



Healthcare Insider Symposium

JANUARY 16, 2019

CONVENE CIRA CENTRE | PHILADELPHIA, PA



2019 Healthcare Insider Symposium

Wednesday, January 16, 2019

Convene Cira Centre | Philadelphia, PA

TABLE OF CONTENTS

Agenda	1
Attendee List	2
Overcoming Legal Hurdles to Leverage Telehealth Models and Advances in Reimbursement to Increase Revenue for Providers	3
Key Reimbursement Issues and Legislative Developments for Addiction Treatment Providers	4
Long Term and Post-Acute Care Update: Verdicts, Corporate Negligence and Industry Developments	5
Is it Time to Cash in Your CHPs? – Increasing Energy Reliability and Savings for Healthcare Providers	6
Legislative and Regulatory Developments and Forecast	7
Presenter Biographies	8

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AGENDA

7:15 a.m. – 8:00 a.m.	Registration, Networking and Breakfast Buffet
8:00 a.m. – 8:10 a.m.	Welcome <i>Marc Tepper, Buchanan Ingersoll & Rooney</i>
8:10 a.m. – 8:20 a.m.	Introductory Remarks <i>Joseph Meterchick, Regional President – Philadelphia, Delaware and Southern New Jersey, PNC Bank</i>
8:20 a.m. – 8:55 a.m.	Keynote Address: Healthcare Capital Markets <i>Lee Stettner, Managing Director, Solebury Capital</i>
8:55 a.m. – 9:10 a.m.	Break
9:10 a.m. – 9:55 a.m.	Overcoming Legal Hurdles to Leverage Telehealth Models and Advances in Reimbursement to Increase Revenue for Providers <i>John Washlick, Buchanan Ingersoll & Rooney</i> <i>Heather Alleva, Buchanan Ingersoll & Rooney</i>
10:00 a.m. – 10:45 a.m.	Key Reimbursement Issues and Legislative Developments for Addiction Treatment Providers <i>Sal Rotella, Buchanan Ingersoll & Rooney</i> <i>Michael Strazzella, Buchanan Ingersoll & Rooney</i>
10:45 a.m. – 10:55 a.m.	Break
10:55 a.m. – 11:40 a.m.	Long Term and Post-Acute Care Update: Verdicts, Corporate Negligence and Industry Developments <i>Matt Corso, Buchanan Ingersoll & Rooney</i>
11:45 a.m. – 12:30 p.m.	Is it Time to Cash in Your CHPs? – Increasing Energy Reliability and Savings for Healthcare Providers <i>John Povilaitis, Buchanan Ingersoll & Rooney</i> <i>Alan Seltzer, Buchanan Ingersoll & Rooney</i>
12:30 p.m. – 12:45 p.m.	Break, Lunch Buffet
12:45 p.m. – 1:30 p.m.	Lunch Session: Legislative and Regulatory Developments and Forecast <i>Brian Kelly, Buchanan Ingersoll & Rooney</i> <i>Michael Strazzella, Buchanan Ingersoll & Rooney</i>

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ATTENDEES

Nora Adelmann

The Kendal Corporation

Heather Alleva

Buchanan Ingersoll & Rooney PC

Gina Ameci

Buchanan Ingersoll & Rooney PC

Carrie Amezcua

Buchanan Ingersoll & Rooney PC

Stephen Amoriello

UHS of Delaware

Stefanie Anderson

Capital Health System

Nicholas Aponte

PNC Bank

Lance Beder

Grant Thornton

Erin Bender

Independence Blue Cross

Ryan Brazell

Grant Thornton

Amara Briggs

Wells Fargo

Michelle Carson

Universal Health Services

Pierre Cassigneul

NMS Labs

Celeste Clancy

Wells Fargo

William Conaboy, Sr.

Allied Services

Matthew Corso

Buchanan Ingersoll & Rooney PC

Jim Costello

Inspira Health Network

Kelly Curran

University of Pennsylvania

Howard Cutler

Universal Health Services

Timothy Denniston

Huntington National Bank

Krystyna Dereszowska

University of Pennsylvania

David DeSimone

CentraState

Rich Devine

Marcum

Mark Dianno

Independence Blue Cross

Valerie Dion

SERV Behavioral Health System

Catherine Doane

PNC Healthcare

Matthew Doonan

Inspira Health Network

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Viren Doshi

Patricia Eynard

Mark Feingold

University of Pennsylvania

University of Pennsylvania Health System

Casey Fernandez

HYLANT

John Fessick

Wells Fargo Bank

Amy Fitzpatrick

Buchanan Ingersoll & Rooney PC

Patrick Flynn

Independence Blue Cross

David Forde

University of the Sciences

Barbara Forte

Buchanan Ingersoll & Rooney PC

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University of Pennsylvania

Jackie Gallagher

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Independence Blue Cross

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Erika Geimonen

AMRING Pharmaceuticals

Sean Girdwood

Buchanan Ingersoll & Rooney PC

Robert Glentzer

Buchanan Ingersoll & Rooney PC

Alexis Graziano

Buchanan Ingersoll & Rooney PC

Adrienne Greenfield

Independence Blue Cross

Jeff Greenlaw

PNC Healthcare

Abigail Gresh

American Academic Health System

Samantha Gross

American Academic Health System

Scott Growney

*Thomas Jefferson University /
Jefferson Health*

John Gyllenhammer

*Drexel University College of
Medicine*

Rafael Haciski

Johnson Kendal & Johnson

Jack Haggerty

Independence Blue Cross

Jacob Halpern

Holdingz

Lejan (Jovi) Hammer

Independence Blue Cross

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Michael Hemsley

Trinity Health

E. Jane Hix

Thomas Jefferson University

Bill Hough

NMS Labs

Lauren Isaacoff

Buchanan Ingersoll & Rooney PC

Aimee James

Abington - Jefferson Health

Marie Keeley

Albert Einstein Healthcare Network

Brian Kelly

Buchanan Ingersoll & Rooney PC

Courtney Kennedy

Chris Kleczkowski

PNC Healthcare

Nathaniel Koonce

Independence Blue Cross

Meredith Krain

University of Pennsylvania

Jessica (Jacey) LaManna

UHS of Delaware

Jill Lashay

Buchanan Ingersoll & Rooney PC

Andrew Laver

Buchanan Ingersoll & Rooney PC

Donald Legreid

Crozer Keystone

Marc Leone

The Graham Company

Katherine Levins

Temple University Health System

Richard Levins

Independence Blue Cross

Katherine Linsey

Independence Blue Cross

Suzanne Lufadeju

Highmark Delaware

Mike Lynch

Deloitte

Jess Marino

Deloitte

Judy Mayer

Inspira Health Network

Phylicia McFaddin

American Academic

Joe McIntyre

Braithwaite Communications

Mia Meloni

UHS

Robert Middleberg

NMS Labs

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John Middleton

Einstein Healthcare Network

Patrick Mullen

Johnson Kendall & Johnson

William Myers

*Montgomery County Emergency
Service*

Steve Neidlinger

PA Academy of General Dentistry

Laura Ness

BAYADA Home Health Care

Gabbie Nirenburg

Independence Blue Cross

Kenneth Pina

Pernix Therapeutics

John Povilaitis

Buchanan Ingersoll & Rooney PC

Deone Powell

Philadelphia FIGHT

Jade Powers

Trinity Health

Ivan Punchatz

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Francine Raichlen

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Brian Rath

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Brian Rhodes

Sequel Youth and Family Services

Jacqueline Roe

American Academic Health System

Phyllis Rosenbaum

Alfred I. duPont Hospital for Children

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Anselm Sauter

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Philadelphia*

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Brooke Glen Behavioral Hospital

Alexander Sharnoff

AtlantiCare

Robert Silberg

Silberg Consultant Services

Michael Sileski

Rothman Institute

Dana Sleeper

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Aimee Smith

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Kim Sokoloski

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Michael Sorelle

Grant Thornton

Sharon Sorokin

Main Line Health

Samantha Southall

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Kathryn Steinbugler

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Kathleen Stengel

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Michael Strazzella

Buchanan Ingersoll & Rooney PC

Keith Stroup

Children's Hospital of Philadelphia

Megan Stupak

Sequel Youth and Family Services

Tony Taliaferro

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Joseph Taylor

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Mourin Thomas

UHS

Hannah Walsh

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John Washlick

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Lauren Weil

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Diane Wender

University of Pennsylvania

Regina Widdows

SERV Behavioral Health System

Derek Wood

UHS

Emily Zitser

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Overcoming Legal Hurdles to Leverage Telehealth Models and Advances in Reimbursement to Increase Revenue for Providers

John R. Washlick, Esq. and Heather Alleva, Esq.
January 16, 2019

Agenda

- Telehealth Overview
- Legal and Regulatory Issues in Telehealth
 - Brief overview of terminology and telehealth technology
 - Corporate practice of medicine and licensing issues
 - Fraud and abuse concerns
- Considerations in Drafting Telehealth Agreements
 - Establishing fair market value
 - Mitigating risk – indemnifications, warranties, liabilities
- Billing and Reimbursement for Telehealth Services
 - Current billing and coding issues
 - Recent developments in Medicare reimbursement for telehealth
 - Trends in state reimbursement laws

Telehealth Overview

- Market Opportunities
- No consistent set of definitions of telemedicine
 - Variance by state and payer
 - “Telehealth” generally broader than “telemedicine” -- The Pennsylvania legislature has not yet defined the “practice of telemedicine” or regulated whether out-of-state physicians providing telemedicine services to in-state patients need to be licensed in Pennsylvania.
 - The state’s Medicaid program does reimburse physicians who video conference with Pennsylvania patients in real time, which implies that such a service is considered the practice of medicine. *Medical Assistance Bulletin* 09-12-31, 31-12-31, 33-12-30, PA DEP’T OF PUBLIC WELFARE (May 23, 2012).
 - Key Terms: Originating Site/Distant Site

Telehealth Overview (cont.)

- Modalities
 - Live video (synchronous)
 - Store-and-forward
 - Remote patient monitoring
 - Mobile health
- Sample Telehealth Arrangements
 - Teleneurology
 - Teledermatology
 - Behavioral telehealth
 - Remote monitoring of chronic conditions

Legal and Regulatory Issues

- Telemedicine Laws
 - Most states have relatively new or evolving statutes and regulations governing telehealth – Not directly addressed by statute in PA
 - But PA Medicaid defines “telemedicine” as real-time interactive telecommunications technology that includes, at a minimum, audio and video equipment as a mode of delivering consultation services. *Medical Assistance Bulletin* 09-12-31, 31-12-31, 33-12-30, PA DEPT OF PUBLIC WELFARE (May 23, 2012).
 - Medicare
 - Insurance statutes and regulations and insurance contracts

Legal and Regulatory Issues

- Licensure
 - Some states implementing state licensure compacts; Interstate Medical Licensure Compact (“IMLC”) movement for expedited pathway to licensure in additional states
 - PA currently only issues “extraterritorial licenses” to physicians licensed in adjoining states near the border whose practices expand into PA. 63 P.S. § 422.34. PA has passed legislation to join the IMLC, but implementation has been delayed.
- Practice of Medicine
 - Physician/Patient relationship vary by state
 - Any physician who engages in diagnosing or treating a patient must be licensed to practice in Pennsylvania. 63 P.S. § 422.10.
 - Impacts on qualification of physician/NP providing medical services
 - Practice of medicine (“PoM”) occurs where the *patient* is located at time of encounter

Legal and Regulatory Issues

- Special PoM Arrangements
 - Provider to Patient Communications – In most states this will trigger licensure in the Originating Site
 - Provider to Provider – Some states, like PA, do not require the Physician in the Distant Site to be licensed if the Physician's communications are limited to consultation (second opinion) with the treating physician of the patient in the Originating Site (63 P.S. § 422.16). The term "consultation" means a deliberation between two physicians regarding a diagnosis or treatment, but a physician is not merely "consulting" if his contribution to the patient's care rises to the level of "active participation," such as touching the patient or assisting in procedures.

Legal and Regulatory Issues

- Special PoM Arrangements
 - Provider to Provider Extender – This model utilizes allied health professionals, such as a registered nurse, NP or PA to facilitate the communication between the patient in the Originating Site and provider at the Distant Site.
 - The Provider Extenders must be licensed in the state of the Originating Site and the services must be within the scope of such licenses.
 - Supervision Requirements

Legal and Regulatory Issues

- Special PoM Arrangements cont.
 - Provider to Non-Treating Provider to Patient – If non-treating provider is communicating with patient, provider must be licensed in Originating Site. In PA, the consultation exemption makes clear that the act of 'consulting' is strictly conducted between a doctor unlicensed in Pennsylvania and a licensed Pennsylvania doctor, not between a doctor unlicensed in Pennsylvania and a patient. *See Gleeson v. State Board of Medicine*, 900 A.2d 430, 437 (Pa. Commw. Ct. 2006).
 - (Note: If non-treating provider is employed by non-physician owned practice, corporate practice of medicine rules may be implicated)

Legal and Regulatory Issues

- Fraud and Abuse Concerns
 - AKS
 - Stark
 - FCA
 - State AKS/Anti-Referral Laws
- Privacy and Security -- HIPAA
- Reimbursement

Legal and Regulatory Issues

- Informed Consent – Federation of State Medical Boards (FSMB) and AMA have mandated baseline elements in the telehealth context
- Remote Prescribing
 - Some states/medical boards strictly prohibit
 - Some states require at least one in-person medical evaluation of the patient
 - Controlled substances prescribed via telemedicine is under jurisdiction of DEA
- Emergency Care – States, FSMB and AMA have issued rules or requirements for professionals and entities that provide telemedicine services to establish protocols for referrals for emergency services and to develop emergency plans

Considerations in Drafting Telehealth Agreements

- Establishing fair market value
 - Minimum threshold to comply with AKS
 - Are services being provided below FMV?
 - Is equipment being provided?
 - Does the arrangement fit within AKS safe harbors (e.g., physician services, equipment leasing, space rental, EMR)? Stark exceptions (e.g., lease arrangements, personal services arrangements)?
 - Is the arrangement “commercially reasonable?”

Considerations in Drafting Telehealth Agreements

- Mitigating risk – indemnifications, warranties, disclaimers
 - Define telemedicine practice standards in Telemedicine Service Agreement
 - Warranty that services provided by personnel with required skill, experience and qualifications -- Schedule list of providers
 - Vendor Equipment/Software Agreements – Define licensing terms, inter-operability, up time/down time, vendor reps/warranties to technology complies with regulatory requirements
 - Performance warranty
 - Compliance with laws – list specific laws and level of knowledge qualifiers (disclaimers)
 - Insurance – Support respective indemnification obligations



Billing & Reimbursement for Telehealth Services

Medicare Reimbursement

- Reimbursement for telehealth historically has been limited by the Social Security Act to certain services that directly substitute for an in-person visit.
- Four requirements for reimbursement:
 - “Originating site”
 - “Distant site”
 - Qualifying technology
 - Covered service

Barriers to Implementing Telehealth

- Uncertainties – what services are reimbursable?
- Inadequate payment
- Coverage restrictions
- Restrictions on eligible telehealth originating sites

MedPac Report to Congress

- March 2018
- Mandated by the 21st Century Cures Act of 2016
- MedPac required to provide the following information to Congress:
 - The extent to which the Medicare fee-for-service (“FFS”) program covers telehealth services
 - The extent to which commercial insurance plans cover telehealth services
 - **Ways in which the telehealth coverage policies of commercial insurance plans might be incorporated in to the Medicare FFS program**

MedPac Report (cont.)

- Recommendation for policymakers to take a “measured approach” to further incorporating telehealth into Medicare
 - Evaluate individual telehealth services to assess capacity to address “Triple Aim”
 - Permit entities that bear financial risk (Medicare Advantage plans, certain ACOs) greater flexibility to use and evaluate telehealth services

Recent CMS Expansion of Reimbursement

- CMS has promulgated new rules related to telehealth reimbursement across various payment programs:
 - Medicare Shared Savings Program (“MSSP”)
 - Physician Fee Schedule for 2019
 - Home Health Prospective Payment System (“HH PPS”)

// We now recognize that advances in communication technology have changed patients’ and practitioners’ expectations regarding the quantity and quality of information that can be conveyed via communication technology.

