

# Long Term Care and the Law

February 17–19, 2010  
Doral Golf Resort and Spa  
Miami, Florida



**Program Planning Committee:** Alan E. Schabes, Esq. – Program Chair,  
David S. Cade, Esq., Dianne J. De La Mare, JD, Kimber L. Latsha, Esq., Christopher C. Puri, Esq.



*PointRight Inc. has provided sponsorship in support of this program.*

*Program held in cooperation with:*



## Program Agenda

**Please Note:** This year's program includes sessions focused on nursing facilities, assisted living facilities and home health providers. The grid, which starts on page 14, indicates for which audience(s) each session is intended.

### Wednesday, February 17, 2010

#### CONCURRENT SESSIONS

8:30 am- 5:15 pm

##### Registration and Information

9:30 –11:30 am

#### I. Nursing Facility Introductory Session

*Kenneth L. Burgess*

*Barbara L. Miltenberger*

- » Medicare and Medicaid – how they are different and how they are alike
- » Discussion of skilled nursing facilities and nursing facilities
- » Overview of senior housing, independent living and assisted living facilities, in-home care, rehabilitation hospitals and hospice
- » Reimbursement sources for SNFs and NFs
- » Regulatory and tort issues
- » Contracting with vendors and other healthcare entities
- » Fraud and abuse

#### II. Assisted Living and Home Health Introductory Session

*William A. Dombi*

*Betty J. Ulmer*

- » Introduction to Assisted Living
  - History
  - State regulation
  - Levels of service
  - Funding sources
  - Application of Federal laws
- » Introduction to Home Health
  - General overview of home health and hospice
  - Critical regulatory and reimbursement issues
  - Current challenges/opportunities for those in the home health and hospice business

9:30-11:30am

##### Interactive Discussion Groups

Attendance is limited to 30 people for each; pre-registration is required; \$40 additional – please see page 19 to register.

#### Group 1: Advanced Survey Enforcement Trial Practice

*Hon. Keith W. Sickendick*

*Geoffrey E. Webster*

- » Prehearing paperwork and preparation
- » Witnesses vs documents - avoiding repetition
- » Testimony of “lay” witnesses – staff, family and others
- » Expert witness preparation and presentation
- » Post-hearing briefs
- » New evidence-post hearing and what is it
- » Effective direct and cross-examination

#### Group 2: Conversations with Government

*Anne Hall*

*Farheen Hussain*

- The format of this session will be a round-table discussion of current and significant long term care issues from legal and policy perspectives. Based on the interests of the participants, topics to be discussed will include:
- » Healthcare reform
    - Senate/House proposed provisions affecting long term care providers
  - » Survey and enforcement
    - Five Star Rating Program
    - Special Focus Facilities
    - “Never” events – Can this trickle down to nursing homes once implemented in acute care settings?
    - Nursing Home Value-Based Purchasing Demonstrations (NHVBP) – “pay for performance”
    - Federal survey and certification letters
  - » Fraud and abuse
    - Medicare and Medicaid Integrity Program
    - False Claims Act cases focusing on quality of care and minimum data sets
  - » Medicaid and state issues
    - Upcoming hospice proposed rule
    - Medicare/Medicaid integration

#### Group 3: Friend or Foe: An Interactive Session for Nursing Facility In-House Counsel (Open only to In-House Counsel)

*Thomas J. Kapusta*

*Roland G. Rapp*

- » Legal counsel: Vulture on the fence or canary in the mine? What color are your feathers?
- » Use of enterprise risk management: Fad or fancy?
- » How to commit a CIN without really trying
- » Email creation: Social media communication or pre-trial admission
- » E-discovery: Land of the geeks or source of the leaks

## Program Agenda

### Group 4: An Interactive Session for Assisted Living In-House Counsel (Open only to In-House Counsel)

*Kirstin B. Sumner*

This is intended to be an active dialogue of shared best practices and strategies to address issues facing assisted living facilities. Interactive discussion with audience on legal issues they face in operating their assisted living facilities that may include the following:

- » Regulatory enforcement
- » Legislation affecting ALFs
- » Fraud and abuse
- » Risk management
- » Third party provider involvement

11:30 am-1:00 pm

**Lunch on your own**

### GENERAL SESSION

1:00 - 1:15 pm

#### Welcome and Introduction

*Joel M. Hamme, AHLA Past President*

*Alan E. Schabes, Program Chair*

1:15-2:00 pm

#### Keynote Address: Public Health Initiatives

*Dr. Regina Benjamin (invited)*

2:00-2:45 pm

#### The Role of Physician Leadership in Long Term Care

*Dr. Paul R. Katz*

2:45-3:30 pm

#### Healthcare Reform and the Future of Long Term Care

*Dennis G. Smith*

3:30-4:00 pm

**Coffee Break Sponsored by PointRight Inc.**

### CONCURRENT SESSIONS

4:00-5:30 pm

#### A. Healthcare Reform Update

*David S. Cade*

*Justin R. Hunter*

*Cynthia K. Morton*

This session will examine and discuss healthcare reform from the 30,000 foot view including the politics of the bill and if the bill actually “reforms” healthcare, how the bill may change healthcare delivery and finance and what next steps are for implementation.

- » Who are the players in healthcare reform?
- » How did the key issues drive the debate?
- » How did the Senate’s 60 vote requirement impact the debate?
- » What’s the “reform” in healthcare reform?
- » Will final legislation impact the President’s FY 2011 budget?
- » Who were the key influencing provider groups and what did they get?
- » Will the healthcare delivery system be affected?
- » What is the employer perspective?
- » Was Medicaid and Medicare left out of the discussion?
- » Why was long term care left out in terms of reform?

