Long Term Care and the Law

Program Planning Committee
Christopher C. Puri, Program Chair
David C. Beck
Barbara J. Duffy
Marsha R. Greenfield
Ari J. Markenson

Program Learning Objectives
❯❯ Increase knowledge of the regulatory issues affecting the delivery of care by post-acute and long term care providers
❯❯ Learn practical information to increase operational effectiveness of long term care facilities
❯❯ Understand challenges and risks for post-acute and long term care providers

Program Sponsors

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Exhibitors
❯❯ Housing & Healthcare Finance LLC
❯❯ Ntracts LLC
❯❯ Principle Valuation LLC
❯❯ Proactive Medical Review & Consulting LLC
❯❯ PYA

Hotel Information
Manchester Grand Hyatt
1 Market Place
San Diego, CA 92101
Phone: (619) 232-1234
Hotel accommodations are not included in the registration fee. Call Manchester Grand Hyatt Hotel at number and indicate that you are attending the AHLA program. Rooms at the group rate of $239 single/double occupancy are limited and may sell out prior to the January 24, 2017 cut-off.

Registration Fees:
Postmarked and paid on or before January 24, 2017
$ 845 first AHLA Members
$ 770 each additional AHLA Members
$ 1,095 Non-Members

Postmarked and paid after January 24, 2017*
$ 970 first AHLA Members
$ 895 each additional AHLA Member
$ 1,220 Non-Members

* Fees increase $100 after this date

Discounts
$100 off full applicable rate for In-House Counsel and Solo Practitioner
$ 515 AHLA Academician Members
$ 515 AHLA Government Members
$ 515 AHLA Public Interest Professional Members
$ 590 Government/Academician/Public Interest Professional Non-Members
$ 625 Non-Attorney Provider (these are CEOs, CFOs, Administrators)

Practice Group Luncheon(s):
$55 Members of the sponsoring Practice Group(s)
$60 Non-Members of the sponsoring Practice Group(s)

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

Please Note: This year’s program includes sessions for Nursing Facility, Assisted Living and Home Health audiences. This schedule 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 22, 2017

7:45 am-12:45 pm
Assisted Living In-House General Counsel Roundtable sponsored by NCAL
Pre-registration is required; space is limited; open to Assisted Living In-House Counsel only.

The National Center for Assisted Living’s (NCAL) seventh annual In-House Counsel Roundtable discussion for in-house attorneys and counsel who work for assisted living companies.

This exclusive and unique forum will have an in-depth focus on risk mitigation in the context of rising acuity in assisted living. Participants will also have an opportunity to network with peers in small-group discussions on a variety of issues. Attendance to this complimentary event is limited to in-house counsels from assisted living and long term care companies.

NCAL will host a breakfast and luncheon for those in attendance. CLE credit for this event will be available to attendees registered for the AHLA’s Long Term Care and the Law conference. Please note: 180 minutes of the 300 minute time frame are considered substantive and will qualify for credit. Space is limited; pre-registration is required.

8:30 am-5:30 pm
Registration and Information

9:30-11:30 am
Introduction to Long Term Care: The Continuum of Care (NF/AL/HH)
(not repeated)
Carin A. Marney
Mary Zak-Kowalczyk
❯❯ Types of providers in the long term care continuum (nursing home, home health, assisted living, hospice, palliative care, private duty/ personal care)
❯❯ State licensure
❯❯ Certificate of Need
❯❯ Reimbursement sources for each type of provider
❯❯ Conditions of payment and participation for each provider type
❯❯ Characteristics of the clients each would serve
❯❯ Regulatory (survey and enforcement) and tort issues that may arise for each type of provider
❯❯ Interaction between facility and non-facility based long term care providers
❯❯ Special Focus Facilities, Elder Justice Act, Five Star Quality Review

New SNF Requirements of Participation (NF) (not repeated)
Lyn Bentley
Cheryl Phillips
Donna Thiel
This session will focus on the “how” of implementation for the new Requirements of Participation for Nursing Homes. The presenters interact regularly with providers and will share insights regarding “boots on the ground” experiences. Although many providers hope for some relief, given a new administration, we will review the Final Rule from the perspective that most of this will likely not change, and advanced preparation—even for phase III—is essential. The panel will focus on three domains of implementation:
❯❯ Compliance and legal perspective
❯❯ Operations perspective
❯❯ Clinical leadership

Interactive Session: Self-Reporting and Refunding Medicare Overpayments (the “60-Day Rule”)
(limited attendance; pre-registration required)
Glenn P. Hendrix
❯❯ What triggers the 60-day period for reporting and refunding an overpayment?
❯❯ The “reasonable diligence” standard—what does it mean for providers?
❯❯ What constitutes “credible information” to trigger a duty to investigate?
❯❯ Can the failure to conduct proactive compliance audits subject providers to reverse False Claims Act (FCA) liability?
❯❯ Protecting against reverse FCA liability
11:30 am-1:15 pm
Lunch on your own

GENERAL SESSION
1:15-1:30 pm
Welcome and Introduction
David S. Cade, CEO, AHLA
Christopher C. Puri, Program Chair

1:30-2:15 pm
Advancing Long-term Care Financing and Delivery through Care Integration in the New Administration and Congress
Katherine Hayes
An estimated 12 million Americans need assistance with activities of daily living, and a decline in caregiver workforce and personal savings strain federal, state and family budgets. With a new Administration and Congress focused on the repeal and replace of Obamacare, tax reform, and reductions in entitlement spending, advancing long-term care seems out of the question. This session will cover:
❯❯ Key players in Congress and the Administration
❯❯ The new health care agenda
❯❯ Opportunities in value-based purchasing and state flexibility

2:15-3:30 pm
Point/Counterpoint: Two Views on the Life Care Centers of America Case
Scot T. Hasselman
Andy Mao
Two of the lead attorneys in the Life Care Centers of America False Claims Act case, will offer alternate perspectives on the recently settled lawsuit. The session will include a discussion of the factual allegations, theories of the case, defenses, use of statistical evidence, government and defense experts, and the relevant rules regarding the provision of therapy in skilled nursing facilities.