– Centers for Medicare & Medicaid Services



Changes to the MSSP

- Rule finalized December 21, 2018
- Allow physicians and other practitioners who take risks within ACOs to receive payment for introduction of and reliance on new technologies in their practices
- Changes include:
 - Store-and-forward teledermatology and teleophthalmology services
 - Treatment of patient's home as an "originating site"

2019 Physician Fee Schedule

- Rule finalized November 1, 2018, effective January 1, 2019
- Communicates new interpretation by CMS of applicability of their statutory requirements for reimbursement of remote communication technology as separate from telehealth
- New services added based on this interpretation, which are not subject to originating site or geographic restrictions:
 - Virtual check-ins
 - Store-and-forward images and video
 - Peer-to-peer internet/phone consults

2019 Physician Fee Schedule (cont.)

- Includes new CPT codes to the Medicare telehealth list related to remote patient monitoring ("RPM") services that will more accurately reflect how RPM services are furnished by:
 - Establishing 20-minute intervals tracked by calendar months
 - Providing separate reimbursement for initial set-up of remote monitoring equipment, patient education and onboarding
 - Allowing "clinical staff" to furnish certain services

2019 Physician Fee Schedule (cont.)

- Adds two new codes to the list of telehealth services related to prolonged preventive services in an office or outpatient setting for periods of 30 minutes
- Loosened restrictions on use of telehealth services to treat substance abuse
 - Implemented SUPPORT Act, effective October 24, 2018, which adds the home of an individual as a permissible originating site for telehealth services furnished for substance use disorder treatment or treatment of co-occurring mental health disorders
- Expanded telehealth services for end-stage renal disease ("ERSD") patients who receive home dialysis and acute stroke patients by adding ERSD patient homes and mobile stroke units as originating sites

HH PPS Reimbursement Change

- Rule finalized October 31, 2018, effective January 1, 2019
- Permits home health agencies to report certain RMS expenses as allowable administrative costs on the cost report

CMS' increasing coverage of telehealth services sends a strong message that the services are important, clinically valid tools through which providers can deliver healthcare services.

Other Payors Encouraging Telehealth

- State Medicaid reimbursement
 - 49 states and DC reimburse for live video conferencing services
 - 15 states reimburse for asynchronous services other than teleradiology
 - States increasingly including patient's home as "originating site"
- Pennsylvania Medicaid reimbursement
 - Synchronous services by certain practitioners
 - Specialty consultations, including "endorsed" telepsychiatry services

Other Payors Encouraging Telehealth (cont.)

- Private payors
 - Rapidly expanding coverage
 - 39 states have guidelines in place for private payor reimbursement of telehealth
 - Partial or Full Parity laws

Practice Tip for Providers

- Take the time to truly understand all precise, technical requirements of billing for each service
 - *E.g.*, frequency limitations, new vs. established patients
- Medicare – 2018 OIG Audit Report:
 - 31% sampled telemedicine claims did not meet Medicare conditions of payment, resulting in **\$3.7 million** in overpayments
 - OIG recommended that CMS conduct periodic post-payment reviews to disallow payments for errors



Questions?

Presenters



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John R. Washlick focuses his practice on healthcare transactions and corporate compliance. He is resident in both the firm's Philadelphia and Princeton offices. His clients include hospitals, healthcare systems, physician practices, individual physicians, medical device companies, and entrepreneurs and investment-backed entities.



Heather Alleva, Associate

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Heather Alleva focuses her practice on representation of health systems, hospitals, physician groups, behavioral health facilities and other healthcare providers in a broad range of regulatory and compliance matters. She represents clients in mergers, acquisitions, affiliations, provider integration and other strategic transactions, as well as in reimbursement disputes with public and private payors.



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Key Reimbursement Issues and Legislative Developments for Addiction Treatment Providers

Michael P. Strazzella | Salvatore Rotella, Jr.
January 16, 2019

Agenda

- Speaker Introduction
- The Financial Realities of the Opioid Crisis
- Whether to Accept Federal Health Program Patients
- Whether to Join Commercial Health Plan Networks
- Negotiating Commercial Health Plan Agreements
- Out-of-Network Issues
- Getting Paid
- Appealing Payment Denials
- Responding to Refund Demands
- Two New Laws

Speaker Introduction – Sal Rotella

- Representing health care providers exclusively for the past 20 years
- Former federal prosecutor, chief compliance officer for state mental health agency, and attorney at national law firms in DC and Philadelphia
- Represent health systems, hospitals, large physician groups, ambulatory surgery centers, and residential and community-based behavioral health providers
- Negotiate managed care contracts, collect unpaid and underpaid reimbursement claims, respond to refund demands from payors, and provide regulatory advice
- Represent providers across the country offering all types of addiction recovery services – drug and alcohol, detox, residential, partial hospitalization, intensive outpatient, traditional outpatient, and sober living

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The Financial Realities of the Opioid Crisis

- High demand for addiction recovery services
- Plenty of patients with commercial insurance – mainstream epidemic, significant patient population under 26 years of age (covered by family plan)
- Investment opportunity – influx of venture capital
- Financial strain on insurers



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Whether to Accept Federal Health Program Patients

- Anti-Kickback Statute, Stark Law, Civil Monetary Penalties, False Claims Act
- Oversight by HHS OIG, and State Attorneys General and MFCUs
- Contracting with Medicare Advantage plans and Medicaid MCOs
 - The participation agreement makes a difference, not identical to treating members of fee-for-service programs
 - Managed care is within the scope of government oversight
 - Know terms of plan's contract with CMS/single state agency

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Whether to Join Commercial Health Plan Networks

Old calculus

- Go in-network, get paid less, try make it up in volume
- Stay out-of-network, get paid more, often make more money doing fewer/higher paying cases than by joining network

New calculus

- Go in-network
 - Will payor extend an offer? Is there an "any willing provider law" that applies?
 - Low network rates might not be enough, even with higher member volume
 - Unintended consequences – e.g., the Blue Card program
- Stay out-of-network
 - Payors are slow to pay
 - Payors pay less – e.g., reference-based payment (e.g., 110% of Medicare) instead of 80% of UCR (e.g., estimate of average rate paid for same services in same geographic area)
 - Payors pay consumers instead of providers, regardless of valid patient assignment

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Negotiating Commercial Health Plan Agreements

Extent to which a provider can negotiate contract terms and rates depends on various factors, but always worth trying to address key issues

Sample key provisions:

- Plan's right to recoup by offset
- Prompt payment period language (applicability, or not, of state prompt payment laws)
- Plan's right to unilaterally amend agreement and/or incorporated provider manual
- Applicability of contract rates at new facilities
- Plan's right to create preferred tiers of contracted providers and/or to direct plan members to certain network providers over others

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Out-of-Network Issues (Part I)

Facility flags

- Statutory and contractual prompt payment periods still apply
- Note privacy issues for addiction recovery providers
 - For example, the Pennsylvania DHS' Department of Drug and Alcohol Programs' interpretation of 4 Pa. Code 255.5
 - Limits medical record information a provider can furnish to a health insurance plan regarding substance abuse treatment, even with patient consent and for purposes of getting paid

Repricing entities

- Like MultiPlan, enter into contracts with both payors and OON providers
- Some states will allow provider to enforce its contract with MultiPlan and payor's separate contract with Multiplan as one single agreement

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Out-of-Network Issues (Part II)

Patient cost share payments

- No discounts to OON members of Medicare Advantage or Medicaid MCO plans
- Some states also prohibit discounting patient cost share for member of an OON commercial plan
- In remaining states, either charge full OON level cost share or notify payors that you are not doing so

Patient balance billing

- Some payors say they “require” an OON provider to collect from patient the difference between billed charges and allowable amount paid by the insurer to the provider
- No court has, to our knowledge, ever conditioned provider’s right to insurance payment on balance billing patient

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Getting Paid (Part I)

- If you don’t make a record of a service, it didn’t happen
- More unusual an addiction treatment modality, more important that it be
 - Described in current treatment plan
 - Documented by clinician

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Getting Paid (Part II)

- Filling out claim forms – issue of behavioral health claims misrouted as medical claims (due to type of rendering clinician?) and then erroneously denied
- Bill for level of service actually provided – insurers may well deem billing for “only” PHP when providing residential services, for example, as giving patient an improper inducement to come to your facility and as fraud

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Appealing Payment Denials

Mechanism in place to challenge all questionable denials

- Chance to overturn denial and get paid
- Only way to reserve right to bring legal challenge (prove “exhaustion of administrative remedies”)

Checklist for denial appeals

- Make sure appeal is timely and sent to correct address
- Make sure appeal responds to actual denial reason
- Pursue all available levels of appeal

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Responding to Refund Demands (Part I)

Not all failures to abide by contract and manual provisions result in an obligation to refund payment.

False Claims Act applies to all federal healthcare programs:

- Potential overpayments from Medicare Advantage plans and Medicaid MCOs, as well as from fee-for-service programs
- Even if initial overpayment resulted from innocent mistake, failure to report and refund identified overpayment could be violation of FCA
- Treble damages and up to over \$20,000 penalty per false claim

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Responding to Refund Demands (Part II)

Consider alternative ways of documenting that services were provided if standard records are insufficient.

Note limitations on plans' legal rights of offset

- For example, 2017 decision by federal district court in Minnesota – *Peterson v. UnitedHealth Group Inc. et al.* (Case No. 14-CV-2010) and *Riverview Health Institute v. UnitedHealth Group Inc. et al.* (Case No. 15-CV-3064)
- *Peterson* rejected cross plan offsetting, which is when a TPA withholds current payment owed to provider for services rendered to member of TPA client/self-funded employer A's plan so as to recoup amount of prior alleged overpayment to same provider for services rendered to member of TPA client/self-funded employer B's plan

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Two New Laws (Part I)

On October 24, 2018, President signed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act a/k/a the "SUPPORT Act"

- Ant-kickback provision
 - Prohibits the solicitation or payment of remuneration in exchange for referring a patient or patronage to a recovery home, clinical treatment facility or clinical laboratory, regardless of whether the benefits will be paid by federal, state or private payors
 - Violations of the new kickback prohibitions punishable by criminal fines of up to \$200,000 per occurrence, up to 10 years in prison, or both
 - Safe harbors are similar to federal AKS, but not identical
- No rules promulgated yet
 - SUPPORT Act prohibits "referring a patient" in exchange for remuneration
 - Does not extend to "arranging for referrals," like federal AKS
 - Unclear if law will preclude common practice of addiction recovery facility paying productivity bonuses to representatives who market to commercial insurers
- Other notable provisions
 - Loosens Medicare restrictions on telehealth services designed to treat substance abuse
 - New grants to establish or operate 10 "comprehensive opioid recovery centers" across the country (focusing on drug treatments (e.g., methadone), counseling, residential rehabilitation and job-placement assistance)

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Two New Laws (Part II)

On August 30, 2018, New Jersey Out-of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act (the "OON Law") went into effect. See N.J.S.A § 26:2SS-1 *et seq.*

- The OON Law applies to all fully insured commercial plans and to those of self-funded employer plans elected to be subject to certain requirements and protections of the law
- If provider and plan cannot agree on amount for plan to pay for out-of-network services, they must then engage in a baseball-style binding arbitration
 - Arbitrator ultimately will order the plan to pay – and the provider to accept – either the amount put forward by the plan or the amount put forward by the provider
- OON Law also prohibits an OON provider from discounting in whole or in part the patient cost share owed by a health plan member for a covered service (N.J.S.A. 26:2SS-15)

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Thank you

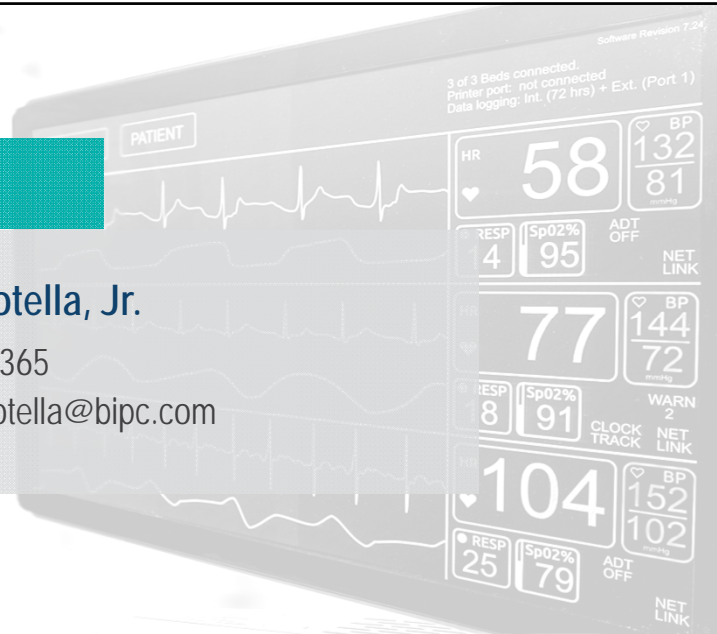


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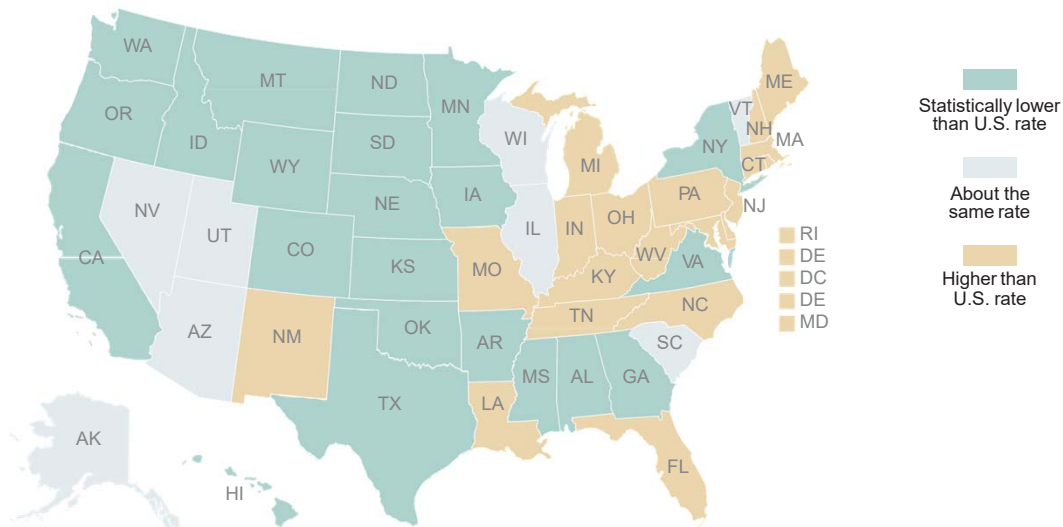
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Opioid Crisis

The national rate was 21.7 deaths per 100,000 population in 2017



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Alternatives to Opioids

Identifying and incentivizing pain management alternatives to opioids will be critical to addressing the crisis.

The SUPPORT Act:

- Ensures Medicare coverage of methadone for opioid use disorder
- Expands the ability to prescribe buprenorphine

Source: Pew Charitable Trusts

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Prescription Drug Monitoring

- Increased transparency into gifts given to physicians assistants and nurse practitioners who prescribe opioids
- States will have grants to create and enhance PDMPs to monitor prescribing of opioids and flag suspicious prescribing
- E-prescribing for controlled substances

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Access to Quality Sober Living

- HHS will issue best practices for entities operating recovery housing facilities
- HHS will also identify or facilitate the development of common indicators or fraud in sober homes
- CMS will issue best practices to help states design demonstration projects to improve care transitions for those being released from custody – a population more than twice as likely to die from overdose

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42 CFR Part 2

- **42 CFR Part 2** applies to all records relating to the identity, diagnosis, prognosis or treatment of any patient in a substance abuse program requiring consent beyond HIPAA's requirements for use and disclosure
- Critics say it disrupts continuum of care and lobbied for reform to be included in the opioid package
- Proponents say it is necessary to protect patients' privacy because of stigma of addiction
- Despite the efforts several large coalitions boasting hundreds of stakeholders – including major trade associations, health IT companies and providers – no reform was included in the final SUPPORT Act

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Two Part 2 Bills failed to make final SUPPORT Act

HR 6082

- Overdose Prevention and Patient Safety Act
- Would have permitted substance use disorder (SUD) records to be shared among covered entities and Part 2 programs in accordance with HIPAA for the purposes of treatment, payment and healthcare operations.

S 1850

- Protecting Jessica Grubb's Legacy Act
- Would have amended Public Health Service Act to protect confidentiality of SUD patient records and align with HIPAA
- Named for young woman who died of an overdose after being prescribed oxycodone despite being in addiction recovery

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Thank you



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Long Term and Post-Acute Care Update: Verdicts, Corporate Negligence & Industry Developments

Matthew T. Corso, Esq.
January 16, 2019



Agenda

- Industry Trends
- Arbitration
- Corporate Negligence
- Staffing Developments
- Verdicts
- Consumer Protection



Skilled Nursing and Post-Acute in the News

The
New York
Times



THE
NATIONAL
LAW REVIEW

Skilled Nursing and Post-Acute in the News

Staffing

- ['It's Almost Like a Ghost Town.' Most Nursing Homes Overstated Staffing for Years](#)
 - The New York Times, May 31, 2018

Payment Methods

- [Medicare to Cut Payments to Nursing Homes Whose Patients End Up Back in the Hospital](#)
 - NPR, December 1, 2018

Home Health Care

- [As the US Population Ages, the Need for Home Health-Care Workers Skyrockets](#)
 - CNBC, June 2018

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Skilled Nursing and Post-Acute in the News

Acquisitions

- ProMedica Acquisition of HCR ManorCare
- [Looking Ahead to the Top Skilled Nursing Trends of 2019](#)
 - Skilled Nursing News, December 17, 2018

Federal Claims Act

- [DOJ False Claims Act Statistics from FY 2018: Total Collections Fall While Healthcare Recoveries Rise](#)
 - The National Law Review, December 26, 2018

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Arbitration Agreements

Marmet v. Brown, 132 S.Ct. 1201 (2012)

- Arbitration Agreements in nursing home admissions fall within the purview of the Federal Arbitration Act ("FAA")
- The FAA generally favors arbitration
- Nursing Home arbitration agreements may not be voided on **public policy** grounds
- Traditional contract defenses, including **unconscionability**, are still available

SCOTUS Reaffirms Arbitration

- Kindred Nursing Ctrs. v. Clark, 137 S.Ct. 1421 (2017).
- Nursing home arbitration case involving interpretation of Power of Attorney document.
- SCOTUS once again reversed state court (Kentucky) attempting to circumvent arbitration through “fanciful” application of state law.
- Reaffirms that Federal Arbitration Act (“FAA”) preempts any attempt to disfavor arbitration agreements.

