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American Conference Institute's 2nd National

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Long Term Care Regulatory Boot Camp

Basic training in core regulatory concepts for litigators, in-house counsel and risk managers

Learn from an expert faculty who will share their regulatory knowledge:

Caroline J. Berdzik
Partner, Goldberg Segalla LLP

Jason Bring
Partner, Arnall, Golden & Gregory LLP

Timothy Cesar
Vice President of Legal
Brookdale Senior Living Inc.

Christy T. Crider
Partner, Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC

John F. Costa
Partner, Ryan Ryan Deluca LLP

Lynn K. Fieldhouse
VP and General Counsel of Litigation Services
Signature Healthcare LLC

Andrew Graham
Partner, Aging Services Group
Hall, Booth, Smith & Slover, PC

Rick E. Harris
Of Counsel, Starnes Davis Florie LLP

Thomas W. Hess
Partner, Dinsmore & Shohl LLP

Brian T. McGovern
Partner, Cadwalader, Wickersham & Taft LLP

Linda Mullany
Partner, Gordon Rees LLP

William J. Mundy
Member, Burns White LLC

James A. Napoli (invited)
Partner, Hanson Bridgett LLP

Pam Roberts
Assistant General Counsel – Litigation
Golden Living

Jean M. Stiles, MBA, MS, CHC
Corporate Compliance Officer, HIPAA Privacy
Officer, Signature Healthcare LLC

Kirsten Ullman
Managing Partner, South East Region
Lewis Brisgaard & Smith LLP

Beverly B. Wittekind
General Counsel, The Ensign Group

Preeminent long term care regulatory experts will guide you through the complex regulatory landscape and help you understand:

- Defending against a “trifecta” of claims: what to do when civil, criminal, and regulatory actions overlap
- The regulatory requirements from opening a facility through defending against tags
- How to minimize the impact to future litigation by managing the response to surveys
- The differences between appeals, IDR, and IIDR
- The requirements for admission, transfer, and discharge of patients and how non-compliance can impact litigation
- The relevant regulations governing labor and employment
- What triggers a Medicare/Medicaid fraud investigation

Distinguished Co-Chairs:

Lori Pearson
Senior Vice President of Legal Services and
Assistant General Counsel
UHS-Pruitt Corporation

Norris Cunningham
Chair, Litigation Practice Group
Hall, Render, Killian, Heath & Lyman, P.C.

Pre-Conference Regulatory Primer

A Long Term Care Regulations 101

Interactive Post-Conference Master Class

B Developing Litigation Strategies, Substantive Arguments, and Skills to Keep Surveys out of Evidence

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Get the ultimate roadmap to the complicated landscape of Long Term Care regulatory law

From opening a long term care facility, to enduring an investigation, to appealing tags, to full scale litigation, there are a plethora of regulatory hurdles that must be overcome to avoid non-compliance. The regulatory landscape in this area is complex and it is essential for attorneys who do not have regulatory practices — but who do deal with long term care compliance and litigation — to have a familiarity with these concepts.

**Litigation often follows regulatory violations and the two are inextricably linked.
Ensure you have a firm grasp of relevant regulations to achieve the best outcomes for your cases.**

Many litigators and in-house counsel — despite their tenure litigating long term care cases — are not well-versed in the regulatory hurdles found in this space. Whether you are an in-house or outside counsel litigator or in-house regulatory counsel, Long Term Care Regulatory Boot Camp will provide you with the insights you need.

Boost your regulatory IQ

ACI's Long Term Care Regulatory Boot Camp has been designed to give litigators (both in-house and outside), as well regulatory counsel, a strong working knowledge of core long term care regulatory competencies.

A distinguished faculty of regulatory experts will share their knowledge and give you critical insights on:

- Relevant regulations that govern all aspects of long term care facilities
- The survey and certification process
- All aspects of the appeals process, including DAB, IDR, and IIDR
- Medicare/Medicaid fraud and other audits
- Elder Abuse statutes
- FCA, anti-kickback, and qui tam
- Labor and employment issues
- The impact of Health Care Reform on long term care facilities
- Complying with requirements for admission, transfer and discharge of residents

Attend the pre-conference regulatory primer or post-conference master class to get the background and the in-depth information you need to maximize your learning and networking experience at this event!

