Senior Living & Long Term Care

Our Senior Living and Long Term Care Team is a regionally and nationally recognized practice devoted to the representation of seniors housing and long term care clients for all of their needs; regulatory, compliance, risk management, transactional, employment, IP, litigation, tax and real estate.

Regulatory/Operations

Our in-depth industry knowledge coupled with our understanding of your business makes us ideal partners. We advise clients in survey preparation, investigations, deficiency citations and enforcement response, plans of correction, immediate jeopardy citations, imposition of license conditions, revocation and termination actions, certificates of need, Medicare/Medicaid fraud claims, abuse allegations, licensing, admission agreements, resident discharges, medical director agreements, management agreements, HIPAA compliance, fair housing and other complex matters.

Government and Compliance Investigations

With a former federal prosecutor on our team, we have a unique perspective on management and defense of government investigations including False Claims Act, and the Foreign Corrupt Practices Act for our clients with operations outside of the U.S.

Transactional

Our comprehensive approach combines our deep knowledge of the post-acute/senior housing industry with seasoned deal-makers, helping our clients successfully complete transactions. We advise clients in development, acquisition, divesture, leasing, financing and joint venturing of facilities, and negotiating and documenting working capital credit facilities.

Labor and Employment

We have experienced and practical lawyers who can defend against all types of labor and employment disputes. We help develop, train, implement and update policies to ensure you are meeting best practices — providing risk management strategies and counseling to employers to help navigate potential claims.

Litigation

Our practical and efficient approach to litigation and our industry knowledge, allows us to defend clients against the full spectrum of adverse federal, state and civil actions. We defend providers against private party claims, state and federal actions, wrongful death, abuse and neglect allegations, professional negligence, licensing board actions and unlawful employment practice claims.
Client Services

Because of our understanding of the post-acute/senior housing industry, we can expertly and promptly navigate the complex regulatory, operational and employment challenges faced by our clients. Our team’s knowledge and experience in this industry is unparalleled. Our lawyers are members, leaders and frequent presenters at regional and national trade organizations such as the American Health Lawyer Association (AHLA), American Health Care Association (AHCA), LeadingAge, Argentum and National Association of Home Care and Hospice.

Some of the unique services we offer include:

- Purchase and Sale of Operations and Real Estate
- Certificates of Need and Licensing
- Health Care Facility Finance and Leases
- Management Agreements and Operation

Transfer Agreements

- Risk Management and Managed Risk Agreements
- Admission Agreements, Policies and Procedures, and Resident Handbooks
- Reimbursement Issues and Recoupment Issues
- Surrogate Decision Making for Healthcare and End of Life
- HIPAA Compliance
- Fair Housing Issues
- Resident Rights Issues, including Discharge Proceedings
- False Claims Act Defense
- Defense of License Conditions and

Revocation Matters

- Abuse Investigations and Management
- Arbitration Agreements
- Appealing and Disputing Civil Monetary Penalties
- Coordination and Risk Sharing Agreements Under Value Based Payment Reform Systems
- Managed Care Contract Negotiations

Recognition

Our Senior Living & Long Term Care Team is recognized in Chambers® USA: America’s Leading Lawyers for Business for its “extensive experience in regulatory compliance issues such as HIPAA, Certificate of Needs mandates, and both Medicaid and Medicare fraud claims.” One client enthused, “they are excellent,” further adding that “they are very strong on the regulatory front, very responsive and have a sense of urgency.”
Experience

WHCA v. Dreyfus
Case No. WL 2432005 | U.S. District Court, Western District of Washington | Seattle, Washington
Order granting motion for temporary restraining order enjoining Medicaid rate cuts by the state of Washington.

Case No. 13-cv-00097RAJ | U.S. District Court, Western District of Washington | Seattle, Washington
Represented client Premera Blue Cross in a Washington Mental Health Parity Act and consumer protection matter.

Case No. 11-2-30233-4 SEA | King County Superior Court | Seattle, Washington
Represented client Premera Blue Cross in a Washington Mental Health Parity Act and consumer protection matter.

Case No. 601 F. Supp. 2d 1224 | U.S. District Court, Western District of Washington
Order invalidating legislation requiring assisted living providers to retain Medicaid residents after termination of their Medicaid contracts in violation of the Contracts Clause of the United States Constitution.