#### B. Assisted Living Update

*Maribeth Bersani*

*Dave Kylo*

*Karl P. Polzer*

- » Core national metrics about assisted living customers and providers from 2009 Overview of Assisted Living
- » Federal legislative and regulatory activity that could impact senior living providers and residents
- » National senior living studies, surveys and research expected within the next few years
- » New study of Medicaid coverage and payment issues in assisted living
- » State legislative and regulatory trends

#### C. Home Health Update (not repeated)

*William A. Dombi*

- » Understand recent legislative changes affecting home health and hospice
- » Review critical regulatory and reimbursement developments
- » Learn the practical implications of recent litigation affecting home health and hospice

#### D. Hot Topics: SNF/NF Legislative, Regulatory and Case Law Updates

*Janet K. Feldkamp*

*Jennifer L. Hilliard*

- » Major legislative and regulatory developments affecting SNFs/NFs, including financing, nursing home transparency and elder justice provisions in healthcare reform legislation
- » Specific provider issues, including timely procurement of pain medication for residents, pharmaceutical waste, CMS’ Special Focus Facility selection methodology and the 5-Star Program

## Program Agenda

- » Recent changes in interpretive guidelines issued by the Centers for Medicare for Medicaid Services for Medicare and Medicaid certified facilities
- » Recent Departmental Appeal Board cases for survey and certification and a review of recent case law relating to long term care facilities

### E. Case Law Update

*Jeffery Cusic*

*Karen L. Goldsmith*

- » Medicare and Medicaid reimbursement
- » Survey, certification and enforcement
- » Liability for resident care
- » Home health
- » Hospice
- » Fraud and false claims
- » Assisted living

5:30-6:30 pm

**Reception Sponsored by PointRight Inc.**

(attendees, speakers, children, registered spouses and guests welcome)

## Thursday, February 18, 2010

7:00 am-5:35 pm

**Registration and Information**

7:00-8:30 am

**Continental Breakfast Sponsored by PointRight Inc.**

(attendees, speakers, children, registered spouses and guests welcome)

### CONCURRENT SESSIONS

*(Please note start times for the following sessions)*

8:00-9:30 am Extended Sessions

#### A. Healthcare Reform Update (repeat)

#### B. Assisted Living Update (repeat)

8:30-9:30 am

#### F. Compliance Program Realities within the Homecare Business Operations (not repeated)

*John N. Camperlengo*

- » Importance of conducting an internal RAC audit/risk assessment
- » HITECH and electronic information challenges
- » Structuring internal reviews of home health agencies

- » Compliance issues with referral source portals
- » Intermediary Audits: a case study

#### G. Minimizing Risk in a Wireless World (not repeated)

*Brian R. Purtell*

*Stacie L. Turner*

- » Benefits, risks and possible expectations associated with technology in the assisted living environment
- » Areas for which providers should develop or revise policies and procedures to minimize legal and regulatory risk
- » Become sufficiently savvy with technology to be able to advise clients or instruct employees

#### H. Preparing for the MICs

*Tracy M. Field*

*Paula G. Sanders*

- » The philosophical focus of the Medicaid Integrity Program and the interplay between CMS and each state's separate Medicaid program
- » Understand crucial operational differences between the RACs and the MICs so that your institution is prepared for a MIC audit
- » Key forms used by the MICs, such as "provider intake questionnaires." Engage in an interactive discussion with other attendees about the potential ramifications of responding to some of the questions
- » Hear experiences of your colleagues who have already been subjects of a MIC audit
- » Strategies for effective partnering with your state Medicaid agency as the MICs roll-out across the country

9:45-10:45 am

#### J. Chronic Care Coordination: Home Care as Part of the Solution (not repeated)

*James C. Pyles*

- » For decades Medicare spending for home health has been cut while the need for the services has steadily grown
- » Home care is one of the lowest cost, most popular benefits under Medicare
- » Home care has been perceived as part of the problem rather than part of the solution to rising healthcare costs
- » Health reform will present numerous opportunities for home care to demonstrate its cost effectiveness
- » Health reform bills present unprecedented opportunities for home care under provisions such as Independence at Home, the Medical Home, Accountable Care Organizations, Transitional Care, bundling and others
- » This session will describe those opportunities and what home care must do to seize them

## Program Agenda

### K. Sex, Drugs and Rock 'n Chairs (not repeated)

*Tara A. Cope*

*Joel S. Goldman*

- » Dealing with allegations of non-consensual sexual contact by memory impaired residents
- » Addressing family concerns about seemingly consensual sex among dementia residents
- » Use of medicinal marijuana
- » Controlling resident access to medications
- » Determination of ability of residents to self-medicate
- » Responding to miscellaneous resident and family complaints

### L. Are Your Stars in Alignment? Strategies for Dealing with the Five-Star Nursing Home Quality Rating System

*Steven B. Littlehale*

*Frederick Miles*

- » Five-Star Nursing Home Quality Rating System and the methodological strengths and weaknesses of these calculations
- » Translate these strengths and weaknesses into strategies for improvement and the affirmative use of such data based rankings
- » Identify data, protocols and legal strategies to respond to the inappropriate use of Five-Star rankings
- » Case outline of how to refute the Five Star rating when adversely utilized by an outside agency

### M. Legal Ethics: Dilemmas in Long Term Care

*Kathleen A. Hessler*

*Susan M. Voigt*

- » Difference between a legal analysis and an ethical review process
- » Care and treatment scenarios involving financial and care issues
- » Two elements of an ethical decision-making process
- » Various solutions to difficult ethical issues presented in a case study

### N. Medicaid Rates for Nursing Facilities

*Barbara J. Duffy*

*Mark E. Reagan*

- » Challenge Medicaid ratemaking using the Supremacy Clause and other legal theories
- » Maximize the chances of success in obtaining preliminary injunctive relief in Medicaid rate cases
- » Attack claims by States that they met their obligation to conduct a "reasonably principled analysis" of access and quality

11:00 am - 12:00 noon

### O. Managing the Immediate Jeopardy, Termination and Facility Closure Process (not repeated)

*Elizabeth Tyler*

- » The current state of immediate jeopardy deficiencies in long term care facilities
- » The termination process including reapplication issues
- » Practical and regulatory issues confronted by providers when closing a facility

### P. HUD Financing for Long Term Care and Senior Housing Facilities

*Andrea C. Barach*

- » Types of HUD insured financing available for healthcare facilities
- » Primary program requirements under Section 232
- » Practical issues in loan processing, including a hypothetical project
- » Special considerations applicable to nonprofit borrowers
- » Discussion of experience of borrowers under the LEAN Processing program and recent developments under the program

