



Long Term Care and the Law

February 28–March 2, 2018 | Sheraton New Orleans | *New Orleans, LA*

In Association with:



A Member of Prism Healthcare Partners



Bridging Business & Healthcare

Principle Valuation LLC and PYA have provided sponsorship in support of this program.

Long Term Care and the Law

Planning Committee

Christopher C. Puri, *Program Chair*

David C. Beck

Barbara J. Duffy

Marsha R. Greenfield

Ari J. Markenson

Learning Objectives

- Increase knowledge of the regulatory issues affecting the delivery of care by post-acute and long term care providers
- Learn practical information to increase operational effectiveness of long term care facilities
- Understand challenges and risks for post-acute and long term care providers

Program Sponsors



Principle Valuation LLC

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Exhibitors

HORNE LLP

Ntracts

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Proactive Medical Review

PYA

Simione Healthcare Consultants, LLC

Zimmet Healthcare Services Group, LLC

Hotel Information

Sheraton New Orleans

500 Canal St

New Orleans, LA 70130

Phone: (504) 525-2500

Hotel accommodations are not included in the registration fee. Call Sheraton New Orleans at number and indicate that you are attending the AHLA program. Rooms at the group rate of \$227 single/double occupancy are limited and may sell out prior to the February 6, 2018 cut-off.

Registration Fees:

Early Registration

*Postmarked and paid on or before
February 12, 2018*

First AHLA Members: **\$865**

Each additional AHLA Members: **\$790**

Non-Members: **\$1,115**

Registration

*Postmarked and paid between
February 13-20, 2018**

First AHLA Members: **\$990**

Each additional AHLA Member: **\$915**

Non-Members: **\$1,240**

** Fees increase \$100 after this date*

Discounts

In-House Counsel and Solo Practitioner: **\$100 off full applicable rate**

AHLA Academician Members: **\$520**

AHLA Public Interest Professional Members: **\$520**

Government/Academician/Public Interest Professional Non-Members: **\$595**

Non-Attorney Provider (these are CEOs, CFOs, Administrators): **\$650**

Practice Group Luncheon

\$60 Member of sponsoring Practice Group(s)

\$70 Non-Member of sponsoring Practice Group(s)

Please Note: This year's program includes sessions for Nursing Facility, Assisted Living, and Home Health audiences.

This schedule indicates for which audience(s) a session is intended: Nursing Facility (NF) attendees; Assisted Living (AL) and/or Home Health (HH) attendees.



For the most up-to-date information
and to register, visit our website at
www.healthlawyers.org/programs

Agenda

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Wednesday, February 28, 2018

7:45 am-12:45 pm

Assisted Living In-House General Counsel Roundtable sponsored by NCAL

Pre-registration is required; space is limited; open to Assisted Living In-House Counsel only.

The National Center for Assisted Living's (NCAL) ninth annual In-House Counsel Roundtable discussion for in-house attorneys and counsel who work for assisted living companies.

In 2018, this exclusive and unique forum will have an in-depth focus on emergency preparedness.

Participants will also have an opportunity to network with peers in small-group discussions on a variety of issues. Attendance to this complimentary event is limited to in-house counsels from assisted living and long term care companies.

NCAL will host a breakfast and luncheon for those in attendance.

CLE credit for this event will be available to attendees registered for the AHLA's Long Term Care and the Law conference. Please note: 180 minutes of the 300 minute time frame are considered substantive and will qualify for credit.

8:30 am-5:30 pm

Registration and Information

9:00-11:50 am

Fundamentals of Long Term Care

9:00-9:50 am

Primer on Skilled Nursing Facilities (not repeated)

*Janet K. Feldkamp
Toni H. Parkinson*

This introductory session will provide information for those new to the nursing facility area. A general overview will be provided related to the multiple regulatory requirements that make nursing facilities unique health care businesses.

- State licensure; Medicare and Medicaid certification; certificate of need
- Residents—Types of resident, admission, MDS, discharge, resident rights
- Basic survey and enforcement
- Regulatory—Special focus facility, elder justice, 5 star program, staffing and competency
- Compliance and risk management
- Payment types; payment and payer sources

10:00-10:50 am

Primer on Home Health and Hospice (not repeated)

Jason E. Bring

- Overview of home health
- Payment models for home health
- Overview of hospice service
- Payment models for hospice
- Hot topics and trends in hospice

11:00-11:50 am

Introduction to Assisted Living (not repeated)

Mary Zak-Kowalczyk

- Assisted Living defined
- Accommodations, amenities, and services
- State regulations and surveys and inspections
- Residency agreement, disclosure statement and

admission/discharge criteria

- Personnel qualifications and training
- Private and public funding sources
- Third party providers

9:30-11:30 am

New Requirements of Participation Guidance: New "Rules" – New Risks (not repeated)

*Michele A. Conroy
Leah Killian-Smith
Sara Rudow*

- The themes for the new Requirements of Participation Guidance
- New survey process and the impact the regulations are expected to have on the number of immediate jeopardy level deficiencies across the country
- Areas of the regulations and guidance that are likely to have significant regulatory and financial impact, such as the discharge planning and notice requirements, pharmacy and abuse
- Areas of the new regulations and guidance that can expose facilities to liability from a negligence and criminal stand-point, including the implementation of the new facility assessment, staff competency requirements, and the erosion of Quality Assurance protection

Interactive Session: Life After Escobar (not repeated)

(limited attendance; pre-registration required)

*James F. Segroves
Jack W. Selden*

This interactive program will provide an advanced-level roundtable discussion regarding recent developments in the False Claims Act (FCA) context, with a specific and extensive focus on how courts are deciding various issues in the aftermath of the U.S. Supreme Court's decision in *Universal Health Services, Inc. v. United States ex rel. Escobar*. The presenters will engage the

Continuing Education Credit Information

CLE/MCLE: AHLA will be applying for 18.75 credits (including 1.5 ethics credit) for 60-minute states and approximately 22.5 credits (including 1.8 ethics credit) for 50-minute states.

