Post-acute and long-term care providers have faced extensive and continuous change over the last decade. Federal and state regulatory efforts are changing participation requirements, reimbursement structures, quality measures and producing profound operational changes. Some of these changes, such as the introduction of bundled payment initiatives, accountable care organizations, and numerous other demonstration projects demand greater integration with hospitals and other types of health care providers.

Hooper, Lundy & Bookman’s attorneys are the pre-eminent practitioners of post-acute and long-term care, as evidenced by our client base, which includes most of the top post-acute and long-term care service providers in the country. Whether ensuring appropriate reimbursement from governmental payors or health plans and insurers, managing audits, investigations and legal actions relating to fraud, abuse and program integrity, fighting adverse survey, certification and enforcement actions or handling major transactions such as mergers, acquisitions, asset sales, joint ventures and financings, our attorneys have the expertise and experience to needed to effectively handle the changing legal needs of post-acute and long-term care providers.

Our longstanding dedication to this facet of the health care industry is evidenced in the key positions our attorneys hold in the largest national and state trade associations representing post-acute and long-term care providers. These relationships allow us a unique opportunity to see, touch and influence emerging industry and regulatory trends as we guide our individual provider clients with unparalleled industry knowledge. We currently serve in key positions in the American Health Care Association (AHCA) and the California Association of Health Facilities (CAHF), for which we act as General Counsel. Our engagement with these groups, as well as with other state associations representing post-acute and long term care providers, ensures we are at the forefront of significant state and national policy developments. (For detailed description of our work with AHCA and CAHF, please see highlights at the end of this page).

If there is an issue that will impact post-acute and long-term care providers, our attorneys likely already understand the issue and its implications. We pride
ourselves on having a deep understanding of the legal and business issues facing post-acute and long-term care providers, and our ability to serve as trusted advisors to our clients. We have a long history of serving each of the types of post-acute and long-term care providers described below.

**Skilled Nursing Facilities**

Skilled Nursing Facilities (SNFs) come in all shapes and sizes in how they are structured and the patients that they serve. Our attorneys specialize in all facets of SNF operations, including reimbursement, regulatory issues, audits and investigations, business transactions and operations, structural nuances, and litigation.

**REIMBURSEMENT**

Our firm has extensive expertise in handling Medicare and Medicaid reimbursement issues as well as all of the related post-payment issues that SNFs face in ensuring that they are not only paid timely and appropriately but that they retain these payments.

As payment systems move to managed care and other alternative payment systems, our attorneys are able to skillfully unravel the intricacies of negotiating health plan contracts on behalf of SNFs as well as enforcing the terms of those agreements. We have tremendous expertise with respect to the operation of Medicare Advantage and Medicaid managed care plans and Accountable Care Organizations.

Given the nature of the patients served by SNFs, we also have specific expertise with Special Needs Plans (D-SNPs) that serve dually-eligible beneficiaries, either through the recently enacted Duals Demonstration programs or in markets that otherwise have significant D-SNP penetration. Our attorneys have a track record of successfully obtaining reimbursement on behalf of SNFs from these plans, as well as assisting provider organizations that desire to become D-SNP plans.

**REGULATORY ISSUES**

Our attorneys have significant expertise with the numerous regulatory issues faced by SNFs in their daily operations, as overseen by CMS as well as state licensing authorities. We have an in-depth understanding of the federal regulatory system, as well as state licensing requirements. These include the myriad issues associated with the new SNF Requirements of Participation, along with expanded residents' rights, new transfer and discharge obligations, the establishment of Quality Assurance and Performance Improvement Plans (QAPI), facility assessments, and self-reporting obligations relating to the delivery of care. Whether counseling clients or directly handling these matters, we bring a wealth of expertise to these issues.

