Physicians and Hospitals Law Institute
Health Information and Technology Featured Track

February 5-7, 2018 | Sheraton New Orleans | New Orleans, LA

In Association with Louisiana State Bar Association and the Louisiana Hospital Association

Plantinum Sponsor:

HORNE CPAs & BUSINESS ADVISORS
Planning Committee
Lisa J. Gilden, Program Co-Chair
Julie E. Kass, Program Co-Chair
David A. DeSimone
Rick L. Hindmand
Seth M. Wolf
Kristen McDermott Woodrum

Learning Objectives
• Current enforcement efforts and their impact on physicians, hospitals, and health systems
• ACA implementation challenges for providers
• Regulatory developments and considerations
• Structuring integration models and delivery systems

Hotel Information
Sheraton New Orleans
500 Canal St
New Orleans, LA 70130
(504) 525-2500
Hotel accommodations are not included in the registration fee. Call Sheraton New Orleans Hotel and indicate that you are attending the AHLA program. Rooms at the group rate of $227 single/double occupancy are limited and may sell out prior to the January 12, 2018 cut-off.

Program Fees
Early Registration
Postmarked and paid on or before January 12, 2018
First AHLA/LSBA/LHA Member: $895
Each additional AHLA/LSBA/LHA Member: $820
Non-Member: $1,145
Registration
Postmarked and paid between January 13-23, 2018*
First AHLA/LSBA/LHA Member: $1,020
Each additional AHLA/LSBA/LHA Member: $945
Non-Member: $1,270
* Fees increase $100 after this date

Discounts
In-House Counsel and Solo Practitioner: $100 off full applicable rate
AHLA/LSBA/LHA Academician Member: $540
AHLA/LSBA/LHA Government Member: $540
AHLA/LSBA/LHA Public Interest Professional Member: $540
Government/Academician/Public Interest Professional Non-Member: $615
AHLA/LSBA/LHA One-Day Attendance Member: $450
One-Day Attendance Non-Member: $570

Practice Group Luncheons
$60 Member of sponsoring Practice Group(s)
$70 Non-Member of sponsoring Practice Group(s)

Lunch Sponsors
Antitrust, In-House Counsel, and Hospitals and Health Systems – ECG Management Consultants
Medical Staff, Credentialing, and Peer Review and Health Care Liability and Litigation – NorthGauge Healthcare Advisors LLC
Health Information and Technology – HORNE Cyber

Please note: Sessions labeled as (HIT) and/or shaded on the schedule are in the Health Information Technology Track.

Exhibitors
Carnahan Group
Change Healthcare
Coker Group
ECG Management Consultants
HealthCare Appraisers, Inc
HealthCare Compliance Network, LLC
HORNE Cyber LLP
HORNE LLP
NorthGauge Healthcare Advisors, LLC
Ntracts, Inc.
Pinnacle Healthcare Consulting
PYA
The Greely Company
If you are interested in exhibiting or sponsorship opportunities at this program, please contact veshleman@healthlawyers.org

For the most up-to-date information and to register, visit our website at www.healthlawyers.org/programs
Monday,
February 5, 2018
7:00 am-5:30 pm
Registration and Information
7:00-8:00 am
Continental Breakfast, sponsored by PYA and Sullivan, Cotter and Associates, Inc.
This event is included in the program registration fee. Attendees, faculty, and registered guests are welcome.

GENERAL SESSION

8:00-8:15 am
Welcome and Introductions
Marilyn Lamar, AHLA President-Elect
Lisa J. Gilden, Program Co-Chair
Julie E. Kass, Program Co-Chair

8:15-9:45 am
Year in Review
Elizabeth Carder-Thompson
Jack S. Schroder, Jr.
• Adventures in health care reform
• Recent false claims act cases initiated by physician whistleblowers
• Several states find a way to circumvent FTC opposition to hospital mergers
• Impact of Yates memo on individual accountability for health care executives
• The price of resolving a HIPAA violation has escalated dramatically
• What has become of episode payment models and value-based health care?
• An important Supreme Court decision on pension plans maintained by church-affiliated hospitals
• Evolving federal and state responses to the opioid crisis
• The IRS revokes a hospital’s tax-exempt status for failing to conduct a community health needs assessment
• Fines for EMTALA violations double

9:45-10:15 am
Coffee Break, sponsored by HealthCare Appraisers, Inc

CONCURRENT SESSIONS

10:15-11:15 am
A. Minimizing Risk for Business Associate Misconduct
Kim C. Stanger
(not repeated)
• Exposure for business associate misconduct: Emerging theories and shifting OCR standards
• Rethinking who is—and who is not—your business associate, and why it matters
• Avoiding agency and vicarious liability
• Do HIPAA and other laws impose a duty to monitor business associate conduct?
• Modifying business associate agreement terms to minimize liability
• Practical suggestions for responding to breaches by business associates

B. Navigating Compliance in a Post-Escobar World
Richard RossBurris, III
Lindsey Lonergan
• The impact of Escobar on the law of False Claims Act implied certification cases
• Lessons learned from the interpretation of Escobar by federal courts nationwide, including recent case developments affecting hospitals and physician practices
• Perspectives on how the Escobar case and its interpreting decisions have impacted day-to-day compliance concerns in hospitals
• How these lessons can be used to proactively redesign your compliance program
• Potential policies to ensure compliance with potential risk areas including licensure, conditions of participation, and accreditation standards

C. Hot Topics in EMTALA: Screening and Triaging Emergency Room Challenges
Emily Black Grey
Sarah E. Swank
• How opioid overdoses are challenging EDs
• Working with law enforcement
• Special considerations for international patients
• Partnering with law enforcement: Lessons learned
• Trends in enforcement: Behavioral health

D. Lessons Learned from Leasing the Physician Practice to the Hospital or Health System: The Life Cycle of PSAs and More
Alice G. Gosfield
• Fundamental terms
• Points of controversy: Restrictive covenants, ownership of records, billing performance, non-CPT payments, overhead, asset purchase, staff employment, dispute resolution
• Sticking points during the term: change in FMV, loss or addition of physicians, metrics for quality payments
• Transitioning from one PSA to another
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.