### Q. Accounts Receivable: Successful Strategies for Payment

*Robert F. Rodè*

- » Federal law and regulations regarding payment, discharge requirements and case law on liability of responsible parties and powers of attorney including a Minnesota Court of Appeals decision
- » Strategies to negotiate for payment including creative solutions such as mortgages, assignments of insurance and other non-litigation strategies
- » Admission contract that complies with federal law and includes fees and costs of collection
- » Use the federal discharge law as a tool to obtain payment from third party payors and Medicaid
- » Practical operational advice for clients on how to prevent aged receivables

### R. Documentation Wake Up Call: How to Prevent Documentation Deficiencies

*Mary P. Chiles*

*Mary C. Malone*

- » Legal and industry standards relating to the long term care clinical record
- » Consequences that may result from insufficient, inaccurate and incorrect documentation

## Program Agenda

- » Common problems in clinical record documentation and management
- » Solutions and best practices for long term care staff in managing the clinical record
- » Ways to monitor documentation for compliance with legal and industry standards

### S. Compliance Programs: Meeting the Expectations

*Susan E. Gillin*

*Susan Thomas Whittle*

- » Compliance program evolution, including OIG guidance
- » Current status of Federal legislation mandating compliance programs
- » Identify the compliance “constituency”
- » Define compliance expectations
- » Resource allocation in compliance program design
- » Align compliance program goals and objectives with expectations
- » The role of auditing and monitoring in meeting/maintaining expectations

12:00 noon-1:30 pm

**Lunch on your own or attend the Long Term Care, Senior Housing, In-Home Care and Rehabilitation Practice Group Luncheon Sponsored by The Compliance Store and HealthCare Case Law LLC**  
(additional fee; limited attendance; pre-registration required – see page 19)

### Emerging Trends in Healthcare Quality: Legal and Financial Implications

*Charlie C. Huber, Esq.*

*Lane Powell PC, Seattle, WA*

*Tracy E. Miller, Esq.*

*Consultant, Health and Biomedical Law, Metuchen, NJ*

*Barbara L. Miltenberger, Esq. (Moderator)*

*Husch Blackwell Sanders LLP, Jefferson City, MO*

## CONCURRENT SESSIONS

1:45-2:45 pm

### T. CCRCs and Assisted Living Facilities—Repositioning, Turn-Arounds and Closures (not repeated)

*Paul A. Gordon*

Economic stress is affecting consumers of all senior care properties. Unemployment and the slump in home resales has made the payment of monthly fees and entrance fees more challenging than ever before, this session will discuss:

- » Effects of the economic downturn on need-driven assisted living and dementia properties, as well as independent

living communities and CCRCs, where prospective residents may have more flexibility to delay their decision to make a move

- » Methods providers are using to reposition themselves in the marketplace, such as by providing alternative pricing, service and contract offerings
- » Recent consumer protection legislation governing the closure of assisted living and CCRC properties
- » Examples of facility acquisitions, turnarounds and closures

### U. Controlled Substances in Long Term Care: DEA Enforcement Developments (not repeated)

*Ralph E. Breitfeller*

*James S. Mathis, Jr.*

- » Recent enforcement activity in the LTC area
- » Where you find controlled substances
- » Industry and pharmacy expectations on documentation
- » DEA interpretation of existing regulation and additional guidance
- » DEA enforcement activity
- » Industry response (e.g., communication with DEA, legislative proposals)

### V. Hospice Update—What’s Old, What’s New and What’s Projected

*Michael H. Cook*

- » Basics of hospice – what’s covered and how it’s paid under Medicare
- » Special issues involved in hospice relationships with nursing and assisted living facilities
- » Fraud and abuse
- » The changing face of hospice including MedPac recommendations for revising the payment system, any issues arising out of healthcare reform and the forces driving future revision of the benefit

### W. The Medical Director and SNF/ALF Relationship: Contractual, Regulatory and Clinical Perspectives

*James F. Henry*

*Michael L. Reeves*

- » Regulatory requirements for Medical Directors
- » Role of the Medical Director in formulating and implementing facility policies to provide high quality care and leading, overseeing and coordinating medical care at the facility
- » Structuring contractual relationships with Medical Directors to build a solid base for leadership and accountability among the facility’s physician staff

## Program Agenda

- » Role of the Medical Director in establishing realistic expectations among families and working with local hospitals and physicians to help them gain a greater understanding of long term care
- » How to choose a Medical Director
- » Emerging issues

### X. In the Crosshairs: The Intersection of Management Prerogative and Resident Demand in Assisted Living Facilities, Skilled Nursing Facilities and Home and Community Based Service Programs

*Joanne R. Lax*

*Cynthia F. Wisner*

- » How does the law limit management's prerogative to adopt policies and procedures that restrict resident/client options in the areas of weapons, smoking, medical marijuana, pets, illegal activity and alternative lifestyles?
- » How can providers lawfully and practically balance the competing interests of residents/clients, visitors and staff in these areas?
- » What processes and procedures can the provider use to maximize resident/client satisfaction when adopting new restrictions on resident/client interests?
- » How can providers most effectively draft their policies to maximize management flexibility while withstanding legal scrutiny?

2:55-3:55 pm

### Y. The Office of the Medicaid Inspector General and Medicaid Provider Compliance in New York: Right on Target or Missing the Mark? (not repeated)

*Jane Bello Burke*

*David R. Ross*

- » The New York State OMIG: Background and development
- » The Federal-State health reform partnership and its impact on OMIG's goals and activities
- » The impact of OMIG's activities on the Medicaid provider community

### Z. What Is Aging in Place and When Is It a Viable Option in CCRCs and ALFs? (not repeated)

*Bonnie Helfgott Krisztal*

*Stephen J. Maag*

- » Medical verses social model
- » Risk management, fair housing, licensing and other legal issues
- » Managing resident and family expectations

### AA. National Healthcare Reform: Implications for Long Term Care

*Jordan M. Bernstein*

*Joel M. Hamme*

- » This session will examine particular provisions of the proposed or enacted national healthcare reform legislation, their effective dates, and their specific implications for the full panoply of long term/post acute care providers (nursing homes, home health, assisted living, hospice, long term care hospitals, and rehabilitation hospitals).
- » Nursing home transparency
- » Medicare – payment provisions, therapies and the Advisory Board
- » Medicaid – eligibility expansion and increased state flexibility
- » The Community Living Assistance Services and Supports (CLASS) program and entitlement reform
- » Possible sleeper provisions on training and funding, fraud and abuse, liability reform, elder justice and background checks
- » Who won? Who lost? And why?