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Arbitration - Enforcement Issues

Does the person signing have proper authority?

- *Washburn vs. Northern Health Facilities*, 121 A.3d 1008 (Pa.Super.2015)
- *Kindred Nursing Centers LP vs. Clark*, 137 S.Ct. 1421 (2017) – found that a state court rule requiring that power of attorney document must confer specific authority to waive the right to a jury trial was in violation of the FAA

Unconscionability?

- *MacPherson vs. Magee Mem'l Hosp.*, 128 A.3d 1209 (Pa. Super. 2015)

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Arbitration – Enforcement Issues

Capacity?

- High standard.
- *Garcia vs. ManorCare*, 2016 WL 127514 (Pa.Super. 2015)
 - Capacity is presumed as a matter of law
 - Testimony of party challenging is insufficient without more evidence
 - Sickness or old age is insufficient to void an agreement

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Arbitration – Enforcement Issues

Is the forum selected unavailable?

- *Stewart vs. GGN-Canonsburg*, 9 A.3d 2015 (Pa.Super. 2010); *Wert vs. GGN*, 124 A.3d 1248 (Pa. 2015) (unavailability of forum voids where forum is integral)
- *MacPherson vs. Magee Mem'l Hosp.*, 128 A.3d 1209 (Pa. Super. 2015) (agreement not voided where forum is not integral)

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Arbitration – Wrongful Death

Arbitration and Wrongful Death Claims:

- *Pisano v. Extendicare*, 77 A.3d 651 (2013) – wrongful death claim not subject to arbitration when agreement not signed by wrongful death beneficiary
- Exception: *MacPherson* (wrongful death action brought by personal representative who is not a statutory beneficiary)

Bifurcation of Wrongful Death and Survival Claims

- *Taylor v. Extendicare*, 637 Pa. 163 (2016) – where there is a wrongful death claim that is not subject to arbitration under *Pisano* and a survival claim that is subject to arbitration, the claims are bifurcated, with the survival claim going to arbitration

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Arbitration – Regulatory Developments

- October 4, 2016: CMS publishes final rule prohibiting use of arbitration agreements in Long-Term Care Facilities 42 C.F.R. § 483.70(n)(1).
- Regulation challenged in *American Health Care Ass'n vs. Burwell* (District Court for N.D. Mississippi, Civil Action No. 3:16-CV-00233), and a preliminary injunction was entered
 - CMS appealed to the Fifth Circuit
 - June 5, 2017: CMS issues a new proposed rule removing the ban
- *Kindred Nursing Centers LP vs. Clark*, 137 S.Ct. 1421 (May 15, 2017) – second decision in 5 years affirming that nursing home arbitration agreements are enforceable under the FAA

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August 8, 2017: Holding that Management Company Had Duty to Resident

- Pursuant to a management services contract, "management company" created policies and procedures
- Even though the licensed operator set staffing levels, "management company" approved the budget
- "Management company" hired and trained licensed operator's registered nurses and appointed its Director of Nursing

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August 8, 2017: Holding that Management Company Had Duty to Resident

- "Management company" employed nurse consultants who visited licensed operator weekly to oversee patient care
- "Management company's" employee supervised NHA
- "Management company" established and administered a Quality Assurance Program

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Holding

- *Only* Highland Park, the licensed operator, may be directly liable for corporate negligence
- Grane's contractual undertaking to manage and oversee Ms. Scampone's care was necessary for her protection
- Grane, the management company, may be vicariously liable for the actions of its nurse consultants, who oversaw Highland Park staff and failed to ensure patients received appropriate care. But it has no direct liability.

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Takeaway

- "Management company's" contractual undertaking to manage and oversee resident's care was necessary for her protection
- *Only* the licensed operator may be directly liable for corporate negligence
- The management company may be vicariously liable for the actions of its nurse consultants, who oversaw the nursing staff and failed to ensure patients received appropriate care

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Staffing Developments

SNF Staffing Requirements

42 CFR § 483.30

- "The facility must have sufficient nursing staff ... to provide nursing and related services to ... attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population..."

28 Pa. Code § 211.12(i)

- A minimum number of general nursing care hours shall be provided for each 24-hour period. The total number of hours of general nursing care provided in each 24-hour period shall, when totaled for the entire facility, be a minimum of 2.7 hours of direct resident care for each resident.

CMS and Payroll-Based Journal Data

- Facility staffing information submitted quarterly and represents the number of hours staff are paid to work each day that quarter
- Aims to improve the accuracy of public reporting and provide greater insight to how facility staffing relates to quality outcomes
- Public postings of each facility's daily hours
- Postings sometimes reveal several days in a quarter without an RN onsite or significantly low nurse staffing on weekends

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CMS and Payroll-Based Journal Data

- CMS began informing state survey agencies of facilities with potential staffing issues in November 2018
- Previously, CMS required States to conduct at least 10% of the facility standard health surveys "off hours" (on the weekends or before 8 a.m. or after 6 p.m.)
 - Now, states are required to conduct at least 50% of the required off-hours surveys on weekends, using a list of facilities provided by CMS
- CMS is aiding surveyors' investigations by identifying facilities that have a higher risk of noncompliance with the RN staffing requirements
 - Noncompliant facilities are cited under deficiency F-tag 727

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CMS and Payroll-Based Journal Data

- CMS is updating the Payroll-Based Journal Policy Manual:
 - Meal Break Policy – more guidance provided regarding deducting time for meal breaks
 - Universal Care Workers (CNAs who perform additional duties outside of the nurse aid role) – facilities must use a reasonable methodology to allocate the hours that these employees are providing CAN services and report the hours accordingly. Facilities shall not report hours spend on housekeeping, cooking and other duties as CNA hours.

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// The understaffing during the ___ days amounted to \$_____ per day for a total savings from understaffing of \$_____.

- Expert Report //

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Significant Recent Verdicts

Lancaster, PA Verdict - Overview

- Suit brought by estate of former resident of nursing home as a result of a sexual assault by another resident.
- Named Defendants – Parent Company, Facility and Assailant
- Decedent – 82 years old at the time of alleged assault, suffered from dementia/mild Alzheimer's
- Assailant – 20 years younger than Decedent, registered sex offender in PA resulting from guilty plea for sexual assault at knifepoint in 1993.

Lancaster, PA - Report to Office of Aging

- Report indicated that:
 - Decedent had dementia/mild Alzheimer's
 - Decedent was involved in "relationship" with Assailant
 - Assailant was a convicted sex offender with a sex addiction, who was focusing on Decedent because of her cognitive issues
 - Assailant was *"grooming her for a sexual relationship"*
 - The Facility was *"very concerned"* that Decedent would be *"sexually victimized"* by Assailant
- As a result of the report, a care plan was placed in Decedent's chart, which indicated that she was at risk for sexual assault

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Lancaster, PA - Plaintiff's Allegations

- Primary Allegation: Sexual assault of Decedent by Assailant (no allegation that assault contributed to her subsequent death)
- Assailant observed leaving Decedent's room and a CNA observed Decedent with her pants down, redness in her peri area, and bruises on her hands
- Plaintiffs alleged that Assailant displayed increasingly erratic behavior and made inappropriate remarks prior to the assault, including a verbal threat to rape a staff member

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Lancaster, PA - Verdict

- Jury found Parent Company and Facility to be 85% liable (37.5 to Parent Company and 47.5 to Facility) and Assailant 15% liable
- Jury found that Facility showed reckless indifference in failing to prevent the assault and awarded punitive damages
- \$7.5 million dollar verdict for Plaintiffs in Lancaster County

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Paducah, KY Verdict - Overview

- Suit brought by guardian of resident against the facility and its ownership
- Resident – 60-year-old amputee with history of stroke. He experienced eight difference episodes of dehydration at the facility and later developed nausea and severe pain.
- The Incident – Nursing staff left him in bed, in distress, for 27 hours before calling paramedics to transfer him to a local hospital. When he was transferred, he was diagnosed as being severely dehydrated and in hypovolemic shock and acute kidney failure. He received 27 liters of fluid at the hospital before being sent back to the facility. Upon return to the facility, he fell, breaking his hip in three places. The resident is not a candidate for hip surgery.

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Paducah, KY - Plaintiff's Allegations

- The suit alleged negligence in violation of Kentucky's resident's rights law for choosing not to timely transfer him to a hospital when staff knew or should have known of his acute medical condition and failing to provide adequate hydration.
- Plaintiff maintained that the facility and its ownership had a policy of non-transfer of residents to hospitals for reimbursement purposes and that its nurses chose not to note the resident's dehydration in his records or provide him with sufficient water.
- Plaintiff further argued that the facility chose not to notify his family of the dehydration episode preceding his hospitalization.

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Paducah, KY - Verdict

- Jury awarded \$28.5 million in McCracken County
 - (\$25 million punitive damages award for the willful and wanton conduct of the facility, its personnel and its ownership)

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Consumer Protection Claims

- Long-term care establishments are increasingly finding their advertising claims under fire as plaintiffs use state consumer protection statutes to lodge malpractice claims against them
- Many state consumer protection acts that were originally enacted to address advertising fraud have been expanded to address fraud in consumer transactions

Typical Allegations Involving Consumer Protection

- Facilities have false and misleading marketing and staffing based on care needs
- Facilities fail to staff facilities to the needs of the residents
- Residents pay for services they do not receive
- Facilities fail to staff according to resident assessments and assessed care groups

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Commonwealth v. Golden Gate Nat'l Senior Care, LLC

- In July 2015, the Attorney General filed a complaint against more than two dozen nursing homes and their parent companies alleging violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL")
- The complaint claimed that through deceptive advertising and marketing materials, the nursing homes made materially misleading statements about the nature and quality of the care provided to their residents and intentionally understaffed facilities in order to maximize profits.

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Commonwealth v. Golden Gate Nat'l Senior Care, LLC

- *"Snacks and beverages of various types and consistencies are available at any time from your nurse or nursing assistant."*
- *"We have licensed nurses and nursing assistants available to provide nursing care and help with activities of daily living . . . Whatever your needs are, we have the clinical staff to meet those needs."*
- *"Clean linens are provided for you on a regular basis, so you do not need to bring your own."*

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Commonwealth v. Golden Gate Nat'l Senior Care, LLC

- *"A restorative plan of care is developed to reflect the resident's goals and is designed to improve wellness and function. The goal is to maintain optimal physical, mental and psychological functioning."*
- *"A container of fresh ice water is put right next to your bed every day, and your nursing assistant will be glad to refresh it for you."*
- *"We work with an interdisciplinary team to assess issues and nursing care that can enhance the resident's psychological adaptation to a decrease of function, increase levels of performance in daily living activities, and prevent complications associated with inactivity."*

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Commonwealth v. Golden Gate Nat'l Senior Care, LLC

- Allegations in Complaint:
 - Statements were misleading because they created the impression that the facilities would provide care that they did not, in fact, provide
 - Facilities generated billing statements which indicated certain care was provided when it was not

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Commonwealth v. Golden Gate Nat'l Senior Care, LLC

- Regarding the UTPCPL claims, the lower court found that statements contained in the advertising materials were mere “puffery” – patently hyperbolic or excessively vague in character such that no reasonable consumer should rely on them

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Commonwealth v. Golden Gate Nat'l Senior Care, LLC

- The Pennsylvania Supreme Court, however, reasoned that “residents of nursing homes, many of whom are physically compromised and require assistance with day-to-day living activities,” would reasonably rely on “statements promising to provide food, water and clean linens,” and would have no reason to not take the statements seriously
- Pennsylvania Supreme Court reversed the Commonwealth Court’s dismissal of the UTPCPL claims

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Foflygen v. Zemel

- Although the Pennsylvania Supreme Court revived the lawsuit, *Foflygen v. Zemel*, 420 Pa. Super. 18 (1992) holds that UTPCPL claims are not available in medical malpractices cases because the statute is inapplicable to medical services

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Trends in other states

New Jersey Consumer Fraud Act does not permit claims for nursing home abuse

- *Manahawknin Convalescent v. Frances O'Neill*

Virginia Consumer Protection Act applies to claims against nursing homes

- *Humphrey v. Leewood Healthcare Ctr.*

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Is It Time to Cash in Your CHPs? Increasing Energy Reliability and Savings for Healthcare Providers

Alan M. Seltzer, Esq. | John F. Povilaitis, Esq.
January 17, 2019

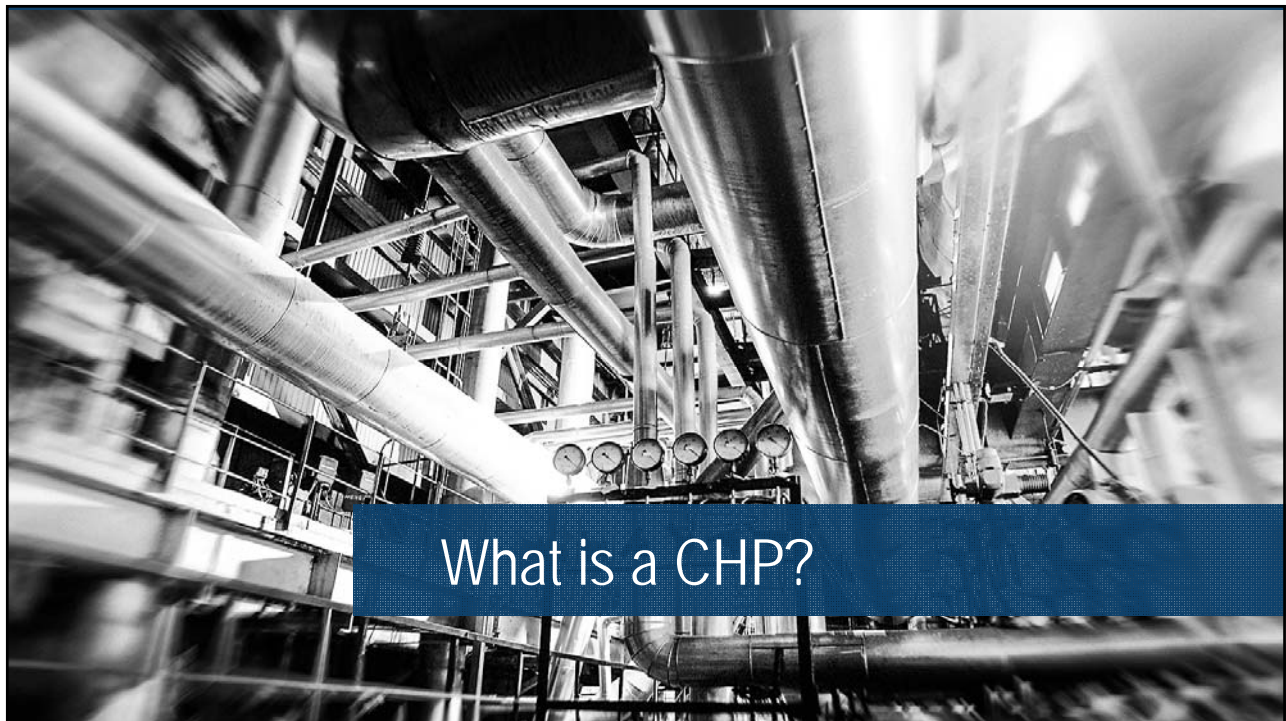
Agenda

- Buchanan Energy Team Introduction
- What is a Combined Heat and Power (CHP pronounced “CHIP”) Facility?
- Why are CHP Facilities Important for Healthcare Providers?
- So You’ve Decided to Develop a CHP Project – Now What?

Buchanan Energy Team

- **John F. Povilaitis** – What is a CHP and Why are CHPs Important for Healthcare Providers?
- **Alan M. Seltzer** – So You've Decided to Develop a CHP Plant – Now What?

We are energy and utility lawyers from Buchanan's Harrisburg office, specializing in public utility and energy law, both regulatory and transactional. We represent power plant owners, operators and developers, including hospitals and others developing or considering the development of CHP facilities.



