

**THE UNIVERSITY OF ALABAMA SCHOOL OF LAW**

**HEALTH CARE LAW (Law 696) – Fall 2014**  
**Mon 5:30 – 7:20 Room A255**

**INSTRUCTOR:** William W. Horton  
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**SYLLABUS AND CLASS POLICIES**

**TEXTS:** Furrow, Greaney, et al., *The Law of Health Care Organization and Finance* (West 7th ed. 2013) (“Furrow”, in the syllabus below)

Supplemental materials available on TWEN course website (“TWEN”, in the syllabus below, and subject to additions, subtractions and general updating on the TWEN course website).

**TWEN Website:** <http://lawschool.westlaw.com/manage/homepage.aspx?courseid=179164>

Please register for the TWEN website as soon as possible. Course materials, including materials for the first class, will be on the site.

**COURSE OBJECTIVES:** This course is intended to:

- Provide students with a basic understanding of the structure, regulation and financing of the U.S. healthcare delivery system
- Introduce students to key legal concepts in healthcare delivery, including practitioner and facility licensure, measurement of quality, relationships among providers, public and private reimbursement and healthcare fraud
- Introduce students to major themes in healthcare reform
- Highlight selected challenges in the practical representation of clients in the healthcare industry
- Provide students with general exposure to concepts and approaches in advising clients who operate within a highly regulated industry

This course will not cover in any significant way:

- General concepts of tort liability in the healthcare industry (e.g., malpractice) (which are, in general, covered in Health Care Liability, Law 815)
- Concepts of clinical ethics in patient care
- Regulation of clinical research, food and drugs, etc.

There are no specific prerequisites for the course, although some basic knowledge of Business Organizations will be helpful in some of the discussion.

**ATTENDANCE:** The Law School's attendance policy will apply to this course. There will be a sign-in sheet in each class session, and you are responsible for signing in to verify your attendance (and no student may sign in for another student). Beyond that, healthcare law, including that portion of it we study in this class, is a discipline with a lot more questions than answers. A major part of learning to "do" health law is learning effective approaches to struggling with those questions. Students who miss significant portions of class discussion will likely miss a significant practical benefit of the course.

**PARTICIPATION AND PREPARATION:** Consistent with the foregoing, active and thoughtful class participation is both required and essential to the learning process. Accordingly, adequate preparation for each class period is critical. I expect to call upon one or more students (at random) in most, if not all, class periods to brief and/or discuss the assigned material and related questions and problems. Consistent with Law School policy, substantial and/or repeated lack of preparation may result in the reduction of your final grade by up to one grade level (i.e., .333). Similarly, truly extraordinary contributions to class discussion (quality being significantly more important than quantity) may result in an upward adjustment of up to one grade level in your final grade (however, it is my expectation that the general level of contributions to class discussion will be sufficiently high that truly extraordinary contributions are relatively unlikely to occur).

In that regard, I am aware that life happens. If you are going to be unavoidably absent or are seriously unprepared for a particular class period, please let me know by email not later than 4:30 on class day to avoid potential adverse consequences. I would prefer that you come to class even if you are seriously unprepared; just let me know so that I will not call upon you. Note, however, that repeated use of this mechanism may be deemed to constitute substantial and/or repeated lack of preparation for purposes of the immediately preceding paragraph.

**A FURTHER NOTE ON PREPARATION:** There is a lot of reading in this course. Much of it is "environmental" in nature, to acquaint you with what is probably a different economic and regulatory world than you have previously encountered. Do not worry overmuch about specific details; focus instead on concepts and the relationships among concepts. We will try to elicit the most relevant details through class discussion. This does not mean you should not read the assigned material carefully. Rather, it means you should not obsess over the fine points of statutes and regulations, but instead think about why they are there and how they work (or don't) together.

**SCHEDULE:** Class will generally meet as regularly scheduled, except on October 13, when I will be out of town. I will notify you of the make-up day for that class period as soon as I can schedule it. If any other cancellations are necessary, I will notify you as soon as practicable and will post a notice on the TWEN course website. Any make-up classes will be scheduled in accordance with Law School policy, and I will notify you as soon as practicable of the time(s) and date(s).