### BB. Quality of Care; Failure of Care; False Claims Act Review and Update

*James F. Segroves*

*Howard L. Sollins*

- » Overview of government theories
- » Update per FERA
- » Implications for such cases based on changes in CMS State Operations policies, Five-Star rankings and related developments
- » Integration of corporate integrity agreements and other tools into settlements of FCA cases

### CC. Recent Developments in Labor and Employment Law for Long Term Care Institutions

*John F. Leebron*

*Robert R. Niccolini*

- » Trends in employment litigation under the Obama Administration
- » Impact of the ADA Amendments Act – who isn't disabled?
- » Developments concerning the Employee Free Choice Act
- » Implications of the Lily Ledbetter Fair Pay Act
- » Understanding the newly revised FMLA regulations

## Program Agenda

(Please note the end times for the following sessions)

4:05-5:05 pm

### **DD. Fair Housing Challenges in Assisted Living and Independent Living Providers** (not repeated)

*Robin Dale*

- » Basic fair housing rules in the context of daily operational challenges faced by assisted living, independent living and CCRC providers
- » Admission agreements, transfer between levels of care and safety rules affecting use of motorized carts and walkers
- » Recent FHA cases impacting senior housing providers
- » Disability, religious, sexual orientation, race and other areas of concern and how they apply to customs and practices in the industry
- » Tips to help avoid FHA/ADA challenges and implement policies and procedures that reduce risk and still meet operational goals
- » Sample policies and admission agreements addressing FHA issues

### **EE. Residents with Behavioral Issues and Other Mental Health Conditions and Long Term Care** (not repeated)

*Harvey M. Tettlebaum*

- » Review of the growing demographic comprising persons with behavioral problems, mental illnesses or mental health conditions
- » Statutes and regulations which affect the ability of long term care facilities to provide care and treatment for persons with behavioral problems, mental illnesses or mental health conditions
- » Policies which underlie pre-admission screening and resident review requirements as well as payment restrictions which impact a long term care facility that qualifies as an institution for mental diseases (IMD)
- » Considerations for long term care facilities to avoid IMD status
- » Likely policies by the government to deal with the growing demographic

### **FF. RAC Tools: How to Prepare Your Clients for RAC Audits**

*Harry M. Brown*

*J. William Kutschbach*

- » What can be done for your clients pre/during/post RAC audits
- » Documentation required to minimize the adverse consequences of the RAC audits

- » How, how often, when and why your client should conduct self audits or use external resources
- » Your role as a lawyer in interfacing with your client and the external resources for independence
- » Legal rights and the legal process for your clients when they are RAC'ed

4:05-5:35 pm Extended Sessions

### **D. Hot Topics: SNF/NF Legislative, Regulatory and Case Law Updates** (repeat)

### **E. Case Law Update** (repeat)

5:05-6:30 pm

**Reception Sponsored by PointRight Inc.**

(attendees, speakers and registered spouses and guests welcome)

## Friday, February 19, 2010

7:30 am-3:25 pm

**Registration and Information**

7:30-8:30 am

**Continental Breakfast Sponsored by PointRight Inc.**

(attendees, speakers, children, registered spouses and guests welcome)

## CONCURRENT SESSIONS

8:30-9:30 am

### **GG. Legal Ethics of Investigations** (not repeated)

*J. Richard Kiefer*

- » Ethical issues in internal investigations—who does counsel represent? Must Miranda warnings be given to employees?
- » Potential conflicts of interest in joint representation of the company and its employees
- » May corporations terminate or otherwise punish employees who refuse to be interviewed by counsel for the corporation?
- » Federal government subpoenas for corporate internal investigation employee interview files: Are they privileged?
- » Do corporations violate the employee's attorney-client privilege by voluntarily producing to the government memoranda summarizing corporate counsel's interview of the employee?



## Program Agenda

- HH. Navigating the TRICARE Hearings and Appeals Process** (not repeated)  
*Heather O. Berchem*  
*Mark P. Donahue*
- » Overview of the TRICARE levels of appeals and contractors
  - » Common bases for denials of coverage and issues for appeals
  - » Practice tips from a TRICARE attorney for those pursuing TRICARE appeals
  - » TRICARE criteria for coverage of SNF stays
- JJ. State Medicaid Home Health Agency Inspections, Deficiencies, Plans or Corrections, Notices of Infractions and License Revocations** (not repeated)  
*Rita Michelle Grant*
- » The Medicaid State Plan/Waiver/Regulatory Inspection of home health agency records and documentation
  - » Legal implications of the surprise attack: The Medicaid Right of Entry Home Health Agency Inspection
  - » Responding to a Medicaid Program Complaint Investigation for a reported (or unreported) incident
  - » Averting and/or minimizing the issuance of The Medicaid Program Notice of Deficiency Report (NDR)
  - » Target areas and timetables for the Medicaid Plan of Correction (POC) in response to the Notice of Deficiency Report
  - » The end game: Avoiding the Notice of Infraction, Notice of Proposed License Restriction/Revocation, overpayments and potential false claims
- X. In the Crosshairs: The Intersection of Management Prerogative and Resident Demand in Assisted Living Facilities, Skilled Nursing Facilities and Home and Community Based Service Programs** (repeat)
- FF. RAC Tools: How to Prepare Your Clients for RAC Audits** (repeat)
- 9:40-10:40 am
- KK. Dementia Care in Assisted Living** (not repeated)  
*Martha Everett Meng*
- Dementia care in the assisted living setting presents unique risk management and public policy issues. This session will discuss:
- » New state statutes and regulations governing dementia care in assisted living
  - » Is dementia care compatible with public policy favoring community-based placement?
- » Fair Housing/ADA issues; “aging in place”
  - » Medicaid policy and implications for dementia care
  - » Mental capacity; consent; substitute decision-making
  - » “Slow” treatment; limitations on treatment; end-of-life issues
  - » Risk management: behavioral issues
- LL. Payment and Referral Relationships in Home Health – Recent Developments in Florida and Federal Law** (not repeated)  
*Gabriel L. Imperato*  
*Justin Senior*  
*Craig H. Smith*
- » Recent amendments to the Florida home health licensure statute and their impact on payment and referral relationships for home health agencies under both state and Federal law
  - » Relationship between the Federal and Florida prohibitions on payment and referral relationships for home health agencies
  - » Current agency interpretations of Florida and Federal law and resulting enforcement action and sanction proceedings
- H. Preparing for the MICs** (repeat)
- M. Legal Ethics: Dilemmas in Long Term Care** (repeat)
- S. Compliance Programs: Meeting the Expectations** (repeat)
- 10:50-11:50 am
- MM. Benefits and Liability of Health Information Technology in Home Health and Hospice** (not repeated)  
*Deborah A. Randall*
- » Telephonic, wireless and mHealth developments for home health and hospice
  - » HIT studies on chronic disease management, aging services and diagnostic
  - » Working home HIT into medical homes and RHIO communities
  - » Efforts in the EU, Ireland and the UK to advance home telehealth
  - » Quality of care, patient access, control and ethics in home health and hospice HIT
  - » Barriers in reimbursement, licensure and risk management

