

Health Care Group Of The Year: Zuckerman Spaeder

By **Danielle Nichole Smith**

Law360 (January 30, 2020, 3:44 PM EST) -- Zuckerman Spaeder LLP has made a name for itself in the health care industry, successfully challenging the federal government's handling of the 340B drug discount program and insurers' internal coverage guidelines, earning the firm a spot among Law360's 2019 Health Care Groups of the Year.

Partners William Schultz and D. Brian Hufford told Law360 that Zuckerman Spaeder has been able to tackle interesting cases because it doesn't represent major brand pharmaceutical companies or insurers — a fact that distinguishes the firm from others in the health care space.

More than half of the firm's 80 attorneys in Washington, D.C., Tampa, New York and Baltimore have worked on major health care matters in the past couple of years, according to Schultz. The offices handle a variety of matters, including qui tam litigation, insurance coverage disputes, issues involving Medicare and Medicaid and advocacy work concerning tobacco use, among other things, Schultz said.

"I think what sets us apart is that we tend to represent the small interest — whether it's the patients in this insurance practice, the advocates in terms of tobacco or the nonprofit hospitals in the 340B case," Schultz said.

Last year, Zuckerman Spaeder successfully took on the U.S. Department of Health and Human Services for nonprofit hospitals challenging a regulation that drastically cut the reimbursement rates for the federal 340B drug discount program.

In December 2018, a D.C. federal judge ruled in the hospital's favor, finding that the agency had overstepped its authority when it cut the program's drug reimbursement rates by nearly 30% that year. And the same was true of similar cuts meant for 2019, the judge held in May.

Schultz, who previously served as HHS' general counsel, said that these kinds of cases are often difficult because of the amount of deference courts give federal agencies in implementing their regulations.

Schultz said the cuts would have amounted to about \$3.2 billion over the two-year period. The



department will have to remedy those cuts if the ruling is upheld at the D.C. Circuit, where it is currently being appealed, according to the firm.

"This was a program that was created to give these hospitals more money so that they would be better able to serve the poor and disadvantaged patients who otherwise wouldn't have available to them various kinds of programs," Schultz said.

The firm also put pressure on the agency last year to implement changes to the 340B drug discount program that had been delayed by the Trump administration five times. After a lawsuit and subsequent briefing, the agency "caved" and issued the regulation, Schultz said.

Zuckerman Spaeder additionally demonstrated itself to be a "substantial innovator" in the area of health care insurance, generating case law that allowed providers and patients to better pursue claims against insurance companies, Hufford said.

For instance, in *Wit v. United Behavioral Health* — a suit challenging United Behavioral Health's internal guidelines for mental health benefits — the firm actually used precedent that had been developed by insurance companies under the Employee Retirement Income Security Act, Hufford said.

"That's sort of what we've done with our practice," Hufford said. "We use theories that insurance companies previously used to defend themselves and turn it against them."

According to Hufford, insurers often argued in individual suits that faulty benefit determinations should be remanded back to them for reprocessing, which could discourage lawyers from bringing those cases.

However, Zuckerman Spaeder was able to use the remedy of remanding and reprocessing to avoid some of the individualized issues that historically defeated certification in proposed class actions against insurance companies, Hufford said.

In the *Wit* case, the firm was able to achieve certification of a class of more than 50,000 members and, in February, secure a finding that the insurer's coverage guidelines for behavioral health treatment ran afoul of ERISA.

The firm also achieved class certification in a suit accusing Aetna Inc. of wrongly denying coverage for transcranial magnetic stimulation — which is used to treat depression. The dispute ended with a \$6.2 million settlement in February that provided compensation that equaled roughly 98% of the billed charges for the denied claims, according to the firm.

Zuckerman Spaeder, which started out in white collar crime back in the 1970s, "grew organically from various directions toward health care," Hufford told Law360. Now, the firm is even expanding into consulting services, as more providers, hospitals and associations have begun to seek out its advice, he noted.

"It just highlights how significant health care is to the country," Hufford said. "I think our practice as a result has organically developed such a strong practice in that area, and I think we can provide a unique space to help clients deal with all sorts of different issues."

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