

HEALTH LAW ORGANIZATION & FINANCE

Spring Term, 2011
Hamline University School of Law
Professor Katrina Pagonis

SYLLABUS

Contact Information

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Class Meetings

Mon. & Wed. 9:30-10:45am

Office Hours

Mon. & Wed. 11am-12pm *or by appointment*

I. INTRODUCTION & COURSE OBJECTIVES

Welcome to *Health Law Organization & Finance*. Health law is a vast and dynamic discipline that covers the myriad interactions between law, medicine, and individual and population-level health. And you are studying health law at a particularly opportune time. The health care industry continues to expand (despite national economic woes) and the laws governing health care continue to multiply, creating a vast, interlocking legal web. While some might rightly lament this state of affairs, health lawyers are finding themselves in demand. This course, in conjunction with other health law courses at Hamline (especially *Health Law: Quality of Care and Liability*), will give you some of the basic tools to successfully navigate (and, in turn, guide clients through) applicable statutes and regulations. Health law is also of particular interest now because health policy questions are at the forefront of America's consciousness, which is not surprising given the weight of what is at stake: health, autonomy, and money. Accordingly, in addition to studying the current state of the law, we will explore underlying policy considerations and prospects for improving access to high quality health care while controlling and justly distributing costs.

This course focuses on the regulation, structure, and financing of the American health care system. We will examine barriers to access, drivers of cost, and factors contributing to high rates of underinsurance and uninsurance. You will learn about private health insurance and the regulation thereof at the state and federal levels. We will also examine the major public insurance programs: Medicare and Medicaid. The course will also review the forms and structures of health care enterprises, with a focus on the creation and regulation of tax-exempt organizations. The fraud and abuse laws, including the False Claims Act, the Anti-Kickback Statute, and Stark, will be reviewed both from the perspective of the compliance department and of the lawyer who must structure health care entities with these laws in mind. Finally, the course will review how antitrust law impacts the structure and conduct of health care providers.

Learning outcomes: By the end of this course, you should:

- Understand how health care is publicly and privately financed in the United States, the drivers of health care costs, and the sources of disparities in access to health care and insurance;
- Critically analyze national health reform legislation;

- Understand the obligations of the board of directors, the implications of non-profit status, and legal rules concerning the structure of health care institutions;
- Analyze how the laws that govern health care financing and impose cost controls on the health care system also drive how health care organizations are structured;
- Advise clients about managing legal risk while achieving their business goals, charitable purposes, and other objectives; and
- Interpret statutes and regulations, identify textual ambiguities, and counsel clients in light of legal uncertainty.

II. LOGISTICS

- A. **Time and Place.** This three-credit course will meet twice a week on **Mondays** and **Wednesdays**, from **9:30-10:45am** in **Law 100**.
- B. **Textbook and Readings.** The syllabus contains a list of readings for each class meeting. There are two versions of our required main text (you are required to have one of the two) and a required supplemental text.
- **Main Text (required; choose one):**
 - **Unabridged Text** (used in both this course and Quality & Liability; cheapest option if you're planning on taking both)
 - BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY S. JOST, ROBERT L. SCHWARTZ, **HEALTH LAW: CASES, MATERIALS AND PROBLEMS** (6th ed., 2008).
 - Publisher: West
 - ISBN: 9780314184740
 - **Abridged Text** (cheapest option if you are not planning on taking Quality & Liability)
 - BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY S. JOST, ROBERT L. SCHWARTZ, **HEALTH CARE ORGANIZATION AND FINANCE** (6th ed., 2008).
 - Publisher: West
 - ISBN: 9780314184771
 - **NOTE:** Page numbers in the syllabus are keyed to the unabridged casebook. If you are using the abridged text, you can use the table of contents of the unabridged text (posted on TWEN) and the table of contents of the abridged text to find the appropriate readings.
 - **Supplemental Text (required)**
 - BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY S. JOST, ROBERT L. SCHWARTZ, **HEALTH CARE REFORM: SUPPLEMENTARY MATERIALS** (2010).
 - Publisher: West
 - ISBN: 9780314266873

In addition to readings from our course textbook, I will occasionally assign additional cases and articles, copies of which will be posted on TWEN and/or

placed on reserve in the library (as indicated in the list of reading assignments). *Unless the reading assignment indicates otherwise, supplemental readings are required (not optional).*

Students are responsible for reading and analyzing all assigned course materials before each class.

- C. **TWEN Site.** Course documents, updated syllabi, and any powerpoints used in class will be posted on the class TWEN site. In addition, you are encouraged to participate in discussions of current events in health law by posting to our news forum on TWEN.

