

MVP: Foley Hoag's Thomas Barker

Law360 (December 5, 2018, 1:09 PM EST) -- Thomas Barker, the co-chair of Foley Hoag LLP's health care group, got a law restricting the relationship between pharmacies and their benefit managers invalidated, and pushed the federal government to alter how it would determine a certain Medicare payment, earning him a spot as a Law360 Health MVP.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Barker coordinated the litigation strategy that helped take down an Arkansas law dictating how much pharmacies get reimbursed for the generic drugs they buy from wholesalers. Foley Hoag represented the Pharmaceutical Care Management Association, which claimed the law wrongly tied how PBMs can structure their relationships with pharmacies.

The Eighth Circuit in June found the law preempted by the Employee Retirement Income Security Act and Medicare Part D, which was a win for PCMA.

As for what made this case such an accomplishment, Barker said: "We only won on one claim in district court, so preparing for the appellate court oral arguments and the briefing, just making sure that we explained it as clearly and as succinctly as possible, because we obviously only partially succeeded in doing that with the district court."

OTHER NOTABLE WORK:

Barker represented the Federation of American Hospitals as it challenged the formula the Centers for Medicare & Medicaid Services used to determine a portion of payments hospitals receive for treating a disproportionate share of low-income individuals.

The MVP logo features the letters 'MVP' in a blue, serif font. The 'V' is partially enclosed by a red circle with an upward-pointing arrow, suggesting a 'win' or 'achievement'.

Thomas Barker
Foley Hoag

Under the Affordable Care Act, 75 percent of those so-called DSH payments were held back but then provided based on a hospital's level of charity care, Barker said. CMS had to revise a cost report to actually reflect that information and Barker challenged what formula the agency proposed. CMS adopted his methodology in its final policy in November 2017, and the value of that change for the FAH could reach \$1 billion, the firm said.

Barker said it was rewarding to “work with CMS and have CMS acknowledge that there needed to be some changes, because CMS as an agency isn't always willing to do that, and they were in this case.”

THE PROUDEST MOMENT OF HIS CAREER:

Barker spent about five years with the U.S. Department of Health and Human Services, eventually becoming its acting general counsel. During that time, he helped implement Medicare Part D, which covers prescription drugs.

“I was primarily just giving legal advice to the agency and to the White House on how we felt the program needed to be structured, but at the time I was working for Secretary [Mike] Leavitt and he really tried to make it a point to go out in communities and understand how the benefit worked and I got to go with him,” Barker said. “Seeing how it improved individual Medicare beneficiaries' lives was a big deal for me.”

HIS ADVICE FOR JUNIOR ATTORNEYS:

Barker said newer attorneys “have to really get grounded in the basics.” He stressed how complicated health care is, and said attorneys won't be able to advance until they really understand the foundations.

— *As told to Dani Kass. Additional reporting by Adam Lidgett.*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2018 MVP winners after reviewing nearly 1,000 submissions.