

# **HEALTH CARE LAW & POLICY**

**Fall 2009**

**Course No. 22453 AD**

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

Class Time: MW 10:00 to 11:15 a.m.  
Classroom: Room 245  
Office Hours: MW: 11:15-12:15; 3:15- to 4:15 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 (7<sup>th</sup> or 8<sup>th</sup> 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.

## **Writing a Paper to Fulfill the School Legal Writing Requirement After Completion of this Course**

You can not elect to write a paper that fulfills the law school writing requirement in this course. However, I will be glad to sponsor an independent study for course credit following completion of this course that will allow you to meet the law school writing requirement. The independent study will develop some issues and themes that grow out of issues in this class. The idea is that you will have some background based on this course, and perhaps other course work or experience, that will provide grounding for an in depth paper.

## **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* (3<sup>rd</sup> 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."*

## **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**

October 5	Mid-term exam handed out
October 19	Mid-term exam due
November 2	News analysis of rights and health law due
November 30	Take-home exam handed out
December 14, 5 p.m.	Take-home exam due

Readings for the 1<sup>st</sup> 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**

*August 24*

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

Rodwin. *The Rise of Protected Medical Market: the United States until 1950.*  
1-12 (Up until Professional Control of Medical Practice and Insurance)

*August 26*

Rodwin. *The Rise of a Protected Medical Market: The U.S. til 1950,* 12-18.

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

*August 31*

Rodwin. *The Commercial Transformation: 1950—1980,* 1-13.

Gladwell, Malcolm. 2005. The Myth of Moral Hazard. *The New Yorker* 8-29.

*September 2*

Rodwin. *The Logic of Markets: U.S.A. 1980-2009 pp 1-20*

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**

*September 7: Labor Day – No Class.*

*September 9: Competing Models of Financing and Insurance*

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

Whitted. Private Health Insurance and Employee Benefits (In Williams, Steven and Paul Torens. 1993. *Introduction to Health Services* (4<sup>th</sup> ed.) 332, 336-60.

1. Wing, K. Notes and Questions on Third Party Financing Arrangements.
2. Wing, K. The Tax Treatment of Employer-Purchased Health Benefits and its Impact on Private Health Financing.

Winslow & Gentry. 2000. Health Benefits Trend: Give the Workers Money, Let Them Buy a Plan. *Wall Street Journal* February 8..

Graham, P. 1994. Why We Need Medical Savings Accounts. *New Engl J. Med* 330, no. 24: 1752-1753.

IRS Publication 969-Health Savings Account.

Rodwin. 2003. The Dark Side of a Consumer Driven Health Care System, *Frontiers of Health Services Management* 19, no.4: 31-34.

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**

*September 14: 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

*September 16: Hospital-Physician Relation, Hospital Privileges, Peer Review*

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

The Transformation of Hospitals, 6-7

Rodwin. *The Logic of Markets: 1980-2007*, 8-10

Revenues and Referrals

Cost Containment, Cost Shifting and Collection

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

Termination of hospital privileges problem

## **Week 5: Physician Payment**

*September 21*

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).

*September 22*

*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**

*September 28: 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 (9<sup>th</sup> Cir. 1996).

*Alvarado Community Hosp. v. Shalala*, 155 F.3d 1115 (9<sup>th</sup> Cir. 1998).

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

*September 30: 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* (4<sup>th</sup> ed.). Gaithersburg: Aspen, 197-231.

*Mount Sinai Hospital v. Zorek*, 271 New York Supp. 2<sup>nd</sup> 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**

*October 5*

*Wilson v. Blue Cross*, 222 Cal. App. 3<sup>rd</sup> 660 (1990).

Complaint, *Dawson v. Blasi*, 2001.

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

Midterm handed out

*October 7: Review*

*October 9: Mid term Exam due 5 p.m.*

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

*October 12 Columbus Day No Class Tuesday October 13 Monday Schedule*

*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.

*October 14: 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**

*October 19*

*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.

October 21

*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**

October 26

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 & the Formation of Multi-Hospital Systems 17
- 2) The Conversion of the Blues 18

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.

October 28:

*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.

## **Week 11: Rights, Charity Care and Access**

November 2

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*

November 4

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**

*November 9*

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.

*November 11 Veteran's Day No Class*

## **Week 13: Medicaid**

*November 16*

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).

*November 18: Medicaid Continued*

*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).

## **Week 14 Medicare**

*November 23*

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).

*November 25*

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**

*November 30*

Review and problems  
Take Home Exam Handed Out

*December 2:*

Viewing of film: *Borderline Medicine*