Chips



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"CHiPs"



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CHP

- “CHP” stands for “Combined Heat and Power”
- Also known as “cogeneration”
 - The concurrent production of electricity or mechanical power and useful thermal energy (for heating and/or cooling) from a single source of energy.
 - A suite of technologies that can use a variety of fuels to generate electricity or power at the point of use, allowing the heat that would normally be lost in the power generation process to be recovered to provide needed heating and/or cooling.¹

¹ Department of Energy Office of Energy Efficiency & Renewable Energy, “Combined Heat and Power Basics,” available at <https://www.energy.gov/eere/amo/combined-heat-and-power-basics>

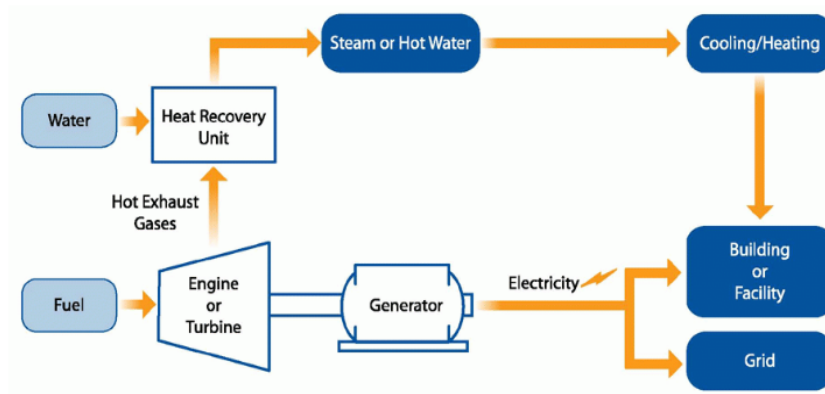
CHP

- Combustion turbine or reciprocating engine CHP systems burn fuel (e.g., natural gas, oil, or biogas) to turn generators to produce electricity and use heat recovery devices to capture the heat from the turbine or engine.
- This heat is converted into useful thermal energy, usually in the form of steam or hot water.

Source: United States Environmental Protection Agency, Combined Heat and Power (CHP) Partnership, “Common CHP Configurations”, available at <https://www.epa.gov/chp/what-chp>

CHP

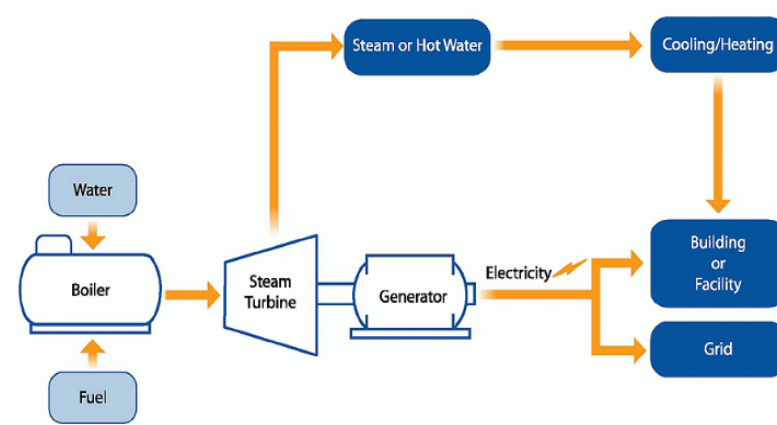
Combustion Turbine, or Reciprocating Engine, with Heat Recovery Unit



Source: United States Environmental Protection Agency, Combined Heat and Power (CHP) Partnership, "Common CHP Configurations", available at <https://www.epa.gov/chp/what-chp>

CHP

Steam Boiler with Steam Turbine



Source: United States Environmental Protection Agency, Combined Heat and Power (CHP) Partnership, "Common CHP Configurations", available at <https://www.epa.gov/chp/what-chp>

CHP

- The steam or hot gases leaving the turbine can be used to produce useful thermal energy for building heat and cooling.
- Both the steam turbines fed by boilers and the turbines fueled by natural gas turn generators that produce electricity for use in the facility and excess that is for sale to the electricity grid.

Source: United States Environmental Protection Agency, Combined Heat and Power (CHP) Partnership, "Common CHP Configurations", available at <https://www.epa.gov/chp/what-chp>

CHP

- CHP technology can be deployed quickly and cost-effectively compared to larger scale electric generators.
- CHPs can use a variety of fuels.
- CHPs have been employed for many years, mostly in industrial, large commercial, and institutional applications.
- CHPs may not be widely recognized outside industrial, commercial, institutional and utility circles, but have been quietly been providing highly efficient electricity and process heat/cooling to some of the most vital industries (including healthcare facilities), large employers and college campuses in the United States.²

² Department of Energy Office of Energy Efficiency & Renewable Energy, "Combined Heat and Power Basics," available at <https://www.energy.gov/eere/amo/combined-heat-and-power-basics>



Why are CHPs Important for Healthcare Providers?

CHPs – The Value Proposition

CHPs have been around since 1980, but are now spiking in popularity.

Why?

- Long used by Independent Power Producers (IPPs) and large industries, but now a feasible customer option for smaller facilities.
- Long-term availability of reasonably priced fuel, e.g., natural gas.
- Multiple approaches available to evaluate, design and build a CHP facility on customer premises.

CHPs – The Value Proposition

Who are considering CHPs?

- Hospitals, acute care facilities
- Medical parks/complexes
- Senior living facilities
- Education facilities

CHPs – The Value Proposition

What does a CHP do for me?

- Increased reliability of electricity supply
- Energy savings

CHPs – The Value Proposition

You may be a good candidate for a CHP facility if...

1. You are concerned about electric reliability and resiliency because...

- CHPs are protection from short-term grid outages, lengthy grid outages, voltage fluctuations and frequency fluctuations.
- Be the first micro-grid on your block!

CHPs – The Value Proposition

2. You are concerned about the cost of electricity you consume, because...

- CHPs provide a predictable long-term energy cost with protection from market price fluctuations compared to purchases from your local utility or the competitive market.

CHPs – The Value Proposition

3. You have consistent, year-round electricity and heating/cooling needs, because...
 - Steady, level usage of electricity increases the efficiency of CHPs and “waste” heat is put to use.

CHPs – The Value Proposition

4. You anticipate upgrading, expanding or replacing your boiler, generator or heating/cooling facilities in the next 3-5 years, because...
 - You have an opportunity to reduce your long-term energy costs.

CHPs – The Value Proposition

5. You've implemented energy efficiency measures, e.g., new lighting and smart controls, but still have large energy costs, because...
 - You can reduce and stabilize your cost per kwh of electricity with a CHP facility.

CHPs – The Value Proposition

6. You are interested in reducing your facilities' impact on the environment, because...
 - You may be able to switch from "slice of the system" electricity (which includes coal generation) to a fuel with a smaller carbon footprint such as natural gas or biogas.

CHPs – The Value Proposition

Customers now have more options to obtain a CHP facility.

- Planned, designed and built by the customer.
- Contract with a third party developer.
- Contract with a utility, e.g., a gas company.
- Combine with other customers to create a micro-grid.

CHPs – The Value Proposition

Is it risky to generate my own electricity?

There are risks, but your energy team can work with you to make them acceptable.

- Allocation of business risk with the developer.
- Proper economic/business analysis.
- Provision for change in law or regulations.
- Monitor the level of governmental support.



So You've Decided to Develop a CHP Plant – Now What?

So You've Decided to Explore a CHP Plant – Now What?

Assemble the Right Team

- In-house legal and facilities managers
- Finance
- Outside legal
- Economic consultants

So You've Decided to Explore a CHP Plant – Now What?

Negotiate and Execute the Key Transaction Documents

- Energy Services Agreement (ESA) – kwh price protection.
- Fuel Supply Agreement (typically gas) – fuel security.

So You've Decided to Explore a CHP Plant – Now What?

Negotiate and Execute the Key Transaction Documents

- CHP Facility Operations and Maintenance (O&M) Agreement – performance guarantees.
- Engineering Procurement and Construction (EPC) Agreement (for the CHP Facility) – delivered ready for commercial operation.
- Utility Agreements – back up delivery service and alternative supply.

So You've Decided to Explore a CHP Plant – Now What?

Negotiate and Execute the Key Transaction Documents

- Prepare engineering drawings, schematics, circuit diagrams, etc. for the CHP Facility – what will we get for our money?
- Model forecasts of fuel costs, electricity costs, electric demand and load, change of law or regulations impacting costs and pricing, etc. – will the facility achieve my financial/environmental/reliability/resiliency goals?

So You've Decided to Explore a CHP Plant – Now What?

CHP Transaction Risks

- A CHP Facility transaction can provide many benefits, but the key is to manage through analysis and negotiation the risks inherent in any long-term (usually 20 years) power arrangement.
- The greatest risk to any long-term power supply and construction arrangement is that the anticipated benefits do not materialize due to unanticipated/unaccounted for changes in cost and other factors that are outside of the analyzed scenarios and sensitivities.
- Long-term power plant construction and power sales arrangements have a number of variables/risks that can be studied and evaluated, but not completely controlled.

So You've Decided to Explore a CHP Plant – Now What?

CHP Transaction Variables

- Future price and availability of the fuel supply (e.g., natural gas) for the CHP Facility.
- Changes in utility charges for back up service.
- Changes in law (including environmental laws and regulations) that impact the economics and anticipated transaction benefits for either party.
- Changes in technology that make the CHP facility prematurely obsolete from either an operational or cost perspective.
- CHP Facility operates with different efficiency and cost (including the costs of the O&M provider) than the base case.

So You've Decided to Explore a CHP Plant – Now What?

Mitigation of CHP Transaction Variables

- Most transaction risks can be mitigated to a certain degree by developing contract terms that allocate the cost responsibility to the parties in certain ways and/or amounts based on the item involved.
- Good contracting protocol is to allocate the greatest amount of risk on any item on the party that can most cost effectively and efficiently manage that risk.
- The negotiations will involve identifying the key risks and determining the appropriate party and mechanism to handle such risk.
- Risks that cannot be addressed via contract are typically mitigated by obtaining professional evaluations and opinions from experts.



Is It Time to Cash in Your CHPs – Increasing Energy Reliability and Savings for Healthcare Providers

The Buchanan Team



John F. Povilaitis, Shareholder

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John focuses his practice on administrative law matters with special emphasis on energy, communications, water/wastewater and transportation public utility law and related transactions. His practice ranges from proactive counseling to litigation before administrative agencies, and appellate matters before state and federal courts. He is a former Chief Counsel of the Pennsylvania Public Utility Commission, and has significant regulatory experience in electricity, natural gas, water, transportation and communications law.



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Alan focuses his practice on electric and gas matters. He has actively represented public utilities and other stakeholders before the Pennsylvania Public Utility Commission, particularly in the areas of electricity, gas, water and transportation. His current emphasis is on energy related transactions, obtaining the state regulatory approvals for the merger or acquisition of gas and electric utilities, and addressing the real estate, regulatory and financing phases of renewable energy project development.



Questions?

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State Legislative Update and Post Election Results

Brian Kelly, Senior Principal
PA State Government Relations

Agenda

2018 Year in Review

- Agency Consolidation
- HealthChoices Update
- Medical Marijuana Program
- Opioid Crisis
- Community HealthChoices Implementation
- Legislative Wins, Losses and Unfinished Business

Looking Ahead to 2019

- Fiscal Year 2018-2019 State Budget
- What to watch for legislatively

General Election Results

- Gubernatorial Race
- PA General Assembly
- Congressional Seats

Agency Consolidation

- Gov. Wolf called for the merger of four health-related state agencies as part of his proposed budget for FY 2017-18:

Department of Health

Department of Human Services

Department of Aging

Department of Drug & Alcohol Programs

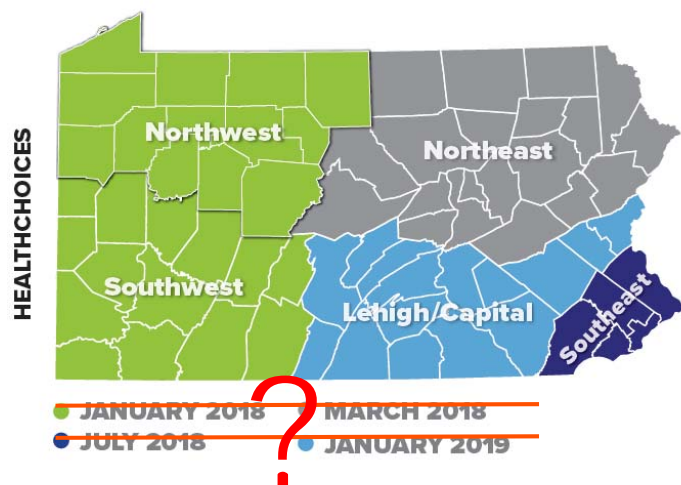
"Department of Health and Human Services"

- Cost savings? Streamlining of service delivery? Increased efficiencies?*
- No formal efforts to implement the merger
- Additional information requested

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Healthchoices Update

- PA's statewide mandatory managed care program for 2.2 million Medicaid recipients, currently in a "stay"
- DHS announced selection of 6 MCOs to administer HC in 5 regions on 1/5/17 → Ensuing bid protests
- Challenges heard in Commonwealth Court 10/18/17 → Decision pending
- Potential (third) re-procurement - TBD



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Community Health Choices (CHC)

- Mandatory managed care program for dually eligible persons and persons with physical disabilities
- Enhances access to and improves coordination of medical care
- Creates a person-driven, long-term support system in which people have choice, control and access to a full array of services that provide independence, health and quality of life



SOUTHWEST	SOUTHEAST	LEHIGH/CAPITAL, NORTHWEST & NORTHEAST
JANUARY 2018	JANUARY 2019	JANUARY 2020
Allegheny Armstrong Beaver Bedford Blair Butler Cambria Fayette Greene Indiana Lawrence Somerset Washington Westmoreland	Bucks Chester Delaware Montgomery Philadelphia	Adams Berks Bradford Cameron Carbon Centre Clarion Clearfield Clinton Columbia Crawford Cumberland Dauphin Elk Erie Forest
	Franklin Fulton Huntingdon Jefferson Juniata Lackawanna Lancaster Lebanon Lehigh Luzerne Lycoming McKean Mercer Mifflin Monroe Montour	Northampton Northumberland Perry Pike Potter Schuylkill Snyder Sullivan Susquehanna Tioga Union Venango Warren Wayne Wyoming York

Affected individuals will be notified at least 90 days before CHC begins in each zone, so they will be ready for the change.

REVISED: JUNE 2018

Source: PA Department of Human Services

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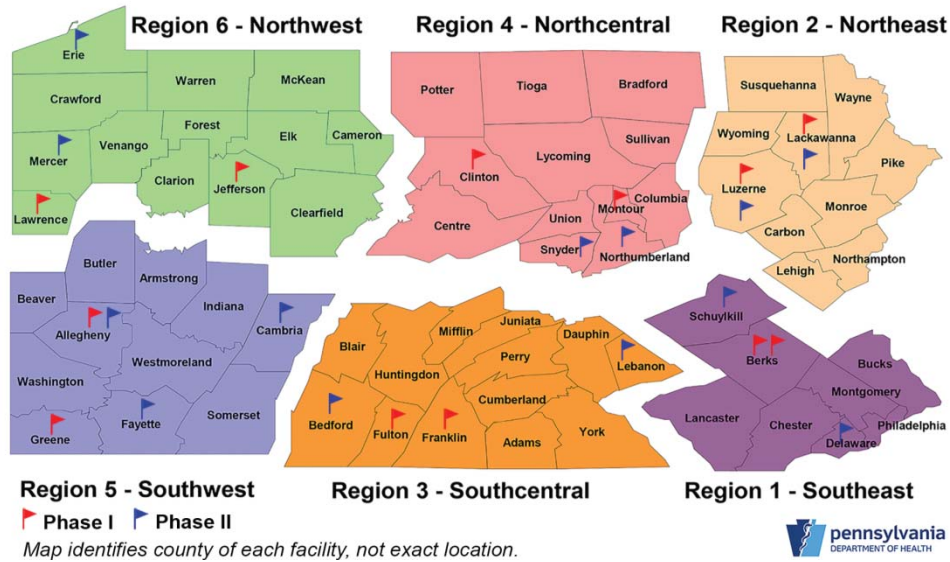
Medical Marijuana Program

- Act 16 of 2016 (Folmer, R-Lebanon) established a program, administered by the Department of Health, for the use of medical marijuana by patients with a "serious medical condition."
- Doctors may apply to become registered as a "practitioner" in order to certify patients to use medical marijuana.
- Initial amount of permits:
 - 50 dispensaries (can open up to three separate locations)
 - 25 growers/processors
 - 8 clinical registrants (contract with an academic research center to dispense medical marijuana for research purposes)



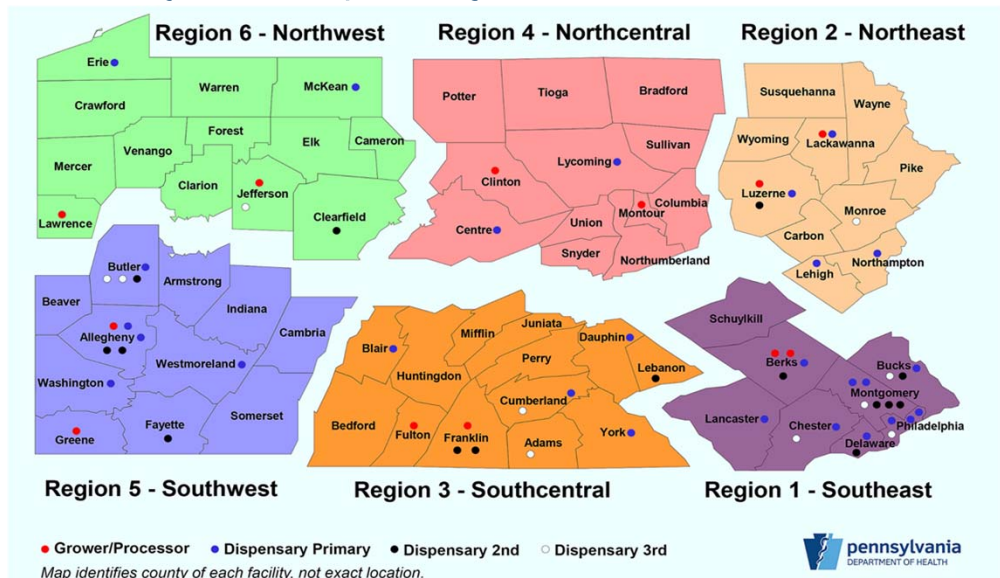
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Medical Marijuana Grower/Processor Permit Awardees



