

AHLA

Long Term Care and the Law

March 2–4, 2020

Grand Hyatt San Antonio, San Antonio, TX

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Program Sponsor:



LONG TERM CARE AND THE LAW

Planning Committee

Barbara J. Duffy, *Program Chair*

David C. Beck

Jennifer L. Hilliard

Ari J. Markenson

Emily M. Park

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

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Exhibitors

- Housing & Healthcare Finance LLC
- JND eDiscovery
- JTaylor
- Molnlycke
- Ntracts
- Polaris Group
- PYA

Hotel Information

Grand Hyatt San Antonio

600 E Market St
San Antonio, TX 78205
(210) 224-1234

Hotel accommodations are not included in the registration fee. Call Grand Hyatt San Antonio at number and indicate that you are attending the AHLA program. Rooms at the group rate of \$219 single/double occupancy are limited and may sell out prior to the Monday February 3, 2020 cut-off.

Registration Fees:

Members of American Health Care Association, National Center for Assisted Living, LeadingAge, Argentum, and National Association for Homecare and Hospice are eligible to register at the AHLA Member Rate with a coupon code.

Postmarked and paid on or before
February 3, 2020

\$ 895 first Member

\$ 820 each additional Member

\$ 1,170 Non-Member

Postmarked and paid between
February 4-23, 2020*

\$ 1045 first Member

\$ 970 each additional AHLA Member

\$ 1,320 Non-Member

* Fees increase \$100 after this date

Discounts (please note:
discounts cannot be combined)

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

\$ 600 Government/Academician/Public Interest
Professional Member

\$ 750 Government/Academician/Public Interest
Professional Non-Member

\$ 750 Non-Attorney Provider (these are CEOs,
CFOs, Administrators)

Practice Group Luncheon

\$60 AHLA Member

\$70 Non-Member

For the most up-to-date information and to register, visit our website at:
www.healthlawyers.org/longtermcare2020

Continuing Education Credit Information

CLE/MCLE: AHLA will be applying for 21.25 credits (including 2.0 ethics credit) for 60-minute states and approximately 25.5 credits (including 2.4 ethics credit) for 50-minute states.

CPE: AHLA will be applying for 25.0 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 25.5 Compliance Certification Board (CCB) credits.

NHA: AHLA will be applying for 21.0 Nursing Home Administrator (NHA) credits

Participants will be given a link to the Continuing Education Request form. The form must be completed and submitted to receive credit. The sessions, unless otherwise designated, are intermediate in level. This program is designed to be an update on developments in the area of long term care 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

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; \$190 for Solo Practitioner in Private Practice, \$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.

Cancellations/ Substitutions

Cancellations must be **received in writing by February 19, 2020 and sent to Dorothy Johnson: djohnson@healthlawyers.org**. Registration fee, minus the \$150 administrative fee, will be refunded approximately 3-4 weeks following the program in the same form of tender as the original payment. Refunds will not be issued for cancellations received after the cancellation date, to include no-shows.

Substitutions will be **accepted, in writing to AHLA (djohnson@healthlawyers.org), up to 2 business days prior to the event date** on a one time basis. Note, that the registration fee is based on AHLA membership status of the individual who actually attends the program. Non-member substitutes will be charged the fee difference if they are substituting for a member-discounted registration.

Transfer to an upcoming event within one year of equal or higher value is available on a one time basis only, and should be **received in writing to AHLA (djohnson@healthlawyers.org) no later than 2 business days prior to the event**. An administrative fee of \$150 will be charged for a transfer request.

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 receptions on Monday and Tuesday evenings and the breakfasts on Tuesday and Wednesday mornings. Please sign up on the registration form. (Children are welcome to attend these events at no additional charge.)

Travel

ATC Travel Management (ATC) has negotiated discounts with Delta, Hertz, Alamo, and United to bring you special airfares and car rental rates lower than those available to the public. Discounts apply for travel for AHLA 2020 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.

ATC TRAVEL MANAGEMENT

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.

Monday, March 2, 2020

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

7:00 am-5:15 pm

Registration and Information

8:00 am-1:00 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

CONCURRENT SESSIONS

9:00-10:30 am

Extended Sessions

A. SNF Survey and Enforcement Developments: Are We Seeing Progress? *(not repeated)*

Carol Rolf

Sara A. Rudow

- New developments in SNF survey and enforcement
- Changes to survey and enforcement policies over the last year and how those have impacted providers
- Latest and anticipated CMS initiatives regarding survey and enforcement and how those changes are expected to affect providers

B. Fundamentals of Medicare and Medicaid Reimbursement in Long Term Care *(not repeated)*

Janet K. Feldkamp

Maria J. Hayden

- Structure and background of the Medicare Program: History, program administration, and operation
- Medicare coverage: Statutes, manuals, LCDs, NCDs, ALJ decisions, legislative history, resources

- Components of Medicare programs, Parts A–D: Eligibility criteria, provider types, current reimbursement system, quality incentives affecting reimbursement, and appeals process
- Medicaid fundamentals: Overview of state programs, eligibility criteria, covered benefits, reimbursement and financing, recent reform, and developments

C. The Masters Class on Class Actions—What You Need to Do Right Now to Get Ready (AL/SNF)

Timothy J. Cesar

Tara J. Clayton

Christy T. Crider

Paul Killeen

- Deep dive into the increase of class actions claims against LTC providers including an analysis of how these claims have morphed and are even uglier
- Recent case law updates on the certification of LTC class actions and the role of arbitration agreements in claims
- Insurability issues with these claims and coverage issues providers should be considering now
- Measures providers should be taking now to avoid / mitigate these claims; including the interplay between arbitration agreements and class certification
- Interactive discussion with providers about the costs associated with these claims and new processes they have implemented to address
- A dozen practical, rapid fire takeaways to avoid, and if necessary, win a class action claim

