Best Practices for AHCA and NCAL Committee Chairs

Thursday, January 28
2:00pm – 3:30pm Eastern Time

AHCA Goals and Strategic Plans

Tom Coble, AHCA Board Chair
AHCA Goals

- Powerful policy voice
- Deliver solutions to members
- Improve quality care
- Powerful political voice
- Strong organization

2016 – Powerful Policy Voice

- Ensure a clean 2017 SNF PPS Rule
- No Congressional cut other than Board-approved pay-fors
- No Congressional cut worse than other providers
- Passage of payment reform
- Attain Board approval for a Medicaid Reform Proposal
- Attain Board approval for a Managed Care Bill of Rights for providers & beneficiaries
Five Years – Powerful Policy Voice

- Avoid cuts on Capitol Hill or from CMS
- Proactively shape future payment models to protect members and beneficiaries
- Proactively shape regulatory environment to help our members provide quality care in more efficient manner
- Ensure parity in treatment between FFS and managed care organizations (beneficiary protections and public reporting on spending and outcomes)

2016 – Deliver Solutions

- Maintain member participation in AHCA/NCAL Convention and conferences
- Integrate four additional NCAL Board-approved assisted living measures into LTC Trend Tracker
- Increase assisted living membership by 8%
Five Years – Deliver Solutions

✓ Provide high quality tools, data and new measures to educate members on developing payment and business models

2016 – Improve Quality Care

✓ Provide
  - individualized data/tools to members to improve performance towards Quality Initiative goals
  - resources for members to negotiate with potential partners, referral sources and networks
  - resources to help members achieve compliance with regulatory changes occurring in 2016

✓ Launch 2016 LTC Trend Tracker enhancements as approved by the Steering Committee
Five Years – Improve Quality Care

- Achieve Quality Initiative goals
  - Reduce SNF and NF hospitalizations by 15% or maintain rates <10%
  - Increase discharges to community by 10% or maintain rate >70%
  - Reduce staff turnover by 15% or maintain rate <40%
  - Decrease antipsychotics by 30% from 2011 baseline
  - Adopt new use of AHCA quality measures

- Launch the new iteration of the AHCA/NCAL Quality Initiative

2016 – Powerful Political Voice

- Reach a hard dollar goal of $3.95 million
- Reach a soft dollar goal of $2 million
Five Years – Powerful Political Voice

- Establish strategic relationships with key members of Congress
  - Each member of House and Senate leadership
  - 90% of Senate Finance, Health Subcommittees of House Ways and Means, and House Energy & Commerce
- Meet annual fundraising goals

Strong Organization

- 2016
  - Positive operating cash-flow for the year
- Five Years
  - Build and maintain a reserve of 50% of operating budget
  - Grow SNF membership to 1,125,000
  - Grow AL membership to 275,000
NCAL Goals and Strategic Plans

Chris Mason, NCAL Board Chair

Advocacy and Awareness

- Increase public awareness and perception of assisted living
- Increase PAC participation
- Increase participation at Congressional Briefing
- Educate affiliates about state regulatory changes and requirements
Member Engagement

- Increase membership by 8%
  - Five-year goal: Grow AL membership to 275,000
- Increase SLEC membership to 25 member companies
- Increase NCAL member engagement (State Leaders, administrators/executive directors, independent owners)

Solutions for Quality Care

- Increase AL participation in the Quality Awards
- Increase AL participation in LTC Trend Tracker
- Create additional solutions for members to improve workforce
- Help members achieve the NCAL Quality Initiative goals
Policy Solutions

- Work to ensure the HCBS final rule does not negatively impact residents or providers when implemented in 2019
- Provide and help members use comparable data tools (Cost Calculator)
- Develop solutions to increase available workforce

Antitrust, Conflict of Interest and Confidentiality Policies and Procedures

Susan Edwards, Reed Smith
PRESENTATION OVERVIEW

- Antitrust 101
- Associations and Antitrust
- What can AHCA Members do?

