



Stephen D. Bittinger

Partner

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OVERVIEW

Stephen Bittinger is a partner and a member of the Health Care/FDA practice group. Stephen focuses his practice on health care reimbursement compliance, defense and litigation, with an emphasis on government and private payer disputes on behalf of providers, suppliers, and manufacturers involved in the US health care system nationally and from abroad. He has extensive experience representing large provider groups, home health agencies, medical facilities, ancillary service providers, medical labs, revenue cycle management companies, and drug and device manufacturers in matters including Medicare and Medicaid audits, private payer audits, federal regulatory termination and exclusion proceedings, False Claims Act defense, and health care revenue disputes. Stephen is one of the leading attorneys in the country on the law regarding the use of statistical sampling and extrapolation in the review and analysis of health care claims. He has served as an expert witness regarding federal reimbursement law in civil and criminal proceedings. Stephen has represented many providers with federal agency matters, including the Centers for Medicare and Medicaid Services (CMS) Center for Program Integrity (CPI), the Department of Health and Human Services Office of Inspector General (HHS-OIG), the Department of Veteran Affairs (VA), and Health Care Fraud division of the Department of Justice (DOJ).

PROFESSIONAL BACKGROUND

Prior to joining the firm Stephen served at a regional commercial law firm where he focused his practice on health care reimbursement defense and litigation. Previously, Stephen and team represented numerous types of physician practices, home health agencies, medical facilities, ancillary service providers, medical laboratories, revenue cycle management companies, and drug/device manufacturers in Medicare audits (RAC, ZPIC, UPIC, TPE), Medicaid audits (SIU), private payors audits, federal regulatory termination, and exclusion litigation related to the health care revenue cycle.

ACHIEVEMENTS

- Southeastern Legal Awards, Legal Innovator Finalist, 2024
- Listed, *The Best Lawyers in America*®, Health Care Law, 2024
- Stephen Bittinger was named “Presenter of the Year” by 1st Healthcare Compliance

- Charleston Business Magazine's Legal Elite – Health Care, 2022 and 2023

SPEAKING ENGAGEMENTS

- Presenter, "The Physician in the Legal Ecosystem," Medical University of South Carolina, College of Medicine, 22 April 2024
- Presenter, "OIG, FCA, & RADV: The Rising Risk of Medicare Advantage," Cozeva, 18 October 2023
- Panelist, "Hunting Health Care Fraud Post-Pandemic: Audits and Investigations," Charleston Health Care Summit, 13 October 2023
- Panelist, "Hunting Pandemic Fraud: Audits and FCA Litigation Resulting From the PHE," 2023 Physicians Legal Issues: Healthcare Delivery & Innovation Conference, 7 September 2023
- Panelist, "The Current State of RA Litigation and Risk Areas for MA Plans, Physician Groups, Vendors and Downstream Entities," RISE West 2023, 29 August 2023
- Panelist, "Legal Challenges to Extrapolated Overpayments from RADV Audits," Rise 21st Risk Adjustment Forum, 10 May 2023
- Presenter, Risk Adjustment Innovations, "Staying Compliant as Regulatory Activity Increases for Risk Adjustment: CMS RADV Regulations, OIG Audits, and DOJ Lawsuits," 18 April 2023
- Speaker, MedtradeEAST, "Understanding How the Government Uses Audits to Bring Fraud Investigations," 24 October 2022
- Speaker, Homecare and Hospice Conference and Expo, "Legal Challenges to Statistical Sampling & Extrapolated Overpayments," October 2022
- Speaker, RISE West 2022, "The Current State of RA Litigation and Risk Areas for MA Plans, Vendors and Downstream Entities," 1 September 2022
- Speaker, Risk Adjustment Compliance – Best Practices For Avoiding Legal Action, 9 November 2021
- Speaker, RISE West 2021, "Legal Insights Panel: Trends in Audit and Compliance Issues," 2 September 2021
- Speaker, Virtual Regional Healthcare Compliance Conference: "Big Data and False Claims Act Risk Due to COVID-19," Health Care Compliance Association, 6 August 2021

EDUCATION

- J.D., University of Akron School of Law, 2010
- M.A., John Carroll University, 2005
- B.S., Kent State University, 2001

ADMISSIONS

- Bar of District of Columbia
- Bar of North Carolina
- Bar of Ohio
- Bar of South Carolina
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Federal Claims
- United States District Court for the District of Columbia
- United States District Court for the Northern District of Ohio
- United States District Court for the Southern District of Ohio

