

The AHLA Health Law Curriculum Manual



The authors and contributors have made every effort to ensure that the information in *The AHLA Health Law Curriculum Manual* is accurate. While our goal is to update this manual periodically, users of this resource should be aware that some information may be subject to change, such as the information regarding a state or bar association's definition of health law or the practice of health law. This manual is not intended to be a definitive and comprehensive resource about how law schools can tailor their health law curriculums; rather, it is meant to provide guidance to full time and adjunct law school professors, directors of legal clinics, employers, and others who wish to provide students of health law with opportunities—both inside and outside the classroom—that will better prepare them for their careers as health law attorneys.

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“More clearly than any other, the physician should illustrate the truth of Plato’s saying that education is a life-long process.”

—Sir William Osler (1849–1919), one of the four founding physicians of Johns Hopkins Hospital and creator of the modern medical residency program who transformed the physician education system in the United States in the late 1800’s.

Three years ago, Professor Kevin Outterson of Boston University School of Law surveyed numerous health law practitioners and asked what skills they would like health law graduates to develop during their law school education. He then presented his findings to the Fellows of the American Health Lawyers Association (AHLA). After the presentation, Professor Outterson and the Fellows agreed that AHLA could make a significant contribution to American law schools by creating a set of resources focusing on an effective health law curriculum. It was further agreed that the resources should include tools to assist with practical issues likely to be encountered by health lawyers in private practice, as well as tools to develop conceptual skills that improve one’s ability as a lawyer.

From that consensus comes the health law curriculum resources included in this compendium. I joined with some incredible practitioners and academics in organizing several volunteers to create this set of resources, and I am deeply grateful to each of them. During the past year, I’ve discovered that the journey we’ve all been on is one of service to, and improvement of, the practice of health law. We are hopeful that the materials presented herein will lead to better trained and educated health lawyers; more efficient health law programs within law schools; the professional fulfillment of health law educators; and greater success for health law practitioners in all settings (in-house, law firm, government, academic, etc.).

I have been privileged to work with and learn from some giants of our profession during the pendency of this project. I must humbly offer my most sincere thanks for the many hours of work willingly volunteered by our workgroup chairs of the Health Law Curriculum Steering Committee who collaborated with AHLA’s Public Interest Committee:

Dean Kathleen Boozang, Nicole DiMaria, Melissa Markey, Kevin Outterson, Peter Pavarini, Harvey Tettlebaum, and Ramona Thomas. I am particularly indebted to Nicole DiMaria for accepting, mid-stream, the role of Vice-Chair of the entire project, and to Harvey Tettlebaum, for mentoring my own leadership development with a style of quiet confidence, collegiality, kindness, and ultimate professionalism.

As well, I must recognize the value of the work contributed by our amazing AHLA staff, including Peter Leibold, AHLA’s Chief Executive Officer, without whom this project would never have come to fruition; Kerry Hoggard, Vice President of Membership and Public Interest; Mary Boutsikaris, Creative Director; Ana Tobin, Graphics Designer; Robert D. Taflinger, Manager of Development and Special Projects; Kristen Brown, Administrative and Committee Assistant; and, above all, Katherine Wone, Senior Legal Editor, who was everywhere, all of the time, and was surely the glue that held this project together during the past year. Finally, to all of those who volunteered their time, effort, and expertise to this project as a member of a workgroup, you each have a standing ovation from your project’s Chairman. Well done!

Speaking for our committee, I think we all believe that this project jointly produced by health law academics and practitioners will help to provide higher value to law students, utilize scarce educational resources with greater efficiency, and produce health law graduates who are better prepared to excel in this noble profession. This may not be as revolutionary as Sir Osler’s Medical Residency, but we believe that academics and practitioners working together have provided a great first step toward creating a curriculum that will produce well qualified law school graduates who want to specialize in this thing we call “Health Law.”

Marc D. Goldstone
Chair, Health Law Curriculum Steering Committee

Introduction



Despite being a significant segment of the economy, the discipline of health law is relatively new. This is particularly evident in many law schools where health law is still not represented by a full-time faculty member. Some of these schools either do not teach any courses in the area or rely primarily on adjuncts. For those unfamiliar with the discipline, it can be difficult to understand its content and breadth, which becomes a particular challenge to faculties that want to hire a health law professor for the first time, or for academic deans attempting to identify appropriately qualified adjuncts. Meanwhile, employers seeking to hire health lawyers face difficulties in finding candidates with the practical skills and experience required to fulfill their health law needs. These challenges are made all the more difficult by the frequent and expansive changes in the laws that govern the area and a struggling economy that has resulted in less employers willing to hire and train attorneys new to the bar.

Given the increased importance of health law to the country, and with an understanding that health law is one of the few areas of the legal economy that continues to grow, the American Health Lawyers Association (AHLA) has collaborated with several health law academics and practicing attorneys to create a resource that will support law schools in their health law curricular development. The goal of the collaboration is to aid schools in producing students substantively ready to practice health law upon graduation

and support their efforts to integrate skills development into their curricula. In addition, for those schools interested in beginning or expanding their health law programs, we hope the collaboration will aid in identifying qualified full-time and adjunct health law professors.