Pre-conference Regulatory Primer A: **Long Term Care Regulations 101** will address topics to set the stage for the main conference by helping you thoroughly comprehend the long term care regulatory structure and the essentials of the certification and survey process, including different options for appeals. Maximize the value of your attendance and get the background you need to participate in the conversations at Long Term Care Boot Camp.

Post-Conference Master Class B: **Developing Litigation Strategies, Substantive Arguments, and Skills to Keep Surveys out of Evidence** will provide you with the tools to make smart decisions when a civil lawsuit runs concurrent with a regulatory violation. Understand the interplay between survey findings and litigation at this in-depth post-conference session.

Attend this conference and learn to navigate your way through the regulatory maze that plays such a crucial role to your cases and practice areas. Don't delay — register now by calling 1-888-224-2480, faxing your registration form to 1-877-927-1563, or registering online at <http://www.americanconference.com/LTCBootCamp>.

A

Pre-Conference Regulatory Primer: Long Term Care Regulations 101

Monday, July 22, 2013

1:00 p.m. – 4:00 p.m. (registration begins at 12:00)

Lori Pearson

Senior Vice President of Legal Services and Assistant General Counsel
UHS-Pruitt Corporation (Toccoa, GA)

Aimed at providing a primer for professionals who have limited experience working on regulatory matters, this workshop will provide you with a basic overview of federal long term care regulations and will prepare you for the more in-depth discussions that will take place throughout the conference. Topics addressed during this workshop will set the stage for the main conference by helping you thoroughly comprehend this complex regulatory structure. Maximize the value of your attendance and get the background you need to participate in the conversations at Long Term Care Boot Camp.

- Overview of regulations
 - OBRA
 - 42 CFR 483 (2011)
 - PPACA
 - HIPAA
 - Other relevant federal regulations
 - State Regulations
 - › Elder Abuse Statutes
- How regulations are enforced
 - CMS
 - State enforcement
- Definitions of commonly used acronyms
- Funding and reimbursement through Medicare and Medicaid
- Appealing regulatory violations
 - DAB
 - CMPs
 - IDR



American Conference Institute:

The leading networking and information resource for counsel and senior executives.

Each year more than 21,000 in-house counsel, attorneys in private practice and other senior executives participate in ACI events – and the numbers keep growing.

Guaranteed Value Based on Comprehensive Research

ACI's highly trained team of attorney-producers are dedicated, full-time, to developing the content and scope of our conferences based on comprehensive research with you and others facing similar challenges. We speak your language, ensuring that our programs provide strategic, cutting edge guidance on practical issues.

Unparalleled Learning and Networking

ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.

Day 1 – Tuesday, July 23, 2013

7:30 Conference Registration and Continental Breakfast

8:30 Co-Chairs' Opening Remarks

Lori Pearson

Senior Vice President of Legal Services and Assistant General Counsel
UHS-Pruitt Corporation (Toccoa, GA)

Norris Cunningham

Chair, Litigation Practice Group
Hall, Render, Killian, Heath & Lyman, P.C.
(Indianapolis, IN)

8:45 The Basics: Regulatory Overview of State and Federal Regulations that Impact Litigation and Compliance

Timothy Cesar

Vice President of Legal
Brookdale Senior Living Inc. (Milwaukee, WI)

Lori Pearson

Senior Vice President of Legal Services and Assistant General Counsel
UHS-Pruitt Corporation (Toccoa, GA)

- What happens when a facility opens?
 - Conditions of Medicare certification
 - State licensing
- Responding to surveys
 - What happens when the surveyor walks through the door?
 - What are survey standards?
 - What is a survey cycle and how/when is it completed?
- How can you be in compliance with regulations and still get into trouble?
 - Measuring regulatory compliance
- Understanding the enforcement process
- Using the "Watermelon Book"
 - Tags
 - Appendix Q
- How to handle the finding of a deficiency
 - CMPs and other sanctions
 - Appealing: What are your options?
 - › IDR (to state)
 - › IIDR (to state)
 - › Appeal to CMS
 - What can you appeal vs. IDR – how do those choices impact litigation?
- What is a SFF and why is it important?
 - What is the five star system?