THOUGHT LEADERSHIP *POWERED BY HUB*

- 8 March 2024, What's Been Missing: District Court Orders the Government to Produce Complete Universe of Claims in Provider's Due Process Challenge to Extrapolated Overpayment
- 13 December 2022, COVID-19: A Roadmap to Fraud Investigations: Office of Inspector General Targets Labs for Billing COVID-19 Add-On Tests
- October 2022, False Claims Act: Insights on Local and National Developments
- 2 August 2022, Medicare Advantage False Claims Act Developments
- 30 June 2022, Qui Tam Quarterly - Data on Defense: Invalidating FCA Allegations Based on Statistical Sampling and Extrapolation
- 27 August 2021, Qui Tam Quarterly - Hunting Telehealth Fraud Under COVID-19 Waivers and Expansion
- August 2021, August 2021 Accolades
- 10 June 2021, Understanding OIG and CMS Audits
- 29 April 2021, Health Care Audit and Reimbursement Trends and Challenges
- 25 March 2021, Veteran Affairs Auditing US\$35 Billion in Payments to Community Care Providers
- 30 December 2020, Qui Tam Quarterly - COVID-19 and the Big-Data Revolution of Health Care False Claims Act Litigation
- 9 December 2020, HHS Creates a Working Group to Increase Collaboration with DOJ

- 23 October 2020, COVID-19: K&L Gates Triage: CMS Cease and Desist Letters to COVID Labs and Reimbursement Dispute
- 18 September 2020, COVID-19: K&L Gates Triage: OIG Updates Work Plan to Include Audits of COVID-19 Related Reimbursement and CARES Act Funding
- 4 September 2020, 2021 Physician Fee Schedule Proposed Rule
- 20 July 2020, COVID-19: CMS Announces Plan to Restart the Audit Machines on 3 August 2020 and Additional Changes to Enforcement Policies
- 17 July 2020, COVID-19: K&L Gates Triage: COVID Audits
- 25 June 2020, COVID-19: PPP Loan Borrowers - Your Information May Now Be Public
- 18 May 2020, CMS Issues IPPS/LTCH Proposed Rule for FY 2021

OTHER PUBLICATIONS

- "Due Process: A Winning Weapon Against Extrapolated Overpayments," *American Health Law Association*, 11 April 2024
- "DOJ Indicts Former Executive at Medicare Advantage Organization, Signaling Continued Commitment to Individual Accountability in Corporate Criminal Investigations," *American Health Law Association*, 16 November 2023
- "Righting an Institutional Wrong: Redefining an Overpayment Through HHS-OIG's Policy Shift on Zero-Paid Claims," *American Health Law Association*, 11 August 2023
- "False Claims Act Enforcement Involving Medicare Advantage Plans: Recent Cases and Current Trends," *American Health Law Association*, 18 May 2023
- "Statistical Sampling and Extrapolation," *American Bar Association*, 28 December 2022
- "The Hunt is On: OIG Targets Telehealth Fraud During the COVID-19 Pandemic," *American Bar Association*, 31 October 2022
- "Medicare Reimbursement Audit Checklist," *LexisNexis Practical Guidance*, October 2022
- "Weekly News and Compliance Strategies on Federal Regulations, Enforcement Actions and Audits," *Report on Medicare Compliance*, Vol. 31 No. 32, 5 September 2022
- "Hunting Telehealth Fraud Under COVID-19 Waivers and Expansion," *Pratt's Government Contracting Law Report*, December 2021
- "Qui Tam Quarterly: COVID-19 and the Big-Data Revolution of False Claims Act Legislation," *Health Law Journal*- Vol. 26 No. 2, *New York Bar Association*, 25 May 2021

NEWS & EVENTS

- 27 September 2023, The Evolving Law of Statistics in Health Law: Challenging Extrapolations, Supporting Fraud Claims, and Self-Disclosures, Hosted by American Health Law Association Fraud and Compliance Forum
- 7 September 2023, Hunting Pandemic Fraud: Audits and FCA Litigation Resulting from the PHE, Hosted by ABA's Physicians Legal Issues: Healthcare Delivery & Innovation Conference
- 29 September 2023, The Current State of RA Litigation and Risk Areas for MA Plans, Physician Groups, Vendors and Downstream Entities, Hosted by RISE West 2023
- 22 April 2022, Healthcare Compliance Symposium: Data Mining COVID Fraud and Compliance, Hosted by Widener Law School
- 31 March 2022, 26th Annual Compliance Institute: Avoiding Data Mining Fraud Allegations, Hosted by the Health Care Compliance Association
- 9 November 2021, Risk Adjustment Compliance - Best Practices For Avoiding Legal Action, hosted Health Fidelity
- 6 August 2021, Philadelphia Virtual Regional Healthcare Compliance Conference, hosted by the Health Care Compliance Association
- 13 July 2021, How the Government Uses Data to Hunt Fraud: Audits and FCA, hosted by Medtrade West 2021
- 29 June 2021, COVID-19 and the Big-Data Revolution of Healthcare False Claims Act Litigation, hosted by Health Care Compliance Association
- 2 June 2021, Big Data And False Claims Act Risk Due To COVID-19, hosted by the New York State Bar Association
- 26 January 2021, Big Data and False Claims Act Risk Due to COVID-19
- 13 April 2020, K&L Gates Expands Health Care Practice with Charleston Partner Addition

