

Syllabus

Economic Analysis of Health Care Law

**Professor Kathy Zeiler
Boston University School of Law
Spring 2018 – JD 960 (A1)**

Class sessions: T, Th 4:20-5:45
Room 204

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Course Description

This three-credit course is designed to develop a basic understanding of microeconomics principles and how they can be used to explain the structure of health law, to solve problems caused by market imperfections, to diagnose problems caused by the law, to make powerful legal arguments in health law disputes and to structure contracts and deals in the health care and insurance industries. The course will begin with a discussion of broad economic rationales behind industry regulation. We will then explore regulations designed to address asymmetric information and agency costs, health care insurance regulation, and regulation of market power. We will apply microeconomic theory to analyze strategies for achieving efficient levels of access, quality and quantity through law. We will also develop skills related to reading, interpreting and critiquing empirical studies at a basic level. Familiarity with the fields of economics and health care law is not required.

Course Materials

No textbook is required for this course. The reading list that follows is divided into 26 sets of readings that correspond to the 26 class sessions. All readings can be found on Blackboard. Reading assignments are listed below.

Announcements and course documents including class slides will be posted to Blackboard. Class slides are posted following class. As the exam period draws near, I will post previously administered exams and model student answers.

Those without a background in economics might find the following helpful:

Jackson et al. 2010. ANALYTICAL METHODS FOR LAWYERS. 2nd ed. Foundation Press.

Polinsky. 2011. AN INTRODUCTION TO LAW AND ECONOMICS. 4th ed. Aspen Pub.

Posner. 2014. ECONOMIC ANALYSIS OF LAW. 9th ed. Aspen Publishing.

The following contain surveys of health care law:

Havighurst, Blumstein, and Brennan. 2007. HEALTH CARE LAW AND POLICY, 2nd ed. (much of the material has an economics bent)

Furrow, et al. Hornbook on HEALTH LAW, 2014. 3rd ed. West Academic Pub. (detailed but thorough)

Course Objectives

At the end of this course, students should:

1. be familiar with a set of concepts, theories and empirical findings economists use to analyze the production, consumption and distribution of health care and health insurance,
2. have developed their own, integrated framework for thinking critically like lawyers and economists about topical issues related to health and health technology,
3. understand and be able to construct legal and policy arguments using an economics framework, and
4. be proficient at critiquing the structure of health care regulations and predicting economic consequences that might result from implementation of legal rules and regulations.

I will assess students on these learning objectives using in-class participation and a final exam.

Course Requirements and Grading

Grades will be based **20% on in-class participation and 80% on a three-hour, in-class, open-book final examination** (laptops permitted; no internet access). You can use any materials you might find helpful during the exam.

I expect students to be prepared to participate in class discussions. Class participation includes attending each class in its entirety, listening and contributing in class and preparing to answer questions posed. I will divide the class into two groups. Each group will be on call during one class session every week beginning on Tuesday, January 30.

Lack of preparation can negatively impact course grades. For students on the border between grades (e.g., the highest B+), a strong participation record will result in a chance to receive a higher grade (e.g., a move up from B+ to A-). A weak participation record will preclude a move up and might result in a move down one grade (e.g., the lowest A- could be shifted down to a B+).

If you know you will miss class on a day your group is on call, please email me to provide notice. If your absence is excused,¹ it will not negatively impact your grade and you may obtain an audio recording of the class session by emailing me. If your absence is of the unexcused variety, I will record the absence as unexcused with notice. This might negatively impact your grade if you end up on the border between grades, but it will impact it less severely than if you fail to attend, or are clearly unprepared, when your group is on call and you do not provide notice.

Scheduling

The following classes (and office hours) are canceled: Thursday, February 8, and Thursday, March 15, and Thursday, April 19.

Make up classes will be held on dates and at times to be announced.

¹ Valid excuses include (1) serious medical situation or family emergency; (2) religious observance; (3) official participation in a Law School approved moot court event held out of town; (4) rescheduled class; (5) other comparably urgent reasons, and not including vacation plans, minor non-contagious illness, or work conflicts. Absences due to job interviews will be excused, but attempts should be made to schedule them around classes.

