

HEALTH CARE LAW & POLICY

Spring 2008

Course No. 2732-AE

Instructor: Professor Marc A. Rodwin, J.D., Ph.D.

Class Time: M, W: 6:00 to 7:15 p.m.
Classroom: Room 325
Office Hours: M 5:00-6:00, W: 3:45-6:00, and by appointment.

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This course introduces students to the law, policy and finance of American health care institutions and medical practice. It examines how health care is financed through private insurance and by public payers such as Medicare and Medicaid. It looks at how federal, state and private organizations regulate and reimburse hospitals, physicians and other medical providers. It examines programs to promote access to health care, control health care spending, monitor the quality of care, and ensure that providers have necessary credentials. It traces the evolution of American health law and policy and highlights problems that need to be addressed in the future.

Students taking this course will become familiar with key legal and policy issues in the American health care system today. They will acquire the tools, language and concepts necessary to understand the problems of health care clients in private and public sectors and to take more specialized courses in health care law. It is designed both for students who want an overview of health care law but have their main interests in other fields and also for students who want to concentrate in health care law and already have some experience in health care.

Course Requirements

Students need to come to class prepared to contribute to discussion of cases and other readings as well as to apply concepts and ideas discussed to current public issues reported in major metropolitan newspapers. I will award additional credit for students that distinguish themselves in classroom participation.

Students should read regularly a national newspaper (such as *The New York Times*, *Washington Post* or *Wall Street Journal*) and think about how class relates to current health news. An excellent daily listing of links to health news articles is available at <http://www.kaisernetwork.org/dailyreports/healthpolicy>. You can receive these links as an email each day from the Kaiser Family Foundation if you sign up at <http://www.kff.org/profile/subscriptions.cfm>. You can read newspapers on the web, or on Lexis or Westlaw. It would also be helpful to occasionally scan health care press such as the *BNA Health Care Policy Report*.

There will be a take-home exam (5-9 pages) due at the beginning of exam period and a short essay (5-7 pages) due near mid-semester (7th or 8th week), each of which count for 47.5% of the grade. There will also be a 2 page health news analysis which will count for 5% of the grade. The take-home exam will be an essay question that requires the student to reflect on and integrate course readings. The mid-term essay will ask you to analyze and reflect on assigned reading. For the news analysis you will analyze a newspaper article on health care in light of course readings. Further details on assignments will be provided later.

Students can meet their legal writing requirements by writing a paper which will substitute for the take home final. To do this, students need to write a draft paper by week 9 and revise it by the end of the semester in response to feedback from the professor. This paper can be a substitute for the second exam.

Joint Studying

Students benefit from discussing the issues and comparing notes with fellow students. With your permission, I will pass out a list with the names and telephone numbers of students to help you get together. However, each assignment you turn in must be your own writing. Copying or paraphrasing from another student's paper or other written source constitutes plagiarism and is grounds for discipline under University rules.

Texts

1) *Rodwin Reader with selected cases and materials*, 2008

Three draft chapters from my book, *Medical Profession, Market & State* that describe the evolution of American health care are in the front of the reader before the weekly readings. They are assigned at different weeks in the course. This reading is abbreviated as “Rodwin, U.S. Health Care.”

2) Bodenheimer & Grumbach, *Understanding Health Policy: A Clinical Approach* (3rd ed. 2002) (abbreviated in syllabus as “B&G.”)

Written Work

All papers and exams must be written only by the student submitting the work for a grade. Papers and exams must respect law school rules on academic honesty. When turning in your exam and paper, include a separate page paper clipped to the back with the following statement and your signature.

“I reviewed the Suffolk University Law School policy on academic honesty and plagiarism. My written work is my own written work and conforms o these rules.”

Writing a Paper to Fulfill the School Legal Writing Requirement

You may elect to write a paper for this course to meet the school legal writing requirement. If you want to do so, let me know early in the semester, meet with me to get your topic approved, and fill out the registrar forms. *A draft paper needs to be submitted by the 9th week of class and revised based on my comments.* If you write the paper, you will still take the mid-term exam and write the news analysis on rights but will skip the final exam and 1st news analysis on rules. The paper will count for 50% of the grade. If you want the paper to count for more than 50% of the grade, please discuss this with me before the mid-term.

Format and Style for Written Assignments

- Title page with exam ID number and title
- Number pages.
- Use 12 pt. font with 1 inch margins on all sides.
- Double space.
- Use end notes rather than footnotes or notes in text
- Start each exam question at the top of a page.

