



David M. Johnston

Partner



David Johnston has been advising hospitals, health systems, home health and durable medical equipment companies, as well as pharmacies, Federally Qualified Health Centers (FQHCs), long-term care providers and several other types of health care facilities for more than a decade. He counsels clients on a wide range of reimbursement issues, including Medicare cost report issues and appeals and provider-based compliance and opportunities. Additionally, he guides clients on all aspects of 340B drug program compliance and management, provider and supplier enrollment and enforcement issues, change of ownership (CHOW) transactions and implementation, pharmacy compliance and operations, nursing home transactions and certificates of need. David also advises home and behavioral health providers and durable medical equipment companies to optimize their compliance and operations.

Bar Admissions & Activities

- Admitted, State of Ohio, 2006
- Admitted, U.S. District Court, Southern District of Ohio, 2006
- Member, Ohio State Bar Association
- Member, Columbus Bar Association (Health Law Committee, 2008; Bar Admissions Committee, 2010)

Education

- University of Texas (J.D., with honors), 2006; Associate Articles Editor, *Texas Journal of Business Law*
- Davidson College (B.A. in Economics, *magna cum laude*), 2001; Phi Beta Kappa

Awards & Recognition

- Rising Star, *Ohio Super Lawyers* (Health Care), 2009–2010, 2012–2013, 2019

Presentations & Published Works

- Speaker, "So You Think You're Really a Hospital: the CMS Primarily-Engaged-In Standard" AHLA Institute on Medicare and Medicaid Payment Issues, March 2019

CONTACT INFORMATION

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INDUSTRIES & PRACTICES

Health Care Law
Health Care Industry



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- Speaker, "The Opioid Epidemic: Impact on Ohio Hospitals," Ohio Hospital Association Annual Meeting, June 2018
- Speaker, "Provider-Based Status Update," Health Care Compliance Association Annual Compliance Institute, April 2018
- Speaker, "Second Campuses," AHLA's Institute on Medicare and Medicaid Payment Issues (MMI), March 2018
- Speaker, "Opioid Prescribing Rules in Ohio," Ohio Hospital Advisory Panel, October 2017
- Author, "Medicare Enrollment Revocations and Reenrollment Bans: The Scary New Enrollment Landscape for Providers and Suppliers," AHLA *Connections* Magazine, August 2017
- Speaker, "The Risks and Rewards of Medicare Reimbursement," Ohio Hospital Association Annual Meeting, June 2017
- Speaker, "Medicare Administrative Appeals (PRRB, RACs, Claims and Surveys): Trends and Tips," Ohio Hospital Association Annual Meeting, June 2017
- Speaker, "Provider-Based Status Update: How Recent Changes Impact Off-Campus Outpatient Departments," Ohio Hospital Association Annual Meeting, June 2017
- Speaker, "Provider and Supplier Enrollment: Challenges and Solutions, Everyday Compliance, and Healthcare Transactions," Ohio Hospital Association Annual Meeting, June 2016
- Speaker, "Expanding Your 340B Participation With Provider-Based Clinics: A Practical Case Study," Ohio Hospital Association Annual Meeting, June 2015
- Speaker, "Expanding 340B Participation – the Provider-Based Challenge", OHA Annual Meeting, June 2014
- Author, "Medicare CHOW Implications of Health Care Entity Conversions," *RAP Sheet*, Volume 17, Issue 2, May 2014

Professional & Community Activities

- Chair, Bricker & Eckler Recruiting Committee, 2015–2020
- Member, American Health Law Association, 2006–present (Vice-chair, Accreditation, Certificate, and Enrollment Affinity Group, 2015–2019)
- Member, Society of Ohio Healthcare Attorneys, 2006–present
- Member, Central Ohio Chapter of Healthcare Finance and Management Association, 2010–present
- Secretary (2016–2017) and Past Treasurer (2012–2016), Trinity Evangelical Lutheran Church

Experience

Change of Ownership RAP appeal

Represented a home health agency in its appeal of post-Medicare Change of Ownership Request for Anticipated Payment suspension imposed by the Centers for Medicare and Medicaid Services. Successfully appealed the payment suspension, which was worth \$15 million.



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Skilled nursing facility bed sale

Represented a health system in its sale of a skilled nursing facility to the management firm of the nursing facility. Formulated potential structures, drafted and negotiated various agreements, and implemented each agreement's operation. The sale involved a bed purchase agreement, Medicare change of ownership, certificate of need and comprehensive facility and operating lease, as well as several regulatory filings.

Health system COVID-19 response

Provided 24/7 support to a health system responding to the COVID-19 pandemic. Advised the system on federal and state regulations, including waivers issued as a result of the public health emergency declaration. Also advised on staffing, compensation, quality and patient care issues, as well as expanding telehealth abilities and related reimbursement issues.

Behavioral health provider counseling

Represent a variety of behavioral health providers in state licensure matters as well as general operational and compliance matters.

Medicare reimbursement matters

Represent large teaching hospitals and other non-teaching hospitals on Medicare reimbursement matters and cost report appeals, which include appeals of administrative agency decisions and various court appearances.

340B Program contract negotiations

Drafted and negotiated pharmacy services agreement and contract pharmacy agreements on behalf of a hospital system with national pharmacy providers.

340B self-disclosure

Managed and successfully negotiated self-disclosure by a 340B covered entity to multiple drug manufacturers and the Health Resources Services Administration.

Health system acquisition

Served as lead counsel in the acquisition of a nonprofit health system by a health corporation, negotiating the transaction, drafting all corporate documents, conducting due diligence review and completing all regulatory filings.



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Provider-based attestations

Prepared successful provider-based and mid-build attestations for a hospital system regarding an off-campus, provider-based department and counseled the client through the process.

Amicus in support of HHS interpretive rule

Prepared an amicus brief on behalf of the American Hospital Association in support of the U.S. Department of Health and Human Services (HHS) interpretive rule providing guidance on the scope of the exclusion of orphan drugs from 340B discounts.