Introduction

1. What is Economics?

Excerpt from Stiglitz (pp. 10-12, 19-24)

2. Why Regulate the Health Care Industry?

(1) Excerpt from Stiglitz (pp. 84-105 and 381-389)

(2) Arrow. 1963. Uncertainty and the Welfare Economics of Medical Care. American Economic Review 53(5): 941-967. Note: skip all math.

Product Uncertainty: Asymmetric Information and Agency

3. Supplier-Induced Demand

(1) Excerpt from Feldstein. 1999. HEALTH CARE ECONOMICS. 5th ed. Delmar Publishers (pp. 255-262)

(2) Judith H. Hibbard and Jacquelyn J. Jewett. 1997. Will Quality Report Cards Help Consumers? Health Affairs 16(3): 218-228

(3) Excerpt from Morriem. 1997. Medicine Meets Resource Limits: Restructuring the Legal Standard of Care. 59 University of Pittsburg Law Review

4. Pay for Performance

Douglas A. Conrad and Lisa Perry. 2009. Quality-Based Financial Incentives in Health Care: Can We Improve Quality by Paying for It? Annual Review of Public Health 30: 357-71.

5. The Role of Non-Profits

(1) Excerpt from Furrow Hornbook (pp. 38-49)

(2) Needleman. 2001. The Role of Nonprofits in Health Care. Journal of Health Politics, Policy and Law 26(5)

Unpredictable Demand: The Role of Insurance

6. The Economics of Health Care Insurance: Risk Pooling and Adverse Selection

- (1) Excerpt from Santerre and Neun, HEALTH ECONOMICS: THEORY, INSIGHTS AND INDUSTRY STUDIES, pp. 143-151 (stop reading at the end of the last full paragraph on p. 151)
- (2) Excerpt from Folland (pp. 199-206) on adverse selection and the lemons problem

7. Adverse Selection in Insurance Markets: A Deeper Look

Peter Siegelman. 2004. Adverse Selection in Insurance Markets: An Exaggerated Threat, Yale Law Journal 113: 1223.

8. Employer-Sponsored Health Care Insurance and Moral Hazard

- (1) Folland, Chapter 11 (pp. 218-224)
 - skip section on spousal coverage
 - Folland pp. 29-34 might help with understanding Fig. 11-3
- (2) Singhai et al. 2011. How US Health Care Reform Will Affect Employee Benefits, McKinsey Quarterly.

9. Managed Care I: Incentives

- (1) Folland, Chapter 12 (pp. 241-251)
- (2) Excerpts from Havighurst casebook: note 2 (pp. 215-217) and notes 1 - 3 (pp. 1267-1269)
- (3) Excerpt from Furrow casebook (pp. 625-631)

10. Managed Care II: Impact on Quality of Care

- (1) Excerpt from Folland (pp. 256-259)
- (2) Manning et al. 1984. A Controlled Trial of the Effect of a Prepaid Group Practice on the Use of Services. New England Journal of Medicine 310:1505-1510
- (3) Miller and Luft. 2002. HMO Plan Performance Update: An Analysis of the Literature, 1997-2001, Health Affairs 21(4):63-86
- (4) optional: for those who are unfamiliar with statistics (or need a refresher), please skim though Jackson et. al, "Statistical Analysis," in ANALYTICAL METHODS FOR LAWYERS (2010, 2d ed.)—in law library on reserve

11. Employee Retirement Income Security Act: Back to Agency

- (1) Excerpt from Baker, INSURANCE LAW AND POLICY (pp. 202-211)
- (2) Excerpt from Havighurst casebook (pp. 1196-1203)
- (3) Excerpt from Aetna Health Inc. v. Davila, 542 U.S. 200 (2004)

12. Insurer as Agent: Financial Incentive Prohibitions versus Disclosure

Mark Hall. 2002. Is the Health Care Revolution Finished? The Theory and Practice of Disclosing HMO Physician Incentives. Law and Contemporary Problems 65:207

Market Power

13. General Antitrust Issues

- (1) Excerpt from Folland (pp. 451-457)
- (2) Excerpt from Furrow hornbook (pp. 671-687, skip Section 14-3 on private antitrust litigation)

14. Barriers to Entry: Licensing of Physicians

- (1) Excerpt from Folland (pp. 344-352)
- (2) Elizabeth Graddy. 1991. Interest Groups or the Public Interest—Why do regulate health occupations? Journal of Health Politics, Policy and Law 16:25.
- (3) optional: for those who are unfamiliar with regression analysis (or need a refresher), please skim though Jackson et. al, “Multivariate Statistics,” in ANALYTICAL METHODS FOR LAWYERS (2011, 2d ed.)

