SYLLABUS

HEALTH LAW AND POLICY

Mr. Bierig

The principal text for this course will be Rosenbaum and Frankford, Law and the American Health Care System, Foundation Press (2d Ed. 2012). Unless otherwise noted, all pages listed herein refer to the principal text. In each week, there will also be supplemental reading as indicated in this syllabus.

Part I – Public Financing of Health Care

Week 1

Class 1. a. Background (no reading)
b. Introduction to Medicare, pp. 450-460

Class 2. Basic Payment Issues Under Medicare
a. Payments to Hospitals, pp. 591-606
b. Payments to Physicians, pp. 613-623
c. Medicare Managed Care, (no reading)

Week 2

Class 1. Care for the Poor and Uninsured
a. Basic Issues, pp. 499-509
c. Waiver Programs, pp. 356-358, Massachusetts Medicaid Program Waiver
d. Medicaid and the American with Disabilities Act, pp. 552-561, 565-567

Class 2. Coverage Issues Under Medicare and Medicaid
a. Covered Providers
b. Covered Services  
Weaver v. Reagen, 886 F.2d 194 (8th Cir. 1989)  
Smith v. Rasmussen, 249 F.3d 755 (8th Cir. 2001)

c. Jurisdictional Issues and Medicare  
pp. 465-480, 483 (at n. 3) – 485

**Week 3**

Class 1. **Private Remedies Against State Underfunding**

a. The Boren Amendment and Equal Access Provisions (no reading)

b. Issues of Standing  
Arkansas Medical Society v. Reynolds, 6 F.3d 519 (8th Cir. 1993)  
pp. 537  

c. Issues of Proof  
Methodist Hospitals v. Sullivan, 91 F.3d 1026 (7th Cir. 1996)

Class 2. **Other Federal Regulation of Health Care**

a. HIPAA Privacy Regulations, pp. 762-769;  
Byrne v. Avery Center, 102 A.3d 32  
EMTALA, pp. 52-59, 66-70, 99-107; Morales v. Sociedad Espanola, 524 F.3d 54 (1st Cir., 2008); pp. 80-87; summary of R. Epstein critique of  
EMTALA

**Week 4**

Class 1. **Regulation of Billing Practices**

b. False Claims Act, pp. 1113-1116; 1129-1142; 1150 (at n. 7) – 1154 (at n. 10) Universal Health Services v. U.S. ex. rel. Escobar, 579 U.S. ___ (June 16, 2016)

Class 2. **Anti-Kickback and Related Laws**

a. Anti-Kickback Rules, pp. 1161-1172 (at top); Medical Dev. Network v. Professional Respiratory Care, 673 So. 2d 565 (Fla. App. 1996); Hanlester Network v. Shalala, 51 F.3d 1390 (9th Cir. 1995)  
Week 5

Class 1. Introduction to the Affordable Care Act
   c. Medicare Fact Sheets (CMS, March 31, 2011) – Summary of proposed rule provisions for ACOs under the Medicare Shared Savings Program; Improving Quality of Care for Medicare Patients: ACOs; Federal agencies address legal issues regarding ACOs

Class 2. Implementation of the ACA
   a. Establishment of Insurance Exchanges, King v. Burwell, 135 S.Ct. 2480
   b. Medicaid Expansion (no reading)
   c. Religious Objections, Burwell v. Hobby Lobby Stores, 134 S.Ct. 2751

Part II – Managed Care

Week 6

Class 1. Introduction to Managed Care; Relationship between Patients and MCOs
   a. Types of Managed Care Plans (no reading)
   b. What isManagedinManagedCare? pp. 894-905
   d. Relations with Physicians, pp. 919-927

Class 2. Litigation Against Managed Care Organizations Under State Law
   a. Vicarious Liability of MCOs, Petrovich v. Share Health Plan, 719 N.E.2d 756 (Ill. 1999)
   b. Assigning Too Many Patients, Jones v. Chicago HMO Ltd., 730 N.E.2d 1119 (Ill. 2000)
   c. Failure to Disclose Physician Incentives, Neade v. Portes, 739 N.E.2d 496 (Ill. 2000)
Week 7

Managed Care and ERISA

a. Introduction to ERISA, pp. 371-383


c. Any Willing Provider Laws, pp. 398 (at n. 3) – 401 (at bottom)


e. Tort Claims, pp. 987-997

Part III – Regulation of Practitioners and Providers

Week 8

Class 1. For-Profit and Non-Profit Providers

a. Are For-Profits Different from Non-Profits? (no reading)


c. Joint Ventures between Non-Profits and For-Profits, pp. 1095-1103

d. Conversion of Non-profits to For-profits (no reading)

e. Should hospitals and other health care providers qualify for state tax exemptions, Community Health Care v. Ill. Dept. of Rev., 859 N.E. 2d 1196 (Ill. App. 2006)

Class 2. Expansion of Providers and Corporate Practice


b. Certificate of Need, pp. 877-879

c. Hospital Mergers, HCA v. FTC, 807 F.2d 1381 (7th Cir. 1986)

Week 9

Class 1. Professionalism, Licensure, Credentialing, and Turf Battles of Practitioners

a. The Basis for Self-Regulation (no reading)

b. The Professional Ethic v. The Commercial Ethic, Association for Molecular Pathology v. Myriad Genetics, 133 S.Ct. 2107
c. Licensure, Petrie v. Va. Bd. of Medicine, 2016 WL 2851166

d. Credentialing and the HCQIA, pp. 805-807

Class 2. Hospital – Practitioner Relations


b. Exclusive Contracts, (no reading)

c. Antitrust Challenges to Credentialing Decisions and the HCQIA, pp. 828-839

d. Labor Law Issues, NLRB v. Kentucky River Comm Care, 121 S.Ct. 1861 (2001); discussion of employment status of medical residents

Week 10

Class 1. Payor Provider Relations

a. The Power of Purchasers, pp. 1241-1245; 1248-1253

b. Most-Favored-Nations Clauses, pp. 1280 (at bottom) - 1282

c. Physician Opposition to Payors, U.S. v. Alston, 974 F.2d 1206 (9th Cir. 1992)

Class 2. Integrated Care

a. Physician Networks, pp. 1285-1295, 1301 (at n. 4) – 1306

b. Integrated Delivery Systems, Blue Cross v. Marshfield Clinic, 65 F.3d 1406 (7th Cir. 1996)