10:45-11:45 am

D. DAB/ALJ Case Law Update and Navigating the DAB Appeals Process (SNF) *(not repeated)*

L. Drew Hickey

Mark A. Yost

- DAB/ALJ decisions and statistics on how they were decided
- Particular cases of note where decisions will impact future appeals

- Other cases where decisions uphold prior opinions
- Starting the appeal: Federal appeal timelines, including Independent IDR Process
- Avenues for settlement of cases
- Building a record on appeal

E. The PDGM Challenge: Home Health Care Redefined (HH)

Suzanne Sheldon-Krieger

- What is PDGM
- How will PDGM impact the business
- What legal counsel needs to know to support the shift
- Potential pitfalls

F. Workplace Violence—Preventing, Diffusing, and Responding to the Growing Threat (AL/SNF)

Darryl Ross

Elizabeth Tyler

- The sources of potential threats: Residents, visitors and staff
- Practical prevention policies and practices
- Options for diffusing aggression
- Legal responses to threats and events of violence

G. Expanding Fraud and Abuse Liability in Private Payer Situations (SNF)

Anna F.C. Munoz

Kim C. Stanger

- Current and emerging bases for private payer action
- Common payer contract terms
- Lessons learned from recent cases by private payers against health care providers
- Report and repayment obligations
- Minimizing liability to private payers

11:45 am-1:00 pm

Lunch on your own

CONCURRENT SESSIONS

1:15-2:45 pm

Extended Sessions

H. Telehealth and SNFs: Legal and Operational Issues (SNF) *(not repeated)*

Saurabh Chandra

David Chess

Mark E. Reagan

- The telehealth reimbursement landscape under Medicare fee-for-service, historically, and opportunities for payment through Medicare Advantage, the SNF Value Based Purchasing Program, and expanded coverage of other telehealth services by CMS
- The telehealth opportunities available to both rural and non-rural SNFs
- State-level legal issues that need to be vetted when practitioners treat patients across state lines, e.g., licensure, documentation, physician-patient relationship establishment, and e-prescribing
- The clinical case for telehealth, and exploring the specific areas in which telehealth has improved the quality of care provided to SNF residents
- The operational challenges that arise, and specifically how clinicians providing services via telehealth are integrated into the full offerings of a SNF

I. Discharge or Dumping: Nursing Home Law, Policy, and Practice (SNF)

Mark A. Johnson

William A. Rivera

- Current laws regarding resident “dumping”
- Diverse perspectives on the issue: Non-profit litigator for residents and outside counsel for facilities
- Case law developments
- Legislative and regulatory trends
- Best practices to ensure proper compliance with applicable laws and to promote resident health, safety, and well-being

J. Hot Topics in Employment Law for Long Term Care Providers (HH)

Kevin Koronka

Timothy Ryan

This session will cover a variety of recent employment law trends in the long term care setting, including:

- Discrimination and harassment claims by employees and non-employees
- Negligent hiring and retention issues
- Unique wage and hour concerns in home health care
- Business restructuring and related successor liability considerations
- Whistleblowers and the False Claims Act in long term care

K. Case Law Update (SNF/AL/HH)

Erica Fang

Kara G. Silverman

- False Claims and other fraud and abuse litigation
- Arbitration agreement litigation
- Data breach and HIPAA enforcement actions
- General litigation developments

3:00-4:00 pm

L. The Use of Medical and Recreational Cannabis in Skilled Nursing, Hospice, and Assisted Living (SNF/AL/HH)

Randall R. Fearnow

William D. Troutt

- 33 states and the District of Columbia have active medical cannabis programs
- Several other states have legalized the recreational use of cannabis
- Despite reluctance by many health professionals to embrace the use of cannabis by their patients, consumers are demanding access in health care settings
- Long term care facilities will be forced to navigate uncertain legal and medical terrain to meet the expectations of consumers and not run afoul of state and federal laws

M. Your Resident has a Guardian: How Does that Affect Your Resident's Rights and Now Who Decides if Your Resident Can have Sexual Activity (AL/SNF)

Barbara S. Barrett

Denise Bloch

- What are the powers of the guardian?
- What limitations can the guardian put on the resident?
- What rights does a resident with a guardian retain?
- What happens if there are co-guardians?
- Can a guardian prevent their ward from having sexual activity?
- What risk assessment or procedure should a facility have to address the issue of resident sexual activity?

N. The Rise of PDPM—How SNF Providers are De-Coding New Medicare Reimbursement (SNF)

Joseph M. Greenman

- The PDPM system, its effective date of October 1, 2019, and any changes made to the system by CMS pre-implementation
- The transition from RUGs to PDPM (10/1/19) along with specific transition issues that have arisen for post-acute providers in the first 3-4 months of the new system
- Early compliance issues from the PDPM implementation
- The manner in which Medicare Advantage plans have adopted or otherwise dealt with the PDPM implementation and what that means for managed care contracting
- How Medicaid programs in states that have utilized the RUGs system for Medicaid reimbursement have positioned themselves for PDPM adoption or otherwise dealt with the issues, given that CMS will no longer support the RUGs system after 10/20
- Initial developments in reimbursement patterns and their impact on SNF operations

O. Internal Investigations: Processes, Ethical Challenges, and More! (AL/SNF)

Paula G. Sanders

Alissa M. Vertes

- Considerations for engaging the expert
- Creating and protecting privilege
- Do you really want them to get a subpoena?
- Managing surprise discoveries and scope creep
- Minimizing sweat equity

4:15-5:15 pm

P. The Intersection of Federal Staffing Regulations, Payroll-Based Journal Data, and CMS Expected Staffing Model, and Combating Attempts to Assign a Heightened Standard to LTC Facilities (SNF) (not repeated)

