Syllabus - Health Care Access and the Law  
Tufts Experimental College Fall 2011  
Instructor: Clare D. McGorrian, J.D.

September 8  
Class #1 – The American Health Care System: Why Do We Need Consumer Advocacy?

Reading  
• Human Right to Health Care, National Economic & Social Rights Initiative (NESRI) Info Sheet  
• The Uninsured and the Difference Health Insurance Makes, Kaiser Family Foundation (Sept. 2010) [http://www.kff.org/uninsured/upload/1420-12.pdf]  
• The Illusion of Coverage: How Health Insurance Fails People When They Get Sick, C. Pryor et al., The Access Project (March 2007) (pp. 5-9, 19-22) [http://www.accessproject.org/adobe/the_illusion_of_coverage.pdf]

Lecture/discussion  
• The crisis in access to health care and reform efforts  
• Is there (or should there be) a “right” to health care? What are the barriers to access?  
• The movement for health care access  
• Critical contexts in which the law applies to and interacts with health care

September 15  
Class #2 – Managed Care: Insurance Does Not Guarantee Access

Reading  
• Mass. G.L. ch. 176O Sections 12-14 plus handout of select definitions  
• 105 Code of Massachusetts Regulations (CMR) 128.00 (selections)  
• Excerpts: Medical Necessity in Private Health Plans: Implications for Behavioral Health Care, Sara Rosenbaum et al., U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration (2003) [http://store.samhsa.gov/shin/content//SMA03-3790/SMA03-3790.pdf], pp. 11-13 (Analysis of the Structure of Medical Necessity Definitions), p. 22 (Figure 4), p. 50 (Table 2), p. 105 (Appendix D)  
• Select portions of Federal claims and appeals law post-health reform
Lecture/discussion
• Managed care grievances and appeals
• Patients' rights to challenged managed care denials
• “Medical necessity” and coverage exclusions

September 22
Class #3 – Mental Health Treatment: The Myth of Parity

Guest speaker: Laurie Martinelli, National Alliance for Mental Illness (tentative)

Reading
• Massachusetts Mental Health Parity Law, chapter 80 of Acts of 2000 as amended
• Division of Insurance Bulletins on Mass. Mental Health Parity
• Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Federal Mental Health Parity Law) (select sections)
• Select interim regulations under Federal mental health parity
• Fight Erupts Over Rules Issued for “Mental Health Parity” Insurance Law, Robert Pear, New York Times, May 9, 2010
• Some Tips for Effective Written Advocacy, C. McGorrian

Lecture/discussion
• Massachusetts and Federal Mental Health Parity Laws
• Mental health coverage challenges
• Effective writing skills for health care advocacy

September 29
Class #4 – Access to Reproductive Health Care

Reading
• Patient Protection and Affordable Care Act, Title X, Subtitle A, Section 10104 (c)
• Excerpts from U.S. Supreme Court decisions: Roe v Wade, 410 U.S. 113 (1973); Harris v. McRae, 297 U.S. 323 (1980); Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 883 (1992)
• State Policies in Brief: An Overview of Abortion Laws (Guttmacher Institute)
• State Policies in Brief: Restricting Insurance Coverage of Abortion (Guttmacher Inst.)
• National Conference on State Legislatures (NCSL) Chart: Insurance Coverage for Contraception Laws
• Editorial: Free birth control proposal goes too far, Des Moines Register, July 21, 2011
• Editorial: Everyone gains when women have affordable birth control, The Tennessean (Aug. 5, 2011)
• NCSL Chart: State Laws Related to Insurance Coverage for Infertility Treatment
Lecture/discussion
Access to reproductive health care has long been a controversial issue. In this class we will discuss the current landscape with regard to legal access to and insurance coverage of a range of reproductive health services, including family planning/contraception, abortion and infertility treatment.

*Assignment #1 DUE* - Appeal letter on behalf of patient denied insurance coverage for medical treatment (5 pages)

October 6
Class #5 – Privacy Law and Electronic Health Records: Impact on Access and Quality

Reading
- Health Insurance Portability and Accountability Act (HIPAA) and regulations - selections
- Select information from federal HIPAA Privacy Rule website
- Article from BNA Health Law Reporter on strict new health privacy law in Texas (2011)
- Articles on impact of electronic health records – pro and con
- Possible other readings TBD

Lecture/discussion
- Does the HIPAA Privacy Rule have any adverse effects on access to health care? If so what can be done to address the law’s shortcomings?
- Federal health reform has created new incentives for electronic health records – will this push result in improved access and quality of care?

October 13
Class #6 – Medicaid and Impact Litigation to Improve Access

Reading
- Medicaid for New Attorneys, J. Perkins et al. (National Health Law Program, 2006)
- Preparing for Litigation, G. Smith et al., Clearinghouse Review (May/June 2004) (selections)
- As Medicaid Payments Shrink, Patients are Abandoned, Kevin Sack, New York Times (March 15, 2010)
- Memorandum and Order, *Health Care For All v. Romney* (U.S. District Court Mass., 2005) (access to dental care for Massachusetts children on Medicaid)

Lecture/discussion
- The Medicaid program – key concepts and issues
- Using impact litigation to improve access to health care (focus on Medicaid beneficiaries)
October 20  
Class # 7 – Racial and Ethnic Disparities in Health Care Access and Quality

Reading  
- Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959 (D.N.C. 1963)  
- Unfinished Agenda: The Need for Civil Rights Litigation to Address Race Discrimination and Inequalities in Health Care Delivery, M.E. Lado, 6 Texas Forum on Civil Liberties & Civil Rights 1 (2001-2) (select sections)  
- Race, Ethnicity and Quality of Care: Inequalities and Incentives, Sidney Watson, American Journal of Law and Medicine (2001)  

Lecture/discussion  
There is growing evidence that patients of color are treated differently by health care providers than are white patients. How can the law and advocacy tools be used to address racial and ethnic disparities in the health care system?