ANTITRUST 101

ANTITRUST? WHERE?

CHECK THIS OUT, "JAI AND NIGELA, ALLEGEDLY HELD SECRET MEETINGS WHERE THEY STOLE PIECES OF THEIR CREDIT. THAT'S SICK, MAN."

"IT'S BROUGHT THE SITES & I KNOW ANY OTHER CARD WAS!"
Basic Principles

- Competition produces lower prices and better goods and services
- Antitrust laws are designed to promote competition by prohibiting competitors from colluding

Antitrust Enforcement

- Section 1 of the Sherman Act prohibits any contract, combination, or conspiracy in restraint of trade
  - Other Statutes
    - FTC Act
    - State antitrust laws
- Enforcement - FTC and DOJ
  - State Attorney Generals
  - Private Plaintiffs
- Violations
  - Per Se – e.g., price fixing
  - Rule of Reason – e.g., membership restrictions
Violations of the Antitrust Laws

- Could result in drastic penalties and fines for corporations, as well as individuals.
  - Up to $100 million per count for a corporation and $1 million per count for an individual.
  - Under federal law, the maximum fine may be increased to twice the amount the conspirators gained from the illegal acts or twice the money lost by the victims of the crime, if either of those amounts is over $100 million.
- Criminal sanctions include jail sentences for individuals.
  - Up to 10 years in prison.
- Permanent restrictions could be imposed on the company’s business practices which would limit future commercial activities and represent a competitive disadvantage.
- Defending against charges of such violations will cost the company/association time and money and will be otherwise disruptive.

Important Antitrust Topics for Trade Associations

- Price Fixing
- Market Division – Territorial or Customer Allocation
- Group Boycotts – Competitors Agreeing to Boycott a Customer or Supplier
- Membership Restrictions
- Obligations to Non-Members
- Statistical Reporting
Price Fixing

- Price fixing is an agreement among competitors to raise, fix, or otherwise maintain the price at which their goods or services are sold. It is a per se violation of the antitrust laws.
- It is not necessary that the competitors agree to charge exactly the same price, or that every competitor in a given industry join the conspiracy.
- Prohibition also applies to price-related items (e.g., salaries, benefits, etc.) and may prohibit collusion on other key commercial terms (e.g., wages, accreditation requirements).
- “Can we talk about prices?”: Discussion regarding current and future prices are not per se illegal, but may be strong evidence of an illegal price-fixing conspiracy.

Price Fixing can take many forms, and any agreement that restricts price competition violates the law. Other examples of price-fixing agreements include those to:
- Establish or adhere to price discounts
- Hold prices firm
- Eliminate or reduce discounts
- Adopt a standard formula for computing prices
- Maintain certain price differentials between different types, sizes, or quantities of products
- Adhere to a minimum fee or price schedule
- Fix credit terms
- Not advertise prices
Price Fixing – Key Takeaway

✓ Competitors Must Always Determine Price Independently
  - Each company must determine the prices, discounts and all other terms and conditions of sale offered to customers or prospective customers independently and without consultation or agreement with any competitor.

Market Division

✓ Dividing the market is illegal as a per se violation of antitrust laws
✓ e.g., it is illegal for competitors to agree not to advertise in specified areas or to divide customers between them
✓ Key Takeaway - Agreements not to do something are as problematic as agreements to do something
**Group Boycotts**

- In trade association context, often arises in the case of a group decision to punish supplier or customer for perceived wrongful behavior.
- Also improper to decide to reward certain cooperative suppliers or customers with increased business.
- Discussions regarding dealing with a particular supplier or customer may be permissible, but discussions regarding group action must be avoided.

**Membership Restrictions**

- A trade association is seen as conferring competitive benefits on its members.
- It may be an illegal restraint of trade to unreasonably deny membership to competitor within the industry.
- Membership qualifications must be reasonable.
- Requirements must be consistently applied to all applicants.
Obligations to Non-Members

✓ In most cases, a trade association may limit its services to members only.

