

# HEALTH CARE

A SPECIAL REPORT

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## Law firms are recruiting health care lawyers

The Obama administration's anticipated health care overhaul fuels client demand.

BY LYNNE MAREK

Law firms are angling to add attorneys with health care expertise as clients seek counsel in navigating the Obama administration's health care overhaul and a wave of industry mergers.

Firms are recruiting corporate, regulatory and transactional lawyers who have experience working in the health care, pharmaceutical, biotechnology and medical device industries. Morgan, Lewis & Bockius grabbed 13 lawyers in the area from Sonnenschein Nath & Rosenthal in April; Proskauer Rose snatched two from McDermott Will & Emery the same month; and Sidley Austin in May picked up the former acting general counsel of the U.S. Department of Health and Human Services. "One of the bright spots in the law right now is health care," said James C. Stansel, the former Bush appointee and top lawyer at the Department of Health and Human Services (HHS). He rejoined the Washington office of Sidley after considering a half-dozen rival offers.

Client demand in the health care arena is rising, despite downturns for corporate and real estate practices, mainly because companies want to prepare for the health care regulation and enforcement changes promised by President Barack Obama. Attorneys in the area have also been busy advising clients on mergers, acquisitions and restructurings, which haven't been as affected as other industries by reduced financing availability.

To assist clients in shaping the health care system changes, Washington lawyers with expertise in the area are lobbying Congress members who are in



**PREPARING FOR CHANGE:** "There are a lot of nervous people," said Monte Dube, whose clients include hospital boards that expect increased monitoring. Health care lawyer Judith Sherwin anticipates "much more intense regulation" in the next year.



the early stages of drawing up health care reform legislation. The Senate Finance Committee started deliberating on options in May. For instance, Senate lobbyist registrant filings this year show that Proskauer Rose is working for the Alabama Medicaid Agency and that Sidley represents a host of health care and biopharmaceutical clients, including the Advanced Medical Technology Association, Bayer Healthcare and Pfizer Inc.

The lawyers are also putting clients in front of federal officials, such as those at HHS, who will have a hand in changing the system, said Scott Memmott, one of Morgan Lewis' new lawyers.

"People are talking about what reform should look like, and people want to be a part of that process from the beginning, before things get set in stone," Memmott said.

### REGULATION ON THE WAY

Clients in the health care arena specifically want their lawyers' advice on how they can start preparing now for regulatory and enforcement likely changes later. The Obama administration is already making some changes. For instance, federal stimulus money was made available for hospitals'

increased use of electronic medical records, which has in turn led to changes in how health care providers meet the patient information privacy requirements of the Health Insurance Portability and Accountability Act, said Judith Sherwin, an attorney at Chicago-based Shesky & Froelich. The administration has also created the Federal Coordinating Council for Comparative Effectiveness Research, which will review the comparative strengths of medical services.

"I anticipate that over the next year or so, we're going to start seeing the effect of much more intense regulation," said Sherwin, who recently was named head of the firm's health care practice group.

Clients will have to adapt to a convergence of the U.S. Food and Drug Administration and the HHS' Centers for Medicare & Medicaid Services as those two entities increasingly work together, said Kathleen Sanzo, the head of Morgan Lewis' FDA/health care regulation practice. The FDA's approval of pharmaceutical and medical products and the Centers for Medicare & Medicaid Services decisions on payments for services and products will be more closely linked as the Obama administration revises how health care is funded, she predicted. "Those decisions are more likely to be made in tandem into the future," said Sanzo, who led her firm this year in doubling the number of attorneys in her group to 30. "You're going to have to be schooled in both areas."

To back up the administration's new and increased regulation of health care companies, hospitals, clinics and other service providers, there will be a rise in federal enforcement actions to root out

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waste and fraud, lawyers predicted. Federal and state enforcement has already picked up during the past couple years and is likely to keep climbing with more overall scrutiny from HHS, plus a keener eye on fraud and antitrust issues at the U.S. Department of Justice and a focus on tax-exempt hospitals at the Internal Revenue Service, they said.

"There are a lot of nervous people," said Proskauer Rose attorney Monte Dube, who works with hospital boards that expect more monitoring of compensation and conflicts of interest, especially with respect to affiliated doctors' groups.

Dube left McDermott Will & Emery in April, along with another partner, to create a health care presence in Proskauer's Chicago office and to help the firm build up its U.S. and international practice group, which currently has 15 lawyers. Dube, who formerly led McDermott's health law department, expanded that group to include 85 lawyers by the time he left, he said.

#### M&A EXPERTISE NEEDED

Although health care merger and acquisition activity has flagged a bit due to the recession, it hasn't slowed as much as in other industries, and efforts by some state and local government hospitals to raise funds by privatizing facilities is increasing, said Dube, who specializes in hospital mergers, privatizations and restructurings. Companies in the area need attorneys with health care regulatory expertise to help them avoid conflicts of interest in arranging affiliations or transactions with other health care providers, he said.

In addition, major mergers in the pharmaceutical industry, including Pfizer's \$68 billion purchase of Wyeth in January and Merck & Co. Inc.'s \$41 billion purchase of Schering-Plough Corp. in March, have also driven the need for lawyers who understand how to value assets in the highly regulated, arcane arena, lawyers in the area said.

Foreseeing, to the extent possible, how the federal government will reimburse health care costs in the future is essential in valuing assets of companies in the industry being bought or sold, Sanzo said. The federal government's reimbursement contributes a significant portion to companies' revenue, and its practices are likely to influence what private insurers pay in the future as well, she said.

"There is a heightened interest in what will happen with the Obama administration," said Gene Basanta, a co-director of the Southern Illinois University Center for Health Law and Policy. "Hospital groups and health care providers are trying to position themselves to be ready."

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