

Behavioral Health

Behavioral health providers have unique business model, care delivery and regulatory issues that require focused legal expertise informed by real-world experience in the behavioral health space. Polsinelli's Behavioral Health Group, one of the largest in the country, is a cross-functional team with significant experience completing major transactions and resolving complex regulatory matters involving behavioral health providers.

We are dedicated to providing full-service legal representation to investors and operators in the behavioral health space, including:

- Private equity, venture capital and family office investors
- PE-owned platform behavioral health providers
- Acute care psychiatric hospitals and units
- Substance abuse and eating disorder treatment providers
- Residential, outpatient and adolescent treatment facilities
- Mental health and multi-specialty behavioral health providers
- Community mental health centers
- Digital and telehealth treatment providers
- Autism and ABA treatment providers
- IDD/DD service providers

Polsinelli's Behavioral Health Group includes attorneys with deep experience representing investors and leading behavioral health providers in all facets of their legal affairs. Our extensive health care industry experience spans M&A and financing transactions, real estate, compliance, reimbursement, employment technology, HIPAA/privacy and security and other legal disciplines, which allows us to fully partner with our clients in support of their business goals.

Matters

Mergers, Acquisitions & Transactional

Our team has structured, negotiated and successfully completed all aspects of complex transactions in the behavioral health space, including purchase and sale transactions ranging in value from \$1 million to \$1.2 billion. Notable matters include:

- Acted as lead counsel for Elements Behavioral Health in its sale to a PE buyer out of Chapter 11 bankruptcy proceedings involving more than \$200 million in obligations, handling all M&A, regulatory, bankruptcy,

finance and real estate work involving 13 facilities across the U.S. and its related laboratory operation. Polsinelli's representation of Elements Behavioral Health in this transaction resulted in Polsinelli receiving the Deal of the Year award for Healthcare/Life Sciences (Restructuring) ((\$50 million-\$100 million) at the 14th Annual M&A Advisor Turnaround Awards and the USA Restructuring Deal of the Year Middle Markets award at the 11th Annual Americas M&A Atlas Awards.

- Represented Monte Nido & Affiliates, a leading national eating disorder treatment provider, in its sale to Revelstoke Capital Partners. Behavioral Health Business named this transaction a 2022 Deal that Defined Behavioral Health Investment.
- Represented Frontline Healthcare Partners in its investment partnership with Bay Area Clinical Associates, among California's largest adolescent mental health providers.
- Represented Frontline Healthcare Partners in its investment partnership with Front Range Clinic, a leading provider of medication-assisted treatment services in Colorado and New Mexico.
- Represented Harmony Recovery Group, operator of 10 addiction treatment facilities in Florida, North Carolina, Tennessee, New Jersey and Massachusetts, in its sale to Thrive Healthcare.
- Represented a PE-owned national addiction treatment provider in 18 add-on acquisition transactions involving outpatient opioid addiction treatment programs in nine states.
- Represented a PE-owned national behavioral health treatment provider in 12 add-on acquisition transactions involving five states' residential and outpatient addiction and mental health treatment programs.
- Represented a PE-owned addiction and mental health treatment provider in nine add-on acquisition transactions involving outpatient mental health and addiction treatment providers in six states.
- Represented an investor group in acquisition of distressed multistate addiction treatment provider with operations in California, Tennessee and Texas.
- Represented Mahajan Therapeutics, a leading Ohio mental health and substance abuse treatment provider, in its sale to Baymark Health Services.
- Represented Acacia Psychology, a provider of collegiate mental health in California and Minnesota, in its sale to MindPath Health.
- Represented the owners of a group of outpatient mental health clinics and TMS providers in multiple states to one of the country's largest outpatient mental health providers.
- Represented a closely held behavioral health treatment provider in its \$50 million sale to PE-sponsored roll-up platform in the behavioral health space.
- Represented a national provider of mental health and addiction treatment to adolescents and young adults in its sale to new PE owner.
- Served as counsel in the sale of autism therapy and special educational services provider to a PE-sponsored buyer.
- Advised on purchasing and integrating several Medicaid Home and Community Based Services funded agencies specializing in providing habilitative services to intellectually and developmentally disabled individuals to a PE-sponsored portfolio company.
- Provided full-spectrum due diligence and deal support involving dozens of behavioral health transactions, including evaluation and mitigation of business and legal risks, regulatory compliance, government investigations and transition of licensing and payor contracts.

