

Schedule

The planning committee has finalized the sessions and speakers for the program. The timeline for the program is below. We will offer 22 in-depth sessions covering litigation, regulatory, risk management, patient care, and more. In addition, 4 sessions will be offered on demand, where attendees can watch the presentation on their own time. The difference between the a live session and an on-demand session is the live sessions include an interactive speaker/attendee question and answer feature.

[Continuing education credits](#) (CLE, CPE, and CCB) are available for the sessions being presented on March 3-4 as well as for any on-demand sessions that you watch. AHLA will also offer continuing education credits for those attending the Assisted Living In-House General Counsel Roundtable being hosted by NCAL on March 2.

Attendees can access program materials, continuing education information, and networking opportunities on the [Attendee Website](#). This site is for attendees only and you must be logged in to access it.

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

Tuesday, March 2, 2021

(This session is being hosted by National Center for Assisted Living (NCAL) and for In-House General Counsel only. Those registering will receive information from NCAL on how to access the session. The session will only be available live and not recorded. Pre-registration is required.)

1:00 pm-3:00 pm Eastern

Assisted Living In-House General Counsel Roundtable Panel Presentation, Discussion, and Small Group Breakouts

COVID-19 & Assisted Living Panel Presentation and Discussion, followed by small group breakouts

Barbara J. Duffy (Moderator)

Dr. David Gifford, AHCA/NCAL

Mark Reagan, Hooper Lundy & Bookman
Christine Thelen, Lane Powell

Wednesday, March 3, 2021

(Live Speaker Q&A available during the scheduled time; All sessions are available the next day to watch on demand)

11:00 am-12:15 pm Eastern

1. What the New Administration Means to the Long Term Care Industry

Barbara J. Duffy (Moderator)

James Balda

Mark Parkinson

David S. Schless

Katie Smith Sloan

- Hear from influential voices in the industry about the following:
 - When will the sector be out of the pandemic's danger zone
 - What are the lasting effects of the pandemic on Long Term Care and Seniors Housing
 - What do they expect from the Biden Administration for the sector
 - What they are optimistic about
 - What challenges exist
 - What are the next opportunities for the sector in the next 5 years

12:30-1:30 pm Eastern

2. Business as Unusual: Navigating the Employment Challenges Posed by COVID-19 (AL, SNF)

3. The Intersection of Regulatory and Personal Injury Considerations- Practical Considerations and the Focused Infection Control Survey (SNF)

4. Update on Skilled Nursing Abuse and Neglect (SNF)
Sean J. Fahey
Chantelle Smith

Marti Downey
Devjani H. Mishra

- Update on COVID-19 vaccine distribution and considerations related to workplace vaccine programs
- OSHA and state workplace safety guidance
- New and continuing leave of absence and accommodation requirements
- Reassessing workforce strategies for 2021 and beyond

Joseph L. Bianculli
Brittany H. Cone

- What sorts of cases raise (or should raise) red flags for both regulatory and defense counsel?
- Trends regarding use of survey reports to support personal injury cases, including claims of “systemic” problems
- Coordination of discovery, experts, and defense theories
- Structuring an administrative appeal—how to “not make things worse”
- Collateral effects of bad surveys—Five Star, Special Focus, disqualification from demonstration projects, financing, etc.
- Realistic outcomes

Update on Abuse and Neglect

- Recent issues in abuse and neglect citations and DAB decisions
- Update on CMS "Red Hand" Icon
- Current regulatory requirements for abuse and neglect prevention and reporting for long term care
- Develop an understanding of the requirements for policies and procedures for abuse, neglect and misappropriation of funds

1:45-2:45 pm Eastern

**5. Government Overreach in Survey Enforcement -
Tales from the Trenches
(SNF)**

Alan C. Horowitz
Mark A. Yost

- Hypothetical example of government regulatory actions drawn from real-world examples
- The use of Section 1983 to combat regulatory overreach
- Appeals to the DAB and an interacting with CMS regional offices
- The SFF program and utilization of IDR and IIR program in achieving graduation

**6. Medical Marijuana: Legal and Practical
Considerations for Long Term Care Providers
(AL, SNF, HH)**

Ashlee M. Gray
Aleah M. Schutze

- State and federal marijuana laws with a particular focus on the conflicts between those laws and what that means for long-term care providers
- Legal risks and compliance issues for providers that allow the use of medical marijuana in their facilities
- Medical marijuana policies adopted by health care providers