We also have extensive experience in assisting SNFs with their compliance efforts and obligations. We have drafted, reviewed and revised numerous SNF compliance plans and serve as advisors to compliance officers and internal SNF staff in resolving compliance issues.
AUDITS & INVESTIGATIONS

All SNFs face the growing challenges associated with audits and investigations by governmental payors and health plans. Further, as these activities can produce retroactive recovery from SNFs or produce administrative, civil or criminal filings under the elder abuse or false claims laws, providers need to ensure that their attorneys are fluent with these risks, the governmental investigators involved and can manage these investigations with these interests in mind.

Our attorneys have successfully managed countless investigations through conclusion (or litigation) brought by governmental entities or qui tam relators. We represent SNF clients in both federal and state investigations. On the federal side, we handle audits and investigations by the Centers for Medicare and Medicaid Services (CMS) and its contracted Medicare Administrative Contractors (MACs), Recovery Auditors (RAs), Zone Program Integrity Contractors (ZPICs), Supplemental Medical Review Contractors (SMRCs), the Office of Inspector General (OIG), the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ). On the state side, we handle investigations by state Medicaid agencies in California and other states.

BUSINESS TRANSACTIONS

Beyond the risks associated with operating in this challenging area, our attorneys have significant experience assisting post-acute care and long-term care providers with a myriad of business transactions, including mergers, acquisitions, asset sales, joint ventures, affiliations with other types of providers, financings, real estate transactions, private placements and syndications, health plan and other commercial contracting, and other transactional matters. Not only do our attorneys have the expertise to draft and negotiate the necessary documents to support the transaction, they have a thorough understanding of the due diligence process related to SNF operations and all of the necessary regulatory approvals that need to be obtained from governmental entities to make the transaction operational. We have extensive contacts within the federal and state regulatory agencies that greatly assist with our clients' transactional and operational needs.

STRUCTURAL CONSIDERATIONS

While most SNFs participate in the Medicare and Medicaid programs, they may have slightly different structural aspects based on whether they are “free-standing” or “hospital-based.” Our attorneys are expert in these nuances as well as the additional reimbursement and regulatory issues that arise when SNFs provide subacute services through specialized units, either by entering into separate governmental contracts with Medicaid agencies or operating under existing hospital licensure. With the trend towards managed care payment systems, our attorneys understand the nuances of these structures and patient populations and how they relate to managed care contracting. This likewise applies to the operation of Special Treatment Programs within SNFs (SNF-STPs) and the unique state-county funding of these skilled nursing and mental health services under Medicaid.
LITIGATION

As civil litigation is an increasing risk for the post-acute and long-term care profession, our attorneys regularly manage complex litigation in both federal and state courts at the trial and appellate levels. Our attorneys have defended against numerous class actions and representative lawsuits brought under federal and state laws, including those alleging false claims, unfair business practices, violations of patient/resident rights and other regulatory requirements. We also regularly assist providers in risk management and asset preservation strategies through corporate structuring advice and assistance in developing operational policies and procedures.

Intermediate Care Facilities for Individuals with Intellectual Disabilities

Intermediate Care Facilities for the Individuals with Intellectual Disabilities also come in many shapes and sizes. Our attorneys are well versed in all of the different licensure categories operating in this area in California and other states, as well as the unique issues that each of the types of facilities face in their work with disabled patients requiring habilitative, nursing and continuous nursing services. We have significant expertise as to the licensing and certification of these facilities, the survey and enforcement system overseeing their operations, as well as their reimbursement by state Medicaid agencies.

Institutions for Mental Diseases

Institutions for Mental Diseases (IMDs) present unique issues with Medicaid reimbursement by virtue of the ages of the patients served by these SNFs and other facilities and the federal “IMD exclusion.” We have significant experience handling reimbursement issues in this area, including the application of the “IMD exclusion,” county funding of services as well as state funding for “ancillary” services. Moreover, as with any facility caring for patients with mental health issues, the issues associated with self-reporting are significant and challenging. Our attorneys have a high degree of expertise in this area.

