

# Health Law: Financing, Organization and Access Spring 2012

*Course Meets on Mondays from 6:25 to 9:05 p.m. in Room 132*

## **Ann O’Leary**

Office Hours: 5:00 – 6:00 p.m. on Mondays (in Café Zeb) or by appointment

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## **Course Description:**

This course offers an introduction to the financing and organization of the U.S. health care system and the public policies and laws that impact that system. Topics covered include health care cost and access; federal and state regulation of private health insurance and managed care; financing of public health programs, including Medicare and Medicaid; the structure of the health care enterprise; and legal issues related to the organization and reform of the delivery of health care, including anti-trust and fraud and abuse. This course will not cover biomedical ethics or public health law.

## **Course Material:**

Casebook (CB): FURROW, GREANEY, JOHNSON, JOST, & SCHWARTZ, [THE LAW OF HEALTH CARE ORGANIZATION AND FINANCE](#) (6<sup>th</sup> ed. 2008), and the [2010 HEALTH CARE REFORM SUPPLEMENT](#) to FURROW , ET AL., HEALTH LAW: CASES MATERIALS AND PROBLEMS (6<sup>th</sup> ed. 2008).

Plus additional materials noted on syllabus, which will be posted on the course bSpace page.

## **Course Requirements:**

The landscape of health law is going through fundamental changes as we embark on this course. The most important requirement is to be actively engaged and interested in learning the basics of health care organization and finance and be prepared to learn together as the landscape shifts in front of us. Each student will be required to write a weekly reflection paper and will be required to submit either a final research paper or final take home examination.

- *First Week Submission:* For the first class, please submit several paragraphs explaining your goals for the class, interest in health law, any prior work or academic experience in the subject, and any career plans/ambitions in the field of health law. You should also submit a weekly reflection paper unless you are planning to use a free pass (see below). Please send this first week submission to me via email at [ann.oleary@tcng.org](mailto:ann.oleary@tcng.org) by Noon on Sunday, January 8<sup>th</sup>.
- *Weekly Reflection Papers:* The weekly reflection papers should be no longer than one page. You may either comment generally on your reactions to the readings, or you may raise several questions about the readings that you would like discussed in the class session. They are due at noon on Sunday of each week and must be emailed to me at

[ann.oleary@tcng.org](mailto:ann.oleary@tcng.org) by that deadline. During the course of the semester you have three free passes to use in which you may email me by Noon on Sunday to let me know that you will be using one of your free passes that week.

- *Final Paper or Final Exam:* In this course you may choose either to write a final paper or take a final take-home examination. If you are going to write a final research paper, however, you must inform me by class on Monday, February 13<sup>th</sup> and at that time you must also inform me of the topic of your research paper. The final research paper—25 to 30 pages in length— may be on a topic of your choosing as long as it is related to the course. Students are expected to work on the research paper throughout the semester and you must receive approval by me on the topic of your paper.

**Optional Information:** During the course of the semester the Supreme Court will be litigating the constitutionality of the Patient Protection and Affordable Care Act (ACA litigation). Because this case will be of great interest to many of you and because we will cover it in class, I have noted the briefing schedule on the syllabus and will post the briefs as they become available. These are not required readings (I will assign some portion of the briefs later in the semester as noted on the syllabus, but certainly not all of them).

## **PART I: HEALTH CARE ACCESS AND COST**

### **CLASS 1: MONDAY, JANUARY 9**

**Topics/Readings: Overview and Introduction to Health Law**

#### **Access to Health Care: Focus on Affordability/Ability to Pay**

- CB: Chapter 4, Section I.A. The Problem of Access, pp. 177-79;
- CB: Chapter 4, Section II.A. Options for Expanding Access to Care, pp. 191-201
- Supp: Chapter 7, Section II.A. Options for Expanding Access to Care, pp. 65-83
- Additional Reading: Kaiser Family Foundation, Overview of the Patient Protection and Affordable Care Act, available at: <http://www.kff.org/healthreform/upload/8061.pdf>

**Assignment:** For the first class, please submit several paragraphs explaining your goals for the class, interest in health law, any prior work or academic experience in the subject, and any career plans/ambitions in the field of health law. You should also submit a weekly reflection paper unless you are planning to use a free pass

**Of Interest in the ACA Litigation:** Three briefs due by January 6: (1) Individual Mandate – Brief to be filed by the U.S. Solicitor General in defense of the ACA’s individual mandate is due

to the U.S. Supreme Court. (2) Anti-injunction Act: Court-appointed lawyer to file brief arguing that the suit brought to challenge the constitutionality of the individual mandate is barred by the federal Anti-Injunction Act. (2) Severability – 26 States and others who have argued that the individual mandate in the ACA is unconstitutional to file the opening brief on the severability issue arguing that the entire law must fall if the mandate is held unconstitutional.

