

**HEALTH LAW FINANCING, ORGANIZATION & QUALITY  
(LAW 6331 – Spring 2014)  
Prof. Mantel  
Syllabus and Course Policies**

**Professor Jessica Mantel**

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**Office Hours: Thursday 3-4:00 and by appointment**

**Course Description**

Healthcare is one of the most regulated industries in the United States and currently accounts for approximately 18 percent of the U.S. gross domestic product. In addition, the industry is going through a tremendous restructuring in how health care is organized, delivered, and paid for, in part as a result of the Affordable Care Act (more commonly referred to as “Obamacare”) and in part due to market forces and technological developments. This course provides students with an understanding of how the health care system is currently organized, financed, and regulated, and explores what the health care system of tomorrow may look like.

This course focuses on health care institutions and payors, rather than the physician-patient relationship. Specifically, the course provides a basic overview of key health laws and policies that students should know if they are to practice health law at a law firm; work in-house in a hospital, academic medical center, or managed care organization’s legal department, compliance office, or risk management department; or work as a government attorney drafting or enforcing federal and state health laws. The first part of the course examines the various ways in which our system regulates the quality of care provided in health care institutions. The second part of the course focuses on health insurance. Specifically, we will discuss the regulation of private health insurance, the public insurance programs Medicare and Medicaid, and the new health care exchanges. We then study the business of health care and the laws that impact health care business enterprises, including the tax laws governing tax-exempt organizations, the antitrust laws, and the fraud and abuse laws. The course concludes with a study of the federal privacy law, known as HIPAA.

In addition to teaching students about fundamental health laws related to financing, organization, and quality, the course helps students develop a set of lawyering skills that all health law attorneys should have. First, the course includes a unit on legal research in health law and advice for how to keep abreast of current developments in health law and policy. Second, the course gives students several opportunities to analyze federal and state health laws, regulations, and agency guidance, a skill that health lawyers rank as the most important skills for recent law graduates entering the health law field. Finally, the course gives students practical advice for how to analyze client problems and

advise clients on their legal options. Students also will benefit from guest speakers who will share their expertise and experience with the class.

### **Course Materials:**

BARRY FURROW ET AL, THE LAW OF HEALTH CARE ORGANIZATION AND FINANCE (7<sup>th</sup> ed. 2013) (please be sure to purchase the **2013** edition and not the 2008 edition). Additional materials will be distributed in class or posted on the class website, or available at the URL link indicated in the syllabus.

\*Note: If you took Introduction to Health Law and previously purchased BARRY R. FURROW ET AL, HEALTH LAW: CASES, MATERIALS, AND PROBLEMS (7th ed. 2013), you do not need to purchase THE LAW OF HEALTH CARE ORGANIZATION AND FINANCE.

### **Course Requirements and Policies:**

**Course Requirements and Grading:** This course has three requirements: (1) preparing for and attending class sessions; (2) completing a legal research exercise; and (3) completing a three-hour, in-class exam. Only the final exam will be graded. However, at my discretion, a student's final grade may be adjusted upward or downward by one "notch" (e.g., from B to B+, or from B- to C+) in recognition of strong classroom contributions or lack thereof. In addition, a student's final grade will be adjusted downward by one notch for failure to turn in the legal research exercise by the due date. (You will have approximately 2 weeks to complete the legal research exercise.)

- (1) **Attendance and Preparedness.** For each class, I will ask questions of the panel of students assigned to be "on-call" that day; I also will call on 1 or 2 other students at random. Preparation and active participation is expected of all students. That said, I understand that illness or other situations may prevent you from being adequately prepared for class. If you are not prepared for class, I will give you a "pass" provided you ask me not to call on you prior to the start of class. You are allowed no more than two passes for the semester. If I call on you and you are unprepared, you will be required to choose the classmate who must answer my question in your place. Pursuant to the Law Center's policy, you must attend at least 80% of all class meetings; however, you should strive to attend 100%. Missing more than 20% of classes will result in your being dropped from the course.
- (2) **Exam.** You will complete a graded three-hour exam, which will consist of a combination of issue-spotting and policy questions. During the exam you may consult three things: (1) your casebook and health reform supplement, (2) any *printed* additional course reading, and (3) your outline. More details regarding the exam format and content will be discussed as the exam date approaches.

**Seating Assignments:** After the first week of class, I will create a seating chart. You must sit in your assigned seat for the remainder of the semester.

**Web site:** Announcements, assignments, and links to supplemental materials will be posted on my home page.

**Office Hours:** I will hold office hours in my office on Thursday from 3:00-4:00 and by appointment. Please feel free to come by to see me not only about class matters, but for course selection guidance, career counseling, or any other matter related to your legal education and career.