## Program Agenda

### **NN. Legal and Practical Considerations for Implementation of Electronic Health Records for Long Term Care**

(not repeated)

*Terrill Johnson Harris*

- » Points to address in contracts with EHR vendors
- » How to integrate EHR and existing policies and procedures, particularly HIPAA policies and procedures
- » Considerations for staff education regarding EHR
- » Potential risk areas with EHR

### **00. Tax Credits and Government Subsidies for Long Term Care and Housing Development**

(not repeated)

*Sean P. Clancy*

- » Finance structures that are used by the tax credit industry for the syndication of various tax credits
- » Green building tax and financing incentives, including federal energy credits
- » Use of low-income tax credits with assisted living facilities
- » How historic credits could be used to rehabilitate older facilities
- » State programs that could be combined with other federal tax incentives

### **AA. National Healthcare Reform: Implications for Long Term Care**

(repeat)

### **CC. Recent Developments in Labor and Employment Law for Long Term Care Institutions**

(repeat)

11:50 am- 1:05 pm

**Lunch on your own or attend the Labor and Employment Practice Group Luncheon**

(additional fee; limited attendance; pre-registration required – see page 19)

### **Wage and Hour Law in the Long Term Care Industry**

*Will Garnitz*

*South Florida District Director, Wage and Hour Division, U.S. Department of Labor, Miami, FL*

## CONCURRENT SESSIONS

1:15-2:15 pm

### **L. Are Your Stars in Alignment? Strategies for Dealing with the Five-Star Nursing Home Quality Rating System**

(repeat)

### **N. Medicaid Rates for Nursing Facilities**

(repeat)

### **Q. Accounts Receivable: Successful Strategies for Payment**

(repeat)

### **BB. Quality of Care; Failure of Care; False Claims Act Review and Update**

(repeat)

2:25-3:25 pm

### **P. HUD Financing for Long Term Care and Senior Housing Facilities**

(repeat)

### **R. Documentation Wake Up Call: How to Prevent Document Deficiencies**

(repeat)

### **V. Hospice Update – What's Old, What's New and What's Projected**

(repeat)

### **W. The Medical Director and SNF/ALF Relationship: Contractual, Regulatory and Clinical Perspectives**

(repeat)

## ADJOURNMENT

## Program Materials

AHLA is going green for the 2010 Long Term Care Program! We are trying to reduce the amount of paper we use at our programs. This is both an effort at responsible environmental conservation, and an effort to increase the timeliness of the resources provided to our attendees. We will not automatically be printing binders for everyone. All materials will be available on a website prior to the program so attendees can print what they need for the sessions they plan to attend and handed out on CD at the program. For those who still do want the binder, they will be available for an additional fee; please order on the registration form on page 19.

## Program Faculty

### PLANNING COMMITTEE

**Alan E. Schabes, Esq.**

*Program Chair*  
Benesch Friedlander Coplan &  
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Cleveland, OH

**David S. Cade, Esq.**

Acting General Counsel  
Office of the General Counsel  
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**Dianne J. De La Mare, JD**

Vice President of Regulatory Affairs  
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**Christopher C. Puri, Esq.**

Bradley Arant Boult Cummings LLP  
Nashville, TN

**Andrea C. Barach, Esq.**

Bradley Arant Boult Cummings LLP  
Nashville, TN

**Regina Benjamin, MD (invited)**

Surgeon General  
US Department of Health and  
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**Heather Overholser Berchem, Esq.**

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SVP, Public Policy & Government  
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Farmington Hills, MI

## Program at a Glance

This year there are sessions for Nursing Facility, Assisted Living and Home Health audiences. The grid below indicates for which audience(s) a session is intended: Nursing Facility (NF) attendees; Assisted Living (AL) attendees; and/or Home Health (HH) attendees