3:30-4:00 pm
Coffee Break, sponsored by Principle Valuation LLC and PYA

CONCURRENT SESSIONS
4:00-5:30 pm Extended Sessions
A.  Case Law Update (NF/AL HH)
William E. Hopkins
Emily M. Park
❯❯ False Claims and other fraud and abuse litigation, including the Supreme Court’s Escobar decision
❯❯ The new CMS Arbitration Rule and other arbitration agreement litigation
❯❯ Hospice physician certification litigation
❯❯ Survey, certification, and enforcement update
❯❯ General litigation developments

B.  Nursing Home Legislative and Regulatory Update (NF)
Michael W. Cheek
Barbara Gay
❯❯ A review of 2016 legislation affecting post-acute care
❯❯ New legislative and policy directions likely in the new Congress and with a new President
❯❯ Latest regulatory developments that have occurred over the past year
❯❯ Legislative and regulatory trends that will likely dominate in 2017

C.  Home Health Legislative and Regulatory Update (HH)
William A. Dombi
❯❯ The 2017 Medicare home health payment system changes
❯❯ The Medicare Home Health Value-Based Purchasing pilot program update
❯❯ Medicare pre-claim review demonstration program
❯❯ Medicare physician certification compliance issues
❯❯ The status of the proposed Medicare Conditions of Participation for home health agencies and the current imposition of CoP alternative sanctions
❯❯ Medicare hospice regulatory updates including hospice payment reform
❯❯ Medicaid managed care developments affecting home care
❯❯ Developments in the oversight of home care and hospice under Medicare and Medicaid
❯❯ Legal and legislative updates on new regulatory actions under the Fair Labor Standards Act impacting public and private pay home care
❯❯ Forecast for future legislative and regulatory changes in 2017

D.  Understanding and Analyzing CMS’ Final Rule Revising the Medicare/ Medicaid Requirements for Long Term Care Facilities (NF)
Annaliese Impink
Christopher C. Puri
❯❯ The major requirements of the final rule that will now impact long term care facilities (81 F.R. 68688, Oct. 4, 2016)
❯❯ The major differences between the proposed and the final rule
❯❯ How the new requirements of participation will impact SNF/NFs and how they are likely to change the operations of facilities in the future
❯❯ Ways that facilities are implementing operational changes to comply with the substantial new expectations of SNF/NFs
Networking Reception, hosted by AHLA’s Diversity+Inclusion Council sponsored by Principle Valuation LLC and PYA
Join AHLA for a combined Welcome Reception and Diversity+Inclusion Reception. Learn more about AHLA’s diversity and inclusion initiatives. Network with AHLA leaders and your fellow colleagues. This event is included in the program registration. Attendees, faculty, and registered spouses and guests are welcome.

THURSDAY, FEBRUARY 23, 2017
7:00 am-5:15 pm
Registration and Information

7:00-8:00 am
Continental Breakfast, sponsored by Principle Valuation LLC and PYA
This event is included in the program registration. Attendees, faculty, children, and registered spouses and guests welcome.

CONCURRENT SESSIONS
8:00-9:30 am Extended Sessions
Interactive Session: Nursing Facility General Counsel Roundtable (NF)
(not repeated)
David C. Beck
Pre-registration is required for this interactive session. Space is limited. Must be SNF General Counsel to attend. Join your SNF general counsel colleagues to share details about what is keeping you up at night, predictions on the top challenges for our clients in 2017, and innovative solutions you are implementing or even just wishing you could implement. As Benjamin Franklin put it, “we must, indeed, all hang together or, most assuredly, we shall all hang separately.”

A. Case Law Update (NF/AL/HH) (repeat)
B. Nursing Home Legislative and Regulatory Update (NF) (repeat)
C. Home Health Legislative and Regulatory Update (HH) (repeat)
D. Understanding and Analyzing CMS’ Final Rule Revising the Medicare/ Medicaid Requirements for Long Term Care Facilities (NF) (repeat)

9:45-10:45 am
E. Electronic Devices, Monitoring, and Social Media in the Long Term Care Facility (NF/AL)
Barbara S. Barrett
Denise Bloch
How do you handle residents taking and posting photos of other residents, staff, and more? Do you allow staff to be Facebook friends with residents? Can you prohibit staff from being Facebook friends with residents or does that violate Resident Rights? Do you provide internet/Wi-Fi access for residents? Can you block access to certain content?
Are there limits in what type of monitoring the facility can do? Does it matter if it is video or includes audio?
Can monitoring be done in a resident’s room if it is care planned (e.g. resident with mental health issues is convinced people are coming in at night and shooting him up with drugs)? If monitoring is allowed, when is consent needed, how can consent be given, by whom, how to withdraw consent, what limits need to be considered, etc?
What about monitoring by resident’s family? More and more states are passing nanny cam laws but what are practical issues with allowing that. What are the most important issues to consider if your state is considering adopting such a law? Should you choose to allow it even without a nanny cam law?
What about your employees? Most staff have a smart phone. Do you allow them to have it with them at work?
Do you limit where employees can keep or use it? Any limits on photos of residents, other staff members, posting of photos? What if a family wants photos shared with them?