Tentative Written Assignment Due Dates

February 19	Mid-term exam handed out
February 22	Mid-term exam due
March 24	News analysis of rights and health law due
April 23	Take-home exam handed out
May 12	Take-home exam due

In Class Problems & Events

January 28	Choosing a Health Plan
January 30	Termination of Hospital Privileges problem
March 3	External Review problem
March 5	ERISA problems
March 12	Community Hospital Conversion problem
April 23	Viewing and Discussion of Video: Borderline Medicine (A comparison of the American and Canadian health care systems)

Readings for the 1st 2 weeks are on library reserve, and on Blackboard and Campus Cruiser, as well as in the course reader.

Tentative Class Schedule

Week 1: History and Organization of the U.S. Health Care System-I

January 7

Harris, Art. 1982. Burn Victim Refused by 40 Hospitals, *The Washington Post* (May 12).

Rodwin. U.S. Health Care Part 1: *The Rise of Protected Medical Market: Colonial America until 1950.*

1. Early American Medicine 1700—1870, 1-4

January 9

Rodwin. U.S. Health Care Part 1: *The Rise of a Protected Medical Market: Colonial America until 1950.*

1. The Growth of Medical Commerce and Private Medical Practice 1890-1950, 17-23.
2. The Origins of American Health Insurance: 1912—1950, 26-34.

Week 2: History and Organization of U.S. Health Care System-II

January 14

Rodwin. U.S. Health Care Part II. *The Monetization of Medical Care: 1950—1980*, 1-30.

Gladwell, Malcolm. 2005. The Myth of Moral Hazard. *The New Yorker*, August 29.

January 16

Rodwin. U.S. Health Care Part III. *The Logic of Markets: 1980-2007*

1. Insurance, 20-29
2. Contemporary Health Care Institutions: Health Insurance, 36-38.

B & G. Chapters 6-7: How Health Care is Organized, I & II, 53-77.

Center for the Study of Health System Change. Health Market Stabilizes but Rising Costs and State Budget Woes Loom in Boston.

Week 3: Contemporary Health Care Financing Choices

January 21: Martin Luther King Day - Holiday

January 23: Competing Models of Financing and Insurance

Selections from Wing, Kenneth *et al.* 1998. *Law and American Health Care*. New York: Aspen, and other readings

1. Whitted. Private Health Insurance and Employee Benefits (In Williams, Steven and Paul Torens. 1993. *Introduction to Health Services* (4th ed.) 332, 336-60.
2. Wing, K. Notes and Questions on Third Party Financing Arrangements.
3. Wing, K. The Tax Treatment of Employer-Purchased Health Benefits and its Impact on Private Health Financing.
4. Winslow & Gentry. 2000. Health Benefits Trend: Give the Workers Money, Let Them Buy a Plan. *Wall Street Journal* February 8..
5. Graham, P. 1994. Why We Need Medical Savings Accounts. *New Engl J. Med* 330, no. 24: 1752-1753.
6. IRS Publication 969-Health Savings Account.
7. Rodwin. 2003. The Dark Side of a Consumer Driven Health Care System, *Frontiers of Health Services Management* 19, no.4: 31-34.
8. Fein. 1980. Social and Economic Attitudes Shaping American Health Policy *Milbank Mem. Fund Q* 58, no. 349: 376-82.

Week 4: Competing Models of Insurance/ Choosing a Health Plan

January 28: Competing Models-- Social Insurance and Private Insurance

Stone, Deborah. 1993. The Struggle for the Soul of Health Insurance, *J Health Politics, Policy, & Law* 18, no. 2: 287-315.

Problems for Discussion: Choosing a Plan

Indiana University Health Plan Materials

January 30: Hospital-Physician Relation, Hospital Privileges, Peer Review

Rodwin. U.S. Health Care Part I. *The Rise of Protected Medical Market: Colonial America until 1950.*

1. Almshouses, Dispensaries, Hospitals, 3-4
2. The Transformation of Hospitals, 14-17

Rodwin. U.S. Health Care Part III. *The Logic of Markets: 1980-2007*

- 1) Hospitals, 13-20
- 2) Hospitals and Medical facilities, 39-41

Patel v. Midland Me. Hosp. & Med. Ctr., 298 F.3d 333 (5th Cir. 2002)

Termination of hospital privileges problem

Week 5: Physician Payment

February 4

B & G. Ch 4: Reimbursing Health Care Providers, 33-43.

B & G. Ch. 5: Capitation Payment in Managed Care, 44-52.

Rodwin. *Memo: Physician Payment in the United States.*

Landro, Laura. 2004. To Get Doctors to Do Better, Health Plans Try Cash Bonuses 'Pay for Performance' Rewards Preventive, Follow-Up Care, *Wall Street Journal* (September 17).