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.

Karin Chernoff Kaplan
Joseph N. Wolfe
• Legal and regulatory implications of employment and other arrangements that require FMV and CR standard
• Are these requirements expected to remain as is? What is the current administration thinking?
• Present challenging cases examples from both a fair market value and/or commercial reasonableness perspective
  – Professional services leases
  – Highly productive physicians
  – Group productivity models
  – Employed physicians providing call coverage
  – Co-management arrangements
• How does an appraiser view these examples?
• How does an attorney view these examples?

11:30 am-12:30 pm

F. A Real-World Look at Private Equity Investments in Health Care: What It Means for Providers (not repeated)
Peter A. Pavarini
Michael F. Schaff
• Why private equity (PE) is interested in physician practices
• The typical terms of a PE investment
• How structure is impacted by corporate practice of medicine and other regulatory issues
• What this means for the industry generally
• Case study and the perspectives of the parties

G. Antitrust Overview—Refresher for Hospital, Physician Group, and Payer Counsel Seeking to Engage in Strategic Ventures and Other Activities
David R. Garcia
Christine L. White
• Provider mergers, including best practices in connection with identifying substantive antitrust concerns, mandatory pre-merger filings, transaction planning, and execution
• Clinical integration, including key antitrust issues in the formation and operation of clinically integrated entities

• Joint ventures, including best practices in identifying substantive antitrust concerns in connection with the formation and operation of a JV entity, mandatory pre-merger filings, transaction planning, and the use of firewalls
• Vertical agreements between providers and third party payers, including provisions relating to steering, tiering, and exclusivity

H. Bracing Providers for the Burden of Bundles and Risk Based Payments
David A. DeSimone
Brian S. Kern
John R. Washlick
As easy as A-B-C-D-F:
• Assessing the challenges of risk payments
• Bundle basics: Regulatory foundation and legal implications
• CJR demonstration: Lessons learned
• Delivery models
• Financing future risk

J. Government Enforcement Activities and Policies Shaping 2018 and Beyond
Catherine L. Hess
Tony R. Maida
• Recent False Claims Act settlements and court decisions, including cases regarding medical necessity, the Anti-kickback Statute, and the Stark Law
• The Yates Memo and DOJ’s increasing examination of individual liability
• OIG administrative actions targeted at physicians
• OIG Advisory Opinions and other compliance guidance to hospitals and physicians
• Lessons for hospitals and physicians from DOJ-HHS coordinated enforcement activities

K. Ensuring Safety and Compliance during Difficult Patient Encounters
Sharon Peters
Allison Hay Petersen
• Increase in patient assaults towards health care workers nationwide, including legislative response
• Balance between protecting health care workers and patient’s integrity
• Liability and regulatory concerns for when a patient elopes or leaves against medical advice
• Best practices for advising staff on how to interact with potentially violent patients (choosing appropriate reaction: security, physician-ordered restraint, patient safety monitor/sitter, police, or allowing patient to leave AMA)
• Best practices for post-encounter actions (license reporting, abuse reports, involvement of law enforcement, quality review)

12:30-1:45 pm
Lunch on your own or attend the Practice Group Luncheon:
• Antitrust, In-House Counsel, and Hospitals and Health Systems Practice Group Joint Luncheon, sponsored by ECG Management Consultants
Topic: Health Care—Too Big to Fail? A Facilitated Lunch for In-House Counsel and Those Who Support Them

This event is not included in the program registration; there is an additional fee; limited attendance; pre-registration required. Check our website for more information on each topic.

CONCURRENT SESSIONS

2:00-3:00 pm
L. Managing Risk in Employing Foreign Physicians and Researchers during the Trump Years (not repeated)
Isabelle Bibet-Kalinyak
Mary Therese Link
• Statutory and regulatory framework: Interdependency between health care, labor and employment, immigration regulations, and international export control regulations. Applicable statutes and rules and consequences of noncompliance
• Immigration basics: Introduction to (i) the non-immigrant visas available for health care providers, researchers, professors, and executives, including types, availability, cost, timeline, pros and cons, options for spouses and dependents, etc.; and (ii) the green card process – types of permanent visas available for health care providers, researchers, professors, and executives, availability, cost, timeline, pros and cons, dependents, traveling restrictions, etc
• Immigration Reform: Update on various Executive Orders and changes in laws and regulations implemented by the Trump administration
• Compensation models: When and how to utilize productivity and other incentives in employing foreign nationals without running afoul of Department of Labor and immigration regulations
• Drafting employment agreements for foreign nationals: Immigration fees, term period, non-compete covenants, compensation, J-1 waiver state-specific requirements, etc