Philip J. Anderson

Annaliese Impink

- CMS has long identified staffing as one of the vital components of nursing homes' ability to provide quality care, and developed a system for facilities to submit staffing information based on the Payroll-Based Journal (PBJ) data
- How post acute providers can best comply with federal staffing requirements based upon PBJ data, while combating the argument that they should meet the CMS "expected staffing" model, an emerging theme in patient care cases
- The interplay between compliance with state PPD requirements governing staffing, and a heightened nurse staffing requirement based on acuity and "expected staffing" model, and how to best refute these theories
- The facility assessment requirements and staffing matrices and strategies for meeting your staffing requirements in a very tight labor market

Q. The PPS to PDPM Pendulum: An Analysis of PDPM Compliance Matters Post Go-Live (SNF)

Amy Dalton

Liz Steffen

- Trends in care provision related to value based outcomes and quality of care
- Relevant compliance updates from HHS, DOJ, and OIG
- Clinical and compliance related hurdles for SNFs post-PDPM go-live
- How PDPM fits into the larger context of a SNF compliance program
- PDPM recommendations and best practices going forward

R. Home Health Legislative and Regulatory Update (HH)

William A. Dombi

- The 2020 Medicare home health payment system changes
- Medicare Review Choice Demonstration for home health servicers
- Medicare Home Infusion Therapy new benefit
- Medicare home health and hospice regulatory burden reduction initiatives
- Hospice payment model reform
- Hospice quality of care reforms
- Medicare Advantage home care related supplemental health benefits allowance
- Medicaid managed care developments affecting home care

S. Legal Ethics of Abuse Prevention: Isn't the Goal the Same for Provider, Lawyer, and Family (AL/SNF)

Marit Peterson

Susan M. Voigt

- Current research and articles that have been written regarding the health care attorney's ethical responsibilities related to operational and legal advice, including an AHLA Connections Article on Apology Laws (with permission) and a PALS Advisor Ethics Article authored by Ms. Voigt.

- Practical ethical routes for the long-term care attorney to follow when advising clients. Using case scenarios, and a communication tool, speakers will challenge attorneys to "do the right thing" including advising how to communicate successfully to avoid a lawsuit with family and how to structure an apology when clients make a mistake.
- Statistical data on the success of the use of an apology (under current apology laws) made by a provider
- Ms. Peterson, of the MN Elder Justice Center (MN EJC) will present some of the difficult legal, clinical and ethical dilemmas faced by advocates and MN EJC counsel in educating and advising families, providers, and victims of abuse, neglect and exploitation and how providers can best navigate those dilemmas working with families

5:15-6:15 pm

Networking and Diversity+ Inclusion Reception, sponsored by PYA

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

**Tuesday,
March 3, 2020**

7:00 am-5:30 pm

Registration and Information

7:00-8:00 am

Continental Breakfast, sponsored by PYA

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

GENERAL SESSION

8:00-8:15 am

Welcome and Introduction

S. Craig Holden, AHLA
President-Elect

Barbara J. Duffy, Program Chair

8:15-9:15 am

Getting a Second Opinion—Developments in Medical Necessity in False Claims Act Cases

James F. Segroves

Jack W. Selden

Tejinder Singh

Natalie Waites

- Significant case law developments, including:
 - o The Tenth Circuit's *Polukoff* decision
 - o The Eleventh Circuit's *AseraCare* decision (touching upon *Druding* case pending before 3rd Circuit; Winter case pending before the 9th Circuit)
 - o The Supreme Court's *Allina* decision
- Amendments to the Justice Manual following the Brand Memo
- Ramifications of the above on:
 - o Pre-filing case development by relators' counsel
 - o Government investigations
 - o Discovery
 - o Dismissals under Granston Memo factors

9:15-10:00 am

CMS Initiatives on Survey and Enforcement

David R. Wright

10:00-10:25 am

Break

CONCURRENT SESSIONS

10:25-11:55 am

Extended Sessions

T. Regulatory and Legislative Update for Assisted Living (AL) *(not repeated)*

Lilly S. Hummel

Gabriela Sanchez

- Key federal and state policy and legal developments affecting assisted living communities

- Possible federal oversight of the sector, proposed bills, or new actions from the Centers for Medicare and Medicaid Services
- Current trends affecting assisted living providers including Fair Housing Act and American with Disabilities ("ADA") issues and claims as it pertains to admissions, transfers and reasonable accommodations, increased use of medical and recreational marijuana, sexual consent, and granny cams

U. Nursing Home Legislative and Regulatory Update (SNF)

Cory Kallheim

Clif Porter

- Congressional oversight activities
- 116th Congress legislative activity
- Requirements of Participation proposed rule from the Centers of Medicare and Medicaid (CMS)
- Effect of the new Arbitration rule on facilities
- Nursing Home Compare abuse icon
- New Patient-Driven Payment Model
- Latest guidance issued by the Centers for Medicare and Medicaid Services

V. Change of Ownership—Roadmap for Multistate Transactions (AL)

Chad Jungman

M. Daria Niewenhaus

- The Deal
- Game plan—assemble the right team/divide and conquer
- Assessment of current and planned ownership and control structure
- CHOW? Maybe yes, maybe no
- Special considerations for nonprofits
- Regulatory Requirements and Guidance
- Strategy and timing for communicating with regulators
- CMS/MACs, State Medicaid Agencies

C. The Masters Class on Class Actions—What You Need to Do Right Now to Get Ready (AL/SNF) *(repeat)*

K. Case Law Update (NF/AL/HH) *(repeat)*

11:55 am-1:15 pm

Lunch on your own or attend the luncheon *hosted by Post-Acute and Long Term Services Practice Group, sponsored by JTaylor*

Topic: Working Together: Lawyers and Long-Term Care Ombudsmen Advocating for Residents' Rights

John B. Henry

*Law Office of John B. Henry III
PLLC, Bellaire, TX*

Suzanne Mitchell

*Nursing Home Ombudsman Policy
Specialist*

*Office of the State Long-Term Care
Ombudsman, Health and Human
Services, Austin, TX*

This event is not included in the program registration fee. There is an additional fee; limited attendance; pre-registration required. Continuing Education Credits are not available for the luncheon.