### Wednesday, February 17, 2010

8:30 am– 5:15 pm	<b>Registration and Information</b>					
	<i>Attendance for each discussion group is limited to 30 people; there is an additional charge of \$40; and pre-registration is required – please see page 19</i>					
9:30– 11:30 am	<b>I. Nursing Facility Introductory Session (NF)</b>  <i>Burgess Miltenberger</i>	<b>II. Assisted Living and Home Health Introductory Session (AL/HH)</b>  <i>Dombi Ulmer</i>	<b>Interactive 1 Advanced Survey Enforcement Trial Practice (AL/NF/HH)</b>  <i>Sickendick Webster</i>	<b>Interactive 2 Conversations with Government (AL/NF/HH)</b>  <i>Hall Hussain</i>	<b>Interactive 3 (open only to In- House Counsel) Friend or Foe: An Interactive Session for Nursing Facility In-House Counsel (NF)</b>  <i>Kapusta Rapp</i>	<b>Interactive 4 (open only to In- House Counsel) An Interactive Session for Assisted Living In-House Counsel (AL)</b>  <i>Sumner</i>
11:30 am– 1:00 pm	<b>Lunch on your own</b>					
1:00– 3:30 pm	<p><b>General Session</b></p> <p>1:00–1:15 pm <b>Welcome and Introduction</b> <i>Hamme, Schabes</i></p> <p>1:15–2:00 pm <b>Keynote Address: Public Health Initiatives</b> <i>Benjamin (invited)</i></p> <p>2:00–2:45 pm <b>The Role of Physician Leadership in Long Term Care</b> <i>Katz</i></p> <p>2:45–3:30 pm <b>Healthcare Reform and the Future of Long Term Care</b> <i>D. Smith</i></p>					
3:30– 4:00 pm	<b>Coffee Break Sponsored by PointRight Inc.</b>					
4:00– 5:30 pm  Extended Sessions	<b>A. Healthcare Reform Update (AL/NF/HH)</b>  <i>Cade Hunter Morton</i>	<b>B. Assisted Living Update (AL)</b>  <i>Bersani Kyllo Polzer</i>	<b>C. Home Health Update (not repeated) (HH)</b>  <i>Dombi</i>	<b>D. Hot Topics: SNF/NF Legislative, Regulatory and Case Law Updates (NF)</b>  <i>Feldkamp Hilliard</i>	<b>E. Case Law Update (AL/NF/HH)</b>  <i>Cusic Goldsmith</i>	
5:30– 6:30 pm	<b>Reception Sponsored by PointRight Inc.</b> (attendees, speakers, children, registered spouses and guests welcome)					

## Program at a Glance

**Thursday, February 18, 2010**

7:00 am– 5:35 pm	<b>Registration and Information</b>					
7:00– 8:30 am	<b>Continental Breakfast Sponsored by PointRight Inc.</b> (attendees, speakers, children, registered spouses and guests welcome)					
<b>Please note the start times of the following sessions</b>						
8:00– 9:30 am Extended Sessions	<b>A. Healthcare Reform Update</b> (repeat) (AL/NF/HH)  <i>Cade Hunter Morton</i>	<b>B. Assisted Living Update</b> (repeat) (AL)  <i>Bersani Kyllo Polzer</i>	8:30– 9:30 am	<b>F. Compliance Program Realities within the Homecare Business Operations</b> (not repeated) (HH)  <i>Camperlengo</i>	<b>G. Minimizing Risk in a Wireless World</b> (not repeated) (AL/NF)  <i>Purtell Turner</i>	<b>H. Preparing for the MICs</b> (NF)  <i>Field Sanders</i>
9:45– 10:45 am	<b>J. Chronic Care Coordination: Home Care as Part of the Solution</b> (not repeated) (HH)  <i>Pyles</i>	<b>K. Sex, Drugs and Rock'n Chairs</b> (not repeated) (AL)  <i>Cope Goldman</i>	<b>L. Are Your Stars in Alignment? Strategies for Dealing with the Five-Star Nursing Home Quality Rating System</b> (NF)  <i>Littlehale Miles</i>	<b>M. Legal Ethics: Dilemmas in Long Term Care</b> (AL/NF/HH)  <i>Hessler Voigt</i>	<b>N. Medicaid Rates for Nursing Facilities</b> (NF)  <i>Duffy Reagan</i>	
11:00 am– 12:00 noon	<b>O. Managing the Immediate Jeopardy, Termination and Facility Closure Process</b> (not repeated) (NF)  <i>Tyler</i>	<b>P. HUD Financing for Long Term Care and Senior Housing Facilities</b> (AL/NF)  <i>Barach</i>	<b>Q. Accounts Receivable: Successful Strategies for Payment</b> (AL/NF)  <i>Rodè</i>	<b>R. Documentation Wake Up Call: How to Prevent Document Deficiencies</b> (AL/NF/HH)  <i>Chiles Malone</i>	<b>S. Compliance Programs: Meeting the Expectations</b> (NF)  <i>Gillin Whittle</i>	
12:00 noon– 1:30 pm	<b>Lunch on your own or attend the Long Term Care, Senior Housing, In-Home Care and Rehabilitation Practice Group Luncheon sponsored by The Compliance Store and HealthCare Case Law LLC</b> (additional fee; limited attendance; pre-registration required – see p. 19)					
1:45– 2:45 pm	<b>T. CCRCs and Assisted Living Facilities – Repositioning, Turn-Arounds and Closures</b> (not repeated) (AL)  <i>Gordon</i>	<b>U. Controlled Substances in LTC: DEA Enforcement Developments</b> (not repeated) (NF)  <i>Breitfeller Mathis</i>	<b>V. Hospice Update – What's Old, What's New and What's Projected</b> (AL/NF/HH)  <i>Cook</i>	<b>W. The Medical Director and SNF/ALF Relationship: Contractual, Regulatory and Clinical Perspectives</b> (NF/AL)  <i>Henry Reeves</i>	<b>X. In the Crosshairs: The Intersection of Management Prerogative and Resident Demand in Assisted Living Facilities, Skilled Nursing Facilities and Home and Community Based Service Programs</b> (NF/AL/HH)  <i>Lax Wisner</i>	