7

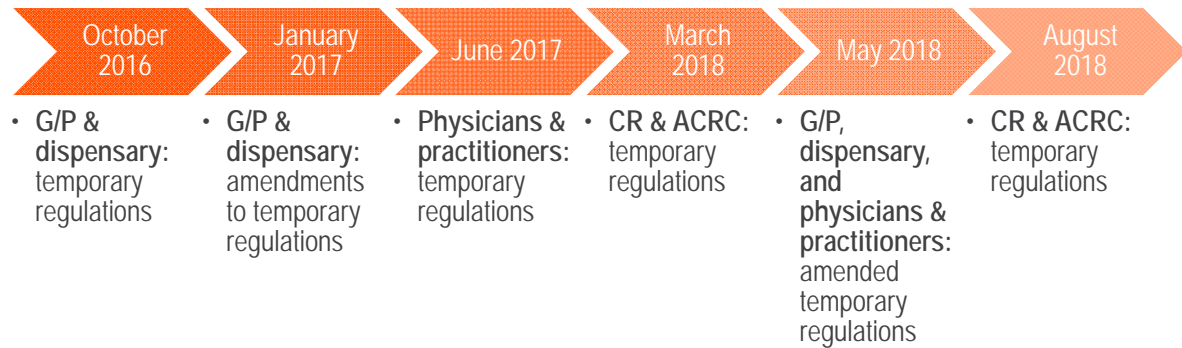
Medical Marijuana Dispensary Permit Awardees



Phase II yet to be announced

8

Medical Marijuana Regulations



G/P: Growers/Processors
CR: Clinical Registrants
ACRC: Academic Clinical Research Centers

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Opioid Crisis

- Emergency Declaration is first of its kind – Command Center at PEMA
- Agencies involved include Health, DHS, DDAP, PEMA, PCCD and PSP
- 13 initial initiatives in 3 key areas:
 - Enhancing Coordination/Data Collection to Bolster State/Local Response
 - Improving Tools for Families, First Responders and Others to Save Lives
 - Speeding Up and Expanding Access to Treatment
- Extended for a third 90-day period in September
- Ongoing federal funding to PA to combat epidemic
 - 21st Century Cures Act
 - SAMHSA State Opioid Response Grant

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Opioid-Related Legislation

More than 130 Bills Introduced by General Assembly:

- ✓ *Consent to Treatment* (Act 47-2018)
- ✓ *Drug & Alcohol Recovery House Certification* (Act 59-2017)
- ✓ *Emergency D&A Detox. Program* (Act 40-2017)
- ✓ *Opioid abuse prevention education in schools* (Act 55-2017)
- ✓ *E-prescribing for controlled substances* (Act 96-2018)
- ✓ *Prescribing opioids to minors* (Act 93-2018)
- ✓ *Epilepsy Drug Exemption from ABC-MAP* (Act 79-2017)
- ✓ *Drug Disposal after Hospice Care* (Act 69-2018)



What Did the General Assembly Do?



What Was Accomplished



Unfinished Business

Bill Summary, 2017-18 Legislative Session

23%

Of all bills
introduced were
health or
insurance-related

	Democrat	Republican	Total
House	1,114	1,569	2,683
Senate	447	811	1,258
Total	1,561	2,380	3,941

Source: PA Legislative Services

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Legislative Activity in 2017-18

- ✓ Medicaid "reforms" → *HB 59 vetoed by Governor 10/19/17*
- ✓ Abortion restrictions → *SB 3 vetoed by Governor 12/18/17*
- ✓ CHIP reauthorization → *Act 58-2017*
- ✓ Rare Disease Advisory Council → *Act 14-2017*
- ✓ "Right to Try" Investigational Drugs → *Act 33-2017*
- ✓ MA eligibility / work requirements → *HB 2138 vetoed by Governor 10/19/18*
- ✓ Public Assistance Integrity Act → *Act 125-2018*

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Legislative Activity in 2017-18

- ✓ Medication Synchronization → *Act 87-2018*
- ✓ "Treat no Transport" → *Act 103-2018*
- ✓ Assisted Outpatient Mental Health Treatment Standards → *Act 106-2018*
- ✓ Patient Test Results Notification → *Act 112-2018*
- ✓ Spinal Cord Injury Research Program → *Act 126-2018*
- ✓ Organ and Tissue Donation → *Act 90-2018*

Unfinished Business

- Project Lazarus Commission (overdose prevention)
- Purchasing health insurance products sold in other states
- Certification of voluntary healthcare practitioners
- ABC-MAP prescription queries
- Grant funding limitations on FQHCs
- Mcare Act: Punitive damages permitted
- Surprised balanced billing
- Uniform insurer credentialing
- Reauthorization of PA Health Care Cost Containment Council

Unfinished Business

- MA Presumptive eligibility for home health / behavioral health services
- Medication Assisted Treatment
- Gender / sex reassignment / transition services reimbursement
- Prohibition of pharmacy “gag” clauses
- Pharmacy reimbursement / drug pricing transparency
- OAPSA reforms
- PA orders for life sustaining treatment (POLST)
- Scope of practice
- Rural health redesign
- Telemedicine

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Looking Ahead to 2019-20 Session

- FY 2018-2019 Budget
- CHC implementation, in Southeast PA, 1/1/19
- Legislative action to watch for:
 - Telemedicine
 - Surprise balance billing
 - Pharmaceutical price transparency / PBM regulation/oversight
 - Presumptive eligibility – Home care, Behavioral Health
 - Uniform insurance credentialing
 - Behavioral health re-integration
 - Nurse Staffing
 - MAT / Opioid related legislation

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Mid-Term Election Results

Pennsylvania House of Representatives

- All 203 members were up for reelection.
- House makeup prior to the election:
 - 121 Republicans
 - 82 Democrats
- House makeup after the election (**Democrats picked up 11 seats**):
 - 109 Republicans
 - 93 Democrats (one vacancy – Sid Michaels Kavulich)

Open House Seats (incumbent not on ballot)

- HD-2 (Erie): **Robert Merski** (D) will replace Rep. Flo Fabrizio (D)
- HD-15 (Beaver): **Joshua Kail** (R) will replace Rep. Jim Christiana (R)
- HD-21 (Allegheny): **Sara Innamorato** (D) will replace Rep. Dom Costa (D)
- HD-25 (Allegheny): **Brandon Markosek** (D) will replace Rep. Joe Markosek (D)
- HD-29 (Bucks): **Meghan Schroeder** (R) will replace Rep. Bernie O'Neill (R)
- HD-30 (Allegheny): **Lori Mizgorski** (R) will replace Rep. Hal English (R)
- HD-34 (Allegheny): **Summer Lee** (D) will replace Rep. Paul Costa (D)
- HD-39 (Allegheny): **Michael Puskaric** (R) will replace Rep. Rick Saccone (R)
- HD-40 (Allegheny): **Natalie Mihalek** (R) will replace Rep. John Maher (R)
- HD-44 (Allegheny): **Valerie Gaydos** (R) will replace Rep. Mark Mustio (R)

Open House Seats (incumbent not on ballot)

- HD-53 (Montgomery): **Steven Malagari** (D) will replace Rep. Bob Godshall (R) – **pick up for Democrats**
- HD-54 (Westmoreland): **Robert Brooks** (R) will replace Rep. Eli Evankovich (R)
- HD-62 (Indiana): **James Struzzi** (R) will replace Rep. Dave Reed (R)
- HD-74 (Chester): **Dan Williams** (D) will replace Rep. Harry Lewis (R) – **pick up for Democrats**
- HD-76 (Clinton): **Stephanie Borowicz** (R) will replace Rep. Mike Hanna (D) – **pick up for Republicans**
- HD-79 (Blair): **Louis Schmitt, Jr.** (R) will replace Rep. John McGinnis (R)
- HD-80 (Blair): **James Gregory** (R) will replace Rep. Judith Ward (R)

Open House Seats (incumbent not on ballot)

- HD-82 (Juniata): **Johnathan Hershey** (R) will replace Rep. Adam Harris (R)
- HD-93 (York): **Paul Jones** (R) will replace Rep. Kristin Phillips-Hill (R)
- HD-105 (Dauphin): **Andrew Lewis** (R) will replace Rep. Ron Marsico (R)
- HD-112 (Lackawanna): **Kyle Mullins** (D) will replace Rep. Kevin Haggerty (D)
- HD-143 (Bucks): **Wendy Ullman** (D) will replace Rep. Marguerite Quinn (R) – **pick up for Democrats**
- HD-144 (Bucks): **Todd Polinchock** (R) will replace Rep. Kathy Watson (R)
- HD-150 (Montgomery): **Joseph Webster** (D) will replace Rep. Michael Corr (R) – **pick up for Democrats**

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Open House Seats (incumbent not on ballot)

- HD-153 (Montgomery): **Ben Sanchez** (D) will replace Rep. Madeleine Dean (D)
- HD-162 (Delaware): **David Dellosa** (D) will replace Rep. Mick Miccarelli (R) – **pick up for Democrats**
- HD-175 (Philadelphia): **MaryLouise Isaacson** (D) will replace Rep. Michael O'Brien (D)
- HD-177 (Philadelphia): **Joseph Hohenstein** (D) will replace Rep. John Taylor (R) – **pick up for Democrats**
- HD-181 (Philadelphia): **Malcolm Kenyatta** (D) will replace Rep. Curtis Thomas (D)
- HD-184 (Philadelphia): **Elizabeth Fielder** (D) will replace Rep. Bill Keller (D)
- HD-193 (Adams): **Torren Ecker** (R) will replace Rep. Will Tallman (R)
- HD-197 (Philadelphia): **Danilo Burgos** (D) will replace Rep. Emilio Vazquez (D)
- HD-199 (Cumberland): **Barbara Gleim** (R) will replace Rep. Stephen Bloom (R)

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House Members That Lost in General Election

- HD-61 (Montgomery): Laura Hanbidge (D) defeated Rep. Kate Harper (R) – pick up for Democrats
- HD-71 (Cambria): James Rigby (R) defeated Rep. Bryan Barbin (D) – pick up for Republicans
- HD-146 (Montgomery): Joseph Ciresi (D) defeated Rep. Thomas Quigley (R) – pick up for Democrats
- HD-155 (Chester): Danielle Otten (D) defeated Rep. Becky Corbin (R) – pick up for Democrats
- HD-157 (Chester): Melissa Shusterman (D) defeated Rep. Warren Kampf (R) – pick up for Democrats

House Members That Lost in General Election

- HD-158 (Chester): Christina Sappey (D) defeated Rep. Eric Roe (R) – pick up for Democrats
- HD-163 (Delaware): Michael Zabel (D) defeated Rep. James Santora (R) – pick up for Democrats
- HD-165 (Delaware): Jennifer Omara (D) defeated Rep. Alex Charlton (R) – pick up for Democrats
- HD-167 (Chester): Kristine Howard (D) defeated Rep. Duane Milne (R) – pick up for Democrats
- HD-178 (Bucks): Wendi Thomas (R) defeated Rep. Helen Tai (D) – pick up for Republicans

Vacancies in House Legislative Committee Chairs

- **Appropriations** : Rep. Joe Markosek (D)
- **Children & Youth** : Rep. Kathy Watson (R)
- **Commerce**: Rep. Curtis Thomas (D)
- **Consumer Affairs** : Rep. Robert Godshall (R)
- **Environmental Resources & Energy**: Rep. John Maher (R)
- **Finance**: Rep. Bernie O'Neill (R)
- **Game and Fisheries**: Rep. Brian Barbin (D)
- **Health** : Rep. Flo Fabrizio (D)
- **Judiciary** : Rep. Ron Marsico (R)
- **Liquor Control**: Rep. Adam Harris (R) & Rep. Paul Costa (D)
- **Local Government**: Rep. Kate Harper (R)
- **Professional Licensure**: Rep. Mark Mustio (R)
- **Transportation**: Rep. John Taylor (R) & Rep. Bill Keller (D)
- **Urban Affairs**: Rep. Mike O'Brien (D)

Pennsylvania Senate

- 25 members (even-numbered districts) were up for reelection; 18 Republicans and 7 Democrats.
- Senate makeup prior to the election:
 - 34 Republicans
 - 16 Democrats
- Senate makeup after the election (**Democrats picked up 5 seats**):
 - 29 Republicans
 - 21 Democrats

Open Senate Seats (incumbent not on ballot)

- SD-10 (Bucks): **Steve Santarsiero** (D) will replace Sen. Chuck McIlhinney (R) – **pick up for Democrats**
- SD-12 (Montgomery): **Maria Collett** (D) will replace Sen. Stewart Greenleaf (R) – **pick up for Democrats**
- SD-28 (York): **Kristin Phillips-Hill** (R) will replace Sen. Scott Wagner (R)
- SD-30 (Blair): **Judith Ward** (R) will replace Sen. John Eichelberger (R)
- SD-38 (Allegheny): **Lindsey Williams** (D) will replace Sen. Randy Vulakovich (R) – **pick up for Democrats**

Senate Members That Lost in General Election

- SD-26 (Delaware): **Timothy Kearney** (D) defeated Sen. Tom McGarrigle (R) – **pick up for Democrats**
- SD-44 (Montgomery): **Katie Muth** (D) defeated Sen. John Rafferty (R) – **pick up for Democrats**

Vacancies in Senate Legislative Committee Chairs

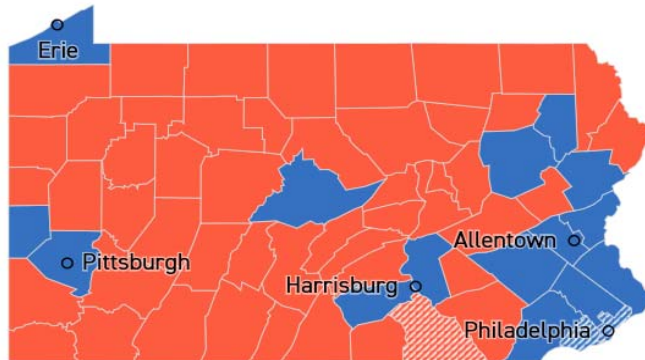
- **Education:** Sen. John Eichelberger (R)
- **Judiciary :** Sen. Stewart Greenleaf (R)
- **Law & Justice :** Sen. Chuck McIlhinney (R)
- **Local Government:** Sen. Scott Wagner (R)
- **Transportation:** Sen. John Rafferty (R)
- **Urban Affairs and Housing:** Sen. Tom McGarrigle (R)
- **Veterans Affairs & Emergency Preparedness:** Sen. Randy Vulakovich (R)

Health-related Committee Chairs

(*Denotes new Chair)

Committee	Chairman (R)	Chairman (D)
House Aging & Older Adult Services	Rep. Tom Murt*	Rep. Steve Samuelson
House Health	Rep. Kathy Rapp	Rep. Dan Frankel*
House Human Services	Rep. Gene DiGirolamo	Rep. Angel Cruz
House Insurance	Rep. Tina Pickett	Rep. Tony DeLuca
House Professional Licensure	Rep. Dave Hickernell*	Rep. Harry Readshaw
Senate Aging & Youth	Sen. John DiSanto*	Sen. Maria Collett*
Senate Banking & Insurance	Sen. Don White	Sen. Sharif Street
Senate Consumer Protection & Professional Licensure	Sen. Tommy Tomlinson	Sen. Lisa Boscola
Senate Health & Human Services	Sen. Michele Brooks*	Sen. Art Haywood*

Governor



- **Governor Tom Wolf (D)** and his running mate for **Lieutenant Governor John Fetterman (D)** defeated the ticket of Scott Wagner (R) and Jeff Bartos (R).
- Wolf received 2,799,1559 votes (57.66%), while Wagner got 1,981,027 votes (40.81%).

