AHLA

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SURVEY & ANALYSIS:
Salaries and Priorities for In-House Counsel 2018

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Leading health law to excellence through education, information, and dialogue, the American Health Lawyers Association (AHLA) is the nation's largest, nonpartisan, 501(c)(3) educational organization devoted to legal issues in the health care field with nearly 14,000 members.

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Introduction

Welcome to the 2018 in-house counsel salary survey report. This year, we are happy to announce that this survey and its analysis were made possible through a partnership between Bloomberg Law and the American Health Lawyers Association In-House Counsel Practice Group.

This resource has a long history with the In-House Counsel Practice Group, whose members have traditionally contributed, and continue to contribute, much of the data analyzed in the following pages. We thank every respondent, and invite all health care in-house counsel to join our Practice Group and make full use of its rich resources, of which this report is one example.

The participation of the Bloomberg Law team has made it possible to collect a greater variety of data that will interest not only in-house counsel, but also the outside firms and consultants who work alongside us. As you'll clearly see as you read the full report, Bloomberg Law's first-rate analytical capabilities have provided the opportunity for a richer analysis of multiple data points to inform your resource allocation in the year ahead.

On behalf of AHLA and the In-House Counsel Practice Group, I thank everyone who participated in the collection of this data and development of this report. We look forward to your feedback and recommendations for future editions.

Sincerely,

Robert A. Gerberry
Chair, AHLA In-House Counsel Practice Group

Survey Results: The State of Health Care In-House Counsel Salaries and Budget Priorities in 2018

Results from a February 2018 American Health Lawyers Association and Bloomberg Law research study

Analysis by Matthew Loughran, Senior Legal Editor of Health Care for Bloomberg Law®

Overview

The February 2018 survey of in-house counsel salaries and budget priorities for health care organizations focused on responses from approximately 488 attorneys spread out across every type of health care provider and legal department size.

The questions were geared toward discovering two main types of information, both salary data and budget and staffing data. Among those responses, the demographics show some clear trends in both data sets that have a direct effect on how health care organizations are spending their legal dollars and where there is room for growth or improvement. The salary data provides guidance for attorneys looking to start or extend their careers as in-house counsel for health care providers and other health care and life sciences organizations by showing where there is the greatest opportunity for career advancement and to be compensated for experience or skill.

Additionally, the budgetary data shows some of the issues and concerns that in-house counsel have in the health care field and how they go about addressing those concerns, either by increasing headcount and adding the experienced individuals to the payroll of the organization or by consulting outside counsel to handle those issues.

Salary Data

There are two types of salary data that the survey measured, base salary and incentive compensation. Base salary is just as it sounds, the measurement of how much an individual is compensated for his or her work.

The survey also asked about any compensation beyond simple base salary, such as incentive compensation, deferred compensation, severance, or other discretionary bonuses. Additionally, respondents were asked whether they were offered some form of stock or equity compensation and whether any severance payment was available upon a change of control in the organization.

Overall the data showed that the best paying jobs were for top level in-house health law attorneys in the Northeast region (Pennsylvania, Delaware, New York, New Jersey, and New England). However, a number of different factors could affect the salary types and amounts received, including the type of health care entity involved, the size of the legal department, and the reporting level for the attorney.

Base Salary Information

One of the most important measures from this survey is the base salary reported. Looking at the mean base salaries for the 488 in-house attorneys who responded to the survey, one can see that the expected base salaries for in-house attorneys in health care organizations varies depending on the region of the country, type of entity, or legal department composition.

Regional Results

The survey results show higher base salaries for in-house attorneys in both the Northeast and on the West Coast (Washington, Oregon, California, Alaska, and Hawaii). However, it is important to note that survey data reported by region was generated from rather small sample sizes and thus may be subject to some statistical anomalies.

Attorneys from the Northeast and West Coast have mean base salaries in excess of $212,000, with the West Coast attorneys obtaining the highest mean base salary at $219,400.

By comparison, Midwestern attorneys—those whose employers are based in North and South Dakota, Minnesota, Wisconsin, Michigan, Nebraska, Iowa, Illinois, Indiana, Ohio, and West Virginia—have the lowest mean base salary at $186,200.

Mean Base Salary By Region (In Thousands)						
Region	Midwest	Northeast	Southeast	Midsouth	West Coast	Mountain
# of Respondents	105	97	92	81	65	29**
Mean Salary	$186.2	$212.4	$189.6	$200.1	$219.4	$210.3

Q. What is your base salary as of December 2017?

**= small base size

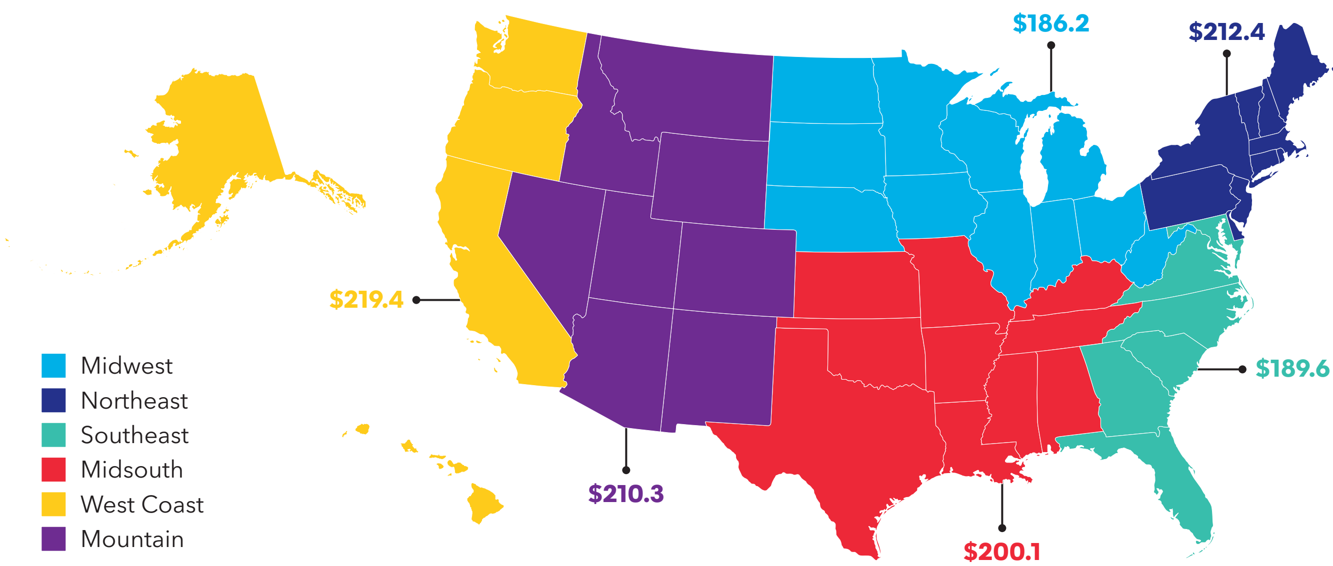
This differential could possibly be explained by the cost of living represented by the areas. The Northeast had the highest consumer price index for all urban consumers (CPI-U) for the 14 months between February 2017 and March 2018, according to data from U.S. Department of Labor's Bureau of Labor Statistics.[1] That region also includes metropolitan areas with the fourth and fifth highest average CPI-U over the same time period—New York City and Boston—as well as one more in the top 15 of metropolitan areas, Philadelphia.

The other leader in base salary for in-house counsel, the West Coast, has the biggest pockets of high cost of living as it includes all of the top three metropolitan areas by average CPI-U—San Diego, the San Francisco Bay area, and the urban areas of Hawaii—as well as two more that are in the top ten: Seattle and Los Angeles. Meanwhile, the trailing region for in-house counsel base salary, the Midwest, has the lowest average CPI-U over the same timeframe, and only two metropolitan areas in the top 15 of average CPI-U: Minneapolis-St. Paul and Chicago.

Therefore, while our survey data shows that in-house attorneys on the coasts tend to have higher base salaries than their counterparts in the middle of the country, they also may tend to have a much higher cost of living to offset, or even necessitate, that salary differential.

The Midwest does however, come out better when the base salaries for the general counsel, chief legal officer, or equivalent are considered by themselves, without including the salaries for other attorneys in the legal department.

Mean Base Salary By Region (In Thousands)



Q. What is your base salary as of December 2017? (in thousands: $50 - $74 = $50,000 - $74,999)

1 The regional CPI-U data from the DOL's Bureau of Labor Statistics (available at https://www.bls.gov/cpi/tables/supplemental-files/home.htm) doesn't match up identically with the regions identified in this report. However, for comparative purposes, the West Coast region of this report is identical to the Pacific subregion of the BLS data for West region. The Northeast region in this report is the same as the BLS Northeast region, with the only difference being that Delaware (which is in the South region of the BLS data) is included in the Northeast in this report's data. Similarly, the Midwest region is the same in both reports with the exceptions of West Virginia (which is included in the Midwest in this report, but not in the BLS data) and Kansas and Missouri (which are included in the Midsouth in this report but are in the Midwest in the BLS data).

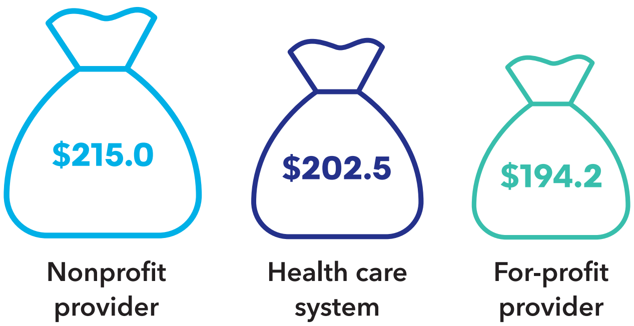
In that comparison, the Northeast still comes out on top, with a mean base salary of $275,200. But the Mountain region (Montana, Idaho, Wyoming, Utah, Colorado, Arizona, New Mexico, and Nevada) and the Midwest region are close behind with means of $265,200 and $263,100, respectively.

The West Coast comes out at the bottom of that comparison with a mean base salary of $236,800.

Entity Results

Just as the region that an attorney works in will have an effect on that attorney's base salary, so will the type of health care entity involved.

Mean Base Salary By Organization Type (Amounts in Thousands of $)



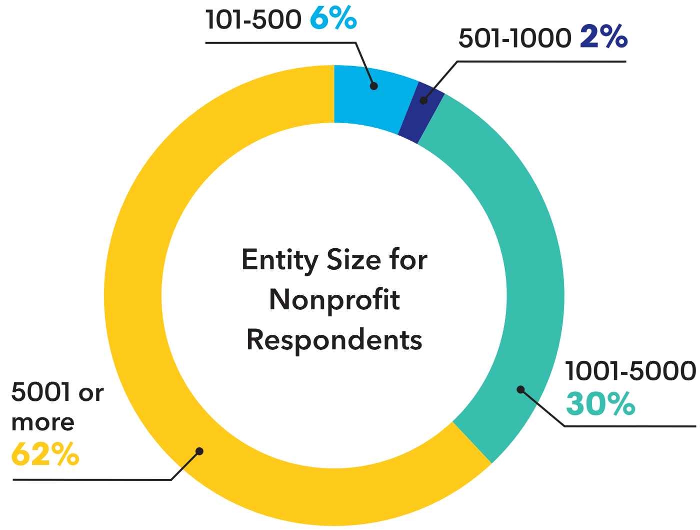
Q. What is your base salary as of December 2017?

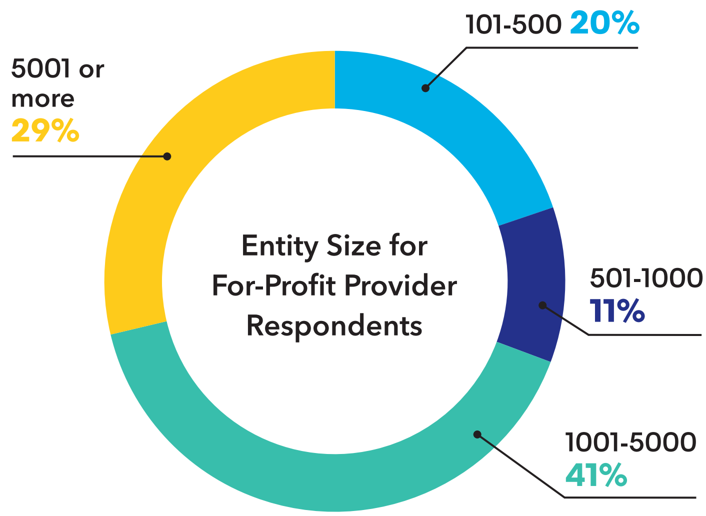
In-house counsel from nonprofit health care providers and health care systems both reported the highest mean base salaries with $215,000 and $202,500, respectively. Coming in a more distant third place were for-profit health care providers who reported a mean base salary of $194,200.

Looking behind those numbers provides a little more context however.

Eighty percent of the 168 attorneys at nonprofit health care providers were from a hospital or hospital group. Of those attorneys, 56 percent were employed by a hospital group consisting of two or more hospitals.

