



## Ken Burgess

Senior Counsel

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Ken Burgess is a health care attorney with more than 35 years of experience advising clients on a wide range of regulatory, litigation, compliance, and operations issues.

Ken advises providers on legal issues arising in hospitals, skilled nursing facilities, assisted living communities, hospice, home health, and other spheres of health care.

Ken also represents ancillary providers, including pharmacy, durable medical equipment (DME), and therapy. He advises clients on Certificate of Need (CON), Medicare/Medicaid enrollment and licensure issues, appeals of quality-of-care issues, and transactional matters. Ken is a frequent national lecturer and author of industry manuals, national trade journal magazine articles, and similar training.

Ken previously served as the Senior Director of Legal Services and Facility Operations of the American Health Care Association (AHCA), as the General Counsel of the North Carolina Health Care Facilities Association (NCHCFA), and as the General Counsel of the Assisted Living Federation of America (ALFA), the national assisted living trade association in Washington, D.C.

### Representative Matters

- Advised skilled nursing facilities, assisted living communities, and related long term care vendors on licensure, certification, survey, fraud and abuse, operations, risk management, certificate of need and business issues.
- Served as senior counsel to the national long term care trade association in Washington, D.C., where he was responsible for administering the association's legal assistance fund litigation, and overseeing all regulatory, facility operations, and clinical staff of the association.
- Served as regulatory and policy counsel for numerous sales and acquisitions of skilled nursing facilities and assisted living communities in multiple states.
- Represented national assisted living and skilled nursing facility provider in high profile licensure revocation action of multiple facilities in the state of Washington resulting in a favorable settlement and avoidance of involuntary de-licensure and permanent exclusion of the provider from the state.
- Negotiated a national exclusion from music licensing fee requirements for assisted living communities across the U.S.
- Served as the long term care industry representative on the first Negotiated Rulemaking Committee convened by the U.S. Department of Health and Human Services (HHS) to create safe harbors from the criminal provisions of the federal Anti-Kickback Statute.
- Negotiated the first global settlement of multiple facility licensure and certification survey citations in California with the state Department of Health Services and the California Attorney General.
- Assisted California provider in defending one of the earliest quality of care fraud actions, including negotiating with the federal Office of the Inspector General (OIG) to develop the provider's corporate compliance agreement and related settlement documents.
- Developed comprehensive advance directive policy for North Carolina long term care providers after enactment of the Patient Self-Determination Act.
- Represented state and national trade associations, and individual providers, on various issues impacting long term care providers, including negotiations with and representation before OSHA, the

federal OIG, the HHS Center for Medicaid and Medicare Services, and state licensure and survey agencies.

- Worked with state trade association, providers, and national accrediting organizations to develop assisted living accreditation standards.
- Assisted an operator of health care facilities in obtaining exemptions from Certificate of Need (CON) requirements. Represented the operator in two contested CON applications and appeals.
- Represented the owner of six skilled nursing facilities in a lawsuit against its tenant for breach of the leases. Following settlement, assisted the owner in negotiating and implementing an operations transfer agreement to take over operations from the tenant.



## Professional Honors & Activities

- Appointed to the North Carolina State Board of Examiners for Nursing Home Administrators by North Carolina Governor Roy Cooper (2023)
- Appointed to the Governor's Advisory Council on Aging by North Carolina Governor Roy Cooper (2022)
- Listed in *Chambers USA* as a leading Health Care lawyer in North Carolina since 2014
- Named the Best Lawyers® 2021 Health Care Law "Lawyer of the Year" in Raleigh-NC
- Listed in *The Best Lawyers in America*® for Health Care Law (2009 – 2013, 2015 – 2018, 2021 – 2024); Litigation - Health Care Law (2022 – 2024); Administrative / Regulatory Law and Corporate Law (2024)
- Listed since 2013 in North Carolina *Super Lawyers* in the area of Health Care
- Awarded *National Law Journal* "Health Care Trailblazer" (2019)
- Recipient – North Carolina Bar Association's Health Law Distinguished Service Award (2016)
- Honoree – *North Carolina Lawyers Weekly* North Carolina Leaders in the Law (2016)
- Legal Consultant and Member – North Carolina Medical Society, Ethical and Judicial Affairs Committee (2008 – present)
- Member – American Health Care Association, National Legal Committee (2008 – 2023)
- Member – North Carolina Bar Association, Health Law Council (2010 – 2011), Advance Directives Project (2006 – present)
- Chair – North Carolina Health Care Facilities Association, Associate Advisory Committee Board of Directors (2016 – present)
- Member – American Health Law Association
- Chair – FutureCare Foundation of North Carolina, Inc., Board of Directors
- Vice-chair – Jessie F. Richardson Foundation, Board of Directors
- Member – North Carolina Institute of Medicine, Task Force on Serious Illness (2019)
- Legal Consultant – North Carolina Coalition on Serious Illness



## Publications

- "CMS Rolls Out New Plan for State Survey Agencies to Address Skilled Nursing Facility Survey Backlogs" (December 2021)



## Speaking Engagements

- "Privacy Do's and Don'ts and Social Media Risks," North Carolina Assisted Living Association Webinar (November 17, 2022)
- "DHSR Survey Officials: Survey Trends and Issues," North Carolina Assisted Living Association Webinar (September 8, 2022)
- "Preparing for, Implementing, and Defending Resident Discharges," North Carolina Assisted Living Association Webinar (July 14, 2022)

- "Guardianships, Powers of Attorney, and HC POAs," North Carolina Assisted Living Association Webinar (May 12, 2022)
- "Survey Trends and Issues in Adult Care Homes," North Carolina Assisted Living Association Webinar (March 10, 2022)
- "Introduction to Long Term Care Legal Issues," North Carolina Board of Nursing Home Examiners Administrator-in-Training Class (September 2021 and annually)
- "Advance Health Care Planning and End of Life Decision Making for Caregivers," Duke Hospice, Inc. (September 2021)
- "Update on CMS and State Covid-Based Waivers" (February 2021)
- "North Carolina Advance Directives for Hospitals" (March 2020)



## Webinars

- Navigating the Vaccine Mandate and Exemptions Process for SNFs (May 2022)



## Education

- Campbell University, J.D., 1984, cum laude
- University of North Carolina, B.A., 1979



## Admissions

- North Carolina, 1984
- California, 1999