February 6

Medical Association of Georgia v. Blue Cross & Blue Shield of Georgia, Inc., 244 Ga. App. 801, 536 S.E. 2d 184 (2000).

Clark v. Kizer, 758 F. Supp. 572 (E.D. Cal. 1990).

Week 6: Hospital Payment/ Hospital Peer Review and Privileges

February 11: Administrative Rule Making/ Medicare Hospital Payment

Cooper, Phillip. 1988. How Rules are Made *Public Law and Public Administration* New York: Prentice Hall, 118-143.

Stephenson v. Shalala, 87 F.3d 350 (9th Cir. 1996).

Alvarado Community Hosp. v. Shalala, 155 F.3d 1115 (9th Cir. 1998).

B&G. Ch. 8: Painful Versus Painless Cost Control, 78-88.

February 13: Managed Care-Cost Containment

B & G. Ch. 9: Mechanisms for Controlling Costs, 89-103.

Kongstvedt, Peter. 2003. Managing Basic Medical Surgical Utilization. *Essentials of Managed Care* (4th ed.). Gaithersburg: Aspen, 197-231.

Mount Sinai Hospital v. Zorek, 271 New York Supp. 2nd 1012 (1966).

Iglehardt, John. Physicians and the Growth of Managed Care. *New Eng J. Med.* 331: 1167-1171.

Week 7: Cost Control and Managed Care

February 18 Presidents' Day – Holiday

February 19 Monday class schedule

Mid-term Exam to be handed out

Wilson v. Blue Cross, 222 Cal. App. 3rd 660 (1990).

Complaint, *Dawson v. Blasi*, Cause No. 96-185839-00, Tarrant County, Texas 2001.

Center for Studying Health System Change. *Tired-Provider Networks: Patients Face Cost-Choice Trade-Offs*.

February 20: Review

February 22: Mid term Exam due 5 p.m.

Week 8: Benefit Determinations in Private Insurance and ERISA Benefit Plans I

February 25

Van Vactor v. Blue Cross Association, 50 Ill. App. 3d 709 (1977).

Sarchett v. Blue Shield of Cal., 43 Cal. 3d 1 (Cal. 1987).

29 U.S.C.S. Section 1144, Section 1132, and ERISA Section 502(a)
Discrimination in Structuring Employer-Sponsored Health Benefits.

February 27: Benefit Determinations

Exclusions Based on Medical Necessity or Experimental Status

Heasley v. Belden & Blake Corp., 2 F.3d 1249 (3d Cir. 1993).

Fuja v. Benefit Trust Life Ins. Co., 18 F.3d 1405 (7th Cir. 1994).

[Hall and Anderson. 1992. Health Insurers' Assessment of Medical Necessity. *University of Pennsylvania Law Review*.]

Week 9: Benefit Determinations in Private Insurance and ERISA Benefit Plans II

March 3

McGann v. H & H Music Co., 946 F.2d 401 (5th Cir. 1991), and notes.

McNeil v. Time Ins. Co., 205 F.3d 179 (5th Cir. 2000).

Dallek, Geraldine and Karen. Pollitz. 2000. *External Review of Health Plan Decisions: An Update* (Kaiser Family Foundation).

External Review Charts.

External Review Problem.

March 5

Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (U.S. 1985).

American Med. Sec. v. Bartlett, 111 F.3d 358 (4th Cir. 1997).

Pegram v. Herdrich, 530 U.S. 211 (2000).

Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355 (2002).

Aetna v. Davilla, 542 U.S. 200 (2004).

ERISA problem.

Week 10: Ownership and Tax Status of Health Care Facilities

March 10

Sughrue, Robert & Michelle Kupinski. 1991. Exempt Organizations: An Overview. *Qualifying as a Nonprofit Tax-Exempt Organization*. Quorum Books.

Rodwin. U.S. Health Care Part III: *The Logic of Markets:1980-2007*

1. Hospital Conversions, 18-19
2. Health Insurance Conversions, 20-22
3. The Mix of Not-For-Profit and For-Profit Insurers Today, 38
4. Hospital and Medical Facilities Ownership, 39

Langley, Monica. 1998. Money Order: Nuns' Zeal for Profits Shapes Hospital Chain, Wins Wall Street, *Wall Street Journal* (Jan 7).

IRS Revenue Ruling No. 69-545 (1969).

Standish, James. 1998. Hospital Conversion Revenue: A Critical Analysis of Present Law and Future Proposals to Reform the Manner in Which Revenue Generated from Hospital Conversions is Employed, *J. Contemp. Health Law & Policy* 15: 131.