**7. Aligning Expectations in Senior Living: Using
Waivers, Negotiated Risk Agreements, and
Attestations to Mitigate Risk During COVID-19
(AL, SNF)**

Tara Clayton
T. Andrew Graham
Melissa Solomon

As senior living communities reopen to visitors and third-parties with continued uncertainty, there are many potential areas of liability exposure related to SARS-CoV-2 (“COVID-19”) to consider. A community should be aware of the tools available to mitigate the risk of liability not only from residents, but also visitors and third-party vendors. This session will provide participants with

- How to address the issue of overzealous or unfair survey practices

- Best practices for providers on topics such as storage and administration of medical marijuana, patient safety, and employment issues

current trends and legal/regulatory developments in the use of waivers, informed consents and attestations in senior living communities. The session will cover:

- When to consider COVID-19 specific liability waivers
- Using informed consents focused on pandemic-related concerns to align expectations and strengthen the care partnership
- The use of attestations as a risk mitigation tool
- Recent developments in state and federal immunity legislation and the practical impact of these on waivers, informed consents, and attestations
- Developments in PREP Act defense arguments and strategies

3:00-4:00 pm Eastern

8. Is the Aseracare Precedent In Jeopardy? The United States Supreme Court Weighs In (HH)

Nicholas A. Danella
Bryan Nowicki

- The 11th Circuit's 2019 "Aseracare" case significantly benefited health care providers in False Claims Act cases
- The 3rd Circuit's 2020 "Care Alternatives" case rejected Aseracare, and is now the subject of a Petition for Certiorari to the United States Supreme Court
- Two attorneys involved in the Aseracare and Care Alternatives appeals, respectively, will analyze the

9. Effective Defenses to COVID-19 Regulatory Citations and Wrongful Death Lawsuits (SNF)

Christy Tosh Crider
Dr. Morgan J. Katz

- The COVID-19 pandemic has presented an ever-changing set of guidance
 - Unpack the timeline of the pandemic, including varying access to resources, differences between state and federal regulations, and changes regarding our understanding of transmission of Sars-CoV-2

10. Legal Ethics: Conducting a COVID-19 Investigation—Ethical and Practical Considerations

Caroline J. Berdzik
Minton P. Mayer

- The ethical and practical implications of conducting an investigation related to COVID-19 and best practices to preserve privilege, identify potential conflicts of interests and preserve state immunity
- How to conduct effective interviews of staff and the ethical issues related to ensuring security and confidentiality while conducting interviews and investigations remotely

implications of that review and a possible Supreme Court Decision. In doing so they will discuss:

- The groundbreaking significance of the Aseracare decision
- The more recent Care Alternatives decision and the substantive areas of disagreement between it and Aseracare
- The consequences of the current circuit split and the practical effect of this circumstance for providers and their attorneys

- How your communities should be preserving each version of your COVID-19 response plan in order to mount an effective defense

- How to best utilize your infectious disease expert witness in order to defeat a claim
- Spot issues now that you are likely to face in claims down the road so that your documentation sets you up for success
- Results of exemplar attempts to appeal immediate jeopardy citations for infection control surveys as well as strategies likely to be successful in professional liability claims

- Ethically managing regulatory issues and potential malpractice liability for infection control and how to document the investigation to protect against survey deficiencies and liability issues
- Unique issues related to vulnerabilities caused by third-party facility providers such as NP's, MD's, consultants and outside rehabilitation providers during the investigation process and unique ethical issues arising from communicating with outside providers

4:00-4:45 pm Eastern

We are offering two Interactive Networking Sessions

Interactive: General Counsel Roundtable (In-House Counsel Only) (Max. 40 participants)

Facilitated by David Beck

or

Open Interactive Networking and Engagement Discussion (All invited)

Moderated small groups

(These event are included in the program registration; pre-registration required for either event)

Thursday, March 4, 2021

(Live Speaker Q&A available during the scheduled time; All sessions are available at the end of the day to watch on demand)

10:00-10:45 am Eastern

Coffee and Conversations

Start the day by connecting with your colleagues over coffee (or tea). Hosted by our PALS Practice Groups, virtual Zoom Rooms will be open based on a topic. More information on the topic will be available soon.