Naylor et al. v. Sunwest Management Inc. et al.
Case No. 0703-03248 | Multnomah County Circuit Court
Obtained dismissal of a class action complaint against a number of long-term care facilities and their management company brought by residents for violation of the Oregon Unlawful Trade Practices Act.

Steele v. Extendicare Health Services, Inc. et al
Represented Extendicare and several affiliated companies in a series of class action lawsuits in Washington, Minnesota and Wisconsin regarding, among other allegations, misrepresentation of the standard of care provided to residents.

Alicia Nunnery as Personal Representative of the Estate of Clem Nunnery v. Evergreen Kitsap, LLC and Extendicare Homes Inc d/b/a Aldercrest Health & Rehabilitation
Represented Extendicare Homes Inc. in allegations of neglect and wrongful death allegedly due to an infected bed sore and failure to properly monitor. The four-week jury trial resulted in a defense verdict.

Mark J. Nielsen as Personal Representative of the Estate of Clayton D. Nielsen v. Northwest Care West Seattle Inc, d/b/a Park West Care Center
Represented Northwest Care West Seattle, Inc. in a jury trial.

Brookdale Senior Living, Inc. Portfolio Financing, Entity Restructuring and Acquisition
Counseled Brookdale Senior Living in connection with separate FNMA and FHLMC portfolio financings, and assisted with entity restructuring after the major acquisition of a Washington-based company that is, like Brookdale, an owner/operator of senior living facilities on a nationwide basis.
The Evangelical Lutheran Good Samaritan Society Wrongful Death Suit
Case No. 4:11 cv-00059-MHW | Idaho
Defended Good Samaritan against a lawsuit by a surviving son for the wrongful death of his mother, alleging negligent care.

Case No. CV09-5395-RBL | U.S. District Court, Western District of Washington
Represented the Washington Health Care Association (WHCA) and a number of Washington skilled nursing homes in a federal lawsuit which challenged the validity of a cut in Medicare reimbursement rates.

Steele v. Extendicare Health Services, Inc.
Case No. 607 F.Supp.2d 1226 | U.S. District Court, Western District of Washington
Represented the defendant, obtaining an order dismissing class action claims under the Washington Consumer Protection Act in the context of long term care.

Estate of Margarete E. Eckstein v. Life Care Centers of America, Inc.
Case No. 2009 WL 1605312 | U.S. District Court, Eastern District of Washington
Arbitration Agreement enforced in context of claim against nursing facility.

In re Zielinski
Obtained dismissal of appeal from involuntary discharge brought by disgruntled and highly disruptive assisted living resident.

National senior living healthcare provider
Recovered millions of dollars owed to providers from residents, Medicaid, Medicare, and commercial and government related insurance companies.

Senior housing management companies
Provide regulatory advice and guidance on HIPAA compliance.

Complex Involuntary Discharge — Dangerous Resident
Represented skilled nursing facility in administrative hearing where resident was involuntarily discharged from facility for ongoing dangerous conduct that included death threats against facility’s administrator and violent conduct directed at vulnerable residents.

Insurance Reimbursement Dispute
Represented national senior living and long term care owners against claim processing contractor related to processor’s negligent and untimely claims processing and unpaid claims.

Law Enforcement and Nursing Board Investigation Related to Resident’s Death
Represented skilled nursing facility and its nurse related to law enforcement and Nursing Board investigation of complaint of alleged crime related to the death of a skilled nursing facility resident.
Whistleblower Retaliation Lawsuit
Defended residential care facility employer against former caregiver employee’s whistleblower retaliation lawsuit, related to Department of Human Services’ investigation of alleged resident abuse. Employee claimed employer retaliated against and terminated employee because employee reported alleged safety and resident abuse violations to the DHS.

Wrongful Death Civil Lawsuit / DHS Neglect / Abuse Hearing
After defending assisted living community in week-long administrative hearing against Department of Human Services’ penalty and finding of abuse related to death of resident, defended same assisted living facility against civil lawsuit wrongful death allegations based on same underlying incident.

Employee Sexual Abuse of Resident
Defended skilled nursing facility against state agency findings that alleged facility had subjected vulnerable facility residents to sexual abuse by failing to take appropriate actions to prevent, detect, investigate and report alleged sexual abuse perpetrated by a rogue former employee/caregiver.

