

Curriculum Vitae of
Thomas R. Barker, Esq.
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Employment History

Foley Hoag LLP
Washington, D.C.

Partner

March, 2009 – Present

Health care regulatory attorney with specialization in complex Medicare and Medicaid regulatory, coverage, and reimbursement issues.

Appointed in May, 2019 to a three-year term as a Commissioner of the Medicaid and CHIP Payment and Access Commission (MACPAC).

Member of the five-member Executive Committee of Foley Hoag responsible for overall management of the Firm. Member of the firm's Billing Committee.

Chair of the Health Care Practice, a part of the Administrative Department of the Firm.

Represent health care providers and payers on complex regulatory issues before the Centers for Medicare & Medicaid Services (CMS), the Health Resources and Services Administration (HRSA) and the Food and Drug Administration (FDA). Nationally-known expert in Medicare and Medicaid payment rules as well as CMS regulatory processes. Founder and co-author of the firm's Medicaid and the Law Blog.

Represent employer groups before the Department of Labor and the Internal Revenue Service on tax and ERISA compliance issues arising from implementation of the Patient Protection and Affordable Care Act.

Pro-bono practice representing immigrants. Special focus on health care issues facing immigrants. Have developed specialization representing refugees from North Korea and non-government organizations serving North Korean defectors living in the United States and the Republic of Korea. Provide counsel and advice to the organizations, as well as legal advice and immigration counsel to individual North Korean defectors. Have represented over 35 North Korean refugees in becoming United States citizens or in obtaining permanent residence (green cards). Practice before Department of Homeland Security, United States Citizenship and Immigration Services and United States Immigration Court.

Office of the General Counsel
U.S. Department of Health and Human Services, Washington, D.C.

Acting General Counsel
May, 2008 – January, 2009

Designated by the President of the United States as Acting General Counsel, United States Department of Health and Human Services (HHS). Responsible for supervising an office of 450 attorneys nationwide representing the various staff and operating divisions of HHS. Ultimately accountable for the legal sufficiency of every regulation and item of sub-regulatory guidance published by HHS. Direct and oversee the conduct and strategy of each piece of litigation to which the Department is a party. Responsible for providing recommendations to the Department of Justice regarding appeal and settlement recommendations in that litigation. Interpret proposed and enacted legislation affecting HHS. Provide confidential legal advice to the Secretary of Health and Human Services, a member of the President's Cabinet, and his subordinate officers including the Administrator of the Centers for Medicare & Medicaid Services (CMS) and the Food and Drug Administration (FDA). Interact multiple times daily with senior-level Administration officials including the White House Counsel's Office and Justice Department officials.

Immediate Office of the Secretary
U.S. Department of Health and Human Services, Washington D.C.

Counselor to the Secretary
October, 2005 – April, 2008

Reported directly, and served as a senior advisor, to the Secretary of HHS. Provide confidential legal, political, and strategic advice to Secretary Michael O. Leavitt on a broad range of issues within the jurisdiction of the Department. Served as lead counselor on high-priority HHS projects including the implementation of the Medicare Prescription Drug Benefit. Act as principal liaison between the Secretary, the White House, and other Cabinet agencies on these and other project areas within the jurisdiction of HHS. Chair HHS senior staff briefings on every major Medicare and Medicaid policy initiative implemented and adopted by HHS during my tenure. Serve as principal liaison between the Secretary and the Administrators of the Centers for Medicare & Medicaid Services; the Health Resources and Services Administration; the Agency for Healthcare Quality and Research; and the Indian Health Service. Significant initiatives included:

- Implementation of Medicare part D from its enactment in December, 2003 through plan year 2010.
- Lead Administration negotiator with Congress on the Medicare and Medicaid provisions in the Deficit Reduction Act of 2005.
- Drafted President Bush's Executive Order on health information technology and health care transparency signed August 22, 2006. Worked with senior White House officials to arrange the event and signing ceremony.
- At the request of the United States Trade Representative, served as lead HHS negotiator on the pharmaceutical and medical device provisions of the U.S.-South Korean Free Trade Agreement negotiated in Seoul, South Korea.
- HHS lead in the development of the health access initiatives in the President's 2007 and 2008 State of the Union Addresses. Lead liaison between HHS and the Department of Treasury on tax issues involved in health care.