CONCURRENT SESSIONS

1:30-2:30 pm

W. Legal and Clinical Ethics and Requirements in Serving LGBT Older Adults *(not repeated)*

Jane Danner

Robert F. Rode

- Issues of LGBT aging and impact of legal and clinical ethics in the same
- The diversity of sexual orientations and gender identities among senior clients to comply with CMS requirements including upcoming Phase III requirements of trauma-informed-care
- Ethical dilemmas providers and their counsel may encounter

- Opportunities for growth with person centered living to make your clients facilities and operation more LGBT culturally competent
- Transform facilities/agencies to offer person-centered living and services to the changing population of LGBT elders

X. Managing Population Health as Part of a Post-Acute Care Network (SNF)

Jeanna Palmer Gunville

Arielle Schmeck

- Development and evaluation of post-acute care network based on current reimbursement and population health trends
- How to evaluate the community, quality and costs, and referral patterns to assess potential partnerships
- Vulnerable patient populations not covered by current provider relationships and care management methods (e.g., mental illness, long term care needs)
- Determining whether to join an existing network or to design elements of an ideal network based on desired outcomes and available resources
- Case studies regarding potential arrangements to achieve operational and clinical goals:
 - o Sale or acquisition
 - o Partnering to create a new provider or support an existing provider
 - o A combination of the above

F. Workplace Violence—Preventing, Diffusing, and Responding to the Growing Threat (AL/SNF) (repeat)

G. Expanding Fraud and Abuse Liability in Private Payer Situations (SNF) (repeat)

N. The Rise of PDPM—How SNF Providers are De-Coding New Medicare Reimbursement (SNF) (repeat)

2:45-3:45 pm

Y. Opioid Public Health Crisis—Risks and Legal Obligations of Long Term Care Providers and Facility Medical Directors (SNF/AL/HH) (not repeated)

Terri Johnson Harris

- Risk management challenges presented by opioid use and abuse among older adults
- Impact of recent federal legislation on long term care providers
- Obligations of Medical Directors to monitor opioid prescribing
- Survey risks related to opioids, including pain management
- Strategies for long term care providers to deal with drug diversion

Z. Risk Management in Assisted Living (AL) (not repeated)

Tara A. Cope

Joel S. Goldman

The frequency and severity of claims and regulatory citations in the assisted living environment is increasing. The events that pose risks at assisted living facilities that arise frequently include:

- Falls
- Abuse (sexual, physical, financial and verbal)
- Elopement
- Improper administration of medication
- Wound issues
- Transporting residents
- Emotional support animals

AA. Understanding and Evaluating the I-SNP Contract Model

Bruce R. Grindrod

Adrian Rios

- In-depth discussion of the ISNP model including:
 - o General ISNP overview
 - o How to evaluate SNFs as a good candidate for ISNP

- o SNF resources needed to benefit from the ISNP model of care financially, operationally, and clinically
- o Quality measures influenced by ISNP collaboration, other potential ancillary benefits
- o Provider challenges and lessons learned
- o General ISNP contract and payment methodologies
- Address various strategies that a provider may employ to engage in the ISNP model including but not limited to:
 - o Contracting with an existing ISNP
 - o Partnering with a SNF provider group to contract with an ISNP
 - o Establish a Medicare Advantage ISNP product (independently or in partnership)

BB. The Arc of the Deal

Taylor C. Pancake

Helen E. Quick

Q. The PPS to PDPM Pendulum: An Analysis of PDPM Compliance Matters Post Go-Live (SNF) (repeat)

4:00-5:00 pm

CC. Lessons Learned from Litigation: An Ounce of Prevention (AL/SNF) (not repeated)

Christine J. Wilson

William Wilson

- Practical steps to assure compliance with litigation hold
- Establishing “unavoidability” for the three most common fact patterns: Pressure wounds, falls, and patient decline
- Managing staff communications with patients, families, and regulatory authorities
- Best practices for implementing arbitration agreements that will be upheld

DD. Judicial Review of Departmental Appeals Board Decisions—Auer, Kisor and the Breakdown of Administrative Procedure Act Standards and How Facility Counsel Can Construct Persuasive APA Arguments (SNF)

Joseph L. Bianculli

Alan C. Horowitz

- Court of Appeals DAB case law
- APA and how DAB interprets and applies APA case law to its appeals
- “Deference” under Chevron, Auer, Kisor, et al.
- Raising and preserving APA issues in DAB appeals
- Effective appellate advocacy in Board and judicial appeals

4:00-5:30 pm

Extended Sessions

EE. How White-Out and Good Photocopiers Cost Millions—A Review of the Pre-Admission Evaluation Process, Abuses and Government Enforcement (SNF) *(not repeated)*

Andrew Baird

Kaitlin E. Hazard

Clay T. Lee

Mario Pinto

- What is a Pre Admission Evaluation (PAE), why it must be completed, why forgeries are common
- How HHS OIG and state-level counterparts functionally investigate allegations of PAE misuse/abuse and what are typical ancillary lines of investigation
- Common prosecution and defense strategies
- Relevant and ongoing legislative developments effecting PAE process

J. Hot Topics in Employment Law for Long Term Care Providers (HH) *(repeat)*

Interactive Session: Update on the “60-Day Rule” and Implications for Compliance Officers (SNF) *(not repeated)*

Pre-registration required, Space is limited.

John D. Dailey

Tracy M. Field

- Impact of Allina and Kisor cases on “Sub regulatory Guidance” and CMS guidance
- Denial dilemmas and hypotheticals (and “real world examples”)
 - o What happens when the government errs
 - o UPIC audits: For Medicare and Medicaid issues
 - o When Medical Necessity a difference of opinion – and not the basis for refund
- Documenting the decision
 - o Disclosures/refunds and best practices in communications with MACs, CMS
 - o Considerations in extrapolation, including appropriate sampling analyses, need for expert review

5:00-6:30 pm

Networking Reception, sponsored by PYA

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

**Wednesday,
March 4, 2020**

7:00 am-1:00 pm

Registration and Information

7:00-8:00 am

Continental Breakfast, sponsored by PYA

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

7:30-9:30 am

Interactive: General Counsel Roundtable

(In-House Counsel Only) (not repeated) Pre-registration required, Space is limited.