This resource first discusses health law curricula from both the academic and employer perspectives. It then provides health law curricula guidance that was developed on the basis of these perspectives and addresses best practices for health law clinics and externships. It also addresses potential state-specific issues and options for law schools to form an alliance with AHLA, along with a state survey that reveals which states may have formally defined the “practice of health law” or which ones certify health law as a specialty. The appendices provide problem sets and a teacher’s manual that can be used in health law courses to develop practical skills; general statistics about law schools that offer health law courses, and states that require pro bono services in order for an attorney to maintain her license. Ultimately, we hope this resource represents the beginning of a long-term collaboration that will foster greater development of, and continuous improvement in, health law curricula.

The Employer's Perspective



Introduction

In developing the recommendations contained in this resource, a primary consideration was whether changes in current health law curricula were viewed as necessary or desirable by the primary stakeholders—the employers of health lawyers. To discern their broad range of views, a core work group of four members¹ and a large contingent of other volunteers developed a 26-question survey that sought information regarding a wide range of factors that may impact the necessary education for new health lawyers. The survey covered a wide range of topics, including the types of work performed by health lawyers to the areas in which new lawyers tended to lack training.² This chapter summarizes the more interesting and potentially important results and proposes some possible learning points based on responses provided by 287 experienced health care attorneys.

Setting the Stage

Where Do Health Lawyers Work, and What Do They Do?

While law schools seek to train lawyers for many different work environments, law students may have some pre-conceived ideas about where certain types of lawyers actually practice. Our survey indicated that while 33.8%³ of those surveyed worked in medium to large law firms, 42.6% worked in-house at health-related entities. The predominance of in-house lawyers may help explain, in part, why the overwhelming majority of respondents (65%) felt that having a broad understanding of the business side of health care was very important. Approximately thirty-three percent felt it was somewhat important.

This makes sense when one considers the fact that many health lawyers have a predominantly transactional (80%) and regulatory practice (91%). It also makes sense given that so many health lawyers work in-house who are frequently more integrated into the business and strategy of the entity. Without a clear understanding of the entity's business needs, it is difficult to adequately represent the client. This

is particularly true given the extensive regulation of the business of health care.

Other significant areas of work identified by the survey respondents were litigation (49.3%), administrative (59.8%), malpractice (33.2%), and compliance (81.1%) activities. It is clear that health lawyers wear many hats, must be skilled at multi-tasking, and that malpractice—which many lay persons may think of when they hear the term “health lawyer”—is indeed a minor component of many health lawyers' practices.

What Subject Areas are Included in Health Law Practices?

Given the range of work areas identified by respondents, one might anticipate that the subject areas addressed by health lawyers are extensive. Given the complexity and pervasiveness of regulatory issues, it is not surprising that 89.2% of respondents reported that their practice includes Compliance; it may, rather, be more surprising that the percentage was not higher. Fraud and Abuse issues are addressed by 87.56% of health lawyers, and HIPAA⁴ by 84%. The predominance of Medicare and Medicaid issues are reflected by the fact that 83% of respondents work in this area, and 73.9% focus on reimbursement issues. Other significant areas included Food and Drug law, Corporate Law, and Licensure. However, the results of the “Other” category demonstrated how broad health law really is. Answers ranged from Municipal Bond Law to Canon Law and encompassed the Fair Debt Collections Practice Act, Securities, Labor Law, Tax Law, and many other areas. The survey results make it very clear—health law is in many ways general practice law for a very special type of client.

Who are Health Law Clients?

Health law clients range from the expected—hospitals, health systems, physicians and physician groups—to entities that may not come so readily to mind: trade associations, software vendors, and pharmacy benefit managers. As health care changes under the Affordable Care Act and with advances in health care technology, it is reasonable to expect that the type of entities health lawyers counsel will continue to expand. Part of the challenge for law schools and

1 Stacy Wilson, Sarah Grivas West, Kate Stewart, and Melissa Markey

2 The questionnaire is available at Appendix C.

3 Percentages have been rounded.

4 The Health Insurance Portability and Accountability Act of 1996, as amended and its related regulations.

current health care lawyers will be anticipating the types of companies and individuals who are currently expanding the world of health care without knowing it, reaching out to them, and helping them comply with the legal obligations of this highly-regulated field.

Selecting the Cast

Given the ever-increasing regulation, the expansion of technology, and the development of new methods of health care delivery, the expectation is that the need for new health lawyers will continue. As employers in various practice settings seek new health lawyers, it will be important to consider where they look for candidates and what characteristics they prefer.

What Experience Level is Preferred?

Preferences regarding prior experience vary. Based on our survey, most employers prefer to start fresh with new graduates (27%) or hire attorneys with significant experience in health law—at least three years (36%). Health law has a steep learning curve and these two ends of the scale each have certain advantages. The new graduate is typically less expensive and is tabula rasa, ready to be formed to practice in the manner the employer desires. The more experienced lawyer has the basics down and can hit the ground running. However, lawyers with less than three years' experience are not without appeal, either. Almost ten percent of survey respondents stated they would hire lawyers with 1-2 years of experience, and that experience did not necessarily need to be in health law. Approximately twelve percent would hire lawyers with 1-2 years of health law experience and 14.55% would hire lawyers with three or more years of experience, even if that experience was not in health law. The survey did not ask whether the answer differed based on the subject area in question. If an employer needs a real estate lawyer to work on health care entity transactions, is it less important to have prior health law experience than if the opening is for a lawyer who will work on Medicare reimbursement? We suspect the answer would be yes.

