

Stony Brook University
School of Health Technology and Management
Health Care Policy & Management Program
HAS 536: Health Law syllabus v9
Fall 2018

HAS 536 **Health Law (3 credits)** **ON-LINE SYLLABUS**

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(Please indicate “student communication” in subject line)

Office Hours: E-mail with your available times to set up an appointment

Class Meeting Time: Distance Learning **Class Location:** Distance Learning

INTRODUCTION TO HEALTH LAW

Course Description

This course is designed to provide the student with a broad survey of fundamental legal and policy issues surrounding the financing and delivery of health care in the United States. This course will be both exciting and dynamic—especially now that key provisions of the Affordable Care Act (ACA) are being implemented. A combination of macro-economic factors—including an aging population—means that the health care industry will continue transformations that may run counter to traditional legal theories. This dichotomy is thought-provoking and therefore questions will be at the heart of this course including, perhaps, the biggest question of all: how will private interests conflict with the public good in the healthcare domain and how can such conflicts be resolved within the legal and regulatory environment?

While considering compelling policy debates, this course, also will provide a practical perspective on several major interrelated health laws of interest to healthcare professionals including:

- (1) Medicare & Medicaid
- (2) The Accountable Care Act—and subsequent efforts to repeal and replace the law;
- (3) Nursing Home regulation and the impact of longevity on Medicare and Medicaid;
- (4) Emergency Medical Treatment and Active Labor Act (EMTALA);
- (5) Federal and state regulation of private health insurance;
- (6) An examination of the civil law of torts (medical malpractice);

Lastly, we will touch on some broader areas of interest—including the role of the Supreme Court in defining individual rights under the Constitution, an examination of the civil law of torts and its impact on both public health and medical malpractice and fraud and abuse laws.

Goals

Following successful completion of the course, every student should be able to describe key ways in which US law influences and reacts to the nation’s health care system. Additionally, students will have the skills to cogently analyze the applicability of key statutes and legal precedents to situations arising in the particular topic areas of study. Finally, students will be prepared to succeed in advanced health law classes and to write academic articles on health and health law topics.

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Objectives

At the conclusion of this course the student will be able to:

- Understand potential impacts the Accountable Care Act (and whatever changes to the law may be introduced by President Trump and Congress) may have on the healthcare sector over the next several decades;
- Engage in a reasoned dialogue covering key legal areas important to the healthcare sector: health law, health care compliance, Patient Self-Determination Act, informed consent, patient confidentiality, medical records, HIPAA, liability of health care professionals, Good Samaritan Statute, physician assisted suicide, Oregon Death with Dignity Act, NY Health Care Proxy law, NY Do Not Resuscitate law, mandated reporting obligations for health care providers, patient safety and quality of care issues, health law and emerging technology;
- Describe ways that policymakers are working to improve the quality and safe delivery of health care;
- Understand how the law and various core legal, governance and finance issues impact health care delivery in the United States;
- Understand tort law and its impact on public health (e.g. rendering the large multi-state tobacco settlement) as well as its impact on individual healthcare providers (i.e. through medical malpractice law suits).

Teaching Strategies

This course is delivered through the use of e-instruction Blackboard platform with a combination of lectures, assigned reading materials, discussion board postings about and analysis of reported health law statutes as well as actual reported legal cases, health care compliance regulations and published compliance matters. Discussion board will include “breakout sessions” in which students are presented with hypothetical scenarios and cases for legal and/or compliance issue identification and problem solving analysis applying health law theories.

Readings and Texts

A Textbook is NOT Required for this Course. Please see my week by week analysis for Required Reading/Viewing.

In past semesters, a few students have asked if there is a textbook I recommend. It seems some students enjoy having access to a textbook as a reference text. If so, the one I recommend is: *American Casebook Series: Health Law: Cases Materials and Problems 7th edition* (Furrow, Greaney, Johnson et. al) published by West Publishing ISBN 9780314265098.

NOTE: I DO NOT ASSIGN ANY READINGS FROM THIS TEXTBOOK! ALL OF YOUR READINGS ARE OUTLINED IN THIS SYLLABUS!

Additional Required Reading

- (1) In order to get a sense of prominent health law and policy issues, students are required to subscribe to an on-line health law news service. Two good resources are the Kaiser Daily Health Policy Report (available at: <http://www.kaiserhealthnews.org/Email-Subscriptions.aspx>) and Robert Wood Johnson Foundation daily news digest (available at: <http://my.rwjf.org/login.do>). You are also welcome to choose any newspaper and self-select for health care policy

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(2) Reading and viewing as posted on your syllabus (see below week by week).

Extra Credit Reading (NOT REQUIRED)

An American Sickness: How Healthcare Became Big Business and How You Can Take it Back, Elisabeth Rosenthal (2017).

NOTE: Reading this book is not required in order to do well in my class. It is an excellent book, however, for those of you who want to deconstruct some of the interesting, and unique issues, present in the U.S. Health Care delivery system.

Methods of Evaluation

Students will be evaluated and graded as follows:

Grading

Three (3) Writing/Short Assignments	30 points (10 points each)
Final Exam (Take Home)	40 points
Participation/Discussion Board	30 points

Discussion Board

For each thread posted by the instructor, each student will be required to post substantive comments and/or attach a file or link that supplements the discussion. **For each thread, students may (but are not required to) reply to some of their colleagues' postings.** I am looking for an intellectually robust Discussion Board! Also, if you fall behind, please know that you are more than welcome to go back to a previous week to post. I grade the Discussion Board postings at the end of the semester so you have the entire semester to post intellectually captivating threads! As always, proper online etiquette is required for discussion board.

Short Writing Assignments

After reading the articles assigned you will be asked (throughout the semester) to answer three compelling questions. Previous classes have loved these assignments and I have truly enjoyed reading your well-crafted essays.

The schedule for the Short Writing Assignments is as follows:

Short Writing Assignment#1	Syllabus, Page 11 Tuesday September 25 at MIDNIGHT
Short Writing Assignment #2	Syllabus, Page 15 Tuesday October 23 at MIDNIGHT
Short Writing Assignment #3	Syllabus, Page 18 Tuesday December 4 at MIDNIGHT

NOTE: Please submit all deliverables (Short Writing Assignments and Final Exam) to my Stony Brook e-mail address listed above. I do not like the functionality of the Blackboard Assignment Manager.