F. Tips for a Successful Compliance Risk Assessment and Effectiveness Review (NF/AL/HH)
Kathleen A. Hessler
Daniel Meier
Compliance assessment and effectiveness under the seven elements of an ethics and compliance program
Merging HIPAA privacy considerations into the compliance program
The roles of compliance professionals and attorneys, including when to reach out to in-house and or external legal counsel
The latest government guidance on risk areas: special emphasis on home health and hospice
G. Reefer Madness: Marijuana in Senior Care and Housing (NF/AL/HH)
   James F. Miles
   Gabriela Sanchez
   ➤ Existing and new laws legalizing medical and/or recreational marijuana
   ➤ The impact that the new administration will have on legalization of marijuana in states, including a discussion of the continued effectiveness of the Cole Memo and enforcement of federal laws
   ➤ The effect of legalization of marijuana in different care settings ranging from resident rights, storage and administration, Requirements of Participation, and risk management issues
   ➤ Employment implications for providers, including compliance with no-smoking workplace laws and drug use policies
   ➤ Best practices for allowing or not allowing marijuana use in communities and facilities

H. Swapping Kickbacks, Fair Market Value: Risks for a Post-Acute Provider in the Bundling Era (NF/AL/HH)
   Shannon L. Drake
   Alan E. Schabes
   ➤ Anti-kickback statute and other fraud and abuse laws
   ➤ Swapping and fair market value issues
   ➤ Post acute care bundling, coordinated care, and other alternative payment arrangements
   ➤ OIG guidance on bundling, ACO, and coordinated care arrangements
   ➤ Practical solutions and risk mitigation to address potential legal and compliance concerns

J. What Every Provider Needs to Know about Department of Justice Investigations by the Elder Justice Task Force (NF)
   Christy T. Crider
   Susan C. Lynch
   Ellen B. McIntyre
   ➤ Background and focus of DOJ’s Elder Justice Initiative
   ➤ Government’s focus on “grossly substandard services” to build cases under the False Claims Act (FCA)
   ➤ Potential signs of trouble: Letter suspending payments under 42 CFR 455.23, Civil Investigative Demand (CID), pattern of reports and surveys suggesting poor quality of care and/or “excessive” therapy billing
   ➤ Potential red flags for quality of care and therapy billing
   ➤ What documents the government will likely request in grossly substandard services and excessive therapy billing investigations
   ➤ Recent DOJ enforcement activities, settlements and corporate integrity agreements

K. Trade Association Issues: Outside Counsel, In-House, and Now, Executive Director (NF/AL/HH) (not repeated)
   Gavin J. Gadberry
   Elizabeth A. Johnson
   ➤ Ethical and practical challenges representing trade associations
   ➤ Who is my client today: Representing the association and its members
   ➤ Common antitrust issues, especially in the ever expanding managed care arena
   ➤ Sharing best practices for representing trade associations and lawyer transitions

L. Dealing with Sexual Activity in Assisted Living (AL)
   Tara A. Cope
   Joel Goldman
   Lisa Hulse
   ➤ Issues pertaining to sexual activity that commonly arise in assisted living communities
   ➤ State laws pertaining to capacity to consent to sexual activity
   ➤ Several case studies including those involving sexual activity:
   —Where both residents are competent
   —Where both residents have diagnoses of dementia
   —Where one resident has dementia
   —Between married persons where one spouse has a dementia diagnosis

M. Surviving an Overpayment Demand Resulting from an Extrapolation of a High Error Rate in an Extremely Small Probe Sample (NF/HH)
   Catherine Gill
   Donna J. Senft
   ➤ The benefit of a coordinated approach to appealing the overpayment demand, with the team consisting of the provider, a consultant with expertise in claims analysis and reviewers with clinical backgrounds to develop factual arguments, a statistician to analyze the statistical sampling methodology, and a health care attorney to develop the legal arguments
   ➤ The need to distinguish conditions of participation, conditions for payment, and what constitutes an overpayment, applying the two-prong test of the Supreme Court in Universal Health Services, Inc. vs. U.S.
   ➤ When and how to cure documentation deficiencies when medically necessary and covered services were delivered, but documentation in the record is missing, illegible, or incomplete
   ➤ Steps in the appeals process and addressing considerations such as repayment to avoid interest accrual, steps to forestall recoupment, and evidence needed to preserve factual and legal arguments
N. REITs and Assisted Living—Dealing with Lease and Operations Issues (AL)
   Ann B. Harrington
   Susan V. Kayser
   Stephen J. Levy
   ➤ RIDEA structure and history
   ➤ Control of revenues considerations
   ➤ Control of operating license considerations
   ➤ Liability issues
   ➤ Options for dealing with lease, license and risk issues in transactional documents

O. Post-Acute Care Compliance in a Post-Escobar World (NF/AL/HH)
   S. Lindsey Lonergan
   Roberta Wilson
   ➤ The Escobar decision and its impact on the FCA landscape amongst post-acute care providers?
   ➤ Recent post-Escobar decisions
   ➤ The impact of these decisions the materiality and knowledge thresholds of the FCA
   ➤ Suggestions and approaches on using the lessons from these decisions to redesign compliance programs, including risk analysis, employee training and documentation

12:00 noon—1:30 pm
   Lunch on your own or attend the Post-Acute and Long Term Services Practice Group Luncheon, sponsored by Simione Healthcare Consultants, LLC
   This event is not included in the program registration fee. There is an additional fee; limited attendance; pre-registration required.

