

A vertical red sign with gold trim and white lettering spelling 'CHICAGO' is on the left. The background shows a city street with various buildings, including a prominent blue glass skyscraper on the right.

# Payors, Plans and Managed Care Law Institute

October 26-27, 2009  
Westin Michigan Avenue  
Chicago, IL



AMERICAN  
**HEALTH LAWYERS**  
ASSOCIATION

**Planning Committee:**

Gary Scott Davis, Esq. – Program Chair  
David Abelman, Esq.  
Kevin D. Gordon, Esq.  
Lisa A. Hathaway, Esq.  
James P. Wolf, Esq.

## Program Agenda

**Monday, October 26, 2009**

7:00 am-5:30 pm

### Registration and Information

7:00-8:00 am

### Continental Breakfast

(attendees, speakers and registered spouses and guests welcome)

### GENERAL SESSION

8:00-8:15 am

#### Welcome and Introductions

*Gary Scott Davis, Program Chair*

*Gerald M. Griffith, AHLA President-Elect Designate*

8:15-9:45 am

#### Healthcare Reform: Implications for Plans, Payors and Providers

*Senator David Durenberger (Moderator)*

Chair National Institute of Health Policy, Former Senator

*Felicien (Fish) Brown, Director, Federal Relations, Kaiser Permanente*

*Alissa Fox, Senior Vice President, Office of Policy and Representation, Blue Cross and Blue Shield Association*

*Catherine I. Hanson, Vice President, American Medical Association*

*Steve B. Kelmar, Senior Vice President, Government Affairs and Public Policy, Aetna*

*Michael F. Rodgers, Senior Vice President, Advocacy/Public Policy, Catholic Health Association*

### CONCURRENT SESSIONS

10:15-11:15 am

#### A. The Role of ERISA in Healthcare Reform

(not repeated)

*John Blum*

- Update on ERISA preemption law
- What self-funded plans are doing currently in anticipation of health reform
- Changes in self-funded retiree health
- Where are we with health reform?

#### B. The Evolution of Coverage and Payment for the Services of "Out-of-Network" (ONET) Providers in Managed Care Plans

*Barbara G. Quackenbos*

*Linda V. Tiano*

- The use of variable coverage language (UCR, MAC etc.) in health insurance policies – what it said and what it was supposed to mean
- The impact on health plan members and providers
- The resulting lawsuits, Attorney General investigations, Congressional investigations and regulatory response
- How all of this will change health insurance (or not)

#### C. Fraud, Waste, and Abuse Detection for Managed Care Plans: The Intersection of Compliance Imperatives and Reality (advanced)

*Nicholas Messuri*

*Steve E. Skwara*

- Government-imposed compliance imperatives to monitor and detect fraud, waste, and abuse ("FWA") by providers
- FWA reporting requirements for managed care plans: What, when, and to whom?
- The practical issues and challenges that arise when a managed care plan detects possible FWA by a provider
- The pros and cons, based on real-life experiences, of various approaches to resolving disputes with providers involving potential FWA

11:25 am-12:25 pm

#### D. Payment Litigation Other than UCR (not repeated)

*Steven M. Ziegler*

- Silent PPOs
  - Do silent PPOs violate ERISA?
  - Current status of class action litigation
  - State legislation aimed at stopping silent PPOs
- Waiver of co-payments by providers
  - Current litigation trends
  - Consequences of co-payment waiver on the healthcare community
  - State and federal reaction to issue

#### E. Compliance in a Challenging Environment: Why Does Everyone Want Your Money?

(advanced)

*Robert E. Slavkin*

- Highlights of current fraud and abuse flashpoints, including Medicare audits and government task forces

## Program Agenda

- Who's looking: CMS, MEDICS, ZPICS, OIG, DOJ, AGs
- Potential risk areas – OIG Workplan, Attorney General investigations, Congressional inquiries, recent settlements
- Best practices for compliance

### F. Innovative Approaches to Care

*Gary Scott Davis*

*Laura Merten*

- New (re-designed) delivery models emerging from healthcare reform initiatives, including medical homes and accountable care organizations
- The implications of these emerging models for hospital and physician relationships
- How emerging models of care can affect reimbursement with a focused analysis on the Geisinger-ProvenCare model
- A case-study regarding the development, adoption and use of retail clinics