Final Exam

The final exam will be a **take-home exam** and specific information will be distributed as we approach the exam.

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Extensions

I have been told I am one of the few Professors who endorses extensions. I understand that many of you have jobs and other significant responsibilities—and sometimes more time is needed to truly enjoy the process of learning. With regard to the three short writing assignments, I give each and every student, two opportunities to hand the assignment in after the deadline—with no grade penalty! To facilitate keeping you on track, I prefer that the assignments are handed in by the following week but if you need more time please ask and we can work out a deadline that works for you.

In terms of the Final, I post the questions far in advance and so, with the exception of a few cases (where a student has been sick or has had a difficult issue arise related to either work or family) I anticipate most students will be able to hand their Finals in on time. Again, if you have a difficult situation, please ask for what you need in order for me to be able to accommodate your schedule!

Grades will be assigned using Stony Brook University’s standard graduate grading schema.

Grade	Percent
A	93 or greater
A-	90 or more but less than 93
B+	87 or more but less than 90
B	83 or more but less than 87
B-	80 or more but less than 83
C+	77 or more but less than 80
C	73 or more but less than 77
C-	70 or more but less than 73
D	60 or more but less than 70
F	less than 60

Expectations of Learners

Your full participation is necessary for you to be successful in this course which provides an interactive learning experience among your peers and instructor. To acquire the knowledge and skills to meet the objectives of this course, learners are required and expected to meet the following expectations:

- Have a working computer with speakers or other means to participate on-line and listen to presentations with audio components. Microsoft Office software with Word and PowerPoint are required.
- Have an active e-mail address updated on Blackboard. Check your e-mail and logon to the Blackboard course daily for Announcements and course updates.
- Read and become familiar with the course syllabus including the learner expectations, objectives, and schedule.
- Be prepared for each discussion board session by having read all assigned articles.

Expectations of Faculty

- Course-related questions should be posted by students via e-mail.
- For personal questions, including a request for an extension, students may also e-mail the instructor directly.

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Syllabus Disclaimer

Although the course is intended to follow the contents of this syllabus, there may be situations which result in the necessitation of content change. Any such changes will be communicated to the students by the instructor as soon as available.

Equipment Requirements for Participation

For this class the student may need the following: computer, internet access, microphone for narrated Power Point presentations on the computer (may be optional; will depend on group presentation), computer, speakers, Microsoft Word (or compatible word processing software), and Microsoft Excel and PowerPoint.

Access to the Online Blackboard Site

You can access class information on-line at: <http://blackboard.sunysb.edu>. If you have used Stony Brook's Blackboard system previously, your login information (Username and Password) has not changed. "The materials in this course available online or via a website link are for the exclusive use of registered students currently enrolled in this course and may not be further distributed. In addition to legal sanctions, violation of these copyright prohibitions may result in University disciplinary action." Our class's on-line Blackboard site: Make sure that the email address in Blackboard is one that you check frequently, since any emails that I or another student sends to you, through the blackboard system, will be sent to that email address. Change your email address in Blackboard, if necessary. To change your email address in Blackboard, go to the blackboard logon page at: <https://blackboard.sunysb.edu/> and click on "My Institution" and then from the tools box select "Personal Information"; next you need to select "Edit Personal Information". Erase your old email address; type in your current email address - make sure the email address is correct and click on submit.

Blackboard Technical Support

Blackboard technical issues are supported by the University. Assistance can be obtained via the web at <https://tlt.stonybrook.edu/StudentServices/BbStudents/Pages/default.aspx>, by calling 631-632-9602 or by e-mailing helpme@ic.sunysb.edu. "The materials in this course available online or via a website link are for the exclusive use of registered students currently enrolled in this course and may not be further distributed. In addition to legal sanctions, violation of these copyright prohibitions may result in University disciplinary action."

UNIVERSITY POLICIES

Americans with Disabilities Act

If you have a physical, psychological, medical or learning disability that may impact your course work, please contact Disability Support Services, 128 ECC Building (631) 632-6748. They will determine with you what accommodations are necessary and appropriate. All information and documentation is confidential.

Students who require assistance during emergency evacuation are encouraged to discuss their needs with their professors and Disability Support Services. For procedures and information, go to the following web site: <http://www.ehs.sunysb.edu> and search Fire Safety and Evacuation/Physical Disabilities.

Critical Incident Management

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Stony Brook University expects students to respect the rights, privileges, and property of other people. Faculty are required to report to the Office of Judicial Affairs any disruptive behavior that interrupts their ability to teach, compromises the safety of the learning environment, or inhibits students' ability to learn, as per the SHTM Academic Policies and Procedures.

Plagiarism Policy

Any act of plagiarism will be taken very seriously in this class. Plagiarism is a form of academic dishonesty. Plagiarism is the use of others' words and/or ideas without clearly acknowledging their source. Plagiarism occurs when a writer uses another person's words and/or ideas in a paper without giving credit to the original author. As students, you are learning about other people's ideas in your course texts, your instructors' lectures, in-class discussions, and when doing your own research. When you incorporate those words and ideas into your own work, it is of the utmost importance that you give credit where it is due.