M. Practical Approaches to Disclosing Behavioral Health Information—Legal and Compliance Perspective
(not repeated)
Marla Berkow
Gerald E. DeLoss
• Standard disclosures for treatment, payment, and health care operations
  – Differences between HIPAA & 42 CFR Part 2
  – Coordination of care under 42 CFR Part 2
  – Disclosures under selected State mental health laws
• Client rights, right to authorize release, and right to revoke release
  – HIPAA
  – 42 CFR Part 2
  – Selected state mental health laws
• Legal liability and weighing the decision to disclose
  – Real world scenarios

N. MACRA 2.0: Navigating the New Course of QPP in CY2018 and Beyond
W. Schaeffer Smith
Kristen McDermott Woodrum
Recent updates to the Quality Payment Program (QPP) created by the Medicare Access and Chip Reauthorization Act of 2015 (MACRA) implement key program and policy changes that chart the course for MACRA under the Trump administration for CY 2018 and beyond.
• MACRA refresh: What is new? What is different?
• Key changes to the Merit-based Incentive Pathway: Flexibility and support in the CY 2018 QPP
• Evaluating virtual group participation options: Navigating the special rules for facility-based physicians

O. Strange Bedfellows or Successful Business: Navigating New Payer-Provider Arrangements
Ann M. Bittinger
Mark S. Kopson
• I now work for whom? When plans employ providers
• Can they really do that? Key terms in new payer-provider contracts
• Slicing the pie: Payer-provider compensation arrangements
• Risky business—when do I cross the line and do I want to do so?

P. Living in a Virtual World—Benefits and Risks of Advanced Technology (HIT)
Gerard M. Nussbaum
William Tanenbaum
Adoption of new technologies will
• Shift how health care providers interact with patients, clinicians, staff, and service providers
• Require new models for new technologies, risk management, liability, and contracting for technology
• Alter approaches for privacy, security, data retention, and appropriate use of data
• Involve grappling with Internet of things (IoT), virtual reality, blockchain and a host of other new developments

3:15-4:15 pm
Q. Ancillary Services: Just What the Doctor Ordered or Quagmire for Physician Practices
(not repeated)
Lucy R. Carter
Rick L. Hindmand
As physician practices face financial challenges, ancillary services and product sales present opportunities to increase revenues and better serve patients, but present compliance, professional and financial issues. This session will address:
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 no later than January 22, 2018. 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.

R. Absolution from the Seven Deadly Sins—Saving Your Exemption

Gerald M. Griffith

- Houston we have a problem—the seven deadly sins that can lead to revocation if not properly and promptly addressed
- Contemplation and penance—conducting a review, formulating corrective action plans, and facing potential penalties
- Bless me, for I have sinned—confessing to the IRS
- Going from excommunication to absolution—strategies to build the record and procedural options
- Negotiating with fellow sinners—seeking repayment and compliant agreements

S. Clinical Integration Networks and Accountable Care Organizations: Topics for Developing High Value CINs and ACOs

Thomas J. Babbo
Dennis K. Butts

- Extending CINs/ACOs to achieve statewide, regional, or even multi-regional reach
- Engaging payers around contracting in a value-based manner that adequately recognizes the value of a CIN/ACO
- Creating a program between the CIN and a health system whereby the health system “hires” the CIN/ACO and its physicians for efforts to reduce costs
- Aligning a health system CINs and Medicare ACOs to forge a more comprehensive value-based physician enterprise
- Crafting business models whereby Medicare ACOs and health systems can take advantage of CMS’s various “waivers” from fraud and abuse laws
- Using a CIN/ACO to help physicians thrive under MACRA

T. Legal Ethics: Conundrums for Counsel Advising on Compliance Reviews and Voluntary Disclosures—Who and What Must Be Reported and How?

Gregory M. Luce (Moderator)
Sandra H. Benzer
John C. Ivins

- What are the legal and ethical obligations of the organization’s counsel to report not only possible violations and repayment but also to assign individual liability for corporate conduct? Upjohn warnings and voluntary disclosures
- Is it appropriate to limit a review or audit based upon resources and timing considerations as well as the anticipated scope of the issue? E.g. can the time period for a review be limited by considerations of the applicable statute of limitations, departure dates of former employees, changes in data systems, etc. Model Rule 1.2(d); Model Rule 3.2; Model Rule 3.4; and, Model Rule 4.4(a)
- When should in-house counsel consider engaging outside counsel for such reviews and what are the expectations for confidentiality and privilege associated with the review? Who is the client when management may be directly accountable for the conduct in question? Model Rule 1.13(b) and (f); Model Rules 4.2 and 4.3
- Is there a legal obligation to disclose individual culpability to enforcement authorities and when and how does that arise? Ethical considerations under the Yates Memo and Model Rules 1.13(b).
- What are the ethical obligations of in-house and outside counsel during the review when individuals are identified as the source of potential compliance violations? E.g. would in-house counsel be a witness; would outside counsel be required to report directly to the governing body when violations by management are identified?
- Maintaining the privilege while conducting an internal review and advising on an ensuing voluntary disclosure

U. What’s the Future of the CMS 60-Day Overpayment Rule—Can Negligence Really Trigger False Claims Act Exposure

Barbara Rowland
Andrew D. Ruskin

- Fundamental concepts applicable to the 60-Day Repayment Rule
- Tips for conducting internal audits that are appropriately tailored to the receipt of “credible information”
- Criteria for evaluating whether review by an external body, such as OIG or a MAC, triggers an obligation to do further internal review
• Framework for deciding whether a repayment is necessary or whether an OIG/MAC/DOJ disclosure alone is warranted, including potential implications for a False Claims Act case predicated on the 60-Day Repayment Rule

• The ongoing federal litigation brought by Unitedhealthcare Insurance Company’s Part C plans against US Health and Human Services to square agency rulemaking imposing a negligence standard for addressing overpayments on Medicare Part C and D providers with the False Claims Act’s stricter “knowledge” requirement.