Also, of the 168 nonprofit health care entity attorneys who answered the survey, approximately 62 percent reported their organizations employed more than 5,000 people. Similarly, of the 162 health care system attorneys who answered the survey, 74 percent said their systems employed more than 5,000 people.





Q. What is the total number of employees in your organization?

Meanwhile, a majority of the for-profit health care entity attorneys who answered the survey, 76 percent of the 56 answers, hailed from physician groups, ambulatory surgical centers, telemedicine providers, or other similar entities. Only 11 percent of the for-profit attorneys reported being from a for-profit hospital.

Looking at the entity size, the for-profits also tended to be smaller than the nonprofit entities, with 71 percent of respondents identifying their organizations as having 5,000 or fewer employees.

That difference would appear to explain the base salary differential since health systems and nonprofit health care entities tend to include the larger academic medical centers, religiously affiliated hospitals, and nonprofit hospital systems, while the for-profit world is dominated by physician groups and smaller clinics.

Legal Department Composition

Unlike with entity types, it would appear that size may not matter as much when looking at the base salaries as related to the composition of a health care provider's legal department.

According to the data in this report, legal departments that include more than 10 attorneys have a mean base salary of $199,300. While this does exceed the $197,100 mean base salary reported by mid-sized legal departments (those employing six to 10 attorneys), it is actually less than the $203,400 mean base salary reported by smaller legal departments (those employing five or fewer attorneys).

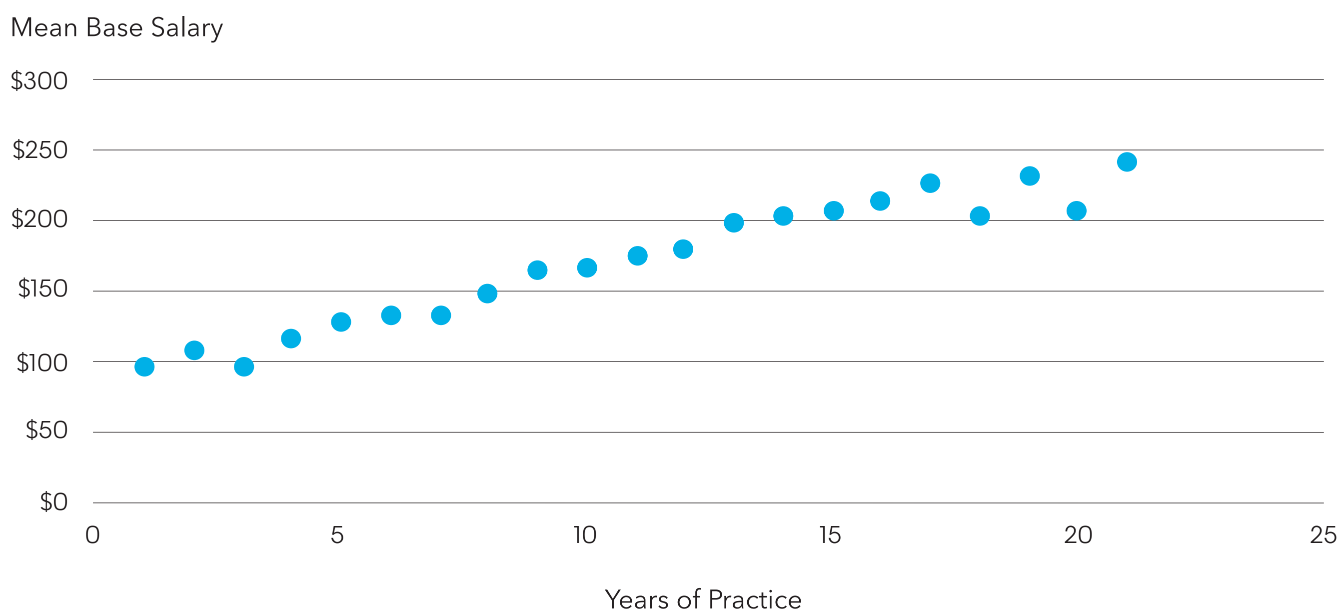
The higher salary reported by the smaller legal departments may be explained in part by the fact that a smaller legal department is going to have a smaller range of salaries to effect the mean. This is brought into greater relief when one considers the range of mean salaries broken down by both years practicing law and reporting level.

Not surprisingly, attorneys who have practiced law for more than 20 years report significantly higher salaries than their less experienced colleagues. These most experienced attorneys had a mean base salary of $242,100, while attorneys with 10 years of experience or less reported a mean base salary of $140,800. The middle ground, attorneys with 11 to 20 years of experience came in at a mean base salary of $202,600.

Additionally, reporting level makes a huge difference in reported mean base salary. Attorneys who reported being the top attorney in the legal department also reported the highest mean base salary at $242,600. Meanwhile, the most junior attorneys reported a mean base salary of $144,500. Similar to the experience breakdown, the middle ground is held by attorneys in the middle of the reporting structure with $204,500.

These two data points provide a possible reason for the smallest legal departments having a higher mean base salary. **A smaller legal department is going to have a more compressed reporting structure with fewer junior attorneys and more experienced attorneys.** As a result, the base salaries are going to skew higher in those departments, which would affect the mean.

Mean Salary By Years of Practice



Q. What is your base salary as of December 2017? (in thousands: $50 - $74 = $50,000 – $74,999)

Additional Compensation Information

Base salary isn't the only measure of compensation for in-house health care attorneys, however; Nearly all of the respondents indicated that their employers provided some form of additional compensation.

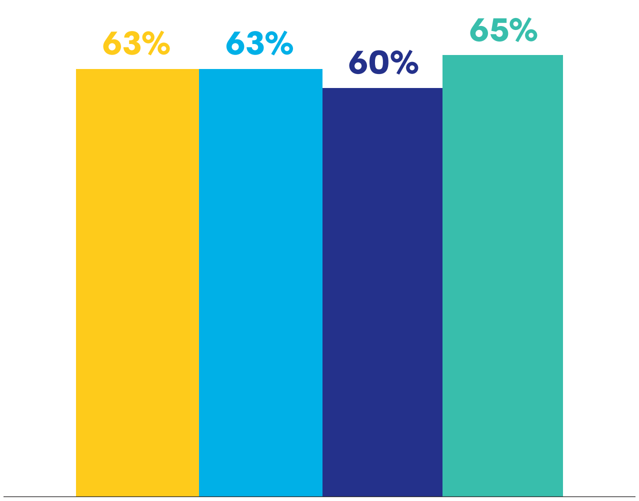
Additional compensation can take many forms including incentive compensation, deferred compensation, severance, stock options, and discretionary bonuses. The type of compensation and amount varies within organizations based on entity type, position title, and attorney experience level. Additionally, the data shows that larger revenue health care entities tend to provide more incentive compensation than smaller revenue entities.

Incentive Compensation

The most prominent form of additional compensation listed is incentive compensation, which is available to 63 percent of the attorneys who responded to the survey. Incentive compensation is additional compensation that is directly tied to the achievement of individual or corporate goals.

Compensation Provided by Employer Beyond Base Salary

Across Organization Types



Incentive Compensation

- Total n=503
- Health care provider non-profit n=168
- Health care system n=163
- Health care provider for profit n=57

Overall, in-house counsel at each of the three main categories of health care entity are somewhat equally likely to obtain some form of incentive compensation with 65 percent of for-profit providers providing compensation, followed by 63 percent of nonprofit providers and 60 percent of health systems.

Incentive compensation appears to be largely reserved for the attorneys at the top of the reporting structure. Approximately seven in 10 general counsel or chief legal officers reported receiving some form of incentive compensation. Additionally, 64 percent of assistant or associate general counsel reported the same. Meanwhile, only 43 percent of staff attorneys reported receiving some form of incentive compensation.

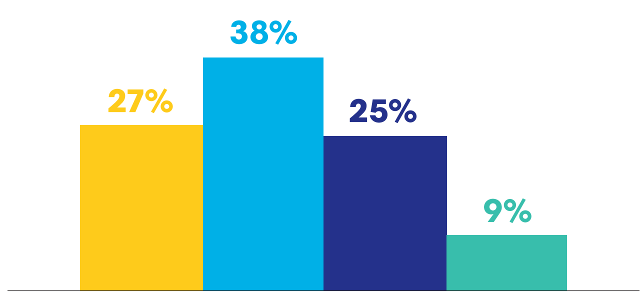
Reporting level also appears to have some effect on the level of incentive compensation provided to attorneys. Top level attorneys reported a mean level of incentive compensation of 25 percent of their salaries. However, mid-level and junior attorneys reported means of 19 and 14 percent of their salaries, respectively.

Deferred Compensation

The less common form of incentive compensation is deferred compensation plans. Approximately a quarter (27 percent) of the attorneys who answered the survey say that they receive this type of compensation.

Compensation Provided by Employer Beyond Base Salary

Across Organization Types



Deferred Compensation

- Total n=503
- Health care provider non-profit n=168
- Health care system n=163
- Health care provider for profit n=57

Q. Which of the following compensation beyond your base salary does your employer provide? Select all that apply.

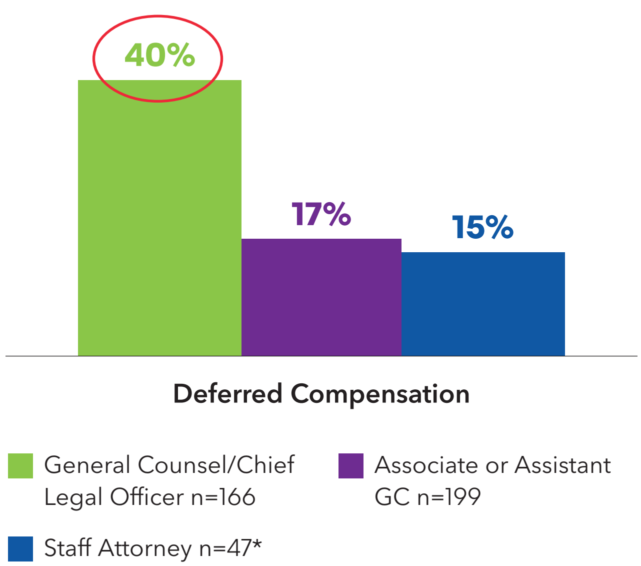
A deferred compensation plan takes a portion of the employee's salary and holds it in trust for a later payment date. Often the plans operate either with the expectation that the employee will have a more favorable tax bracket for the payments at a later time, or that it will provide the company with less of a hit to its bottom line.

Other than incentive compensation, deferred compensation plans appear to be the vehicle of choice for nonprofit organizations to provide their employees with additional compensation. Approximately 38 percent of the attorneys from nonprofits who responded reported some form of deferred compensation. For comparison, only 9 percent of attorneys working for a for-profit health care provider received a deferred compensation plan.

Despite only 27 percent of attorneys indicating this type of compensation, 40 percent of the top level attorneys (general counsel or chief legal officers) reported receiving some form of deferred compensation. That percentage drops of precipitously though at the next level, with only 17 percent of assistant or associate general counsel and 15 percent of staff attorneys reported receiveing deferred compensation.

Compensation Provided by Employer Beyond Base Salary

Across Titles



Deferred compensation arrangements are slightly more prevalent for health care organizations that have larger revenues. Of the 91 attorneys who answered the survey from companies with annual gross revenues of $4 billion or more, 35 percent reported some form of deferred compensation agreement. Similarly, of the 56 attorneys from companies with annual gross revenues of between $500 and 999 million, 39 percent received deferred compensation.

Severance

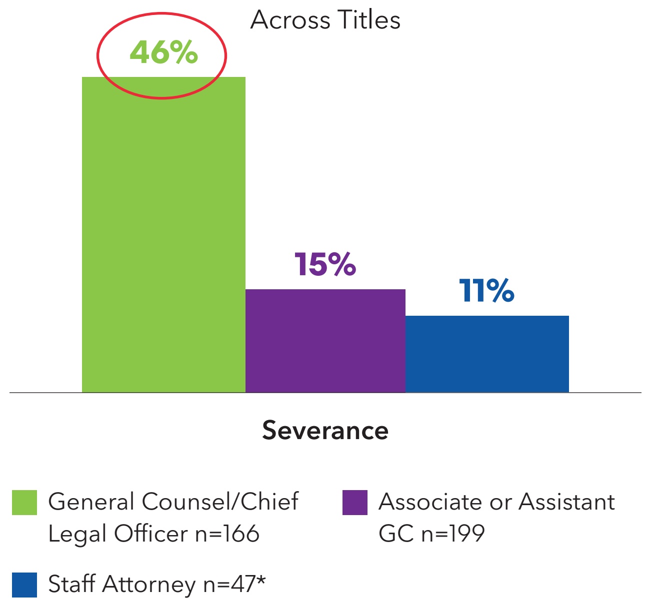
Another less common type of additional compensation comes in the form of a severance payment equal to at least 30 days' pay. Severance plans are available to 26 percent of the respondents overall.

The distribution of those plans is consistent across entity types, with 31 percent of nonprofits, 25 percent of health systems, and 25 percent of for-profit health care providers offering a severance package.

Similar to incentive compensation, the top attorneys tend to be the ones given a severance package. Of the 205 top or solo attorneys who responded to the survey, 42 percent reported that they received some kind of severance package. That number drops to 23 percent for mid-level attorneys and only 8 percent of junior-level attorneys can claim a severance.