Plagiarism takes many forms: The form you might be most familiar with is direct copying of another's words without using quotation marks and/or without citing the source of those words. If you do quote verbatim from another source, always (a) use quotation marks around the words that are not yours and (b) properly cite the source at the end of the quoted material. Other forms of plagiarism are equally problematic and wrong. One such form is rewording parts of an author's point (but not others) and not citing that source. Any portion, be it ever so small, of another author's argument must be cited. If you 'borrow' phrases from an author, these phrases must be put in quotation marks and properly cited. A third form of plagiarism is when you reword an author's words entirely but you keep the authors' original sentence structure and paragraph structure without proper citation. Whenever you rely on other people's work (which we all do), just make sure to cite their ideas. See the following sites for help understanding plagiarism:

<http://www.indiana.edu/~wts/pamphlets/plagiarism.pdf>

<http://sunysb.libguides.com/content.php?pid=114624&sid=1895775>

Plagiarism, intentional or unintentional, is considered academic dishonesty and all instances will be reported to the Academic Judiciary. To avoid plagiarism, you must give the original author credit whenever you use another person's ideas, opinions, drawings, or theories as well as any facts or any other pieces of information that are not common knowledge. Additionally quotations of another person's actual spoken or written words; or a close paraphrasing of another person's spoken or written words must also be referenced. Accurately citing all sources and putting direct quotations – of even a few key words – in quotation marks are required. For further information on plagiarism and the policies regarding academic dishonesty go to the Academic Judiciary website at <http://naples.cc.sunysb.edu/CAS/ajc.nsf>.

Academic Integrity

Each student must pursue his or her academic goals honestly and be personally accountable for all submitted work. Representing another person's work as your own is always wrong (see plagiarism policy, above). Faculty are required to report any suspected instances of academic dishonesty, as per the SHTM Academic Policies and Procedures.

Academic Dishonesty

Intellectual honesty is a cornerstone of all academic and scholarly work, including in an on-line format. Penalties for misconduct may vary according to the circumstances of each particular case. Penalties may range in severity from verbal warning to expulsion from the University with

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the reason recorded on the student's permanent transcript. Academic dishonesty is a serious offense and will be treated in accordance with the University's Policies and Procedures Governing Undergraduate Student Academic Dishonesty, which can be located at http://www.uhmc.sunysb.edu/studserv/bulletin/03_SHTM2006.pdf

Writing Center

The Stony Brook University Writing Center, located in Humanities room 2009, supports writing at Stony Brook University. Trained undergraduate and graduate writing tutors help writers through one-on-one tutoring sessions that focus on each individual writer's needs. Writers of all skill-levels at any stage of the writing process are invited to make appointments at the Writing Center. Writers can bring in anything they're working on, be it a creative piece, a personal statement, or a paper for class. Tutors will help writers brainstorm, organize, focus, and develop their written works. To make an appointment on-line, go to <http://stonybrook.edu/writrhet/wcabout.shtml>.

Etiquette Rules (sometimes referred to as Netiquette Rules)

When participating in any aspect of an online course, there are rules of etiquette that need to be followed. These rules will be observed; students who fail to follow these rules of etiquette will lose points from their discussion board grade. Please do not use winks, smiley faces, etc. in any of your postings. Read the rules that are found posted on this website: <http://matcmadison.edu/online-etiquette-guide>

Remember some basic rules:

1. **Respect others and their opinions.** In online learning students from various backgrounds come together to learn. It is important to respect their feelings and opinions though they may differ from your own.
2. **Tone Down Your Language.** Given the absence of face-to-face clues, written text can easily be misinterpreted. Avoid the use of strong or offensive language and the excessive use of exclamation points. If you feel particularly strongly about a point, it may be best to write it first as a draft and then to review it, before posting it, in order to remove any strong language.
3. **Pick the right tone.** Since we depend on the written word in online learning, it is especially important to choose the right words to get your meaning across. For example, sarcasm is harder to detect when you read the words rather than hearing them.
4. **Keep a Straight Face.** In general, avoid humor and sarcasm. These frequently depend either on facial or tone of voice cues absent in text communication or on familiarity with the reader.
5. **Consider others' privacy.** Ask for permission if you want to forward someone's email messages to third parties. Keep in mind that all private email mail is considered copyrighted by the original author.
6. **Avoid inappropriate material.** Emailing should be used for course content/information; classmates' emails should not be used for private soliciting.
7. **Be forgiving.** If someone states something that you find offensive, mention this directly to the instructor. Remember that the person contributing to the discussion might be new to this form of communication. What you find offensive may quite possibly have been unintended and can best be cleared up by the instructor.
8. **Think before you hit the send button.** Think carefully about the content of your message before contributing it. Once sent to the group there is no taking it back.

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- Grammar and spelling errors reflect on you and your audience might not be able to decode misspelled words or poorly constructed sentences.
9. **Test for Clarity.** Messages may often appear perfectly clear to you as you compose them, but turn out to be perfectly obtuse to your reader. One way to test for clarity is to read your message aloud to see if it flows smoothly. If you can read it to another person before posting it, even better.
 10. **Brevity is best.** Be as concise as possible when contributing to a discussion. Your points might be missed if hidden in a flood of text.
 11. **Stick to the point.** Contributions to a discussion should stick to the subject. Don't waste others' time by going off on irrelevant tangents.
 12. **Frivolous email.** Don't forward jokes, "chain letters" or unimportant email to other students without their permission. Not only does it fill up their mailboxes but may offend people who do not share the same sense of humor or who are tired of these types of email.
 13. **Read First, Write Later.** Don't add your comments to a discussion before reading the comments of other students unless the assignment specifically asks you to. Doing so is tantamount to ignoring your fellow students and is rude. Comments related to the content of previous messages should be posted under them to keep related topics organized, and you should specify the person and the particular point you are following up on.
 14. **Netspeak.** Although electronic communication is still young, many conventions have already been established. DO NOT TYPE IN ALL CAPS. This is regarded as shouting and is out of place in a classroom. Acronyms and emoticons (arrangements of symbols to express emotions) are popular, but excessive use of them can make your message difficult to read.

Week 1: Week of August 26, 2018

Introduction to Health Law: The Influence of American "Ideals"

Our goal in the weeks ahead is to make sense of how health laws and health policy in the US are shaped by a variety of forces to produce a healthcare system unique to this nation. This task entails a look at the institutional features of our system of government that structures policymaking, the private interests and the many tensions inherent in providing adequate healthcare within a democratic system premised on a faith in individual liberties and laissez faire economics. Better healthcare in this country requires those who seek improvements to fully understand how our unique system creates both opportunities for unprecedented success, as well as the possibility of wholesale constraints within certain populations.