12:25-1:45 pm

**Lunch on your own or attend the Payors, Plans, and Managed Care Practice Group Luncheon** (additional fee, limited attendance, pre-registration required)

**Settlement Impact on AWP Drug Pricing for Payors, Pharmacies, PBMs, and Consumers – Part Two**

*Todd M. Ebersole, Esq.* (Moderator)

Vice President and Senior Associate General Counsel, Prescription Solutions, a UnitedHealth Group Company, Irvine, CA

*Suzanne E. Broderick, Esq.*

The Phoenix Law Group of Feldman Brown Wala Hall & Agena PLC, Scottsdale, AZ

*T. Reed Stephens, Esq.*

McDermott Will & Emery LLP, Washington, DC

### CONCURRENT SESSIONS

2:00-3:00 pm

### G. Hot Topics in Managed Care Antitrust

(not repeated)

*Robert F. Leibenluft*

- Health plan mergers – what to expect from the Obama DOJ
- Provider contracting issues
- Collaborations among plans to improve quality
- Implications of healthcare reform

### H. Fight or Flight: Medical Tourism's Implications for Providers and Plans

(not repeated)

*Mark S. Kopson*

- What is medical tourism?
- Potential problems, opportunities, and best practices for providers and plans
- What's on the horizon for medical tourism?
- Potential impact of healthcare reform on medical tourism

### J. Advanced Contracting in the Changing Healthcare Environment

*Jeanne M. Dunk*

*Lisa A. Hathaway*

- Boiler plate language remains an important focus
- Use of arbitration and other dispute resolution provisions
- Addressing bankruptcy, insolvency and cash flow issues for today's environment
- Preparing and dealing with changing industry standards in the managed care contract agreement (ICD 10, AWP rollback, technology, payment terms)
- Quality and safety initiatives and drafting for your managed care agreement (never events, utilization management, authorization, data sharing)
- Silent PPO legislation: Did it work?

3:15-4:15 pm

### K. Evolving Software and Hardware Issues

*Marilyn Lamar*

- Key issues in software licensing and hardware acquisition
- New developments
  - Open source software
  - Software as a Service (SaaS)
  - Cloud computing and virtualization
  - Transition from ICD-9 to ICD-10
- Contract strategies
  - To ease the eventual transition to a new vendor
  - To reduce risk if vendor is acquired or goes into bankruptcy
  - To provide flexibility for acquisitions and divestitures by plans

## Program Agenda

### L. Recent Non-Payment Related Cases, Developments, and Trends Impacting Providers, Plans and Managed Care

*Kevin D. Gordon*

- Benefits determinations: Medical necessity, covered services, experimental/investigational
- Post-claims rescission
- Physician tiering/ranking
- Arbitration
- PBM litigation
- ERISA update (anti-discretion statutes, any willing provider statutes, etc.)

### M. The Medicare Advantage and Part D Programs in an Era of Health Reform

*Anne W. Hance*

- CY 2010 Medicare Advantage payment reforms initiated by CMS, including the coding intensity and MSP adjustments
- Legislative proposals that are part of the health reform debate
- Regulatory initiatives currently underway, such as risk adjuster audits, and their effects on MAOs, Part D Plan Sponsors, and their network providers

4:30-5:30 pm

### N. Medicaid Managed Care – New Opportunities, New Challenges (not repeated)

*Robert M. Kessler*

- Implications of healthcare reform for Medicaid managed care
- Emerging models for patients with complex medical needs (medical home model, complex care case management, integrated care for dual eligibles)
- Recent legal challenges to Medicaid managed care (*G. v. Hawaii, Department of Human Services*)

### O. Contracting with the Medicare Advantage Organization: Providers, Suppliers and PBMs

*Maureen E. Corcoran*

- The regulatory issues facing the other side in order to effectively negotiate managed care agreements – when dealing with Medicare plans, the considerations may change from year to year

- Whether the plan is a Special Needs Plan, a Prescription Drug Plan or a Medicare dual eligible plan, the counsel for both the provider and plan need to be informed about CMS regulations and instructions
- Special considerations and the hot spots where contract negotiations sometimes falter
- Basic managed care plan contract terms and federal preemption
- Medicare Advantage regulatory flow down requirements – for providers and for suppliers
- Medicare Prescription Drug Plans – contracting with pharmacies and contracting with plan sponsors
- Fraud and abuse provisions
- HIPAA issues after 2009