CONCURRENT SESSIONS
1:45—2:45 pm
P. De-Stressing Your Stressed SNF: Dissecting Lessons Learned from a Successful Turnaround (NF) (AL) (not repeated)
   Bruce Buchanan
   Dale Maxfield
   John C. Tishler
   ➤ Outside forces continue to push SNF, ALF and CCRC’s to the financial wall
   ➤ Successful strategies to get your SNF/ALF/CCRC back to profitability
   ➤ Dissect a successful turnaround of a SNF company
   ➤ Provide specific strategies for implementing a turnaround in the senior living space

Q. Legal Ethics in Issues of Adult Abuse, Neglect, and Exploitation (NF/AL/HH)
   Robert F. Rodé
   ➤ Two applicable attorney ethical rules/responsibilities in advising clients in adult abuse, neglect and exploitation matters
   ➤ Practice tips for attorneys to identify ethical issues in elder abuse matters
   ➤ Practice tips for assisting provider clients in handling ethical matters
   ➤ What it means to “do the right thing” in abuse and exploitation matters

R. Anatomy of an Abuse Allegation: How In-House and Outside Counsel Team up to Cover All the Bases (NF)
   Peter Carlson
   Jason T. Lundy
   ➤ CMS and State requirements to identify, report, thoroughly investigate, and respond to allegations or suspicions of abuse in a skilled nursing facility
   ➤ Risk management considerations and facility process improvement
   ➤ Defense/coordination of resulting civil and/or criminal cases
   ➤ Defense/coordination of resulting professional disciplinary actions

S. Best Practices for Establishing and Running a Post-Acute Care Network (NF/AL/HH)
   Thomas D. Anthony
   Tim Grimes
   ➤ Business environment and operations of post-acute care networks
   ➤ Meeting and exceeding operational challenges
   ➤ Functioning effectively within the Bundled Payment Care Initiative program
   ➤ Structuring relationships and successfully working with Episode Initiators
   ➤ Corporate structure, ownership, governance, and operations from a legal and regulatory point of view

E. Electronic Devices, Monitoring, and Social Media in the Long Term Care Facility (NF/AL) (repeat)

3:00—4:00 pm
T. Continuing Care at Home (CCaH) (AL/HH) (not repeated)
   Kimber L. Latsha
   ➤ Continuing Care at Home program models
   ➤ Various corporate structuring options for development of a CCaH business line
   ➤ The regulatory approval and compliance requirements for the creation and operation of a CCaH
   ➤ Contractual options for membership and marketing of the CCaH product
   ➤ Risk management issues for the operation of a CCaH
U. Fair Housing in the Long Term Care Context: An Advanced Analysis of the Issues and Current Trends (AL) (not repeated)
Scott P. Moore
Trey Thomas
➤ An advanced analysis of key issues involving Fair Housing compliance in the long term care space with a particular focus on senior housing such as:
  – Admissions and transfers between levels of care
  – Use of scooters and other assistance devices
  – Assistance animals and service animals
  – Parking
  – Private duty aides
➤ Current case law and pending administrative cases that are relevant
➤ Best practices to improve compliance
➤ Investigation and litigation trends and best practices related to both

V. Best Practices for Aging in Place (AL)
Tara J. Clayton
Kirstin B. Sumner
➤ Current state of senior housing and where we are heading
➤ Changing demographics of senior housing residents
➤ Setting realistic expectations of residents and families about senior housing services
➤ Assessment of residents at admission and throughout their stay and managing transitions to higher levels of care
➤ Common challenges and suggested practices related to aging in place

W. Legal Ethics: Attorney-Client Privilege for In-House and Outside Corporate Counsel (NF/AL/HH)
Todd Presnell
➤ Intersection of ethical confidentiality concerns and the attorney-client privilege
➤ Scope and contours of the corporate attorney-client privilege
➤ Heightened privilege requirements for in-house counsel
➤ Pitfalls arising from conflict-of-law rules in federal and state privilege laws
➤ Handling internal investigations to enhance privilege protection
➤ Scope and problems of the common-interest privilege

H. Swapping, Kickbacks, Fair Market Value: Risks for a Post-Acute Provider in the Bundling Era (NF/AL/HH) (repeat)

4:15-5:15 pm
X. Death with Dignity: A Medico-Legal Perspective (AL) (not repeated)
Pamela S. Kaufmann
Kati Murray
➤ Long term care providers’ response to state death with dignity laws
➤ Practical and risk management issues with a lawyer who has advised clients extensively about end-of-life laws
➤ Hear from a medical director of a provider that has experienced a death with dignity; review medical questions and concerns raised by these laws
➤ Understand the dying process

Y. First to the Ball: Can You Find the Issue before It Becomes a Problem? (HH)
JoAnne K. Little
Maureen D. Murray
➤ When do denials signal a problem?
➤ When should complaints cause alarm?
➤ What and how much to audit?
➤ When to sample?
➤ How to obtain comparative data and know if your agency is an outlier?
➤ Have you found the root cause?
➤ How to make operational managers part of your team?
➤ How to build a culture of compliance?
➤ When, what and how to share information with your board?

Z. Preparing for Your Coming Privacy Breach (NF/AL/HH)
Robert E. Leamer
Gracelyn Sessions
Considering the frequency that health care organizations are the target of malware, hacking, phishing and ransomware, it is likely that most organizations will need to respond to a privacy breach. Using lessons learned from long term care providers in responding to a privacy breach, the session will address:
➤ Actions that can reduce the likelihood of breaches and limit exposure when they occur
➤ The requirements placed on health care providers by state and federal law to address breaches and inform those who are impacted by it
➤ Best practices for breach response

F. Tips for a Successful Compliance Risk Assessment and Effectiveness Review (NF/AL/HH) (repeat)

J. What Every Provider Needs to Know about Department of Justice Investigations by the Elder Justice Task Force (NF) (repeat)

5:15-6:30 pm
Networking Reception, sponsored by Principle Valuation LLC and PYA
This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.
FRIDAY, FEBRUARY 24, 2017
7:30 am-3:10 pm
Registration and Information

7:30-8:30 am
Continental Breakfast, sponsored by Principle Valuation LLC and PYA
This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome.