9:45	<h3>Comprehending all Facets of the Survey and Certification Process</h3> <hr/> <p><i>Beverly B. Wittekind</i> General Counsel The Ensign Group (Mission Viejo, CA)</p> <ul style="list-style-type: none"> • Identifying the difference between QIS (quality indicator surveys) and traditional surveys <ul style="list-style-type: none"> - Understanding the traditional survey process to understand QIS - How to explain QIS to a jury once in evidence • Utilizing “Guidance to Surveyors” to your benefit <ul style="list-style-type: none"> - Identifying when the surveyor does not follow all of the guidelines • Understanding the IJ (immediate jeopardy) process <ul style="list-style-type: none"> - Is an IJ finding tantamount to an automatic lawsuit because of the notification procedures? - Minimizing the impact on future litigation by managing the way in which they are investigated, handled, and resolved - Monetary penalties • Special focus facilities (SFFs) <ul style="list-style-type: none"> - Determining whether a provider is on the SFF list - Evaluating the survey results - Checking the CMS 5-star rating system • Focusing on evidentiary issues associated with the surveys <ul style="list-style-type: none"> - How do you keep them out of evidence? - How do you deal with them if they come into evidence? • How does DoH use documents and regulations? <ul style="list-style-type: none"> - Repeat tags - What are the penalties? 	12:00	<h3>Networking Lunch for Speakers and Delegates</h3> <hr/>
1:15	<h3>Understanding Requirements for Admission, Transfer, and Discharge to Mitigate the Impact on Litigation</h3> <hr/> <p><i>Pam Roberts</i> Assistant General Counsel – Litigation Golden Living (Plano, TX)</p> <ul style="list-style-type: none"> • Admitting a patient and completing the Minimum Data Sheet <ul style="list-style-type: none"> - Understanding the impact improper completion of the MDS will have on a case • Avoiding Consumer Fraud Act violations <ul style="list-style-type: none"> - How to assess whether a patient is appropriate for the facility <ul style="list-style-type: none"> › Identifying special subsets of residents - When is aging in place not appropriate? • Transferring a patient <ul style="list-style-type: none"> - What to do when a resident resists moving - When do resident hearing rights apply? - Transferring a patient within a facility • Notice requirements when discharging a patient for non-payment • The secret to collections 	2:00	<h3>Understanding the New Quality Assurance Improvement Program Regulations</h3> <hr/>
10:45	<h3>Morning Coffee Break</h3>	2:00	<p><i>Christy T. Crider</i> Partner Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (Nashville, TN)</p> <p><i>Lynn K. Fieldhouse</i> VP and General Counsel of Litigation Services Signature Healthcare (Louisville, KY)</p> <p><i>Jean M. Stiles, MBA, MS, CHC</i> Corporate Compliance Officer, HIPAA Privacy Officer Signature Healthcare LLC (Louisville, KY)</p> <ul style="list-style-type: none"> • Examining root cause analysis • How to deal with this new process • Protecting the documents you create in a quality assurance environment • How do you investigate internally before the government comes in to investigate? • What do you do internally when you get served? • Creating an appropriate plan to train staff and prepare for investigations
11:00	<h3>Appeals, Civil Monetary Penalties, IDR, and IIDR</h3> <hr/> <p><i>Rick E. Harris</i> Of Counsel Starnes Davis Florie LLP (Birmingham, AL)</p> <ul style="list-style-type: none"> • How to appeal a violation imposed by a regulatory body • Determining where to appeal • What constitutes substandard quality of care? • DAB process for appeals • The new independent Informal Dispute Resolution (IIDR) process <ul style="list-style-type: none"> - How has it been structured? - How is it working? - Which states use this procedure? • Comparing IDR with DAB appeals • Identifying differences between state and independent IDR processes • Pros and cons of choosing a particular appeals process • What constitutes a CMP? • Mitigating the amount of the CMP • What states allow survey results into evidence? 	3:00	<h3>Afternoon Refreshment Break</h3>

