



November 1-2, 2018

Institute for Health Plan Counsel

Chicago Marriott Magnificent Mile | *Chicago, IL*



BRG Healthcare has provided sponsorship in support of this program.

Institute for Health Plan Counsel

Program Planning Committee

Anne W. Hance, *Program Co-Chair*
Lisa A. Hathaway, *Program Co-Chair*
Ankur J. Goel
Beth Connor Guest
C. Brooks Newman

Program Learning Objectives

- Gain a greater understanding of regulatory issues and enforcement trends and the impact on health plans
- Learn how changes in the health care market and the ACA are affecting health plans
- Network with peers and learn about the challenges and risk areas faced by plans and providers

Program Sponsor



Lunch Sponsor



eProgram Sponsor



Health Solutions

Hotel Information

Marriott Chicago Downtown Magnificent Mile
540 North Michigan Avenue
Chicago, IL 60611
(877) 303-0104

Hotel accommodations are not included in the registration fee. When making reservations, please indicate that you are with the AHLA program. Rooms at the group rate of \$289 single/double occupancy are limited and may sell out prior to the Monday, October 10, 2018 cut-off.

Registration Fees:

- \$395** AHLA In-House Counsel/Government Representatives/Academician Member
- \$495** AHLA Outside Counsel Member
- \$545** In-House Counsel/Government Representatives/Academician Non-Member
- \$645** Outside Counsel Non-Member

Practice Group Luncheon:

- \$60** Member of the sponsoring Practice Group
- \$70** Non-member of the sponsoring Practice Group

Continuing Education Credit Information

CLE/MCLE: AHLA will be applying for 9.75 credits (including 1.00 ethics credit) for 60-minute states and approximately 11.7 credits (including 1.2 ethics credit) for 50-minute states.

CPE: AHLA will be applying for 11.0 CPE credits.

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

CCB: AHLA will be applying for 11.7 Compliance Certification Board (CCB) credits.

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

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

Agenda

Thursday, November 1, 2018

12:30-5:30 pm

Registration and Information

General Session

1:15-1:30 pm

Welcome and Introductions

Marilyn Lamar, AHLA President
Anne W. Hance, Program Co-Chair
Lisa A. Hathaway, Program Co-Chair

1:30-2:45 pm General Session

Lead, Follow, or Get out of the Way: The Impact of Disruptors and Disruption in the Health Plan Marketplace

Gary Scott Davis
Patrick D. Pilch

- The evolution of disruption
- Directional trends and changes in the market place—vertical mergers, payer-provider 2.0, and other strange bedfellows
- Cutting out the insurer—DTC access to care models
- The next generation of health insurance “upstarts” and how do they differ from and present challenges to traditional health plans
- What might ABC (Amazon, Berkshire, Chase) mean for traditional health plans?
- A collision course: Silicon Valley and traditional health plans?
- Remaining relevant in a disruptive market place
- Emergence of the consumer brand networks

2:45-4:00 pm

What's Next for the ACA: The Continued Uncertainty Swirling Around the Health Insurance Markets

Ethan Baumfeld
Lisa M. Campbell
Mark Newsom

- Federal regulatory update
 - Impact of Trump Administration guidance on ACA insurance markets

- Association Health Plan Final Rule
- Short-term, limited-duration Insurance Final Rule
- Health reimbursement accounts
- Litigation update
 - Texas v. U.S.: Update and scenario planning
- Legislative update
 - Impact of mid-term elections on health care debate
 - Legislative efforts to protect and/or repeal the ACA

4:00-4:15 pm

Break, sponsored by BRG Healthcare

4:15-5:30 pm

Recent Developments in Government Enforcement and Program Integrity Initiatives in Managed Care

Kimberly Brandt (invited)
Edward Crooke
William Jordan

- Fraud enforcement against Medicare Advantage and Managed Medicaid Organizations
- Trends in claims brought by DOJ and qui tam relators
- CMS Program Integrity Developments in Managed Care
- Status of changes in anti-fraud laws to enhance value-based care initiatives
- Update on ALJ hearings
- Best practices for managed care compliance programs to mitigate risk of fraud/regulatory enforcement

5:30-6:30 pm

Networking and Diversity+Inclusion Reception, hosted by AHLA's Diversity+Inclusion Council, sponsored by BRG Healthcare

Join us and your colleagues and learn more about AHLA's diversity and inclusion initiatives and network with AHLA leaders and your fellow colleagues. This event is included in the program registration. Attendees and faculty are welcome.

Friday, November 2, 2018

7:00 am-4:15 pm

Registration and Information

7:00-8:00 am

Continental Breakfast, sponsored by BRG Healthcare

This event is included in the program registration. Attendees and faculty are welcome.