**EXAMINATION:** Subject to the provisions set forth under “Participation”, 100% of your grade will be based on a final exam, which will be graded anonymously in accordance with Law School policy. The details of that exam will be announced later in the semester. However, my current expectations are that it will be a “floater” exam of 2-3 hours and will likely be open-book (to the extent of “official” class texts and materials only; no commercial outlines or other third-party materials). These current expectations may be modified. The exam will primarily be an essay exam, but will likely include some objective components (multiple choice/short-answer, etc.). I will provide more information about exam format later in the semester. Any material assigned or covered in class is fair game for an exam topic.

**(NON-)OFFICE HOURS:** Because I practice in Birmingham, I will not have regularly scheduled office hours. I will generally be in the Law School about half an hour before class, and will generally be willing to remain for a reasonable period of time after class. If you wish to schedule a specific appointment during those periods, please call or (more preferably) email me by noon on the Friday before class on Monday. Alternatively, you can take your chances with catching me before or after class, but be aware that I may have other schedule commitments that limit my time then. If you would like to arrange a telephone conference outside of class, please email me and I will try to schedule a mutually convenient time.

**TECHNOLOGY:** Computers may be used in class for note-taking only. Use of computers or other Internet/communications devices (iPhones, iPads, Androids, Blackberries (if anyone besides me has one), cell phones, etc.) for email, game-playing, tweeting, Facebook-ing, Web-surfing, writing assignments for other classes, and so forth is prohibited and will be subject to the Law School’s disciplinary policies. In addition, I reserve the right to (a) require that laptops be closed at any given time for pedagogical reasons or (b) impose additional specific requirements if I deem it necessary to prevent disruption of the class. No audio recording is permitted (whether by tape recorder, computer or handheld device).

If special and unavoidable circumstances (parenting responsibilities, serious family illness, etc.) require that you be available by cell phone, text message or the like at any time, please notify me of that before class so that I will not assume that you are disregarding this policy.

**VISITORS:** Visitors are generally welcome, so long as they do not present unreasonable distractions or disruptions. I would appreciate it if you would advise me in advance if you plan to have visitor(s) in class, or at least be prepared to introduce them.

**DISABILITY ACCOMMODATIONS:** The Law School is committed to meeting the needs of students with physical, learning, and other disabilities, and provides appropriate accommodations and services tailored to each person’s specific requirements. The Law School’s assistant deans and the University’s Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact Claude Arrington, Associate Dean for Students/Academic Services at (205) 348-6557 or [carrington@law.ua.edu](mailto:carrington@law.ua.edu) so that the individual’s needs for support services can be evaluated and accommodated in a timely manner.

**CODE OF ACADEMIC CONDUCT:** All students in attendance at the University of Alabama are expected to be honorable and to observe standards of conduct appropriate to a community of scholars. The University expects from its students a higher standard of conduct than the minimum required to avoid discipline. Academic misconduct includes all acts of dishonesty in any academically related matter and any knowing or intentional help or attempt to help, or conspiracy to help, another student. The Academic Misconduct Disciplinary Policy will be followed in the event of academic misconduct.

### **CLASS ASSIGNMENTS**

The Class will meet for two 50-minute hours (with a 10-minute break) each Monday evening.<sup>1</sup> Set forth below are the topics to be covered and reading assignments (marked with bullet points) for each class date. These assignments are subject to change; any change will be announced in class and posted on the TWEN course website. Unless a change is so announced, you should read the materials assigned for each week, even if we did not complete the prior week's assignment in the prior week's class period; some of these topics will take more or less time than is allotted for them below. However, I will generally try to either stay on schedule or expressly change the schedule. You should regularly check the TWEN course website for updates, schedule or assignment changes, supplemental materials and general information. I will feel entitled to assume that you are aware of any information that is posted on the TWEN course website as long as it is posted at least 24 hours in advance of the next scheduled class. In addition, I will ordinarily post PowerPoints for each class on the website on the day of class.