3:15

Defending Simultaneous Regulatory and Civil Litigation

Norris Cunningham

Chair, Litigation Practice Group
Hall, Render, Killian, Heath & Lyman, P.C.
(Indianapolis, IN)

Kirsten Ullman

Managing Partner, Southeast Region
Lewis Brisbois Bisgaard & Smith LLP (Tampa, FL)

- How does the “Client” change in civil v. regulatory proceedings: Determining whom you represent and whom you don’t
- Addressing conflicting goals in civil v. regulatory proceedings
- Minimizing the impact of potential conflicts of interest as well as conflicting goals
- How to conduct civil discovery when the State must be given almost everything it wants
- Insights into negotiating Global Settlements
- Who should “manage” such multi-venue litigation

4:15

Overview of State and Federal Elder Abuse Statutes

Andrew Graham

Partner, Aging Services Group
Hall, Booth, Smith & Slover, PC (Atlanta, GA)

Linda Mullany

Partner
Gordon Rees LLP (San Diego, CA)

- Identifying Federal Elder Justice Act reporting requirements
- What are states doing with regard to elder abuse statutes?
 - Pennsylvania
 - California
 - New Jersey
 - Massachusetts
- Best practices for maintaining compliance
- Preparing for automatic referral to DOH when a violation is identified
 - To what extent is a referral admissible in ongoing litigation?
- What to do when you get an elder care statutory violation but not a tag from DoH
- Honing defense strategy to combat the trend of plaintiffs’ attorneys joining the fray with the DA
- Understanding how civil regulations go hand in hand with criminal statutes
- Defending against the premise that a facility’s failure to _____ is tantamount to aiding and abetting elder abuse

5:15

Conference Adjourns to Day 2

Day 2 – Wednesday, July 24, 2013

8:00 Continental Breakfast

8:50 Co-Chairs’ Opening Remarks and Recap of Day One

9:00 Responding to the New HIPAA Hitech Regulations and Preparing for Audits in the Long Term Care Environment

Brian T. McGovern

Partner
Cadwalader, Wickersham & Taft LLP (New York, NY)

James A. Napoli (invited)

Partner
Hanson Bridgett LLP (San Francisco, CA)

- Understanding the new HIPAA Hitech regulations
 - Business associate agreements with vendors
 - Enforcement
 - Penalties
- Managing personal health information
 - Special considerations for law firms considered “business associates” of skilled nursing facilities and hospitals
- Assessing the impact of a HIPAA violation on litigation
 - Who can’t you contact during litigation?
- What types of business associate agreements should providers have with 3rd party vendors?
- Mitigating risk when using social media
- Overcoming HIPAA limitations on how you can acquire information
 - Qualified protective order
 - Avoiding having testimony stricken

10:00 Medicare/Medicaid Fraud: Reimbursement, Audits, Secondary Payor Rules, and More

Jason Bring

Partner
Arnall, Golden & Gregory LLP (Atlanta, GA)

William J. Mundy

Member
Burns White LLC (West Conshohocken, PA)

- Avoiding triggering an investigation
 - What is the focus of MFCU?
 - How does MFCU give referrals for who should be investigated?
- Coordinating a response to reimbursement, RAC, and ZPIC audits

- Best practices for dealing with Medicare secondary payor rules
 - Set-asides
 - Strategizing about the CMS rule on refunding overpayments: benefits and detriments of self-reporting
- Understanding how OIG selects facilities to audit
 - Algorithms to analyze RUG length and frequency
- Winning strategies and defenses for appeals
- Overview of fraud cases in 2011 and 2012

11:00 Morning Coffee Break

11:15 Reconciling the Overlap between False Claims Act, Anti-Kickback Statutes, and Qui Tam Cases

Thomas W. Hess

Partner

Dinsmore & Shohl LLP (Columbus, OH)