Reading/Viewing:

- Familiarize yourself with President Obama's Affordable Care Act: Please Read the *Summary of New Health Reform Law* available at the Kaiser Family Foundation's website at: <http://www.kff.org/healthreform/upload/8061.pdf>
- Then, please familiarize yourself with the Republican Party's proposed alternate plan: by reading The New York Times article, *What is in the AHCA (American Health Care Act): The Major Provisions of the Republican Health Care Bill* found on the New York Times website at <https://www.nytimes.com/2017/05/04/us/politics/major-provisions-republican-health-care-bill.html?mcubz=0>
- After reading about the Affordable Care Act and the American Health Care Act, compare the Affordable Care Act and the American Health Care Act using the Kaiser Family

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Foundation's tools found on their website at *Compare Proposals to Replace the Affordable Care Act* at <http://www.kff.org/interactive/proposals-to-replace-the-affordable-care-act/>.

- *Eliminating Waste in US Health Care*, Donald M. Berwick, MD, MPP, Andrew D. Hackbarth, MPhil, JAMA 2012;307(14):1513-1516 found at <http://news.medicine.duke.edu/wp-content/uploads/2013/08/Eliminating-Waste-in-US-Healthcare-Berwick.pdf>

Discussion Board Assignment

- Using what you've read and seen answer: Is there one thing you like about the ACA? Conversely, is there one thing that worries you? Similarly, is there one thing you like about the recently proposed plan by the Republicans—the American Health Care Act and one thing that worries you? You should feel free to express your own opinion and sometimes it is helpful to identify the lens through which you are viewing the law or the legislation. In other words, I may like something as a US taxpayer (because for example it reduces costs on the American taxpayer) but not like the very same thing as a healthcare provider (because it increases the regulatory burden on me as a healthcare provider, and therefore costs me money!)

Week 2: Week of September 3, 2018

Examining the Supreme Court decision, *National Federation of Independent Business v Sebelius* (the Supreme Court ruling that enabled the Affordable Care Act to be implemented)

On March 23, 2010, the day President Obama signed the ACA, the state of Florida filed a lawsuit in federal district court challenging the constitutionality of the individual mandate and the Medicaid expansion. Florida was joined by 25 other states: Alabama, Alaska, Arizona, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming. Another group of plaintiffs, including the National Federation of Independent Businesses (NFIB) and some individual plaintiffs who do not currently have health insurance, also filed a lawsuit in Florida. Both cases were considered together by the Supreme Court.

On the last day of the 2011-2012 Term, the United States Supreme Court issued its long-anticipated opinion about the Affordable Care Act (ACA). In a case known as *National Federation of Independent Business v. Sebelius*, the Court agreed to consider the constitutionality of two major provisions of the ACA: the individual mandate and the Medicaid expansion. A majority of the Court upheld the individual mandate. And, while the Court found the Medicaid expansion unconstitutionally coercive of states, because states did not have adequate notice to voluntarily consent and the Secretary could potentially withhold all of a state's existing federal Medicaid funds for non-compliance, a majority of the Court found that this issue was appropriately remedied by circumscribing the Secretary's enforcement authority, thus leaving the Medicaid expansion intact in the ACA. This class will review the Court's decision and look ahead to the implementation of health reform now that the constitutionality of the ACA has been resolved.

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Reading/Viewing: Please read the case Supreme Court case *National Federation of Independent Business v. Sebelius* found by using your search engine.

Discussion Board Assignment

Please discuss the Supreme Court's reasoning found in the case *National Federation of Independent Business v. Sebelius*. What are some of the issues you found interesting after reading this Supreme Court case? What analysis did the Supreme Court use to uphold the law's individual mandate to purchase insurance?

Week 3: Week of September 10, 2018

Introduction to the Healthcare market: Payers, providers and patients: Economics and the Law in the Financing of Care

Health care is a vital service that daily touches the lives of millions of Americans at significant and vulnerable times: birth, illness, and death. In recent decades, technology, pharmaceuticals, and know-how have substantially improved how care is delivered and the prospects for recovery. American markets for innovation in pharmaceuticals and medical devices are second to none. The miracles of modern medicine have become almost commonplace. At its best, American health care is the *best* in the world.

Notwithstanding these extraordinary achievements, the cost, quality, and accessibility of American health care have become major issues. Substantial increases in the cost of health care have placed considerable stress on federal, state, and household budgets, as well as the employment-based health insurance system. Health care quality varies widely, even after controlling for cost, source of payment, and patient preferences. Many Americans lack health insurance coverage at some point during any given year. The costs of providing uncompensated care are a substantial burden for many health care providers, other consumers, and tax payers.

The proper role of competition in health care markets has long been debated. For much of our history, federal and state regulators, judges, and academic commentators saw health care as a "special" good to which normal economic forces did not apply. Skepticism about the role of competition in health care continues.

This class will show our US health care delivery systems may have led to rising costs by examining Donald Berwick and Andrew Hackbarth's proposal for waste elimination, outlined in their article, *Eliminating Waste in US Healthcare*.

Reading/Viewing

- *Eliminating Waste in US Health Care*, Donald M. Berwick, MD, MPP, Andrew D. Hackbarth, MPhil, JAMA 2012;307(14):1513-1516 found at <http://news.medicine.duke.edu/wp-content/uploads/2013/08/Eliminating-Waste-in-US-Healthcare-Berwick.pdf>

Discussion Board

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Short Assignment # 1 (250-300 words)

After reading the article *Eliminating Waste in US Health Care*, please write a short essay discussing whether or not you believe the approach suggested in this article seems like it would be effective in addressing our system's "waste" issues? Are the theories advanced dependent upon whether or not the Affordable Care Act is the health care law of the land or will they work if another health care law replaces the Affordable Care Act?