### P. HITECH Act Changes to HIPAA: What They Mean for Health Plans

*Thomas D. Bixby*

*Deborah L. Marine*

- New breach notification obligations
- Issues with business associates and BA agreements
- New restrictions on using PHI for marketing
- What bigger penalties and more regulators mean for you

5:30-6:30 pm

#### Reception

(attendees, speakers and registered spouses and guests welcome)

## Tuesday, October 27, 2009

7:30 am-3:30 pm

#### Registration and Information

7:30-8:30 am

#### Continental Breakfast

(attendees, speakers and registered spouses and guests welcome)

Join the following groups for informal discussions during breakfast:

- Health Plan Affinity Group (launched in May 2009)
- Managed Care Contracting Affinity Group
- Healthcare Reform Educational Task Force
- Medicare Part D Task Force

## Program Agenda

### CONCURRENT SESSIONS

8:30-9:30 am\*

#### **Q. The Link between Quality and Medical Management**

*Rakal Meir*

*Paul W. Shaw*

- Health plan initiatives to improve the quality of care as well as reduce potential overutilization
- Physician tiering
- Prior authorizations
- “Never” events
- Disease management

#### **R. The Payment Puzzle: Innovative Strategies for Reforming Healthcare Payment**

*Jim Knutson*

*Leah Beth Stewart*

- Innovative payment arrangements, including bundled or episode payments, performance-based payment and gainsharing
- Certain laws that might impact innovative payment arrangements, including Stark, federal and state kickback prohibitions, and the Medicare patient inducement prohibition
- General framework to pilot projects currently underway
- Issues and barriers to implementation on the frontier of payment reform, including healthcare warranties and possible legal incentives for providers who practice evidence-based medicine

#### **K. Evolving Software and Hardware Issues** (repeat)

\* *If Federal healthcare reform legislation is passed prior to the program, a plenary session on the details of the legislation will be held during this time rather than the above concurrent sessions. Please note each of these sessions is being presented at some other time during the program and will be held at those times as scheduled whether or not the legislation passes.*

9:45-10:45 am

#### **S. Legal Ethics: Coverage Decisions in the World of Advanced Medical Technologies – Ethical Issues for Health Plan Attorneys** (not repeated)

*Nanette Elster*

*Kayhan P. Parsi*

#### **J. Advanced Contracting in the Changing Healthcare Environment** (repeat)

#### **L. Recent Non-Payment Related Cases, Developments, and Trends Impacting Providers, Plans and Managed Care** (repeat)

11:00 am-12:00 noon

#### **B. The Evolution of Coverage and Payment for the Services of “Out-of-Network” (ONET) Providers in Managed Care Plans** (repeat)

#### **C. Fraud, Waste, and Abuse Detection for Managed Care Plans: The Intersection of Compliance Imperatives and Reality** (advanced) (repeat)

#### **Q. The Link between Quality and Medical Management** (repeat)

12:00 noon-1:00 pm

**Lunch on your own**

### CONCURRENT SESSIONS

1:15-2:15 pm

#### **F. Innovative Approaches to Care** (repeat)

#### **M. The Medicare Advantage and Part D Programs in an Era of Health Reform** (repeat)

#### **R. The Payment Puzzle: Innovative Strategies for Reforming Healthcare Payment** (repeat)

2:30-3:30 pm

#### **E. Compliance in a Challenging Environment: Why Does Everyone Want Your Money?** (repeat)

#### **O. Contracting with the Medicare Advantage Organization: Providers, Suppliers and PBMs** (advanced) (repeat)

#### **P. HITECH Act Changes to HIPAA: What They Mean for Health Plans** (repeat)

### ADJOURNMENT

## Program Faculty

### PLANNING COMMITTEE

**Gary Scott Davis, Esq.**

*Program Chair*  
McDermott Will & Emery LLP  
Miami, FL

**David Abelman, Esq.**

Vice President, Deputy General Counsel and Foundation Executive Director  
Tufts Health Plan, Inc.  
Watertown, MA