Compensation Provided by Employer Beyond Base Salary

Across Titles

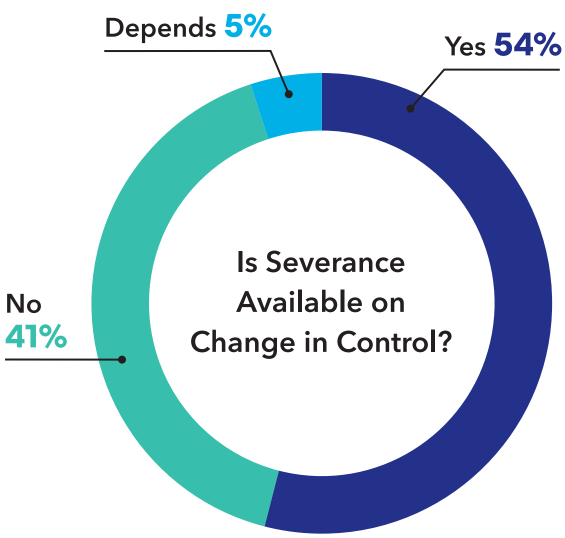


Q. Which of the following compensation beyond your base salary does your employer provide? Select all that apply.

*=small base size   Significantly higher proportion than others in sub-segment

Severance payments are generally available upon an employee leaving the service of the company, not based on any transactions involving the company. But, in light of the increase in merger and acquisition activity across the health care industry lately, that general rule may be changing.

According to the attorneys who responded to this survey, a majority of their severance plans, 54 percent, make the payments available upon a change of control at the top of the organization. That means that those attorneys can leave their employment and claim their severance if the organization merges or is sold.



Q. Is severance available upon a change in control?

Equity Compensation and Discretionary Bonuses

Just as deferred compensation is more prevalent in the nonprofit health care world, equity compensation and discretionary bonuses are more prevalent in the for-profit world.

Overall, only 25 percent of respondents said they had access to discretionary bonuses and only 13 percent had been offered stocks or equity share in their companies. However, those groups were heavily weighted toward the for-profit world with 32 percent of for-profit attorneys saying they had access to discretionary bonuses and 33 percent indicated they had been offered stock options.

That stock options are largely available in the for-profit world isn't surprising since most nonprofits don't issue stock and thus cannot offer their employees any sort of equity stake in the corporation. There are a few exceptions and those account for the 2 percent of nonprofit attorneys who reported they were offered some form of equity share in the corporation.

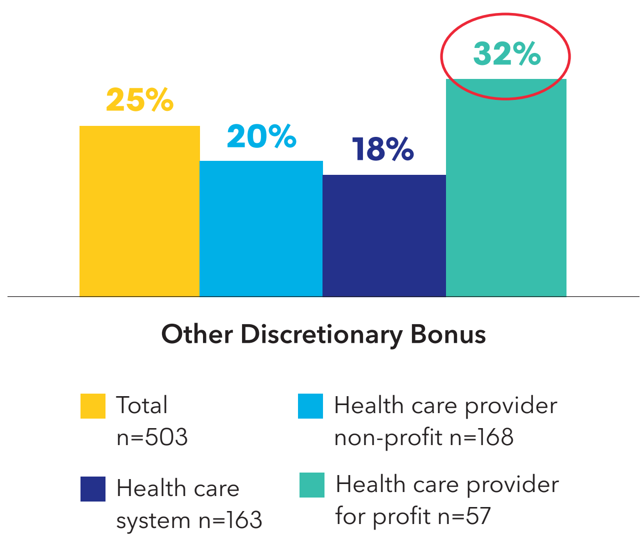
While not quite to the level of their for-profit counterparts, 20 percent of nonprofit attorneys report that they have access to discretionary bonuses.

Overall, discretionary bonuses are more prevalent in the smallest legal departments, with departments of 1 or 2 attorneys providing such bonuses 36 percent of the time.

Thus, while region and legal department compensation seem to be the deciding factors on the level of base salary for in-house counsel, an attorney's experience level and the size and type of entity that he or she works for provide the greatest indicators for what type of additional compensation might be available.

Compensation Provided by Employer Beyond Base Salary

Across Organization Types



Q. Which of the following compensation beyond your base salary does your employer provide? Select all that apply.

Significantly higher proportion than others in sub-segment

Budget and Staffing Data

New to the survey this year are questions regarding in-house counsel's expected budget and staffing data. In particular, the survey set out to discover whether there was a trend to the types of issues handled by in-house counsel and whether health care legal departments expected to increase or decrease their staffing and budgets in the coming year.

Department Expenditures

Primary among the questions the survey asked involved how much each legal department spent in fiscal 2017. The primary differentiators again involved entity type, with nonprofit health care providers and health care systems vastly outspending their for-profit counterparts both internally and externally.

Across the full range of respondents, the average internal legal department spend for fiscal 2017 was roughly $1.8 million while the average amount spent on outside legal expenses was approximately $2.1 million.

But looking at the categories separately provides more insight into where the money is flowing for health care legal departments.

Internal Spending

Health care systems lead the way in internal spending for their legal departments. For fiscal 2017, they averaged approximately $2.2 million in in-house expenses. Nonprofit providers were not far behind, averaging $1.9 million in in-house counsel spending. That is more than twice the $849,375 average spent by for-profits for their in-house counsel departments.

Given the salary differentials pointed out above, it isn't surprising to find that the groups that have the highest average base salaries for their attorneys also have the highest spending levels for their in-house counsel departments.

External Spending

The same trend plays out for external spending, with health systems spending an average of $2.6 million on external expenses[2] and nonprofits spending an average of $2.2 million.

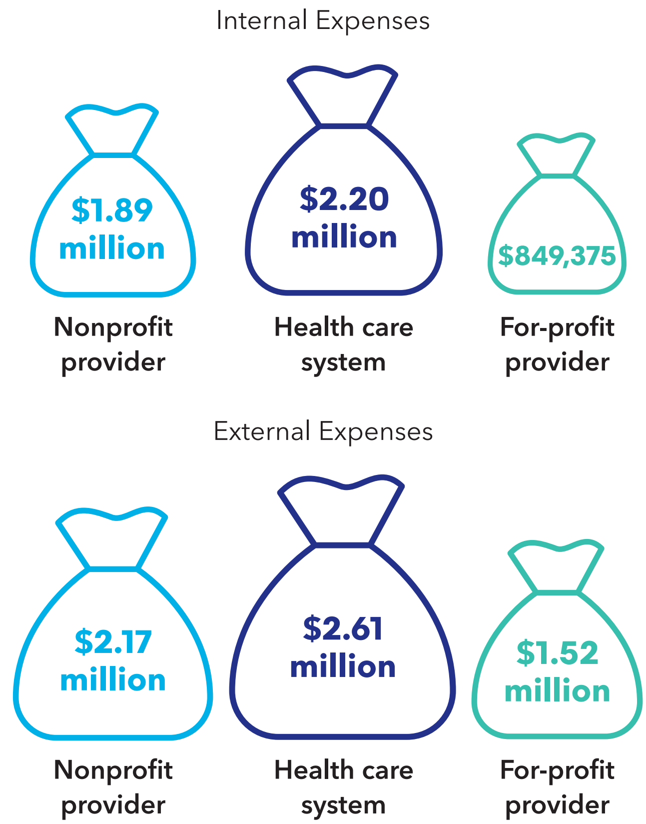
For-profit providers are somewhat closer in their outside counsel spending, averaging $1.5 million in external expenditures. However, 71 percent of for-profit providers still indicated that they spent less than $1 million on outside counsel expenses in 2017.

Reasons for Differences

There are a number of possible reasons for the differences in these amounts including the types of entities involved in each category and the nature of for-profit versus nonprofit status.

As noted in the base salary section above, the majority of the largest entities are included in the nonprofit and health system segment, while the for-profit segment is dominated by physician groups and smaller clinics.

Mean Expenditures FY 2017 (by Entity)



Q. Please indicate the budgets for the below:
Total organization's internal expenditure for your legal department in fiscal 2017 (Include or estimate all expenses other than for outside counsel. Include compensation-related, operating, allocated overhead, facilities, and other expenses.)
Total external expenditure for your legal department in fiscal 2017. (Include litigation and non-litigation fees and expenses for law firms and other external vendors, but not settlements, fines, or judgments. Also include all outside counsel expenditures even if they were charged back to another function or business unit.)

Additionally, for-profit corporations tend to have to answer for their bottom line to shareholders. As a result, the headcount at a for-profit will be directly and adversely effected by a drop in profits. This could also explain why for-profits tend to look to outside counsel for nearly two-thirds of their legal work.

Year to Year Changes

Most respondents said all of their legal department expenditures either stayed the same or increased from fiscal year 2016 to 2017. Seven percent of the respondents said that their internal expenditures decreased from year to year and only 17 percent said their external expenditures decreased over the same time period.

A large majority of respondents said they expected their legal department staffing levels to stay the same in the next year. That majority holds across regions and regardless of legal department side.

However, 39 percent of the attorneys from the largest legal departments (11 or more attorneys) expect to add staff over the next year. Additionally, 38 percent of the attorneys from each the Southeast, Midsouth and West Coast regions expect to increase their staffing levels in the next year.[3]

Legal Expertise Needed by In-House Departments

Having established that most of legal departments expect to either stay the same or increase their staffing over the next year, the question arises what areas of expertise those departments most need.

According to survey responses, the top three areas needed by legal departments are for regulatory or compliance expertise, transactional experience, and privacy and data security.

These needs track closely to the most frequently addressed issues by legal departments. According to the survey data (see graph below) the most frequently addressed challenge by health care legal departments is privacy, data security, and cybersecurity. Some 78 percent of respondents identified that issue as a most often addressed concern.

Additionally, the need for regulatory and compliance expertise can be seen in the fact that three of the next four most frequently cited needs involve provider regulation (75 percent), payment and billing issues (65 percent), and government enforcement actions (46 percent).

The fourth most cited need for health care legal departments involves health care industry consolidation and other strategic affiliations, with 55 percent of all respondents citing that as a major concern.

Areas of Expertise Currently Needed by Legal Departments

Among Total Participants n=433

Q. Which areas of expertise are a current need for your legal department? Select all that apply.

2 These include litigation and non-litigation fees and expenses for law firms and other external vendors, but not settlement, fines, or judgment. Also it include all outside counsel expenditures even if they were charged back to another function or business unit.

3 As noted above, the Southeast Region includes health care organizations in the District of Columbia, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. The West Coast region includes providers from Washington, Oregon, California, Alaska, and Hawaii. The Midsouth includes organizations in Kansas, Missouri, Kentucky, Oklahoma, Arkansas, Tennessee, and Mississippi.

Entity Types

Looking at how the most often-addressed health law issues break down across different entity types, the numbers are fairly consistent, only fluctuating by a few percentage points from nonprofit health care providers, health systems and for-profit providers.

One notable difference involves health IT issues, including internet of things. While a majority (51%) of those in nonprofit health care providers report this as an issue that is often addressed, just 40% of those in health care systems and 25% of those in for-profit health care providers report this as an issue they often address.

Size of Legal Department

Another main indicator for which issues legal departments will address is the size of the legal departments.

In the medium and large legal departments, none of the eight areas of concern examined draws less than 21 percent of responses. Most hover between 55 and 70 percent indicating that their departments work on those issues.

Meanwhile, smaller legal departments tend to work on the most prevalent concerns identified, but a substantially smaller proportion of respondents among the smaller departments identified government enforcement, litigation, and health IT issues as a concern.