CPE: AHLA will be applying for 22.0 CPE credits.

AHLA is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Ave. North, Suite 700, Nashville, TN 37219-2417. NASBA's website is www.nasba.org.

CCB: AHLA will be applying for 22.5 Compliance Certification Board (CCB) credits.

NHA: AHLA will be applying for 18.75 Nursing Home Administrator (NHA) credits.

Participants will be given Continuing Education Request forms at the program. Forms must be completed and returned to AHLA staff to receive credit. The sessions, unless otherwise designated, are intermediate to advance in level. This program is designed to be an update on developments in the area of health law. There are no prerequisites or advanced preparations required to register for this group live program. Those seeking accounting credits should be familiar with the basic concepts and terminology associated with health law in order to obtain the full educational benefit of this program.

Membership

audience in a lively conversation about various topics, including how courts and the Department of Justice are addressing such things as:

- The materiality standard established by the Supreme Court in *Escobar*
- Questions of medical necessity and/or clinical judgment
- Discovery and expert-witness issues
- The use of statistical sampling to establish liability and damages
- The impact of ambiguous statutes or regulations on falsity
- Defendant claims for attorney's fees under the Equal Access to Justice Act

11:30 am-1:30 pm

Lunch on your own

GENERAL SESSION

1:30-1:45 pm

Welcome and Introduction

*Marilyn Lamar, AHLA President-Elect
Christopher C. Puri, Program Chair*

1:45-2:30 pm

Keynote Address

Lance Robertson

2:30-3:30 pm

Post-Acute Care in a Value-Based Environment: Emerging Opportunities and Strategic Imperatives

Fred Bentley

- The paths that CMS, Medicaid agencies, and other payers are likely to follow in refining and expanding risk-based payment models—both for post-acute providers as well as their acute care referral partners
- Along with the adoption and diffusion of bundled payment programs, ACO/shared savings models, and other value-based care arrangements, this session will address the implications of the expansion in Medicare Advantage and Medicaid managed care for the growth and profitability of post-acute care providers
- Against the backdrop of rising managed care penetration and more risk-based payment models, we will comment on how demographics and evolving consumer preferences are likely to affect the post-acute care business model
- An exploration of the different business models that leading PAC organizations are pursuing, ranging from serving as the high-reliability downstream provider to acting as the compre-

hensive post-acute care manager for hospitals and payers

3:30-4:00 pm

Coffee Break, sponsored by Principle Valuation LLC and PYA

CONCURRENT SESSIONS

4:00-5:30 pm Extended Sessions

A. Home Health Legislative and Regulatory Update (HH)

(not repeated)

William A. Dombi

- The 2018 Medicare home health payment system changes
- The Medicare Home Health Value-Based Purchasing pilot program update
- Medicare pre-claim review demonstration program
- Medicare physician certification compliance issues
- The status of the proposed Medicare Conditions of Participation for home health agencies and the current imposition of CoP alternative sanctions
- Medicare hospice regulatory updates including hospice payment reform
- Medicaid managed care developments affecting home care
- Developments in the oversight of home care and hospice under Medicare and Medicaid
- Legal and legislative updates on new regulatory actions under the Fair Labor Standards Act impacting public and private pay home care
- Forecast for future legislative and regulatory changes in 2018

B. Case Law Update (NF/AL/HH)

William E. Hopkins

Emily M. Park

- False claims and other fraud and abuse litigation
- Arbitration agreement litigation update
- Medicare and Medicaid reimbursement cases
- Survey, certification, and enforcement update, including DAB analysis of "strict liability"
- Data breaches and HIPAA enforcement actions
- Other litigation developments

C. Nursing Home Legislative and Regulatory Update (NF)

Stacie E.S. Aman

Jennifer L. Hilliard

- Regulatory developments affecting the nursing home industry in the advent of the Trump Administration
- Guidance issued by the Centers for Medicare and Medicaid Services
- The effect that regulatory developments will have on your clients

D. Taking the Risk out of Assisted Living: Building Blocks for a Comprehensive Risk Management Program (AL)

*Tara J. Clayton
T. Andrew Graham
Frank Russo*

- Strategies to reduce resident injuries
- Best practices for reducing legal and regulatory risk in memory care
- Strategies for limiting corporate liability
- Creating an effective multidisciplinary crisis response team

5:30-6:45 pm

Networking and Diversity+Inclusion Reception, hosted by AHLA's Diversity+Inclusion Council, sponsored by Principle Valuation LLC and PYA

Join AHLA for a Diversity+Inclusion Reception. Learn more about AHLA's diversity and inclusion initiatives. Network with AHLA leaders and your fellow colleagues. This event is included in the program registration. Attendees, faculty, and registered spouses and guests are welcome.

**Thursday,
March 1, 2018**

7:00 am-5:15 pm

Registration and Information

7:00-8:00 am

Continental Breakfast, sponsored by Principle Valuation LLC and PYA

This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.

(not repeated)

*David C. Beck
Teresa L. Salamon*

Pre-registration required, Space is limited. Must be SNF General Counsel to attend.

Join your SNF general counsel colleagues to participate in a discussion about the things that consume all of your time and the things that keep you awake at night, but which are not always the same things.