4:30-5:30 pm

V. Mixed Marriages: Transactions and Affiliations among Tax-Exempt Hospitals, Physicians, and Non-Exempt Entities (not repeated)
Ethan E. Rii
Neal Shah

• Key motivations and incentives for hospitals, medical practices and for-profit non-exempt entities to enter into mutually-beneficial transactions and affiliations

• Structural and business considerations applicable to each category of participants

• Legal and regulatory considerations, including fraud and abuse and compliance

• Financial considerations, including the implementation of value-based care and other incentive-based arrangements

• Effective management of financing, advisory, and other ancillary party involvement

W. Operationalizing Compliance with the New Nondiscrimination Requirements of Section 1557 of the Affordable Care Act (not repeated)
Toby K. L. Morgan
Drew Stevens

• Section 1557 of the Affordable Care Act is the first civil rights law to specifically target the health care industry, and the first civil rights law to prohibit discrimination on the basis of “sex” in health care, in addition to race, color, national origin, disability, and age

• The new legal landscape under Section 1557, including its new prohibitions, requirements, and risks—and then explore practical steps and best practices that health care providers should implement to minimize risk and achieve compliance

• Under the regulation, health care providers must take immediate action for compliance. These steps include: 1) adopting a grievance procedure to resolve complaints of discrimination; 2) desig-
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 Monday and Tuesday evenings and the breakfasts on Monday, Tuesday, and Wednesday mornings. Children are welcome to attend these events at no additional charge.

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.

- Incorporating P4P/Value Based concepts into the credentialing and peer review process
- Defining the steps in the peer review process to provide transparency and facilitate communication and cooperation, as opposed to creating barriers
- Protecting peer review confidentiality while handling increased dissemination of performance information
- Applying these concepts to both private practice and employed physicians
- The evolving and changing nature of the government relationship with the private sector including an update on current activities and the impact on health care regulation
- Current and “hot topics” for The Joint Commission survey and certification
- An “insiders” view of The Joint Commission accreditation process with tips on how to counsel your client through a successful survey in the current health care delivery environment
- Practical guidance to share with your organization’s regulatory compliance professionals

BB. Breaches and Bars: Issues of Legal Ethics in Cybersecurity and Data Breaches (HIT)
Scott Bennett
Seth M. Wolf

- Issues of legal ethics relating to cybersecurity and data breaches
- The duty of technological competence
- The duty to safeguard information
- Creating and maintaining the attorney-client privilege and work-product protection
- Communicating with attorneys hired by cyber insurers
- The duty to explain the attorney’s role to employees, and to other organizations involved with the breach

CC. Achieving Hospital-Physician Integration through Effective Co-Management Agreements
Curtis H. Bernstein
William Mathias

- Pros and cons of various co-management structures
- Valuation considerations—FMV and commercial reasonableness
- Strategies for mitigating fraud and abuse and compliance risks

C. Hot Topics in EMTALA: Screening and Triaging Emergency Room Challenges (repeat)

O. Strange Bedfellows or Successful Business: Navigating New Payer-Provider Arrangements (repeat)

9:45-10:45 am

DD. A Mardi Gras Parade...Catch the Regulatory “Insight” Beads! (not repeated)
Lisa Diehl Vandecaveye

EE. Anatomy of a Whistleblower: Avoiding Whistleblower Claims (not repeated)
Jana S. Baker
Terra Reynolds

- The many faces of a whistleblower
- Federal and state landscape governing whistleblowers
- Recent developments and trends in whistleblower litigation
- Implementing and maintaining internal controls and compliance programs to minimize risk

FF. 2018 and Beyond: New Ways Providers Are Using Telemedicine and Digital Health (HIT)
Alexis S. Gilroy
Nathaniel M. Lacktman

- Hot topics and regulatory updates in telemedicine and digital health
- 50-state surveys highlighting on telemedicine law and rule changes
- Changes to Medicare billing, coding and enrollment rules for telehealth services
- How physician groups and hospitals are currently contracting for telemedicine services
- The growth of evolving “non-face-to-face” services and how they differ from traditional “telemedicine” services

D. Lessons Learned from Leasing the Physician Practice to the Hospital or Health System: The Life Cycle of PSAs and More (repeat)

K. Ensuring Safety and Compliance during Difficult Patient Encounters (repeat)
11:00 am-12:00 noon

GG. Direct Contracting 101 and Beyond: Navigating Regulatory and Other Legal Hurdles in the Development of Direct Contracting Arrangements and Downstream Network Building (not repeated)
Joy Harris Hennessy
Elspeth Delaney Paul

• Direct contracting arrangements
• Antitrust issues raised by participants who may be competitors
• Insurance licensing considerations
• Data exchange concerns
• Compliance with Stark and Anti-Kickback

HH. Playing the Long Game: Successful Physician Acquisitions Require More than “Getting a Deal Done at FMV”
Brett R. Friedman
Jessica E. Stack