What Attributes are Valued in Recent Law School Graduates?

We identified five factors that we thought might be of interest to employers when trying to differentiate new graduates: prior health care or life sciences work experience; a health law certificate earned through a JD program; a significant number of health law courses; an LLM in health law; or other health-related degrees, such as a Masters in Public Health. Prior health care or life sciences experience was identified as a very strongly valued attribute by 28.6% of respondents, a strongly valued attribute by 39.4%, and 25.8% found it somewhat valuable. This may reflect the importance of understanding the business of health care. Individuals who have previously worked in health care or the life sciences are more likely to understand how health care really works, and that real-life experience can come in handy when serving clients. Academic focus on health law was also valued, however. The most valued academic attribute was a Masters of Law in Health Law, which was very strongly valued by 19% of respondents. Health law certificates or other health-related administrative degrees were also valued at either the very strong, strong, or somewhat level.

What Are Considered the Most Useful Skills for Recent Graduates?

We asked survey respondents to rank ten skills from most to least important. The ability to analyze federal or state laws and regulations was identified overwhelmingly as the most important skill, followed by a near-tie between the ability to draft a basic contract and analyze basic client problems. One's ability to analyze basic fraud and abuse issues also ranked at the top. Health care is a highly regulated industry, and the ability to analyze the myriad laws that apply to our clients is critical. Given the fact that most of the respondents identified their practices as regulatory and transactional, the need for skills related to preparation of simple contracts and analysis of client problems and fraud and abuse scenarios are also reflective of the day-to-day work new graduates are likely to perform.

How Important are Specific Courses for a New Graduate?

We asked respondents to rank as very important, somewhat important or not important eight courses offered by many law schools and asked them to propose other courses they thought were important. Of the eight courses we proposed, only one course was found to not rank as “very important” by a large percentage—Antitrust. The second least popular was a basic course in Tax (thought to be “very important” by only 18.5%). The remainder was deemed to be very important by at least one-third of all respondents. In fact, all eight were deemed to be at least somewhat important by at least 65% of respondents.

The range of “other” classes proposed by respondents was impressive. The classes included basic quality and performance improvement processes, government relations and lobbying, a leadership course, food and drug law, transactions courses, and veterans or military law. One repeated theme, however, was the value of an externship or practicum course in health law.

Are Externships, Moot Court or Clinics Helpful?

As indicated by the popularity of externships proposed in the preceding question, respondents resoundingly supported externships and practicum courses. In fact, 73.8% of respondents felt that students who participated in externships, clinics, Moot Court, and similar opportunities were better prepared for health law positions than students who participated in more general law school activities. The type of internship was less important than the experience itself. Respondents felt that externships at hospitals, regulatory agencies, a health law firm, a public health care company, or any other experience that exposed the student to practical experiences and the problems faced by health care providers and policy-making agencies would be very valuable.

The value of externships and other experiences relate to the respondents’ focus on the importance of new health lawyers understanding the business of health care. This understanding needs to encompass not only the general business issues, but also how health care is paid for (67.6% felt it was very important and 31.3% felt it was somewhat

important) and an understanding of business ethics (51.6% considered very important and 40.7% somewhat important). Understanding other issues may be less important, depending on the type of client and practice location; for example, understanding end-of-life decision making and other health care ethics issues was considered very important by only 17.7% of respondents, but somewhat important by 47.7%. This may reflect the fact that others in health care have a significant role with respect to this issue, such as non-attorney ethicists.

It is interesting that only 1% of respondents thought it was important for new health lawyers to understand non-U.S. laws, 47.9% felt it was not very important, and 42.9% felt it was not important at all. At first blush, this makes a great deal of sense. Health care is typically a local, or at most a national activity. However, with the growth of medical tourism and global health care, this belief may start shifting. As law schools consider changes to health care curricula, this may be an area to consider.

Do You Routinely Require New Health Lawyers to Attend Health Law CLE?

We asked respondents whether they routinely required new health lawyers to attend health law CLE, and if so, if they preferred certain programs. The vast majority stated they do and named several different programs. Preferred courses included some AHLA programs, such as the Fundamentals of Health Law program, Institute on Medicare and Medicaid Law, and AHLA’s Annual Meeting. Other respondents also named state bar programs and specialty programs such as those offered by the Food and Drug Law Institute. Some respondents noted they were unable to send lawyers to CLE programs due to budget constraints. Others preferred to train lawyers in-house. With a few exceptions, it appeared that almost every respondent continued to find ways to train new lawyers in the complexities of health care law.

Facing the Critics

How Would You Characterize the Breadth and Depth of the Health Law Curriculum at the Law School From Which You Hire?

