

OUR PRACTICE

Seniors Housing and Long Term Care

Our Long Term Care Team makes understanding the client's business environment and goals their number one priority. Our approach at the initiation of an engagement is to develop a strategy that supports the client's overall strategic plan. Regular communication policies are established, such as site visits when appropriate, teleconferences with leadership and other key client personnel, update calls with the single point of contact, and participation in client strategic planning meetings. We solicit feedback regarding the level and quality of effort by our attorneys.

Our representative experience is extensive and includes the following:

Litigation

Baker Donelson's attorneys work with facilities to develop policies, procedures and strategic plans designed to minimize or avoid litigation. If litigation becomes unavoidable, we employ early case resolution methods such as mediation, settlement or arbitration. Should the matter proceed to trial, our attorneys are licensed in more than 30 states and have tried cases in virtually every jurisdiction. We defend the full gamut of claims, including abuse and neglect, medical malpractice, slip and falls, and violations of federal and state regulations. Our team represents long term care facilities in survey appeals. We also manage litigation and discovery for our clients, overseeing other outside counsel in the defense of claims.

Regulatory Advice

Our team provides regulatory advice under both federal and state law, including guidance regarding licensure, survey and certification inspections and enforcement, participation and enrollment in Medicare, Medicaid and other governmental reimbursement programs, as well as Medicare, Medicaid and payer audits, health care information and privacy matters, and state certificate of need laws.

Compliance Counseling

We regularly advise long term care clients about compliance with Medicare and Medicaid fraud and abuse laws, and we work with clients to develop effective corporate compliance programs to prevent, detect and correct fraud and abuse.

Fraud and Abuse Advice/Government Enforcement and Investigations

We represent long term care clients in fraud and abuse investigations conducted by the Department of Justice, U.S. Attorneys' offices, the Office of the Inspector General at the U.S. Department of Health and Human Services, and state Medicaid fraud enforcement authorities. The work our attorneys provide on such cases includes assisting clients with internal investigations of possible violations, defense of grand jury subpoenas and proceedings, defense of search warrants, negotiations with prosecutors, and handling criminal pleas, trials and sentencing.

Labor and Employment

Baker Donelson attorneys regularly counsel long term care employers on compliance with federal and state labor and employment laws, as well as wage and hour issues, noncompetition agreements, breach of contract, employment discrimination and wrongful termination. We also handle claims brought before the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, and state and local agencies. Our team's knowledge also extends to special areas governing long term care employers,

including ERISA compliance and litigation governing all forms of employee welfare benefits plans, immigration matters, OSHA-compliant safety and health procedures, and minimizing the threat of union organizing activity.

Acquisitions, Sales and Development

The acquisition and sale of long term care facilities requires specific knowledge of business and regulatory issues to accomplish the transaction while protecting the parties from unanticipated delays and potential liabilities. Experienced counsel can anticipate possible problems, saving the client time and expense, as well as often preventing problems in a transaction.

Our experience includes asset and stock acquisitions, joint ventures and a myriad of other combinations. We also have the experience necessary to meet the challenges involved in the development and construction of health care facilities. Developers can benefit from counsel experienced in navigating the overlapping maze of regulatory issues specific to health care facilities.

Financing

Our long term care team has served as counsel to lenders and borrowers on a wide range of financing transactions, including traditional mortgage financing, securitization/commercial mortgage-backed securities, equipment leases and loans, accounts receivable financing, sale-leaseback transactions, Fannie Mae and Freddie Mac loans, and seller financing of facilities. We have also assisted tax exempt clients in borrowing funds through the issuance of tax exempt bonds, including bond authority approval, trust indentures, loan agreements, security agreements and other bond documents.

HUD-Insured Financing Transactions

We are one of the few law firms in the U.S. with a practice dedicated to assisting lenders and borrowers in HUD-insured loans. We have served as counsel in more than 200 of these loans for lenders and borrowers, totaling more than \$1 billion. Our team has the experience that borrowers and MAP lenders require to navigate around the pitfalls and opportunities involved in HUD transactions, including HUD-insured financing transactions under Sections 223(f) for senior housing facilities and 232 of the National Housing Act for nursing home and assisted living facilities, transfers of physical assets of facilities with existing HUD financing, and acquisitions of HUD-foreclosed properties. We have relationships with attorneys and staff in more than 25 HUD hubs and field offices throughout the nation, having closed HUD loans on-site in Los Angeles, Boston and many HUD offices in between.