Office of the General Counsel**U.S. Department of Health and Human Services, Washington, D.C.**

Deputy General Counsel, CMS Division

December, 2003 – April, 2006

Served as Chief Legal Officer of CMS. Reported directly to the General Counsel of HHS. Responsible for overseeing the 60 career attorneys in the Centers for Medicare & Medicaid Services (CMS) division of the General Counsel's office. Direct legal review of all regulations, instructions and correspondence affecting CMS for the General Counsel. Responsible for decisions regarding the conduct of all litigation affecting the CMS Division for the General Counsel. Interact with other agencies of the government, notably the White House Counsel, the HHS Office of Inspector General and Department of Justice, on common matters of interest affecting CMS. Directed the following activities:

- Development of the proposed and final regulations implementing the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA).
- Ongoing litigation involving provider reimbursement matters, including one matter for which the Government sought a writ of *certiorari* before the Supreme Court of the United States.
- HHS guidance to providers on hospital billing practices affecting the uninsured.
- Response to Government Accountability Office and Congressional investigations of implementation of the MMA.

Office of the Administrator**Centers for Medicare & Medicaid Services, Washington, D.C.**

Senior Health Policy Counselor to the Administrator

October, 2001 – December, 2003

Reported directly to the Administrator of CMS. Provided confidential legal, political and policy advice to the Administrator. Oversaw all liaison efforts between the Administrator and major health care provider and beneficiary groups and trade associations. Developed and directed CMS legal and regulatory policy affecting the operation of the Medicare and Medicaid programs. Engaged in the following activities:

- Implementation of the fiscal years 2002, 2003 and 2004 reimbursement policies for all CMS-regulated providers. Interacted with key stakeholders and members of Congress on these reimbursement policies.
- Providing technical advice to members of Congress and their staffs during the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA).
- Implementation of amendments to CMS' regulations interpreting the Emergency Medical Treatment and Labor Act (EMTALA).
- Implementation of amendments to CMS' regulations defining rehabilitation hospitals.
- Administration of monthly meetings of 11 "open door" advisory groups to CMS.

Massachusetts Hospital Association, Burlington, MA

Regulatory Counsel

November, 1998 – October, 2001

Directed legal and regulatory affairs for hospital trade association. Advised and advocated for hospitals, health systems and physicians on health care regulatory issues, including:

- Medicare and Medicaid regulatory and payment policies
- Regulatory and billing compliance
- Tax, antitrust, and other corporate issues affecting health care organizations

Position involved significant interaction with state and federal legislative and regulatory officials responsible for the development of health care regulatory policy. Frequent presentations to hospital members of Association, as well as external groups. Developed and conducted monthly legal education programs for members of Association.

Massachusetts Hospital Association, Burlington, MA

Director, Health Care Access and Continuing Care Policy

October, 1992 – November, 1998

Responsible for advising hospitals and health systems, and advocating for hospitals and health systems, on health care access and continuing care issues, including:

- Leading Association's legislative and regulatory efforts to support significant expansions to the Massachusetts Medicaid program and educating member hospitals and health systems on those expansions and their implications.
- Leading Association's legislative and regulatory efforts to modify state and federal policy toward payment for and regulation of continuing care and post-acute care services.
- Implementation of regulations modifying the Massachusetts uncompensated care pool and Medicaid program.

Significant interaction with senior-level staff of member hospitals and health systems as well as policymakers. Conducted monthly briefings for member hospitals and health systems on health access issues and monthly meetings of non-acute hospital CEOs.

U.S. House of Representatives, Washington, DC

Legislative Director and Committee on Ways and Means Associate Staff to U.S. Representative Brian Donnelly

February, 1987 – October, 1992

Responsible for overseeing all of Congressman's work within the jurisdiction of the Committee on Ways and Means including federal health and income tax policy. Directed Congressman's efforts in the following areas:

- Coordination of efforts to develop, with ranking Republican member of the Committee on Ways and Means, a bipartisan approach to legislation to repeal of the Medicare Catastrophic Coverage Act of 1988.
- Drafting legislation to revise and modify the standards that non-profit hospitals are required to meet as a condition of federal income tax exemption.
- Drafting legislation, enacted into law, revising the continued health access provisions of ERISA and COBRA.

- Drafting of legislation to revise the Medicare programs in 1987, 1988, 1989 and 1990 through the Omnibus Budget Reconciliation Acts of those years, as well as the Tax and Miscellaneous Revenue Act of 1988.

Also represented the Congressman in negotiations to create the original Diversity Visa (Immigration and Nationality Act § 203(c)) program and drafted legislation to make program permanent in the Immigration Act of 1990.

U.S. House of Representatives, Washington, DC

Legislative Assistant and Legislative Director, U.S. Representative Silvio Conte
September, 1981 – February, 1987

Member of, and in 1986 director of, legislative staff of the ranking Republican Member of the House Committee on Appropriations. Responsible for overseeing legislative initiatives considered by the House of Representatives for the Congressman. Drafted legislation for introduction, and drafted floor speeches for delivery, by the Congressman. Prepared summaries of legislation being considered by House of Representatives. Prepared recommendations for Congressman's vote.

