

Syllabus
New York University—Vanderbilt Hall—VH216
L13.3525.001—Health Law (and Policy) (4 cr)
Tuesday—2:05 – 3:55 p.m.
Thursday—12:05 – 1:55 p.m.

Spring 2006

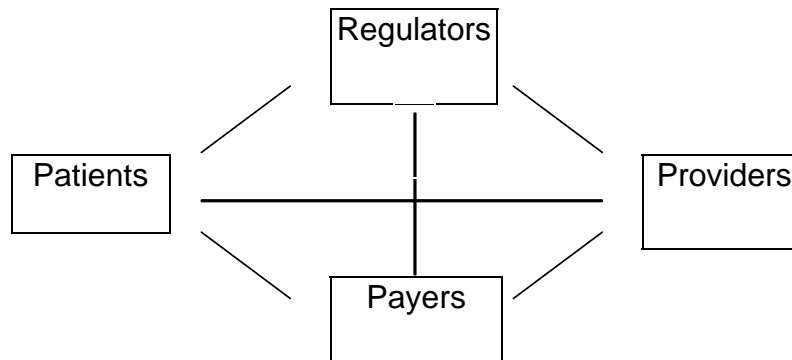
Ted Marmor – Visiting Professor

Description

L13.3525.001 - Health Law (and Policy) 4 credits. This course provides a general introduction to health law, with attention to healthcare policy, politics and economics. Topics will include, among others, access to health care, patients' rights, the meaning and effects of “managed care”, the relationship of health care to public health, the financing and regulation of Medicare and Medicaid, and selected issues in bioethics. Treatment of these issues in foreign health care systems will be analyzed to provide perspective on American developments and patterns.

The basic text for this course is Hall, Bobinski, Orentlicher, *Health Care Law & Ethics* (6th ed. 2003) (hereafter “CB”), Aspen Publishers, available at NYU book store. Additional readings are available for purchase at the NYU bookstore.

Examination with a limited paper option.



I. Overview of the Health Care System

1. The Uneasy Relationship Between Health and Health Care

CB 18-35

“Producing Health, Consuming Health Care,” Chapter 2, R. G. Evans and G. L. Stoddart, Why Are Some People Healthy and Others Not? The Determinants of Health of Populations, Aldine deGruyter Publishers, 1994.

2. Professionalism and the Struggle for Control of Health Care Decisionmaking

CB 38-42

Introduction, “The Social Origins of Professional Sovereignty,” pages 3 - 29, from The Social Transformation of American Medicine, Paul Starr, Basic Books, Inc. Publishers, 1982.

“Professionals and Professionalism: An Overview,” by Robert Gordon, Professor Yale University.

3. Financing Medical Care

A. Basics

CB 43-51

“The Special Case of Medical Insurance, Michael Graetz & Jerry Mashaw, Chapter 7, True Security, Yale University Press, 1999.

B. The “New World” of Managed Care

CB 60-63

“How Not to Think About Managed Care,” Jacob Hacker and Theodore Marmor, University of Michigan Journal of Law Reform, Vol. 32, No. 4, Summer 1999.

4. Ethics, Economics & Choice

CB 68-76, 86-89

Uwe Reinhardt’s review of Richard Epstein’s book Mortal Peril: Our Inalienable Right to Health Care, NY, NY Addison-Wesley, 1997. Appearing in JAMA, Vol 278, No 17, November 5, 1997.

Letter to the Editor by Richard Epstein, “Articulating a Social Ethic for Health Care;” letter by James F. Lally, and reply by Uwe Reinhardt. Appearing in JAMA, Vol 279, No 10, March 11, 1998.

“Will Clinton’s Plan Be Fair?” Ronald Dworkin, *The New York Review*, January 13, 1994.

“Ethics, Institutional Complexity and Health Care Reform: The Struggle for Normative Balance,” Michael J. Graetz, and Jerry L. Mashaw, 10 *Journal Contemporary Health Law & Policy* 93, 1993.

5. Political Analysis of Health Care?

“Political Analysis: Applications to Health Care and Health Policy”, Robert Wood Johnson (RWJ) Investigator Awards in Health Policy Research, Theodore R. Marmor and Rudolf Klein (July 28, 2000). (This is Professor Marmor’s submission applying for a grant with the RWJ foundation.)

“Can the American State Guarantee Access to Health Care?” Chapter 5 – Theodore R. Marmor and Jerry Mashaw, in *The State as The Guarantor of Social Welfare: A Structural Perspective On Contemporary American Debates on Medical Care Reform*, edited by Patricia Day, Daniel M. Fox, Robert Maxwell and Ellie Scrivens, Blackwell Publishers, 1996.

“The Reform of the 1990s, The United States,” pages 71-84 in Chapter 3, in *Accidental Logics*, Carolyn Tuohy, Oxford University Press, Inc., 1999.