**Kevin D. Gordon, Esq.**

Crowe & Dunlevy PC  
Oklahoma City, OK

**Lisa A. Hathaway, Esq.**

Assistant General Counsel  
Blue Cross Blue Shield of Florida  
Jacksonville, FL

**James P. Wolf, Esq.**

Regional General Counsel  
Aetna, Inc.  
Alpharetta, GA

**Thomas D. Bixby, Esq.**

Thomas D. Bixby Law Office LLC  
Madison, WI

**John Blum, Esq.**

John J. Waldron Research  
Professor  
Loyola University Chicago School of Law  
Chicago, IL

**Felicien (Fish) Brown**

Director, Federal Relations  
Kaiser Permanente  
Washington, DC

**Maureen E. Corcoran, Esq.**

Sheppard Mullin Richter & Hampton LLP  
San Francisco, CA

**Jeanne M. Dunk, Esq.**

Vice President and Associate General Counsel  
Health Alliance Plan  
Detroit, MI

**David Durenberger**

Chair, National Institute of Health Policy  
Former US Senator  
St. Paul, MN

**Nanette Elster, JD, MPH**

Affiliated Scholar  
Spence & Elster PC and Faculty, Institute for Health, Law and Policy  
University of Illinois at Chicago School of Medicine  
Chicago-Kent College of Law  
Chicago, IL

**Anne W. Hance, Esq.**

McDermott Will & Emery LLP  
Washington, DC

**Catherine I. Hanson, Esq.**

Vice President  
American Medical Association  
Chicago, IL

**Steve B. Kelmar**

Senior Vice President, Government Affairs and Public Policy  
Aetna  
Hartford, CT

**Robert M. Kessler, Esq.**

Chief Counsel for Legal Affairs  
Aetna, Inc.  
Phoenix, AZ

**Jim Knutson, JD**

Risk Manager  
Aircraft Gear Corporation  
Loves Park, IL

**Mark S. Kopson, Esq.**

Plunkett Cooney  
Bloomfield Hills, MI

**Alissa Fox**

Senior Vice President, Office of Policy and Representation  
Blue Cross Blue Shield Association  
Washington, DC

**Marilyn Lamar, Esq.**

Liss & Lamar PC  
Oak Brook, IL

**Robert F. Leibenluft, Esq.**

Hogan & Hartson LLP  
Washington, DC

**Deborah L. Marine, Esq.**

Compliance and Privacy Officer  
Health Alliance Plan  
Detroit, MI

**Rakel Meir, Esq.**

Associate General Counsel  
Tufts Health Plan, Inc.  
Watertown, MA

**Laura K. Merten, Esq.**

VP, Health Law Division  
Walgreens and Walgreens HIPAA Privacy Officer  
Deerfield, IL

**Nicholas Messuri, Esq.**

Director Fraud Prevention and Recovery  
Tufts Health Plan, Inc.  
Watertown, MA

**Kayhan P. Parsi, JD, PhD**

Neiswanger Institute for Bioethics and Health Policy  
Loyola University Chicago Stritch School of Medicine  
Maywood, IL

**Barbara G. Quackenbos, Esq.**

Wilentz Goldman & Spitzer PA  
Woodbridge, NJ

**Michael F. Rodgers**

Senior Vice President  
Advocacy/Public Policy  
Catholic Health Association  
Washington, DC