✓ May have obligation to make services available to non-members when:
  ▪ Service is reasonably necessary to compete;
  ▪ Membership is not available.

✓ In such a case, may still charge non-member a higher price to account for lack of dues payment.

Statistical Reporting

✓ While certain discussions may raise antitrust concerns, the FTC and DOJ have provided a safe harbor for statistical reporting regarding business activities.

✓ The requirements for the safe harbor are:
  ▪ the prices reported must be at least three months old;
  ▪ the price information must be aggregated by a third party so that individual company information cannot be determined from the published results;
  ▪ at least five companies must participate; and
  ▪ no reporting company’s data represents more than 25% on a weighted basis of the aggregate statistic.
ASSOCIATIONS AND ANTITRUST

The Risks of Collaboration

- Trade associations are, by definition, groups of competitors coming together to work for a common purpose.
- Often seeking goals such as greater profits, better treatment by suppliers, etc.
- Associations themselves may be sued or prosecuted.
- More commonly, cases are brought against members that were involved in the activities.
The Risks of Collaboration

- It is fine to join industry trade associations and participate in activities that do not affect the vigor of your competition with other members.
- But trade associations have clear risks that must be monitored – a well-managed association like AHCA will have its own counsel to help with this.
- If the trade association discussion turns to what might be construed as market division or price-fixing, speak up to raise antitrust concerns or consider leaving the discussion.

How Can a Trade Association Protect Itself?

- Include legal counsel at association meetings to spot potential antitrust issues.
- Avoid problematic discussions:
  - Circulate written agendas in advance of meetings whenever possible.
  - Read Antitrust Statement at the beginning of each meeting.
  - Remind members to review Antitrust Statement/Policy on their own.
  - Encourage members to ask questions regarding Antitrust Statement/Policy.
- Discipline any member that violates antitrust policy.
Trade Association Don’ts

Don’t:
✓ Agree on or announce pricing, especially future pricing, or other terms of sale
✓ Allocate territories or customers
✓ Agree to prevent or impede entry of new competitors
✓ Agree to eliminate “inferior” products
✓ Refuse to sell to certain customers
✓ Agree to deny a competitor a significant input or competitive tool
✓ Agree on industry standards for an improper purpose, i.e., to preclude competition from a non-member

Trade Association Do’s

Do:
✓ Establish reasonable standards and disseminate “best practices”
✓ Collect and circulate impersonal market data or statistics
✓ Promote the industry in general (e.g., through advertising)
✓ Discuss lobbying legislative or executive government bodies
✓ Gather and manage industry statistics if blinded – i.e., not involving company-specific current data or future plans
✓ These practices are usually permissible
Other Ways to Minimize Trade Association Risks

✓ Formal Meetings
  - A written agenda should be prepared in advance of the meeting and should be followed during the meeting.
  - Ensure that accurate minutes be taken at all official or formal meetings.
  - Meeting participants should respect warnings by other participants if a particular subject is off limits.

✓ Informal Discussions
  - Always be cautious during discussions with potential competitors – broadly construed – during casual conversations or impromptu meetings during industry gatherings.
  - Particular areas of risk are discussions of prices, geographical strategies, etc.
Role of Members in Preventing Antitrust Violations

- Comply with processes in antitrust policy
- Follow governance practices
- Understand context of discussions and decisions – if you do not know, ask
- Do not assume you or other members understand antitrust rules. Read and re-read the antitrust policy regularly and don’t be shy!

QUESTIONS?
Conflict of Interest and Confidentiality Policy

Work Group

- Formed due to some member concern over potential divided loyalties with members of AHCA/NCAL Committees
- Considered whether an expanded conflict of interest is needed for committee members
- Currently, only the AHCA/NCAL Boards and staff complete an annual conflict of interest disclosure form
- Members of work group included the AHCA Executive Committee, two state execs and two legal committee members
Actual/Potential Areas of Conflict

- **Governing Board/Organization Membership** - Relationships with other organizations, including any current or prospective leadership role in, or other relationship with, any other association, society or foundation (e.g., board member, committee member, advisor, contributor).