Some topics:

- Emergency preparedness, facility assessment, QAPI but what about the patient?
- Medicare and Medicaid physician enrollment, revalidation and opt out, and how it may impact our centers
- Moving mountains—how to get good ideas out of the corporate office and into the centers
- Where did you sleep last night/the Midnight Census Rule
- Staffing—where did all the nurses go?
- Are your retaliation claims on the rise?
- Arbitration agreements and class action

E. Responding to Disaster: Attributes of a Prepared Nation (NF/AL/ HH)

*Steve Bahmer
Seann M. Frazier
Dan Hanfling*

- Expected health care capabilities, the role of health care coalitions, and planning for crisis standards of care
- Emergency preparedness requirements for Medicare and Medicaid participating providers
- CMS' Sept. 16, 2016 final rule
- State regulation of emergency preparedness
- When Hurricane Irma hit: A natural disaster begets a regulatory emergency

F. Legal Ethics: Promoting a Culture of Compliance: What Counsel and Health Care Professionals Need to Know about Cultivating Ethical Conduct and Protecting Their Organizations from Whistleblower Threats (NF/AL/ HH)

*Malcolm J. Harkins
Linda W. Taetz
Linda Woolf
Christine A. Zack*

- False Claims Act recoveries
- Perspectives and advice from the head of Operations for multi-state long term care provider
- What organizations and in-house counsel, compliance professionals, and defense counsel can do to prevent activity leading to whistleblower threats
- How to mitigate the damages from an actual or purported whistleblower
- Comparison of the Ethical and Professional Responsibilities governing attorneys vs. compliance professionals, including an overview of the relevant case law

B. Case Law Update (NF/AL/HH) (repeat)

C. Nursing Home Legislative and Regulatory Update (NF) (repeat)

9:45-10:45 am

G. The Art of Buying and Selling Facilities—From LOI to Close (NF) (not repeated)

*Elizabeth P. Tyler
Julianne Williams*

- Beginning a transaction addressing primary deal terms
- Due diligence including financial, operational, environmental, and physical inspections
- Negotiating the documents including specialized deal terms
- Financing options including term debt and AR lending
- Pre and post-closing covenants and deliverables
- Mechanics of transferring the operations
- Tax considerations, options, and benefits

CONCURRENT SESSIONS

8:00-9:30 am Extended Sessions

Interactive Session: Nursing Facility General Counsel Roundtable (NF)

Dues are \$235 for those admitted to the Bar/graduated from college within the last four years; \$355 for those admitted/graduated between four and seven years ago; and \$400 for those admitted/graduated eight or more years ago. Dues are \$120 for government employees and full-time academicians; \$105 for paralegals, \$125 for public interest professionals, and \$100 for retired professionals. Include the applicable membership fee with your registration form and take advantage of the program registration fee for members.

Special Needs

If you have needs requiring special assistance or accommodations, including special dietary needs, or have questions about accessibility issues at the program, contact our special needs coordinator, Valerie Eshleman at (202) 833-0784 or veshleman@healthlawyers.org.

Spouse/Guest Fee

For an additional \$50 spouses and adult guests can register to attend the reception on Wednesday and Thursday evenings and the breakfasts on Thursday and Friday mornings. Children are welcome to attend these events at no additional charge.

H. The RUG that Doesn't Really Tie the Room Together – CMS Announces Major Changes to the SNF Prospective Payment System (NF)

*Joseph M. Greenman
Mark E. Reagan*

- Background of the SNF PPS payment methodology and the current Resource Utilization Groups, Version 4 (RUG-IV) for paying SNFs per diem rates for resident services
- New proposed Resident Classification System (RCS-1)
- In-depth analysis of proposed new RCS-1 case-mix components, underlying assessment criteria for each that will affect individual resident reimbursement level determinations, and additional resident data sources used by CMS to produce resident reimbursement
- How RCS-1 will impact health care fraud and abuse laws such as the False Claims Act
- Side-by-side comparison of RUGs with RCS-1 in an effort to impart understanding of how SNF Medicare payments will change when providing care to residents with varying care needs
- Analysis of anticipated impact of reimbursement changes on SNF models of operation, including SNF services provided by vendors under contract with providers

J. Resident Transfers and Contract Terminations in Assisted Living and CCRCs (AL)

*Tara A. Cope
Paul A. Gordon*

Assisted Living and CCRC providers are often faced with situations where a change in the resident's condition or disruptive conduct warrant a transfer to another level of care or a contract termination. Often, the grounds for such a decision and the proper procedure to implement it are less than clear. Complications can include the parameters of the provider's contractual and regulatory rights and obligations, fair housing and disability discrimination defenses, and conflicts between landlord-tenant law and licensing regulations.

Among the issues to be addressed in this presentation are:

- The extent to which the grounds for resident transfer and contract termination are adequately disclosed to residents in advance
- The process used for making a level of care determination—assessment, who is consulted and who decides?

- When is disruptive resident behavior defensible?—pursuit of grievances, political speech
- Does the provider have a duty to address the resident's problem clinically, rather than to transfer or terminate?
- When might the transfer/termination decision constitute unlawful disability discrimination?
- What procedures are available to enforce a transfer/termination decision?

K. Electronic Devices, Monitoring, and Social Media in the Long Term Care Facility (NF/AL/HH)

*Barbara S. Barrett
Denise Bloch*

- How do you handle residents taking and posting photos of other residents, staff, and more? Do you allow staff to be Facebook friends with residents? Can you prohibit staff from being Facebook friends with residents or does that violate Resident Rights? Do you provide internet/Wi-Fi access for residents? Can you block access to certain content?
- Are there limits in what type of monitoring the facility can do? Does it matter if it is video or includes audio?
- Can monitoring be done in a resident's room if it is care planned (e.g. resident with mental health issues is convinced people are coming in at night and shooting him up with drugs)? If monitoring is allowed, when is consent needed, how can consent be given, by whom, how to withdraw consent, what limits need to be considered, etc?
- What about monitoring by resident's family? More and more states are passing nanny cam laws but what are practical issues with allowing that. What are the most important issues to consider if your state is considering adopting such a law? Should you choose to allow it even without a nanny cam law?
- What about your employees? Most staff have a smart phone. Do you allow them to have it with them at work?
- Do you limit where employees can keep or use it? Any limits on photos of residents, other staff members, posting of photos? What if a family wants photos shared with them or asks a question on social media? What about social media messaging such as Facebook messenger? What about posts without names?
- What about social media for marketing? For communications with family members?