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Key Dates

- **New Elected Officials Reception** – January 28, 2019
- **Governor's Budget Address** – February 5, 2019
- **Budget Hearings** – February 11 - March 7, 2019
- **Budget Deadline** – June 30, 2019
- **House/Senate Session Days** = 50

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Thank you



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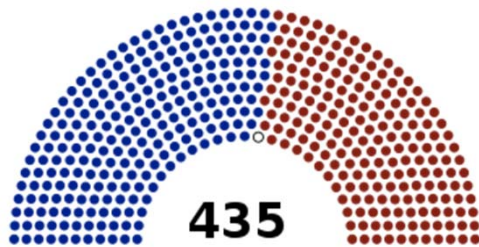
Federal Legislative and Regulatory Update

Michael P. Strazzella
January 16, 2019

116th Congress Party Split

House

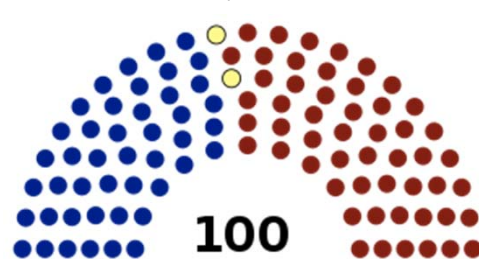
235 Democrats; 199 Republicans;
1 Vacancy



Speaker of the House: Nancy Pelosi (D-CA)
Minority Leader: Kevin McCarthy (R-CA)

Senate

53 Republicans; 45 Democrats;
2 Independents



Majority Leader: Mitch McConnell (R-KY)
Minority Leader: Chuck Schumer (D-NY)

116th Congress - House Committee Leadership

	Republican	Democrat
Agriculture	Rep. Collin Peterson (MN)	Rep. Mike Conway (TX)
Appropriations	Rep. Nita Lowey (NY)	Rep. Kay Granger (TX)
Armed Services	Rep. Adam Smith (WA)	Rep. Mac Thornberry (TX)
Budget	Rep. John Yarmuth (KY)	Rep. Steve Womack (AR)
Education & Labor	Rep. Bobby Scott (VA)	Rep. Virginia Foxx (NC)
Energy & Commerce	Rep. Frank Pallone (NJ)	Rep. Greg Walden (OR)
Financial Services	Rep. Maxine Waters (CA)	Rep. Patrick McHenry (NC)
Foreign Affairs	Rep. Eliot Engel (NY)	Rep. Mike McCaul (TX)
Homeland Security	Rep. Bennie Thompson (MS)	Rep. Mike Rogers (AL)
House Administration	Rep. Zoe Lofgren (CA)	Rep. Rodney Davis (IL)
Intelligence	Rep. Adam Schiff (CA)	Rep. Devin Nunes (CA)
Judiciary	Rep. Jerry Nadler (NY)	Rep. Doug Collins (GA)
Natural Resources	Rep. Raul Grijalva (AZ)	Rep. Rob Bishop (UT)
Oversight & Government Reform	Rep. Elijah Cummings (MD)	Rep. Jim Jordan (OH)
Rules	Rep. Jim McGovern (MA)	Rep. Tom Cole (OK)
Science, Space and Technology	Rep. Eddie Bernice Johnson (TX)	Rep. Frank Lucas (OK)
Small Business	Rep. Nydia Velazquez (NY)	Rep. Steve Chabot (OH)
Transportation & Infrastructure	Rep. Peter DeFazio (OR)	Rep. Sam Graves (MO)
Veterans' Affairs	Rep. Mark Takano (VA)	Rep. Phil Roe (TX)
Ways & Means	Rep. Richard Neal (MA)	Rep. Kevin Brady (TX)

116th Congress - Senate Committee Leadership

	Republican	Democrat
Agriculture	Sen. Pat Roberts (KS)	Sen. Debbie Stabenow (MI)
Appropriations	Sen. Richard Shelby (AL)	Sen. Patrick Leahy (VT)
Armed Services	Sen. James Inhofe (OK)	Sen. Jack Reed (RI)
Banking, Housing & Urban Affairs	Sen. Mike Crapo (ID)	Sen. Sherrod Brown (OH)
Budget	Sen. Michael Enzi (WY)	Sen. Bernie Sanders (VT)
Commerce, Science & Transportation	Sen. Roger Wicker (MS)	Sen. Maria Cantwell (WA)
Energy & Natural Resources	Sen. Lisa Murkowski (AK)	Sen. Joe Manchin (WV)
Environment & Public Works	Sen. John Barrasso (WY)	Sen. Tom Carper (DE)
Finance	Sen. Chuck Grassley (IA)	Sen. Ron Wyden (OR)
Foreign Relations	Sen. Jim Risch (ID)	Sen. Bob Menendez (NJ)
Health Education Labor & Pensions	Sen. Lamar Alexander (TN)	Sen. Patty Murray (WA)
Homeland Security & Governmental Affairs	Sen. Ron Johnson (WI)	Sen. Gary Peters (MI)
Judiciary	Sen. Lindsey Graham (SC)	Sen. Dianne Feinstein (CA)
Rules & Administration	Sen. Roy Blunt (MO)	Sen. Amy Klobuchar (MN)
Small Business & Entrepreneurship	Sen. Marco Rubio (FL)	Sen. Ben Cardin (MD)
Veterans' Affairs	Sen. Johnny Isakson (GA)	Sen. Jon Tester (MT)
Select Committee on Intelligence	Sen. Richard Burr (NC)	Sen. Mark Warner (VA)
Special Committee on Aging	Sen. Susan Collins (ME)	Sen. Bob Casey (PA)

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Freshman of the 116th Congress



At least 73 went to graduate school. A third of them have law degrees and 12 have MBAs. Seven freshmen earned at least two graduate degrees.



36 women — 35 Democrat, 1 Republican



At least 24 of the new members elected to the House this cycle are Hispanic, Native American and people of color.



At least 18 members of the incoming class have served in the military. Six served in the Army, 11 in the Navy and two in the Air Force.



Five worked in education or were teachers.



There are **at least five** medical professionals: three doctors, one dentist and one nurse.

Source: Politico Pro Datapoint

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116th Congress Agenda

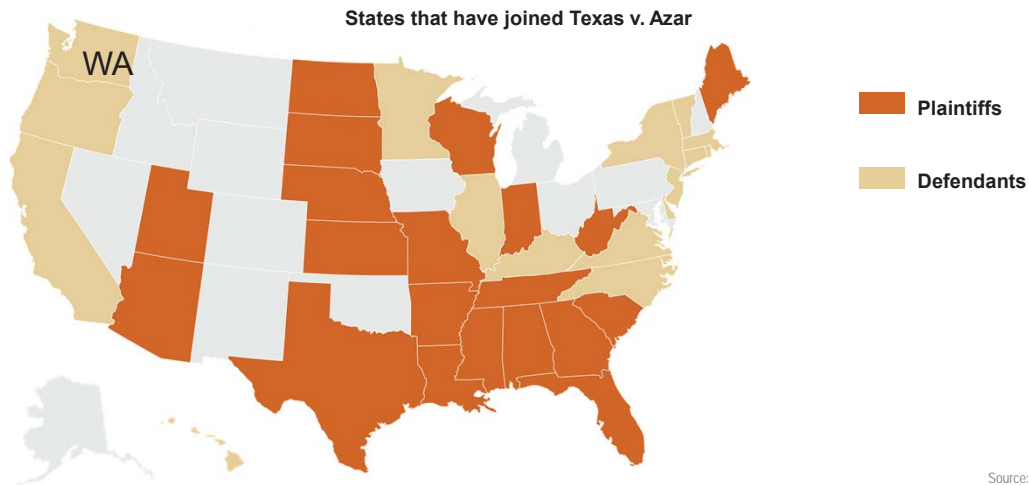
- ACA
- Health IT/Telemedicine
- Drug Pricing
- Hospitals

Future of the ACA: The Lawsuit

The Basics:

- 20 Republican state attorneys general filed suit challenging the ACA after the individual mandate was effectively eliminated in last year's tax bill
- A TX judge found the ACA unconstitutional in December 2018
- Democratic state attorneys general will appeal with support from House Democrats
- The law is still in effect while pending appeal
- If affirmed by higher courts, entire ACA would be repealed including popular provisions like pre-existing condition protections

Future of the ACA: The Lawsuit



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Future of the ACA: Congress

- Senate HELP may again take up stabilization compromise
- We may see legislation to protect pre-existing conditions
- Bipartisan permanent repeal of "Cadillac tax" and medical device tax
- Will the House see a vote on Medicare for all?

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Future of Medicaid

- In 2018 CMS memo to states allowed for implementation of Medicaid work requirements
- 7 states have received 1115 waivers to enact work requirements
- 8 states have pending 1115 waivers
- New Democratic Governors likely to expand Medicaid under the ACA

Pending and Approved Medicaid Work Requirements

Approved

- Arkansas
- Indiana
- Kentucky
- Maine
- Michigan
- New Hampshire
- Wisconsin

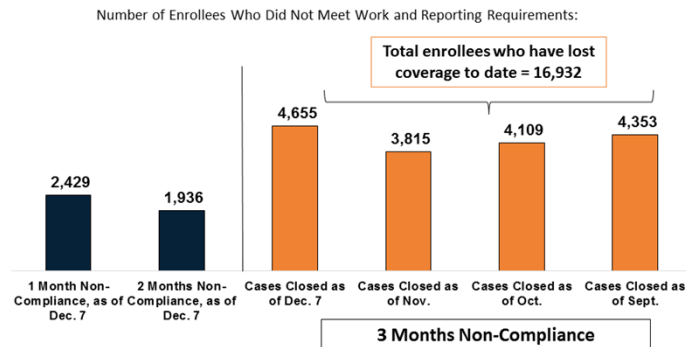
Pending

- Alabama
- Arizona
- Mississippi
- Ohio
- Oklahoma
- South Dakota
- Utah
- Virginia

Source: Kaiser Family Foundation and CMS

Future of Medicaid: Arkansas Work Requirements Snapshot

Figure 1
Nearly 17,000 AR Works enrollees have lost Medicaid coverage for failure to meet work and reporting requirements.



SOURCES: Ark. Dept of Human Servs., Ark. Works Program, [Nov. 2018 Report](#) (data as of Dec. 7, 2018, released Dec. 17, 2018); [Oct. 2018 Report](#) (data as of Nov. 7, 2018, released Nov. 15, 2018); [Sept. 2018 Report](#) (data as of Oct. 8, 2018, released Oct. 15, 2018); [Aug. 2018 Report](#) (data as of Sept. 9, 2018, released Sept. 12, 2018).

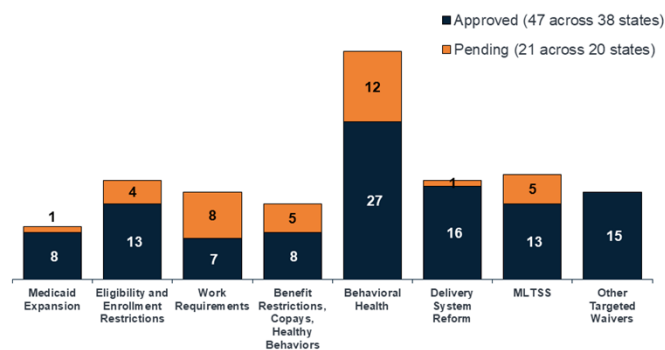


Source: Kaiser Family Foundation

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Future of Medicaid: Other 1115 Pending and Approved Waivers

Landscape of Approved vs. Pending Section 1115 Medicaid Demonstration Waivers, January 3, 2019



NOTES: Some states have multiple approved and/or multiple pending waivers, and many waivers are comprehensive and may fall into a few different areas. Therefore, the total number of pending or approved waivers across states cannot be calculated by summing counts of waivers in each category. Pending waiver applications are not included here until they are officially accepted by CMS and posted on Medicaid.gov. For more detailed information on each Section 1115 waiver, download the detailed approved and pending waiver tables posted on the tracker page. "MLTSS" = Managed long-term services and supports.



Source: Kaiser Family Foundation

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116th Congress Agenda: Health IT and Telemedicine

- In 2018, CMS continued the trend of expanding reimbursement and pilot projects for telehealth services – expect this to continue
 - ✓ Medicare Advantage
 - ✓ Removal of geographic and originating site restrictions
 - ✓ Nursing homes and senior care
 - ✓ Expanded broadband – especially into rural areas
 - ✓ Telebehavioral health

Drug Pricing: Administration

- Trump Administration's Blueprint to Lower Drug Prices released May of 2018 identified four strategies:
 1. Improved Competition
 2. Better Negotiation
 3. Incentives for Lower List Prices
 4. Lowering Out-of-Pocket Costs
- Other Trump Administration approaches to drug pricing include:
 - Proposed demonstration to lower Part B prices
 - International Pricing Index
 - Drug reimportation under consideration at FDA

Drug Pricing: Congress

- One of the few areas of bipartisan interest, expect drug pricing to be a priority in the 116th Congress
 - Look for “bad actor” scapegoat companies
 - Pharmacy Benefit Managers will continue to be focus
 - 340B cuts and lawsuit impact pricing
 - Medicaid misclassification by pharmaceutical companies
 - Incentives to increase competition and generic drugs including sample-blocking

Hospitals

The ways in which hospitals and providers are compensated are always of interest to lawmakers:

- Surprise medical bills and “balance billing”
- Executive compensation: Relive Sen. Grassley’s Non-for-Profit scrutiny?
- The 340B cut and lawsuit continue to be big news in 2019
 - 30% cut went into effect in 2018
 - Saved by the gavel: On Dec. 28th a judge issued a permanent injunction blocking the cut – huge win for hospitals
 - HHS is “evaluating next steps”

Thank you



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Joseph G. Meterchick

Regional President, PNC Bank

Joseph G. Meterchick is PNC Bank's Regional President for Philadelphia, Delaware and Southern New Jersey.

Prior to assuming his current role, Meterchick served as regional president for Florida West, as well as PNC's director of Corporate and Commercial Banking for the state. In that role, his responsibilities included business development and portfolio management for businesses with sales in excess of \$10 million.

Meterchick brings over 37 years of banking experience with PNC to its clients and prospects. Before assuming the regional president role in Florida West in 2011, Meterchick's career at PNC included nearly 30 years in Philadelphia and Southern New Jersey. During that time, he led the corporate banking team in addition to serving as managing director of PNC Capital Markets and group manager in PNC Business Credit.

Active in a range of community organizations, Meterchick is a board member, finance committee chair and executive committee member of the Greater Philadelphia Chamber of Commerce and serves on the Foundation Board of Overseers of The Children's Hospital of Philadelphia.

Meterchick received B.S. degrees from the Pennsylvania State University in Business Administration (Accounting) and Liberal Arts (Economics).



Lee Stettner

Managing Director, Solebury Capital

lss@solecap.com

Lee Stettner has worked on Wall Street for twenty five years in a variety of senior roles in both equity capital markets and corporate finance. Before joining Solebury, Lee was a Managing Director in Equity Capital Markets at J.P. Morgan where he was responsible for both the Healthcare and Natural Resources sectors. He also served on the firm's Equity Underwriting Commitment Committee which is responsible for evaluating all aspects of proposed equity transactions. Prior to joining J.P. Morgan, Lee was a Senior Managing Director and Global Head of Equity Capital Markets at Bear Stearns. From 2004-2007, Lee was a Managing Director at Deutsche Bank where he served as Head of the Healthcare Investment Banking and Equity Capital Markets Group. Prior to Deutsche Bank, he was a Managing Director in the Equity Capital Markets Group at Credit Suisse First Boston, where he was responsible for origination in the Healthcare and Business Services sectors. Lee started his career at Dean Witter and Morgan Stanley, where he worked in the Healthcare Investment Banking Group.

Over the course of his career, Lee originated and bookran over 300 equity transactions, including landmark transactions for HCA, Alcon, Smith International, AEP, Laredo Petroleum, Antero Resources, AES, PPL, Premier Inc. Quintiles Weight Watchers, Quest Diagnostics, Progress Energy, LabCorp, Apache and Human Genome Sciences.

Lee graduated with a BA in Economics from Hamilton College and an MBA from the Wharton School of Business of the University of Pennsylvania. Lee is a Board Member of the Mount Sinai Hospital Department of Medicine. Lee lives in Manhattan with his wife and two daughters.



Practices

Healthcare

Healthcare Regulatory & Compliance

Healthcare Litigation

Cybersecurity & Data Privacy

Education

J.D., University of Pennsylvania Law School, 2016

M.B.E., University of Pennsylvania, 2016

B.A., The Pennsylvania State University, History and Political Science, summa cum laude, 2013

Admissions

Pennsylvania

New Jersey

Heather R. Alleva

Associate

heather.alleva@bipc.com

t: 215 665 5315 | Philadelphia, PA

How Heather Helps Clients

Heather Alleva focuses her practice on representation of health systems, hospitals, physician groups, behavioral health facilities and other healthcare providers in a broad range of regulatory and compliance matters. She represents clients in mergers, acquisitions, affiliations, provider integration and other strategic transactions, as well as in reimbursement disputes with public and private payors.

Heather frequently counsels clients on state and federal regulation of healthcare providers, state and federal fraud and abuse matters, professional licensing issues, changes of ownership, Medicare and Medicaid enrollment, and HIPAA compliance. She is also experienced with billing and other internal investigations, including investigations of data-security incidents and breaches.

During law school, Heather served as a law clerk at the University of Pennsylvania, Office of the General Counsel, where she researched and compiled licensing requirements for hospital employees and medical students, drafted memoranda pertaining to the legality of various hospital policies and collected evidence for litigation to release patients from a physician's services. She also served as a law clerk for the Children's Hospital of Philadelphia, where she contributed to hospital consent forms, researched and drafted memoranda pertaining to the hospital's compliance with state Medicaid regulations, and drafted the position statement for an employment discrimination case.