Supplemental materials posted on the TWEN course website are, for the most part, intended as user-friendly aids to enhance your understanding and communicate basic ideas in a comparatively straightforward way. You will benefit from reading them, but you will not be expected to be prepared to discuss supplemental materials in class unless they are marked with a "\*" below or are otherwise identified in class and/or on the TWEN course website. TWEN materials marked with a "\*" are required reading and will be fair game for class discussion.

There is a Glossary on the TWEN course website that contains a number of the acronyms and shorthand terms used by health law practitioners in day-to-day communication. This is provided for your convenience. It is not assigned reading, and you are welcome to use the terms or not in class discussion, exam answers, etc. However, you are free to so use them, which will likely save some ink and paper on the exam, and your fellow students and I will generally be permitted to assume that you are familiar with them.

Finally, as noted above, class will not meet on October 13, and a make-up date will be scheduled. However, we will continue through the syllabus in order, so whether the make-up is before or after October 13, the order of assignments will control, not the date on the syllabus. I will post an updated syllabus when the make-up date is established.

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<sup>1</sup> At the first class meeting, I will offer the class the opportunity to decide, by vote, whether to take the 10-minute break or go straight through and finish at 7:10, rather than 7:20. If there is a clear majority either way, we will honor that. If the majority is narrow (in either direction), we will honor the published schedule and take the 10-minute break.

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<u>Date</u>	<u>Assignment</u>
<b>August 18</b>	<u>Basic Themes: Cost, Quality, Access and Choice</u> <ul style="list-style-type: none"> <li>• Introduction and Basic Structure: Furrow 1 – 6, 8 – 14</li> <li>• What Is Illness?: Furrow 15 – 27</li> <li>• Introduction to Quality: Furrow 27 – 38</li> <li>• Offutt, <i>For Value Received</i> (TWEN)</li> </ul>
<b>August 25</b>	<u>Medical Errors and Patient Safety</u> <ul style="list-style-type: none"> <li>• Introduction to Medical Errors: Furrow 38 – 42</li> <li>• Introduction to Patient Safety: Furrow 43 – 54</li> <li>• Federal Regulation of Patient Safety Matters: Furrow 56 – 63</li> </ul> <u>Quality Control through Professional Licensure</u> <ul style="list-style-type: none"> <li>• Introduction to Licensing: Furrow 71 – 73</li> <li>• Professional Discipline: Furrow 74 - 87</li> </ul>
<b>September 1</b>	NO CLASS – LABOR DAY HOLIDAY
<b>September 8</b>	<u>Quality Control through Professional Licensure</u> (cont.) <ul style="list-style-type: none"> <li>• Complementary and Alternative Medicine: Furrow 88 – 95</li> <li>• Unlicensed Providers: Furrow 97 – 107</li> <li>• Scope of Practice Regulation: Furrow 108 – 119</li> </ul>
<b>September 15</b>	<u>Quality Control Regulation of Health Care Institutions</u> <ul style="list-style-type: none"> <li>• Introduction to Health Care Institutions and Related Quality Issues: Furrow 121 – 130</li> <li>• The Institutional Regulatory Process: Furrow 130 – 138; 146 – 152; 156 – 157</li> <li>• Private Accreditation: Furrow 157 – 159</li> </ul>
<b>September 22</b>	<u>Health Care Cost and Access: The Policy Context</u> <ul style="list-style-type: none"> <li>• The Nature of the Problem: Furrow 161 – 176</li> <li>• A Note on Cost Controls: Furrow 199 - 205</li> <li>• Kaiser Family Foundation, <i>Summary of the Affordable Care Act</i> (TWEN; background only)</li> </ul> <p>[NOTE: <u>Read through the above materials quickly for context</u>; do not belabor them. We will return to the topic of health care reform and the Affordable Care Act's approach to access and cost issues in a couple of</p>