CONCURRENT SESSIONS
8:30-9:30 am
AA. Civil Rights, Civil Litigation, and Civility: The Non-Discrimination Provisions of the Affordable Care Act (NF/AL/HH) (not repeated)
Timothy Gutwald
Joanne R. Lax
❯❯ Section 1557 of the Affordable Care Act and OCR’s 2016 final rule implementing it, as applied to post-acute and long term care providers
❯❯ Actions providers can take now to minimize litigation risk later
❯❯ Strategies for defending and avoiding Section 1557 claims brought by the government and private actors
❯❯ The future of Section 1557 and civil rights enforcement under the new administration

BB. Best Practices for Preventing Violence in the Post-Acute Workplace from Internal and External Sources (NF) (not repeated)
Caroline J. Berdzik
Minton P. Mayer
Beverly B. Wittekind
This session is designed for in-house counsel, risk managers, executives and human resources professionals and explores the rising prevalence of incidents of violence in the post-acute workplace from internal and external sources. This program will explore best practices for recognizing and addressing elder bullying and other resident-on-resident conflicts, educating caregivers on best practices for conflict free interaction with residents, managing the risks associated with a mobile health care workforce, maintain a safe environment for residents and staff and handling restraining orders in the workplace that employees have in place from relationships outside of the workplace.
❯❯ Recognize, prevent, and address resident-on-resident conflicts and elder bullying
❯❯ Caregiver on resident abuse and promote conflict free interactions between staff and residents
❯❯ Federal and state regulatory efforts pertaining to caregiver on resident abuse and how to minimize citations with policies and training
❯❯ Compliance with OSHA and other agency requirements on maintaining a safe workplace
❯❯ The unique challenges in keeping a mobile healthcare workforce safe
❯❯ Policies for handling temporary restraining orders and obligations to accommodate employees who may be domestic violence victims under state and local laws

CC. The Future Is Now: Medicare’s Shift from Volume to Value-Based Payments and Role of Long Term Care Providers (NF/AL/HH)
Samuel C. Cohen
Ritu K. Cooper
James P. Sharp
❯❯ The U.S. health system and the government’s interest in bending the cost curve
❯❯ HHS’ announcement of goal for shifting to value-based care
❯❯ The role of long term care (LTC) providers in the health care delivery eco-system
❯❯ Alternative Payment Models (APMs) with opportunities for direct participation by LTC providers
❯❯ Other APMs impacting LTC providers
❯❯ Lessons learned from payment reform experience so far
❯❯ Key considerations in determining whether a model is right for your organization
❯❯ Fraud and abuse issues related to the shift in delivery models
❯❯ The impact of the recent election results on the shift to value-based care

Q. Legal Ethics in Issues of Adult Abuse, Neglect, and Exploitation (NF/AL/HH) (repeat)

Y. First to the Ball: Can You Find the Issue before It Becomes a Problem? (HH) (repeat)

9:40-10:40 am
DD. The Keys Are under the Mat: Closing a Medicare Certified SNF (NF) (not repeated)
Randall R. Fearnow
❯❯ The process for closing a SNF is in some ways as complex as that for opening a SNF
❯❯ Patient discharge issues are challenging
❯❯ The closure process is fraught with difficulties, particularly if the closing is involuntary
❯❯ Employee and union issues must be addressed along with state mass layoff notifications
❯❯ Depending on the state, there may be value in the Medicaid certified beds
EE. HIPAA Updates: Current Topics, Enforcement, and Cybersecurity (NF/AL/HH)
   Roger C. Geer
   Anthony J. Munns
   Suzanne Sheldon-Krieger
   ➤ Recent OCR guidance and audit program phase 2
   ➤ HIPAA enforcement activities
   ➤ Ransomware attacks
   ➤ First business associate penalty
   ➤ Recent settlements
   ➤ Lincare update
   ➤ Cybersecurity awareness and training programs
   ➤ Practical guidance to minimize risk

FF. Prevention, Preparation, Perseverance: The Three “P’s” of Surviving a Hospice Government Audit (HH)
   Karen Bommelje
   Jason E. Bring
   ➤ Importance of an effective compliance and ethics plan
   ➤ Preventative steps should the government come knocking
   ➤ Persevering through an appeal process
   ➤ SWAT team responses to audits

N. REITs and ALS–Dealing with Lease and Operations Issues (AL) (repeat)

W. Legal Ethics: Attorney-Client Privilege for In-House and Outside Corporate Counsel (NF/AL/HH) (repeat)

10:50-11:50 am

GG. Keeping QA Investigations Privileged (NF) (not repeated)
   Karla B. Dreisbach
   Alexis A. Langella
   ➤ The Peer Review and Quality Assurance Privileges are powerful tools available to health care providers to protect against discovery of confidential documents and information generated by a Peer Review/QA committee
   ➤ The types of documents and information that are afforded protections from discovery and provide a checklist for safeguarding such documents from discovery
   ➤ Protections are not absolute. Attendees will participate in interactive question/answer session with case law examples of information/documents determined to be privileged v. non-privileged
   ➤ The overall impact that that QA/Peer Review documents not deemed confidential can have on a case

M. Surviving an Overpayment Demand Resulting from an Extrapolation of a High Error Rate in an Extremely Small Probe Sample (NF/HH) (repeat)