- **Employment** - Employment, consulting, or other compensation arrangements, including honoraria, involving payments of more than $5,000.00 per year or $10,000.00 over a three-year period that are current, prospective or have occurred within the past three years where actual or potential conflict may exist.

- **Financial Interests** - Material financial interests of the volunteer, or anyone within the volunteer’s immediate family or with whom the volunteer directly shares income, held in a commercial entity that provides products or services to the AHCA/NCAL, or reasonably may be anticipated to conflict with the interests of the AHCA/NCAL.

- **Other Relationships** - Relationships with third party vendors that may benefit from any confidential information of AHCA/NCAL plans and strategies.

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COI and Confidentiality Policy

- At the time of appointment, committee members will be asked to read and submit a signed Conflict of Interest and Confidentiality Certification form.

- A statement of AHCA/NCAL’s Conflict of Interest and Confidentiality Policy will be added to the committee agendas similar to the current Antitrust Policy.

- At the start of every committee meeting the Chair will ask members if they have any actual or potential conflicts with any agenda items and if yes that they disclose such conflict(s).

- If there is an actual conflict then the member shall recuse himself/herself from discussion and/or voting on the conflicted issue.

- If a committee member believes that another member has not appropriately disclosed a conflict, that member may file a grievance to AHCA/NCAL’s General Counsel who will rule on the issue.
COI Statement for Agendas

The American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL) is dedicated to improving lives by delivering solutions for quality long term care. The integrity of AHCA/NCAL, and the activities it undertakes, depends on the avoidance of conflicts of interest, or even the appearance of such conflicts, by the individuals involved in those activities.

Each volunteer should have reviewed the agenda for today’s meeting and if a potential conflict is noted on the agenda that was not disclosed earlier on the annual disclosure form then the volunteer should immediately disclose the potential conflict to the chair of the meeting.

Next Steps

- Email will be sent to all committee/council/work force/task force members letting them know about the policy
- Included will be a link for each member to sign a document stating that they:
  - Will exercise care not to disclose confidential information
  - Have read the policy and will comply with it
  - Will disclose any potential or actual conflict at any meeting that includes an agenda item where actual or potential conflict exits
  - Will recuse self from discussion and/or voting on any topics where a conflict exists
Questions?

Meeting Facilitation and Parliamentary Procedures

Van Moore
Co-Chair, Constitution and Bylaws Committee
Reasons For Rules Of Order

- Rules of order are needed to keep the meeting moving and on track so that the value of members' time is respected and goals can be accomplished.
- When a committee or board is functioning under a given set of protocols or rules, it is important to adhere to those rules to avoid having some or all of the work challenged on a technicality.

Rules Of Order

- American Institute of Parliamentarians Standard Code (AIPSC)
- Roberts Rules Of Order, Newly Revised (RONR)
  - A Great Meeting Needs A Great Chair – 72 Pages, Colette Collier Trohan
The Chair Inappropriately Influencing Business

- The Presiding Officer speaking to the motion without “Surrendering the Gavel”.
- Failing to be impartial in moderating the discussion at hand.
- The Chair influencing the action by inappropriate voting protocol.

Calling The Question
(Previous Question)

- **Question:** When a member of a committee or a board “Calls The Question”, just what are they doing or think they are doing?

- **Answer:** While they *usually* think they are asking to have a vote on the motion at hand, under RONR they are simply asking for a vote on ending discussion so that they can then vote on the motion.
Discussion Without A Second

- **Question:** A motion requires a second before any discussion is warranted, why?
- **Answer:** To determine if there is more than one person in the body interested enough in the issue to warrant taking time in the meeting to consider the action or motion.

