

**THE U.S. HEALTH SYSTEM: AN INTRODUCTION TO MANAGED CARE,
TRANSACTIONS, AND POLICY
(Spring 2015)
Prof. Mantel
Syllabus**

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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 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. Specifically, 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. The course also 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 (7th 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 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. I will provide you a table with a crosswalk of the assigned pages in THE LAW OF HEALTH CARE ORGANIZATION AND FINANCE and the corresponding pages in HEALTH LAW: CASES, MATERIALS, AND PROBLEMS.

Course Requirements and Policies:

Course Requirements and Grading: This course has two requirements: (1) preparing for and attending class sessions; and (2) completing a take-home final exam (to be scheduled at the student's convenience). Only the final exam will be graded.

- (1) **Attendance and Preparedness.** Preparation and active participation in class discussion will be expected. For each class, I will ask questions of the panel of students assigned to be "on-call" that day. You may take a "pass" day twice a semester provided you ask me *before* class not to call on you. 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. 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 eight-hour take-home exam, which will consist of a combination of issue-spotting and policy questions. During the exam you may consult three things: (1) your casebook, (2) any *printed* additional course readings and PowerPoint slides, 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 the class home page <http://www.law.uh.edu/faculty/jmantel/us-health.html>.

Office Hours: I will hold office hours on Thursday from 2:00-3:00 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 Schedule: There will be no class on Tuesday February 17th.

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.*

I. INTRODUCTION

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

[No assigned reading]

B. The Health Care “Crisis”: Problems in Access, Cost and Quality

1. Thomas W. Merrill et al., *Health and Medical Care Reform in the United States: Ethical Questions and Concerns* (2008)
2. David M. Eddy, *Clinical Decision Making: From Theory to Practice* (1996) (excerpt)
3. Elizabeth Rosenthal, *The \$2.7 Trillion Medical Bill*, NEW YORK TIMES (June 1, 2013)

C. 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. STATE REGULATION OF PRIVATE HEALTH INSURANCE AND MANAGED CARE

A. Overview of Insurance and Managed Care (263-75)

B. Contract Liability of Private Insurers and Managed Care Organizations (275-80)

C. Tort Liability of Managed Care

1. Vicarious liability (280-94)
2. Direct institutional liability
 - a. General (294-99)
 - b. *Wickline v. State*, 239 Cal. Rptr. 810 (Cal. App. 1986)
3. Exercise (handout)
4. Physician incentive systems (299-300)

D. Managed Care Physician Contracts (564-69)

E. Regulation of Insurance and Managed Care (308-316), Exercise – State Managed Care Laws (handout), Exercise – Appeals Process (handout)

III. REGULATION OF INSURANCE AND MANAGED CARE: THE FEDERAL ROLE

A. ERISA (352-54, *Retail Industry Leaders Assoc. v. Fielder*, 354-70, 375-89)

B. Federal Initiatives to Regulate and Expand Private Insurance Coverage

1. Background on Underwriting and Ratemaking (271-275)
2. The Affordable Care Act
 - 317-21 (skip section 2705 (wellness programs)), 323-324, 329-339 (skip problems), 344-350, 176-181, 183-184, 197-199 (skip Problem Employer Responsibility)
 - Chart on ACA Rules (handout)
 - Problems (handout)

IV. MEDICARE, MEDICAID, and CHIP

A. Medicare Overview

- Kaiser Family Foundation, *Medicare: A Primer* (2010)
<http://www.kff.org/medicare/upload/7615-03.pdf>
- Summary of Medicare Benefits and Cost-Sharing Chart
- Part D Chart
- Coverage Determinations (434-36)
- Problems (handout)

B. Medicare Payment for Services

1. Prospective payment and fee schedules (444-49)
2. Financial Incentives to Improve Quality and Lower Costs
 - 454-56; 459 (note 2); 61-62 (Hospital-Acquired Conditions); 459-66 (skip Patient-Centered Medical Homes); 467-69 (Notes and Questions)
 - Supplemental materials on EHRs

C. Medicaid 484-85 (skip HHS vs. Florida), 491-98, 501-06 (skip Problem: Medicaid Benefits), 508-15 (skip Problem: Representing Providers in Medicaid Litigation)

D. CHIP (530-33) (skip Problem: Health Care Coverage for the Poor)

V. DUTY TO PROVIDE CARE – NOT-FOR-PROFIT HOSPITALS

A. State

1. General (662-71, 674-76)
2. Texas (Texas Health and Safety Code 311.041-.045)

B. Federal (676-82 (skip problem on p. 682))

VI. BUSINESS ENTERPRISES

A. Overview (603-04, 650-60 (skip Note: The Specialty Hospital Phenomenon))

B. Business Enterprises Involving Tax-Exempt Health Care Organizations

1. Joint ventures (697-706)

2. Inurement, private benefit, and excess benefit transactions (716-19, 719-24, 724-29 (on p. 729, skip Problem Excess Benefit transactions #2 and Chapter Review Problem))

C. Antitrust

1. Overview (823-29)
2. Mergers and Acquisitions (903-926)
3. Collective bargaining and other joint ventures (829-35, 863-883 (skip Notes and Questions), DOJ and FTC Statements of Antitrust Enforcement Policy in Health care – Statement 9)

VII. FRAUD AND ABUSE

A. False Claims (731-48, 762- 66)

B. Medicare & Medicaid Anti-kickback Statute

1. General (770-82, 790-95 (Problems p. 771-73 – skip #1, #4, and #5))
2. 42 C.F.R. § 1001.952
3. Physician recruitment exercise

C. Stark Law

1. General (801-18)
2. 42 C.F.R. §§ 411.351, 411.353, 411.355, 411.356, 411.357
3. Stark Questions

IX. HIPAA Privacy Rule

1. Summary of HIPAA Privacy Rule (hand out)
2. 44 C.F.R. Parts 160 and 164