David C. Beck (Moderator)

- Meet with your peers and build your network in a session limited to in-house counsel
- Compare notes with fellow general counsel on what’s keeping each of us up at night and what folks are doing to meet those challenges
- Share best practices in managing your department and working with outside counsel

CONCURRENT SESSIONS

8:00-9:30 am

Extended Sessions

I. Discharge or Dumping: Nursing Home Law, Policy, and Practice (SNF) *(repeat)*

U. Nursing Home Legislative and Regulatory Update (SNF) *(repeat)*

V. Change of Ownership—Roadmap for Multistate Transactions (AL) *(repeat)*

8:30-9:30 am

FF. Advocacy Groups and LTC Providers: A Discussion about Fair Housing *(not repeated)*

Daniel Z. Sternthal

Sandra A. Tamez

- Fair Housing enforcement efforts from the perspective of a fair housing advocacy organization, including testing methodology, complaint assessments, and investigations
- Various hot topics and trends in Fair Housing relevant to LTC providers
- Current litigation trends in the field
- Best practices for preparing for a Fair Housing investigation and testing

9:40-10:40 am

GG. Recent Developments in Personal Care and Other Home and Community Based Services in the Medicaid and Medicare Advantage (SNF/HH)
(not repeated)

Michael H. Cook

- The new opportunities for Medicare Advantage plans to cover personal care and other home and community based services as supplemental benefits beginning in 2019
- The additional opportunities for MA plans to cover non-medical benefits in 2020
- Where these services fit into alternative payment systems such as the Comprehensive Joint Replacement program
- Major compliance issues in personal care including requirements on states to implement tracking devices on aides
- How these services fit into state Medicaid programs

HH. Avoiding the Deadly POLST Sins (not repeated)

Karl E. Steinberg

Amy Vandenbroucke

- Advance care planning and contrast various documents associated with ACP (POLST/MOLST, advance directives, DNRs) and CMS S&C 14-01-NH
- Differentiate between medical orders (e.g., POLST Paradigm forms, DNR orders) and advance directives (e.g., living wills, medical/health care power of attorney)
- Legal aspects of the POLST Paradigm (where are the laws, regulations, guidance; variability of forms and laws across states; reciprocity issues with POLST Paradigm orders)
- Avoid the Seven Deadly Sins of POLST (mandating form completion, providing incentives for completion, completing form without conversations, providing forms in admission packets, completing a POLST form for a healthy individual, never reviewing POLST forms, and failing to evaluate facility POLST use)
- Federal regulations pertaining to advance care planning in nursing homes under 42CFR§483, and F Tags F578, F678, and F684

- Common ethical issues in advance care planning in long-term care: Handling conflicts among surrogates, religious or ethical objections to resident requests, decision-making for unrepresented incapacitated residents

E. The PDGM Challenge: Home Health Care Redefined (HH)
(repeat)

S. Legal Ethics of Abuse Prevention: Isn't the Goal the Same for Provider, Lawyer, and Family (AL/SNF) (repeat)

DD. Judicial Review of Departmental Appeals Board Decisions - Auer, Kisor and the Breakdown of Administrative Procedure Act Standards and How Facility Counsel Can Construct Persuasive APA Arguments (SNF)
(repeat)

10:50-11:50 am

II. Can Patients Choose to Stop Eating—Even If They Have Dementia—and Can Health Care Facilities Get Paid for Taking Care of Them? Ethics and Reimbursement at the End of Life (not repeated)

David N. Hoffman

Judy Schwarz

- As the incidence of dementia increases, there is a growing awareness among patients of their ability to make decisions about care including explicit refusal of assisted oral feeding, even while receiving symptom management through hospice or palliative support. Should we support them?
- Why are clinicians and institutions often reluctant to support a patient's decision to refuse oral feeding, particularly in the presence of dementia? It is often due to misunderstandings about the CMS definitions of Abuse, Neglect, and Immediate Jeopardy?
- Various regulatory and reimbursement challenges, including CMS charges of failure to provide adequate nutrition and hydration to support and maintain life, which providers and institutions must confront when managing care for patients who do not want to eat, are real. What should we do about that?

- This session will address:

- o Concerns faced by terminally and incurable ill patients and families
- o Because all suffering cannot always be relieved some patients want to know how to legally hasten death
- o Clinicians need to be counseled on how to respond to requests for Voluntarily Stopping Eating & Drinking (VSED), including the Legal, clinical and ethical considerations in letting, or helping a patient die
- o The possible national impact of a new Nevada law that authorizes an advance directive for dementia patients, including instructions on acceptance or rejection of assisted nutrition and hydration

O. Internal Investigations: Processes, Ethical Challenges, and More! (AL/SNF)
(repeat)

X. Managing Population Health as Part of a Post-Acute Care Network (SNF) (repeat)

BB. The Arc of the Deal (repeat)

12:00-1:00 pm

L. The Use of Medical and Recreational Cannabis in Skilled Nursing, Hospice, and Assisted Living (SNF/AL/HH) (repeat)

M. Your Resident has a Guardian: How Does that Affect Your Resident's Rights and Now Who Decides if Your Resident Can have Sexual Activity (AL/SNF) (repeat)

R. Home Health Legislative and Regulatory Update (HH)
(repeat)

AA. Understanding and Evaluating the I-SNP Contract Model (repeat)

