

## Mark D. Polston

Partner  
*Healthcare*

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Mark is a Partner in the firm’s Healthcare practice and Co-Chairs the firm’s Life Sciences and Healthcare Industry Group, which is comprised of more than 300 lawyers across the firm. As the former HHS Deputy Associate General Counsel for Litigation for the Centers for Medicare & Medicaid Services, Mark has over 20 years of experience in Medicare reimbursement policy and Medicare fraud defense and represents numerous health care systems and hospitals in navigating the Medicare regulatory environment. Mark has served as the lead litigator on numerous Medicare reimbursement litigation cases defending providers against government enforcement actions, and frequently advises clients on Medicare reimbursement strategy and regulatory and compliance requirements.

For more than 20 years, Mark has counseled clients in navigating through the complex realm of Medicare, a regulatory environment so intricate that the Supreme Court has described it as “unintelligible to the uninitiated.” In that vein, Mark specializes in representing clients and litigating complicated Medicare reimbursement issues, including the successful challenge to Medicare’s so-called “Two Midnight” 0.2 percent rate cut. As a former high-ranking litigator within the Department of Health and Human Services, Mark brings credibility and an insider’s knowledge when advocating before the Centers for Medicare & Medicaid Services and Congress on Medicare and Medicaid issues.

Drawing upon his experience as CMS’s former chief litigation counsel, Mark represents hundreds of hospitals in Medicare reimbursement appeals. His cases typically challenge national Medicare reimbursement policies, with hundreds of millions of dollars at stake. On the defense side, Mark’s years of government fraud enforcement experience and Medicare knowledge translates to surgically effective representation of providers in Medicare fraud investigations.

Mark is more than just a litigator. According to Chambers USA, sources praise Mark’s ability to “distill issues carefully and thoughtfully,” while also praising his “very client service-oriented” approach. Given Mark’s vast knowledge of the pitfalls and complexities woven throughout the regulatory and compliance labyrinth of Medicare and Medicaid, Mark is able to counsel and strategize with clients on diverse topics such as Graduate Medical Education reimbursement for teaching hospitals, Medicare’s “provider-based” rules, and Medicare coverage standards for inpatient services.

His extensive and lengthy experience in handling complex Medicare and Medicaid issues has led

Mark to be deemed a nationally-recognized expert, particularly on matters related to Medicare reimbursement. Mark is also a frequent speaker and a Faculty Member of the Institute on Medicare and Medicaid Payment, and participates annually in the Institute's conference sponsored by the American Health Lawyers' Association. Mark is also co-editor of the *Reimbursement Advisor*, a leading publication within the healthcare finance community.

## Matters

"Represented over 200 hospitals in a successful lawsuit challenging CMS's decision to cut inpatient Medicare hospital rates to offset the financial impact of the so-called Two Midnight rule, leading to a reversal of the policy by CMS and an influx of approximately \$660 million in additional Medicare reimbursement to the nation's acute care hospitals."

"Won an \$18 million arbitration award for a national healthcare company involving breach of contract and fraud claims against sellers of a Medicare-reimbursed hospice."

"Spearheaded the RAC Coalition, a group of the nation's leading hospitals which successfully lobbied for reform of the Medicare Recovery Audit Contractor program."

"Leading the Stark Reform Coalition, a consortium of hospitals seeking reform of the Stark Physician Self Referral Law."

"Representing an academic medical center in a False Claims Act investigation involving allegations of violations of the Medicare provider-based facility rule."

"Representing Community Health Systems in numerous cost report reimbursement appeals before the Provider Reimbursement Review Board and in federal court."

"Representing the Florida Hospital Association and several Florida hospitals in multi-million dollar group appeal challenge to CMS policy excluding Low Income Pool Section 1115 expansion waiver days from the Medicare DSH payment calculation."

"Counseled major Mid-Western hospital chain on reorganization of its Medicare Graduate Medical Education programs, including seeking rural re-designation of certain hospitals in order to maximize FTE 'cap space' and take advantage of relaxed rules for creation of 'new' medical education programs, all of which resulted in millions of dollars of additional Medicare reimbursement."

"Successfully assisted academic medical center in seeking 'on-campus' status from CMS for provider-based facility located more than 250 yards from campus, resulting in millions of dollars of additional Medicare reimbursement."

"Counseled numerous providers on the 60-day overpayment rule, including advising a hospice provider in identifying and returning a \$10 million overpayment refund to the Medicare program."

"Representing 30 hospitals in a multi-million dollar challenge to CMS regulation which arbitrarily penalizes teaching hospitals for training medical fellows above their 'FTE cap.'"

## Credentials

### EDUCATION

J.D., Harvard University, cum laude

B.A. Political Science, University of Dayton, summa cum laude

## ADMISSIONS

Supreme Court of the United States  
U.S. Court of Appeals for the Ninth Circuit  
U.S. Court of Appeals for the D.C. Circuit  
California  
District of Columbia  
Maryland

## CLERKSHIPS

Law Clerk, Pierce Lively, U.S. Court of Appeals for the Sixth Circuit

## Recognition

Sources praise his ability to "distill issues carefully and thoughtfully," while also praising his "very client service-oriented" approach.

CHAMBERS 2017 HEALTHCARE

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Named a "Life Sciences Star"

LMG LIFE SCIENCES, 2016

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Ranked in the Healthcare: Service Providers category

THE LEGAL 500, 2015

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Received the Superior Achievement Award

HHS, OFFICE OF GENERAL COUNSEL

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Received the Special Service Citation

CMS ADMINISTRATOR

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## Insights

### NEWSLETTER

*July 29, 2019*

Health Headlines – July 29, 2019

*July 15, 2019*

Health Headlines – July 15, 2019

*July 1, 2019*

Health Headlines – July 1, 2019

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## Events

### SPEAKING ENGAGEMENT

*June 18, 2019*

Mark Polston to Speak at HFMA Greater Heartland Conference About Medicare Cost Report Appeals

## WEBINAR

August 21, 2019

Medicare Litigation Opportunities after Allina and Kisor

May 16, 2019

Just Around the Corner: FDA's Proposed Rule Would Make Major Changes in Requirements for U.S. Mammography Facilities

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## News

### IN THE NEWS

September 17, 2019 • Source: *Law360 and InsideHealthPolicy*

Mark Polston, Chris Kenny, Joel McElvain and Nikesh Jindal obtain a favorable ruling for a group of over 40 hospitals in a \$600M Medicare pay cut dispute

July 30, 2019 • Source: *Bloomberg Law and Law360*

Ashley Parrish, Mark Polston and Elizabeth Swayne represent American Clinical Laboratory Association before the U.S. Court of Appeals

### RECOGNITION

October 4, 2019

LMG Life Sciences Recognizes King & Spalding With Multiple Rankings in its 2019 Guide

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