Not Having An Orderly Discussion

1. Allowing one person to filibuster a discussion
2. Not allowing an alternation of pro/con discussions
3. Not allowing all individuals to speak for or against the motion prior to letting members speak a second time.
4. Allowing excess vitriol in the discussion
Confusion In The Voting Process

- When a motion or amendment is made and seconded, it should be written down.
- If/When a motion is amended, it should be rewritten and read.
- When the body is ready for a vote, be that an amendment, calling of the question, or the motion itself, the motion should be reread prior to the vote.

Crib Sheets

A Great Meeting Needs A Great Chair – C. C. Trohan

- The last tab of the second chorus of this guide, Motions, Charts, and Rules: RONR is an excellent crib-sheet to keep a meeting on track.
- With common sense and courtesy, the tab “Motions, Charts and Rules:”, and the 2nd, 3rd, and 4th tabs behind it, most issues that AHCA / NCAL committees will encounter will be covered.
AHCA/NCAL Preferred Provider Programs

Dave Kyllo, AHCA

Growing our Preferred Provider Programs is Key to AHCA/NCAL's Financial Future

- No dues increase in more than 10 years
- Membership growth won't keep pace with needed resources
- Sponsorship revenue is strong but cannot be viewed as unlimited
- AHCA/NCAL must seek new revenue streams now if dues are to remain static
- Growing our preferred provider programs will be key to the association's financial future
Our Ask of AHCA and NCAL Committee Chairs and Members

- Take a serious look at AHCA/NCAL’s Preferred Provider products and services and support those programs when it makes sense
- Increase your understanding of what programs the association offers
- Become ambassadors for these programs locally and nationally

AHCA/NCAL Gero Nurse Prep

Get an Edge in the Marketplace!

- Gero Nurse Prep Sets You Apart from the Competition
  - Less than 1% of RNS have this credentialing
  - Board credentialed RNs are the gold standard in geriatric patient care
  - Credentialed nurses demonstrate the clinical competency that ACOs, MCOs and hospitals seek

- Gero Nurse Prep Provides Value
  - Grads have a 96% pass rate on the credentialing exam
  - Affordable & comes with up to 30 CEUs for RNs

geronurseprep.org
AHCA/NCAL Gero Nurse Prep

Increase RN Clinical Competency
ANCC Board credentialed RNs are the gold standard in geriatric patient care
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- Affordable & comes with up to 30 CEUs for RNs
- Credentialed RNs can demonstrate clinical competency the clinical competency that ACOs, MCOs and hospitals seek

[link to geronurseprep.org]

LTC CAREER CENTER

Find and Recruit Top LTC Talent!
Increased exposure of job listings through our affordable network of millions of members of more than 300 prestigious health care associations.
- Quick and easy job posting
- High quality candidates
- Online reports
- Simple, affordable pricing

[link to ltccareercenter.com]
Insurance Solutions

Give Us a Look Before You Choose Your Next Employee Health Benefit Plan!

✓ Exclusive discounts for AHCA/NCAL Members
✓ Packages tailored to individual member needs
  ▪ Fully or Self-Insured Medical
  ▪ Dental
  ▪ Vision
  ▪ Disability
  ▪ Life
  ▪ And Much More

Email us: AHCAInsurancesolutions@ahca.org

CARES® Online Dementia Training & Alzheimer’s Association® essentiALZ® Certification

• 5 courses offer easy access to 29 hours of dementia education.
  – CARES® Dementia Basics™
  – CARES® Dementia Advanced Care™
  – CARES® Dementia-Related Behavior™
  – CARES® Activities of Daily Living™
  – CARES® End-of-Life Dementia Care™

• Engaging courses feature videos of real people and situations, interactive exercises, and practical ideas.
• EssentiALZ individual certification demonstrates knowledge.
• CARES Basics & Advanced Care are recommended by CMS/Medicare.
• AHCA/NCAL recommends CARES and essentiALZ to help reduce the off-label use of antipsychotics.
• Customers receive 10% off with AHCA10 ‘purchase code.’

www.hcinteractive.com/AHCA
Questions and Answers

Adjourn