Assisted Living, Board and Care and Residential Care Facilities

Our attorneys represent a wide array of owners and operators of senior care in California and other states, including assisted living, board and care and congregate senior communities. We regularly assist providers regarding operational issues, licensure issues, regulatory compliance, and enforcement actions brought by state regulators. Our attorneys have managed scores of business transactions for senior care providers, including mergers, acquisitions, asset sales, joint ventures, real estate transactions, management contracts and other transactional matters. We not only draft and negotiate the necessary documents to support the transaction, but also assist our clients through the due diligence process and with all of the necessary regulatory approvals that need to be obtained from governmental entities to make the transaction operational. We have extensive contacts within state regulatory agencies that often prove to be beneficial with a transaction and generally meeting our clients’ needs.
Continuing Care Retirement Communities and Multi-Level Facilities

Our attorneys represent a wide array of owners and operators of continuing care retirement communities (CCRC) and multi-level facilities. We regularly assist providers regarding operational issues, licensure issues with the numerous state agencies with overlapping jurisdiction of such unique providers, and regulatory compliance. We assist clients in negotiating resident contracts, vendor contracts, management contracts and compliance with reporting obligations to state agencies related to reserve requirements and operational accounting. We have extensive contacts within the state regulatory agencies overseeing these facilities.

Rehabilitation Agencies and Comprehensive Outpatient Rehabilitation Facilities

Rehabilitation Agencies and Comprehensive Outpatient Rehabilitation Facilities (CORFs) face a variety of certification and reimbursement issues from governmental payors. This includes significant program integrity activities by MACs, ZPICs, RAs and SMRCs regarding rehabilitation delivered to residents of SNFs under Medicare Parts A and B as well as medical review regarding certain Part B claims for services delivered to SNF patients. In addition, the trend towards managed care has resulted in the development of an alternative payment model that has impacted the manner in which these entities are reimbursed and how they deliver rehabilitation services. Our attorneys are experts in helping clients navigate this increasingly complex payment mechanism.

There are numerous other legal issues that arise when rehabilitation agencies contract with SNFs to provide rehabilitation services to patients that are covered by Medicare. Whether the issues arise under Parts A, B or C, our attorneys are highly experienced in the billing, reimbursement and related fraud, abuse and program integrity issues currently under scrutiny with respect to the delivery of rehabilitation services. We have handled numerous audits and investigations relating to the medical necessity of rehabilitation services as well as the frequency and duration of services under both Parts A and B. In addition to the contractors referenced above, these have also included the OIG, FBI and DOJ. We also regularly handle administrative, civil and criminal litigation matters involving the delivery of these services in the post-acute and long-term care area.

We also advise and assist rehabilitation providers develop and implement compliance plans in response to the increased federal scrutiny in this area.

Home and Community Based Services

We have served the broad array of home and community-based service providers, including hospices, adult day centers, home health agencies, and other personal care services.

Hospices. Hospices face a variety of certification and reimbursement issues from governmental payors. In addition, the trend towards managed care has created some additional complication for hospices when they deliver services to patients in SNFs. Our attorneys are experts in this area and can assist with respect to these issues.
We are also at the forefront of helping hospices navigate increasing numbers of Medicare and Medicaid audits and investigations focused on questioning the medical necessity and duration of service provided to patients as well as compliance with “face-to-face” requirements. These have included investigations undertaken by CMS and state Medicaid agencies. We have extensive experience managing audits and investigations of hospices by state agencies as well as federal authorities, including MACs, RAs and ZPIC and the OIG, FBI and DOJ. We also regularly represent hospices in response to threats of administrative, civil and criminal exposure.

**Home Health Agencies.** Increasingly, governmental programs and other health care payors are focusing on home health services as an alternative for higher acuity care settings. These home health agencies operate under significant and complex government regulation and scrutiny. Our attorneys are experts in assisting home health agencies navigate these regulatory challenges. We have also assisted in the development of an IPA-model for home health agencies for managed care contracting. We also regularly advise numerous home health agencies in their review and negotiation of managed care contracts, and also assist these providers with contractual disputes with managed care organizations.