III. COURSE REQUIREMENTS & POLICIES

A. **Attendance**

Attendance is important and required by the ABA and Hamline University School of Law. At the beginning of each class, I will distribute a class roster for you to sign. *If you are absent for more than three classes, your absences will be treated as “excessive” in accordance with Hamline University Academic Rule 108. If you will be absent to attend a hearing required by another course or to observe a religious holiday, it is your responsibility to talk with me in advance to arrange make up work and have the absence excused.*

B. **Preparedness and Punctuality**

Punctuality and preparedness are both important: they demonstrate your respect for your peers and me and they allow you to get the most out of the class. *If you are more than 10 minutes late, you have missed a substantial part of that day’s class; your tardiness will therefore count as an absence and you are prohibited from signing in as present for that class.*

Most class sessions will be based on lectures and class discussion of the issues raised by the lecture and readings. Class discussions showing rigorous thought and an informed understanding of the subject matter will be an integral part of the learning process. *You must read all of the assigned materials and think through assigned problems before class to facilitate discussions (regardless of whether you have volunteered to be “on call”).*

C. **Participation**

Volunteering to be On Call: At the beginning of each class session, I will have a copy of the seating chart on which you can designate whether you would like to be “on call” for that day. You can sign up to be on call during the 5 minutes preceding class (i.e., *once class has begun, you can no longer sign up*). See “Course Evaluation” below for information on how volunteering to be on call can boost your grade.

Participation when not On Call: If you have not signed up to be on call, you will still be expected to actively engage in small group discussions and activities and should be sufficiently prepared to do so.

D. **Problems**

Problem-solving is crucial to legal practice (and an important learning tool). The

book has problems throughout, and you should use these as an opportunity to apply the material and assess your level of understanding. I am available to go over any problems with you during office hours or meetings.

On occasion, I will assign a problem in the book or a problem I will distribute via TWEN along with the readings for a given day. We will go over these assigned problems in small groups and/or as a class. It is particularly important that you come to class having read and reflected on the assigned problem(s) so that we can use class time efficiently. Students interested in receiving a “bump up” in their grades should also submit written answers to assigned problems to me via e-mail before class (see “Course Evaluation” below).

D. **Technology Policy**

Laptops: Students are expected to use technology in a professional and productive manner. The use of laptops in a manner that does not further our learning objectives or a manner that distracts others is strictly prohibited. **If a student uses technology in a way that distracts others, he or she may have his grade lowered by one-half of a letter; if the student does so again, he or she may be asked to drop the course without receiving academic credit for the class.**

Cellphones and Similar Devices: You are prohibited from using cell phones and smart phones during class time. If you use such a device during class, you will have your grade lowered by one-half of a letter. If you do so again, you may be asked to drop the course without receiving academic credit for the class.

IV. COURSE EVALUATION

The grade for the course will be based on your performance on the midterm and final examinations (weight allocated as indicated in the table below) with a possible upward adjustment based on participation and submission of written responses to assigned problems:

	Details	Percent of Final Grade
<i>Final examination</i>	<i>Take Home:</i> 72 Hours, Open Book, Anonymous	70%
<i>Client Letter</i>	<i>Take Home:</i> One Week (with word limit), Open Book, Anonymous	30%
<i>Participation & Problems</i>	See below	“Bump up” (see below)

Bump up. To be receive a “bump up” in your grade (e.g., raising your final grade from a B+ to an A-), you must ***either*** (a) volunteer to be on call for 23 of our 28 class meetings and submit via e-mail written responses before class to at least 7 of the assigned problems ***or*** (b) volunteer to be on call for 20 of our 28 class meetings, submit via e-mail written responses before class to at least 7 of the

assigned problems, and, for an *additional* 3 assigned problems, submit a written answer before class and meet with me to review your answer. If you volunteer to be on call but are not in fact prepared, you will be ineligible to receive a bump up.

V. INSTRUCTOR AVAILABILITY

I want to be fully available to help students whenever they need assistance with the content and readings in the class.

I will hold *office hours one hour after each class*. I am also available to meet with students by appointment. Feel free to come to office hours individually or with your study group.

VI. FINAL THOUGHTS

I am fascinated by the subject matter of this course and hope you will share my enthusiasm for the intellectually challenging ideas presented in the readings and the class work. I look forward to getting to know you and to our many thoughtful discussions. If I can ever be of assistance, please come by and see me at any mutually convenient time.

COURSE SCHEDULE: PART I

Introduction: The Problems of Access and Cost

January 19

Course Introduction and the Problem of Access

Introduction: Overview of the course; explanation of class policies and expectations

The Problem of Access: Tuesday, March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act. One of the central aims of this legislation is to increase access to health care for the 50.7 million uninsured Americans (approximately 16.7% of the population) and 25 million underinsured Americans. We will discuss the problem of access to care and some of the central PPACA provisions designed to insure 32 million additional Americans by 2019.