	<p>weeks. Please review the Kaiser material at this point and start thinking about these issues as a foundation for the later discussion.]</p> <p><u>The Duty to Treat</u></p> <ul style="list-style-type: none"> <li>• Common Law: Furrow 213 – 226</li> <li>• EMTALA: Furrow 227 – 240</li> <li>• Anti-Discrimination Laws: Furrow 243 – 256</li> </ul>
<b>September 29</b>	<p><u>The Duty to Treat (continued if necessary)</u></p> <p><u>Private Health Insurance and Managed Care</u></p> <ul style="list-style-type: none"> <li>• Introduction to Insurance and Managed Care: Furrow 263 – 265; 268 – 269</li> <li>• The Concept of Insurance: Furrow 269 – 275</li> <li>• Contract Liability of Insurance and Managed Care: Furrow 275 – 280</li> <li>• Tort Liability of Insurance and Managed Care: Furrow 280 – 299</li> <li>• Physician Incentive Programs: Furrow 299 - 300</li> </ul>
<b>October 6</b>	<p><u>Regulation of Managed Care and Insurance</u></p> <ul style="list-style-type: none"> <li>• Introduction to State Regulation: Furrow 308 – 316</li> <li>• Insurance Regulation and Health Care Reform: Furrow 302 – 304; 317 – 324; 329 – 333; 335 – 339; 344 – 350</li> <li>• ERISA Preemption of Tort Claims: Furrow 375 - 385</li> </ul>
<b>October 13</b> <b>[NOTE: Class will not meet on this date. A make-up will be scheduled.]</b>	<p><u>Introduction to Public Health Care Financing Programs</u></p> <ul style="list-style-type: none"> <li>• Furrow 419 – 423</li> </ul> <p><u>Medicare</u></p> <ul style="list-style-type: none"> <li>• Furrow 424 – 441; 442 – 449; 450 – 454; 469 – 475</li> <li>• Kaiser Family Foundation, <i>Medicare: A Primer</i> (TWEN; background only)</li> </ul>
<b>October 20</b>	<p><u>Medicare (continued if necessary)</u></p> <p><u>Medicaid and SCHIP</u></p> <ul style="list-style-type: none"> <li>• Furrow 485 – 505; 508 – 528; 530 – 533</li> <li>• Kaiser Family Foundation, <i>Medicaid: A Primer</i> (TWEN; background only)</li> <li>• Kaiser Family Foundation, <i>Medicaid: Moving Forward</i> (TWEN)*</li> </ul>

<b>October 27</b>	<u>Professional Relationships in Health Care Enterprises</u> <ul style="list-style-type: none"> <li>• Hospital – Physician Relationships: Furrow 535 – 561</li> <li>• Managed Care – Physician Relationships: Furrow 564 – 569</li> </ul>
<b>November 3</b>	<u>Forms of Organizational Structure and Related Issues</u> <ul style="list-style-type: none"> <li>• Governance, Compliance and Fiduciary Duties: Furrow 604 – 623</li> <li>• Conversions, Asset Sales and Mergers: Furrow 623 – 638</li> <li>• Corporate Practice of Medicine: Furrow 642 – 649</li> </ul>
<b>November 10</b>	<u>Tax-Exempt Health Care Organizations</u> <ul style="list-style-type: none"> <li>• Tax-Exempt Hospitals: Furrow 662 – 682</li> <li>• Integrated Delivery Systems: Furrow 692 – 697</li> <li>• For-Profit/Nonprofit Joint Ventures: Furrow 697 – 716</li> </ul>
<b>November 17</b>	<u>Introduction to Fraud and Abuse</u> <ul style="list-style-type: none"> <li>• Horton, <i>Through a Glass, Starkly: Fundamental Concepts in Stark Law and Healthcare Fraud Analysis</i> (TWEN)*</li> </ul> <u>Anti-Kickback Statute</u> <ul style="list-style-type: none"> <li>• The Statute and the Case Law: Furrow 770 – 788</li> <li>• Safe Harbors and OIG Guidance: 790 – 801</li> </ul> <u>Stark Law</u> <ul style="list-style-type: none"> <li>• Furrow 801 – 807; 812 - 815</li> </ul>
<b>November 24</b>	<u>False Claims Act</u> <ul style="list-style-type: none"> <li>• Furrow 731 – 757; 762 – 766</li> </ul> <u>Wrap-Up and Questions</u>