Adjournment

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

Monday, March 2, 2020

7:00 am-5:15 pm			
Registration and Information			
8:00 am-1:00 pm			
Assisted Living In-House General Counsel Roundtable, sponsored by NCAL <i>(Pre-registration is required: space is limited; open to Assisted Living In-House Counsel only)</i>			
9:00-10:30 am Extended Sessions			
A. SNF Survey and Enforcement Developments: Are We Seeing Progress? (not repeated) Rolf Rudow	B. Fundamentals of Medicare and Medicaid Reimbursement in Long Term Care (not repeated) Feldkamp Hayden	C. The Masters Class on Class Actions—What You Need to Do Right Now to Get Ready (AL/SNF) Cesar Clayton Crider Killeen	
10:45-11:45 am			
D. DAB/ALJ Case Law Update and Navigating the DAB Appeals Process (SNF) (not repeated) Hickey Yost	E. The PDGM Challenge: Home Health Care Redefined (HH) Sheldon-Krieger	F. Workplace Violence—Preventing, Diffusing, and Responding to the Growing Threat (AL/SNF) Ross Tyler	G. Expanding Fraud and Abuse Liability in Private Payer Situations (SNF) Munoz Stanger
11:45 am-1:00 pm			
Lunch on your own			
1:15-2:45 pm Extended Sessions			
H. Telehealth and SNFs: Legal and Operational Issues (SNF) (not repeated) Chandra Chess Reagan	I. Discharge or Dumping: Nursing Home Law, Policy, and Practice (SNF) Johnson Rivera	J. Hot Topics in Employment Law for Long Term Care Providers (HH) Koronka Ryan	K. Case Law Update (SNF/AL/HH) Fang Silverman
3:00-4:00 pm			
L. The Use of Medical and Recreational Cannabis in Skilled Nursing, Hospice, and Assisted Living (SNF/AL/HH) Fearnow Troutt	M. Your Resident has a Guardian: How Does that Affect Your Resident's Rights and Now Who Decides if Your Resident Can have Sexual Activity (AL/SNF) Barrett Bloch	N. The Rise of PDPM—How SNF Providers are De-Coding New Medicare Reimbursement (SNF) Greenman	O. Internal Investigations: Processes, Ethical Challenges, and More! (AL/SNF) Sanders Vertes

Monday, March 2, 2020 (continued)

4:15-5:15 pm			
P. The Intersection of Federal Staffing Regulations, Payroll-Based Journal Data, and CMS Expected Staffing Model, and Combating Attempts to Assign a Heightened Standard to LTC Facilities (SNF) (not repeated) Anderson Impink	Q. The PPS to PDPM Pendulum: An Analysis of PDPM Compliance Matters Post Go-Live (SNF) Dalton Steffen	R. Home Health Legislative and Regulatory Update (HH) Dombi	S. Legal Ethics of Abuse Prevention: Isn't the Goal the Same for Provider, Lawyer, and Family (AL/SNF) Peterson Voigt
5:15-6:15 pm			
Networking and Diversity+Inclusion Reception, sponsored by PYA <i>(This event is included in the program registration. Attendees, faculty, and registered spouses and guests are welcome.)</i>			

Tuesday, March 3, 2020

7:00 am-5:30 pm				
Registration and Information				
7:00-8:00 am				
Continental Breakfast, sponsored by PYA <i>(This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.)</i>				
8:00 am-10:00 am General Session				
8:00-8:15 am Welcome and Introduction Holden, Duffy				
8:15-9:15 am Getting a Second Opinion—Developments in Medical Necessity in False Claims Act Cases Segroves, Selden, Singh, Waites				
9:15-10:00 am CMS Initiatives on Survey and Enforcement Wright				
10:00-10:25 am				
Break				
10:25-11:55 am Extended Sessions				
T. Regulatory and Legislative Update for Assisted Living (AL) (not repeated) Hummel Sanchez	U. Nursing Home Legislative and Regulatory Update (SNF) Kallheim Porter	V. Change of Ownership—Roadmap for Multistate Transactions (AL) Jungman Niewenhaus	C. The Masters Class on Class Actions—What You Need to Do Right Now to Get Ready (AL/SNF) (repeat) Cesar Clayton Crider Killeen	K. Case Law Update (SNF/AL/HH) (repeat) Fang Silverman

Tuesday, March 3, 2020 (continued)

11:55 am-1:15 pm				
Lunch on your own or attend the luncheon, hosted by Post-Acute and Long Term Services Practice Group, sponsored by JTaylor Topic: Working Together: Lawyers and Long-Term Care Ombudsmen Advocating for Residents' Rights Henry, Mitchell <i>(This event is not included in the program registration fee. There is an additional fee; limited attendance; pre-registration required. Continuing Education Credits are not available for the luncheon.)</i>				
1:30-2:30 pm				
W. Legal and Clinical Ethics and Requirements in Serving LGBT Older Adults (not repeated) Danner Rode	X. Managing Population Health as Part of a Post-Acute Care Network (SNF) Gunville Schmeck	F. Workplace Violence—Preventing, Diffusing, and Responding to the Growing Threat (AL/SNF) (repeat) Ross Tyler	G. Expanding Fraud and Abuse Liability in Private Payer Situations (SNF) (repeat) Munoz Stanger	N. The Rise of PDPM—How SNF Providers are De-Coding New Medicare Reimbursement (SNF) (repeat) Greenman
2:45-3:45 pm				
Y. Opioid Public Health Crisis—Risks and Legal Obligations of Long Term Care Providers and Facility Medical Directors (SNF/AL/HH) (not repeated) Harris	Z. Risk Management in Assisted Living (AL) (not repeated) Cope Goldman	AA. Understanding and Evaluating the I-SNP Contract Model Grindrod Rios	BB. The Arc of the Deal Pancake Quick	Q. The PPS to PDPM Pendulum: An Analysis of PDPM Compliance Matters Post Go-Live (SNF) (repeat) Dalton Steffen
4:00-5:00 pm		4:00-5:30 pm Extended Sessions		
CC. Lessons Learned from Litigation: An Ounce of Prevention (AL/SNF) (not repeated) C. Wilson W. Wilson	DD. Judicial Review of Departmental Appeals Board Decisions - Auer, Kisor and the Breakdown of Administrative Procedure Act Standards and How Facility Counsel Can Construct Persuasive APA Arguments (SNF) Bianculli Horowitz	EE. How White-Out and Good Photocopiers Cost Millions—A Review of the Pre-Admission Evaluation Process, Abuses and Government Enforcement (SNF) (not Repeated) Baird Hazard Lee Pinto	J. Hot Topics in Employment Law for Long Term Care Providers (HH) (repeat) Koronka Ryan	<i>Pre-registration required, Space is limited.</i> Interactive Session: Update on the “60-Day Rule” and Implications for Compliance Officers (SNF) (not repeated) Dailey Field
5:00-6:30 pm				
Networking Reception, sponsored by PYA <i>(This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.)</i>				