What Clients Can Expect

Given Heather's experience with one of the nation's largest health systems, she has the ability to relate to her clients and their needs from an insider's perspective. Clients appreciate her proactive nature, excellent communication and tenacity.

Outside the Office

Heather enjoys spending time with friends and family, exploring the Philadelphia BYO scene and the numerous spin studios in the city. She is an avid Philadelphia sports fan and dreams of seeing the Flyers win the Stanley Cup. Heather also travels as much as work allows, enjoys listening to history and political podcasts, and considers herself a Super Fan of both "Survivor" and "The Walking Dead."

Proof Points

- Served as lead associate in the sale of five clinical trial sites owned by a clinical research organization.
- Served as lead associate and assisted in the integration of a specialty hospital with a Pennsylvania multi-hospital health system.
- Represented out-of-network health care providers in successfully

resolving underpayments and alleged overpayment refund demands by commercial health insurance plans.

- Reviewed and updated substance abuse facility's billing policies and procedures.
- Assisted with investigations and counseling of various healthcare providers facing allegations of violations of the Stark Law, Anti-Kickback Statute, and other state and federal fraud and abuse statutes.
- Served as lead associate in various investigations into data-security incidents, including HIPAA breaches.

Affiliations

Philadelphia Bar Association, Member

Union League of Philadelphia, Member

American Health Lawyers Association, Member

Civic & Charitable

Communicare, Volunteer

Youth Work Foundation, Union League Committee Member



Matthew T. Corso

Shareholder

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Practices

Litigation

Healthcare

Healthcare Litigation

Healthcare Regulatory & Compliance

Post-Acute & Long Term Care

Education

J.D., The Dickinson School of Law, Pennsylvania State University, 1994

B.A., Old Dominion University, 1991

Admissions

Pennsylvania

New Jersey

U.S. District Court for the Eastern District of Pennsylvania

What Clients Can Expect

Whether in complex litigation or regulatory and compliance matters, healthcare providers and businesses know that Matthew Corso has the legal know-how and experience to guide them through any challenge. They also know that his sound strategic counsel – based on a clear understanding of their business – is something they can count on.

How Matthew Helps Clients

Matthew focuses on providing a wide range of services to healthcare providers, including litigation and regulatory and compliance matters. His clients include healthcare corporations and health systems, physicians, hospitals, hospice and home health providers, continuing care retirement communities, nursing homes and skilled nursing facilities, rehab centers, assisted living facilities, nurses, therapists, administrators, urgent care centers and more.

As both a member of the firm's Healthcare practice group and co-chair of the Post-Acute and Long Term Care practice group, Matthew is able to coordinate the dozens of firm attorneys in multiple states who serve the healthcare industry with practices including litigation, regulatory compliance, labor and employment, corporate and real estate, among others. Healthcare providers are able to receive comprehensive representation with efficient responses to any legal issue.

When disputes result in litigation, Matthew has 20 years of experience defending health care clients in complex litigation and jury trials. He has defended physicians, hospitals, long-term care/post-acute facilities and other providers in high-exposure cases in both federal and state courts throughout Pennsylvania and New Jersey. Matthew has been asked to coordinate litigation for clients in numerous states. He also regularly litigates in various alternative dispute formats, such as arbitration and mediation. Matthew also coordinates experienced litigation teams to handle complex e-discovery issues. His team utilizes trial and litigation technology to present cases in the most sophisticated and efficient manner for clients.

In healthcare litigation, Matthew has significant experience in defending claims of corporate negligence and punitive damages. He has also argued and been successful on the enforcement of healthcare arbitration agreements. Matthew has successfully guided clients through complex and high-profile matters including representation in matters involving homicide, manslaughter, sexual and physical assault, and abuse and neglect.

On the regulatory and compliance side, Matthew assists healthcare providers with regulatory issues, including Medicare and Medicaid fraud, False Claims Act investigations, patient care and abuse investigations, and HIPAA and data security compliance. He coordinates healthcare investigations with clients' internal personnel and other Buchanan counsel as needed to provide comprehensive reviews for clients. Matthew also has experience counseling clients in risk management and developing comprehensive compliance policies

and procedures. Matthew provides counseling to healthcare providers on a daily basis coordinating representation for clients on legal and regulatory issues.

Proof Points

- White-collar criminal investigations
- Medical malpractice defense
- General liability and premises liability defense
- Employment litigation
- False claim act defense
- Internal corporate investigations
- Disciplinary and board actions and administrative proceedings
- Commercial litigation

Upon receiving his law degree, Matthew clerked for the Honorable Isaac S. Garb and the Honorable Kenneth G. Biehn in the Bucks County Court of Common Pleas. Before joining the private sector, Matthew served as an assistant public defender in Bucks County, Pa., where he represented criminal defendants in felony and misdemeanor cases. He also handled juvenile court matters and mental health proceedings.

A much-requested speaker on healthcare law, Matthew has addressed national audiences on long-term care litigation, nursing home regulations, malpractice prevention and risk management. He also has been a regular contributor to long term care industry publications.

Affiliations

Pennsylvania Bar Association

Bucks County Bar Association

Health Care Compliance Association

American Health Lawyers Association

Defense Research Institute

Civic & Charitable

Lenape Valley Baseball

Experience

As lead counsel, obtained a defense verdict in an arbitration case for a skilled nursing facility in a case involving alleged negligent care.

As lead counsel, obtained a defense verdict in an arbitration case involving a burn at a skilled nursing facility.

As lead counsel, secured a defense verdict for a family practice physician group at trial in Bucks County.

As lead counsel, obtained defense verdict for skilled nursing facility in case involving alleged negligent treatment of a pressure ulcer.

As lead counsel, secured a defense verdict for a family practitioner at trial in Philadelphia.

As lead counsel, secured a defense verdict for a surgeon in Chester County.

Served as lead counsel in defense of nursing home negligence matter in Federal Court of Vermont.

Served as lead counsel in defense of nursing home negligence matter in Rhode Island.

As lead counsel, secured a defense verdict for a surgeon in Montgomery County.

Served as lead counsel in defense of a False Claims Act action in Federal Court of New Jersey.

Secured enforcement of an arbitration agreement for a skilled nursing facility.

As lead counsel, secured a defense verdict for a physician in Bucks County.

As lead counsel, secured a defense verdict for an orthopedist in Philadelphia.

As lead counsel, secured a defense verdict for a family practitioner at trial in Philadelphia.

As lead counsel, secured a defense verdict for an otolaryngologist at trial in Bucks County.



Practices

Government Relations &
Public Policy

Healthcare

Education

M.A., East Stroudsburg
University, Political Science,
1995

B.A., Gettysburg College,
Political Science, 1993

Brian W. Kelly

Senior Principal - Government Relations

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How Brian Helps Clients

Brian is recognized as one of Harrisburg's premier health care lobbyists with more than two decades of experience in and before state government.

Brian provides highly customized services and solutions that address client needs as well as the challenges of today's dynamic health care environment. His areas of expertise include public health policy, health care finance and reimbursement, long-term care, Medicaid, Medicare, PACE/PACENET, managed care, pharmaceuticals, behavioral health, and health information technology. Additionally, Brian also has experience with transportation solutions, economic development and government procurement.

Brian has a proven track record of legislative and regulatory accomplishments. As former director of government affairs for the Pennsylvania Chamber of Business and Industry and senior staffer to the Senate President Pro Tempore, he played a key role in passage of numerous health care related initiatives including medical liability reform, creation of the Cover All Kids health insurance program, statewide hospital payment reform, reauthorization of the Pennsylvania Health Care Cost Containment Council, introduction of Health Savings Accounts in the Commonwealth and reform of the state's civil justice system, among others.

His strategic vision, ability to navigate the legislative and regulatory process, and communication skills are highly valued by the firm's clients.

What Clients Can Expect

Clients and colleagues appreciate Brian's credibility, insight, responsiveness and attention to detail.

Brian's depth and breadth of experience, along with the relationships he has built with key decision makers, give him a unique perspective. He leverages what he knows and who he knows to create substantive, practical solutions that meet clients' needs.

First and foremost, it's my job to understand the client's goals and the business and regulatory environments in which they operate.

Proof Points

- Attained passage of legislation that modernizes the important fee-for-service hospital payment system, establishes enhanced hospital payments through Medicaid Managed Care Organizations (MCOs) and secures additional federal matching Medicaid funds through the establishment of the Quality Care Assessment.
- Achieved state funding increases for various healthcare providers, including nursing homes and MCOs.
- Collaborated with the pharmaceutical and managed care communities in preventing the Department of Human Services from "carving out"

pharmaceutical services as a covered benefit from the HealthChoices program or the voluntary managed care program.

- Convinced legislative leaders to increase the debt ceiling for the capital budget to allow for more funding of client capital projects.
- Received funding commitments for hospital-related capital improvement projects.
- Assisted clients through the regulatory process with regard to the recently enacted assisted living regulations.
- Helped to attain passage of legislation creating a program for the use of medicinal marijuana for patients with severe medical conditions.
- Directed clients through state procurement opportunities pertaining to the Commonwealth's Medical Assistance program.

Affiliations

Harrisburg Regional Chamber, PAC, Health Subcommittee and Government Relations Committee Member

Capital Region Economic Development Corporation, Board Member

Civic & Charitable

Hershey Jr. Bears, Board of Directors, Member

Statewide YMCA, Board of Directors

TEAM Pennsylvania, Partner

Experience

Served as a legislative assistant to former Senator Robert C. Jubelirer, its president pro tempore.

Served as a research analyst for the Pennsylvania Senate.

Attained passage of legislation that modernizes the important fee-for-service hospital payment system, establishes enhanced hospital payments through Medicaid MCOs and secures additional federal matching Medicaid funds through the establishment of the Quality Care Assessment.

Collaborated with the pharmaceutical and managed care communities in preventing the Department of Public Welfare from "carving out" pharmaceutical services as a covered benefit from the HealthChoices program or the voluntary managed care program.



John F. Povilaitis

Shareholder

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Practices

Energy

Power Generation & Utility

Renewables

Water

Autonomous & Connected
Vehicles

Education

J.D., University of Pittsburgh
School of Law, 1978

B.A., LaSalle University, 1974

Admissions

Pennsylvania

Supreme Court of the United
States (SCOTUS)

U.S. Court of Appeals for the
Third Circuit

U.S. Court of Appeals for the
District of Columbia Circuit

U.S. District Court for the
Middle District of
Pennsylvania

U.S. District Court for the
Western District of
Pennsylvania

John F. Povilaitis focuses his practice on administrative law matters with special emphasis on energy, communications, water/wastewater and transportation public utility law. His practice ranges from proactive counseling to litigation before administrative agencies, and appellate matters before state and federal courts.

With nearly 20 years of service for the Pennsylvania Public Utility Commission (PaPUC), John has significant regulatory experience in electricity, natural gas, water, transportation and communications law. After joining the Commission in 1978, he served as assistant counsel, federal division deputy chief counsel and first deputy chief counsel before assuming the position of chief counsel in 1989. John served as the Commission's counsel in the litigation that established the Pike County Doctrine.

In 1998, he joined Ryan, Russell, Ogden & Seltzer PC, a Central Pennsylvania-based law firm that primarily handled various public utility matters. John concentrated his practice on state and federal regulatory proceedings, legislative activities, litigation before state and federal courts, facilities siting proceedings, land use and eminent domain matters and complex commercial transactions.

Previously, John served as chairperson of the Pennsylvania Bar Association's Public Utility Law Section and as editor of the Section newsletter.

Since 1990, he has been a course planner and speaker at the Pennsylvania Bar Institute's biannual Public Utility Law Conference and more recently he has served as a course planner for the biannual PaPUC Bench Bar Conference.

Most recently, John has:

- Represented a major Pennsylvania electric distribution company in its smart meter and energy efficiency and conservation regulatory proceedings. Counseled a Motor Carrier Trade Association on PaPUC jurisdiction.
- Represented a client seeking PaPUC paratransit authority.
- Represented clients in appeals before the Commonwealth Court. Represented clients in natural gas regulatory proceedings.
- Represented communications carriers in mergers and other regulatory proceedings.
- Counseled water and wastewater utilities and authorities on various regulatory issues.

John has been consecutively selected for inclusion in *The Best Lawyers in America®* list under the categories of Communications Law and Energy Law since 2017. In 2017, he was selected as Harrisburg Energy Law "Lawyer of the Year."

Affiliations

American Bar Association

Pennsylvania Bar Association

Dauphin County Bar Association

Federal Energy Bar Association

Civic & Charitable

CYO Girls' Basketball, assistant coach

Church of the Good Shephard, chairman, Pastoral Council

Experience

Represented clients in natural gas regulatory proceedings.

Represented a major Pennsylvania electric distribution company in their smart meter and energy efficiency and conservation regulatory proceedings.

Represented clients in appeals before the Commonwealth Court.

Represented clients such as DIECA Communications, Inc. d/b/a Covad Communications Company, CTSI, LLC, Qwest Communications Corporation and RCN Telecom Services, Inc.

Represented communications carriers in mergers and other regulatory proceedings.



Salvatore G. Rotella Jr.

Shareholder

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Practices

Healthcare

Healthcare Litigation

Healthcare Regulatory & Compliance

Healthcare Information Security & Privacy

Innovative Healthcare Delivery & Payment

Reimbursement & Managed Care

Education

J.D., University of Pennsylvania Law School, cum laude, 1993

B.A., Harvard University, magna cum laude, 1988

Admissions

U.S. Court of Appeals for the Sixth Circuit

U.S. District Court for the District of Columbia

U.S. District Court for the Eastern District of Pennsylvania

District of Columbia

Pennsylvania

How Sal Helps Clients

Sal is a shareholder in the firm's healthcare section and handles a wide variety of health law litigation, contracting, and regulatory matters. He represents health systems, hospitals, ambulatory surgery centers, behavioral health facilities, and other health care providers in reimbursement disputes with public and private payers, billing and other internal investigations, and in connection with managed care contracting. He also advises providers and other health care industry participants on a broad spectrum of regulatory and compliance issues, and on privacy law requirements. He regularly writes and speaks on health law topics.

Sal has extensive experience representing behavioral health care providers, including inpatient psychiatric facilities, addiction recovery programs, residential academies for at-risk youth, outpatient mental health clinics, wraparound service providers, foster care programs, and others nationwide.

Sal has been recognized in *Chambers USA* as one of America's leading healthcare lawyers (2014, 2016, 2017 & 2018).

What Clients Can Expect

Sal has worked for many of his clients on numerous matters and over multiple years. He has developed strong working relationships with the clients' leadership and operations personnel, and a solid understanding of their businesses and strategic objectives. His clients have noted his consistent responsiveness and ability to work effectively and efficiently with client teams, and his extensive knowledge of the legal issues that face health care providers.

Sal's collaborative and informed approach to his clients' problems enables him to provide practical and timely solutions.

Outside the Office

Sal enjoys spending time with his wife and teen-age son hiking, playing tennis, and watching sports and (good or bad) science fiction. He is also an avid reader and runner, and occasionally seeks to relive earlier, more successful days as a bass guitarist and basketball player.

Proof Points

- Representing out-of-network health care providers in successfully resolving underpayments and alleged overpayment refund demands by commercial health insurance plans, and Medicare and Medicaid fee-for-service programs and managed care plans
- Representing behavioral health providers in conducting internal investigations of potential overpayments and making appropriate self-disclosures to payers

- Negotiating comprehensive network participation agreements for health systems, hospitals, and ambulatory surgical centers, including population-based contracting and other risk-sharing and incentive-based contractual arrangements between providers and payers
- Advising providers on uses and disclosures of protected health information
- Analyzing and updating internal compliance policies and procedures

Affiliations

American Health Lawyers Association
Philadelphia Bar Association
Justinian Society

Civic & Charitable



Alan M. Seltzer

Shareholder

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Practices

Energy

Power Generation & Utility

Real Estate

Renewables

Water

Autonomous & Connected
Vehicles

Education

J.D., Temple University
Beasley School of Law, 1978

B.A., Albright College, Political
Science, 1975

Admissions

Pennsylvania

Ohio

Supreme Court of the United
States (SCOTUS)

U.S. Court of Appeals for the
Third Circuit

U.S. District Court for the
Eastern District of
Pennsylvania

U.S. District Court for the
Western District of
Pennsylvania

Alan M. Seltzer focuses his practice on domestic and international electric, gas, water and transportation matters with a concentration on transactions and litigation/appellate matters before various state and federal courts and administrative agencies. He has actively represented public utilities and other stakeholders before the Pennsylvania Public Utility Commission for 39 years, particularly in the areas of electricity, gas, water and transportation.

His current emphasis is on obtaining the state regulatory approvals for the merger or acquisition of gas and electric utilities, and addressing the real estate, regulatory and financing phases of renewable energy project development. He also has recently represented the seller of a municipal wastewater system in proceedings before the Pennsylvania Public Utility Commission and a large refinery opposing the reversal of a major intrastate petroleum pipeline. He is Co-Chair of the firm's Power Generation, Renewable & Utility Practice Group.

In July 2015, Alan was appointed to the Siting and Routing Workgroup of the Pennsylvania Pipeline Infrastructure Task Force – a stakeholder-driven effort that will develop policies, guidelines and tools to assist in pipeline development, as well as long-term operation and maintenance. In this role, he worked collaboratively to develop best practices related to planning, siting and routing oil and gas pipelines in ways that avoid, minimize or mitigate environmental and community impacts from pipelines across the Commonwealth.