October 27  
Class # 8 – For profit versus non profit health care: Does it matter?

Reading  
- Provena Covenant Medical Center v. Department of Revenue, Supreme Court of Illinois (March 18, 2010) and/or The Dearth of Charity Care: Do Nonprofit Hospitals Deserve Their Tax Exemption? V. McWilliams and A. Alop, Clearinghouse Review (July/Aug 2010)  
- Article on “conversions” of non-profit to for-profit (hospitals and health insurers)  
- Readings on recent sale of Caritas Christi HealthCare to a for-profit investor

Lecture/discussion  
- Hospital tax-exempt status and community benefits  
- Sales of non-profit hospital assets (Caritas Christi)  
- How does for profit vs. non-profit status impact access to care?

November 3  
Class # 9 – Hospital Services / Introduction to Medicare

Reading  
- Federal Emergency Medical Treatment and Active Labor Act (EMTALA)  
- Recent court decisions under EMTALA (TBD)  
- Mass. Essential Services Law (M.G.L. c. 111, § 51G and 105 CMR 130.020)  
- Holding On: Fighting to Preserve Essential Services at a Community Hospital (Community Catalyst, 2003)
• Medicare: A Primer, Kaiser Family Foundation (2010) (selections)

Lecture/discussion:
• EMTALA – access to emergency care
• Mass. Essential Services Law
• Medicare overview
• Negotiation – strategies, considerations, techniques

November 10
Class # 10

*In-class oral assignment (#2) – A week or two ahead, students will receive a detailed scenario about the proposed closure of certain services at a Boston area hospital. Using the state essential services law and the facts they have been given (and possibly additional research), students will negotiate one-on-one (one representing a consumer coalition and the other the hospital) over how to address concerns about the closure of these “essential” services.

November 17
Class # 11 – Medicare: Select Access Issues / End of Life Care

Reading
• How the “Improvement Standard” Improperly Denies Coverage to Medicare Patients with Chronic Conditions, G. Deford et al., 43 Clearinghouse Review 422 (2010)
• Mass. Health Care Proxy law

Lecture/discussion
• Is the “improvement standard” for skilled nursing and home health care under Medicare consistent with the law? What standard(s) do you think should apply?
• Legal issues in end of life care, ethical challenges to effectuating a patient’s wishes
• What factors affect access to care in old age and at the end of life?

***NO CLASS WEEK OF NOVEMBER 21 – THANKSGIVING BREAK***
December 1
Class # 12 - Health Reform Past and Present

Reading
• APHA Advocates’ Handbook (select pages)
• Real Clout, J. Meredith and C. Dunham (1999) (select pages)
• Key Impacts on Individuals of the Federal Health Reforms of 2010, C. McGorrian (Boston Bar Association Health Law Reporter)
• A Widening Rift in Access and Quality: Growing Evidence of Economic Disparities, R. Hurley et al., Health Affairs (December 6, 2005)
• Benefit for Uninsured May Still Pose Hurdle, R. Rabin, New York Times (April 19, 2010)

Lecture/discussion
• Massachusetts’ health reform initiative
• Federal health reform efforts past and present
• Consumer health advocacy and the rulemaking process

December 8
Class # 13 – FINAL CLASS – REVIEW AND WRAP UP

Reading
• A Quiet Revolution: Law as an Agent of Health System Change, M. Bloche and D. Studdert, Health Affairs (2004)
• Community Lawyering: Why Now? R. Doloff and M. Potvin
• Jobs in consumer health law advocacy (select descriptions)
• Short pieces on future of health care reform and access (TBD)

Lecture/discussion:
• Is there (or should there be) a right to health care in the United States? REDUX
• What are the barriers to accessing health care?
• How can legal tools be used to reduce these barriers?
• Thoughts on health reform – will federal reforms create meaningful access? If not, how reform can best be achieved?
FINAL ASSIGNMENT (#3) – TAKE HOME

Students will be given proposed regulations on a subject related to health care access (for example, eligibility for a government-subsidized health care program or managed care appeal rights). They will also be given related background on the issue and guidance on finding additional information. The students will review the regulations closely and write a detailed comment letter (minimum 5 pages) to the appropriate regulatory agency, addressing ways in which the regulations can be improved to reduce the adverse impact on access to care. The comments should be specific and include examples of revised regulatory language.

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Grading: The three assignments described above (due September 9, November 10 and during exam period) will be given equal or approximately equal weight (each worth 25 to 30 percent of the total grade). Periodic in-class exercises based on the week’s reading will also be assigned for an additional portion of the grade. Finally, class participation and contribution to discussion over the semester will be taken into account.