Finance & Real Estate

- Advised institutional lenders, investors and providers in financing transactions in connection with the acquisition, expansion and operation of behavioral health providers.
- Served as borrower's counsel with over \$250 million of financing and refinancing of prop-co and op-co (and joint ventures) loans for acquiring, constructing, developing, and operating behavioral health and chemical dependency facilities across four states.
- Served as counsel in the sale-leaseback of six behavioral health facilities across three states by privately owned, national owner/operator to major health care real estate investment trust for purchase price of more than \$400 million.
- Advised on real property purchase, lease, divestiture and sale-leaseback transactions involving behavioral health properties for investors and behavioral health providers, including due diligence, land use and credentialing assessment.

- Routinely represented lenders and borrowers in financing transactions, including as pertain to behavioral health M&A acquisitions, construction, growth capital and credit facility transactions.
- Supported the development and launch of de novo behavioral health programs, including real estate acquisition and leasing, land use, licensing and due diligence matters.
- Pursued zoning approval for de novo and facility expansion, successfully overcoming NIMBY opposition in administrative and judicial proceedings.

Corporate Practice, Compliance & Privacy

- Provided guidance related to compliance with corporate practice of medicine restrictions.
- Assisted with laboratory compliance issues for behavioral health providers, including specialized laboratory coding and coverage issues for urine drug testing.
- Advised on pharmacy licensure, compliance and billing issues.
- Advised on and drafted admission and discharge policies and procedures, including specialized admission criteria dictated by applicable state laws.
- Drafted policies and procedures related to federal and state privacy and security laws, including state preemption issues related to behavioral health patients in multiple jurisdictions across the U.S.
- Developed, implemented and tested corporate compliance programs for behavioral health providers.
- Represented behavioral health providers in government investigations at the state and federal level, including Federal Civil False Claims Act matters.
- Directed both internal and external payor audits impacting the behavioral health, laboratory and pharmacy space.
- Advised on fraud and abuse compliance issues and guided providers through the federal and state anti-kickback, self-referral and civil monetary penalties laws impacting behavioral health related to, for example, marketing arrangements and patient brokering issues.

Reimbursement, Payor Contracting, Enrollment & Credentialing & Payor Disputes

- Developed and advised on participation and non-participation strategies with commercial, government and other third-party payors related to behavioral health coverage.
- Strategized and negotiated commercial payor contracts, including developing stand-alone and integrated Value-Based Care programs to protect and grow revenues.
- Guided providers through expanding Medicare and Medicaid enrollment, coverage, payment options, and issues.
- Advised on Medicare Advantage and Medicaid managed care contracting and risk-bearing networks for behavioral health providers.
- Evaluated behavioral health and substance use treatment coverage under other government payors, such as Federal Employee Benefits Plans, Veterans Administration, TriCare and Indian Health Services.
- Defended, litigated and resolved payor audits, recoupment and reimbursement issues related to behavioral health claims, including, for example, level of care and medical necessity disputes and violations of the Mental Health Parity and Addiction Equity Act.
- Resolved payor credentialing disputes to address authorization and/or payment delays for services.

Licensing & Enforcement Matters

- Advised on state licensure requirements, including determining applicable licensing schemes for various behavioral health settings, care levels, and laws and regulations.
- Defended against enforcement actions and other hearings before administrative agencies.
- Counseled on personnel licensure and enforcement actions involving various state agencies with administrative authority over behavioral health providers and clinical personnel.
- Guided clients on the applicability of certificates of need (CON) and, as necessary, securing CON for developing or expanding behavioral health facilities.
- Advised on regulatory requirements for physical plant attributes, clinical personnel scope of practice issues, staffing ratios and supervision requirements.

Public Policy Advocacy

- Represented a large national behavioral health professional association in federal legislative and regulatory advocacy.
- Assisted a behavioral health precision medicine provider in advocating before Congress and the Centers for Medicare & Medicaid Services (CMS) regarding coverage, coding and reimbursement issues.
- Advanced the legislative and regulatory agenda for a national behavioral health professional association. This included securing federal appropriations for mental health services and research.
- Represented a psychiatric health system advocating for Congress and CMS to remove access-to-care barriers in the Medicaid and Medicare programs.
- Developed conditions of participation within the Medicare program for a mental health services provider organization and advocated for increased reimbursement levels within the Medicare Hospital Outpatient Prospective Payment System.
- Advocated for policies to curtail opioid use prior to addiction, including establishing a separate Medicare payment for non-opioid alternatives (i.e., FDA-approved drugs, medical devices shown to reduce opioid use and dependence).