L. Survey and Enforcement Refresher (NF)

Joseph L. Bianculli

Some counsel and clients are not familiar with recent developments in survey and enforcement procedures. This intermediate level session provides an overview of the survey and enforcement process; counsel's role, before, during and after surveys; considerations pro and con IDR and appeal; and the current state of the Departmental Appeals Board and judicial review of enforcement determinations.

- Survey and enforcement developments; counseling clients before and during surveys
- Collateral consequences of bad surveys—5 Star; state enforcement; personal injury cases; other regulatory consequences
- Appeals—IDR, IDR, Departmental Appeals Board; pros and cons of IDR and appeals; case development
- Appeals update—status of DAB cases; Judicial appeals; State appeals

11:00 am-12:00 noon

M. Medicare Claims Appeal (NF/HH) (not repeated)

Donna K. Thiel

- The current status of Medicare claims appeals
- Are changes being made to improve the appeals process
- Strategies for successful defenses of claims denials
 - Fighting “rules of thumb”
 - Challenging assumptions
 - Making the case for coverage

N. Assisted Living Regulatory and Legislative Update (AL)

Stephen J. Maag
Daniel Z. Sternthal

O. CHOW Time: A Menu of Available Options and Ingredients (NF/AL/HH)

David W. Bufford
Brian D. Jent

- Transaction/integration options for acquiring:
 - Skilled Nursing Facilities
 - Home Health Agencies
 - Hospices
 - Durable Medical Equipment Suppliers
- Key aspects of the due diligence process
- Timing issues related to licensure and certification notices/applications

- The spectrum of permits, certificates, and licenses to consider
- Potential options for consolidation of licenses, accreditations or certifications
- Key aspect of the negotiation process
- Critical elements of the various transaction structure options
- Post-closing issues and strategies to avoid unwanted delays or gaps in reimbursement

P. How Long Term Care Providers Can Steer Clear of Religious Discrimination Liability (NF/HH/AL)

Jaklyn Wrigley

Over the past decade, claims of religious discrimination have increased, largely because of the ever-expanding definition of “religion.” But, have things gone too far? The Second Circuit Court of Appeals recently concluded that a workplace philosophy of team interaction called “Onionhead” was a religion, and members of the Church of Body Modification are suing their employers to allow them to have visible tattoos and nose rings at work despite dress and appearance policies. Faith-based employers have their own unique issues. So how does a health care employer maintain productivity while avoiding liability? This interactive session will explore this quandary (and more):

- The age of Pastafarianism: The expanding definition of religion and what the EEOC is doing about it
- Accommodating religion in the workplace: The application process, schedules, dress codes, and mandatory flu shots policies . . . it all boils down to the burden
- Long term care providers with a religious purpose: Can you fire an employee who refuses to pray the Rosary and do you have to cover her birth control?
- The employer/counselor takeaway: How to stay out of hot water

Q. Dealing with a Worthless Services Allegation (NF)

Julie Bowman Mitchell

- Recent care studies analyzing the current status of the government's Worthless Services allegations
- Initial considerations in assessing the government's Worthless Services case, including settlement vs. litigation

- Ins and outs of negotiating a FCA Worthless Services settlement and quality of care CIA
- Personal insight from CCO of Foundation Health Services in dealing with the government's Worthless Services allegation from subpoena to Quality Care CIA and life with a monitor

12:00-1:30 pm

Lunch on your own or attend the Post-Acute and Long Term Services Practice Group Luncheon, sponsored by Simone Healthcare Consultants, LLC

Topic: Honoring and Caring for our Veterans
Ron Abboud, Representative from the National WWII Museum

Dr. Lumie Kawasaki, Chief of Geriatrics and Extended Care (Long Term Care Program), Southeast Louisiana Veterans Health Care System, New Orleans, LA

Join your colleagues for an interesting and educational presentation on many of the issues related to providing long term care for veterans. Attendees will have a unique opportunity to hear from a representative from the National WWII Museum in New Orleans, who will set the stage by highlighting the personal histories of a few soldiers. Following, Dr. Lumie Kawasaki, Chief of Geriatrics and Extended Care (Long Term Care Program) at the new Southeast Louisiana Veterans Health Care System in New Orleans, will discuss how the VA is handling aging services within its population, including issues such as PTSD and behavioral health.

This event is not included in the program registration fee. There is an additional fee; limited attendance; pre-registration required.

CONCURRENT SESSIONS

1:45-2:45 pm

R. Moving Right Along: Medicare's Continuing Shift from Volume to Value-Based Payments and Its Impact on Long Term Care Providers (NF/AL/ HH) (not repeated)

Samuel C. Cohen
Steve Farmer
James P. Sharp

- HHS' framework for shifting to value-based care
- The role of Long Term Care (LTC) providers in the health care delivery eco-system
- Results and lessons learned from initial Alternative Payment Models (APMs) with opportunities for direct participation by LTC providers

Travel

ATC Travel Management (ATC) has negotiated discounts with Delta, Hertz, and Alamo to bring you special fares and car rental rates lower than those available to the public. Discounts apply for travel for AHLA 2018 meetings, discounts available 3 days pre/post meeting start/end dates. Restrictions and a service fee may apply. ATC will also search for the lowest available fare on any airline.

ASSOCIATION TRAVEL CONCEPTS
1-800-458-9383

email: reservations@atcmeetings.com

ATC is available for reservations from 8:30 am until 8:00 pm Eastern, Monday through Friday.