Reading these briefs is not a required part of the course, but may be of interest to a number of you. As a result, I will post a link to the briefs and analysis on the class home page optional reading section.

### **NO CLASS ON MONDAY, JANUARY 16**

### **CLASS 2: MONDAY, JANUARY 23**

**Topic/Readings:**      **Access to Health Care (cont.) – Disparities based on factors including race, medical condition, and immigration status**

- CB: Chapter 5, 212-253
- Supp: Chapter 8, 89-93
- Rayden Llano, [\*Immigrants and Barriers to Health Care: Comparing Policies in the United States and the United Kingdom\*](#), Stanford Journal of Public Health, June 1, 2011.

**Of Interest in the ACA Litigation:** Medicaid Expansion/10<sup>th</sup> Amendment – Brief by 26 States due on January 10<sup>th</sup> on issue of whether Medicaid expansion is constitutional under the 10<sup>th</sup> Amendment – arguing that it is not.

### **CLASS 3: MONDAY, JANUARY 30**

**Topic/Readings:**      **The High Cost of Health Care & Efforts Aimed at Cost Containment**

- CB: Chapter 4, Section I.B. The Problem of Cost, pp. 179-191
- CB: Chapter 4, Section II.B. Cost Control, pp. 201-211
- Supp: Chapter 7, Section B. Cost Control, pp. 83-88
- Additional Reading: John Holahan, et al., [\*Containing the Growth of Spending in the U.S. Health Care System\*](#), The Urban Institute, October 2011.

**Of Interest in the ACA Litigation:** Severability – The SG must file a brief by January 27<sup>th</sup> on the severability issue arguing that much, but not all of the remainder of the law can survive even if the mandate is nullified.

**PART II: FEDERAL AND STATE REGULATION OF PRIVATE HEALTH INSURANCE AND MANAGED CARE**

**CLASS 4: MONDAY, FEBRUARY 6**

- Topic/Readings:**                   **Private Health Insurance and Managed Care**
- CB: Chapter 6, Part I. Insurance and Managed Care: Some Basic Concepts, pp. 254-264
  - CB: Chapter 6, Part II. Contract Liability of Private Insurers and Managed Care Organizations, pp. 264-268
  - CB: Chapter 6, Part III. Tort Liability of Managed Care, pp. 269-303
  - Supp.: Intro to Ch. 9 & 10, pp. 94-95; Ch. 9, p. 96

**Of Interest in the ACA Litigation:** (1) Individual Mandate – By February 6, the 26 States and others who are challenging the constitutionality of the individual mandate must file their reply brief. (2) Anti-Injunction Act – By February 6, both the 26 States and the Solicitor General will file briefs arguing that the Anti-Injunction Act does not bar the suit from being brought.

**CLASS 5: MONDAY, FEBRUARY 13**

- Topic/Readings:**                   **Regulation of Private Insurance and Managed Care Under State Law**
- CB: Chapter 6, Section IV-VII, pp. 303-337
  - Supp.: Chapter 9, IV, V and VI. Regulation of Private Insurance and Managed Care, pp. 97-120 and VII Consumer Directed Health Care, p. 120

**Guest Lecturer:**           Dave Jones, Insurance Commissioner, State of California (invited)

**Of Interest in the ACA Litigation:** Medicaid Expansion – SG will file reply brief defending expansion of Medicaid as permissible under the 10<sup>th</sup> Amendment.

**NO CLASS ON MONDAY, FEBRUARY 20**

**Of Interest in the ACA Litigation:** Severability – Court appointed lawyer will file brief on severability issue arguing that nothing else should fall even if mandate is held unconstitutional.

**CLASS 6: MONDAY, FEBRUARY 27**

- Topic/Readings:**                   **Regulation of Insurance and Managed Care: The Federal Role**
- CB: Chapter 7, Regulation of Insurance and Managed Care: The Federal Role, Parts I (Intro); II (ERISA), pp. 338-398
  - Supp: Chapter 10, Part II (ERISA), pp. 121-129

- CB: Chapter 7, Part III, Other Federal Initiatives (HIPAA, COBRA, Anti-Discrimination Statutes), pp. 399-420
- Supp: Chapter 10, Part III, pp. 129-130