Due: Tuesday September 25, 2018 at MIDNIGHT

Week 4: Week of September 17, 2018

Introducing Medicare: A national social insurance program, administered by the U.S. federal government since 1965

President Obama reinforced the concept that Medicare is an entitlement when he signed the ACA into law on June 8, 2010. *"This new law recognizes that Medicare isn't just something that you're entitled to when you reach 65; it's something that you've earned. It's something that you've worked a lifetime for, having the security of knowing that Medicare will be there when you need it. It's a sacred and inviolable trust between you and your country. And those of us in elected office have a commitment to uphold that trust – and as long as I'm President, I will."*

President Trump, when he was a candidate, was quite clear that he would **not** reducing Medicare benefits. He promised to impose discipline on the US \$4 trillion budget without touching Medicare. Many political analysts feel this promise deprived the Democrats of an "issue" they could use against him and that his belief (like President Obama before him) that Medicare is something you earn, probably contributed to his election. President Trump submitted his Fiscal 2018 budget and he kept his promise and did not reduce Medicare benefits.

In the United States, Medicare is a national social insurance program, administered by the U.S. federal government since 1965, that guarantees access to health insurance for Americans ages 65 and older and younger people with disabilities as well as people with end stage renal disease (Medicare.gov, 2012) and persons with Lou Gehrig's Disease. As a social insurance program, Medicare spreads the financial risk associated with illness across society to protect everyone, and thus has a somewhat different social role from for-profit private insurers, which manage their risk portfolio by adjusting their pricing according to perceived risk.

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Medicare offers all enrollees a defined benefit. Hospital care is covered under Part A and outpatient medical services are covered under Part B. To cover the Part A and Part B benefits, Medicare offers a choice between an open-network [single payer health care](#) plan (traditional Medicare) and a network plan ([Medicare Advantage](#), or Medicare Part C), where the federal government pays for private health coverage. A majority of Medicare enrollees have traditional Medicare (76 percent) over a Medicare Advantage plan (24 percent) (Medicare.gov, 2012). [Medicare Part D](#) covers outpatient prescription drugs exclusively through private plans or through Medicare Advantage plans that offer prescription drugs. In 2010, Medicare provided health insurance to 48 million Americans—40 million people age 65 and older and eight million younger people with disabilities.

This class will explore the history of Medicare in this country and discuss the “sacred and inviolable trust” that the President Obama specifically referred to and the promise President Trump made, while still a candidate, to maintain the Medicare system. It is important for those of you who will become Nursing Home Administrators to understand the basic underpinnings of both Medicare and Medicaid (to be covered in the following weeks).

Also, since the Affordable Care Act is the current law of the land, it is important for you to realize that it included a series of Medicare reforms that were designed to generate billions of dollars in savings for Medicare and strengthen the care Medicare beneficiaries receive. The new law protects guaranteed benefits for all Medicare beneficiaries, and provides new benefits and services to seniors on Medicare that will help keep seniors healthy. The law also includes provisions that will improve the quality of care, develop and promote new models of care delivery, appropriately price services, modernize our health system, and fight waste, fraud, and abuse. Implementing these changes extends the life of the Medicare Hospital Insurance Trust Fund by 12 years from 2017 to 2029, more than doubling the time before the exhaustion of the Trust Fund. This class will also explore the series of Medicare reforms on the health care system, particularly on hospitals, nationwide.

Reading/Viewing

- Please read the opinion piece *Trump’s Budget doesn’t Cut Medicare: It Should* found at The Washington Post website at https://www.washingtonpost.com/opinions/trumps-budget-proposal-doesnt-cut-medicare-it-should/2017/05/31/fd065e9c-4613-11e7-bcde-624ad94170ab_story.html?utm_term=.c7e720c9eae6
- Read The Kaiser Family Foundation: “Medicare & Minority Americans.” The Faces of Medicare, Fact Sheet found at: <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/medicare-and-minority-americans-fact-sheet.pdf>
- Watch “Health Reform and Medicare: Overview of Key Provisions” available at: <http://www.kaiseredu.org/Tutorials-and-Presentations/Health-Reform-and-Medicare.aspx>
- Read Affordable Care Act Update: Implementing Medicare Cost Savings found at: <http://www.cms.gov/apps/docs/aca-update-implementing-medicare-costs-savings.pdf>

Discussion Board

In what ways did the creation of Medicare in the 1960s fuel an increase in healthcare services? In what ways has this increase been a positive for society (e.g. increased longevity for people over 65, a vibrant sector of the economy providing high quality high paying jobs etc.) and in what

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ways did the creation of Medicare, perhaps, cause a rise in health care costs? What does Medicare cost for fiscal year 2018? In what ways does this cost hinder other areas of the federal budget (e.g. funding for, perhaps, infrastructure, education, jobs programs etc.) As a taxpayer, do you think Medicare is a worthwhile program? Why or why not?

Week 5: Week of September 24, 2018

Medicaid: An entitlement Program Designed to Help Low-Income Families (and others who meet the eligibility requirements) PART I: Health Services

Medicaid was created by the Social Security Amendments of 1965 which added Title XIX to the Social Security Act. Medicaid was created as an entitlement program to help states provide medical coverage for low-income families and other categorically related individuals who meet eligibility requirements. Candidates include the blind, aged, disabled and pregnant women. In essence, Medicaid serves as the nation's primary source of health insurance coverage for low-income populations. Each state administers its own Medicaid program, establishes their own eligibility standards, determines the scope and types of services they will cover, and sets the rate of payment. Benefits vary from state to state, and because someone qualifies for Medicaid in one state, it does not mean they will qualify in another.^[6] The federal Centers for Medicare and Medicaid Services (CMS) monitors the state-run programs and establishes requirements for service delivery, quality, funding, and eligibility standards.

The Affordable Care Act includes a Medicaid expansion which helps to extend health coverage for more low-income Americans and eliminate state variation in the current program. Medicaid is jointly administered and financed by states and the federal government, so changes to Medicaid will have a direct impact on states.

This class will explore how the ACA's Medicaid expansion provisions will impact the delivery of healthcare services within the State of New York.

Reading/Viewing

- New York Times, *How Medicaid Works and Who Covers it* found at <https://www.nytimes.com/2017/06/23/health/medicaid-basic-facts.html?mcubz=0>

Discussion Board

After reviewing the various New York Times articles related to Medicaid, have your thoughts on the program changed? If so how or how not?