Cancellations/ Substitutions

Cancellations must be received in writing no later than February 16, 2018. Refunds will not be issued for cancellations received after this date. Registration fees, less a \$125 administrative fee, will be refunded approximately 3-4 weeks following the program. If you wish to send a substitute or need more information regarding refund, complaint and program cancellation policies, please call (202) 833-1100, prompt #5. Please note that registration fees are based on the AHLA membership status of the individual who actually attends the program.

Live Tweet the Program Using #AHLA18

Will you be at the Long Term Care and the Law program? We encourage you to live tweet and include hashtag #AHLA18 so that attendees can learn from more than one session at once, and so that members unable to attend still feel plugged in.

- Next generation models for LTC providers
- New approaches to delivering care to LTC recipients
- Key considerations in determining whether a model is right for your organization

S. Canary in the Coal Mine: Use of Consumer Protection Statutes against Senior Housing and Care Operators (AL)

*Gwen M. Dayton
Kathleen M. Reilly*

- Unlawful trade practice laws and enforcement mechanisms throughout various jurisdictions, including a discussion of a resident's private cause of action, recent cases brought by plaintiff's counsel, state attorney generals, and state laws expanding the consumer protections laws to CCRCs
- Best practices for handling an unlawful trade practice investigation, challenging civil investigative demands, and managing regulatory implications of such actions
- Best practices for handling an unlawful trade practice action initiated by plaintiff counsel, including a discussion of current litigation in California and other states
- Consider whether a preemption law defense is effective against unlawful trade practice actions for those facilities and communities regulated by other state and federal agencies
- Best practices to reduce the risk of unlawful trade practice lawsuits and complaints from residents

T. Strategic Considerations: Aligning Financing Structures with Long Term Organizational Goals (NF)

*Brendan Healy
Daniel J. O'Brien*

- Knowing the market: Perspective on the influx of capital in senior living, growth of senior living M&A, cap rates, valuations, and the interest rate environment
- Aligning financing strategies with long-term organizational goals: Buy, sell, renovate, expand, refinance or recapitalize
- Positioning an asset or portfolio for sale (legal and structural considerations)
- Positioning an asset for long-term financing (debt structure, organizational requirements, expected timing, and best practices for preparation/submission)
- How to achieve organizational goals through FHA financing, including relevant legal considerations and tips for avoiding common pitfalls

U. Protecting the Castle: Avoiding, Addressing, and Mitigating Ransomware (NF/AL/HH)

Cathlin E. Sullivan

- Ransomware is becoming more common and more stealthy. Do your employees know how to identify and avoid malware, and what to do if they accidentally introduce malware into the system?
- Processes and best practices for being ready for a data incident, and how to react and respond to one if and when it occurs
- How to use internal and external resources to mitigate the effects of the malware and, how to leverage available information to prepare your organization to avoid future incidents

K. Electronic Devices, Monitoring, and Social Media in the Long Term Care Facility (NF/AL/HH) (repeat)

3:00-4:00 pm

V. Long Term Care Providers – Racketeering and Individual Criminal Liability (NF) (not repeated)

*Joseph E.H. Atkinson
Jeff Overbeck*

- Coordinated investigations of long term care providers have received increased emphasis in the past several years. Government agencies, including DOJ, have launched enforcement efforts specifically designed to target the long term care community
- A model for how those enforcement efforts might work already exists. Between 2009 and 2015, a multi-agency team, comprised of DOJ, OIG, IRS, DOL, and MFCU team members conducted a joint investigation against the owners and operators of a long term care organization, utilizing experts and evidence from the state survey agency and Medicaid department to build substantial portions of their case
- Those coordinated enforcement efforts culminated in the indictment and prosecution of an owner, regional vice president, accounting director, facility administrator, director of nursing, and wound care nurse in United States District Court for charges including being members of a racketeering conspiracy, health care fraud, wire fraud, mail fraud, false statements, and obstruction of justice
- The speakers will discuss this prosecution and similar enforcement actions across the nation, the defense strategies that helped push this case toward resolution, and practical guidance regarding compliance and reducing risk within facilities

W. Best Practices for Managing and Handling Allegations of Sexual Assault in Long Term Care (NF/AL)

Caroline J. Berdzik
Beverly B. Wittekind

This session is designed for in-house counsel, operators, risk managers, executives and human resources professionals and explores how to handle sexual assault allegations in the LTC setting whether the allegation relates to another resident, family member, employee or visitor. Specifically, this program will provide:

- Best practices for prevention by robust admission and employee screening policies and staff education
- Recent cases and outcomes involving alleged sexual assault
- Dealing with the issue of consent in the SNF and ALF settings
- Effective investigation techniques and handling allegations of sexual assault
- Interacting with local authorities, regulatory agencies, family members, and the media

X. The Intersection of Licensure and the Rights of Lenders/Landlords in the Event of Default by the Operator/Licensee (NF/AL)

Kimber L. Latsha
Karin Simpson (invited)

- The potential conflict between state licensing requirements and contractual rights/remedies of lenders/landlords in the operating lease and other contractual arrangements relative to lender/landlord-lessee/operator transactions
- The potential responses of the Licensing Agency to the exercise by the lender/landlord of certain "control" remedies/rights in default situations which potentially usurp or conflict with the role/duties/responsibilities of the licensee/operator under the applicable state licensing regulations
- Potential licensing compliance challenges relative to the expected role of the receiver in default situations
- Balancing licensing requirement with the contractual remedies/rights of lender/landlord in licensee/operator default situations

Y. Understanding and Analyzing CMS' Proposed Rule Revising the Medicare/Medicaid Requirements for Long Term Care Facilities (NF)

Annaliese Impink
Christopher C. Puri

- The major changes to be implemented in Phase 2 of the final rule, Medicare and Medicaid