CONCURRENT SESSIONS

8:00-9:00 am

A. The Outer Bounds of Health Care: Legal Issues and Lessons Learned for Payers Addressing Social Determinants of Health

(not repeated)
Kate McDonald
Barbara Otto

- The legal framework applicable to different types of health insurers (Medicare Advantage, Medicaid, and commercial) that expand benefits beyond traditional health care
- Legal limitations, challenges, and potential pitfalls associated with offering a broader set of non-traditional benefits to health plan members
- Recent regulatory changes, for example by illustrating the types of services Medicare Advantage organizations may and may not provide under CMS's new supplemental benefit authority and describing the legal guardrails on these new benefits
- Lessons learned from Medicaid Managed Care Programs, which have been providing many of these expanded services for years, including considerations relevant to credentialing, billing and coordination of non-traditional health care services and service providers

B. What's New in Managed Care Litigation: Key Considerations and Emerging Trends

Miranda L. Berge
Michelle Rothenberg-Williams

Additional Program Information

Membership

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

Cancellations/ Substitutions

Cancellations must be received in writing by October 22, 2018 and sent to **Dorothy Johnson: djohnson@healthlawyers.org**. Registration fee, minus the \$125 administrative fee, will be refunded approximately 3-4 weeks following the program in the same form of tender as the original payment. Refunds will not be issued for cancellations received after the cancellation date, to include no-shows.

Substitutions will be accepted, in writing to AHILA (**djohnson@healthlawyers.org**), up to 2 business days prior to the event date on a one time basis. Note, that the registration fee is based on AHILA membership status of the individual who actually attends the program. Non-member substitutes will be charged the fee difference if they are substituting for a member-discounted registration. An administrative fee of \$125 will be charged for a substitution request.

Transfer to an upcoming event within one year of equal or higher value is available on a one time basis only, and should be received in writing to AHILA (**djohnson@healthlawyers.org**) no later than 2 business days prior to the event. An administrative fee of \$125 will be charged for a transfer request.

- Hot topics and emerging litigation trends in class action and other high-stakes cases brought by providers and members against commercial health care plans
- Key considerations and recent legal developments relevant to defending your health plans against such litigation
- Strategies for pushing back against expanding theories of liability
- Practical tips for proactively working with your plan's business units to help mitigate litigation risk

C. Sharing and Using Patient Data in Payer-Provider and Other Network Arrangements: Major Legal and Contractual Considerations

*David E. Kopans
Courtney S. Schoenfeld*

- Common patient data sharing arrangements in payer-provider and other provider network arrangements
- Application of federal and state privacy and security laws and other legal and contractual restrictions to data sharing arrangements
- Special considerations for patient marketing arrangements
- Key contractual issues for data sharing arrangements

9:15-10:45 am Extended Sessions

D. Critical Challenges in Privacy and Security Law (not repeated)

*Thomas D. Bixby
Kirk J. Nahra*

- Substance use disorder record compliance challenges
- Obtaining consent to conduct payment and health care operations activities; case management and care coordination
- Responding to common requests for "patient identifying information," such as requests from ASO accounts, stop-loss carriers, government agencies, and APCDs
 - Adventures in data security lawyering
 - Challenges of being a lawyer on sophisticated technical issues requiring "reasonable and appropriate standards and compliance"
 - Evaluating how best you can represent your plan or company and how to work most effectively with your IT professionals
 - Ethical challenges in being a data security lawyer

E. Government Regulation of Drug Pricing and the Evolving Role of Health Plans and PBMs in the Pharmaceutical Supply Chain

*Theresa C. Carnegie
Dina Kasper*

The Trump Administration has identified drug pricing reform as a key policy initiative. Since the release of its "Blueprint to Lower Drug Prices," the Administration has used a variety of Agency action to address high drug prices and reform the pharmaceutical supply chain. PBMs and plans play a critical role in this supply chain which is poised to undergo significant change in the coming years.