## COURSE OUTLINE & READING LIST

A single reading does not necessarily correspond to a single class session. Reading assignments will be announced in class. Supplemental materials will be posted on Blackboard or are available at the URL link indicated below. Unless otherwise specified, page references are to the casebook.\*

\*For those of you using the casebook BARRY R. FURROW ET AL, HEALTH LAW: CASES, MATERIALS, AND PROBLEMS (6th ed. 2008), please see Attachment A for the corresponding page references.

### I. INTRODUCTION

#### A. Historical Overview of the U.S. Health Care System

[No assigned reading]

#### B. Overview of the Regulatory Rulemaking Process and Agency Guidance

1. Lisa Schultz Bressman et al, THE REGULATORY STATE, 400-03 (2010)
2. Jessica Mantel, *Procedural Safeguards for Agency Guidance: A Source of Legitimacy for the Administrative State*, 61 ADM. L. REV. 343 (2009) (excerpt)

### II. LEGAL RESEARCH IN HEALTH CARE

Guest Lecturer: Emily Lawson, University of Houston law librarian

[No assigned reading]

### III. LIABILITY OF HEALTH CARE INSTITUTIONS

#### A. Agency, Control, and Vicarious Liability

1. *Adamski v. Tacoma General Hospital*, 579 P.2d 970 (Wash. Ct. App. 1978)
2. *Baptist Memorial Hospital v. Sampson*, 969 S.W.2d 945 (Tex. Sup. Ct. 1998)

#### B. Hospital Direct Liability and Corporate Negligence

1. *Darling v. Charleston Community Memorial Hosp.*, 211 N.E.2d 253 (Ill. 1965)
2. *Johnson v. Misericordia Community Hosp.*, 301 N.W.2d 156 (Wis. 1981)

#### C. Rethinking Hospital Quality: Atul Gawande, *The Checklist: If Something So Simple Can Transform Intensive Care, What Else Can it Do?*, NEW YORKER, December 10, 2007,

[http://www.newyorker.com/reporting/2007/12/10/071210fa\\_fact\\_gawande](http://www.newyorker.com/reporting/2007/12/10/071210fa_fact_gawande)

### IV. QUALITY CONTROL REGULATION OF HEALTH CARE INSTITUTIONS

#### A. Background (27-31, 39-43, 68-70 (Shopping for Quality))

#### B. Regulatory Systems (121-26 (skip problem on p. 126), 127-31 (skip Heckler case), Philip Aka et al., *Political Factors and Enforcement of the Nursing Home Regulatory Regime*, 24 J.L. & HEALTH 1 (2011) (excerpt), 152-57

#### C. Private Accreditation of Health Care Facilities

1. Overview (157-59)
2. JCAHO Fact Sheets:  
[http://www.jointcommission.org/facts\\_about\\_the\\_joint\\_commission/](http://www.jointcommission.org/facts_about_the_joint_commission/)  
[http://www.jointcommission.org/facts\\_about\\_joint\\_commission\\_accreditation\\_and\\_certification/](http://www.jointcommission.org/facts_about_joint_commission_accreditation_and_certification/)  
[http://www.jointcommission.org/accreditation\\_process\\_overview/](http://www.jointcommission.org/accreditation_process_overview/)

## **V. NEW APPROACHES TO PROMOTING QUALITY OF CARE**

- A. General**
- B. Financial Incentives**
- C. Electronic Health Records, Outcome Measures, and Guidelines**

## **VI. STATE REGULATION OF PRIVATE HEALTH INSURANCE AND MANAGED CARE**

- A. Overview of Insurance and Managed Care**
- B. Contract Liability of Private Insurers and Managed Care Organizations**
- C. Tort Liability of Managed Care**
  1. Vicarious liability
  2. Direct institutional liability
  3. Physician incentive systems
- D. Regulation of Insurance and Managed Care**
- E. Managed Care Physician Contracts**

## **VII. REGULATION OF INSURANCE AND MANAGED CARE: THE FEDERAL ROLE**

- A. ERISA**
- B. Federal Initiatives to Regulate and Expand Private Insurance Coverage**

## **VIII. MEDICARE, MEDICAID, and CHIP**

- A. Medicare Overview**
- B. Medicare Payment for Services**
  1. Prospective payment and fee schedules
  2. ACOs, Pilot programs and demonstrations
- C. Medicaid**
- D. CHIP**

**IX. DUTY TO PROVIDE CARE – NOT-FOR-PROFIT HOSPITALS**

**A. State**

1. General
2. Texas

**B. Federal**

**X. BUSINESS ENTERPRISES**

**A. Overview**

**B. Business Enterprises Involving Tax-Exempt Health Care Organizations**

1. Joint ventures
2. Inurement, private benefit, and excess benefit transactions

**C. Antitrust**

1. Overview
2. Collective bargaining and other joint ventures

**XI. FRAUD AND ABUSE**

**A. False Claims**

**B. Medicare & Medicaid Anti-kickback Statute**

**C. Gainsharing**

**D. Stark Law**

**XII. HIPAA PRIVACY RULE**