Week 6: Week of October 1, 2018

Medicaid and Long Term Care for the Elderly (and others who meet the criteria) PART II: Nursing Home Care and Medicaid

Medicaid will pay for a nursing home only when having access to skilled care is medically necessary. In general, for a nursing home to be considered medically necessary, you must have a medical condition that is so serious that you need the level of nursing care that is only available in an institution.

In New York, when you are admitted to a nursing home, an evaluator will meet with you to review all of your medical conditions and your ability to do some activities of daily living like eating, moving between a bed and chair or wheelchair, using the bathroom, and getting around.

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The evaluator will use a form called a Hospital and Community Patient Review Instrument (HC-PRI) to assign a particular score to your need for nursing home care. Medicaid uses that information to decide whether you need a nursing home, what kind of nursing home is appropriate for you, and what services Medicaid will pay in the nursing home.

Reading/Viewing

- New York Times, *One Woman's Slide from Middle Class to Medicaid* found at <https://www.nytimes.com/2017/07/07/your-money/one-womans-slide-from-the-upper-middle-class-to-medicaid.html?mcubz=0>
- New York Times, *Medicaid Cuts may force Retirees out of Nursing Homes* found at <https://www.nytimes.com/2017/06/24/science/medicaid-cutbacks-elderly-nursing-homes.html?mcubz=0>
- New York Times, *Plan on Growing Old? Then the Medicaid Debate Affects You* found at <https://www.nytimes.com/2017/06/30/your-money/plan-on-growing-old-then-the-medicaid-debate-affects-you.html?mcubz=0>
- New York Times, *How the Medicaid Debate Affects Long Term Care Insurance Decisions* found at <https://www.nytimes.com/2017/07/14/your-money/how-the-medicaid-debate-affects-long-term-care-insurance-decisions.html?mcubz=0>
- New York Times, *You're Probably Going to Need Medicaid* found at <https://www.nytimes.com/2017/06/13/opinion/youre-probably-going-to-need-medicaid.html?mcubz=0>
- New York Times, *The Ethics of Adjusting Your Assets to Qualify for Medicaid* found at <https://www.nytimes.com/2017/07/21/your-money/estate-planning/the-ethics-of-adjusting-your-assets-to-qualify-for-medicaid.html?mcubz=0>
- Investor News, *Long Term Care Market Sees Rapid Decline (July 2016)* found at <http://www.investornews.com/article/20160721/FREE/160729979/long-term-care-insurance-market-sees-rapid-decline>

Discussion Board

For a combination of reasons (including a decline in the long term care insurance market and a dramatic rise in longevity) many Americans—poor, middle-class and even wealthy-- are using Medicaid to fund their long term care needs. What are your thoughts on this situation and what might be done so that future generations don't find themselves in this situation?

Week 7: October 8 & 9 2018

FALL BREAK. ENJOY!

Week 8: Week of October 15, 2018

The Obligation to Provide Care: EMTALA Emergency Medical Treatment and Active Labor Act

In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination (MSE) when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor,

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regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with EMCs. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.

Prior to the implementation of the Emergency Medical Treatment and Active Labor Act of 1986, a patient coming into a hospital emergency department often had no right to treatment or even evaluation, no matter how dire his or her condition. If patients could not prove that they had the resources to pay for care, they could be turned away or sent elsewhere—sometimes in a taxi, sometimes on foot. They often suffered adverse health consequences as a result of delayed care. And sometimes they died.

It is widely believed that the multiple horror stories about dumping were the primary cause of EMTALA's passage. But according to Larry S. Gage, president of the National Association of Public Hospitals and a partner in the Washington, D.C., law firm of Ropes and Gray, there were two other reasons that have been discussed far less. "EMTALA also grew out of Congressional concerns about the impact of the 1983 Medicare prospective payment system. Hospitals were going to receive a bundled payment for treating patients with a particular DRG, and there was a lot of fear [in Congress] that they would provide fewer services than would be necessary for Medicare patients." Another observer says that the late Sen. Edward Kennedy (D-Mass.) was the principal proponent of this argument.

Gage goes on to say that a third reason for passage of EMTALA was that some hospitals were no longer obligated to provide indigent care under the Hill-Burton Act. That law, passed in 1946, provided capital funds for reconstruction and improvement of hospitals, with the proviso that they must make care available to low-income uninsured patients, sometimes for 25 years and sometimes in perpetuity. "So by 1986," Gage says, "some hospitals were aging out of Hill-Burton obligations, and it was becoming less effective than it had been in terms of care of uninsured patients." Although Hill-Burton had other requirements for care of Medicare and Medicaid patients, the uninsured were far more vulnerable.

Additional Reading

Read, "*The Law that Changed Everything—and it isn't the one you think*" about the passage of the EMTALA found at <http://www.emilyfriedman.com/columns/2011-04-05-emtala.html>

Discussion Board

Please comment on any aspect of the article, "*The Law that Changed Everything—and it isn't the one you think.*"

Short Assignment #2 (250-350 words)

In specific, do you think the passage of EMTALA in 1986 codified the notion that **health care is a right and not a privilege in the United States**? In what way do you think the passage of this law "changed everything" as the article hypothesizes?

Due Tuesday October 23 at MIDNIGHT

Week 9: Week of October 22, 2018

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Supreme Court Cases that have defined Key Aspects of American Health Care System

In the early 1970s, the Supreme Court agreed to hear two cases challenging laws that restricted abortion. In *Roe v. Wade* (1973), the high court considered a challenge to a Texas law outlawing abortion in all cases except those in which the life of the mother was at risk. In *Roe*, the court concluded that constitutional rights to privacy and liberty protected a woman's right to terminate her pregnancy. Writing for the majority, Justice Harry Blackmun acknowledged that while "the Constitution does not explicitly mention any right to privacy," a number of prior decisions had found "a guarantee of certain areas or zones of privacy." This guarantee of privacy, Blackmun added, is grounded in several amendments within the Bill of Rights and in the 14th Amendment's guarantee of liberty, which taken together create zones of privacy in areas of society such as marriage, contraception, family relationships and child-rearing.