7:00 am-1:00 pm				
Registration and Information				
7:00-8:00 am				
Continental Breakfast, sponsored by PYA (This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.)				
7:30-9:30 am	8:00-9:30 am Extended Sessions			8:30-9:30 am
<p><i>Pre-registration required, Space is limited.</i></p> <p>Interactive: General Counsel Roundtable (In-House Counsel Only) (not repeated)</p> <p>Beck (Moderator)</p>	<p>I. Discharge or Dumping: Nursing Home Law, Policy, and Practice (SNF) (repeat)</p> <p>Johnson Rivera</p>	<p>U. Nursing Home Legislative and Regulatory Update (SNF) (repeat)</p> <p>Kallheim Porter</p>	<p>V. Change of Ownership—Roadmap for Multistate Transactions (AL) (repeat)</p> <p>Jungman Niewenhous</p>	<p>FF. Advocacy Groups and LTC Providers: A Discussion about Fair Housing (not repeated)</p> <p>Sternthal Tamez</p>
9:40-10:40 am				
<p>GG. Recent Developments in Personal Care and Other Home and Community Based Services in the Medicaid and Medicare Advantage (SNF/HH) (not repeated)</p> <p>Cook</p>	<p>HH. Avoiding the Deadly POLST Sins (not repeated)</p> <p>Steinberg Vandenbrouck</p>	<p>E. The PDGM Challenge: Home Health Care Redefined (HH) (repeat)</p> <p>Sheldon-Krieger</p>	<p>S. Legal Ethics of Abuse Prevention: Isn't the Goal the Same for Provider, Lawyer, and Family (AL/SNF) (repeat)</p> <p>Peterson Voigt</p>	<p>DD. Judicial Review of Departmental Appeals Board Decisions—Auer, Kisor and the Breakdown of Administrative Procedure Act Standards and How Facility Counsel Can Construct Persuasive APA Arguments (SNF) (repeat)</p> <p>Bianculli Horowitz</p>

Wednesday, March 4, 2020 continued

10:50-11:50 am			
II. Can Patients Choose to Stop Eating—Even If They Have Dementia—and Can Health Care Facilities Get Paid for Taking Care of Them? Ethics and Reimbursement at the End of Life (not repeated) Hoffman Schwarz	O. Internal Investigations: Processes, Ethical Challenges, and More! (AL/SNF) (repeat) Sanders Vertes	X. Managing Population Health as Part of a Post-Acute Care Network (SNF) (repeat) Gunville Schmeck	BB. The Arc of the Deal (repeat) Pancake Quick
12:00-1:00 pm			
L. The Use of Medical and Recreational Cannabis in Skilled Nursing, Hospice, and Assisted Living (SNF/AL/HH) (repeat) Fearnow Troutt	M. Your Resident has a Guardian: How Does that Affect Your Resident's Rights and Now Who Decides if Your Resident Can have Sexual Activity (AL/SNF) (repeat) Barrett Bloch	R. Home Health Legislative and Regulatory Update (HH) (repeat) Dombi	AA. Understanding and Evaluating the I-SNP Contract Model (repeat) Grindrod Rios

Program Planning Committee

Barbara J. Duffy, Program Chair
Lane Powell PC
Seattle, WA

David C. Beck
Chief Legal Officer
Signature HealthCARE LLC
Louisville, KY

Jennifer L. Hilliard
Arnall Golden Gregory LLP
Washington, DC

Ari J. Markenson
Winston & Strawn LLP
New York, NY

Emily M. Park
Husch Blackwell LLP
Jefferson City, MO

Philip J. Anderson
Buchanan Ingersoll & Rooney PC
Princeton, NJ

Andrew Baird
Director of Government Relations
Encompass Health
Washington, DC

Barbara S. Barrett
Chief Compliance Officer
Reliant Care Management Company LLC
Saint Louis, MO

Joseph L. Bianculli
Health Care Lawyers PLC
Deale, MD

Denise Bloch
Lathrop Gage LLP
Saint Louis, MO

Timothy J. Cesar
Vice President of Legal
Brookdale Senior Living Inc
Milwaukee, WI

Saurabh Chandra
Medical Director of Telehealth
Northwell Health
Syosset, NY

David Chess
Founder, President, and Chief Medical Officer
Tapestry Telehealth
Stratford, CT

Tara J. Clayton
Senior Claim Consultant
Willis Towers Watson
Chicago, IL

Michael H. Cook
Liles Parker PLLC
Washington, DC

Tara A. Cope
General Counsel
Vi Living
Chicago, IL

Christy T. Crider
Baker Donelson Bearman Caldwell &
Berkowitz PC
Nashville, TN

John D. Dailey
Lexington, KY

Amy Dalton
Post-Acute Service Line Manager
PYA
Tampa, FL

Jane Danner
Director of Resident Engagement and
Development
Volunteers of America National Services
Eden Prairie, MN

William A. Dombi
President
National Association for Home Care &
Hospice
Washington, DC