(This event is included in the program registration; pre-registration required)

11:00 am-12:00 noon Eastern

11. Recent Developments in Personal Care and Other Home and Community Based Services in the Medicaid and Medicare Advantage

(HH)

Michael H. Cook
Anne Tumlinson

- 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

12. Nursing Home Legislative Update: How COVID Upended Policy and Advocacy in 2020 and What to Think About for 2021

(SNF)

Evelyn Fortier
Marsha R. Greenfield

- The key issues impacting nursing homes that underlay advocacy and policy as the COVID pandemic took hold
- FFCRA and the impact of paid leave
- CARES Act and nursing homes: Provider relief fund, PPP, testing
- Bills left on the cutting room floor: Liability; state and local aid; elder justice writ large; nursing home specific assistance
- Kirkland and the drumbeat of bad publicity: Impact on Congress?
- Looking ahead: New Administration; new Congressional leadership—what to expect?

13. Legal Liability Considerations Arising Out of Telehealth Interactions

(AL, SNF, HH)

Allison M. Cohen
Kenita P. Hill

This presentation will provide an overview of key legal considerations applicable to telehealth, emerging areas of legal liability and scrutiny, as well as insights into enforcement trends. Topics covered will include the following:

- State laws on telehealth, licensure, and where the practice of medicine occurs
- The PREP Act and how it applies to telehealth services
- Reimbursement for telehealth services, waiving coinsurance and copays, and beneficiary inducement considerations
- Fraud and Abuse considerations associated with providing access to telehealth equipment, software, and devices for remote monitoring
- HIPAA compliance and privacy and security laws applicable to telehealth interactions

14. The Current State of Government Audits and the Medicare Appeals Process (HH)

R. Ross Burris
Andrew B. Wachler

- Various audit entities and audit types: OIG, RAC, UPIC, CERT, SMRC, TPE
- Audit process from initial findings
- The 5 stages of the Medicare appeal process for overpayment determinations
- Suspensions and revocations
- Long term care risk issues

15. Helping Long-Term Care Facilities Restore Financial Health Amid COVID-19 Challenges (AL, SNF)

David W. McMillan
Joseph J. Tomaino
Kristina M. Wesch

- Resource Utilization
 - Costs / Utilization: Cost management and prioritization through implementation of a rigorous cash and vendor management program, while aligning expenses with occupancy and revenue
 - Evaluating legal risks and solutions associated with vendor demands, payment timing, and avenues of relief
- Value Realization
 - Revenue / Market: Evaluating opportunities to improve documentation, ensure appropriate recognition and receipt of documented services (revenue cycle integrity), evaluating additional services and associated revenue streams, and analyzing clinical program effectiveness
 - Evaluating legal, compliance, and licensure issues associated with new clinical streams, revenue opportunities
 - Capital Rationalization
 - Financing / Funding: Access financing options through current lenders, new funding sources, and merger opportunities

16. The Reckoning: Long Term Care Facility Compliance and Enforcement Post-Pandemic (SNF)

Randall R. Fearnow
Brian A. Smith

- The pandemic was devastating for many long-term care facilities
- Systems designed to protect fragile populations failed in most areas of the U.S.
- As providers seek to insulate themselves from private litigation they will be forced to contend with government enforcers intent on punishment
- Will post-pandemic economic and regulatory pressures drastically change the provision of long term care?
- Disease control in long-term care facilities as a case study of compliance and enforcement

- Legal considerations associated with bond financing and other private/public funding sources

1:30-2:30 pm Eastern

17. How Escobar Can Strengthen Overpayment Appeals: Materiality as a Defense and Claiming “Offsets” to Retain Value (AL, SNF, HH)
Alice V. Harris

- Escobar and the concept of “materiality” in the context of defending provider overpayment appeals
- How Escobar can be used in overpayment appeals, and the “death” of technical denials
- Understanding the concept of “offsets” and how a claim for “offsets” can be used to retain the value of medically necessary services rendered in overpayment appeals
- How cases interpreting the Escobar decision support provider claims for offsets
- How to support arguments for “offsets” through financial and clinical appeal presentations

18. Unrepresented Residents: How Can Bioethics Improve Compliance and Risk Management? (SNF)
Thaddeus Mason Pope
Christine J. Wilson

- Value of Bioethics: How bioethics committees and clinical ethics consultants advance risk management and compliance objectives in the post-acute and long-term care setting
- Key Guidance: New laws, regulations, and policy statements on decision making for incapacitated residents without surrogates (so-called unrepresented or unbefriended residents)
- Role of Bioethics: How bioethics protects resident rights, especially those regarding informed consent and end-of-life treatment
- Surrogates and Proxies: How bioethics helps identify surrogate decision makers and resolve surrogate conflicts without the time and expense of guardianship or conservatorship
- Implementation Strategies: Helpful pointers and considerations for establishing a bioethics committee or for contracting for clinical ethics consultation services