Having concluded in *Roe* that access to abortion is a "fundamental right," the court declared that only a "compelling state interest" could justify the enactment of state laws or regulations that limit this right. The court also recognized that the state has an "important and legitimate interest" in protecting the health of the mother and even "the potentiality of human life" inside her. The court then asked: When does the state's legitimate concern for maternal and fetal protection rise to the level of compelling interest? To answer this question, Blackmun created a three-tiered legal framework, based on the nine-month period of pregnancy, which gave the state greater interest and regulatory latitude in each successive tier.

This class will take a close look at Justice Blackmun's analysis; and also analyze subsequent Supreme Court decisions (including *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)) were a conservative Supreme Court upheld the constitutional right to have an abortion. The concept of *stare decisis* in the reconsideration of *Roe v Wade* will be closely examined. Additionally, we will explore other Supreme Court cases that have directly impacted the American healthcare system.

Reading/Viewing

Earl M. Maltz, *Abortion, Precedent, and the Constitution: A Comment on Planned Parenthood of Southeastern Pennsylvania v. Casey*, 68

Notre Dame L. Rev. 11 (1992). Available at: <http://scholarship.law.nd.edu/ndlr/vol68/iss1/3>

Yale Law Journal, *Before and After Roe v Wade: New Questions About Backlash* (2011)
Greenhouse, L. Siegal, R. 120 Yale L.J. 2028.

Discussion Board Assignment: Stare Decisis

Does learning about the concept of *stare decisis* change your view of the political debate surrounding abortion? Given what you now know about the concept, was there ever a chance the landmark decision *Roe v Wade* could have been overturned? Given Justice Blackmun's trimester analysis, at one point will the state have a compelling interest to limit abortion?

Week 10: Week of October 29, 2018

Wrestling with the Dramatic Rise in Longevity and the "Oldest of the Old"—The Regulation of Nursing Home Care in the US

Nursing home care in the USA is part of the costliest health-care system in the world, and is a heavily regulated industry still struggling to maintain quality care across the country. The modern

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nursing home dates back to the 1930s and the passage of the Social Security Act, with continued growth of the industry after the 1960s, when the Medicare and Medicaid programs were created.

As in other industrialized countries, the elderly population in the USA is growing, and the highest growth is occurring among those older than 85. This is the group with the highest health-care costs and rates of nursing home utilization. There are two major types of care provided in US nursing homes: long-term and subacute care. In the 1980s, quality of care became an important concern, which led to major reform and passage of new regulations under the law known as OBRA-87. During this time, the Minimum Data Set (MDS), which is a comprehensive assessment tool, was introduced. It continues to be a vital tool for both payment and research. Reform also ushered in the state survey process, which scrutinizes nursing homes yearly and assesses financial penalties for substandard care. The aging of the American population will provide challenges for financing nursing home care in the future. The use of private long-term care insurance is growing, and may be an important source of payment for this type of care in the decades to come.

Reading/Viewing

- *An Opportunity to Innovate: The Aging of Eastern Queens and Nassau County* (**NOTE: Your Professor was a co-author on this qualitative study**)
- *Medicaid Institute at United Hospital Fund: New York's Nursing Homes: Shifting Roles and New Challenges* (Thomas H. Dennisen)
- *New York Times*, Nursing Home Residents Gain New Protections found at <https://www.nytimes.com/2017/01/27/health/nursing-home-regulations.html?mcubz=0>

Discussion Board

Please read the key findings of the report *An Opportunity to Innovate: The Aging of Eastern Queens and Nassau County*. Of the ten (10) key findings listed, which finding is of most interest to you from your perspective? Why?

Week 11: Week of November 5, 2018

Private Health Insurance and Managed Care: Contract & Tort Liability

Two types of liability—contract and tort—are relevant in litigation involving health plans. Contracts are voluntary agreements entered into for the material benefit of 2 parties; *contract liability* refers to the enforcement of contracts. In most cases, courts limit the penalties associated with breach of contract to the value of the services due under the contract.

Torts are civil, non-contractual wrongful actions in which injured persons seek monetary damages from the responsible entities. But tort liability may also exist in cases of contractual relationships. Malpractice claims made by patients against their physicians are tort claims. Physicians are liable for malpractice if the services they provide do not meet the customary standard of care, which is set by the medical profession. Courts have chosen to grant this authority to the medical profession because of the complexities inherent in medical decision making and the belief that only physicians are capable of assessing the risks and benefits associated with various treatment regimens. Plaintiffs in malpractice suits must show that the

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physician had a duty to provide appropriate care, that this duty was breached, that this breach resulted in injury to the patient, and that the injury resulted in specific damages.

In malpractice cases, patients may be compensated for all injuries they have suffered, and this compensation may include medical care costs, lost wages, and pain and suffering; in situations in which the provider is shown to have acted maliciously, punitive payments may be awarded as well. Punitive compensation is designed to prevent actions unlikely to be restrained by compensatory awards.

As a result of managed care entities having assumed a dominant role in the US health care landscape, the widespread adoption of prior-certification requirements has important implications for the nature and amount of damages at stake in lawsuits filed by enrollees against their health plans. Before the diffusion of managed care, the standard practice was for health care providers to supply services to patients, who in turn filed claims with their health plans. If their health provider refused to pay the claim, enrollees could appeal the decision, and if the appeal failed, they could sue the plan in court. Today, however, patients often must obtain approval from their health plans before receiving a particular type of care. Thus, in cases in which health plans require preapproval in regard to particular types of health care services, patients may sustain damage to their health as a result of their inability to obtain such services.

Health plans are responsible for coverage decisions, and they may be sued for decisions that violate their contracts with enrollees. Health plans are not, however, responsible for treatment decisions made by health care professionals. If health plan enrollees sustain injuries as a result of such treatment decisions, they may file a medical negligence suit in state court against the health care professional in question.

Reading/Viewing

- [The Regulation of Private Health Insurance](#), Robert Wood Johnson Foundation Report (January 2009)
- [When and How Provider competition can improve health care delivery](http://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/when-and-how-provider-competition-can-improve-health-care-delivery) (McKinsey & Company, 2010) found at <http://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/when-and-how-provider-competition-can-improve-health-care-delivery>
- *Uncertainty and the Welfare Economics of Medical Care*, Kenneth Arrow (1963)

Discussion Board

Please discuss any aspect of the law of private insurance you feel comfortable with on the Discussion Board. Do you think private insurance should be a benefit we receive from our employers? Would you like to advocate for a different model (for example the model created in Massachusetts under Governor Mitt Romney?)