Ransomware Attack
Represented skilled nursing facility with respect to a ransomware incident, including investigation of incident, HIPAA breach analysis and notice issues, and appropriate mitigation and response issues.

Successfully represented multiple providers in complex resident transfer cases.
Successfully represented multiple providers in complex resident transfer cases involving resident behavioral and/or payment issues.

Counsel client on business, regulatory and resident matters
Counsel client on business, regulatory and resident matters.

Provide effective risk management strategies involving contentious resident issues
Provide effective risk management strategies involving contentious resident issues.

Successfully resolved complex case involving license revocation for long term care provider
Assisted a long term care provider in successfully resolving complex case involving license revocation and replacement of management companies. Matter involved defending client in an Oregon Department of Justice Uniform Trade Practices Act investigation, resolving related elder abuse litigation, and sale of facilities.

Prestige Care, Inc. Joint Venture With Moda Health
Advised Prestige Care in the formation of a joint venture with Moda Health involving ProPac and Payless pharmacy businesses.

Prestige Care, Inc. Home Health Services Joint Venture
Advised Prestige Care, Inc. in the formation of a home health services joint venture.
Adverse Survey / Statement of Deficiencies — Alleged Sexual Abuse
Represented skilled nursing survey in appeal and independent informal dispute resolution of survey (immediate jeopardy) findings and related imposition of penalties, related to allegations that facility failed to ensure residents were safe from sexual abuse, including alleged resident-on-resident abuse.

Adverse Survey / Statement of Deficiencies — Alleged Neglect Abuse
Represent skilled nursing survey in informal dispute resolution of survey (immediate jeopardy) findings and related imposition of penalties, related to allegations that facility failed to ensure residents were safe from abuse through neglect (related to allegations of inadequate care planning and response to change of condition).

Negligence / Wrongful Lawsuit
Defended assisted living / memory care community and management company against claims that community negligently failed to take appropriate precautions to address certain risks associated with resident’s alleged conditions, including dementia, resulting in an injury that allegedly caused the resident’s death.

Complex Involuntary Discharge — Resident Non-Payment
Represented assisted living facility in administrative hearing where resident was involuntarily discharged for non-payment of fees, but where resident argued that discharge was nonetheless retaliatory.

Complex Involuntary Discharge — Resident Exceeded Facility’s Level of Care
Represented assisted living facility in administrative hearing where resident was involuntarily discharged because resident’s complex medical condition had deteriorated to the point where resident required higher level of care that community could provide.

Agency Imposition of License Conditions
Defended adult foster home against Department of Human Services in contested case matter to oppose DHS’ imposition of conditions on license. Negotiated terms and conditions to lift of conditions.

Protection of Employer’s Employees — Anti-Harassment Protection Order
Represented administrator of assisted living facility to obtain anti-harassment protection order against involuntarily discharged resident who threatened to murder administrator. Employer also retained security guards related to this matter.

Reporting Employee Misconduct to Regulatory Agencies
Represented northwest employer in analyzing issues related to misconduct committed by former employee who is regulated by various agencies, and assisting employer to through process of reporting to various regulatory agencies.

HIPAA Issues Implicated by Witness Subpoena
Represented national senior living and long term care provider with respect to HIPAA and other privacy concerns implicated when its medical staff was subpoenaed to testify as a third-party witness in a lawsuit. Negotiated with counsel in the preparation and entry of an appropriate Protective Order, including appropriate procedures to comply with HIPAA and otherwise comply with privacy rights and duties.
Judgement — Unpaid Fees
Represented national owner of nursing communities to obtain judgment against estate of former resident to collect unpaid fees for services provided to resident.

Provide risk management strategies and regulatory advice related to abuse complaints, including sexual abuse
Provide risk management strategies and regulatory advice related to abuse complaints, including sexual abuse.

Prestige Care, Inc. $41M Real Estate Term Loan
Represented Prestige Care in its acquisition of a $41M real estate term loan.

Prestige Care, Inc. Sale of Joint Venture Interest in Hospice Provider
Represented Prestige Care in its sale of a joint venture interest in a hospice provider.

Contact(s)

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