Course Introduction

Welcome back from the semester break. I hope it was enjoyable for you. Welcome also to Health Policy Law. As this is a unique course, with a focus that is likely not readily apparent to you, I thought it would be helpful to outline what the course is about and what we'll cover in it.

Of course, one of the biggest national issues discussed and debated for the last several years has been “health care reform” at the federal level. Federal reform legislation, in the form of the “Patient Protection and Affordable Care Act” or PPACA (“pee-packa”), more often just called the Affordable Care Act or the ACA, was enacted in the spring of 2010. The ACA is also referred to (often pejoratively) as “Obamacare.” This legislation has made (or will make when implemented) fundamental changes in how we organize and finance health care for our citizens. Some of those changes, such as the individual insurance mandate, have generated debate and litigation that went to the U.S. Supreme Court in 2012. So, of course, part of our discussion in this class will involve examining the ACA and the changes it has made. However, this is not a course simply about ACA. Instead this is a course about our health care “system,” what it looks like, how it has developed over time, the policies choices that underlie the system, the issues that surround it, and the law’s impact on this system and those issues and policies.

Health care is, of course, a significant sector of our nation’s economy—it is a major U.S. industry. Spending for health care in this country is enormous—significantly more than any other nation. In 2012 we in the U.S. spent about $2.8 trillion on health care or about $8915 per person, an increase of 3.7 percent from 2011. While the rate of increase in our health care costs has slowed in recent years—due in part to the recession—it still is significant. Spending on health care in 2012 accounted for 17.2 percent of our nation’s Gross Domestic Product (GDP) [GDP refers to the market value of all final goods and services produced within a country in a given period] up from 16.6 percent in 2008 and from 7.2 percent in 1970—but down from 17.3 percent in 2011. By way of comparison, the 2012 total GDP for France, the world’s fifth largest economy, was $2.77 trillion. So, in 2012 we in the U.S. spent, just on health care, an amount equivalent to France’s total GDP for that year.

The Centers for Medicare and Medicaid Services (CMS) formerly the Health Care Financing Administration (HCFA), a federal agency, has estimated that by 2020 health spending in the U.S. will reach about $4.6 trillion or 19.8 percent of our GDP, a per capita rate of $13700. Some current projects indicate that by 2040 we will spend $1 of every $3 on health care—and that by 2080 this will be $1 in...
every $2. This is a lot of money!! Can we, as a nation, sustain this spending level? What about our other needs—education, defense, the environment? As one commentator recently stated, “We are bumping up against the capacity of the country to afford the current cost of healthcare.”

With all we spend, and despite what politicians may say, we cannot claim that we consistently provide our people with the best health care or that we are, as a nation, the healthiest on earth. In 2012 some 47 million nonelderly Americans (15.4 percent) lacked health insurance—and many others were underinsured. Those who have some form of insurance do not necessarily have access to adequate health care for a whole range of complex reasons—some as simple as having no reliable transportation to see a physician. Of course, a key goal of the ACA is to decrease the number of uninsured Americans with the individual insurance mandate together with the Medicaid expansion and subsidized coverage to qualifying individuals with incomes up to 400% of poverty beginning this year.

It is also important to note that, according to a 2010 report from the Commonwealth Fund, “The U.S. health system is the most expensive in the world, but comparative analyses consistently show the United States underperforms relative to other countries on most dimensions of performance.” K. Davis, et al., Mirror, Mirror on the Wall: How the Performance of the U.S. Health Care System Compares Internationally, 2010 Update. According to this report, on five identified dimensions of a high performance health system, namely quality, access, efficiency, equity, and long, healthy, and productive lives, the U.S. ranked last or next-to-last among the six nations studied in this report—Australia, Canada, Germany, New Zealand, the United Kingdom, and the United States. So, for all we spend, we don’t compare well to other countries. See http://www.commonwealthfund.org/Publications/Fund-Reports/2010/Jan/Mirror-Mirror-Update.aspx?page=all

In addition to its size and economic significance, the health care sector is enmeshed in policy issues of crucial current importance. Beyond the questions surrounding medical malpractice which have received much attention for many years, some of the most important problems facing our society today that lie at the heart of the reform debate include the financing and allocation of health care resources, protecting the public health, and a host of other health care concerns.