Our respondents appeared to identify a gap between law school health law curricula and their hiring needs. Only 8.6% identified the breadth of the health law curriculum as excellent and 27.9% identified it as adequate. More troubling, however, is that 31.5% identified the breadth of the curriculum as inadequate. Interestingly, almost 32% reported they did not know how to characterize the breadth of the health law curriculum. It is not clear whether that was due to lack of familiarity with the health law curriculum or other factors.

Similarly, only 6.5% of respondents stated that the depth of the health law curriculum was excellent, and 26% that it was adequate. Almost 36% regarded the depth as inadequate and 32% did not know. Although no additional information was provided, it would be interesting to know whether the issue with respect to depth was related to the respondents' desire for practical applications of theoretical law, which may be best delivered through externships and practicum opportunities that respondents proposed. Other comments suggested that theoretical understanding taught in class may not translate well to the practice environment. By reducing theory to practice by way of externships and practicum, the perception of lack of depth may be resolved.

How Would You Rate Most Recent Graduates' Preparation To Practice Health Law?

Respondents rated recent graduates' abilities to analyze complex issues; analyze basic issues; exercise a basic understanding of concepts despite needing additional instruction for effective analysis; possessing background knowledge despite needing additional instruction in basic concepts; or having little to no background knowledge in four major areas: transactional, regulatory, litigation, and administrative law. Respondents provided the same ranking for other areas of the law that were important to them.

In each of the four categories, respondents felt recent graduates had a basic understanding but needed additional instruction for effective analysis or had some background knowledge but needed more instruction in basic concepts. The consistency of responses was impressive, ranging between 72% and 74% for the four areas of law. Almost three percent of the respondents felt that graduates competently analyzed complex litigation issues. Slightly less than one percent felt the same about the graduate's ability on transactional issues.

Do Recent Law School Graduates Have the Necessary Skills for Health Law? If Not, What One Skill or Knowledge Area Should Be Added?

The results from this question demonstrate the challenges law schools face in preparing health law-ready graduates. One hundred-eighty respondents replied and their answers ranged from recommending greater emphasis on administrative law, writing skills, statutory interpretation, and contracting to understanding financial documents, reimbursement, the health care delivery system, fraud and abuse, and the interplay between business and legal issues. A common theme was developing an understanding of the business of health care from an operational and a reimbursement perspective and improving communication skills.

How Long Does it Typically Take for a New Graduate to Become Proficient in Analyzing Health Law Questions?

Health law has a steep learning curve, and this was demonstrated by our respondents. Almost 50% of them stated it takes more than two years for a new graduate to become proficient in analyzing basic health law issues to the point that he or she can perform without close supervision and without missing material issues. Thirty-eight percent felt that competence could be accomplished within one to two years. Less than 10% felt such competence could be achieved in less time than that.

Do You Believe Law Schools Can Enhance a Law Student's Preparation for a Career in Health Law? If So, How?

Despite the complexities, our respondents overwhelmingly believe that law schools are an important partner in preparing law students to practice. Almost 93% of respondents believe law schools can enhance a law student's preparation for a role in health law.

Increasing the number of health law-specific externships and clinics received the strongest support among our survey's respondents, a theme that has been consistent throughout the 26-question survey. Over 75% supported the use of externships and practicum courses to help students transition from theory to practice, learn the unique nature of health law, and help emphasize the uniquely collaborative nature of most health law practices. Our survey respondents also suggested joint programs with the medical school, which could have the additional benefit of breaking some of the traditional distrust and barriers between physicians and lawyers.

Almost seventy percent of the survey respondents supported greater depth in the health law subjects currently offered, as well as the number of courses offered (53.8%). Fifty-eight percent also identified increased access to transaction-based courses as beneficial.

Creating an Award-Winning Production

Based on the totality of our survey results, two things become very clear. First, health law is an incredibly complex area of law that is best described as encompassing almost all substantive areas of law for a very special kind of client. Preparing law students to enter practice with some degree of knowledge in such a complex area will require the best skills from traditional academics and members of the private practice community who are willing to partner together to offer not only theoretical, but practical, experiences to the students. Health law is unique in that the work the lawyer does has a direct and resounding impact on the client and society as a whole. Ensuring we have the best possible education for new health lawyers serves not only our profession, but our greater community.

Second, as health care changes, health law will also have to change. This initiative presents the opportunity to re-evaluate the current curriculum and consider ways to work together to make it stronger. However, as technology, the Affordable Care Act, and other changes not yet known impact the way health care is delivered, and as health care transforms from a local activity to a global activity, the way we practice and teach health law will also need to be transformed. Lawyers historically have looked to precedent to make decisions. In health law, precedent often is incapable of illuminating the path. By working together, practicing health lawyers and those who educate our new health lawyers can work together to develop a jurisprudence that accommodates this rapidly changing environment.



The Results of Our Research

Twenty years ago, only a few law schools offered any course on health law. Today, most schools offer at least one course and now dozens offer health law programs. The annual Health Law Professors' Conference (HLPC) now draws up to two hundred attendees. Health law has begun taking its rightful place in the law school curriculum.

We found some significant gaps, however, between what law schools offer and what the profession hopes to see in new health lawyers. Members of the American Health Lawyers Association (AHLA) want to see more substantive classes in fraud & abuse, business, tax, life sciences, and health care reimbursement. Desired skills include working in teams, processing practical transactional skills, and effectively analyzing client-focused problems.