Most recently, Alan has:

- Represented a private equity investor in due diligence matters involving the acquisition of water utilities in 13 states.
- Represented applicants in the merger or acquisition of gas and electric utilities.
- Represented several applicants in regulatory proceedings to site major intrastate and interstate transmission facilities.
- Represented developers of major Pennsylvania wind and solar projects.
- Represented tax equity investors in financing renewable energy projects.

He also has experience in a variety of matters, including:

- Representing utilities in complex retail utility rate cases.
- Defending utilities in rate and service matters before state regulatory agencies.
- Negotiating power supply and related contracts with utilities and other energy providers.
- Assisting competitive gas and electric suppliers obtain state licenses and related certifications.

Prior to joining Buchanan, Alan was a co-founding partner of Ryan, Russell,

Ogden & Seltzer PC, a Central Pennsylvania-based law firm that primarily focused on energy, communications and utility matters.

Alan has been recognized for more than 20 years in the environmental law category of *The Best Lawyers in America*®.

Affiliations

American Bar Association

Federal Energy Bar Association

Pennsylvania Bar Association

Berks County Bar Association

Ohio Oil & Gas Association

Endlich Law Club

Civic & Charitable

Pennsylvania Institute for Children's Environmental Health, board member

Temple Oheb Sholom, board member, secretary

Hispanic Center of Reading, Pennsylvania, board member

Experience

Assisted clients in the development and financing of major Pennsylvania wind farm projects.

Represented several applicants in regulatory proceedings to site major intrastate and interstate electric transmission lines.

Represented one of the utility merger parties in a major regulatory proceeding.

Litigated complex retail rate cases.

Intrastate and interstate transmission lines and other utility facility siting proceedings.

Financing, contracting and project development for non-utility generation facilities — including wind, solar and other renewable resources.



Practices

Government Relations & Public Policy

Cannabis

FDA & Biotechnology

Healthcare

Education

B.A., Gettysburg College,
Political Science

Michael P. Strazzella

Administrative Head, Washington, D.C. Office

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How Michael Helps Clients

Michael and his team of bipartisan government relations professionals are continuously engaged in the issues that affect their clients.

Michael has deep experience in federal government relations, legislative strategy, grassroots advocacy, political action campaigns and coalition building. He focuses his practice on the health industry (providers and payors) and works in various industries, including pharmaceutical, hospital and health systems, health plans and retail and compounding pharmacy industries. Adept at navigating relationships, Michael works closely with Congress and the Executive Branch, including the Department of Health and Human Services; Centers for Medicare and Medicaid Services; the Food and Drug Administration; U.S. Customs; and the Drug Enforcement Administration to create effective lobbying strategies as they apply to the health care sector.

Before Buchanan, he worked for a state hospital association where he was responsible for federal lobbying efforts, strategy and oversight. He also managed congressional and regulatory affairs for several national physician associations that had interests in the laboratory and mental health space.

In addition to his experience managing congressional, regulatory and regional relations, Michael worked on several U.S. Senate and statewide campaigns.

What Clients Can Expect

Michael is always working to gather information and foster collaboration at the highest levels of Congress. With a wealth of experience and his finger on the pulse of current events, Michael knows how to develop sound strategies and get things done.

Michael immerses himself in his work. He becomes part of the client's team, puts their needs first and acts dependably as their representative on Capitol Hill.

Proof Points

- Serves on several advisory committees for members of congress and national political organizations.
- A frequent lecturer on federal health care issues and the Patient Protection and Affordable Care Act.
- Has presented to hospital boards, executive leadership, state and national health care associations, pharmaceutical companies, county chambers of commerce and economic organizations



H. Marc Teppner

Shareholder

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Practices

Insurance & Reinsurance
Antitrust & Trade Regulation
Class Actions
Construction
Consumer Products
Environmental
Estates & Trusts
Litigation
Products Liability
Trade Secrets & Restrictive Covenants

Education

J.D., New England School of Law, 1986
B.S., Ithaca College, 1982

Admissions

Pennsylvania
District of Columbia
New Jersey
New York
U.S. Court of Appeals for the First Circuit
U.S. Court of Appeals for the Second Circuit
U.S. Court of Appeals for the Third Circuit
Supreme Court of the United States (SCOTUS)

How Marc Helps Clients

Marc Teppner is a first-chair trial lawyer highly regarded for his successful representations in complex commercial disputes. With more than 25 years' experience, his diverse practice straddles corporate transactions and trial work, with a focus on corporate governance, financial services and corporate insurance. Marc is a member of the Firm's Associates Committee, which plays a key role in developing associates and senior attorneys.

In 2018 and 2017, Marc was recognized in Pennsylvania by *Chambers USA* and in 2015 as a Band 1 leading lawyer. In the publication, clients noted him as "a practical and savvy lawyer who gets to the core of what needs to be done." Also in 2017, Marc was chosen for inclusion in the *Philadelphia Business Journal's* Best of the Bar: Philadelphia's Top Lawyers in Business Litigation.

Marc has successfully litigated securities class action matters, breach of fiduciary duty, corporate control, antitrust and consumer fraud class actions. In 2016, he was selected to represent the Commonwealth of Puerto Rico in constitutional and jurisdictional issues of first impression. He previously represented the Government of the U.S. Virgin Islands in the landmark \$205 billion settlement with the tobacco industry.

Marc recently concluded a commercial earn out dispute involving revenue recognition issues related to the rebuilding of the World Trade Center in New York City. He frequently counsels insurance and banking industry clients in a wide range of services, including, reinsurance contracts, liquidation, and FDIC laws, regulations and related acts. Additionally, he has handled insurance-specific transactions along with the accompanying Insurance Department regulatory filings.

Marc handles various insurance matters, such as those involving art losses, cyber insurance, recall coverage and related claims, errors and omissions, intellectual property and other business tort claims. Representative clients include insurance companies, bank directors and officers, lenders, governments, licensed professionals, law firms and companies in corporate governance and control disputes. He has also handled FDA issues regarding the sale of dietary supplements and has handled a wide variety of product recall related disputes.

Marc has also represented attorneys in federal jury trials to verdict and other professionals in complex business matters.

Marc previously served on the Board of Governors for the Philadelphia Bar Association and as President of the Philadelphia-Israel Chamber of Commerce. He currently serves on the Board of Directors of the Philadelphia Chamber of Commerce as well as on the regional United Way Cabinet.

Marc is chair of Buchanan's Insurance and Reinsurance Group.

What Clients Can Expect

He never overstaffs or under-communicates. He helps clients understand short-term legal issues and long-term business impact.

Outside the Office

Marc brings a similar work ethic and intensity to his free time. He has run more than 11 marathons; 5 after he turned 50.

Marc lives in the Historic District of Philadelphia with his wife, has two sons in college and a spoiled Great Dane.

Proof Points

- *Chambers USA: America's Leading Lawyers for Business*, Band 1.
- Tried a complex case in Puerto Rico involving Puerto Rico's Act 72, the Dormant Commerce Clause and Equal Protection Clause covered by the *Wall Street Journal* and other national news outlets.
- Represented the Government of the U.S. Virgin Islands for over 20 years in government contract matters, FEMA issues, construction litigation, receivership litigation and environmental litigation.
- America Lawyer Media and Martindale-Hubbell selected Marc as a "2013 Top Rated Lawyer in Insurance Law."
- *The Best Lawyers in America*® list in the insurance law category, since 2013.
- Pennsylvania's Super Lawyers list, consistently since 2006.
- Listed in *Who's Who in America*.
- AV® Preeminent™ Martindale-Hubbell's Peer Review Rating.
- Represented a national bank in a \$120 million collateral swap involving an insurance company in rehabilitation.
- Represented the Government of the U.S. Virgin Islands as part of the landmark \$205 billion settlement with the tobacco industry.
- Defeated a class action for a Pennsylvania real estate developer in PA federal court.
- Represented an automobile component parts manufacturer in a \$25 million replevin recovery, the largest ever in Montgomery County, Pa.
- Represented a syndicate of major lending institutions in a \$50 million director and officer lawsuit in federal court.
- Represented companies, captive insurance companies and reinsurers in multimillion-dollar collateral and trust account disputes.
- Represented suppliers and manufacturers in products liability and consumer class action lawsuits in both state and federal courts.
- Formed and maintained oversight of a security and alarm trade association risk retention group domiciled in Vermont.

Affiliations

Member, Insurance and Reinsurance Committee; Corporate Compliance Committee; International Committee, International Association of Defense Counsel (2007-2011)

Member, ARIAS U.S. (2007-present)

Member, Business Law Section; Philadelphia Trial Lawyers Association; Securities Regulation Committee, Philadelphia Bar Association

Investigative Division, Commission on Judicial Selection and Retention (2006-present)

Executive Committee, Philadelphia Bar Association's Brandeis Society (2009-present)

The Lawyers Club of Philadelphia

Washington DC Bar Association

Member, ASTM

Insurance Section, *Law360* Editorial Board (2011)

Civic & Charitable

United Way of Philadelphia & Southern New Jersey, 2018-2019 Campaign Cabinet

President, Philadelphia-Israel Chamber of Commerce (2008-2011); Also, Board member and Executive Committee Member

Co-Chair, 2015 Tribute Committee for Yitzhak Rabin Public Service Award Dinner honoring the pediatric research partnership between Drexel University, Children's Hospital of Philadelphia and Hebrew University of Jerusalem

Cherry Hill Township, Planning Board Member (2007-2011)

Philadelphia Bar Association Task Force on Public School Funding (2009)

United Way Cabinet Member; Co-chair, Legal Division (2009-present)

Experience

Represented public companies, captive insurance companies and reinsurers in multimillion dollar collateral and trust account disputes.

Defeated an international financial institution's attempts to enjoin a former employee from working for a competing firm, resulting in denial of attempt to get a temporary restraining order and ultimate dismissal of the state court action.

Formed and maintained oversight of a security and alarm trade association risk retention group domiciled in Vermont.

Represented an automobile component parts manufacturer in a \$25 million replevin recovery in Montgomery County, Pennsylvania.

Represented the Government of the US Virgin Islands in government contract matters relating to FEMA, construction litigation, receivership litigation and environmental litigation.

Successfully defeated a class action against a Pennsylvania real estate developer in PA federal court.

Represented a national bank in a \$120 million collateral swap involving an insurance company in rehabilitation.

Represented suppliers and manufacturers in products liability and consumer class action lawsuits in both state and federal courts.

Represented a syndicate of major lending institutions in a \$50 million director and officer lawsuit in federal court.

Represented the Government of the US Virgin Islands as part of the landmark \$205 billion settlement with the tobacco industry.



John R. Washlick

Shareholder

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Practices

Healthcare

Healthcare Administrative & Judicial Proceedings

Healthcare Transactions

Nonprofit Organizations

Healthcare Regulatory & Compliance

Innovative Healthcare Delivery & Payment

Education

LL.M., Georgetown University Law Center, Taxation, 1990

J.D., Southwestern University School of Law, 1986

B.S., University of Rhode Island, Accounting, 1978

Admissions

Pennsylvania

New Jersey

John R. Washlick focuses his practice on healthcare transactions and corporate compliance. He is resident in both the firm's Philadelphia and Princeton offices. His clients include hospitals, healthcare systems, physician practices, individual physicians, medical device companies, and entrepreneurs and investment-backed entities.

John is a recognized authority on federal income tax issues involving tax-exempt organizations and the Anti-Kickback Statute and the Stark Law. His guidance is often sought as his clients assess various arrangements with physicians, such as clinical joint ventures, co-management arrangements, integrated delivery systems, business joint ventures, physician recruitment, practice acquisitions, employment arrangements, hospital/physician integration planning and exclusive provider agreements. He also advises healthcare industry clients, including entrepreneurs and investment-backed entities on general corporate law and regulatory healthcare-related issues, such as the corporate practice of medicine and fee splitting laws. John partners with clients to arrive at strategic, yet practical, solutions to often cutting-edge issues and high-profile matters.

John has experience in structuring, negotiating and documenting a variety of complex business transactions, including mergers and acquisitions, joint operating agreements, joint ventures, clinical co-management agreements, academic and clinical affiliations, and contractual relationships among providers and with third-party payors. He advises clients in the formation or acquisition of new entities, the restructuring of existing entities and the creation of alliances or other integration initiatives. John assists clients in responding to industry changes resulting from the Affordable Care Act, including the development of integrated provider networks, such as Clinically Integrated Networks (CINs), Accountable Care Organizations (ACOs) participating in the Medicare Shared Savings Program and NCQA patient-centered medical homes.

He also assists clients with developing and implementing corporate compliance plans, HIPAA programs and governance restructuring and planning. John speaks nationally and writes frequently on contemporary healthcare topics.

John is recognized among the leading healthcare lawyers in Pennsylvania by international legal research publisher *Chambers USA*, an honor based on an intensive research process incorporating client feedback. *Chambers* described John as "well regarded for his transactional expertise in relation to the health care industry" and noted "his tax knowledge on tax-exempt organizations and federal income tax issues." *Chambers* also noted that John is highly praised for his "very analytical and business-minded" approach to healthcare matters and citing sources who praised his "ability to think outside the box in solving healthcare legal problems," while also gaining client praise for his "great dedication to client service."

John has been listed in *The Best Lawyers in America*® since 2007 in the healthcare law area. He has also been recognized by *Pennsylvania Super Lawyers*® and has garnered an AV® Preeminent distinction, the highest

available mark for professional excellence from Martindale-Hubbell's® Peer Review Ratings.

John is a former adjunct professor of law at both the Widener University School of Law and the Villanova University School of Law, where he taught federal income tax and healthcare-related courses for over 15 years. John speaks and writes on transaction, governance, regulatory and compliance matters, and he has been published in many healthcare and tax-related publications, such as Health Connections, Health Law Digest, the Pennsylvania Bar Association Quarterly and the New Jersey Law Journal. He is the author of *Bloomberg BNA's Tax Management Portfolio's* "Nonprofit Healthcare Organizations: Federal Income Tax Issues" (3rd Edition) and "Joint Ventures Involving Tax-Exempt Organizations."

Prior to joining Buchanan, John was a shareholder in healthcare at two firms, where he led the commercial healthcare practice. Prior to and during law school, John worked as a certified public accountant (CPA), including for two Big Four accounting firms, and as a corporate controller for a publicly traded company.

Representative Transactions and Highlights

- Served as lead counsel in the integration/merger of a multi-hospital New Jersey Health System with a Pennsylvania multi-hospital health system in Pennsylvania with combined revenues post-merger of over \$4 billion.
- Served as lead counsel for seller of nonprofit health system in sale to national for-profit healthcare organization.
- Represented multiple healthcare systems, PHOs and IPAs to develop clinically integrated networks (CIN) and strategic alliances.
- Structured, negotiated and assisted in implementing various strategic hospital affiliation arrangements and clinical joint ventures.
- Represented a large academic medical center (AMC) in structuring and developing ambulatory surgical centers, urgent care centers and cyber knife and other clinical delivery joint ventures between the AMC and community-based physicians.
- Restructured the governance of a multi-tiered, multi-board healthcare system to afford greater operational and management efficiencies.
- Represented a large AMC in structuring and implementing various affiliation agreements and related clinical joint ventures and leased physician arrangements.
- Represented a large health system and physician group in their "virtual merger" vis-à-vis the formation of a joint operating company.
- Represented a public home health company agency in a merger and acquisition and dispositions of home health agencies in multiple states.
- Conducted education for a Hospital Board of Trustees regarding the Board's role in corporate compliance.
- Reviewed and updated client corporate compliance plans.
- Prepared HIPAA policies and procedures and reviewed and audited

HIPAA programs.

Affiliations

New Jersey State Bar Association, Health Law Section, Board of Directors, (2018-2019)

Bloomberg BNA Editorial Advisory Board (2014-present)

American Health Lawyers Association, Chair of Live Transactions Program – Nashville, TN (2013-present) Board of Directors (2006-2013); Chair of Hospital and Health System Practice Group (2003-2006); Vice Chair of Hospital and Health System Practice Group (2000-2003); Co-Chair of Sarbanes Oxley Task Force (2004-2006)

Philadelphia Bar Association, Co-chair of Healthcare Law Committee (2009-present)

Philadelphia Bar Association, Business Law Executive Committee (2013-present)

New Jersey State Bar, Board of Directors of Health & Hospital Law Section (2007-present); Immediate Past Chair (2013-2014)

Camden County Bar Association, Founder and Co-Chair of Health Law Committee (2004-present)

Widener University School of Law, Health Law Institute Advisory Board (2003-2011)

Drexel University School of Law, Health Law Advisory Board (2011-present)

Health Care Editorial Advisory Board, *Law360* (2013-present)

Strafford Publications, Health Law Advisory Board (2010-present)

Civic & Charitable

Philadelphia Volunteer Lawyers for the Arts

Volunteers for the Indigent Program

For Pete's Sake, Chair (2008-2010); Board Member (2003-2012); Director Emeritus (2012-present)

DMAX Foundation (Founded in 2013) – Board of Directors (2013-present)