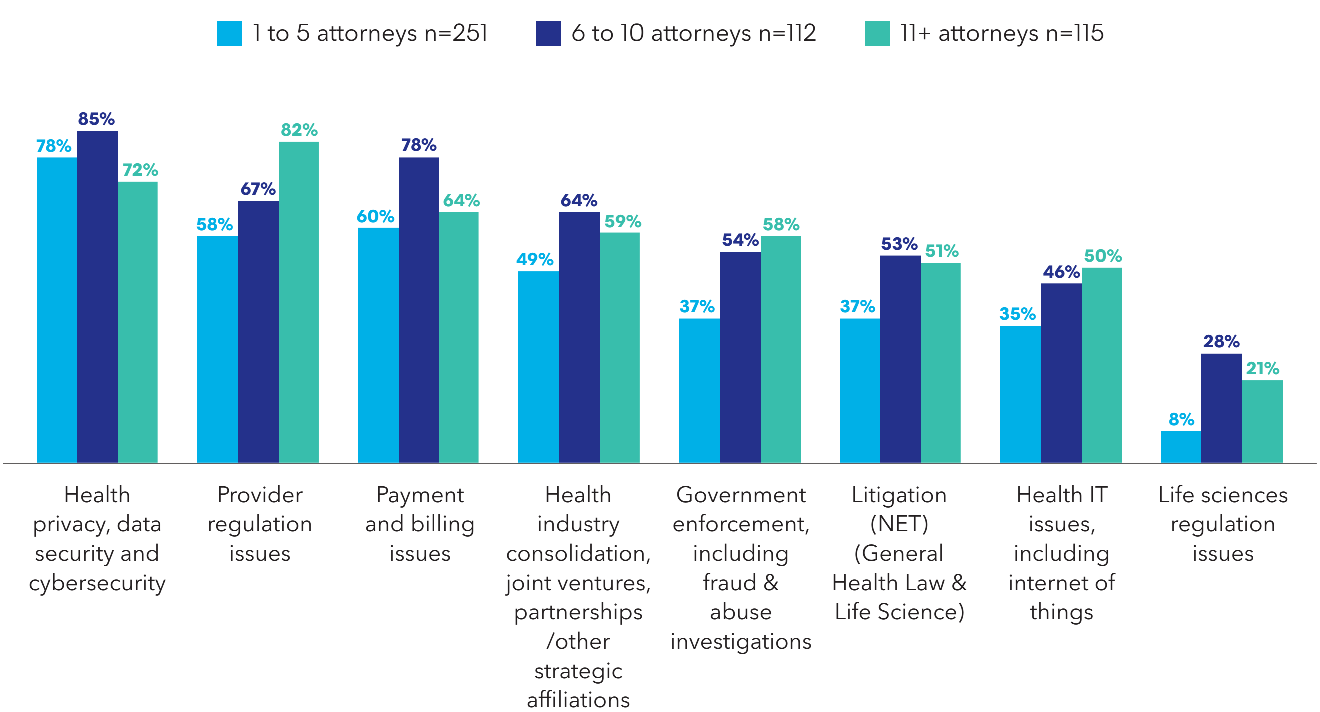
The data would then seem to indicate that the larger legal departments are more likely to address a wider range of subjects than their smaller counterparts.

Need for Outside Counsel

However, not all of those issues are handled exclusively by in-house legal departments. The majority of respondents across all entity types, reporting levels, regions, and department sizes agree to some degree that the rising complexity of health law issues has necessitated consultation with outside counsel.

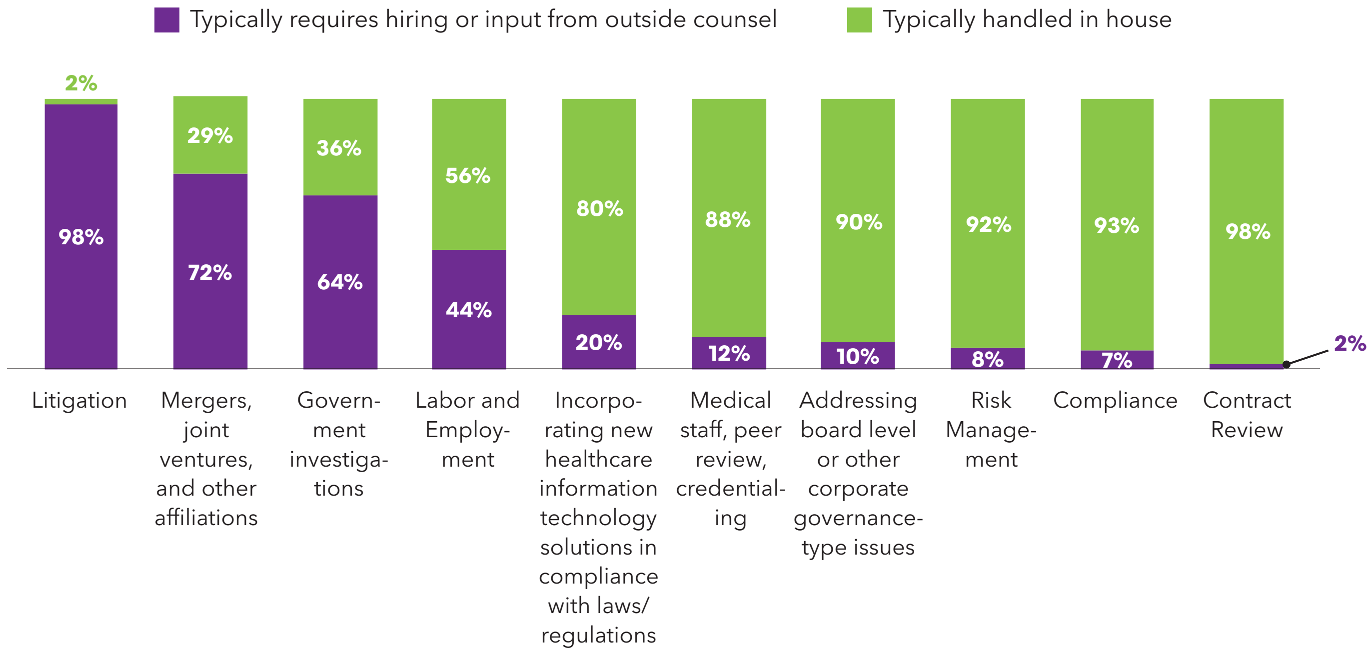
A majority of respondents seek outside advice on litigation, transactional issues, and government investigation issues. In these cases at least 64 percent or more of the respondents typically require outside counsel referrals.

Health Law Issues Legal Department Most Often Addresses



Q. Which of the following health law issues does your legal department most often address? Select all that apply.

Legal Health Care Issues that Likely Require Hiring/Input from Outside Counsel vs. Typically Handled In-house



Q. Which of the following health law issues does your legal department most often address? Select all that apply

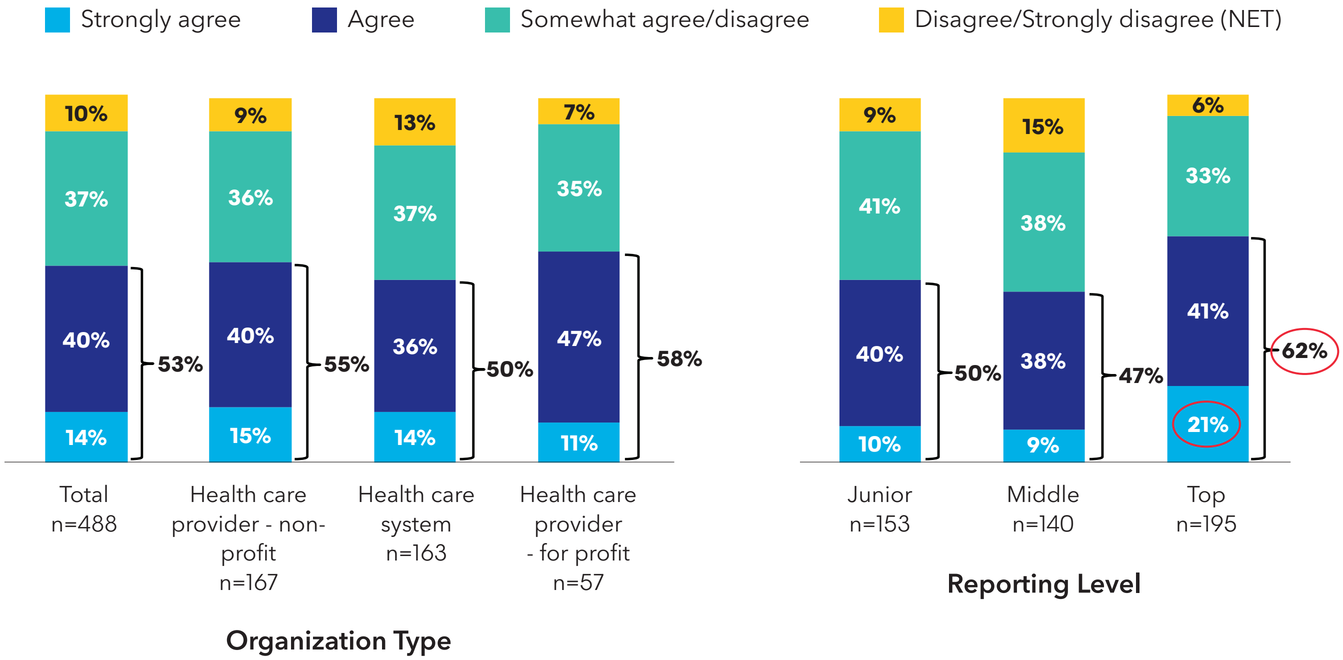
Certain issues see a large majority of respondents handling them internally. In particular, contract review, compliance, risk management, and corporate governance all see about 90 percent or more of respondents indicating that these issues are handled within their internal legal departments.

The one issue that is nearly even in terms of being handled by inside counsel or outside counsel is labor and employment. Whether that is handled in-house or sent to outside counsel seems to depend largely on the size of the in-house legal department. Smaller legal departments seem more likely to require input from outside counsel for labor and employment issues.

This data shows that attorneys who are currently working in fields like labor and employment who are looking for an opportunity to move to an in-house position would be well advised to look for a larger legal department as they would be less likely to farm that work out to an outside law firm.

Additionally, attorneys who specialize in data security and regulatory compliance would be well positioned to join the ranks of in-house counsel in health care organizations across the board.

Participants' Agreement/Disagreement that in the Past Two Years, Health Care Law Continues to Become More Complex, Causing a Greater Need to Consult Outside Counsel



Q. Please indicate how much you agree or disagree with the following statement: In the past two years, as health care law continues to become more complex there is a greater need to consult with outside counsel.

Significantly higher proportion than others in sub-segment

More senior attorneys at health care providers are more likely to identify increased complexity as a reason for seeking more outside counsel advice. Approximately six in ten (62 percent) of all respondents who identified as the top of the reporting structure agreed with the statement, while only 47 percent and 52 percent of mid-level or junior attorneys respectively agree with the statement.

Whether it is actually the evolving complexity of health care law or just additional compliance and regulatory responsibilities being placed in the hands of in-house counsel, it is clear that in-house counsel have evolving needs that may be met either by adding more staff or engaging more experienced outside counsel.

Raw Salary Data

Mean Base Salary in Thousands by Title and Region

	Staff Attorney						Associate or Assistant General Counsel						General Counsel/Chief Legal Officer/Equivalent					
	Midwest	Northeast	Southeast	Midsouth	West Coast	Mountain	Midwest	Northeast	Southeast	Midsouth	West Coast	Mountain	Midwest	Northeast	Southeast	Midsouth	West Coast	Mountain
Base	15**	8**	5**	7**	8**	4**	43*	38*	46*	30*	18**	14**	28**	37*	27**	33*	26**	9*
Mean	**$120.7**	**$94.5**	**$104.0**	**$163.4**	**$172.0**	**$162.0****	**$175.1**	**$178.9**	**$166.6**	**$171.1**	**$229.2**	**$188.6**	**$263.1**	**$275.2**	**$241.3**	**$245.0**	**$236.8**	**$265.2**
$50 - $74	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
$75 - $99	20%	75%	40%	-	-	-	2%	11%	2%	3%	-	-	-	-	4%	-	-	-
$100 - $124	47%	-	40%	29%	12%	-	16%	3%	7%	10%	6%	7%	-	-	-	3%	-	-
$125 - $149	7%	25%	20%	14%	12%	-	19%	13%	30%	20%	-	14%	7%	3%	11%	6%	12%	-
$150 - $174	27%	-	-	14%	12%	100%	12%	16%	17%	17%	-	14%	-	-	11%	15%	4%	11%
$175 - $199	-	-	-	14%	38%	-	19%	18%	24%	27%	6%	29%	-	5%	7%	3%	12%	-
$200 - $224	-	-	-	14%	25%	-	19%	26%	9%	10%	17%	14%	21%	16%	11%	15%	12%	11%
$225 - $249	-	-	-	14%	-	-	2%	5%	9%	10%	50%	14%	7%	16%	4%	3%	19%	11%
$250 - $274	-	-	-	-	-	-	5%	3%	-	-	6%	-	25%	5%	11%	12%	12%	22%
$275 - $299	-	-	-	-	-	-	5%	3%	-	-	17%	-	4%	-	4%	12%	12%	11%
$300+	-	-	-	-	-	-	2%	3%	2%	3%	-	7%	36%	54%	37%	30%	19%	33%

Q. What is your base salary as of December 2017? (in thousands: $50 - $74 = $50,000 – $74,999)

*=small base size **=very small base size

Mean Base Salary in Thousands by Reporting Level and Region

	Junior						Middle						Top (or solo)					
	Midwest	North-east	South-east	Midsouth	West Coast	Mountain	Midwest	North-east	South-east	Midsouth	West Coast	Mountain	Midwest	North-east	South-east	Midsouth	West Coast	Mountain
Base	38*	27**	33*	23**	12**	13**	25**	31*	25**	20**	26**	7**	42*	39*	34*	38*	27**	9**
Mean	**$131.2**	**$123.5**	**$140.2**	**$166.8**	**$166.2**	**$171.2**	**$198.2**	**$217.5**	**$184.0**	**$186.8**	**$223.2**	**$229.6**	**$228.7**	**$269.8**	**$241.7**	**$227.3**	**$239.3**	**$251.9**
$50 - $74	3%	4%	-	-	-	-	-	-	-	-	-	-	-	-	-	3%	-	-
$75 - $99	13%	37%	9%	-	-	-	-	-	-	5%	-	-	2%	3%	3%	-	-	-
$100 - $124	29%	7%	18%	13%	25%	8%	12%	-	4%	10%	-	-	10%	-	-	11%	-	-
$125 - $149	24%	22%	42%	22%	8%	15%	8%	6%	12%	15%	4%	-	10%	5%	12%	5%	7%	-
$150 - $174	16%	15%	9%	22%	17%	38%	12%	10%	20%	10%	12%	14%	12%	-	9%	13%	4%	11%
$175 - $199	13%	7%	15%	22%	25%	15%	16%	23%	32%	20%	12%	14%	-	5%	12%	8%	15%	11%
$200 - $224	3%	7%	-	9%	17%	8%	28%	26%	16%	15%	12%	29%	14%	15%	9%	11%	15%	22%
$225 - $249	-	-	6%	13%	8%	15%	8%	16%	12%	15%	35%	14%	2%	10%	6%	3%	19%	-
$250 - $274	-	-	-	-	-	-	4%	-	-	-	12%	-	19%	8%	9%	11%	11%	22%
$275 - $299	-	-	-	-	-	-	4%	6%	4%	-	15%	14%	5%	-	3%	11%	7%	-
$300+	-	-	-	-	-	-	8%	13%	-	10%	-	14%	26%	54%	38%	26%	22%	33%