Health Policy Law looks at many of these issues. Specifically, in addition to ACA, this semester we will examine in this course the following areas: (a) the organizational structure and regulation of health care delivery including hospitals and other providers (including tax issues relating to not for profit hospitals); (b) the role of both regulation and competition in the health care marketplace, including various antitrust issues; (c) how we pay for and try to control the costs of health care, including private health insurance, governmental financing programs (e.g. Medicare and Medicaid) and various forms of “managed care”; and (d) ongoing and emerging efforts to address quality of care and patient safety issues.

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In an effort to anticipate some of your questions and in order to set out in writing some important information for future reference, please note carefully the following items relating to this class. If you have any questions about any of these items or other issues, please see me.


In addition to a syllabus for the first several weeks of the semester, attached is a list of books on reserve for this course. Several reserve items merit particular mention here. One is the two volume set Kane, Silverman & Singer, *The Law of Medical Practice in Illinois* (West 3d ed., 2007 with 2013 Supp.). While this book deals primarily with Illinois law, it does provide good background as well as a state-specific discussion of many of the areas we'll be considering this semester. Other useful books on reserve include Furrow, Greaney, Johnson, Jost & Schwartz, *Health Law* (2d ed. 2000), and Hall, Ellman & Orentlicher, *Health Care Law and Ethics in a Nutshell* (3d ed. 2011).

A good current information resource for you to look at is the American Medical News, the AMA’s weekly newspaper (similar to the National Law Journal). I suggest that you regularly review it to “keep up” with developments in the health law area. The print version of the most recent issue of *American Medical News* will be available for you to look at each week on reserve in the library. You can also access American Medical News on line at the SIU Law Library website from the terminals in the law library. Just go to the library search page and click on "Complete List of Subscription Resources" in the lower left hand corner of the page. Then, on the page that comes up, under the caption "Subscription Electronic Resources" click on "American Medical News." That will take you to the most recent issue. From here you can also access back issues.

Another good resource to use is the BNA health law and policy databases, particularly, the weekly BNA Health Care Policy Report and the BNA Health Law Reporter. These can also be accessed at the law library webpage from one of the library’s terminals. Under “Quick Links for Law Students & Faculty” click on “BNA databases.” Then you can click on the links to these two sources as well as any of the other BNA publications.

B. Tests and Grading: In lieu of a comprehensive final examination, my plans for the course call for two tests. Each test will count equally towards your course grade. The first test will be (tentatively) during the week of March 17. The second test will be during the scheduled final exam period. I will provide you with more information about the tests later in the semester. They will be scheduled through the Registrar’s Office, and will include both short answer and essay questions. The tests will be noncumulative.

The School of Law Rules require, for an upperclass courses with more than 13 students, that the final course grade median be no lower than 2.9 and no higher than
3.1 (subject to adjustment based on the class cumulative median GPA). In order to meet this requirement, I will evaluate your tests using a raw point total as set out on the grade sheet. Your raw points on each test will be added together and then grades on the 4.0 scale will be assigned based on the total raw point scores for the two exams using the Law School’s mandated median.

In order to give you some idea of what grade, on our 4.0 scale, I would likely assign if I was just grading each test on that scale, I will provide a grade equivalent for each test. Keep in mind however that this is simply to give you some idea so that you can assess your own performance on each test. Final grades will be determined from total raw points only and will not be based on an average of your 4.0 scale grades on each of the three tests.

C. Course TWEN Page: In order to facilitate communication and interaction in this course, I will be using The West Education Network (TWEN). At the TWEN site for this course you will find course information, announcements, discussion forums (with questions and hypotheticals), course materials, and other important items. The TWEN site will include a Glossary of Health Terms to help you begin to learn some of the language of health law and policy, as well as a Case Summary Forum where I will provide summaries and links to some of the cases we refer to in class that are not in our book. I think that using TWEN will enhance the learning experience for all of us in this course. You should be sure to check the course TWEN site on a daily basis.

D. Class Attendance and Participation: We will meet on Mondays and Wednesdays for 75 minutes at 12:30 pm in Room 206. Attendance will be taken with a sign-up sheet. While it really should go without saying, I expect regular, punctual class attendance, with full preparation and active participation by each of you. Preparation and a willingness to engage in an active dialogue are essential in this course—which will involve discussion of complex issues and problems.