19. Anatomy Of A Manslaughter: Criminal Liability And Other Risk Management Issues In Assisted Living (AL)
Joel S. Goldman

People v Skiff is a seminal case in which the owner of an assisted living community was convicted of involuntary manslaughter following the death of a dementia resident who was struck by a car. The discussion will focus on:

- Details of the case including the Court of Appeal decision
- Areas of potential risk for AL operators/executive directors
- How to avoid these pitfalls
- Increase in instances of physical elder abuse and abuse reporting obligations

2:45-3:45 pm Eastern

20. Developing Specialty Units in Skilled Nursing Facilities: A Discussion of Regulatory and Other Aspects (SNF)

David C. Beck
Christopher C. Puri

This session will provide an advanced discussion about challenges and trends related to the development of “specialty units” in long term care facilities. The session will seek to cover the following issues:

- Types of specialty services SNF operators are developing
- Major obstacles or challenges within federal regulations that impede development of specialty services
- Examples of states or other situations where specialty units have succeeded
- Operational competencies needed before developing specialty units
- How to evaluate a partnership with another organization in a specialty unit

The program is designed to be a high-level program where the audience will already have a basic level of knowledge of long-term care regulations and some experience with facility operations and regulations.

21. Acquisition of Home Health and Hospice Agencies (HH)

Michael R. Crowe
Timothy Ryan

Attorneys and other professionals who work in mergers and acquisitions generally are often surprised at the business, compliance, and regulatory issues associated with the acquisition of home health and hospice agencies. The program will identify those issues and offer some solutions. Topics covered:

- The LOI
- Due Diligence, things to look for
- Program and licensing enrollment issues
- What to do about Managed Care Agreements
- The Purchase Agreement
- Post closing issues

22. Accounts Receivable: Successful Strategies for Payment / Raining on the Parade: Strategies When Nursing Home Residents Don't Pay for Their Stay (SNF)

Kyle R. Rene
Robert F. Rodè

- Common non-payment situations that arise in long term care settings
- State-specific considerations which may inform a provider's strategy in addressing a non-payment issue (including Medicaid rules, application time frames, and retroactive coverage)
- Strategies to resolve a non-payment issue or negotiate for payment, including creative non-litigation solutions such as mortgages and assignments of insurance, as well as strategies which may be available through the courts (e.g., guardianship, injunctive relief, etc.)
- Federal law and regulations regarding payment, discharge requirements, and case law on liability of responsible parties and powers of attorney, including discussion of an illustrative Minnesota Court of Appeals decision
- A model admission contract that complies with federal law and includes fees and costs of collection
- Long-term operational best practices for facilities to prevent aged receivables

On Demand Offerings

(Does not include Speaker Q&A; All on demand sessions are available to watch on demand starting March 3)

I. Case Law Update

Kara G. Silverman

Nicholas T. Stone

- False Claims and other fraud and abuse litigation
- Arbitration agreement litigation
- Data breach and HIPAA enforcement actions
- General litigation developments
 - COVID-19 litigation
 - Fair Housing Act and Americans with Disabilities Act developments

II. Home Health Legislative and Regulatory Update

William A. Dombi

- The 2020 Medicare home health payment system first year impact and issues raised
- Medicare Review Choice Demonstration for home health service operation and planned expansion
- Medicare Home Infusion Therapy new benefit
- Medicare home health and hospice regulatory flexibilities and burden reduction during the PHE, including telehealth
- Non-physician practitioner certification authority under Medicare home health
- Hospice quality of care and survey reforms
- Medicare waiver and addendum notice requirements in hospice
- Medicare Advantage home care related supplemental health
- MedPAC recommendations on home health and hospice reforms

III. Survey and Enforcement During COVID and What Providers Can Expect Going Forward

Michele A. Conroy

Sara A. Rudow

- New developments in SNF survey and enforcement as a result of the COVID-19 Pandemic
- Changes to survey and enforcement policies over the last year and how those have impacted providers and are expected to continue to affect providers
- Update on pending or anticipated CMS survey and enforcement initiatives and how those changes may affect providers

IV. Fundamentals of Medicare and Medicaid Reimbursement in Long Term Care

Marian J. Hayden

Nathan D. Sargent

- 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