O. Post-Acute Care Compliance in a Post-Escobar World (NF/AL/HH) (repeat)

R. Anatomy of an Abuse Allegation: How In-House and Outside Counsel Team up to Cover All the Bases (NF) (repeat)

CC. The Future is Now: Medicare’s Shift from Volume to Value-Based Payments and Role of Long Term Care Providers (NF/AL/HH) (repeat)

11:50 am-1:00 pm
   Lunch on your own

CONCURRENT SESSIONS
1:00-2:00 pm
   G. Reefer Madness: Marijuana in Senior Care and Housing (NF/AL/HH) (repeat)

V. Best Practices for Aging in Place (AL) (repeat)

EE. HIPAA Updates: Current Topics, Enforcement, and Cybersecurity (NF/AL/HH) (repeat)

FF. Prevention, Preparation, Perseverance: The Three “P’s” of Surviving a Hospice Government Audit (HH) (repeat)

2:10-3:10 pm
   L. Dealing with Sexual Activity in Assisted Living (AL) (repeat)

S. Best Practices for Establishing and Running a Post-Acute Care Network (NF/AL/HH) (repeat)

Z. Preparing for Your Coming Privacy Breach (NF/AL/HH) (repeat)

Adjournment
Program at a Glance

Please Note: This year’s program includes sessions for Nursing Facility, Assisted Living and Home Health audiences. This schedule indicates for which audience(s) a session is intended: Nursing Facility (NF) attendees; Assisted Living (AL) and/or Home Health (HH) attendees.

WEDNESDAY, FEBRUARY 22, 2017

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:45 am-12:45 pm</td>
<td>Assisted Living In-House General Counsel Roundtable sponsored by NCAL (Pre-registration is required: space is limited; open to Assisted Living In-House Counsel only)</td>
</tr>
<tr>
<td>8:30 am-5:30 pm</td>
<td>Registration and Information</td>
</tr>
<tr>
<td>9:30-11:30 am</td>
<td>Introduction to Long Term Care: The Continuum of Care (NF/AL/HH) (not repeated) Marney Zak-Kowalczyk</td>
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<tr>
<td></td>
<td>New SNF Requirements of Participation (NF) (not repeated) Bentley Phillips Theil Hendrix</td>
</tr>
<tr>
<td></td>
<td>Interactive Session: Self-Reporting and Refunding Medicare Overpayments (the “60-Day Rule”) (limited attendance; pre registration required)</td>
</tr>
<tr>
<td>11:30 am-1:15 pm</td>
<td>Lunch on your own</td>
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<tr>
<td>1:15-1:30 pm</td>
<td>GENERAL SESSION Welcome and Introduction Cade, Puri</td>
</tr>
<tr>
<td>1:30-2:15 pm</td>
<td>GENERAL SESSION Advancing Long-term Care Financing and Delivery through Care Integration in the New Administration and Congress Hayes</td>
</tr>
<tr>
<td>2:15-3:30 pm</td>
<td>GENERAL SESSION Point/Counterpoint: Two Views on the Life Care Centers of America Case Hasselman, Mao</td>
</tr>
<tr>
<td>3:30-4:00 pm</td>
<td>Coffee Break, sponsored by Principle Valuation LLC and PYA</td>
</tr>
</tbody>
</table>
### THURSDAY, FEBRUARY 23, 2017

<table>
<thead>
<tr>
<th>Time</th>
<th>Events</th>
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</thead>
<tbody>
<tr>
<td>7:00 am–5:15 pm</td>
<td>Registration and Information</td>
</tr>
<tr>
<td>7:00–8:00 am</td>
<td>Continental Breakfast, sponsored by Principle Valuation LLC and PYA</td>
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<tr>
<td>8:00–9:30 am</td>
<td>Extended Sessions</td>
</tr>
<tr>
<td>9:45–10:45 am</td>
<td>Concurrent Sessions</td>
</tr>
</tbody>
</table>

#### 4:00–5:30 pm Extended Sessions

<table>
<thead>
<tr>
<th>A. Case Law Update (NF/AL/HH)</th>
<th>B. Nursing Home Legislative and Regulatory Update (NF)</th>
<th>C. Home Health Legislative and Regulatory Update (HH)</th>
<th>D. Understanding and Analyzing CMS’ Final Rule Revising the Medicare/Medicaid Requirements for Long Term Care Facilities (NF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hopkins Park</td>
<td>Cheek Gay</td>
<td>Dombi</td>
<td>Impink Puri</td>
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</tbody>
</table>

**Networking Reception, hosted by AHLA’s Diversity+Inclusion Council, sponsored by Principle Valuation LLC and PYA**

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

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**Wednesday, February 22, 2017 (continued)**

<table>
<thead>
<tr>
<th>Time</th>
<th>Events</th>
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</thead>
<tbody>
<tr>
<td>7:00 am–5:15 pm</td>
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<tr>
<td>7:00–8:00 am</td>
<td>Continental Breakfast, sponsored by Principle Valuation LLC and PYA</td>
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</tr>
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<td>9:45–10:45 am</td>
<td>Concurrent Sessions</td>
</tr>
</tbody>
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#### 4:00–5:30 pm Extended Sessions

<table>
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<tr>
<th>A. Case Law Update (NF/AL/HH)</th>
<th>B. Nursing Home Legislative and Regulatory Update (NF)</th>
<th>C. Home Health Legislative and Regulatory Update (HH)</th>
<th>D. Understanding and Analyzing CMS’ Final Rule Revising the Medicare/Medicaid Requirements for Long Term Care Facilities (NF)</th>
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<tbody>
<tr>
<td>Hopkins Park</td>
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<td>Dombi</td>
<td>Impink Puri</td>
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</tbody>
</table>

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**Interactive Session: Nursing Facility General Counsel Roundtable (NF) (not repeated)**