MEDIA MENTIONS

- Quoted, "Two Courts Side With Providers in Appeals of Extrapolated Overpayments," *Report on Medicare Compliance Volume 33, Number 16*, 29 April 2024
- Quoted, "As 'Originator' of Codes for HCCs, Providers Face Their Own Risk From Crackdown on MA Plans," *Report on Medicare Compliance*, 30 October 2023
- Quoted, "Medicare Advantage insurers will score \$2 billion gift thanks to limited audits," *STAT+*, 1 February 2023

- Quoted, "All OIG Claim Denials From a Vent Audit Are Overturned; OIG National Audit Is Underway," *Report on Medicare Compliance*, 30 January 2023
- Interviewed, "In 'Dual Audit,' Lab Is Audited by Both I-MEDIC and MA Plan's SIU," *Health Care Compliance Association*, 31(27), 1 August 2022
- Quoted, "Medtrade West Delivers On In-Person Promise," HomeCareMag.com, 2 August 2021
- Quoted, "Rulings: Sampling, Extrapolations Should Include Underpayments, Unpaid Claims," Report on Medicare Compliance, 12 July 2021
- Quoted, "More RAC Audits Are Coming, This Time From VA for Community Care," Health Care Compliance Association, 10 May 2021
- Quoted, "Report on Medicare Compliance: Commercial Player, Medicare Telehealth Audits are Underway, with Some Surprises," Health Care Compliance Association, 18 January 2021

AREAS OF FOCUS

- Health Care and FDA
- Academic Medical Centers (AMCs)
- Data Protection, Privacy, and Security
- Food, Drugs, Medical Devices, and Cosmetics (FDA)
- Health Care Fraud and Abuse (U.S.)
- Health Care Payor-Provider Disputes (U.S.)
- Hospitals and Health Systems
- Internal Investigations
- Public Policy and Law
- White Collar Defense and Investigations

INDUSTRIES

- Digital Health
- Health Care Sector
- Lab, Pharmacy, and Durable Medical Equipment
- Pharmaceuticals, Biologics, and Medical Devices
- Post-Acute/Senior Housing and Care

REPRESENTATIVE EXPERIENCE

Government Payor Defense

- Overturned all denials used by HHS-OIG to support a \$29 million dollar overpayment and 98% error rate against a durable medical equipment supplier in the Medicare appeals process.
- Invalidated a statistical extrapolation and overturned all denied claims at an ALJ hearing with OMHA that reduced a debt from \$265,000 to \$2,200 and recovered all previously recouped funds and interest accrued.
- Defended a oncology specialty practice from a Recovery Audit Contractor (RAC) audit on behalf of the Department of Veteran Affairs and settled alleged overpayment for reduced amount prior to completion of the audit.
- Defended a CMS Medicare and Medicaid fraud, waste, and abuse audit by a Unified Program Integrity Contractor (UPIC) by reducing exposure from \$6 million to \$155,000.
- Defended a Medicaid fraud, waste, and abuse audit and reduced exposure from \$1.6 million to \$300,000.
- Defended a hospice owned by a health system from a UPIC audit and CMS payment suspension by reducing error rate from 88% to 3%, terminating suspension, and having held funds in the amount of \$5.5M released.

Commercial Payor Defense

- Defended a medical reference laboratory from a commercial insurer SIU audit and administrative appeal that reduced demand from \$2.5M to \$700,000.

False Claims Act and Agency Defense

- Successfully defended a False Claims Act investigation against a revenue cycle management company that had billed for the targets of the Department of Justice litigation.
- Defended free-standing hyperbaric facility from False Claims Act investigation and reduced exposure from \$25M to \$450,000 in settlement.
- Successfully reduced the Department of Justice's \$80 million dollar fraud loss amount to \$9 million dollars.

International Reimbursement Dispute

- Represent foreign hospitals and air ambulances in administrative appeals and pre-litigation resolutions for settlement of health insurance claims by foreign hospitals and air ambulance companies.
- Represent U.S. hospitals and providers in administrative appeals and pre-litigation resolutions for settlement of health insurance claims against foreign insurance carriers and government health plans.