15. Unionization of Physicians

- (1) Excerpt from Furrow casebook (pp. 1101-1104)
- (2) William S. Brewbaker. 2000. Physician Unions and the Future of Competition in the Health Care Sector. U.C. Davis Law Review 33:545 (**SKIP PART II**)

16. Encouraging Innovation: Pharmaceutical Development

- (1) Folland, Chapter 17 (**skip** sections on The Production of Health and Substitutability and R&D and Innovation)
- (2) Rubin. An Uncertain Diagnosis. Regulation, Summer 2005

17. Rationing and Ethics

Elhauge. 1994. Allocating Health Care Morally. California Law Review 82:1449

18. Single Payer: The Canadian Model

- (1) Excerpt from Commonwealth Fund, International Profiles of Health Care Systems, June 2010
- (2) Excerpt from Mark V. Pauly. 1998. Managed Care, Market Power, and Monopsony, Health Services Research 33:5
- (3) Excerpt from Choulli v. Quebec (Attorney General), 2005 SCC 35

19. Market-Based Approach: Health Status Insurance

John H. Cochrane. 2009. Health-Status Insurance: How Markets Can Provide Health Security, Policy Analysis

20. Current U.S. Strategy: Health Care Insurance Regulation

- (1) Excerpt from Chaikind et al. 2010. Private Health Insurance Provisions in the PPACA, Cong. Research Serv.
- (2) Paul R. Houchens. 2011. ACA Impact on Premium Rates in the Individual and Small Group Markets. Milliman Brief.

21. National Federation of Independent Business v. Sebelius Repeal of the Individual Insurance “Mandate”

- (1) Text of ACA Section 5000A as revised by Tax Cuts and Jobs Act of 2017 (Pub. Law 115-97)
- (2) NFIB v. Sebelius, 567 U.S. 519 (2012) (Justice Ginsburg’s dissenting opinion on the majority’s decision that the individual insurance purchase “mandate” exceeded Congress’s power under the Commerce Clause)

To prepare for class discussion, outline an answer to the following exam-like question:

Use economic theory to predict how the changes to the ACA’s Section 5000A might impact health care insurance markets and access to health care.

Quality and Cost Control

22. Contracts and Consumer Choice

Excerpt from Havighurst. 1995. HEALTH CARE CHOICES: PRIVATE CONTRACTS AS INSTRUMENTS OF HEALTH REFORM

23. Accountable Care Organizations

- (1) HHS Fact Sheet: ACOs: Improving Care Coordination for People with Medicare (March 31, 2011)
- (2) Havighurst and Richman. 2011. The Provider Monopoly Problem in Health Care, Oregon LR 89:847

24. Defensive Medicine

- (1) Mello et al. 2010. National Costs of the Medical Liability System, Health Affairs 29:9 1569
- (2) Sloan and Shadle. 2009. Is there empirical evidence for “Defensive Medicine”? A Reassessment, Journal of Health Economics 28:481

25. Efficient Delivery: Cost Effectiveness Research & Guidelines

- (1) John Donnelly. 2010. Health Policy Brief on Comparative Effectiveness Research. Health Affairs
- (2) David Meltzer, et al. 2010. The Economics of Comparative Effectiveness Studies. Pharmacoeconomics 28(10):843
- (3) Tengs, et al. 1995. Five-Hundred Life-Saving Interventions and Their Cost-Effectiveness. Risk Analysis, 15(3): 369

26. Coverage Mandates

Klick and Stratmann. 2003. Subsidizing Addiction: Do States Health Insurance Mandates Increase Alcohol Consumption? Journal of Legal Studies 35(2):175