Beck

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**Pre-registration required, Space is limited. Must be SNF General Counsel to attend.**

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**Electronic Devices, Monitoring and Social Media in the Long Term Care Facility (NF/AL)**

Barrett Bloch

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**Tips for a Successful Compliance Risk Assessment and Effectiveness Review (NF/AL/HH)**

Hessler Meier

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**Reefer Madness: Marijuana in Senior Care and Housing (NF/AL/HH)**

Miles Sanchez

---

**Swapping Kickbacks, Fair Market Value: Risks for a Post-Acute Provider in the Bundling Era (NF/AL/HH)**

Drake Schabes

---

**What Every Provider Needs to Know about Department of Justice Investigations by the Elder Justice Task Force (NF)**

Crider Lynch McIntyre
### 11:00 am-12:00 noon

<table>
<thead>
<tr>
<th>Topic</th>
<th>Panelists</th>
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</thead>
<tbody>
<tr>
<td>K. Trade Association Issues: Outside Counsel, In-House, and Now, Executive Director (NF/AL/HH) (not repeated)</td>
<td>Gadberry Johnson</td>
</tr>
<tr>
<td>L. Dealing with Sexual Activity in Assisted Living (AL)</td>
<td>Cope Goldman Hulse</td>
</tr>
<tr>
<td>M. Surviving an Overpayment Demand Resulting from an Extrapolation of a High Error Rate in an Extremely Small Probe Sample (NF/HH)</td>
<td>Gill Senft</td>
</tr>
<tr>
<td>N. REITs and Assisted Living–Dealing with Lease and Operations Issues (AL)</td>
<td>Harrington Kayser Levy</td>
</tr>
<tr>
<td>O. Post-Acute Care Compliance in a Post-Escobar World (NF/AL/HH)</td>
<td>Lonergan Wilson</td>
</tr>
</tbody>
</table>

### 12:00 noon-1:30 pm

**Lunch on your own or attend the Post-Acute and Long Term Services Practice Group Luncheon, sponsored by Simione Healthcare Consultants, LLC**  
(This event is not included in the program registration fee. There is an additional fee; limited attendance; pre-registration required)

### 1:45-2:45 pm Concurrent Sessions

<table>
<thead>
<tr>
<th>Concurrent Session</th>
<th>Panelists</th>
</tr>
</thead>
<tbody>
<tr>
<td>P. De-Stressing Your Stressed SNF: Dissecting Lessons Learned from a Successful Turnaround (NF) (AL) (not repeated)</td>
<td>Buchanan Maxfield Tishler</td>
</tr>
<tr>
<td>Q. Legal Ethics in Issues of Adult Abuse, Neglect and Exploitation (NF/AL/HH)</td>
<td>Rode</td>
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<tr>
<td>R. Anatomy of an Abuse Allegation: How In-House and Outside Counsel Team up to Cover All the Bases (NF)</td>
<td>Carlson Lundy</td>
</tr>
<tr>
<td>S. Best Practices for Establishing and Running a Post-Acute Care Network (NF/AL/HH)</td>
<td>Anthony Grimes</td>
</tr>
<tr>
<td>E. Electronic Devices, Monitoring and Social Media in the Long Term Care Facility (NF/AL) (repeat)</td>
<td>Barrett Bloch</td>
</tr>
</tbody>
</table>

### 3:00-4:00 pm

<table>
<thead>
<tr>
<th>Concurrent Session</th>
<th>Panelists</th>
</tr>
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<tbody>
<tr>
<td>T. Continuing Care at Home (CCaH) (AL/HH) (not repeated)</td>
<td>Latsha</td>
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<tr>
<td>V. Best Practices for Aging in Place (AL)</td>
<td>Clayton Sumner</td>
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<tr>
<td>W. Legal Ethics: Attorney-Client Privilege for In-House and Outside Corporate Counsel (NF/AL/HH)</td>
<td>Presnell</td>
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<tr>
<td>H. Swapping, Kickbacks, Fair Market Value: Risks for a Post-Acute Provider in the Bundling Era (NF/AL/HH) (repeat)</td>
<td>Drake Schabes</td>
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</tbody>
</table>
### THURSDAY, FEBRUARY 23, 2017 (CONTINUED)

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>4:15-5:15 pm</td>
<td>X. Death with Dignity: A Medico-Legal Perspective (AL) (not repeated)</td>
</tr>
<tr>
<td></td>
<td>Y. First to the Ball: Can You Find the Issue before It Becomes a Problem? (HH)</td>
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<tr>
<td></td>
<td>Z. Preparing for Your Coming Privacy Breach (NF/AL/HH)</td>
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<td></td>
<td>F. Tips for a Successful Compliance Risk Assessment and Effectiveness Review (NF/AL/HH) (repeat)</td>
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<td></td>
<td>J. What Every Provider Needs to Know about Department of Justice Investigations by the Elder Justice Task Force (NF) (repeat)</td>
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<thead>
<tr>
<th>Speakers</th>
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<td>Kaufmann</td>
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<td>McIntyre</td>
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</table>

5:15–6:30 pm  
Networking Reception, sponsored by Principle Valuation LLC and PYA  
(This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome)

### FRIDAY, FEBRUARY 24, 2017

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:30 am-3:10 pm</td>
<td>Registration and Information</td>
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</tbody>
</table>
| 7:30-8:30 am | Continental Breakfast, sponsored by Principle Valuation LLC and PYA  
(This event is included in the program registration fee. Attendees, faculty, children, and registered spouses and guests welcome) |
| 8:30–9:30 am Concurrent Sessions |