• The importance of thinking beyond “FMV Now!” when completing fair market value and due diligence work to ensure successful transition of independent physicians into the Hospital’s network and to avoid painful post hoc corrective action
• Contractual terms that consider future performance and provide for flexibility to avoid frequent contract revision, but adhere to regulatory compliance requirements and best practices
• Incentive compensation models that are manageable, easily understood by providers and management, and align incentives with desired outcomes, including larger reimbursement changes from volume (i.e., productivity) to value (i.e., outcomes)
• Best practices for effective physician relationship management and contractual enforcement to ensure successful long-term relationships after the “deal is done”
• Hypothetical examples and case studies

J. Government Enforcement Activities and Policies Shaping 2018 and Beyond (repeat)

R. Absolution from the Seven Deadly Sins–Saving Your Exemption (repeat)

Y. Advanced Practitioner Professionals (APPs) in the Hospital/Health System Setting (repeat)

12:00 noon-1:15 pm

Lunch on your own or attend the Practice Group Luncheons:

• Physician Organizations Practice Group
  Topic: Challenges Posed by Consolidation

• Medical Staff, Credentialing, and Peer Review and Health Care Liability and Litigation Practice Group Joint Luncheon, sponsored by NorthGauge Healthcare Advisors, LLC
  Topic: The Opioid Crisis, Litigation Risks, and Medical Staff Privileging

This event is not included in the program registration. There is an additional fee; limited attendance; pre-registration required. Check our website for more information on each topic.

CONCURRENT SESSIONS

1:30-3:00 pm Extended Sessions

JJ. Fair Market Value in Health Care—The Fifth Annual Year in Review (not repeated)
Kelly R. Anderson
Justin Burk
Andrea M. Ferrari
Julie E. Kass

• Previous year’s regulatory actions, court cases, settlements, and other developments that focus on and/or otherwise relate to the concept of fair market value in hospital-physician transactions
• How those developments might reflect, challenge, and/or affect prevailing legal perspectives and operational processes regarding physician-hospital arrangements
• “Top Ten” issues section, based on feedback from prior sessions, which includes practical takeaways for counsel related to this ever-evolving area

MM. Physician Compensation in a Value-Based Environment: Not Just What the Survey Says
W. Mark Easterly
Banee Pachuca
Bartt Boyer Warner

• The value-based reimbursement paradigm
  – The well of prosperity has run dry
  – Everybody’s doing it (government and commercial payors)
  – There is no such thing as “benefit of the doubt”
  – The three C’s of physician compensation: Compliance with laws and regulations, consistent with Fair Market Value, commercially reasonable
• Trends in physician compensation and compliance
  – Stacking
  – Recent cases/settlements detailing the risks associated with physician compensation arrangements
• A simple guide to structuring and reviewing physician compensation arrangements including:
  – Leveraging your resources: How to ensure in-house counsel, outside counsel and the valuators work together effectively and understanding the roles of each party and how to ensure you have a defensible opinion
  – What to consider when engaging an external valuator
  – Practical tips to ensure commercial reasonableness
• Compliance and FMV checklists
• Example case studies for discussion
NN. Culture, Capacity, and Capital: Key Elements of Hospital M&A Transactions and How to Avoid Pitfalls in the Transaction Negotiation and Implementation Process
Jennifer Landrum Elliott
Anne K. Garcia
Torrey J. McClary

- Unique challenges in structuring and negotiating highly regulated health care transactions involving multiple types of health care providers
- Elements of transactions that can have long-lasting implications on the parties (such as destabilizing the relationship and giving rise to disputes) if not addressed properly from the start
- Tips to avoid common pitfalls and ensure long term success of hospital deals
- Three critical elements: cultural compatibility, capacity to negotiate and implement the deal, and availability of capital to integrate, grow and maintain facilities
- Lessons learned from St. Louis University’s purchase and re-purchase of St. Louis University Hospital from Tenet, and simultaneous creation of a new joint venture with SSM Health
- Lessons learned from the formation and termination of the joint operating agreement between the University of Louisville Hospital and KentuckyOne Health

3:00-3:15 pm
Snack and Beverage Break, sponsored by HealthCare Appraisers, Inc

3:15-4:15 pm
OO. Meeting Challenges with Psychiatric Patients in Emergency Departments and Community Settings
(not repeated)
Kathy L. Poppitt
Hillary H. Young

- Community health resources for patients with mental health/substance use disorders
- Mental health patients’ increased use of hospital emergency departments (EDs)
- Payers’ responses to increased claims for this population
- Challenges with treating violent patients and boarding mental health patients in hospital EDs
- Federal rules for hospital EDs (EMTALA and the Medicare Conditions of Participation), their interaction with state/local rules on involuntary treatment, and regulators’ expectations
- Recommended best practices

PP. Medical Practice Acquisitions—Insider Tips from Both Sides of the Table
Dennis Hursh
Robert L. Wax

- Practice Sale
  - Common Due Diligence Issues (“A “lien” sounds like a bad thing, so I’m sure we don’t have any.”)
  - Determination of purchase price (How do you value goodwill?)
  - Reps and Warranties (“Do I really have to read all that legalese?”)
  - Indemnity Provisions (from here to eternity)
  - Staffing post-acquisition (why it’s critical for the doc before the deal is inked)
  - Comparing staff benefits/salaries/policies (“No smoking? That won’t apply to us, right, Doc?”)
  - Communications (Who tells the staff?)
  - Inactive medical records
  - EHR and other long-term commitments of the practice
  - Tail coverage
  - Mulligan

- Employment Agreement
  - Guaranteed salary/compensation (initial term, renewal, retention, and other bonuses)
  - Disability (Says who?)
  - Covenant not to compete, carve outs, liquidated damages (“My surgery center?”)
  - Call
  - Location
  - Benefits
  - Physician recruitment

B. Navigating Compliance in a Post-Escobar World (repeat)


U. What’s the Future of the CMS 60-Day Overpayment Rule—Can Negligence Really Trigger False Claims Act Exposure (repeat)

4:30-5:30 pm
QQ. Feels Like the Odyssey? Working through a System-Wide Compensation Redesign and Living to Tell the Story (not repeated)
Annapoorani Bhat
Kristoffer B. Shepard
Wednesday,
February 7, 2018
Health Information Technology Track (HIT)

7:00 am-3:40 pm
Registration and Information

7:00-8:00 am
Continental Breakfast, sponsored by PYA and Sullivan, Cotter and Associates, Inc.
This event is included in the program registration. Attendees, faculty, and registered guests are welcome.