We should remember that most of AHLA's senior leadership never took a health law class in law school and we should beware of specifying an "ideal" curriculum as we can only imagine the changes that will occur in the following decades. The primary goal is to build good foundations for new health lawyers entering the profession; but even with that more modest goal, it will be difficult to shape law school curricula from the outside.

Issues, Obstacles, and Options

Law school curricula are set by full time professors, few of whom are AHLA members. Some of the current full time health law professors focus their teaching and research on bioethics and may not have the background to teach the classes desired by AHLA members. Existing health law casebooks do not allocate sufficient class time to some of the key topics.

Any attempt to "force" reforms on law schools is likely to be counterproductive. It will be important to develop a long term plan to engage with law schools. Four possible complimentary options are:

1. Offer a greatly reduced price for full-time health law professors to attend AHLA's Annual Meetings. With tight law school budgets, attending the Annual Meeting would cost more than half the annual travel budget for most professors. If we want full-time professors at

AHLA's Annual Meetings, the registration price should be dramatically reduced.

2. Continue engaging with the American Society of Law, Medicine & Ethics, which sponsors the annual Health Law Professors' Conference. Engagement efforts have been made in the recent past but the connections between the professors and the profession remain thin. It is interesting to note that very few adjunct professors teaching health law attend the HLPC conference. Perhaps AHLA members who teach as adjuncts could participate more directly in the ASLME and HLPC.
3. Begin an iterative feedback process with law schools on the gaps between curriculum and AHLA members' expectations. This would need to be much more robust than a simple reputational survey (which is already done by *US News & World Report*). A better process might be to assess law schools on whether their health law curriculum matches the AHLA model. To be fair, this process would need to be both transparent (objectively scored) and iterative (changes over time as we learn more). AHLA should view this as an opportunity to begin a dialogue with law schools.
4. Organize and engage within AHLA the members who teach as adjuncts in law schools. While they will have only modest ability to influence curricular choices in law schools, they are a very important and often overlooked stakeholder.

Curricular Guidance

Introduction and Scope

Many new attorneys lack exposure to the full range of health law issues as practiced by AHLA's members. This Curricular Guidance Model identified the core legal subjects and skills that a well-prepared, new health care lawyer should have studied in law school.

One danger encountered in this initiative was the temptation to include every possible subject, but this was impractical as most law schools only reserve three or four credit hours for teaching the core health law class. We were also mindful that many current leaders in AHLA did not take a health law

course in law school, generally because the course was not offered. Our challenge is to produce well-developed, new health lawyers in a rapidly changing area without over-specifying the curricular model.

We have worked collaboratively, both law professor and practicing AHLA member, to reach consensus on a model that appropriately balances health law expertise with curricular freedom, producing students capable of original thought and creativity. This Curricular Guidance Model should be useful to several audiences:

- Professors teaching health law, if they wish to modify their curriculum to reflect feedback from the AHLA;
- Professors writing, revising, and selecting health law casebooks;
- Appointments Committees at law schools, when hiring entry-level tenure-track health law professors; and
- Associate Deans at law schools, when hiring adjunct health law professors.

We address three issues:

- Content of the health law survey course;
- Health law concentrations or certifications; and
- Teaching health law skills.

Health Law Survey Course Content

To serve their clients well, health care lawyers should have a broad understanding of the health care marketplace in which their clients operate. Health law survey courses can help students build a strong foundation for future health law-related work by describing stakeholders (such as health care providers, patients, payers, policymakers, and regulators), explaining health care financing, and identifying key issues in health care delivery, such as quality and safety concerns. Students should recognize the importance of both public and private payers not only in financing health care (and thereby affecting patients' access to it), but also in shaping health care delivery through the conditions and incentives associated with payment mechanisms. Students should be aware of cost trends within the industry and should be familiar with at least a few recent initiatives to address these trends. They should be able to discuss the implications of these initiatives for both patients and providers. Students should also be aware of organizational trends in the industry,

such as an increasing tendency toward affiliation and integration that raises many legal issues. By developing a better understanding of the health care marketplace, students should be able to gain a better grasp of the challenges their clients face.

While every teacher will approach the material in different ways, the following topics are suggested as the core of the Health Law Survey Course:

- The organization and finance of the U.S. health care market place, including:
 - All major public and private stakeholders;
 - History, trends, and reforms; and
 - Constitutional limits on health laws.
- Federal, state, and private health care reimbursement systems for hospitals, physicians, pharmaceuticals, and other health care items and services, as well as emergent pay-for-performance models such as bundled payments, sharing risk, and accountable care organizations (ACO).
- Federal and state regulation of health insurance, including:
 - ERISA;
 - Managed care;
 - The Patient Protection and Affordable Care Act (PPACA) insurance rules;
 - Federal and state cost control mechanisms such as medical loss ratio (MLR); and
 - State and federal exchanges.
- Fraud and Abuse laws, including:
 - Civil Monetary Penalties;
 - Anti-Kickback Law;
 - Exclusion;
 - Stark II;
 - False Claims Act;
 - Corporate Integrity Agreements;
 - State laws; and
 - Compliance plans.
- Health information technology, privacy, and security, including the Health Information Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act (GINA), and meaningful use.