Short Writing Assignment #3

In what ways is the health care market place different from other market places? Can introducing free market principles improve the US Health Care Delivery System? Does it make sense to have profit-driving executive decisions in health care? Why or why not?

Due Tuesday December 4, 2018 at MIDNIGHT

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Week 12: Week of November 12, 2018

Regulation of Private Insurance and Managed Care Under NY State Law

New Yorkers are protected by a number of important state and federal policies and regulations designed to make quality health insurance more accessible. This section discusses several of these protections. Unlike many other parts of the country, in New York your health insurance options do not depend on your health status, age, or any other factor that might predict the use of health services by you or your employees. Instead, your ability to get health insurance is dependent on your being an individual residing or a business operating in New York State and your ability to pay the premium. This protection is called **guaranteed issue**. In addition, your health plan cannot be cancelled because you get sick or submit a lot of claims. This is called **guaranteed renewability**.

The premium your health insurance carrier charges cannot depend on your or your employees' health status, age, gender, occupation or pre-existing conditions. Instead, premiums are based on the average cost of offering coverage to all individuals seeking the same plan from the same insurer in the same geographic area. This is called community rating. **Limits On Pre-existing Condition Exclusions** In general, when an insurer imposes a "pre-existing condition exclusion", it means the insurer has excluded coverage for a medical condition that existed and/or for which the enrollee received treatment during a specified time period prior to enrolling in the health plan. Federal and New York State law provides consumers some protections in this matter. In the small-group market, a health plan can count as pre-existing conditions only those for which medical advice was given or treatment was recommended or received from a physician within the 6 months immediately before joining that plan. Health plans can only exclude coverage (impose a waiting period) for adults with pre-existing conditions for up to 12 months. If you had prior coverage for the condition and had continuous coverage or a break in coverage for less than 63 days, the health plan must subtract the time you had coverage in your prior plan from the waiting period time. In addition, group health plans cannot apply a pre-existing condition exclusion period for pregnancy, children, or genetic information.

Discussion Board

Please use this week to discuss your rights as a health insurance consumer in New York. Do you have enough rights or do you think citizens need more rights to ensure the insurance they purchase, whether through their employer or on the private market, serves their needs?

Additional Reading

- **Your Rights as a Health Insurance Consumer --**
<http://www.dfs.ny.gov/insurance/hrights.htm>
- **The Managed Care Bill of Rights --**
http://www.health.state.ny.us/health_care/managed_care/billofrights/bill.htm

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Week 13: Week of November 19 & November 26, 2018

The Liability of Healthcare Institutions

In this class we will take a look at the liability of healthcare institutions and establish what theories give rise to this liability. Then, we'll step back and take a look at the management of "quality" within the regulatory framework, including some of the new approaches to promoting quality including financial incentives and electronic medical records. Prior to class please review the following cases in addition to the recommended textbook reading:

Additional Reading

- **Rethinking Hospital Quality:** Atul Gawande, *The Checklist: If Something So Simple Can Transform Intensive Care, What Else Can it Do?*, NEW YORKER, December 10, 2007,
http://www.newyorker.com/reporting/2007/12/10/071210fa_fact_gawande

- **Private Accreditation of Health Care Facilities**
JCAHO Fact Sheets:
http://www.jointcommission.org/facts_about_the_joint_commission/
http://www.jointcommission.org/facts_about_joint_commission_accreditation_and_certification/
http://www.jointcommission.org/accreditation_process_overview

HAPPY THANKSGIVING!!!!!!

Week 13 & Week 14: Week of December 3 & December 10, 2018

Fraud and Abuse: False Claims Act, Anti-Kickback Statute and The Stark Law

Most physicians strive to work ethically render high-quality medical care to their patients, and submit proper claims for payment. Trust is at the core of the physician-patient relationship. The Federal Government also places enormous trust in physicians. Medicare and other Federal health care programs rely on physicians' medical judgment to treat patients with appropriate services. When reimbursing physicians and hospitals for services provided to program patients, the Federal Government relies on physicians to submit accurate and truthful claims information. The presence of some dishonest health care providers who exploit the health care system for illegal personal gain has created the need for laws that combat fraud and abuse and ensure appropriate quality medical care. **This class will focus on understanding how to comply with these Federal laws by identifying "red flags" that could lead to potential liability in law enforcement and administrative actions.** The information is organized around three types of relationships that physicians frequently encounter in their careers:

- Relationships with payers;
- Relationships with fellow physicians and other providers; and
- Relationships with vendors

The five most important Federal fraud and abuse laws that apply to physicians are the False Claims Act (FCA), the Anti-Kickback Statute, the Physician Self-Referral Law (Stark Law), the Social Security Act and the U.S. criminal Code Violations. The fraudulent conduct addressed by these laws is also prohibited in Medicare Part C and Part D and in Medicaid, including fraud and abuse related to dual eligibles. Dual eligibles refers to individuals who are entitled to or enrolled

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in Medicare Part A or enrolled in Part B and who are also eligible for Medicaid.

Reading/Viewing

Please read *Congressional Research Service's Health Care Fraud and Abuse Laws Affecting Medicare and Medicaid: An Overview*, Jennifer A. Staman (September 8, 2014)

Discussion Board

During the first few weeks of class we read Berwick and Hackbarth's influential article *Eliminating Fraud Waste and Abuse in US Healthcare*. Based on what you've learned this week in class, what areas of fraud, waste or abuse would you focus on if you were a government regulator (at either the State or Federal level). What are some ways the US Health Care System could ensure it was not subject to such abuse?

Week 15: Week of December 10, 2018

FINAL EXAM

Final Exam: To be posted at least three weeks before due on the last official day of classes. The Final Exam is due on the last day of classes MAY 4, 2018. Extensions will be available by pre-arranged agreement.