CONCURRENT SESSIONS

8:00-9:00 am
SS. Records Management, Legal Hold, Proper Destruction, and Impact of Loss (HIT) (not repeated)
Melissa L. Markey
- Why records management is important and what is functional records management
- Managing legal holds—best practices
- Impact of communication technology—texting, conferencing, and data exchange
- CMS and HIPAA and the impact on record retention and destruction
- Proper medical record (and data) destruction
- State and other laws regulating record retention and destruction, including licensure, public health codes, FTC and red flags, CMS
- Data use agreements

BB. Breaches and Bars: Issues of Legal Ethics in Cybersecurity and Data Breaches (HIT) (repeat)

N. MACRA 2.0: Navigating the New Course of QPP in CY2018 and Beyond (repeat)

S. Clinical Integration Networks and Accountable Care Organizations: Topics for Developing High Value CINs and ACOs (repeat)

PP. Medical Practice Acquisitions—Insider Tips from Both Sides of the Table (repeat)

9:15-10:15 am
TT. The New Era of Big Data for Health Care (HIT) (not repeated)
Kirk J. Nahra
- How the law currently applies to data that is gathered in the health care industry
- The overlaps and gaps in the current regulatory structure, to provide insights on where there is confusion and ambiguity in the law today
- Various regulatory frameworks that currently are in play for big data in health care, including HIPAA, FDA, the Common Rule, state laws and otherwise
- Risks and opportunities that are being created for the industry and its patients from big data
- Solutions for “solving” these problems and will address how the law likely will evolve over the next decade

UU. EHR Integration: Delivering Relevant Information at the Point of Care (HIT) (not repeated)
Daniel H. Orenstein
- What is EHR integration in contrast to the interoperability of health information more generally
- What are the benefits of EHR integration?
- Concrete examples will be given of algorithms, predictive analytics, and machine learning that can benefit patients at the point of care
- The current status of the 21st Century Cures Act anti-information blocking provisions and rulemaking, and how the law affects EHR integration
- The various standards, both adopted and which may be adopted, which could facilitate EHR integration and provisioning closed loop analytics at the point of care, e.g., APIs, SMART on FHIR, CDS hooks, among others
- The relative effectiveness of standards versus administrative processes and regulation, in achieving EHR integration
- Forecast of expected legal and regulatory developments in the electronic exchange of health information, and how it may affect the development of technology for interoperability and the market for interoperable health information

X. Two to Tango: Top Fraud and Abuse Concerns Related to Hospital-Physician Relationships (repeat)

CC. Achieving Hospital-Physician Integration through Effective Co-Management Agreements (repeat)

HH. Playing the Long Game: Successful Physician Acquisitions Require More than “Getting a Deal Done at FMV” (repeat)
10:30 am-12:00 noon
Extended Sessions

VV. Murder, Mayhem, and Medical Devices: Liability for Patient Harm and Other Consequences when Internet-Connected Medical Devices are Hacked (HIT) (not repeated)
Seth D. Carmody
Elliot Golding
Joanne E. Joiner

• Identification of privacy and security laws applicable to medical devices
• Potential threats to medical devices and the systems that connect them (e.g., bioterrorism, ransomware, etc.)
• Types of potential civil and criminal liability if a medical device is compromised or misused (particularly if used to harm patients)
• Suggestions to help manage cyber risk and liability
• FDA’s current approach to medical device security including public vulnerability disclosure

KK. Cyber Threats, Data Breaches, Privacy Issues, and the Health Care Provider–What Are the State Enforcers Looking At? (HIT) (repeat)

LL. Orange Is the New APM? (advanced) (repeat)

MM. Physician Compensation in a Value-Based Environment: Not Just What the Survey Says (repeat)

NN. Culture, Capacity, and Capital: Key Elements of Hospital M&A Transactions and How to Avoid Pitfalls in the Transaction Negotiation and Implementation Process (repeat)

12:00 noon-1:15 pm
Lunch on your own or attend the Practice Group Luncheon:
• Health Information Technology Practice Group, sponsored by HORNE Cyber

This event is not included in the program registration. There is an additional fee; limited attendance; pre-registration required.