**Adult Day Centers.** Adult day centers and Community-Based Adult Services are a growing segment of the long-term care continuum. We have long supported these centers. As many of these Medicaid programs transition to managed care systems, we have assisted adult day centers in analyzing and negotiating managed care contracts and have handled disputes with managed care plans over these types of contracts.

**Personal Care Services.** Personal Care Services have been part of the long-term care continuum for many years in a number of states, including California. With the expansion of Medicaid managed care to cover Managed Long-Term Care Services and Supports (MLTSS), these services are becoming an even more important part of the delivery of long-term care along with a variety of “wrap around” services. Our attorneys understand the structures of these programs and how they relate to the overall delivery of services. We have represented public authorities involved in the provision of these services and our attorneys have expertise as to the reimbursement and delivery of these services.

**Durable Medical Equipment and Medical Supplies**

We regularly assist Providers of Durable Medical Equipment and Medical Suppliers that serve SNFs and other long-term care providers with challenges associated with competitive bidding and reimbursement from Medicare and Medicaid programs.

With our extensive experience in DME and medical supply reimbursement, we also assist these providers in navigating increased scrutiny regarding their billing practices by state Medicaid agencies, CMS and its contracted DMERCs and RAs. We assist providers in audits and investigations and administrative, civil and criminal actions resulting therefrom. In addition, we are often called upon to counsel providers in this area in order to avoid compliance issues.
Trade Associations

As noted above, our firm currently serves as General Counsel for the California Association of Health Facilities (CAHF), the largest trade association in California representing the interests of post-acute and long-term care providers. As general counsel, we advise CAHF as to any and all legal issues associated with its business operations. A number of our attorneys serve on various standing committees of CAHF and are regular speakers at CAHF conferences.

In our role as General Counsel to CAHF, we also advise and represent CAHF on legal matters, including those arising before the California legislature and the administrative agencies overseeing these facilities (the Department of Health Care Services and the Department of Public Health) as well with the California Department of Justice. We also represent CAHF before CMS and other federal agencies.

Our attorneys often testify before the California legislature and participate in drafting key portions of legislation as well as rulemaking comments to proposed rules impacting CAHF members issued by DHCS, DPH and CMS.

We also represent the interests of CAHF and its members before state and federal courts throughout California. Over the years, our attorneys have handled major pieces of litigation on behalf of CAHF and its members on any number of significant issues related to reimbursement, regulatory, civil liability and labor law. More recently, we have been working extensively with CAHF on California’s expansion into the managed long-term care services and supports (MLTSS) system, as well as its participation in the Dual-Eligible Demonstration program. That work has included significant interface and work with health plans participating in these programs.

In addition to CAHF, our attorneys have also represented the American Health Care Association (AHCA) on a number of matters related to legislative and regulatory affairs, including reimbursement, program integrity and managed care. We participate in a number of standing committees of AHCA.

Beyond CAHF and AHCA, we have represented several state associations in the post-acute and long-term care area regarding a variety of issues, including reimbursement, alternative payments, and program integrity. For example, we also serve as General Counsel for the Massachusetts Senior Care Association, the largest association in Massachusetts representing post-acute and long-term care providers.

News

President Trump Discusses Surprise Billing Legislation
May 10, 2019

Hooper, Lundy & Bookman Launches Webinar Series with Focused Discussions on Post-Acute Care Partnerships
May 8, 2019

PRNewswire
Proposed CMS SNF Program Changes Dramatically Alter Current Reimbursement Methodologies
May 2, 2018

HLB Post-Acute/Long-Term Care Practice Chair Mark Reagan Admitted to the Massachusetts Bar
November 2, 2017

Proposed Massachusetts Legislation Aims to Contain Health Care Costs: Highlights for Providers
October 25, 2017

Best Lawyers in America Recognizes 15 HLB Attorneys
August 16, 2017

Other Publications

2019 Health Law & Policy Report

McCarran-Ferguson Act Doesn’t Exempt Texas Dispute From Compelled Arbitration
HLB Attorney James Segroves Discusses Likely Impacts of the Court’s Opinion
BNA’s Health Law Reporter, March 9, 2015