*Continued, next page*

## Program at a Glance

**Thursday, February 18, 2010** (continued)

2:55– 3:55 pm	<b>Y. The Office of the Medicaid Inspector General and Medicaid Provider Compliance in New York: Right on Target or Missing the Mark?</b> (not repeated) (NF/HH)  <i>Burke Ross</i>	<b>Z. What Is Aging in Place and When Is It a Viable Option in CCRCs and ALFs?</b> (not repeated) (AL)  <i>Krisztal Maag</i>	<b>AA. National Healthcare Reform: Implications for Long Term Care</b> (AL/NF/HH)  <i>Bernstein Hamme</i>	<b>BB. Quality of Care; Failure of Care; False Claims Act Review and Update</b> (NF/HH)  <i>Segroves Sollins</i>	<b>CC. Recent Developments in Labor and Employment Law for Long Term Care Institutions</b> (AL/NF)  <i>Nicolini Leebron</i>	
<b>Please note the end times of the following sessions</b>						
4:05– 5:05 pm	<b>DD. Fair Housing Challenges in Assisted Living and Independent Living Providers</b> (not repeated) (AL)  <i>Dale</i>	<b>EE. Residents with Behavioral Issues and Other Mental Health Conditions and Long Term Care</b> (not repeated) (AL/NF/HH)  <i>Tettlebaum</i>	<b>FF. RAC Tools: How to Prepare Your Clients for RAC Audits</b> (HH/NF)  <i>Brown Kutschbach</i>	4:05- 5:35 pm  Extended Sessions	<b>D. Hot Topics: SNF/ NF Legislative, Regulatory and Case Law Updates</b> (repeat) (NF)  <i>Hilliard Feldkamp</i>	<b>E. Case Law Update</b> (repeat) (AL/NF/HH)  <i>Cusic Goldsmith</i>
5:05– 6:30 pm	<b>Reception Sponsored by PointRight Inc.</b> (attendees, speakers and registered spouses and guests welcome)					

**Friday, February 19, 2010**

7:30 am– 3:25 pm	<b>Registration and Information</b>				
7:30– 8:30 am	<b>Continental Breakfast Sponsored by PointRight Inc.</b> (attendees, speakers, children, registered spouses and guests welcome)				
8:30– 9:30 am	<b>GG. Legal Ethics of Investigations</b> (not repeated) (AL/NF/HH)  <i>Kiefer</i>	<b>HH. Navigating the TRICARE Hearings and Appeals Process</b> (not repeated) (NF)  <i>Berchem Donahue</i>	<b>JJ. State Medicaid Home Health Agency Inspections, Deficiencies, Plans or Corrections, Notices of Infractions and License Revocations</b> (not repeated) (HH)  <i>Grant</i>	<b>X. In the Crosshairs: The Intersection of Management Prerogative and Resident Demand in Assisted Living Facilities, Skilled Nursing Facilities and Home and Community Based Service Programs</b> (repeat) (AL/NF/HH)  <i>Lax Wisner</i>	<b>FF. RAC Tools: How to Prepare Your Clients for RAC Audits</b> (repeat) (HH/NF)  <i>Brown Kutschbach</i>

Continued, next page



## Program at a Glance

**Friday, February 19, 2010** *(continued)*

9:40– 10:40 am	<b>KK. Dementia Care in Assisted Living</b> (not repeated) (AL)  <i>Meng</i>	<b>LL. Payment and Referral Relationships in Home Health – Recent Developments in Florida and Federal Law</b> (not repeated) (HH)  <i>Imperato Senior Smith</i>	<b>H. Preparing for the MICs</b> (repeat) (NF)  <i>Field Sanders</i>	<b>M. Legal Ethics: Dilemmas in Long Term Care</b> (repeat) (AL/NF/HH)  <i>Hessler Voigt</i>	<b>S. Compliance Programs: Meeting the Expectations</b> (repeat) (NF)  <i>Gillin Whittle</i>
10:50– 11:50 am	<b>MM. Benefits and Liability of Health Information Technology in Home Health and Hospice</b> (not repeated) (HH)  <i>Randall</i>	<b>NN. Legal and Practical Considerations for Implementation of EHR for LTC</b> (not repeated) (NF)  <i>Harris</i>	<b>OO. Tax Credits and Government Subsidies for Long Term Care and Housing Development</b> (not repeated) (AL/NF)  <i>Clancy</i>	<b>AA. National Healthcare Reform: Implications for Long Term Care</b> (repeat) (AL/NF/HH)  <i>Bernstein Hamme</i>	<b>CC. Recent Developments in Labor and Employment Law for Long Term Care Institutions</b> (repeat) (AL/NF/HH)  <i>Leebron Nicolini</i>
11:50 am– 1:05 pm	<b>Lunch on your own or attend the Labor and Employment Practice Group Luncheon</b> (additional fee; limited attendance; pre-registration required – see p. 19)				
1:15– 2:15 pm	<b>L. Are Your Stars in Alignment? Strategies for Dealing with the Five-Star Nursing Home Quality Rating System</b> (repeat) (NF)  <i>Littlehale Miles</i>	<b>N. Medicaid Rates for Nursing Facilities</b> (repeat) (NF)  <i>Duffy Reagan</i>	<b>Q. Accounts Receivable: Successful Strategies for Payment</b> (repeat) (NF/AL)  <i>Rodè</i>	<b>BB. Quality of Care; Failure of Care; False Claims Act Review and Update</b> (repeat) (NF/HH)  <i>Segroves Sollins</i>	
2:25– 3:25 pm	<b>P. HUD Financing for Long Term Care and Senior Housing Facilities</b> (repeat) (AL/NF)  <i>Barach</i>	<b>R. Documentation Wake Up Call: How to Prevent Document Deficiencies</b> (repeat) (NF/HH)  <i>Chiles Malone</i>	<b>V. Hospice Update – What's Old, What's New and What's Projected</b> (repeat) (HH/NF)  <i>Cook</i>	<b>W. The Medical Director and SNF/ALF Relationship: Contractual, Regulatory, and Clinical Perspectives</b> (repeat) (NF/AL)  <i>Henry Reeves</i>	

## Program Information

**Dates:** February 17-9, 2010

**Place:** Doral Golf Resort & Spa  
4400 87th Avenue  
Miami, FL 33178

**Phone:** (305) 592-2000

**Reservations:** (800) 713-6725

### Registration Fees:

**All members of AHLA, AAHSA, AHCA, ALFA, ASHA, FAHA, FL Bar Health Law Section, NAHC and NCAL are entitled to member rates.**

### Postmarked and paid by January 27, 2010

\$790 For the first Member

\$715 For each additional Member

\$690 For In-House Counsel Members

\$1015 Non-Members

\$550 Non-Attorney Providers

### Postmarked and paid between January 28 and February 11, 2010\*

\$915 For the first Member

\$940 For each additional Member

\$690 For In-House Counsel Members

\$1140 Non-Members

\$550 Non-Attorney Providers

Printed Course Materials: \$75

\* Registration fees increase \$125 after this date.