Distressed Assets and Creditors' Rights

Our team has extensive experience representing lenders and servicers on defaulted long term care loans. We have been involved in major long term care bankruptcies throughout the country, and have handled workouts involving long term care properties in more than 35 states and several countries. Our attorneys routinely handle litigation and transactions relating to bankruptcy, insolvency, loan workouts, receiverships, collections, repossessions, foreclosures, lien disputes and other matters affecting debtor/creditor relationships in the long term care market.



Case Studies

- **Unanimous Jury Defense Verdict for Nursing Home in Medical Negligence Trial** - Medical Negligence Litigation



Representative Matters

- Represented the largest U.S. comprehensive home health care provider and one of the largest providers of outpatient hospice services in numerous matters concerning dramatic new changes in

legislation affecting the industry. Drafted amendments to proposed regulatory changes from the industry leaders to reach a consensus with government regulators.

- Obtained the dismissal of a nursing home administrative services provider from a negligence case in which the plaintiff asserted claims of corporate control and veil-piercing.
- Argued Provider Reimbursement Review Board (PRRB) cases on behalf of hospitals, skilled nursing facilities (SNFs) and home health agencies (HHAs) on issues such as the offset of interest income on zero coupon bonds, treatment of related party expenses and treatment of FICA and FUTA taxes, as well as Depreciation Recapture on Change of Ownership (CHOW).
- Assisted with the formation of a group purchasing organization for long term care providers.
- Represented retirement community in connection with \$30 million revenue bond issuance by St. Tammany Public Trust Authority to finance construction of new facilities.
- Served as special Medicare counsel for a publicly traded company in a national OIG/Medicaid/DOJ investigation of their long-term care businesses. Served as special Medicare counsel in its ultimate Chapter 11 reorganization – the largest SNF bankruptcy to date. Worked closely with the CMS General Counsel's office addressing cutting edge issues of successor liability and assumption of liabilities in CHOWs and bankruptcy proceedings.
- Represented the purchaser in the acquisition and subsequent expansion of an existing assisted living facility, including licensing and CON issues.
- Represented the borrower in a loan extension and modification to permit construction of a new skilled nursing facility, including coordinating lot split and easement issues.
- Obtained a favorable ruling in arbitration dismissing all negligence claims against the defendant nursing home facility as a result of the plaintiff's failure to comply with the Tennessee Healthcare Liability Act.
- Presented oral argument before the Tennessee Court of Appeals and won an issue of first impression for long term care providers regarding whether the Tennessee Adult Protection Act applies to negligent care lawsuits filed against long term care providers which should fall within the scope of the Medical Malpractice Act.
- Tried to a successful jury verdict the first long term care wrongful death case to go to verdict in more than a decade, for one of the largest privately-owned nursing home chains in the country.
- Achieved the appellate reversal of a jury verdict, based on an evidentiary issue, in a nursing home malpractice case involving decubitus ulcers and the death of a nursing home resident.
- Represented regional long-term care provider with \$9.3 million purchase of 152-bed skilled nursing facility and 340 unit assisted living facility.
- Assisted a national care provider in selling its long-term leasehold interest in a 240-bed skilled nursing facility.
- Represented a tax exempt long term care provider regarding the restructuring of a \$20 million municipal bond issuance.
- Represented a long term health care company in connection with an investigation by the U.S. Department of Health and Human Services and Tennessee Bureau of Investigation into alleged Medicare/Medicaid fraud by a long term care facility and pharmacy.
- Presented oral argument before the Tennessee Supreme Court on an issue of first impression involving whether the existence of a durable power of attorney lifts the tolling of the statute of limitations for an incompetent resident.
- Seller's counsel for several asset purchase agreements for home health companies, including the negotiation of post-closing obligations after buyer's initial public offering as a publicly traded company.
- Achieved a defense verdict in a nursing home negligence trial in which the plaintiff alleged that a nursing home allowed a resident's foot ulcer to deteriorate into a large, stage IV wound, requiring a leg amputation.

- Advised HIPAA Covered Entities and Business Associates in HIPAA Privacy, Security and Breach Notification compliance and state consumer privacy compliance.
- Represented a lender holding \$11 million secured by a long-term acute care hospital (LTAC) in Lafayette, Louisiana. Litigated fraudulent conveyance claims against owners of reorganization opposition to substantive consolidation and Chapter 11 plan. Negotiated and implemented \$23 million secured by multiple LTAC hospitals, across the Southeast and Midwest.