II. The Legal World of Physician and Patient

A. Contract, Consent and Their Limits

6. Rights to Care and Duties to Treat

CB 104-116, 118-123, 128-138, 591-595

7. Forming, Limiting and Terminating Treatment Relationships

CB 142-162

8. “Informed Consent”

CB 186-189, 192-200, 204-207, 213-223

B. Distributing the Costs of Accidents

9. Liability Rules for Physicians

CB 280-289, 296-302, 328-337

“The Quiet Demise of Deference to Custom: Malpractice Law at the Millennium”, Philip G. Peters, Jr., 57 Washington & Lee Law Review 163, 2000.

10. Enterprise Liability

CB 423-436, 442-452, 460-467

11. Malpractice Reform

CB 467-483

“The Case for No Fault Medical Liability,” Paul C. Weiler, 52 Maryland Law Review, Inc. 908, 1993.

III. State Intervention in Medical Decisionmaking

A. The General Structure of Health Care Regulation

12. Regulating Quality

“The Necessary and Proper Role of Regulation to Assure the Quality of Health Care”, Timothy Stolfus Jost, 25 Houston. Law Review 525, May, 1988.

“Taking Action to Improve Safety: How to Increase the Odds of Success,” Donald M. Berwick, in Keynote Address Taking Action to Improve Safety, Enhancing Patient Safety and Reducing Errors in Health Care, Rancho Mirage, CA., November 8-10, 1998.

13. Insurance and HMO Regulation in the Shadow of ERISA

CB 928-954, 1024-1030

“Patient Protections in Managed Care”, Hearing Before the Subcommittee on Health of the Committee on Ways and Means, Serial No. 107-14, April 24, 2001.

B. State Regulation and Patient Autonomy

14. Regulating Refusals of Treatment

CB 493-519, 524-539, 552-557

15. Regulating Physician Assisted Suicide

CB 565-591

16. Regulating the Sick to Protect the Public Health

CB 833-838, 843-853, 860-864, 871-883

IV. Financing Health Care

17. The Development and Current Structure of Health Care Payment Arrangements

CB 894-909, 912-920

“The Structure of the U.S. Health Care System,” Chapter 3, “Taking Stock: The Results of the American Health Care System,” and Chapter 4, from *Your Money or Your Life*, by Marc Roberts.

18. Policy: The Many Paths to Global Reform I

“Northern Light - Canada's Health Insurance and Ours: The Real Lessons, The Big Choices,” Theodore Marmor and Jerry Mashaw, *American Prospect*, No 3, Fall, 1990.

“Social Insurance and Health Care, Chapter 9, Jerry Mashaw & Michael Graetz, *True Security*, Yale University Press, 1999.

19. Policy: The Many Paths to Global Reform II

CB 1036-1050

“The Case for Federalism and Health Care Reform,” with replies, *CT Law Review*, Vol 28, No 1, Jerry Mashaw and Theodore R. Marmor, Vol 28 No 1, Fall 1995.

“The States and Health Care Reform: The Road Traveled and Lessons Learned From Seven That Took the Lead”, Pamela A. Paul-Shaheen, *Michigan Public Health Institute*, 23 *Journal Health Politics Policy & Law* 319, Duke Univ. Press, 1998.

20. Programmatic Reform: Medicaid

“The Politics of Health Care Rationing: Lessons from Oregon,” Robert Hackey and David Rochefort editors, Jonathan Oberlander and Lawrence Jacobs, *The New Politics of State Health Policy*, University Press of Kansas, 2001.

21. Programmatic Reform: Medicare Payment Arrangements

CB 1007-1021

“Rethinking Medicare Reform,” Jon Oberlander and Theodore Marmor, Health Affairs, January/February 1998.

Commentary – “Rethinking Medicare Reform — Needs Rethinking,” Henry Aaron and Robert Reischauer reply.

“Medicare Price Controls: The Wrong Prescription” review by Stuart M. Butler , Health Affairs, Vol 17 No 1, Jan-Feb 1998.

22. Programmatic Reform: Medicare Rx Drug Benefits

(To be supplied)

23. Programmatic Reform: Private Health Insurance

“Can ‘Consumerism’ Slow the Rate of Health Benefit Cost Increases?” Paul Fronstin, EBRI Issue Brief Number 247, July 2002.

“Insurance Reform in a Voluntary Market,” Chapter 9, 1995 Annual Report to Congress.

V. The Industrial Organization of Medical Care

24. Corporate Practice and the Profit/Not-for Profit Divide

CB 1065-1069, 1122-1135, 1087-1098

25. Doctors, Hospitals & “Managed Care” Networks

CB 1135-1169

26. Health Care and the Anti-Trust Laws

CB 1169-1229