CONCURRENT SESSIONS

1:30-2:30 pm

WW. Expanding the Scope of Integrated Health Information Records into the Clinical Research Arena: Lessons Learned (HIT) (not repeated)
Christi J. Braun
Richard P. Church
Heather Fields

• Regulatory complexities arising at the intersection of several health care trends: The expansion of integrated health information records; the growth of clinically integrated networks and ACOs; and the desire to use integrated health records for clinical research
• The overlapping regulatory frameworks that apply to research uses of integrated health records
• The role a CIN/ACO can take in managing integrated clinical records and use of those records for research projects
• Strategies and best practices for patient informed consent and managing contractual rights and expectations of provider participants in the integrated health care record
• The impact of a rapidly evolving regulatory environment, including potential impacts of the updated Common Rule, as well as recommendations from federal advisory groups, committees, and workshops
• Practical insights in working with health systems to develop integrated clinical records and use those records for research purposes

P. Living in a Virtual World–Benefits and Risks of Advanced Technology (HIT) (repeat)

Z. Clinical Documentation at the Crosshairs of EHR and Enabling Technologies (HIT) (repeat)

2:40-3:40 pm

FF. 2018 and Beyond: New Ways Providers Are Using Telemedicine and Digital Health (HIT) (repeat)

RR. When Ransomware Attacks–Dancing with the Devil (HIT) (repeat)

Adjournment
# Program Schedule

## Monday, February 5, 2018

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>7:00 am-5:30 pm</td>
<td>Registration and Information</td>
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<td>7:00-8:00 am</td>
<td>Continental Breakfast, sponsored by PYA and Sullivan, Cotter and Associates, Inc. (This event is included in the program registration fee. Attendees, faculty, and registered guests are welcome.)</td>
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<tr>
<td>8:00-9:45 am</td>
<td>General Session</td>
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<td>8:00-8:15 am</td>
<td>Welcome and Introductions</td>
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<tr>
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<td>Lamar, Gilden, Kass</td>
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<tr>
<td>8:15-9:45 am</td>
<td>Year in Review</td>
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<td>Carder-Thompson, Schroder</td>
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<td>9:45-10:15 am</td>
<td>Coffee Break, sponsored by HealthCare Appraisers, Inc</td>
</tr>
<tr>
<td>10:15-11:15 am</td>
<td>Concurrent Sessions</td>
</tr>
<tr>
<td>A. Minimizing Risk for Business Associate Misconduct (not repeated)</td>
<td>Stanger</td>
</tr>
<tr>
<td>B. Navigating Compliance in a Post-Escobar World</td>
<td>Burris, Lonergan</td>
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<td>C. Hot Topics in EMTALA: Screening and Triaging Emergency Room Challenges</td>
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<td>D. Lessons Learned from Leasing the Physician Practice to the Hospital or Health System: The Life Cycle of PSAs and More</td>
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<tr>
<td>Pavarini Schaff</td>
<td>D. Garcia White</td>
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<td><strong>Lunch on your own or attend the Practice Group Luncheon:</strong> Antitrust, In-House Counsel, and Hospitals and Health Systems Practice Groups (joint luncheon), sponsored by ECG Management Consultants (This event is not included in the program registration; there is an additional fee; limited attendance; pre-registration required)</td>
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<tr>
<td>L. Managing Risk in Employing Foreign Physicians and Researchers during the Trump Years (not repeated)</td>
<td>M. Practical Approaches to Disclosing Behavioral Health Information—Legal and Compliance Perspective (not repeated)</td>
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<tr>
<td>Bibet-Kalinyak Link</td>
<td>Berkow DeLoss</td>
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<td>Q. Ancillary Services: Just What the Doctor Ordered or Quagmire for Physician Practices (not repeated)</td>
<td>R. Absolution from the Seven Deadly Sins—Saving Your Exemption</td>
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<tr>
<td>Carter Hindmand</td>
<td>Griffith</td>
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<td>V. Mixed Marriages: Transactions and Affiliations among Tax-Exempt Hospitals, Physicians, and Non-Exempt Entities (not repeated)</td>
<td>W. Operationalizing Compliance with the New Nondiscrimination Requirements of Section 1557 of the Affordable Care Act (not repeated)</td>
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<td>Rii Shah</td>
<td>Morgan Stevens</td>
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Monday, February 5, 2018 continued

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<td>Networking and Diversity+Inclusion Reception, hosted by AHLA's Diversity+Inclusion Council, sponsored by HORNE LLP</td>
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Tuesday, February 6, 2018

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<td>Networking Breakfast, hosted by AHLA's Women's Leadership Council, sponsored by Pinnacle Healthcare Consulting</td>
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<tbody>
<tr>
<td>AA. Peer Review Re-Engineered: The New Paradigm of Employed Physicians and Value-Based Purchasing (not repeated)</td>
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<td>Cassidy Harrison</td>
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<td>BB. Breaches and Bars: Issues of Legal Ethics in Cybersecurity and Data Breaches (HIT)</td>
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<td>C. Hot Topics in EMTALA: Screening and Triaging Emergency Room Challenges (repeat)</td>
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<td>O. Strange Bedfellows or Successful Business: Navigating New Payer-Provider Arrangements (repeat)</td>
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<td>Bittinger Kopson</td>
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<tr>
<td>DD. A Mardi Gras Parade…Catch the Regulatory “Insight” Beads! (not repeated)</td>
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<tr>
<td>Vandecaveye</td>
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<tr>
<td>EE. Anatomy of a Whistleblower; Avoiding Whistleblower Claims (not repeated)</td>
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<tr>
<td>Baker Reynolds</td>
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<td>K. Ensuring Safety and Compliance during Difficult Patient Encounters (repeat)</td>
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<td>Peters Petersen</td>
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<tr>
<td>GG. Direct Contracting 101 and Beyond: Navigating Regulatory and Other Legal Hurdles in the Development of Direct Contracting Arrangements and Downstream Network Building (not repeated)</td>
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<td>Hennessy Paul</td>
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<td>J. Government Enforcement Activities and Policies Shaping 2018 and Beyond (repeat)</td>
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<td>Y. Advanced Practitioner Professionals (APPs) in the Hospital/Health System Setting (repeat)</td>
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<td>Nagele Sher</td>
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Tuesday, February 6, 2018 continued