Publications

May 14, 2024

New State Laws Could Complicate Behavioral Health Dealmaking

Quoted, Behavioral Health Business

April 25, 2024

FTC Noncompete Ban Presents Several Trade-Offs For Behavioral Health

Quoted, Behavioral Health Business

April 18, 2024

States Aim to Combat Private-Equity Healthcare Takeovers

Quoted, Wall Street Journal Pro

March 26, 2024

Hurdles Ahead For Calif. Mental Health Bond After Narrow Win

Quoted, Law360

March 20, 2024

How Federal Probe Into Private Equity's Health Care Role Could Impact Behavioral Health Deals

Quoted, Behavioral Health Business

March 20, 2024

A Market in Transition: Autism Therapy Provider M&A

Co-Author, The National Law Review

March 19, 2024

Behavioral Health M&A 2024 Legal Trends

Co-Author, The National Law Review

March 8, 2024

Top Issues in Behavioral Health Newsletter 2024

February 27, 2024

HHS Privacy Rules for Addiction Treatment May Add Headache for Providers

Quoted, Behavioral Health Business

February 21, 2024

Supreme Court Rejects UnitedHealth Appeal, Boosting Behavioral Health Providers' Standing with Insurers

Quoted, Behavioral Health Business

February 6, 2024

New SAMHSA Rule Expands Access to Medications for the Treatment of Opioid Use Disorder

January 5, 2024

PE-Backed BrightSpring Health Plans to Hit the Public Market

Quoted, Behavioral Health Business

December 28, 2023

Expect compliance hotspots, G2211 boom, telehealth 'super bowl' and more

Quoted, Part B News

November 30, 2023

Office of Health Care Affordability Publishes Near-Final Regulations on Health Care Transaction Notice Requirements

November 30, 2023

Falling Valuations, Less Competition Make Behavioral Health Deals 'More Attractive' to Investors

Quoted, Behavioral Health Business

November 27, 2023

'Payer Ghosting' Further Straining Behavioral Health-Health Plan Relationship

Quoted, Behavioral Health Business

November 20, 2023

Giving Teeth To Parity: New York Paves the Way for More Medicaid Managed Care Oversight

Quoted, Behavioral Health Business

October 20, 2023

Legal, Regulatory Uncertainty Could Slow Down Behavioral Health Dealmaking

Quoted, Behavioral Health Business

October 12, 2023

DEA Issues Second Temporary Rule Extending Controlled Substance Prescribing Flexibilities Through December 2024

September 12, 2023

Mental health startups face a buyer's market

Quoted, Modern Healthcare

August 3, 2023

Episode 037 – Tani Weiner, Polsinelli Behavioral Health Law Group Co-Chair

Featured, BHE Podcast

May 19, 2023

What the Uptick in Health Care Bankruptcies Means for Behavioral Health

Quoted, Behavioral Health Business

May 9, 2023

DEA Temporary Rule Extends Telemedicine Flexibilities Through November 2023 and Grants Additional One-Year Grace Period

March 2, 2023

Polsinelli Top Issues in Behavioral Health 2023 Newsletter

September 30, 2022

Analyzing Key Developments in the Behavioral Health Space (Autism Services, Addiction Treatment, and Mental Health)

Speaker, Provident Healthcare Dealcast

February 2022

Top Issues in Behavioral Health for 2022

June 08, 2021

Strategies for Smaller Behavioral Providers Looking to Transition to Value-Based Care

Quoted, Behavioral Health Business

December 4, 2020

With Enforcement Actions on the Rise, Behavioral Providers Must Improve Compliance Plans for Protection

Quoted, Behavioral Health Business

June 5, 2020

Proposed California Legislation Would Require State Approval for Health Care M&A and Prohibit Use of Health Care Market Power to Raise Price

November 2018

Senate Bill 1152: California's Hospital Discharge Policy for Homeless Patients and How It May Affect Substance Use Disorder Treatment Providers