- Quality, patient safety, and provider regulations, including:
 - Malpractice;
 - Licensing, credentialing, accreditation, and Medicare Conditions of Participation (COPs);
 - Corporate practice of medicine;
 - Medical staff, peer review, and National Practitioner Data Bank (NPDB); and
 - Initiatives in Medicare, Medicaid, and private plans relating to reporting and rewarding higher quality and lower cost.
- Governance and regulation of tax exempt health care organizations by the Internal Revenue Service (IRS) and state attorneys general.
- Patient autonomy, including:
 - Informed consent;
 - Patient rights;
 - End of life care;
 - Reproduction; and
 - Human subject research.
- The importance and limitations of public health law, including mandatory vaccinations, tobacco control, wellness programs, and emergency preparedness/quarantine powers.
- Introduction to health care antitrust (see the discussion below regarding concentrations and certificates).

Health Law Concentrations or Certificates

Health law concentrations or certificates give graduates more specialized preparation for a career in health law. We see four important components:

- Specialized coursework in health law;
- Important courses in the general law school curriculum;
- Practical experience in a health law externship or clinic; and
- A capstone course.

Specialized Coursework in Health Law

Law school graduates with a concentration or certificate in health law should also have a deeper understanding of the

basic health law topics described above (i.e., an advanced class in health care fraud and abuse or a specialized ERISA class), as well as a solid introduction to some of the following additional topics:

- Life sciences, including Food and Drug Administration (FDA) regulation of pharmaceuticals and medical devices, intellectual property, reimbursement, tort, and global regulation of human subject research;
- Business literacy with health care financial statements, business concepts, and basic statistics;
- Health care antitrust (see discussion below);
- Physical and mental health disabilities, including the Americans with Disabilities Act (ADA), psychiatry, and commitment; and
- Racial and economic health disparities, including limited English proficiency (LEP).

Important Courses for the General Law School Curriculum

While we recommend the following general courses for all aspiring health care lawyers, they are particularly recommended for health law certificates and concentrations:

- Administrative Law—Some administrative law should be embedded in the health law survey course, helping the student understand the health law agencies (e.g., Centers for Medicare and Medicaid Services, FDA, IRS) and how a practitioner interacts with them, including administrative proceedings and advisory opinions;
- Antitrust Law, including:
 - The goals and contours of antitrust law in the health sector;
 - The primary statutes, defenses, and issues relevant to health care, such as the state action doctrine, hospital market definition, and clinical and financial integration;
 - Health care guidance from the agencies, including the ACO Joint Statements;
 - Provider networks; and
 - Scope of practice issues, such as minute clinics.

If the general antitrust class does not include these topics, they should then be covered in either the health law survey course or in a specialized health care antitrust class.

- **Business Associations**—The study of corporations and other business associations provides an essential foundation for health law practice.
- **Labor and Employment**—The introductory course in labor and employment is becoming increasingly important to many health law practice settings.
- **Tax**—The introductory course in federal income taxation is very important. Additional tax courses are also recommended in corporate and partnership tax. An introduction to exempt organizations should be included in the health law survey course and a more specialized course in exempt organizations (tax and governance) is recommended.

Practical Experience in a Health Law Externship Clinic

We recommend at least one practical experience for academic credit in a supervised health law externship or a specialized health law clinic for all health law concentrations or certificates. This experience may also include a substantial writing component.

Capstone Course in Health Law

Finally, we recommend a capstone experience in health law for 3Ls, which integrates elements from across the health law curriculum into a practical, team-oriented course. One possible example of a capstone could be Health Care Transactions, with students working in small teams on simulation transactions of increasing complexity. Other examples of capstones could be advanced health law courses taught jointly with business school faculty and students, as well as Medical-Legal Partnerships involving students from law, medicine, and public health.

The capstone should include a substantial writing component relevant to the particular type of class: transactional capstones could include joint venture agreements; advocacy capstones could include substantial policy position papers; litigation

capstones could include appropriate court documents. The overall goal is to improve the students' writing ability within health law with high quality, relevant work.

Teaching Health Law Skills

Many law schools have recently supplemented traditional law school teaching methods, especially in the second and third years. We applaud this trend and suggest stronger emphasis on:

- Casebook and classroom teaching that examines a **diversity of legal materials** beyond appellate court decisions, including:
 - Statutes, regulations, preambles, advisory opinions, guidance, standards, and other regulatory materials from a variety of federal, state, and private sources;
 - Client and board room documents, including documents that an associate might be asked to draft or comment on early in their career;
 - Complaints and depositions;
 - Medical and health policy literature; and
 - Legislative text and committee reports.
- Working in **small teams** on collaborative projects, including some elements of negotiation, drafting, and transactions;
- Teaching and assessment that include **problem sets**, including the problem sets that AHLA members have developed for law schools (see Appendix A); and
- Health law specific research skills, including health law research guides that some law schools maintain for students (for example, Boston University Law School's guide is available at www.bu.edu/lawlibrary/research/health/index.html).