- President Trump's blueprint to lower drug prices
- Federal agency action and reform measures, including Medicare Part D and Part B program changes
- The focus on formulary rebates and the potential elimination of safe harbor protection for such rebates, which would significantly alter current industry practices and incentives within the pharmaceutical supply chain
- State initiatives to combat rising drug prices
- What these changes mean for industry stakeholders, the potential for market disruption, and the evolution of the relationships among manufacturers, payers/PBMs, and consumers

F. Emerging Issues in Medicaid and Medicaid Managed Care

*A. Courtney Cox
Steven D. Hamilton
Archana Rajendra*

- Recently approved and pending state waiver applications and the future of the delivery of Medicaid benefits
- Emerging enforcement risks for Medicaid managed care organizations
- Litigation and other enterprise risk for Medicaid managed care organizations
- Evolving payment models between Medicaid managed care organizations and providers

11:00 am-12:00 noon

G. Wearing Two Hats: Opportunities and Challenges for Provider-Sponsored Health Plans (not repeated)

*Amy L. Mackin
Jean Wright Veilleux*

- Opportunities and challenges that arise when a health care provider decides to launch a health care plan
- Industry trends and business reasons why providers may be considering this strategy

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.**

Travel

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

ATC TRAVEL MANAGEMENT

1-800-458-9383

email: reservations@atcmeetings.com

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

Payers, Plans, and Managed Care Practice Group Luncheon:

Title: **The Silver Lining of “Silver Loading”:** How the Storm of Defunding Subsidies is Leading to Blue Skies for the ACA

J. Gabriel McGlamery JD
Sr. HCR Policy Consultant, Florida Blue Center for Health Policy, Florida Blue Jacksonville, FL

Ursula Taylor
Strategic Health Law, Chicago, IL

Please visit our website for the full description of the luncheon.

- Various models for structuring provider-sponsored health plans, along with corresponding logistical and operational considerations
- Challenges that providers may encounter, including issues related to resource allocation, compliance, antitrust, and fraud and abuse
- Potential ethical issues that may arise for in-house counsel when a provider seeks to become a payer

H. 10 Awesome Golden ERISA Rules For Health Plans (and 179 Less Awesome Bronze Ones)

(not repeated)

David McFarlane

- Golden Rules—10 essential rules of ERISA that are sure to impress colleagues with your prowess in this area
- ERISA Preemption—the most misunderstood ERISA concept
- Who’s Liable—personal liability under ERISA for officers, directors, employees, and other fiduciaries
- Oops—how you can accidentally become an ERISA fiduciary or co-fiduciary
- Protecting your Directors/Officers—Think your D&O policy protects you? Um... probably not
- New ERISA traps for in-house counsel—40 years of ERISA pension law now haunts health law
- There’s more laws under ERISA?—Interaction with 10 other federal laws

C. Sharing and Using Patient Data in Payer-Provider and Other Network Arrangements: Major Legal and Contractual Considerations (repeat)

12:00 noon-1:15 pm

Lunch on your own or attend the Payers, Plans, and Managed Care Practice Group Luncheon, sponsored by Ankura

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

CONCURRENT SESSIONS

1:30-3:00 pm Extended Sessions

I. The Opioid Crisis: Creating Opportunity and Managing Risk (not repeated)

Melissa J. Hulke (Moderator)

Kristen Ives

Erin McKenna

Emily A. Mosely

- The underlying causes and nature of the opioid crisis that plan counsel should understand to assess legal risks and to identify opportunities to help plan members
- Key laws and regulations health plan counsel need to consider in advising their clients, such as privacy laws and regulations (including recent clarifications to HIPAA), new Medicare Part D provisions that implement the 2016 Comprehensive Addiction and Recovery Act and 21st Century Cures Act, and new state laws aimed at curbing misuse of opioids
- Update on state and federal opioid litigation, including the status and scope of multi-district litigation
- Role of health plans in existing or potential future opioid litigation as plaintiffs, defendants and/or third party subpoena recipients, and strategies for mitigating risk and positioning for potential recovery
- Health plan success stories in addressing the opioid epidemic and mitigating legal and regulatory risk

E. Government Regulation of Drug Pricing and the Evolving Role of Health Plans and PBMs in the Pharmaceutical Supply Chain (repeat)

F. Emerging Issues in Medicaid and Medicaid Managed Care (repeat)

3:15-4:15 pm

J. Legal Ethics: Privileges for Payers: Challenges, Concerns, and Issues Confronting Plan In-House Counsel (not repeated)

Todd Presnell

- Overview the corporate attorney-client privilege
- Privileged Coverage with subsidiaries and affiliates
- Conducting privileged internal investigations
- Updates on proper Upjohn warnings
- Cooperating with government-enforcement agencies
- Understanding the fiduciary-duty exception

B. What’s New in Managed Care Litigation: Key Considerations and Emerging Trends (repeat)

Adjournment

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2:45-4:00 pm General Session
What's Next for the ACA: The Continued Uncertainty Swirling Around the Health Insurance Markets Baumfeld, Campbell, Newsom
4:00-4:15 pm
Break, sponsored by BRG Healthcare
4:15-5:30 pm General Session
Recent Developments in Government Enforcement and Program Integrity Initiatives in Managed Care Brandt (invited), Crooke, Jordan
5:30-6:30 pm
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Faculty

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