**Paul W. Shaw, Esq.**

K & L Gates  
Boston, MA

**Steven E. Skwara, Esq.**

Epstein Becker & Green PC  
Washington, DC

**Robert E. Slavkin, Esq.**

Foley & Lardner LLP  
Orlando, FL

**Leah Beth Stewart, Esq.**

Vinson & Elkins LLP  
Austin, TX

**Linda V. Tiano, Esq.**

Senior Vice President/General Counsel  
Health Net, Inc.  
Woodland Hills, CA

**Steven M. Ziegler, Esq.**

Law Offices of  
Steven M. Ziegler PA  
Hollywood, FL

## Program at a Glance

Monday, October 26, 2009

7:00 am– 5:30 pm	<b>Registration and Information</b>		
7:00– 8:00 am	<b>Continental Breakfast</b> (attendees, speakers and registered spouses and guests welcome)		
8:00– 9:45 am	<p><b>GENERAL SESSION</b> 8:00–8:15 am <b>Welcome and Introduction</b> <i>Davis, Griffith</i></p> <p>8:15-9:45 am <b>Healthcare Reform: Implications for Plans, Payors and Providers</b> <i>Durenberger (Moderator), Brown, Fox, Hanson, Kelmar, Rodgers</i></p>		
10:15– 11:15 am	<p><b>A. The Role of ERISA in Healthcare Reform</b> (not repeated)</p> <p><i>Blum</i></p>	<p><b>B. The Evolution of Coverage and Payment for the Services of “Out-of-Network” (ONET) Providers in Managed Care Plans</b></p> <p><i>Quackenbos Tiano</i></p>	<p><b>C. Fraud, Waste, and Abuse Detection for Managed Care Plans: The Intersection of Compliance Imperatives and Reality</b> (advanced)</p> <p><i>Messuri Skwara</i></p>
11:25 am– 12:25 pm	<p><b>D. Payment Litigation Other than UCR</b> (not repeated)</p> <p><i>Ziegler</i></p>	<p><b>E. Compliance in a Challenging Environment: Why Does Everyone Want Your Money?</b> (advanced)</p> <p><i>Slavkin</i></p>	<p><b>F. Innovative Approaches to Care</b></p> <p><i>Davis Merten</i></p>
12:25– 1:45 pm	<p><b>Lunch on your own or attend the Payors, Plans, and Managed Care Practice Group Luncheon</b> (additional fee, limited attendance, pre-registration required; see page 11) <b>Settlement Impact on AWP Drug Pricing for Payors, Pharmacies, PBMs, and Consumers – Part Two</b> <i>Ebersole (Moderator), Broderick, Stephens</i></p>		
2:00– 3:00 pm	<p><b>G. Hot Topics in Managed Care Antitrust</b> (not repeated)</p> <p><i>Leibenluft</i></p>	<p><b>H. Fight or Flight: Medical Tourism’s Implications for Providers and Plans</b> (not repeated)</p> <p><i>Kopson</i></p>	<p><b>J. Advanced Contracting in the Changing Healthcare Environment</b></p> <p><i>Dunk Hathaway</i></p>

## Program at a Glance

### Monday, October 26, 2009 (continued)

3:15– 4:15 pm	<b>K. Evolving Software and Hardware Issues</b>  <i>Lamar</i>	<b>L. Recent Non-Payment Related Cases, Developments, and Trends Impacting Providers, Plans and Managed Care</b>  <i>Gordon</i>	<b>M. The Medicare Advantage and Part D Programs in an Era of Health Reform</b>  <i>Hance</i>
4:30– 5:30 pm	<b>N. Medicaid Managed Care – New Opportunities, New Challenges</b> (not repeated)  <i>Kessler</i>	<b>O. Contracting with the Medicare Advantage Organization: Providers, Suppliers and PBMs</b>  <i>Corcoran</i>	<b>P. HITECH Act Changes to HIPAA: What They Mean for Health Plans</b>  <i>Bixby Marine</i>
5:30– 6:30 pm	<b>Reception</b> (attendees, speakers and registered spouses and guests welcome)		

### Tuesday, October 27, 2009

7:30 am– 3:30 pm	<b>Registration and Information</b>		
7:30– 8:30 am	<b>Continental Breakfast and Discussion Groups</b> (attendees, speakers and registered spouses and guests welcome)		
8:30– 9:30 am*	<b>Q. The Link between Quality and Medical Management</b>  <i>Meir Shaw</i>	<b>R. The Payment Puzzle: Innovative Strategies for Reforming Healthcare Payment</b>  <i>Knutson Stewart</i>	<b>K. Evolving Software and Hardware Issues</b> (repeat)  <i>Lamar</i>
9:45– 10:45 am	<b>S. Legal Ethics: Coverage Decisions in the World of Advanced Medical Technologies – Ethical Issues for Health Plan Attorneys</b> (not repeated)  <i>Elster Parsi</i>	<b>J. Advanced Contracting in the Changing Healthcare Environment</b> (repeat)  <i>Dunk Hathaway</i>	<b>L. Recent Non-Payment Related Cases, Developments, and Trends Impacting Providers, Plans and Managed Care</b> (repeat)  <i>Gordon</i>
11:00 am– 12:00 noon	<b>B. The Evolution of Coverage and Payment for the Services of “Out-of-Network” (ONET) Providers in Managed Care Plans</b> (repeat)  <i>Quackenbos Tiano</i>	<b>C. Fraud, Waste, and Abuse Detection for Managed Care Plans: The Intersection of Compliance Imperatives and Reality</b> (advanced) (repeat)  <i>Messuri Skwara</i>	<b>Q. The Link between Quality and Medical Management</b> (repeat)  <i>Meir Shaw</i>

\* If Federal healthcare reform legislation is passed prior to the program, a plenary session on the details of the legislation will be held during this time rather than the concurrent sessions. Please note each of these sessions is being presented at some other time during the program and will be held at those times as scheduled, whether or not the legislation passes.