Programs; Reform of Requirements for Long Term Care Facilities

- How the changes in the final rule are impacting long term care facilities and how they are likely to change the operations of facilities, particularly with respect to Phase 1 changes now 1 year old
- Ways that facilities can begin operational changes to cope with what are likely to be substantial, new compliance expectations of facilities going forward

Z. Mental Illness as the New "Fall Risk"—The Importance of a Proactive Strategy to Manage the Legal Risks Associated with the Increasing Rate of Resident Mental Illness

Kimberly Gordy
Sara Hamm

- Critical topics associated with mental illness, including transition of care, depression, isolation/sexual activity, substance abuse, and resident "bullying" behaviors
- How the shift from the "silent generation" to the "baby boomer generation" will increase the need for mental health resources
- How resident mental illness can increase the overall cost to a senior community or care facility
- Concrete recommendations on how communities can better identify at-risk residents
- Policy recommendations and employee training options to develop a proactive risk management program

4:15-5:15 pm

AA. Discharge or Dumping: Nursing Home Law, Policy, and Practice (NF) (not repeated)

Mark A. Johnson
William A. Rivera

- Current laws regarding resident discharge/"dumping"
- Common institutional discharge policies and practices
- Legislative and regulatory trends
- Best practices to ensure proper compliance with applicable laws and to promote resident health, safety, and well-being

BB. If I Knew then What I Know Now: Practical Lessons from Government Investigations and Audits (NF/AL/HH)

Kris D'Ann Maples
Aric D. Martin

- Areas of scrutiny in governmental audits and qui tam actions using experience with actual cases

- Best practices for immediate and subsequent response to the investigation/audit
- What may happen after the action/initial audit to understand future risk and identify best practices to monitor the effectiveness of identified plans of action to ensure on-going compliance
- Employee and management issues, such as the unique risks posed to and by high level managers, and whistleblower avoidance strategies
- The practical costs of defense that are often not anticipated by providers, including electronic production, storage costs, and hiring of expert consultants/witnesses
- Practical strategies that can be put into place before an investigation or audit begins that may reduce costs and potentially lead to better outcomes

4:15-5:45 pm Extended Sessions

CC. OIG Listening Session: Home Health and Hospice Providers (not repeated)

Nancy Brown
Laura E. Ellis
Kenneth D. Kraft

D. Taking the Risk out of Assisted Living: Building Blocks for a Comprehensive Risk Management Program (AL) (repeat)

E. Responding to Disaster: Attributes of a Prepared Nation (NF/AL/ HH) (repeat)

5:15-6:30 pm

Networking Reception, sponsored by Principle Valuation LLC and PYA

This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.

Friday, March 2, 2018

7:30 am-3:10 pm

Registration and Information

7:30-8:30 am

Continental Breakfast, sponsored by Principle Valuation LLC and PYA

This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.

CONCURRENT SESSIONS

8:00-9:30 am Extended Sessions**DD. Importance of Bioethics for Post-Acute Care: Compliance and Risk Management Benefits (NF)** (not repeated)*Thaddeus M. Pope**Christine J. Wilson*

- Challenges in health care decision making in post-acute care
- CMS regulatory focus upon health care surrogates and decision making as well as person-centered care
- Characteristics of effective ethics committees
- The role that ethics committees can play in post-acute care: Not just “end of life”
- Practical application and case study

F. Legal Ethics: Promoting a Culture of Compliance: What Counsel and Health Care Professionals Need to Know about Cultivating Ethical Conduct and Protecting Their Organizations from Whistleblower Threats (NF/AL/HH) (repeat)**8:30-9:30 am****J. Resident Transfers and Contract Terminations in Assisted Living and CCRCs (AL)** (repeat)**N. Assisted Living Regulatory and Legislative Update (AL)** (repeat)**9:40-10:40 am****EE. Referral Agreements in Senior Living (AL)** (not repeated)*James Henry*

- Purpose of referral agencies and what they do
- Contract review and negotiation strategies
- Current state and federal laws that impact the structure of agreements
- Regulatory trends

FF. Evolution of a Home Health Agency Enforcement Case: The View from Both Sides (HH)*Jody Erdfarb**Jill L. Steinberg*

This presentation will discuss how a home health agency (HHA) enforcement case “evolves,” with insight from both a government lawyer and provider perspectives. This presentation will help participants understand the survey process, including recent

regulatory changes to the survey process, the imposition of civil monetary penalties and other alternative sanctions, and provide views of the administrative appeal process from different viewpoints.

- Deeming/accreditation organizations; State Survey Agency (SSA) involvement and process, including survey types, for HHAs
- Exit Conference
- Statement of Deficiencies (Applicable statutory authority and regulations; frequently-cited tags; difference between standard vs. condition-level deficiencies; some portions of SOM guidance)
- Informal dispute resolution
- CMS action (Available sanctions/other remedies: Civil monetary penalties, suspension of payment for new admissions, directed in-service, directed plan of correction, temporary management, and prohibition on home health aide training; calculation of CMP amounts under the regulations; financial hardship consideration; appeal rights)
- Administrative Appeals (Cost-benefit analysis of appealing; appeal process; settlement negotiations; presentation of CMS’ case, including applicable burdens of proof; relevant and more recent ALJ or DAB case law pertaining to HHA regulations)