Q. What is your base salary as of December 2017? (in thousands: $50 - $74 = $50,000 – $74,999

*=small base size **=very small base size

Mean Base Salaries in Thousands by Role and Type of Organization

	Staff Attorney			Associate or Assistant General Counsel			General Counsel/Chief Legal Officer/Equivalent		
	Health care provider - non-profit	Health care system	Health care provider - for profit	Health care provider - non-profit	Health care system	Health care provider - for profit	Health care provider - non-profit	Health care system	Health care provider - for profit
Base	**14****	**16****	**6****	**68**	**79**	**15****	**60**	**47**	**28****
Mean	**$129.1**	**$139.5**	**$135.3**	**$188.1**	**$176.2**	**$156.0**	**$268.4**	**$274.5**	**$243.2**
$50 - $74	-	-	-	-	-	-	-	-	-
$75 - $99	14%	19%	33%	3%	-	13%	-	-	-
$100 - $124	43%	25%	-	7%	8%	20%	-	-	-
$125 - $149	14%	19%	-	18%	23%	20%	5%	2%	4%
$150 - $174	7%	19%	67%	16%	13%	13%	3%	2%	14%
$175 - $199	21%	-	-	13%	28%	7%	5%	9%	-
$200 - $224	-	12%	-	19%	18%	7%	18%	11%	18%
$225 - $249	-	6%	-	9%	8%	13%	7%	9%	14%
$250 - $274	-	-	-	6%	-	7%	8%	13%	21%
$275 - $299	-	-	-	3%	3%	-	5%	6%	11%
$300+	-	-	-	6%	1%	-	48%	49%	18%

Q. What is your base salary as of December 2017? (in thousands: $50 - $74 = $50,000 – $74,999)

*=small base size **=very small base size

Mean Base Salary in Thousands by Reporting Level and Organization Type

	Junior			Middle			Top (or solo)		
	Health care provider - non-profit	Health care system	Health care provider - for profit	Health care provider - non-profit	Health care system	Health care provider - for profit	Health care provider - non-profit	Health care system	Health care provider - for profit
Base	44*	64	17**	51	48*	6**	72	51	34*
Mean	**$144.5**	**$152.0**	**$139.1**	**$216.0**	**$204.8**	**$180.3**	**$257.3**	**$263.6**	**$224.2**
$50 - $74	2%	2%	-	-	-	-	-	-	3%
$75 - $99	9%	5%	24%	-	-	-	1%	-	3%
$100 - $124	20%	17%	18%	2%	2%	17%	7%	2%	3%
$125 - $149	18%	31%	12%	14%	6%	17%	4%	4%	3%
$150 - $174	20%	12%	29%	12%	12%	17%	3%	8%	15%
$175 - $199	25%	16%	6%	4%	31%	17%	6%	8%	3%
$200 - $224	2%	9%	6%	25%	25%	-	15%	10%	18%
$225 - $249	2%	8%	6%	18%	8%	17%	4%	6%	12%
$250 - $274	-	-	-	8%	-	17%	10%	12%	18%
$275 - $299	-	-	-	8%	6%	-	4%	4%	9%
$300+	-	-	-	10%	8%	-	46%	47%	15%

Q. What is your base salary as of December 2017? (in thousands: $50 - $74 = $50,000 – $74,999)

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Mean Base Salary in Thousands by Years Practicing Law

Note: Percentages read across		Base	Mean	Base	$50 - $74	$75 - $99	$100 - $124	$125 - $149	$150 - $174	$175 - $199	$200 - $224	$225 - $249	$250 - $274	$275 - $299	$300+
Years Practicing Law	1	6**	**$97.00**	6	17%	33%	33%	17%	-	-	-	-	-	-	-
	2	7**	**$109.10**	7	-	29%	43%	29%	-	-	-	-	-	-	-
	3	10**	**$97.00**	10	10%	40%	40%	10%	-	-	-	-	-	-	-
	4	10**	**$117.00**	10	-	20%	40%	30%	10%	-	-	-	-	-	-
	5	14**	**$129.10**	14	-	21%	36%	21%	7%	-	7%	7%	-	-	-
	6	12**	**$133.70**	12	-	8%	25%	50%	8%	-	-	8%	-	-	-
	7	15**	**$134.00**	15	7%	13%	7%	40%	20%	7%	7%	-	-	-	-
	8	16**	**$148.20**	16	-	6%	25%	38%	6%	6%	6%	6%	6%	-	-
	9	17**	**$164.90**	17	-	6%	6%	24%	24%	18%	12%	12%	-	-	-
	10	31*	**$167.50**	31	-	-	10%	16%	29%	29%	10%	6%	-	-	-
	11	16**	**$175.30**	16	-	6%	12%	12%	25%	6%	25%	6%	-	-	6%
	12	16**	**$180.90**	16	-	-	12%	25%	19%	6%	12%	12%	6%	-	6%
	13	13**	**$198.40**	13	-	8%	-	15%	8%	23%	15%	8%	8%	8%	8%
	14	16**	**$203.20**	16	-	-	-	12%	12%	19%	25%	12%	12%	6%	-
	15	23**	**$207.70**	23	-	-	4%	4%	22%	35%	4%	4%	9%	-	17%
	16	13**	**$213.00**	13	-	-	-	8%	-	23%	46%	8%	8%	-	8%
	17	10**	**$226.60**	10	-	-	-	10%	-	30%	20%	10%	-	10%	20%
	18	17**	**$204.50**	17	-	-	6%	6%	18%	12%	35%	-	18%	-	6%
	19	7**	**$232.90**	7	-	-	14%	-	-	-	43%	14%	-	-	29%
	20	19**	**$207.10**	19	-	-	-	5%	32%	21%	5%	16%	5%	5%	11%
	More than 20	198	**$242.10**	198	-	1%	2%	7%	8%	12%	12%	13%	9%	8%	30%

Q. What is your base salary as of December 2017? (in thousands: $50 - $74 = $50,000 - $74,999)

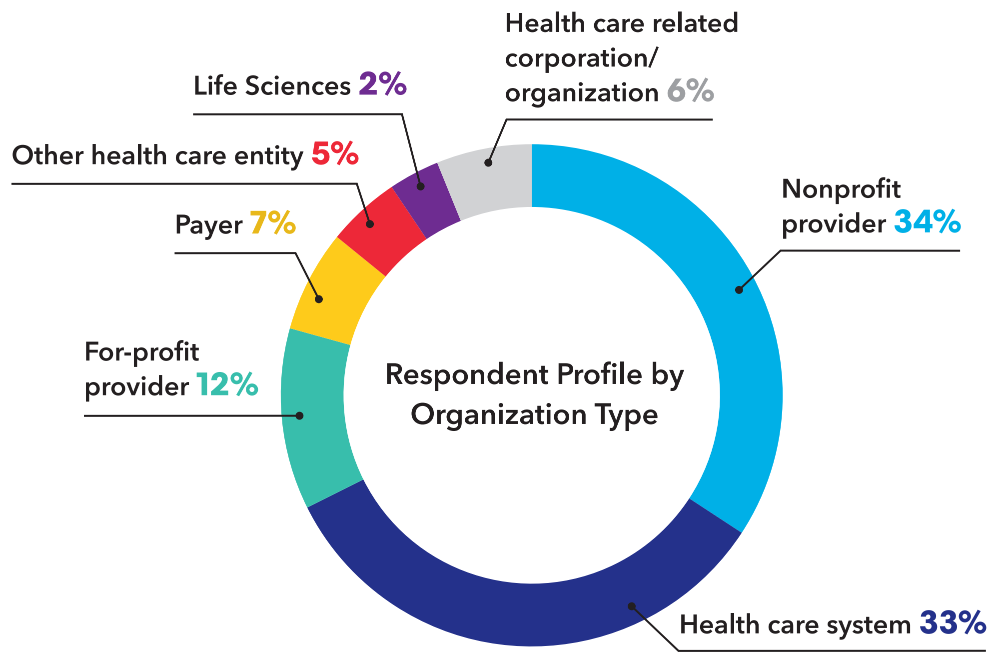
*=small base size **=very small base size

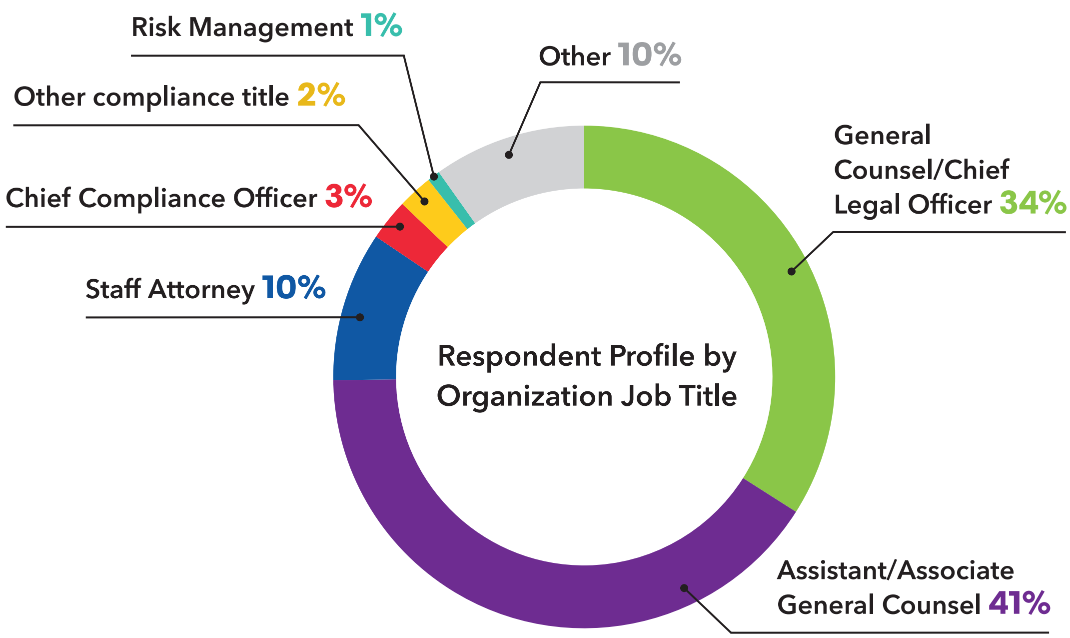
Methodology and Respondent Profile

This joint survey between AHLA and Bloomberg Law was deployed through internal outreach to the members and advisory board members from both organizations. The survey was active from Feb. 19, 2018 to March 12, 2018 and generated 488 completed surveys, each answering a series of 39 questions, a respondent must be an attorney working for one of the following:

- For-profit health care provider
- Nonprofit health care provider
- Health care system
- Payer
- Life sciences organization
- Other type of health care entity, or
- Corporation or commercial organization that provides health care related services