Education

Suffolk University School of Law, Boston, MA

Juris Doctor, May, 1998

- Graduated *magna cum laude*, top 10% of graduating class
- Selected by Deans and Faculty as Outstanding Student, 1998 Evening Division
- Member, National Moot Court Tax Team
- Note Editor, *Transnational Law Review*; Chosen Editor of the Year, 1997 – 1998
- Dean's List: 1995 – 1996 – 1997 – 1998
- Civil Procedure Research Assistant on the topic of personal jurisdiction

Jacksonville University, Jacksonville, FL

Bachelor of Arts, April, 1981

- Graduated with Honors in English and Political Science

Bar and Court Admissions

- Member of the Massachusetts and District of Columbia Bars
- Admitted to practice before the Supreme Court of the United States
- Admitted to practice before the Supreme Judicial Court of Massachusetts
- Admitted to practice before the United States Court of Appeals for the First Circuit

- Admitted to practice before the United States Court of Appeals for the Fifth Circuit
- Admitted to practice before the United States Court of Appeals for the D.C. Circuit
- Admitted to practice before the United States District Court for the District of Columbia
- Admitted to practice before the United States District Court for the District of Massachusetts
- Admitted to practice before the Tax Court of the United States
- Admitted to practice before the United States Immigration Court

Faculty Affiliations

Suffolk University School of Law, Boston, Massachusetts

August, 1999 – December, 2018

- Assisted in development of school's health and biomedical law concentration.
- Teach course in school's health and biomedical law concentration on Legal Issues in Medicare and Medicaid. Developed and teach the course solely from notes, cases and articles and with no official textbook.

School of Public Health and Health Services, George Washington University Medical Center, Washington, D.C.

May, 2002 – May, 2018

Teach courses in University's School of Public Health and Health Services including Medicare and Medicaid Law and Policy and Introduction to Health Law.

Publications

Author of Foley Hoag "Medicaid and the Law" blog, available at <http://www.medicaidandthelaw.com/>.

"Employer-Related Provisions of the Patient Protection and Affordable Care Act New Requirements and Rapid Implementation May Pose Challenges for Labor and Employment, Tax and ERISA Counsel," Suffolk University School of Law, Journal of Health and Biomedical Law, Spring, 2013.

"Options to Change Medicare Payment for Outpatient Prescription Drugs and Biotechnology Products," Journal of Commercial Biotechnology, January, 2012.

“A Critical Analysis of the Provisions of the Affordable Care Act Affecting the Life Sciences Industry,” Suffolk University School of Law, Journal of Health and Biomedical Law, Fall, 2011.

“The Low-Income Subsidy In The New Medicare Drug Benefit,” Suffolk University School of Law, Journal of Health and Biomedical Law, November, 2005.

“Lessons Learned from the Harvard Pilgrim Health Care Receivership,” Boston Bar Journal, May, 2001

“International Taxation and the Troubled History of Internal Revenue Code Section 936,” Suffolk University Transnational Law Review, September, 1998

“Massachusetts Begins Second Generation of Mental Health Managed Care,” Healthcare Financial Management Association, Managed Care Journal, May, 1997.

“Hospital Tax-Exempt Standards: An Update on the Eve of Health Care Reform,” Healthcare Financial Management Association Taxation Journal, October, 1993.

“Re-Examining the § 501(c)(3) Status of Hospitals as Tax-Exempt Organizations,” Tax Notes and The Exempt Organization Tax Review, July, 1991.

Contributor to quarterly newsletter of the Boston Bar Association Health Law Reporter

Professional and Organizational Memberships

- Appointed in May, 2018 as a Commissioner of the Medicaid and CHIP Payment and Access Commission
- Boston Bar Association, Member of Section on Health Law. Founder of the quarterly newsletter of Section
- American Health Lawyers Association
- Federalist Society
- John Carroll Society
- American Immigration Lawyers Association
- Film Noir Foundation
- North Korean Freedom Coalition

Volunteer Activities

Pro Bono **Attorney for Health Law Advocates,**
Boston, Massachusetts
April, 1999 – October, 2001

Represented clients on health care access matters.

Cathedral of St. Matthew the Apostle, Washington, D.C.

October, 2003 – present

Mass Lector

***Pro Bono* Attorney for the North Korean Freedom Coalition and the Committee for Human Rights in North Korea**

Washington, D.C.

2009 – present

Provide volunteer assistance to a coalition of North Korean human rights organizations involving issues such as obtaining non-profit status and compliance with § 501(c)(3) rules; immigration advice; and developing recommended revisions to the Refugee Resettlement Program as it pertains to North Korean refugees.

***Pro Bono* Attorney for Human Rights First and Catholic Charities**

Washington, D.C.

2013 – present

Represented clients on immigration (asylum) claims

Personal Interests

Music, Film Noir, literature, American history, politics, hiking, writing.