S. Canary in the Coal Mine: Use of Consumer Protection Statutes against Senior Housing and Care Operators (AL) (repeat)**Y. Understanding and Analyzing CMS’ Proposed Rule Revising the Medicare/Medicaid Requirements for Long Term Care Facilities (NF)** (repeat)**BB. If I Knew then What I Know Now: Practical Lessons from Government Investigations and Audits (NF/AL/HH)** (repeat)**10:50-11:50 am****H. The RUG that Doesn’t Really Tie the Room Together – CMS Announces Major Changes to the SNF Prospective Payment System (NF)** (repeat)**L. Survey and Enforcement Refresher (NF)** (repeat)**T. Strategic Considerations: Aligning Financing Structures with Long Term Organizational Goals (NF)** (repeat)**U. Protecting the Castle: Avoiding, Addressing, and Mitigating Ransomware (NF/AL/HH)** (repeat)**X. The Intersection of Licensure and the Rights of Lenders/Landlords in the Event of Default by the Operator/Licensee (NF/AL)** (repeat)**11:50 am-1:00 pm****Lunch on your own**

CONCURRENT SESSIONS

1:00-2:00 pm**P. How Long Term Care Providers Can Steer Clear of Religious Discrimination Liability (NF/HH/AL)** (repeat)**Z. Mental Illness as the New “Fall Risk” – The Importance of a Proactive Strategy to Manage the Legal Risks Associated with the Increasing Rate of Resident Mental Illness** (repeat)**FF. Evolution of a Home Health Agency Enforcement Case: The View from Both Sides (HH)** (repeat)**2:10-3:10 pm****O. CHOW Time: A Menu of Available Options and Ingredients (NF/AL/HH)** (repeat)**Q. Dealing with a Worthless Services Allegation (NF)** (repeat)**W. Best Practices for Managing and Handling Allegations of Sexual Assault in Long Term Care (NF/AL)** (repeat)**Adjournment**

Program Schedule

Wednesday, February 28, 2018

7:45 am-12:45 pm			
Assisted Living In-House General Counsel Roundtable <i>sponsored by NCAL</i> (Pre-registration is required: space is limited; open to Assisted Living In-House Counsel only)			
8:30 am-5:30 pm			
Registration and Information			
9:00-11:50 am		9:30-11:30 am	
9:00-9:50 am Primer on Skilled Nursing Facilities (not repeated) Feldkamp Parkinson		New Requirements of Participation Guidance: New “Rules” – New Risks (not repeated) Conroy Killian-Smith Rudow	Interactive Session: Life After <i>Escobar</i> (not repeated) (limited attendance; pre registration required) Segroves Selden
10:00-10:50 am			
Primer on Home Health and Hospice (not repeated) Bring			
11:00-11:50 am			
Introduction to Assisted Living (not repeated) Zak-Kowalczyk			
11:30 am-1:30 pm			
Lunch on your own			
1:30-1:45 pm GENERAL SESSION			
Welcome and Introduction Lamar, Puri			
1:45-2:30 pm GENERAL SESSION			
Keynote Address Robertson			
2:30-3:30 pm GENERAL SESSION			
Post-Acute Care in a Value-Based Environment: Emerging Opportunities and Strategic Imperatives Bentley			
3:30-4:00 pm			
Coffee Break , <i>sponsored by Principle Valuation LLC and PYA</i>			
4:00-5:30 pm Extended Sessions			
A. Home Health Legislative and Regulatory Update (HH) (not repeated) Dombi	B. Case Law Update (NF/AL/HH) Hopkins Park	C. Nursing Home Legislative and Regulatory Update (NF) Aman Hilliard	D. Taking the Risk out of Assisted Living: Building Blocks for a Comprehensive Risk Management Program (AL) Clayton Graham Russo
5:30-6:45 pm			
Networking and Diversity+Inclusion Reception, hosted by AHLA’s Diversity+Inclusion Council , <i>sponsored by Principle Valuation LLC and PYA</i> (This event is included in the program registration. Attendees, faculty, and registered spouses and guests are welcome)			

Thursday, March 1, 2018

7:00 am-5:15 pm				
Registration and Information				
7:00-8:00 am				
Continental Breakfast , sponsored by Principle Valuation LLC and PYA (This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome)				
8:00-9:30 am Extended Sessions				
<i>Pre-registration required, Space is limited. Must be SNF General Counsel to attend.</i> Interactive Session: Nursing Facility General Counsel Roundtable (NF) (not repeated) Beck Salamon	E. Responding to Disaster: Attributes of a Prepared Nation (NF/AL/ HH) Bahmer Frazier Hanfling	F. Legal Ethics: Promoting a Culture of Compliance: What Counsel and Health Care Professionals Need to Know about Cultivating Ethical Conduct and Protecting Their Organizations from Whistleblower Threats (NF/AL/ HH) Harkins Taetz Woolf Zack	B. Case Law Update (NF/AL/HH) (repeat) Hopkins Park	C. Nursing Home Legislative and Regulatory Update (NF) (repeat) Aman Hilliard
9:45-10:45 am Concurrent Sessions				
G. The Art of Buying and Selling Facilities-From LOI to Close (NF) (not repeated) Tyler Williams	H. The RUG that Doesn't Really Tie the Room Together – CMS Announces Major Changes to the SNF Prospective Payment System (NF) Greenman Reagan	J. Resident Transfers and Contract Terminations in Assisted Living and CCRCs (AL) Cope Gordon	K. Electronic Devices, Monitoring, and Social Media in the Long Term Care Facility (NF/AL/HH) Barrett Bloch	L. Survey and Enforcement Refresher (NF) Bianculli
11:00 am-12:00 noon				
M. Medicare Claims Appeal (NF/HH) (not repeated) Thiel	N. Assisted Living Regulatory and Legislative Update (AL) Maag Sternthal	O. CHOW Time: A Menu of Available Options and Ingredients (NF/AL/HH) Bufford Jent	P. How Long Term Care Providers Can Steer Clear of Religious Discrimination Liability (NF/HH/AL) Wrigley	Q. Dealing with a Worthless Services Allegation (NF) Mitchell