**PART III: FEDERAL PUBLIC HEALTH PROGRAMS: STRUCTURE, REGULATION AND FINANCING**

**CLASS 7: MONDAY, MARCH 5**

**Topic/Readings: Public Health Care Financing – A Focus on Medicare**

- CB: Chapter 8, Part I (Intro); and Part II (Medicare), pp. 417-464
- Supp: Chapter 11, Part II (Medicare), pp. 131-145

**CLASS 8: MONDAY, MARCH 12**

**Topic/Readings: Public Health Care Financing – A Focus on Medicaid and SCHIP**

- CB: Chapter 8, Part III (Medicaid) and Part IV (SCHIP), pp. 464-497
- Supp: Chapter 11, Part III (Medicaid) and Part IV (SCHIP), pp. 145-153

**Of Interest in the ACA Litigation:** (1) Anti-Injunction Act – Court appointed lawyer will file reply brief on anti-injunction issue on March 12. (2) Medicaid Expansion – 26 States and others must file reply on Medicaid expansion issue by March 12<sup>th</sup>.

**PART IV: HEALTH REFORM LITIGATION**

**CLASS 9: MONDAY, MARCH 19**

**Topic: Health Reform Litigation:**  
*Constitutionality of the Individual Mandate and the Question of Severability*

**Readings:** TBD (I plan to assign portions of the briefs filed in the case which will come out in the early part of the semester. I will also likely assign some commentary from both sides of the debate, but want to assign timely material so will provide the materials closer to the date of this class.)

**Guest Lecturer:** Neera Tanden, President of the Center for American Progress (invited)

**Of Interest in the ACA Litigation:** Severability Issue – Reply briefs – by SG and 26 states – on severability issues are due on March 13<sup>th</sup>.

**NO CLASS ON MONDAY, MARCH 26 – SPRING BREAK**

**ACA Litigation Note:** Court expected to hear two-days of oral arguments in case this week (date not definitely set). The first day of oral arguments will focus on the constitutionality of the individual mandate and the question of whether the suit is barred by the Anti-Injunction Act. The second day the court will hear arguments on the severability and Medicaid expansion issues.

### **CLASS 10: MONDAY, APRIL 2**

**Topic:** Health Reform Litigation –  
Constitutionality of Medicaid Expansion and Issue of Anti-Injunction Act

**Readings:** TBD (I plan to assign portions of the briefs filed in the case which will come out in the early part of the semester. I will also likely assign some commentary from both sides of the debate, but want to assign timely material so will provide the materials closer to the dated of this class.)

### **PART V: THE HEALTH CARE ENTERPRISE: LAWS ON FRAUD & ABUSE, ANTI-TRUST AND CALLS FOR DELIVERY SYSTEM REFORM**

### **CLASS 11: MONDAY, APRIL 9**

**Topic/Readings:** The Structure of the Health Care Enterprise

- CB: Chapter 10, Parts I (Intro), II (Forms of Business Enterprises) and III (Integration and New Organizational Structures), 558-614
- Supp: Chapter 13, Part III (Integration and the New Organizational Structure), pp. 154-158

### **CLASS 12: MONDAY, APRIL 16**

**Topic/Reading:** Fraud and Abuse

- CB: Chapter 11, Intro paragraph on page 672; Part II (Medicare and Medicaid Fraud and Abuse); Part III (The Stark Law: A Transactional Approach to Self-Referrals), pp. 702-743
- Supp: Chapter 14, Part II (Kickbacks and Self Referrals) and III (Stark Law Amendments), pp. 171-174

### **CLASS 13: MONDAY, APRIL 23**

**Topic/Reading:** Antitrust

- CB: Chapter 12, Introduction, pp. 744-749; Part II, Health Care Enterprises, Integration and Financing, pp. 775-834
- Supp: Chapter 15, Antitrust, pp. 175-181

## **CLASS 14: TUESDAY, APRIL 24**

### **Topic/Reading:      Delivery System Reform**

- Stephen M. Shortell, *Key to Health Care Reform: Changing How Care is Delivered*, 25 Notre Dame J.L. Ethics & Pub. Pol’y 399 (2011)
- Federal Trade Commission and U.S. Department of Justice, final [\*Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program\*](#), November 2011.
- Centers for Medicare and Medicaid Services (“CMS”), final rule on [\*Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations\*](#), 76 Fed. Reg. 67,802 – 67,844 (Nov. 2, 2011) (to be codified at 42 CFR pt. 425).

**Review Class to Be Scheduled during review period: April 25-27**

**April 30 – May 10, 2012: Final Exam Period – Final Papers and Take-Home Exams Must Be Submitted by the End of the Exam Period on May 10<sup>th</sup>**