AHLA's Law School Alliance Program



Benefits of AHLA Membership/AHLA Law School Alliance

Membership in health law associations supports health law education by exposing law students to the most current health law educational content and the practical issues health law professionals face. Early membership in health law associations such as the AHLA can enhance a student's law school education and provide a valuable means to transition into a health law career.

AHLA is the largest non-profit educational professional association devoted to health law in the country. AHLA members, academicians, and students not only have access to a network of over 12,500 academicians, law firm and government agency attorneys, solo practitioners, in-house counsel, students, and other health professionals, they also receive numerous benefits, such as significant discounted rates for AHLA in-person programs and webinars and complimentary access to valuable content and information from AHLA's sixteen Practice Groups. The benefits of AHLA membership can be further expanded through participation in the AHLA's Law School Alliance, which is available to

law schools or schools of public health having a health law program or a student health law organization. Schools that establish an AHLA Alliance receive additional benefits, including:

- Discounted prices for the AHLA's *Fundamentals of Health Law* publication;
- A listing of the School/Program's name, logo, and designated advisor on the AHLA Law School Alliance Program website;
- Opportunities for students to attend AHLA programs for free in exchange for volunteering at the event; and
- Identification of health law experts who can speak to students and student groups about health care legal issues.

More information is at the [AHLA Law School Alliance](#) website.

State Law And State Health Law Associations



The Results of Our Research

The State Law and State Health Law Associations work group was formed to determine how states defined the “practice of health law,” if they defined it at all. In our efforts to identify which subject areas legitimately could be considered the outer limits of “health law,” we tried to exclude subjects that are not commonly accepted as being part of health law without missing content that may be important to how some jurisdictions provide oversight to the health care sector. A few possible indicators that we applied to determine if a subject fit within the realm of health law were whether the subject pertained directly or indirectly to the rights and responsibilities of a patient, concerned a client who played a role in the health care system and had the reasonable expectation of receiving advice or representation on a particular legal issues, and involved a hospital, medical office, or other health care setting where patients received medical care.

Our ensuing discussions produced five standard questions to which we sometimes found answers in a state’s statute or other legal authority and/or by reaching out to a contact at the respective state bar association or similar organization. These questions asked: Did the state formally define the practice of health law; did the state enumerate the specific subjects that constitute health law; did the state license or certify the practice of health law; did the state organize the practice of health law through an organization for continuing legal education purposes or to improve the delivery of health law services; and did there exist any other information that might impact the legal profession’s understanding of what it means to “practice health law?”

Not surprisingly, a large number of states have not codified or formally defined the practice of health law. States that touch upon the topic of health generally in their statutes (e.g., Connecticut, Georgia, Minnesota, Tennessee, and Vermont) define what constitutes “health” or “health care” but not “health law.” On the other hand, the Health Law Section of Delaware’s State Bar Association has defined the practice of health law fairly broadly so as to encompass “any area of the law or legal practice that touches upon or relates to medical services, health services, or other health-related industries,” and the Health Law Council of the State Bar of Texas more specifically defines health law according to legal issues that involve, for example, confidentiality of health records, advance directives, mental health treatment, access to health care, and a patient’s right to refuse psychotropic medication, just to name a few. For the few states in which the practice of health law is defined—either by statute or through its state bar association—certification is offered by only two: Texas and Florida.

Despite the number of states that do not define the practice of health law or enumerate specific subjects that might otherwise constitute health law, a resounding majority—42 states and the District of Columbia—organize the practice of health law through their state or local bar associations or a related organization such as a society for health care attorneys.¹ That an overwhelming majority of jurisdictions organize the practice of health law in this manner shows that health law is no longer the novel or unfamiliar specialty that it may have been almost thirty years ago.

¹ The eight states that do not appear to have a formal health law section as part of a bar association or other related organization are Arizona, Hawaii, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, and West Virginia.

Alabama



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. A search of health laws across Alabama’s Code, administrative regulations, bar rules, and case law did not reveal a definition for the practice of health law. The Alabama State Bar Health Law Section states it is open to those who have an interest in “various state and federal issues such as Medicare fraud and abuse, payment problems, merger and acquisition of health care entities, antitrust, fiscal management, peer review, provider malpractice, individual rights and Supreme Court actions.” [Law Section, Alabama State Bar](#). That language, however, is simply included in the introductory material on the Health Law Section’s website and is not legally binding authority.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. As noted above, Alabama law does not appear to define “health law” or “health care law.” The Health Law Section of its bar also does not provide a definition of the term or exclude particular subjects from constituting health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No. The Alabama Rules of Professional Conduct prohibit a lawyer from stating that she is a specialist in any area of the law (other than patent or admiralty law) unless she has been certified by an organization approved by the Alabama State Bar Board of Legal Certification (Alabama Rules of Professional Conduct, Rule 7.4I (2012)). The state’s Board of Legal Certification only recognizes specialties in business and consumer bankruptcy; creditors’ rights; estate planning; civil, criminal, and family law trial advocacy; Social Security disability advocacy; elder law; and DUI defense (criminal

law). (Alabama State Bar, [Specialization](#)). Health law is not one of the recognized areas of law in which an attorney can become certified as a specialist in Alabama.