Thursday, March 1, 2018 continued

12:00-1:30 pm				
Lunch on your own or attend the Post-Acute and Long Term Services Practice Group Luncheon, <i>sponsored by Simone Healthcare Consultants, LLC</i> (This event is not included in the program registration fee. There is an additional fee; limited attendance; pre-registration required)				
1:45-2:45 Concurrent Sessions				
R. Moving Right Along: Medicare's Continuing Shift from Volume to Value-Based Payments and Its Impact on Long Term Care Providers (NF/AL/ HH) (not repeated) Farmer Cohen Sharp	S. Canary in the Coal Mine: Use of Consumer Protection Statutes against Senior Housing and Care Operators (AL) Reilly Dayton	T. Strategic Considerations: Aligning Financing Structures with Long Term Organizational Goals (NF) Healy O'Brien	U. Protecting the Castle: Avoiding, Addressing, and Mitigating Ransomware (NF/AL/HH) Sullivan	K. Electronic Devices, Monitoring, and Social Media in the Long Term Care Facility (NF/AL/HH) (repeat) Barrett Bloch
3:00-4:00 pm				
V. Long Term Care Providers – Racketeering and Individual Criminal Liability (NF) (not repeated) Atkinson Overbeck	W. Best Practices for Managing and Handling Allegations of Sexual Assault in Long Term Care (NF/AL) Berdzik Wittekind	X. The Intersection of Licensure and the Rights of Lenders/Landlords in the Event of Default by the Operator/Licensee (NF/AL) Latsha Simpson (invited)	Y. Understanding and Analyzing CMS' Proposed Rule Revising the Medicare/Medicaid Requirements for Long Term Care Facilities (NF) Impink Puri	Z. Mental Illness as the New "Fall Risk" – The Importance of a Proactive Strategy to Manage the Legal Risks Associated with the Increasing Rate of Resident Mental Illness Gordy Hamm
4:15-5:15 pm		4:15-5:45 pm Extended Session		
AA. Discharge or Dumping: Nursing Home Law, Policy, and Practice (NF) (not repeated) Johnson Rivera	BB. If I Knew then What I Know Now: Practical Lessons from Government Investigations and Audits (NF/AL/HH) Maples Martin	CC. OIG Listening Session: Home Health and Hospice Providers (not repeated) Brown Ellis Kraft	D. Taking the Risk out of Assisted Living: Building Blocks for a Comprehensive Risk Management Program (AL) (repeat) Clayton Graham Russo	E. Responding to Disaster: Attributes of a Prepared Nation (NF/AL/ HH) (repeat) Bahmer Frazier Hanfling
5:15-6:30 pm				
Networking Reception, sponsored by Principle Valuation LLC and PYA (This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome)				

Friday, March 2, 2018

7:30 am-3:10 pm				
Registration and Information				
7:30-8:30 am				
Continental Breakfast , sponsored by Principle Valuation LLC and PYA (This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome)				
8:00-9:30 am Extended Sessions			8:30-9:30 am	
DD. Importance of Bioethics for Post-Acute Care: Compliance and Risk Management Benefits (NF) (not repeated) Pope Wilson	F. Legal Ethics: Promoting a Culture of Compliance: What Counsel and Health Care Professionals Need to Know about Cultivating Ethical Conduct and Protecting Their Organizations from Whistleblower Threats (NF/AL/HH) (repeat) Harkins Taetz Woolf Zack	J. Resident Transfers and Contract Terminations in Assisted Living and CCRCs (AL) (repeat) Cope Gordon	N. Assisted Living Regulatory and Legislative Update (AL) (repeat) Maag Sternthal	
9:40-10:40 am				
EE. Referral Agreements in Senior Living (AL) (not repeated) Henry	FF. Evolution of a Home Health Agency Enforcement Case: The View from Both Sides (HH) Erdfarb Steinberg	S. Canary in the Coal Mine: Use of Consumer Protection Statutes against Senior Housing and Care Operators (AL) (repeat) Reilly Dayton	Y. Understanding and Analyzing CMS' Proposed Rule Revising the Medicare/Medicaid Requirements for Long Term Care Facilities (NF) (repeat) Impink Puri	BB. If I Knew then What I Know Now: Practical Lessons from Government Investigations and Audits (NF/AL/HH) (repeat) Maples Martin
10:50-11:50 am				
H. The RUG that Doesn't Really Tie the Room Together – CMS Announces Major Changes to the SNF Prospective Payment System (NF) (repeat) Greenman Reagan	L. Survey and Enforcement Refresher (NF) (repeat) Bianculli	T. Strategic Considerations: Aligning Financing Structures with Long Term Organizational Goals (NF) (repeat) Healy O'Brien	U. Protecting the Castle: Avoiding, Addressing, and Mitigating Ransomware (NF/AL/HH) (repeat) Sullivan	X. The Intersection of Licensure and the Rights of Lenders/Landlords in the Event of Default by the Operator/Licensee (NF/AL) (repeat) Latsha Simpson (invited)

Friday, March 2, 2018 continued

11:50 am-1:00 pm		
Lunch on your own		
1:00-2:00 pm		
P. How Long Term Care Providers Can Steer Clear of Religious Discrimination Liability (NF/HH/AL) (repeat) Wrigley	Z. Mental Illness as the New “Fall Risk” – The Importance of a Proactive Strategy to Manage the Legal Risks Associated with the Increasing Rate of Resident Mental Illness (repeat) Gordy Hamm	FF. Evolution of a Home Health Agency Enforcement Case: The View from Both Sides (HH) (repeat) Erdfarb Steinberg
2:10-3:10 pm		
O. CHOW Time: A Menu of Available Options and Ingredients (NF/AL/HH) (repeat) Bufford Jent	Q. Dealing with a Worthless Services Allegation (NF) (repeat) Mitchell	W. Best Practices for Managing and Handling Allegations of Sexual Assault in Long Term Care (NF/AL) (repeat) Berdzik Wittekind

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