If you have indicated an incorrect amount due to errors in addition or not being eligible for a specific rate, AHLA will charge the correct amount to the credit card you have supplied.

**Discounted Registration Fees:** Government employees, academicians, solo practitioners and students: please call (202) 833-1100, prompt #2 for special discounted registration fees.

**Spouse/Guest Fee:** For an additional \$75 spouses and adult guests can register to attend the receptions on Wednesday and Thursday evenings and the breakfasts on Thursday and Friday mornings. Please sign up on the registration form on page 19 (Children are welcome to attend at no additional charge).

**Continuing Education:** Participants will be given continuing education forms at the program. Forms must be completed and returned to AHLA staff to receive credit. AHLA is an approved sponsor of continuing legal education credits in most states. This seminar will be worth approximately 17.75 continuing education credits (including 2.0 ethics credit) based on a 60-minute hour and 20.7 credits (including 2.4 ethics credits) based on a 50-minute hour. This seminar will be worth approximately 17.0 nursing home administrator 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 Avenue North, Suite 700, Nashville, TN 37219-2417. Web site: [www.nasba.org](http://www.nasba.org). This seminar will be worth approximately 21.0 CPE credits.

There are no prerequisites or advanced preparations required to register for this group live program. Sessions are intermediate or advanced unless otherwise noted. Those seeking accounting credits should be familiar with the concepts of law and terminology associated with the area of long term care in order to obtain the full educational benefit of this program.

**Hotel Reservations:** Hotel accommodations are not included in the registration fee. To make a reservation call the Doral Golf Resort & Spa at (305) 592-2000 by January 27, 2010. *When calling, please indicate that you are attending the AHLA program to get a room in the AHLA block at a rate of \$199 single or double occupancy. Rooms at the group rate are limited and may sell out.*

**Membership:** Dues are \$185 for those admitted to the Bar/graduated from college within the last four years; \$300 for those admitted/graduated more than four but less than eight years ago; and \$345 for those admitted/graduated eight or more years ago. Dues are \$155 (or \$75 for electronic benefits) for government employees and full-time academicians; and \$15 for full-time law school students to receive benefits electronically. 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 *no later than February 10, 2010*. 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 the Member Service Center at (202) 833-1100, prompt #5. Please note that registration fees are based on the membership status of the individual who actually attends the program.

**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](mailto:veshleman@healthlawyers.org).

**Travel:** Association Travel Concepts (ATC) has negotiated discounts with United Airlines, Enterprise and Avis Rental Car to bring you special airfares and car rental rates lower than those available to the public. Some restrictions may apply and a service fee may apply. ATC will search for the lowest available fare on any airline.

### ASSOCIATION TRAVEL CONCEPTS

1-800-458-9383

email: [reservations@atcmeetings.com](mailto:reservations@atcmeetings.com)

Online: <http://www.atc.meetings.com/ahla>

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

## Program Registration Form – Long Term Care

**To register:** Remit payment and completed registration form by mail to the American Health Lawyers Association • P.O. Box 79340 • Baltimore, MD 21279-0340 or fax with credit card information to (202) 775-2482. To register by phone call (202) 833-1100, prompt #2. To register online go to [www.healthlawyers.org/programs](http://www.healthlawyers.org/programs).

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Name: \_\_\_\_\_ Member ID #: \_\_\_\_\_  
 First Name for Badge (if different than above): \_\_\_\_\_ Spouse/Guest Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Organization: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP+ 4: \_\_\_\_\_  
 Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
 E-Mail: \_\_\_\_\_

All members of AHLA, AAHSA, AHCA, ALFA, ASHA, FAHA, FL Bar Health Law Section, NAHC and NCAL are entitled to member rates

**Early Registration Fees (faxed/postmarked and paid on or before January 27, 2010):**

Members:  \$790      In-House Counsel Members:  \$690      Non-Members:  \$1015

\$715 each additional member registering from same organization at same time on the same check or credit card payment       \$550 Non-Attorney Provider

**Registration Fees (faxed/postmarked and paid between January 28 and February 11, 2010):**

Members:  \$915      In-House Counsel Members:  \$690      Non-Members:  \$1140

\$940 each additional member registering from same organization at same time on the same check or credit card payment       \$550 Non-Attorney Provider

I will require:  audio  visual  mobility  I have special dietary needs  other assistance \_\_\_\_\_

I am a Member of:  AHLA       AAHSA       AHCA       ALFA       ASHA       FAHA  
 FL Bar Health Law Section       NAHC       NCAL

### PAYMENT INFORMATION

Please fill in applicable amount: (Sorry! Registrations cannot be processed unless accompanied by payment.)

\$ \_\_\_\_\_ Registration Fee

\$ \_\_\_\_\_ Interactive Discussion Group (\$40) (Wednesday, February 17) (please indicate group you plan to attend)

1. Advanced Survey Enforcement       3. Nursing Facility In-House Counsel  
 2. Conversations with Government       4. Assisted Living In-House Counsel

\$ \_\_\_\_\_ Long Term Care, Senior Housing, In-Home Care and Rehabilitation Practice Group Luncheon (\$35 for members of the LTC-SIR PG/\$45 for non-members of the LTC-SIR PG; Thursday, February 18)

\$ \_\_\_\_\_ Labor and Employment Practice Group Luncheon (\$35 for members of the Labor PG/\$45 for non-members of the Labor PG; Friday, February 19)

\$ \_\_\_\_\_ Printed Course Materials (\$75)

\$ \_\_\_\_\_ Spouse/Guest Fee (\$50)

\$ \_\_\_\_\_ Membership Dues (Date admitted to the bar/graduated:   /   /   )

\$ \_\_\_\_\_ Total Enclosed

Check enclosed (Make checks payable to American Health Lawyers Association)

Bill my credit card:          

Number: \_\_\_\_\_ Exp. Date:   /   /

Name of Cardholder: \_\_\_\_\_

Signature of Cardholder: \_\_\_\_\_

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**Discounted Registration Fees:** Government employees, academicians, solo practitioners and students: please call for special discounted fees.

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### Printed Course Materials

All attendees will receive an electronic version of the full set of course materials for the program. If you would like to purchase a binder, please indicate that below:

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