- Reading
- Text 560-563, Supp. 63, Text 575-582, Supp. 65-74
 - Kaiser Family Foundation Video, Health Reform Hits Main Street http://www.youtube.com/watch?v=3-Ilc5xK2_E&feature=player_embedded (a little simplistic, but it provides a basic overview of PPACA and previews issues we will discuss in more depth later)
- Problem
- Help from Health Care Reform (Supp. 71)
 - Help for Small Businesses (Supp. 73)

January 24

Mandating Coverage

The individual mandate is a key requirement of PPACA – without it, individuals would be able to hold off on buying insurance until they were ill or injured. We will look at the individual mandate under PPACA, fines for failing to purchase insurance, and constitutional challenges to these provisions. We will also briefly address employers' responsibility to provide coverage and free choice vouchers.

- Reading
- Text 582-585, Supp. 74-83
 - Constitutional Challenges—**Choose One** to read (pdfs posted on TWEN):
 - Virginia v. Sebelius, Mem. Op. 12/13/10 (E.D. Va.)
 - Liberty University v. Geithner, Mem. Op. 11/30/10 (W.D. Va.)
 - U.S. Citizens Association v. Sebelius, Mem. Op. 11/22/10 (N.D. Oh.)
 - Florida v. U.S. Dep't Health & Human Svcs., Mem. Op. 10/14/10 (N.D. Fla.)
 - Thomas More Law Center v. Obama, Mem. Op. 10/07/10 (E.D. Mich.)
- Problem
- To File or Not to File (Supp. 80)

January 26

Cost Drivers and Variation in Care

In the United States, we pay more for health care in taxes, premiums, and out-of-

pocket expenses than many other developed countries. Meanwhile, our population-level health outcomes rank us below many other developed countries, suggesting that we are not always paying for better care. In this class, we will explore the problem of cost.

- Reading
- Leonhardt, *Making Health Care Better*, (N.Y. Times 11/8/2009), posted on TWEN
 - Gawande, *The Cost Conundrum* (New Yorker 6/1/2009), posted on TWEN
 - Text 26-28, 563-574, Supp. 83-87

January 31

Addressing Cost and Variation

In this class, we will look at innovations designed to rein in health care costs and the relationship between cost-cutting measures, quality, and access.

- Reading
- Supp. 64-65, Text 585-594, Supp. 83-88, Supp. 48-50 (through n.1)
- Problem
- Consumer-Driven Health Care (Text 593)

PART I. Private and Public Health Insurance

A. Private Health Insurance

February 2

Basic Concepts in Private Insurance and State Regulation of Managed Care

We will look at basic principles of insurance and how insurers address adverse selection. We will then look at moral hazard as a driver of health care costs, managed care strategies for containing costs, and state-level efforts to regulate managed care.

- Reading
- Supp. 94-95
 - Text 638-648, Supp. 96
 - Primer on Private Health Insurance, posted on TWEN
 - Text 660-678

February 7

Federalism: PPACA and Insurance Regulation; Introduction to ERISA

PPACA represents the single largest shift in the balance of powers between states and the federal government in the realm of health insurance regulation. Prior to the 1970s, health insurance was exclusively regulated by states. After the enactment of ERISA in 1974, states could no longer regulate health plans provided by self-insured employers. The federal government began regulating health insurance more with HIPAA and COBRA in the 1990s (next week). We will focus first on PPACA's regulation of health insurance and then ERISA.

- Reading
- Supp. 97-120, Text 688-703

February 9

Federalism: ERISA Preemption and Remedies

We will look more closely at ERISA preemption and remedies available where insurers fail to provide required benefits.

Reading • Text 688-703 (reread), 734-748 (skip note 2 on page 741), Supp. 121-129

Problem • ERISA Preemption of State Managed Care Regulation (Text 703)

February 14

Expanding Coverage: State Programs (ERISA challenges) and Federal Law (HIPAA and COBRA)

Prior to PPACA, there were efforts at the state and local levels to improve access to care through programs that include individual and employer mandates. There is some question about the extent to which ERISA limits the ability of states to implement such mandates. We will read *Fiedler* and *Golden Gate Restaurant Association*. (Note that since the Supplement was published, the Supreme Court declined cert on the Ninth Circuit appeal.) Finally, we will look at the federal requirements imposed by HIPAA and COBRA.

Reading • Text 704-710
• Pages 648-661 of *Golden Gate Restaurant Ass'n v. San Francisco* (546 F.3d 639, 648-661 (9th Cir. 2008))
• Text 748-753, Supp. 129-130

Problem • Advising under HIPAA and COBRA (Text 752)

B. Public Health Insurance Programs

February 16

Medicare

Reading • Text 785-803, Supp. 131-145
• Summaries of Medicare and Medicaid Programs, posted on TWEN

Problem • Medicaid Eligibility (Supp. 148)

February 21

Medicaid and State Insurance Programs

Reading • Supp. 145-153
• Research questions: Minnesota's public insurance programs

- Who is eligible for Medical Assistance, MinnesotaCare, and GAMC?
- How are these programs funded and administered?
- What percentage of Minnesotans is uninsured?