Percent of Surveys

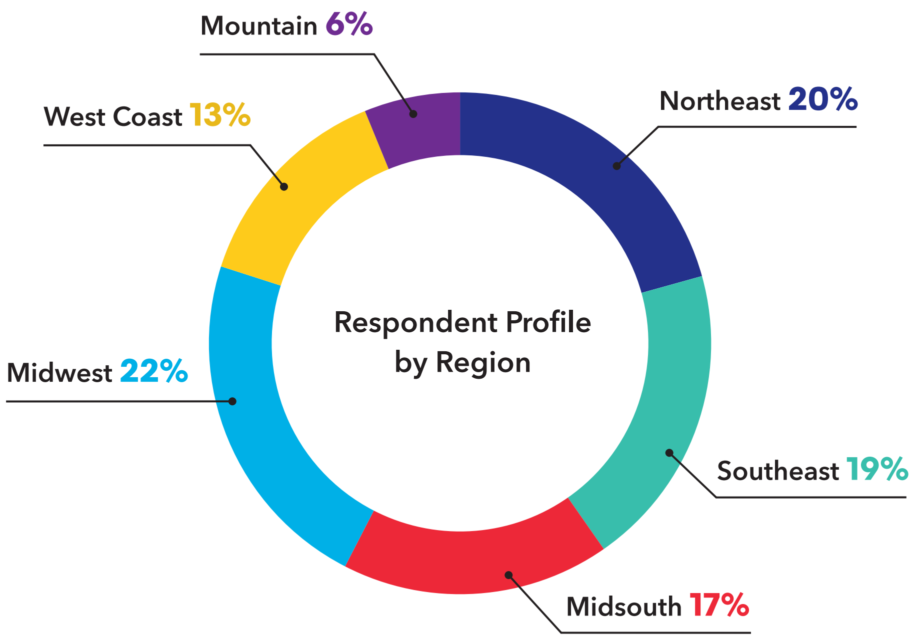


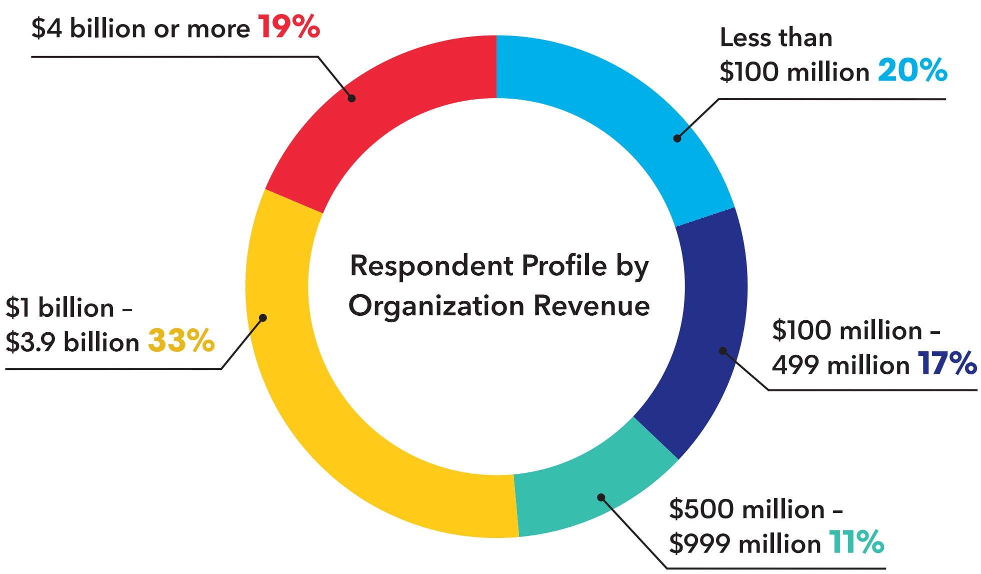


The survey responses were grouped into six distinct regions based on the location of the respondent:

- **Northeast** - Pennsylvania, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine
- **Southeast** - Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida
- **Midsouth** - Alabama, Mississippi, Louisiana, Texas, Oklahoma, Kansas, Missouri, Arkansas, Tennessee and Kentucky
- **Midwest** – West Virginia, Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, South Dakota, and North Dakota
- **Mountain** – Montana, Wyoming, Idaho, Utah, Colorado, New Mexico, Arizona, and Nevada
- **West Coast** – California, Oregon, Washington, Alaska, and Hawaii

Percent of Surveys





How to Make the Relationship between In-House and Outside Counsel Productive and Efficient

By Brent L. Henry and Dennis M. Barry

Objective: Explore how to make the relationship between in-house and outside counsel productive and efficient.

I. The Authors' Backgrounds

1.1 Brent Henry has more than 30 years of experience as a health care system general counsel, first at MedStar Health in the Baltimore/Washington region, and currently at Partners HealthCare in Greater Boston, where he oversees an office of 25 attorneys, and the audit, compliance and business ethics functions.

1.2 Dennis Barry practiced in a private law firm for 40 years and has been a partner in a boutique health law firm, and for the last 25 years of his practice was a partner in two very large international law firms. His practice was exclusively in health care and his clients were mostly hospitals and health systems (both nonprofit and investor-owned). He focused mostly on Medicare and Medicaid matters including coverage, payment, conditions of participation, enrollment, compliance, and False Claims Act defense.

II. The Decision to Use Outside Counsel

2.1 The decision to engage outside counsel often hinges on several factors: (1) whether there is sufficient in-house expertise or staffing to handle the matter; (2) how "high profile" the matter is (e.g., "bet the farm litigation" or major acquisition); and (3) whether there are highly repetitive matters that can be handled more efficiently by firms who specialize in that type of work.

2.2 No legal department is staffed to handle everything inside, and shouldn't be. Ideally, it is best to cover the routine, day-to-day, and farm out the "peak demand" work, either because your lawyers are too busy to meet the client's deadlines, or because the matters require more specialized expertise. In either case, it's always best for the lawyer supervising the work (or responsible for the client interface) to initiate that decision and to play a role in the outside counsel selection, while keeping the client informed (and where appropriate, involved). We all get "urgent" requests from our clients to handle major new matters with quick turnaround time. Sometimes, given what else is on your plate, it may make sense to send it out, but the key is to make sure the client knows. Our clients often see the legal department's advice as a free good, and when told that in order to meet their deadline, the matter will have to be sent out at their expense, the matter suddenly becomes less urgent. Other "peak demand" work involves specialized matters that arise periodically, but on a regular basis (e.g., labor negotiations), for which it is impracticable to maintain in-house expertise.

2.3 While there may be the temptation to "demonstrate your value" as in-house counsel by tackling the high profile issues on your own, outside counsel can be most valuable in the "big stakes" matters because (1) they have likely "been there and done that" and won't need to spend a lot of time (and your money) getting up to speed; (2) the advice and recommendations are more likely to be accepted and followed if it comes from a reputable law firm; and (3) it may be necessary to match the level of expertise on the other side of the table with the kind of deep and broad experience that outside counsel possess.

2.4 When there are limited in-house attorney resources (as is most often the case), it is important to make sure that your lawyers are being put to their "highest and best use." Be wary of relegating your senior attorneys to routine, repetitive matters that they were handling when they were junior lawyers. If there are tasks that cannot be delegated to paralegals, but require attorney involvement (e.g., guardianships), it might be more efficient to farm them out to specialized practitioners, who conceivably could even be less expensive than your own allocated costs. As you know, in-house counsel enjoy being continually challenged with new and different assignments.

III. Selecting Outside Counsel

3.1 "Hire the lawyer, not the law firm" is a well-known maxim. But the firm where the lawyer practices does make a difference. Does the lawyer have sufficient support or is he or she spread too thin? To the extent that areas outside of the lawyer's expertise are required for a matter, does the lawyer's firm have that expertise?

3.2 How can you learn which lawyers are well-suited to your project?

A. Network with other in-house counsel.

B. AHLA offers its members many opportunities to speak, write, participate in social media, and weigh in on virtually all health care topics. Whose names do you see? Can a speaker or author concisely deliver valuable information—if so, they will probably furnish advice and deal with clients in the same manner. If a lawyer has so little to offer that he or she "hides the ball" by talking in generalities, you should be leery.

3.3 Recommendations from outside counsel who you know and trust. A good lawyer knows what he or she cannot do well, and should be happy to refer you to someone else who is good. There are, of course, incentives for a lawyer to refer within his or her own firm. To the extent that good lawyers like to be associated with other lawyers who are good in serving the same client base, referrals within the lawyer's firm are not inherently suspect. You may, however, insist that at least one recommendation be to a lawyer who is not affiliated with the referring lawyer.

3.4 Take into account a lawyer's style of working with clients. Do you just want the answer—don't bother me with a half hour discussion of how you got there? (Of course, you need enough information to have confidence that the answer is correct, but there is a difference between being told the correct time and being told how to build a clock.) Alternatively, do you need to know in detail how the lawyer got to a conclusion/recommendation, what options exist, and all other aspects of the research and reasoning? Style matters, and there are some outstanding in-house counsel and excellent outside counsel who may not necessarily work well with each other or the client. For what it is worth, in our view, it is the job of the outside counsel to conform to the client's style and not vice versa. On the other hand, it is incumbent upon you to know what style of lawyering your client desires (which may vary from project to project).

3.5. Requests for Proposals (RFPs) can perform a valuable function but can also be misused.

A. Target a few firms you have reason to believe are capable of doing the project. Law firms often do not take seriously RFPs distributed to a large universe of firms.

B. Do not play games in trying to conflict out the able law firms. Yes, it may work, but the affected lawyers will never forget.

C. Consider what you really need to know to make your decision. In our experience, the RFP response that has a relatively short narrative and limited attachments is of much greater value than those responses that need to be bound in thick loose leaf binders.

D. Be clear about what factors are important to you, but don't over-rationalize the process. Assigning points to each subcategory for which the RFP seeks information can make the process appear to be objective, but runs the risk of turning what should be a qualitative judgment into a bookkeeping exercise which does not produce the optimal selection.

3.6 "Beauty contests." Whatever process is used, it may be useful to meet with counsel in person or through video-conferencing. Again, be considerate of outside counsel's time—if there is no reasonable probability that a lawyer/firm will be hired, do not waste your time or their time.

3.7 A busy lawyer is not only one whose talents have possibly been validated in the marketplace (remember you can fool all the people some of the time and some of the people all of the time), but is also a lawyer with a self-interest in being efficient so that he or she can go home and have dinner with the family. In addition, a busy lawyer does not need to try to expand the scope of a project in a manner that is not necessary; the lawyer can fulfill hourly expectations without "ginning up" work. Beware, however, of the manic lawyer who works extraordinarily hard and is sure to tell you that he or she toiled through the night to get you the answer.

3.8 You want a self-confident lawyer. To analogize, who would select a surgeon who expresses self-doubt? Humility, however, is essential. Sometimes a self-aware lawyer will realize that he or she was wrong. Speaking from experience, that is not a pleasant realization. Ugly as the revelation of being wrong on the law or, as is more often the case, making a judgment that turns out not to have been optimal may be, it is important that the lawyer be willing to confess error to the client.

3.9 You want candor. Sometimes management, or even General Counsel, is pursuing an unwise course of action, and outside lawyers are not doing their job if they do not speak up. ("Candor" is not a synonym for rudeness or simply assuming one's judgment is in all cases better than everyone else's judgment.)

3.10 Do not undervalue the importance of intuition in selecting working partners.

IV. Expectations from Outside Counsel

4.1 When selecting outside counsel, be explicit about your expectations--not just about the advice/assistance you are seeking, but also about the nature of the relationship you are trying to establish. Is this a "one and done" project that you do not expect will arise again; do you anticipate that the firm could become your "go to" lawyers for periodic, but regular, advice on key matters involving specialized expertise; or are you simply looking for a firm that does a good job on "commodity work" at the right price? The answer to this question will have implications for the fee arrangements you attempt to negotiate (see below). You should also be clear about who the outside counsel will be interacting with, and what protocols you want them to follow in that regard. Will they be rendering advice that you will pass on to your clients, or will they be dealing directly with the clients?

4.2 If this is a new relationship, the parameters should be set out in an engagement letter. The firm will inevitably want to use its standard form, which will vary from firm to firm. Best to develop your own, which will permit you to standardize routine interactions like billing formats, conflict checks, etc. Be prepared to get pushback on some features, because the firms understandably want to standardize their processes around those things also. But remember that as the client in a new relationship, YOU have the leverage.

4.3 Once the engagement parameters are set, it is important that you and outside counsel have a clear understanding of how their advice should be delivered. When you are seeking advice, you are entitled to answers. If the answer were obvious or clear, you probably would not have needed to go to outside counsel. It is not satisfactory for outside counsel to say "on the one hand but on the other hand" and not give recommendations or offer judgments. The law may be unclear and thus, there may be risks to different options. It is not the lawyer's job to make the client's decisions on what is an acceptable degree of risk. It is the lawyer's job to explain those risks (likelihood of a bad outcome and the possible consequences of a bad outcome) and to offer judgments. A lawyer who defaults entirely by throwing his or her hands into the air and tossing the ball to the client is not giving the client the benefit of judgment and it is judgment that justifies the rates that many outside counsel charge.

4.4 We all know that our clients often cringe at the thought of paying outside counsel to tell them that they can't do something that they want to do. But sometimes when they won't take "no" for an answer from in-house counsel, it is important to go outside to get your opinion reinforced. This can be a tricky endeavor, and it is very important for your own credibility to minimize the "daylight" between your advice and the outside counsel's opinion. The maxim that it is "better to ask forgiveness than to seek permission" is not how to proceed on Stark, illegal remuneration, or other compliance issues. Sometimes the lawyer is not doing the job properly if he or she does not say "NO!"

4.5 The outside counsel should conform his or her style to what the client wants. In contract negotiations for what will be an ongoing relationship, you do not want the lawyer to alienate the other party. Even in one-time transactions, the archetype "deal" lawyer who does business with threats, bullying, and trickery will give your organization a reputation you most likely do not want. Granted, there may be occasions, whey you want to engage in "scorched earth" litigation, but beware—the costs will skyrocket not just for the other side but for you as well. Making AUSAs or OIG personnel mad may possibly work in the short term, but be assured, they have long memories.