E. Office and Office Hours: My office is Room 218 on the second floor. I am generally in or around the law school each day from 8:30 a.m. to 5:30 p.m. I am generally available and happy to talk with you about the class or whatever else is on your mind. If you have a question about the class and what we’re covering, you can usually catch me after class or stop by to see me in my office. If you have more detailed questions or would like to schedule a time to meet with me please see my secretary, Bonnie Miller in Room 212A to make an appointment. Also, you can email me at basanta@siu.edu if you have a question.

F. Recording of Classes: Like most other courses in the School of Law, our class sessions will be routinely recorded by our IT staff. These recorded classes will be available for viewing by students in the Computer Lab in the Law Library. Other than this, any other audio or visual recordings of a class session in this course without my permission are prohibited.
G. Emergency Procedures:

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

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I enjoy teaching this course. I think we'll find it both valuable and interesting. One of the things I like about this course is that we can, as a group, explore issues in depth. This will require, however, some real thought and effort from each of us.
The following is a syllabus for the first six weeks of the semester. It will be supplemented.

I. WEEK ONE (1/13)

Class 1: Introduction to the course. We’ll begin with a discussion of American health care policy—some history and getting the “big picture.” Read in Hall, et al. 1-55. As you do so, try to identify major themes and developments that you think are important to understanding the current structure of our health care in this country and the issues we have recently faced in the process of “health care reform.” Prepare a list of five “important things” you learned from these readings about health care in the U.S.

Class 2: Regulation of health care providers—facility licensure and accreditation. Read in Hall et al., 361-70 and 384-95 including Smith and Cospito cases and accompanying Notes. Prepare for discussion Research Exercise at 395.

II. WEEK TWO (1/20)

Class 1: No class Martin Luther King Day. To make up this class, students will attend lecture by Ryan Bioethicist in Residence Judith Daar on Wednesday, April 2 at 5:00 pm in the Courtroom (Rm 108).
Class 2: Regulation of health care providers—health planning and certificate of need regulations. Read in Hall et al., 395-407 including *Overlake Hospital* and *Irvington General Hospital* cases and accompanying Notes.

III. WEEK THREE (1/27)

Class 1: Regulation of health care providers—business organization—for profit, not-for-profit, and public entities. Read in Hall et al., 407-17 including *Queen of Angels* case and accompanying Notes. Review for discussion Problem at 417.

Class 2: Regulation of health care providers—not-for-profit providers and the charitable tax exemption. Read in Hall et al., 418-45 including *Simon*, *Provena*, and *Harding* cases and accompanying Notes.

IV. WEEK FOUR (2/3)

Class 1: Regulation of health care providers—the charitable tax exemption—completion of discussion of previously assigned materials. Read also McDermott, Will, & Emery, “Groundbreaking Legislation on Property Tax and Sales Tax Exemptions for Illinois Hospitals” (June 2012) and Illinois Hospital Association, Tax-Exempt Provisions of Health Reform both in Course Materials Forum at TWEN Page.

Class 2: Regulation of health care providers— the corporate practice of medicine doctrine. Read in Hall et al., 445-58 including *Bartron* and *Berlin* cases and accompanying Notes. Review for discussion Problem at 458.

V. WEEK FIVE (2/10)

Class 1: Regulation of health care providers—hospital/physician relations—the organized medical staff. Read in Hall et al., 458-71 including *St. John’s* and *Mahan* cases and accompanying Notes. Review 210 ILCS 85/10.4 in Course Materials Forum at TWEN.

Class 2: Regulation of health care providers—medical staff disputes. Read in Hall et al., 471-84 including *Greisman* and *Nanavati* cases and accompanying Notes. Also read *Adkins* case in Course Materials Forum at course TWEN page.

VI. WEEK SIX (2/17)

Class 1: Regulation of health care providers—medical staff disputes—completion of discussion of previously assigned materials
Class 2: Regulation of health care providers—memberships in managed care organizations and “deselection.” Read in Hall et al., 484-93 including Potvin case and accompanying Notes. Read also Huntington, Provider Terminations: Strategies for Risk Management in Course Materials Forum at TWEN page.