<table>
<thead>
<tr>
<th>Session</th>
<th>Event</th>
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<tbody>
<tr>
<td>AA.</td>
<td>Civil Rights, Civil Litigation and Civility: The Non-Discrimination Provisions of the Affordable Care Act (NF/AL/HH) (not repeated)</td>
</tr>
<tr>
<td>BB.</td>
<td>Best Practices for Preventing Violence in the Post-Acute Workplace from Internal and External Sources (NF) (not repeated)</td>
</tr>
<tr>
<td>CC.</td>
<td>The Future Is Now: Medicare's Shift from Volume to Value-Based Payments and Role of Long Term Care Providers (NF/AL/HH)</td>
</tr>
<tr>
<td>Q.</td>
<td>Legal Ethics in Issues of Adult Abuse, Neglect, and Exploitation (NF/AL/HH) (repeat)</td>
</tr>
<tr>
<td>Y.</td>
<td>First to the Ball: Can You Find the Issue before It Becomes a Problem? (HH) (repeat)</td>
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<thead>
<tr>
<th>Speakers</th>
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<tbody>
<tr>
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<td>Gutwald</td>
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<td>Murray</td>
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<tr>
<td>Time</td>
<td>Concurrent Sessions</td>
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<tr>
<td>9:40-10:40 am</td>
<td><strong>DD. The Keys Are under the Mat: Closing a Medicare Certified SNF (NF)</strong> (not repeated)</td>
</tr>
<tr>
<td></td>
<td><strong>EE. HIPAA Updates: Current Topics, Enforcement, and Cybersecurity (NF/AL/HH)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>FF. Prevention, Preparation, Perseverance: The Three “P’s” of Surviving a Hospice Government Audit (HH)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>N. REITs and ALS—Dealing with Lease and Operations Issues (AL)</strong> (repeat)</td>
</tr>
<tr>
<td></td>
<td><strong>W. Legal Ethics: Attorney-Client Privilege for In-House and Outside Corporate Counsel (NF/AL/HH)</strong> (repeat)</td>
</tr>
<tr>
<td>10:50-11:50 am</td>
<td><strong>GG. Keeping QA Investigations Privileged (NF)</strong> (not repeated)</td>
</tr>
<tr>
<td></td>
<td><strong>M. Surviving an Overpayment Demand Resulting from an Extrapolation of a High Error Rate in an Extremely Small Probe Sample (NF/HH)</strong> (repeat)</td>
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<tr>
<td></td>
<td><strong>O. Post-Acute Care Compliance in a Post-Escobar World (NF/AL/HH)</strong> (repeat)</td>
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<td>11:50 am-1:00 pm</td>
<td>Lunch on your own</td>
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<td>1:00-2:00 pm</td>
<td><strong>G. Reefer Madness: Marijuana in Senior Care and Housing (NF/AL/HH)</strong> (repeat)</td>
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<td><strong>V. Best Practices for Aging in Place (AL)</strong> (repeat)</td>
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</tr>
<tr>
<td>2:10-3:10 pm</td>
<td><strong>L. Dealing with Sexual Activity in Assisted Living (AL)</strong> (repeat)</td>
</tr>
<tr>
<td></td>
<td><strong>S. Best Practices for Establishing and Running a Post-Acute Care Network (NF/AL/HH)</strong> (repeat)</td>
</tr>
<tr>
<td></td>
<td><strong>Z. Preparing for Your Coming Privacy Breach (NF/AL/HH)</strong> (repeat)</td>
</tr>
</tbody>
</table>
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Daniel Meier  
Benesch Friedlander Coplan & Aronoff LLP  
Hackensack, NJ
Live Tweet the Program
#AHLA17

Will you be in San Diego for the Long Term Care and the Law? We encourage you to live tweet @healthlawyers so that attendees can learn from more than one session at once, and so that members unable to attend still feel plugged in.

PYA has provided sponsorship in support of the Twitter Feed at the program.
Additional Program Information

**Continuing Education Credit Information**

**CLE/MCLE:** AHLA will be applying for 18.5 credits (including 2.0 ethics credit) for 60-minute states and approximately 22.2 credits (including 2.4 ethics credit) for 50-minute states.

**CPE:** AHLA will be applying for 22.0 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 22.2 Compliance Certification Board (CCB) credits.

**NHA:** AHLA will be applying for 22.2 Nursing Home Administrator (NHA) 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 health law. There are no prerequisites or advanced preparations required to register for this group live program. Those seeking accounting credits should be familiar with the basic concepts and terminology associated with health law in order to obtain the full educational benefit of this program.

**Membership**

Dues are $220 for those admitted to the Bar/graduated from college within the last four years; $340 for those admitted/graduated between four and seven years ago; and $385 for those admitted/graduated eight or more years ago. Dues are $105 for government employees and full-time academicians; $89 for paralegals, $110 for public interest professionals, and $85 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 no later than February 10, 2017. 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 (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.

**Spouse/Guest Fee**

For an additional $50 spouses and adult guests can register to attend the reception on Wednesday and Thursday evenings and the breakfasts on Thursday and Friday mornings. Children are welcome to attend these events at no additional charge.

**Travel**

Association Travel Concepts (ATC) has negotiated discounts with United, Delta, Hertz, and Enterprise Rental Car to bring you special airfares and car rental rates lower than those available to the public. Discounts apply for travel for AHLA 2017 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.

ASSOCIATION TRAVEL CONCEPTS
1-800-458-9383
email: reservations@atcmeetings.com
http://www.atcmeetings.com/ahla
ATC is available for reservations from 8:30 am until 8:00 pm Eastern, Monday through Friday.

**Wifi, sponsored by Ntracts**

Free Wifi will be available in the conference area. More information will be available onsite.
Long Term Care and the Law
February 22-24, 2017
Manchester Grand Hyatt
San Diego, CA