Ericka Fang
Kaufman Borgeest & Ryan LLP
Valhalla, NY

Randall R. Fearnow
Quarles & Brady LLP
Chicago, IL

Janet K. Feldkamp
Benesch Friedlander Coplan & Aronoff LLP
Columbus, OH

Tracy M. Field
Parker Hudson Rainer & Dobbs LLP
Atlanta, GA

Joel S. Goldman
Hanson Bridgett LLP
San Francisco, CA

Joseph M. Greenman
Lane Powell PC
Portland, OR

Bruce R. Grindrod
CEO and President
Provider Partners Management Services
Linthicum, MD

Jeanna Palmer Gunville
Polsinelli PC
Chicago, IL

Terri Johnson Harris
Fox Rothschild LLP
Greensboro, NC

Marian J. Hayden
Cull & Hayden PSC
Frankfort, KY

Kaitlin E. Hazard
Assistant United States Attorney, Middle
District of Tennessee
U.S. Attorney's Office
Nashville, TN

L. Drew Hickey
Bolen Robinson & Ellis LLP
Decatur, IL

David N. Hoffman
Lecturer in Bioethics
Columbia University
New York, NY

Alan C. Horowitz
Arnall Golden Gregory LLP
Evergreen, CO

Lilly S. Hummel
Senior Director
American Health Care Association
Washington, DC

Annaliese Impink
Executive Vice President, CXO
SavaSeniorCare Consulting, LLC
Atlanta, GA

Mark A. Johnson
Hooper Lundy & Bookman PC
San Diego, CA

Chad Jungman
The Evangelical Lutheran Good
Samaritan Society
Sioux Falls, ND

Cory Kallheim
Vice President Legal Affairs and
Social Accountability
LeadingAge Inc
Washington, DC

Paul Killeen
Senior Vice President of Litigation
Golden Living
Stevensville, MD

Kevin Koronka
Husch Blackwell LLP
Dallas, TX

Clay T. Lee
Epstein Becker & Green PC
Nashville, TN

Anna F.C. Munoz
Senior Corporate Counsel
Brookdale Senior Living Inc
Milwaukee, WI

M. Daria Niewenhaus
Mintz Levin Cohn Ferris Glovsky & Popeo PC
Boston, MA

Taylor C. Pancake
Foley & Lardner LLP
Orlando, FL

Marit Peterson

Program Director
Minnesota Elder Justice Center
St. Paul, MN

Mario Pinto

Assistant Special Agent in Charge
Office of the Inspector General
US Department of Health and Human Services
Washington, DC

Clif Porter

Senior Vice President of Government Relations
American Health Care Association
Washington, DC

Helen E. Quick

Managing Director, Locust Point Capital
Locust Point Capital
Washington, DC

Mark E. Reagan

Hooper Lundy & Bookman PC
San Francisco, CA

Adrian Rios

Director, Health Care Consulting
BKD CPAs & Advisors
New York, NY

William Alvarado Rivera

Senior Vice President, Litigation
AARP
Washington, DC

Robert F. Rode

Voigt Rode & Boxeth LLC
Saint Paul, MN

Carol Rolf

Rolf Goffman Martin Lang LLP
Rancho Santa Fe, CA

Darryl Ross

Associate General Counsel
Mariner Health Care
Mission Viejo, CA

Sara A. Rudow

Senior Director of Regulatory Services
AHCA
Washington, DC

Timothy Ryan

General Counsel
AccentCare Inc
Dallas, TX

Gabriela Sanchez

Lane Powell PC
Portland, OR

Paula G. Sanders

Post & Schell PC
Harrisburg, PA

Arielle Schmeck

Manager
JTaylor and Associates
Fort Worth, TX

Judy Schwarz

Clinical Director
End of Life Choices New York
New York, NY

James F. Segroves

Reed Smith LLP
Washington, DC

Jack W. Selden

Bradley Arant Boult Cummings LLP
Birmingham, AL

Suzanne Sheldon-Krieger

Director of Clinical Excellence
SSM Health at Home and Post-Acute Care
Valley Park, MO

Kara G. Silverman

Arnall Golden Gregory LLP
Atlanta, GA

Tejinder Singh

Goldstein Russell
Washington, DC

Kim C. Stanger

Holland & Hart LLP
Boise, ID

Liz Steffen

System Director of Compliance
Lee Health Systems
Fort Meyers, FL

Karl E. Steinberg

Chief Medical Officer
Mariner Health Care
Oceanside, CA

Daniel Z. Sternthal

Baker Donelson Bearman Caldwell & Berkowitz PC
Houston, TX

Sandra A. Tamez

Executive Director
Fair Housing Council of Greater San Antonio
San Antonio, TX

William D. Troutt

Director of Medical Education
Harvest, Inc.
Tempe, AZ

Elizabeth P. Tyler

Tyler & Wilson
Los Angeles, CA

Amy Vandenbroucke

Executive Director
National POLST Paradigm
West Linn, OR

Alissa M. Vertes

Chief Compliance Officer
HealthPRO Heritage
Hunt Valley, MD

Susan M. Voigt

Voigt Rode & Boxeth LLC
Saint Paul, MN

Natalie A. Waites

Senior Counsel, Health Care Fraud
Civil Fraud Section, US Department of Justice
Washington, DC

Christine J. Wilson

Tyler & Wilson
Los Angeles, CA

William Wilson

Wilson Getty LLP
San Diego, CA

David R. Wright

Acting Deputy Center Director, Center for Clinical Standards and Quality
Center for Clinical Standards and Quality, Centers for Medicare & Medicaid Services
Baltimore, MD

Mark A. Yost

Palatin Health
Baltimore, MD



AHLA

American Health Lawyers Association

1620 Eye Street, NW, 6th Floor • Washington, DC 20006-4010
(202) 833-1100 • Fax (202)833-1105 • www.healthlawyers.org