4.6 Communication should be linear, logical, and clear. No matter how brilliant outside counsel may be, it is necessary for lawyers to be able to communicate in writing and orally in a clear, concise manner wherein the reasoning process and supporting authority is explained (to the degree the client wants it) in a logical manner. Sometimes the most valuable skill a lawyer brings to a project is organizing it, although that is not necessarily the best use of outside counsel's time.

V. Fees

5.1 Maximizing value should be the ultimate goal of in-house counsel. Once you have identified the best lawyer for the job, the next step is to agree on a fee arrangement that works for both parties and minimizes your ultimate costs. When outside counsel charges by the hour, there are two basic variables, the number of hours and the rates per hour.

5.2 Rates per hour. Partner rates range from as low as the high $300s to $800-$900 (or perhaps more). There is intense pressure within law firms to increase rates, and this increase in rates is the single greatest explanation for increases in law firm profitability from the late 1990s to the present. Partners and law firm groups that have lower rates compared to other lawyers in the same firm will not just have lower compensation but will have a harder time having the firm agree to new partners in their group or recruiting new lawyers to their practices. Do rates at the high end of this scale make sense?

A. Maybe. The lawyer may have the degree of expertise and experience on similar projects that he or she can respond to your query in a few minutes or a few hours. The bill is likely to be much less than paying inexperienced associate rates to research the issue to death and perhaps not get as nuanced a response (or even a wrong response).

B. Maybe not.

1. There may be a lawyer as skilled or nearly as skilled, perhaps an "up and comer," who can deliver answers with the same or nearly the same degree of efficiency for a lower rate. This is particularly likely if the more expensive lawyer is in an expensive market and the less expensive lawyer is not.
2. Judgment on how to spend time. There are times when answering the question will take much more time than it is worth. The lawyer who is a good steward of the client's resources will pull back and try to offer the client an alternative by saying something to the effect of: "It will take me a long time to get you the answer you asked for, and while I have not yet researched the issue, my guess is that even if I put in a lot of time, there will still be some uncertainty. If, however, you tweak the deal in this manner, this question becomes irrelevant. Does that work for you?"
3. Most lawyers taking personality tests are "thinkers." They tend to be fascinated by ideas and want to pursue interesting issues to a conclusion. That can be a good thing; you do not want a lawyer who does not think through his or her conclusions and reasoning. On the other hand, a lawyer who pursues an issue of little value to a client (e.g., there is an option of equal value that moots the need to get an answer or the risk of being wrong is minimal) to satisfy his or her curiosity is not serving the client well although it may never cross the lawyer's mind that it was not necessary to pursue the issue.

C. Is the real problem the rates for associates? Again, law firms push for the highest possible rates for all lawyers, not just partners. Firms often explain accurately that it is far preferable to have associates with lower rates perform many tasks. However, there are certain tasks that may not be efficiently done by junior associates. There are multiple reasons why associates are not used to maximum efficiency, including: the supervising partner is so busy that work is delegated when it should not be; the work is delegated to pump up hours on the project; the work is delegated to train the associate; the associate should be able to do the work but is deadweight that the firm has failed to address; the firm failed to train the associate properly; etc. Barring first year associates from working on your projects is a natural reaction to unpleasant experiences that in-house counsel have had. There are, however, tasks that first years and other junior associates can perform at much lower cost than more experienced lawyers.

5.3 Discounts. Most firms are willing to bill at discount off their hourly rates, ranging from 5-15%, depending on the size of the matter, the prestige of the client, and the potential for more business over time. Virtually all discounts need prior approval by the firm's management, and ultimately may have an effect on the attorney's stature at the firm. Better to negotiate an across-the-board discount on all work with that firm, rather than on an attorney-by-attorney basis.

5.4 What about getting estimates at the outset of a project? This is a good idea and should minimize the risk of fee surprises and subsequent fee disputes.
A. An estimate requires defining the scope of the project. Just as there is rarely a construction project that does not have change orders, legal matters evolve, even in each discrete step, and this can put the inside and outside counsel into an adversarial relationship as they argue over what was included in the estimate.
B. Some projects, e.g., the defense of a False Claims Act case are much less predictable than others. An estimate given by most firms for major litigation will have so many contingencies that it probably is not worth much.

5.4 What about budgets? Budgets may be more enforceable than estimates, depending on their terms, but are similar to estimates. However, budgets can be an effective way to bring discipline to how a project is handled, with respect to both staffing and strategy, as long as in-house counsel are diligent in monitoring performance (this is an area where electronic billing platforms can be a useful tool).

5.5 Fixed fee arrangements are still relatively uncommon, especially in comparison to all the talk about them. Hospitals can credibly argue that they are at risk under prospective payment systems for governmental and nongovernmental payers and their lawyers should be as well. Just as hospitals have to manage the delivery of care better, they can turn to their lawyers and demand that they manage the services that they furnish. This analogy is not perfect. Even a relatively small community hospital will have thousands of discharges in a year, and the law of large numbers applies. The law of large numbers does not apply to one, two or three legal matters. The most predictable work by volume is giving day to day advice on operational issues, drafting physician contracts, leases, etc. That, however, is work that is almost universally handled by in-house lawyers.

5.6 Fee caps are certainly desirable from a client's perspective, although there could be good reasons why a cap is exceeded and you do not want your lawyer to have too much of a disincentive to put in more hours. From the perspective of outside counsel, however, fee caps are all risk with no reward. Efficiency or good luck yield no benefit—hourly rates below the cap amount are billed. If the firm is not as efficient, or lucky, however, it is penalized. From the law firm's perspective, a fixed fee is preferable to a fee cap.

5.7 Arrangements in which the outside firm can benefit from its efficiency by getting a premium from having hourly fees come in below an agreed upon amount and discounts if hourly fees exceed that amount have a lot of appeal to law firms. Fees can even be negotiated in "bands" with varying premiums/discounts the more they depart from the target. These arrangements can be complicated and take time to negotiate, but can be a good idea in major matters.

5.8 Some in-house counsel do not want to pay for the annual (or more frequent) audit inquiry responses. From the perspective of outside counsel, responses to these inquiries are "Opinions" for which there is huge potential exposure. Well-managed firms have elaborate processes to assure that appropriate responses are sent. This is not a pro forma or immaterial service to the client.

5.9 Contingency fees are becoming more common in payment disputes, particularly when the issue affects a large number of hospitals and, in the aggregate nationally, large dollars are involved. Percentages tend to be low compared to typical contingency fee arrangements.

5.10 Expenses—Telephone, routine copying, faxing, and secretarial overtime are often not charged at all.

5.11 Billing disputes. A law firm has a problem if a client consistently believes that the firm's bills are too high. From the firm's perspective, it is vital that its services be viewed as good value.
A. Communication is key to maintaining good relationships. If there is a problem with the bill, in-house counsel should talk to the billing attorney. ("Talk" is the operative term; not "e-mail.")
B. From both the in-house and outside lawyer's perspective, the client should never be surprised by a bill.
C. In any individual circumstance, the outside firm should be willing to reduce a bill. The occasions, however, when the client requests such consideration should be uncommon. If each monthly bill turns into a negotiation, the parties clearly do not agree on the value of the services furnished by the firm. That is a relationship that is in trouble.

5.12 Convergence. Often a large law firm will try to incentivize in-house counsel by offering greater discounts or "more creative billing arrangements" if a larger portion of the client's business is sent to the firm. While this may be tempting as a way to save outside counsel dollars at the outset, it is the rare law firm that contains the best lawyers in the wide range of specialties required to serve health care clients. It is important to remember the earlier caveat to "hire the lawyer, not the firm." This is particularly good advice in light of how life seems to be evolving in law firms these days.

VI. Life in a Law Firm—The Demands and Pressures on the Partner in Charge of Your Relationship

6.1 The profitability arms race. Law firms compete for talent and there is a lot of movement of successful attorneys among firms. Compensation is not the sole reason that lawyers choose one firm over another, but it is an important consideration. To the extent that a firm's lawyers' skills correlate with the firm's profitability, and there is some correlation if imperfect, clients will prefer those firms that are more profitable. While the focus on profits per partner and overall revenue may be less in smaller firms, it is nearly universal among the largest 200 firms in the country.

6.2 Law firm management communicates with the firm's partners frequently and emphatically about profitability which includes rates, billable hours, leverage (ratio of partners to nonpartners), promptness of billing, minimizing write-offs prior to billing, collecting quickly, and minimizing write-offs after billing. Firms monitor these statistics and distribute monthly reports on them. In addition, specific approval is often required for agreeing to billable rates outside a narrow range, as well as any fee arrangements other than hourly billing. Approval for write-offs exceeding relatively low thresholds is also required. Even when painful, a good firm will approve even a very large write-off when that is appropriate, but the partner requesting write-offs frequently or in large amounts should be fearful that it will affect his or her compensation, or even continued tenure.

6.3 Client and matter origination credit can be a very important element in firm compensation formulas. This gives lawyers a strong incentive to refer matters within their own firms. Even when there is no direct financial incentive, a lawyer who refers a client outside of the firm may risk the ire of management or other partners. To the extent that a lawyer has joined a firm because it has other strong lawyers serving health care clients, it is likely that the referral is to a knowledgeable, skilled practitioner. The client should never assume, without inquiry, that an internal referral is optimal. In the ordinary course of events, the referring attorney should handle the introduction in such a manner to make clear why the referred attorney is well-suited for the client's project, but the client should be vigilant.

6.4 Firms do profitability analyses by client. A partner managing a relationship that is not profitable or not as profitable as firm targets or firm averages will need to defend to the firm continuing with that business on the same terms.

6.5 Firms have hour expectations of their attorneys which can range from 1800 to more than 2000 billable hours a year. If a lawyer does not record sufficient billable hours, the lawyer's compensation and continued tenure are at risk. Thus, underutilized lawyers have incentives to "pad" their hours. The good news is that most firms have gotten to the point where they address the problems of underutilized lawyers pretty quickly.

VII. Outside Counsel Guidelines

7.1 Clarity on the terms of the engagement, conflicts, expectations, and requirements is good. Some guidelines, however, are inimical to the firm best serving the client. Some guidelines, and the manner in which they are applied, are insulting to the outside firms. For every specific guideline, there is certainly a horror story that spawned its creation. A relationship built on the premise that the outside lawyers are crooks will not be much of a relationship. If a client has so much mistrust of a firm that it feels the need to have 10 pages of strictures on what the firm must and must not do, one must ask why they choose to deal with that firm at all.

7.2 Approval of lawyers working on the project is a sensible way to monitor costs. However, approval is often withheld from first year lawyers, which is not always in the client's best interests. Incidental use of other lawyers may make sense, e.g., a tax-exempt issue collateral to the project requires 0.50 hours of a tax lawyer's time. Disallowing that time encourages the firm to ignore issues or forces the firm to spend more time and incur delay to obtain approval than it is worth.

7.3 Disallowance of time lawyers spend talking to each other. Sure, there are horror stories of weekly conferences on a pending case where hordes of lawyers dutifully record their time being brought up to speed on current developments. However, absolute bans on paying for lawyers talking to each other may be counter-productive. You want a partner to give guidance to an associate prior to the associate doing needed research; without that guidance, the associate will spend more time than necessary. You want your lawyer to talk to his or her colleague down the hall who handled or is handling a similar matter to share ideas and resources. The ready availability of other smart, knowledgeable lawyers in the same field and ancillary fields is why many lawyers prefer to practice in a firm setting and not as solo practitioners.

7.4 "Task billing," requiring the time for each individual task to be recorded is fine, although it is a pain in the neck for the working attorneys. Whether this reduces hours billed is doubtful.

7.5 The rise of electronic billing systems (e.g., Serengeti, etc.) can be a valuable tool for in-house counsel. They produce useful data, which, when coupled with the right set of analytics, can be very instructive in comparing firm efficiency and monitoring both tasks and deliverables. These systems also contain features that often go unutilized, sometimes to the detriment of in-house counsel's ability to do real-time troubleshooting or mid-course correcting when expensive matters are ballooning beyond budget.

7.6 Conflicts clearance can be an area of annoyance for in-house counsel, and embarrassment for outside counsel. No in-house counsel wants to learn that the firm he or she has retained has subsequently been retained by a party who is actually or potentially adverse to them. Your guidelines should be clear about the circumstances under which you require advance notice, and waivers should not be unreasonably withheld.

7.7 Finally, a word about diversity. This is a sensitive, but important, issue in outside counsel engagement, and an area in which both inside and outside counsel goals should be aligned. If diversity is important to your organization, it should be reflected in your outside counsel guidelines. The standards you set (and the degree to which you monitor a firm's performance against those standards) may vary, but this is another area in which you have more leverage than you think, and you should not hesitate to use it.