March 12

Adventist Health Care System/Sunbelt Health Care Corporation v. Nashville Memorial Hospital, Inc. 914 S.W. 2d 903 (Tenn. App. 1995).

Wing, et al. 1998. Notes & Questions on Hospital Conversions and Consolidation.

Claxton, Gary *et al.* 1997. Public Policy Issues in Nonprofit Conversions: An Overview. *Health Affairs* 16, no. 2: 9-28.

Community Hospital Problem.

MARCH 17 – 21 SPRING RECESS

Week 11: Rights, Charity Care and Access

March 24

Stone, Deborah. 2000. Rights, Ch. 14, *Policy Paradox: The Art of Political Decision Making*. New York: Norton, 326-330.

News analysis on Health Care Rights due

March 26

B & G. Ch. 3. Access to Health Care.

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974).

Higdon v. Boning, 121 N.J. Super. 276 (Cty. Ct. 1972).

Lagnado, Lucette. 2003. Twenty Years and Still Paying. *Wall Street Journal* (March 13)

Lagnado, Lucette. 2003. Medical Seizures: Hospitals Try Extreme Measures to Collect Their Overdue Debts. *Wall Street Journal* (Oct, 30).

Kaiser Commission on Medicaid and the Uninsured. *The Uninsured: A Primer*.

Week 12 EMTALA / Medicaid

March 31

Statutory text of EMTALA

Burditt v. U.S. HHS, 934 F.2d 1362 (5th Cir. 1991).

Roberts v. Galen of Va., 525 U.S. 249 (U.S. 1999).

EMTALA regulations, *Federal Register* 68, No 174, September 2003 (excerpt).

EMTALA Problem.

April 2

Iglehardt, John. 1999. Medicaid, *New Eng J Med* 340: 403-408.

Iglehardt, John. 2003. The Dilemma of Medicaid, *New Eng J Med* 348: 240-48.

Medicaid Program at a Glance (Kaiser Fact Sheet)

State Fiscal Conditions and Medicaid (Kaiser Fact Sheet)

Greenery Rehabilitation Group v. Hammon, 150 F.3d 226 (2d Cir. 1998).

Week 13: Medicaid

April 7

Preterm, Inc. v. Dukakis, 591 F.2d 121 (1st Cir. 1979).

Harris v. McRae, 448 U.S. 297 (U.S. 1980).

Jost, Timothy. 2003. The Tenuous Nature of the Medicaid Entitlement. *Health Affairs* 22, no. 1:145-153.

Wilder v. Va. Hosp. Ass'n, 496 U.S. 498 (1990).

April 9 Medicaid Continued

Week 14 Medicare

April 16

Iglehart, John. 1990. The American Health Care System: Medicare. *New Eng J. Med* 349, no. 4: 327-332.

Iglehart, John. 1996. The Struggle to Reform Medicare. *New Eng J Med* 334, no. 16: 403-408.

Medicare Program at a Glance (Kaiser Fact Sheet).

Medicare Advantage (Kaiser Fact Sheet).

Medicare Spending and Financing (Kaiser Fact Sheet).

Duggan v. Bowen, 691 F. Supp. 1847 (1998).

Bodimetric Health Services v. Aetna Life & Casualty, 498 U.S. 1012 (1990).

April 16

Medicare Dual Eligible: Medicaid's Roles for Low Income Medicare Beneficiaries (Kaiser Fact Sheet).

Medicare Prescription Drug Law (Kaiser Fact Sheet).

Moon, Marilyn. 2004. How Beneficiaries Fare Under the New Medicare Drug Bill. Commonwealth Fund Issue Brief.

Week 15 Kickbacks and Self-Referral

April 21

Rodwin. U.S. Health Care Part 1: *The Rise of Protected Medical Market: Colonial America until 1950.*

Medical Commerce, Kickbacks and Codes of Ethics 17-21.

Rodwin. U.S. Health Care Part III. *The Logic of Markets: 1980-2007*
Physicians and the Logic of Markets 4-13.

Dembner, Alice. 2001. A Cure for Fraud—Weston Doctor Saves Taxpayers Millions by Blowing Whistle. *Boston Globe* (October 7).

U.S. v. Greber, 760 F. 2d 68 (1985).

Hanlester Network v. Shalala, 51 F. 3d 1390 (9th Cir. 1995).

Fraud and Abuse Act (Anti-kickback Act) 42 U.S.C.A. Section 1320a-7.

Stark Anti Self-Referral Act, 42 U.S.C.A. Section 1395 nn.

April 23

Viewing of film: *Borderline Medicine*

Take-home exam handed out

Take-home exam due