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<td>Lunch on your own or attend the Practice Group Luncheon(s):</td>
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<tr>
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<td>Physician Organizations Practice Group OR Medical Staff, Credentialing, and Peer Review and Health Care Liability and Litigation Practice Groups (joint luncheon), sponsored by NorthGauge Healthcare Advisors, LLC</td>
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<td>1:30-3:00 pm</td>
<td>Extended Sessions</td>
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<td></td>
<td>J.J. Fair Market Value in Health Care–The Fifth Annual Year in Review (not repeated)</td>
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<td>Homchick, Reisz, Robinson, Easterly, Pachuca, Warner, Elliott, A. Garcia, McClary</td>
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<td>3:00-3:15 pm</td>
<td>Snack and Beverage Break, sponsored by HealthCare Appraisers, Inc</td>
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<td>3:15-4:15 pm</td>
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<td>OO. Meeting Challenges with Psychiatric Patients in Emergency Departments and Community Settings (not repeated)</td>
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<td>PP. Medical Practice Acquisitions–Insider Tips from Both Sides of the Table</td>
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<td>B. Navigating Compliance in a Post-Escobar World (repeat)</td>
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<td>U. What's the Future of the CMS 60-Day Overpayment Rule–Can Negligence Really Trigger False Claims Act Exposure (repeat)</td>
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<td>Poppitt, Young, Hursh, Wax, Burris, Lonergan, Kaplan, Wolfe, Rowland, Ruskin</td>
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<td>4:30-5:30 pm</td>
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<td>QQ. Feels Like the Odyssey? Working through a System-Wide Compensation Redesign and Living to Tell the Story (not repeated)</td>
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<td>RR. When Ransomware Attacks Dancing with the Devil (HIT)</td>
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<td>G. Antitrust Overview–Refresher for Hospital, Physician Group, and Payer Counsel Seeking to Engage in Strategic Ventures and Other Activities (repeat)</td>
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<td>H. Bracing Providers for the Burden of Bundles and Risk Based Payments (repeat)</td>
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<td>T. Legal Ethics: Conundrums for Counsel Advising on Compliance Reviews and Voluntary Disclosures–Who and What Must Be Reported and How? (repeat)</td>
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<td>Bhat, Shepard, Habte, Wisner, D. Garcia, White, DeSimone, Kern, Washlick, Luce (Moderator), Benzer, Ivins</td>
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**Wednesday, February 7, 2018 – Health Information Technology Track (HIT)**

### 7:00 am-3:40 pm

**Registration and Information**

### 7:00-8:00 am

**Continental Breakfast, sponsored by PYA and Sullivan, Cotter and Associates, Inc.**
(This event is included in the program registration. Attendees, faculty, and registered guests are welcome)

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### 9:15-10:15 am

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<td>Elliott A. Garcia McClary</td>
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**Wednesday, February 7, 2018 continued**

### 12:00 noon-1:15 pm

**Lunch on your own or attend the Practice Group Luncheon:**
Health Information Technology Practice Group Luncheon, sponsored by HORNE Cyber
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<td>Braun Church Fields</td>
<td>Nussbaum Tanenbaum</td>
<td>Leopard Tully</td>
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**DOWNLOAD THE AHLA APP!**

This free app is available in the iTunes App store or Google Play store by searching 'AHLA'. Download AHLA, by Bravura Technologies, onto your mobile device and hit open. Choose ‘Events’ to find Physicians and Hospitals Law Institute. Click on the event (you’ll be prompted to enter your email address). You will not be able to access the event features of a program if you are not registered for the event.

The App will include the agenda, attendee list, and access to the PowerPoint presentations.

Change Healthcare has provided sponsorship in support of the event portion of the app.
SEE THE POSSIBILITIES.

It’s time to think differently about the business of healthcare. Let’s work together to see what’s possible.
Faculty

Planning Committee
Lisa J. Gilden, Program Co-Chair
Vice President & General Counsel
Catholic Health Association
Washington, DC

Julie E. Kass, Program Co-Chair
Baker Donelson Bearman Caldwell & Berkowitz PC
Baltimore, MD

David A. DeSimone
SVP, Transformation and Chief Legal Officer
CentraState Healthcare System
Freehold, NJ

Rick L. Hindmand
McDonald Hopkins LLC
Chicago, IL

Seth M. Wolf
Associate General Counsel
University Hospitals
Beachwood, OH

Kristen McDermott Woodrum
BakerHostetler
Atlanta, GA

Kelly R. Anderson
Associate General Counsel
Baptist Health
Louisville, KY

Thomas J. Babbo
Hogan Marren Babbo & Rose Ltd
Chicago, IL

Jana S. Baker
Ogletree Deakins
Dallas, TX

Scott Bennett
Coppersmith Brockelman PLC
Phoenix, AZ

Sandra H. Benzer
Associate Counsel
University of Maryland Medical System
Baltimore, MD

Marla Berkow
Corporate Compliance Officer and Privacy Officer
Gateway Foundation, Inc.
Chicago, IL

Live Tweet the Program Using #AH-La18
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Transaction Advisory | Tax Audit & Accounting
Compensation Valuation
M&A | Healthcare Compliance

...AND SO MUCH MORE
Clinical Integration
Population Health Management
IT Risk & Security Management
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