- Overview of relevant statutes
 - Federal Anti-Kickback and Stark Statutes
 - Federal False Claims Act
 - › Program Exclusion and Civil Money Penalty Provisions
 - Other criminal and civil statutes
- Pinpointing elements in the best corporate compliance plans
- Fraudulent services deficiencies
- How do worthless service cases impact health care fraud cases?
- Handling the trend of DOJ and OIG using the anti-kickback statutes in false claims Act litigation
- Identifying the links between FCA and Qui Tam
- Defending qui tam actions based on improper relationship

12:00 Overview of Relevant Labor and Employment Regulations

Caroline Berdzik

Partner

Goldberg Segalla LLP (Princeton, NJ)

- OIG exclusion list
 - Strategically handling regulatory violations (e.g., through settlement) to avoid inclusion in the pool of evidence
- Background checks
- Worker's Compensation
- Family Medical Leave Act
- Accommodating employees under ADA
 - Special concerns in the LTC environment

1:00 Conference Concludes –
Lunch for Workshop B attendees only

B

Post-Conference Master Class: Developing Litigation Strategies, Substantive Arguments, and Skills to Keep Surveys out of Evidence

Wednesday, July 24, 2013

2:00 p.m. – 5:00 p.m. (registration begins at 1:30)

John F. Costa

Partner

Ryan Ryan Deluca LLP (Stamford, CT)

Andrew Graham

Partner, Aging Services Group

Hall, Booth, Smith & Slover, PC (Atlanta, GA)

The best lawyer is the one who can handle both the regulatory and the litigation. Understanding the interplay between survey findings and litigation is critical. It is essential to have a sound strategy in place to determine when you should challenge a violation because you have the grounds to do so vs. challenging for strategic purposes to keep it out of the pool of evidence. This master class will provide you with the tools to make smart decisions when a civil lawsuit runs concurrent with a regulatory violation. Topics include:

- Understanding how the regulations and alleged violations are the springboard for litigation
 - What marries the two?
- Arguments that can be used to keep surveys out of evidence
- Dealing with surveys in front of a jury
 - Cross-examination
 - Experts
- Appealing a tag – strategic issues to consider
- Understanding how to coordinate the regulatory appeals process with civil litigation
- How does a surveyor come to the assessment of scope and severity of a tag?
- Working around the prohibition of subpoenaing a surveyor for a deposition without consent of the department head
- Defending against the use of survey results to bolster standard of care arguments
 - What are plaintiffs using in standard of care arguments (e.g., nutrition, hydration, etc.)?
 - Where have plaintiffs been successful at arguing standard of care violations?

Hear what past attendees say about ACI's Long Term Care events:

"I definitely enjoyed all aspects of this program. It was very helpful for someone like me who has limited exposure to the LTC environment."

– E. Gene Thornton, Evans Petree, PC (delegate at Long Term Care Regulatory Boot Camp)

"I think the biggest draw to this event is the intimate setting, which provides an opportunity for participants to discuss the issues presented."

– Stephenie Alexander, Haight Brown & Bonesteel (delegate at Preventing and Defending Long Term Care Litigation)

"The level of expertise was outstanding!"

– Kristine Morimoto, Risk Management Consultant (speaker at Preventing and Defending Long Term Care Litigation)

"Excellent overview of key issues."

– Gretchen Dougherty, Health Systems, Inc. (delegate at Preventing and Defending Long Term Care Litigation)

"Very informative; well presented."

– Richard Scharlat, Locke Lord LLP (delegate at Preventing and Defending Long Term Care Litigation)

Who you will meet:

- ✓ Long Term Care Regulatory Attorneys
- ✓ Long Term Care Litigators
- ✓ In-House Regulatory Counsel
- ✓ In-House Litigation Counsel
- ✓ State and Federal Regulators

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You are required to bring your state bar number to complete the appropriate state forms during the conference. CLE credits are processed in 4-8 weeks after a conference is held.

ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

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Registration Fee

The fee includes the conference, all program materials, continental breakfasts, lunches and refreshments.

Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

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