Sample In-House Counsel Legal Subject Matter Staffing Chart

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Antitrust/Competition		
Federal Sherman, Clayton, FTC, and Robinson Patman Acts		
State Antitrust and Business Competition Statutes		
Federal Policy Statements and Antitrust Safety Zones		
Litigation/Investigations		
Business Strategy/Transactions		
Contracts Management		
Employment		
Independent Contractors		
Exclusive		
Vendors		
Subscriber Groups		
Third-Party Payers		
Network Leases		
Participating Providers		
Education Affiliations		
Physician Recruitment		
Asset Purchases		
Shared Medical Space		
Staffing Agreements		
HIPAA – Business Associate Agreements		
Information Use Agreements		
HIPAA – Transactions		
HIPAA – Broker/Agent/Agency Agreements		
Agreements with Self-Funded Groups		
TPA Agreements		
State DOI Contracting Laws/Regs		
Consulting Contracts		
Research Contracts		
Equipment Leases		
Joint Ventures		
Indemnifications		
Contracting Authority		

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Contract Management		
E-Commerce		
Litigation		
Corporate Law/Governance		
State Nonprofit Corporation Statutes		
Federal and State Corporate Filings		
Charitable Trusts Laws		
Facility Licensure		
Professional Licensure		
Corporate Governance Principles		
Sarbanes Oxley Act		
Federal Sentencing Guidelines		
State DOI Requirements		
Articles of Incorporation and Bylaws		
Privileging/Credentialing		
Regions/Hospital Bylaws		
Physician Division Bylaws/ Credentialing		
Medical Staff Bylaws/ Medical Staff Hearings		
Medical Staff Plans		
Conflicts of Interest Policy		
Committee Charters		
Privileging/Credentialing		
Annual Meetings/Minutes		
Department Management		
Budgets		
Accounting		
Personnel		
Long Range Planning		
Outside Counsel Relations		
Computer Systems		
Employment Issues		
Policies and Procedures		
Counsel/Compliance		
Investigations/administrative hearings/ employment discrimination, sexual harassment, etc.		
Union activity		
ERISA/Pension Plans		

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Other Benefit Issues		
Employment and contractor agreements		
Wage & Hour, Payroll and Garnishment Issues		
Americans with Disabilities Act		
Employee Criminal Conduct		
Title VII		
Environmental		
OSHA		
Medical Waste Disposal		
Clean Air Act		
EPA		
Safety/Security of premises, employees/business invitees		
NRC		
State and Federal documentation, reporting, and posting requirements		
Environment of Care Issues: (Joint Commission)		
Life Safety Code		
Building Code		
Fire Code		
Electrical Code		
Plumbing Code		
Hazardous Waste		
Food Safety/Inspection		
ADA		
Section 504 of Rehabilitation Act of 1973		
Access Issues		
Homeland Security/FEMA		
Finance/Accounting		
Bond Offerings requirements (state/federal law)		
External Audits		
Accounting Practices (GAAP/ IRS/state law)		
Master Trust Indenture (IRS/ state law)		
Grants Accounting		
IRB Accounting		
Clinical Trials Accounting		
Investigational Drugs/Devices Accounting		
A/R Management Protocols		
Internal Audit Collections		

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Prepare Annual Budgets		
Prepare Annual Financial Statements		
Collections/Litigation		
Investigation		
Government Policy		
Political Campaign contribution laws		
501(h) Lobbying Election		
Lobby Registration/Reporting		
Association Policies		
State Law Governing Charitable Fund-Raising		
State Dept. of Health		
Public Health Care		
State Legislation		
Administrative Rule Making		
Federal Legislation		
Health Insurance		
State regulation		
COBRA		
DOI Financial Exams		
DOI Market Conduct Exams		
Arrangements with brokers, agents, and agencies		
Gramm-Leach-Bliley		
HIPAA		
Transactions		
Privacy		
Security		
Insurance aspects (portability, mental health, women's and newborns', cancer rights)		
DOL (ERISA)		
Panel Selection and Termination/ Policy		
Enrollment and Group/ Member Termination		
Grievance and Appeals Processes		
Claims payment – Prompt Pay and Coding Issues		
Subrogation		

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Contracts/Policy		
Affiliate Discounting Policy		
Provider Relations/ Policy		
Litigation/Investigations		
Human Resources		
EEOC		
DOL		
ERISA/Pension Plans		
Fair Labor Standards Act		
Davis-Bacon Act		
Wage & Hour		
Payroll & Garnishment		
Americans with Disabilities Act		
Section 504 of Rehab Act of 1973		
Title VII		
Family Medical Leave Act		
Age Discrimination in Employment Act		
Affirmative Action Program		
Union Activity		
Other Benefit Issues		
COBRA		
Employment/Independent Contractor Agreement		
Child Care		
Employee Criminal Conduct		
Inappropriate Employee Conduct		
Policy Violations		
HIPAA Violations		
Theft		
Improper use of resources		
Harassment/Discrimination		
Excluded/Sanctioned Providers/ Employees		
Employee/Provider Background Checks		
Bureau of Citizenship and Immigration Services (formerly INS)		
Policies & Procedures Development/ Enforcement		
Hearings/Litigation		

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Intellectual Property		
Federal patent/copyright law		
Copyrights		
Patents		
Servicemarks/Trademarks		
DBAs		
Federal and State Filings		
Research		
Medicare/Medicaid/Payor		
Social Security Act, Amendments and Regulations, Titles 18 and 19		
Stark		
EMTALA		
Anti-kickback		
False Claims Act		
Claims Submission (Inpatient/ Outpatient)		
LMRPs		
FI, Carrier, DMERC, RHHI Requirements		
DEA Numbers		
Home Health		
Provider Enrollment/Renewal, Provider Agreements		
External Audits/Surveys		
Conditions of Participation		
Certification		
Cost Reports		
Gainsharing		
Coding		
GME Payment		
Provider Based Status		
State Medicaid Plan		
Patient Care		
Admitting, discharge and transfer issues		
Adoptions		
Abuse of patients - Children / Elderly		
CDC: AIDS, STDs, infectious disease reporting, rights, etc.		
CLIA and pathology issues		

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Clinical Protocols		
Conditions of Admission		
State & Federal Controlled Substances Acts		
EMS Issues		
EMTALA		
ESRD		
FDA/Blood Banks		
Forensic Issues (rape, evidence handling, chain of custody, etc.)		
HIPAA		
Privacy		
Security		
IRBs, medical experimentation and research, protection of Human Subjects		
Medical Records: Vital Records, Birth and Death Certificates		
Mental Health Therapy issues		
NCQA		
Organ Transplants/Procurement		
Patient safety issues		
Patient Restraint issues		
Pharmacy issues		
Resident, intern, fellow issues		
Reproductive health issues		
Scope of Practice/Physician Supervision Issues		
Title VI		
Tumor Registry		
Arbitration/Arbitrations Agreements		
Malpractice/Liability Claims		
Consent to treatment, Living Wills, Medical Treatment Plans, DNR		
Intentional/Unintentional Torts		
Liability issues		
Medical staff questions, investigations, privileging issues, HCQIA, fair hearings		
Ostensible Agency		
Premises liability, invitees		
Respondeat Superior		
Statutes of limitation and repose		
Subpoenas		

Legal/Subject Matter	Legal Resource: In-House Counsel	Legal Resource: Outside Counsel
Property		
Titles/Deeds/Easements		
Leases/Subleases		
Property Acquisitions/ Sales		
Zoning/Ordinances		
Tax Matters		
Internal Revenue Code, rules, regulations, rulings, etc.		
Federal Community Benefit Standards		
Federal Appeals/Application for & Litigation of Taxable Status		
State Property Tax Standards		
State Tax Commission Regulations		
State Admissions and Charity Care Policy		
State Property Tax Affidavits/ Hearings		
State Charity Care Plan/Meetings with County Officials		
State Assessments/Valuation		
Private Inurement/Benefit (Excess Benefit Transactions?)		
Intermediate Sanctions		
Form 990s and 990Ts		
Other Tax Forms		
Audits		
Appeals/Litigation/Hearings		

Sample Legal Services Staffing Matrix

Functions & Practice Areas	Nature of Work	Role of Law Department	Role of Outside Counsel	Additional Details
Legal Advice and Opinions	Legal advice and opinions pertaining to operations and system strategic priorities and goals.	Law Department (LD) to serve as primary legal advice and counseling resource.	Support LD as requested	
Contracts (excluding Referral Source Arrangements)	Develop and update contracting templates, terms and conditions, and related materials to support contracts across the system. Review of all non-template compliant contract agreements within the following categories: • Mission critical (patient care, PHI) • Interested parties • Governance related • Audit, legal, and regulatory compliance services • Vendor and consulting services involving over $500,000 (e.g., IT, materials management, consultants, service agreements, etc.)	LD develops templates, defines policies, and selects and manages outside law firm's attorney.	Outside law firm's partner to review contracts as determined by LD.	Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
Referral Source Arrangements (i.e. Physician Contracts)	Expedited review of all template compliant physician arrangements. Full review of all physician arrangements that do not comply with a pre-approved template (see applicable policies).	LD to lead in physician arrangement review, including legal analysis, and approval.	N/A	
Compliance	Support for Compliance function and programs: legal analyses and opinions, identifying and communicating changes in the law, and leading investigations where appropriate.	LD to select and manage outside counsel firms.	Outside counsel firms to provide subject matter expertise, as needed.	Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
Government Investigations, Search Warrants and Subpoenas	Investigations relating to government subpoenas, search warrants, and investigations.	LD takes early and primary role in oversight and management of government related investigations.	Outside counsel firms to support LD with subject matter expertise, as needed.	
Regulatory and Licensing	Organizational response for Sentinel Events, State Surveys/Plans of Correction, CMS Surveys/Plans of Correction, and OCR Deficiencies/Plans of Correction.	LD supports activities and ensures appropriate leaders are informed.	Outside counsel firms to provide support, as determined by LD.	Departments to lead on development of organizational response with legal review of documents prior to submission to regulatory agencies.

Functions & Practice Areas	Nature of Work	Role of Law Department	Role of Outside Counsel	Additional Details
Labor, Employment, and Benefits	• Advice and Counseling • Litigation Management • Labor Relations • Wage and Hour Practices • Benefits • Immigration • HR Initiatives	LD to select and manage outside counsel firms.	Outside counsel firms to provide telephone retainer service for advice and counseling, L&E litigation defense, labor negotiations support, and wage and hour expertise.	Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
Litigation (excluding medical malpractice and workers compensation)	Resolution and management of all disputes, oversight & management of litigation and other adversarial proceedings.	LD to select and manage outside counsel firms.	Outside counsel firms to handle day-to-day litigation work, court appearances, and other litigation functions.	
Transactions	Legal services related to acquisitions/ mergers, bond financings, joint ventures, land use and development, syndications, physician alignment, and ongoing operations.	LD to proactively partner with the client groups (early &ongoing involvement) to manage transaction related work.	Outside counsel to support LD activities and provide expertise, as requested.	
Clinical Research	Legal services relating to clinical trial agreements/research study agreements, billing considerations, and institutional review board approval in compliance with OHRP, FDA, HIPAA regulations, and state laws.	LD to select and manage outside counsel firms.	Outside counsel firms to provide subject matter expertise.	Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
System Office Strategic Initiatives	Legal services and support to System strategic initiatives and goals.	LD to partner with senior leadership to support strategic initiatives and goals.	Outside counsel firms to provide relevant subject matter expertise.	
Medical Staff	Legal services and support to CMOs, medical staff leadership, and administration related to medical staff activities.	LD to serve as a liaison in management of outside medical staff counsel and lead as legal counsel for appellate review body proceedings.	Outside counsel firms to provide subject matter expertise.	CMOs to send requests to select medical staff attorneys with copy to in-house counsel to ensure effective coordination. Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
Real Estate	Develop and update real estate contract templates, terms and conditions, and related materials. Legal work related to the purchase, sale, use and development of real estate. Manage landlord/tenant negotiations.	LD to lead in template development and administration for all leases and provide subject matter expertise.	Outside counsel firms to provide real estate subject matter expertise, as needed.	LD supports facilities in landlord / tenant related negotiations.

Functions & Practice Areas	Nature of Work	Role of Law Department	Role of Outside Counsel	Additional Details
Governance	Legal work resulting from the requirement for governance approval (e.g. real estate, contracts, creation of an LLC).	TBD		Governance to lead with changes in bylaws. Details TBD.
Intellectual Property / Trademarks	Trademarks and Servicemarks	LD to select and manage outside counsel firms.	Outside counsel firms to provide subject matter expertise, as needed.	Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
Conflicts of Interest	Identification and management of strategy for mitigation of conflicts of interest.	Support Compliance and Governance in development of policies and procedures to identify and manage conflicts of interest.		Compliance and Governance functions to take on lead roles, with support from General Counsel related to mitigation of conflicts of interest. Details TBD.
Resource Development	Legal work relating to fundraising activities and estate planning issues.	LD to select and manage outside counsel firms.	Outside counsel firms to provide subject matter expertise, as needed.	Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
Affiliated Entities	Legal work relating to affiliated entities partially owned by the System.	LD to select and manage a panel of outside counsel firms designated to handle related legal work.	Outside counsel firms to provide subject matter expertise, as needed.	Periodic reporting by outside counsel to the Office of General Counsel on all open matters.
NFP/Tax Exempt Status	Legal services and support relating to managing NFP status, including compliance with IRS Form 990 reporting & related requirements and state charitable trust laws, and interfacing with internal & external auditors and regulators (e.g. executive compensation, private use, conflicts of interest, etc.)	LD plays advisory role to the organization as needs are identified.	Outside counsel firms to provide subject matter expertise, as requested by LD.	

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