## Program At a Glance

Tuesday, October 27, 2009 (continued)

12:00 noon– 1:00 pm	<b>Lunch on your own</b>		
1:15– 2:15 pm	<b>F. Innovative Approaches to Care</b> (repeat)  <i>Davis Merten</i>	<b>M. The Medicare Advantage and Part D Programs in an Era of Health Reform</b> (repeat)  <i>Hance</i>	<b>R. The Payment Puzzle: Innovative Strategies for Reforming Healthcare Payment</b> (repeat)  <i>Knutson Stewart</i>
2:30– 3:30 pm	<b>E. Compliance in a Challenging Environment: Why Does Everyone Want Your Money?</b> (advanced) (repeat)  <i>Slavkin</i>	<b>O. Contracting with the Medicare Advantage Organization: Providers, Suppliers and PBMs</b> (repeat)  <i>Corcoran</i>	<b>P. HITECH Act Changes to HIPAA: What They Mean for Health Plans</b> (repeat)  <i>Bixby Marine</i>

## Program Materials ♻️

AHLA has gone green for all in-person programs! 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 11.

## Program Information

**Dates:** October 26-27, 2009  
**Place:** Westin Michigan Avenue  
909 North Michigan Avenue  
Chicago, IL 60611

**Phone:** (312) 943-7200

### Registration Fees:

#### Postmarked and paid by October 15

\$730 For the first AHLA/BCBSA/AHIP Member  
\$655 For each additional Member  
\$955 Non-Members

#### Postmarked and paid between October 16 and October 22\*

\$855 For the first AHLA/BCBSA/AHIP Member  
\$780 For each additional Member  
\$1,080 Non-Members

### Printed Course Materials: \$45

\* 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, in-house counsel, academicians, solo practitioners and students: please call (202) 833-1100, prompt #2 for special discounted registration fees.

**Spouse/Guest Fee:** For an additional \$30 spouses and adult guests can register to attend the reception on Monday evening and the breakfasts on Monday and Tuesday mornings. Please sign up on the registration form. (*Children are welcome to attend these events 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 11.5 continuing education credits (including 1.0 ethics credit) based on a 60-minute hour and 13.8 credits (including 1.2 ethics credits) based on a 50-minute hour.

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. Website: [www.nasba.org](http://www.nasba.org). This seminar will be worth approximately 13.0 CPE credits.

this group live program. Those seeking accounting credits should be familiar with the basic concepts of law and terminology associated with the area of managed care in order to obtain the full educational benefit of this program.

**Hotel Reservations:** Hotel accommodations are not included in the registration fee. Call Westin Michigan Avenue at (312) 943-7200. *If calling, please indicate that you are attending the AHLA program. Rooms at the group rate of \$249 for single/\$269 for double occupancy are limited and may sell out prior to the October 5, 2009 cut-off date.*

**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, paralegals, 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 October 19, 2009**. 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 AHLA 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, American, Hertz and Avis Rental Car to bring you special fares and car rental rates lower than those available to the public. Discounts of 5-15% apply to travel on October 23-30, 2009. Some restrictions may apply and a service fee may apply. ATC will also search for the lowest available fare on any airline.

### ASSOCIATION TRAVEL CONCEPTS

1-800-458-9383

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

[www.atcmeetings.com](http://www.atcmeetings.com)

(follow the Member Travel links)

Fax: (858) 362-3153

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

**10** This program is designed to be an update on developments in the area of managed care. There are no prerequisites or advanced preparations required to register for





AMERICAN  
**HEALTH LAWYERS**  
ASSOCIATION

1025 Connecticut Avenue, NW  
Suite 600  
Washington, DC 20036-5405

# **Payors, Plans and Managed Care Law Institute**

# *Chicago, IL*

October 26-27, 2009  
Westin Michigan Avenue  
Chicago, IL

Register by October 15 and save!  
For updates and to register, go to  
[www.healthlawyers.org/programs](http://www.healthlawyers.org/programs)

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