To be recognized as a specialist in elder law in Alabama—an area of practice that can overlap with health law—attorneys must qualify for and pass the National Elder Law Foundation’s (NELF) Elder Law Examination. To qualify for the NELF examination, an attorney must have practiced law for five years prior to his application, must have averaged at least 16 hours per week practicing elder law during the three years prior to his application, participated in at least 45 hours of CLE credit during the preceding three years, and provide references attesting to the attorney’s qualification as a specialist. After an attorney passes the NELF examination, Alabama’s state bar requires an attorney to complete a minimum of six hours of CLE course work in the area of elder law each year. See National Elder Law Foundation, [Becoming Certified](#).

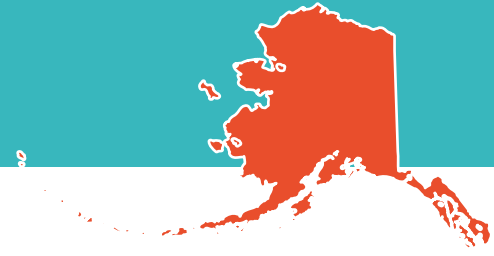
Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes. The Alabama State Bar has established a [Health Law Section](#) that is open to attorneys who are “interested or involved in the ever-broadening interface between law and health care.” The Health Law Section hosts an annual lunch-and-learn series on health law and it has established an electronic discussion forum that concentrates on four areas of health care law: (1) regulations, (2) litigation, (3) hospitals, and (4) physicians and other providers.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: Research did not reveal any information that would affect the scope of the legal profession’s understanding of what is meant by the practice of health law.

Alaska



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. Alaska's statutes, administrative code, case law, and the state bar association do not appear to define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. Alaska's General Statutes contain numerous chapters governing health and safety, welfare, etc., but these chapters do not address the subjects that fall within the domain of the practice of health care law. Alaska's administrative code also does not contain a definition of health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public? If so, please identify those organizations and provide contacts for them.

A: Yes. Visit [Alaska Bar Association – Health Law Section](#)

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: N/A.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: None found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The Arizona Association of Health Care Lawyers, which is not affiliated with the AZ State Bar. The Arizona Bar does not have a section for “Health Law” but has an [Elder Law and Mental Health Section](#).

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: No.

Arkansas



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: None found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No enumeration of subjects that constitute health law were found.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Arkansas allows lawyers to designate a field of practice or specialty under Arkansas Rule 7.4, but that does not include a health law specialty. Arkansas' State Bar Association website's find-a-lawyer page contains an option to find an attorney in the "Health Law" area of practice. This search results in only a handful of attorneys and does not list any certification.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The [Arkansas Bar Association has a Health Law Section](#).

The purpose of the health law section is to promote the objectives of the Arkansas Bar Association within the particular field of health law, through its practitioners, both in public and private practice, and to promote professionalism, further excellence, and create a better understanding and cooperation among the attorneys engaged in this field of law.

Arkansas also has a Disability Law Section that promotes the Association's objectives within the field of Disability Law, including Social Security Law and related federal and state law. The Disability Law Section pledges to promote professionalism, excellence, and understanding and cooperation among the attorneys engaged in this field of law.

Arkansas has an Elder Law Section that promotes the Association's objectives and serve the needs of attorneys who focus their practice in the field of Elder Law. The Elder Law Section pledges to promote professionalism, excellence, and understanding and cooperation among those attorneys engaged in this area of practice.

The purpose of Workers' Compensation Law Section shall be to promote the Association's objectives within the particular field of Workers' Compensation Law and to inform and promote a better understanding among attorneys engaged in this field of law.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: Arkansas publishes a Public Health Law BenchBook that includes discussions for judges of what powers the state has over public health, particularly in emergencies and where state power conflicts with individual rights. The University of Arkansas at Little Rock, William H. Bowen School of Law and the Arkansas Center for Health Improvement fund the book. The materials contained in the bench book were compiled by the Health Law Committee of the Arkansas Bar Association and supported by the Arkansas Department of Health, in particular the Center for Health Protection, Preparedness, and Response Branch.

California



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. California's statutes, administrative code, case law, and the state bar association do not appear to define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. California's General Statutes contain numerous chapters governing health and safety, welfare, etc., but these chapters do not address the subjects that fall within the domain of the practice of health care law. California's administrative code also does not contain a definition of health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

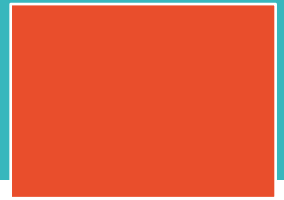
Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes.

- [The Bar Association of San Francisco–Barristers Club Section–Health Law](#)
- [California Society for Healthcare Attorneys](#)
- [San Diego County Bar Association–Law & Medicine Section](#)
- [Los Angeles Bar Association–Health Law Section](#)
- [Orange County Bar Association–Health Law Section](#)

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: There does not appear to be a Health Law Section of the California State Bar Association itself.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No such definition was found. Colorado defines a number of other health-related terms, including “health care practitioner” and “health care provider” for statutory purposes but not the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: None found.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Colorado offers no state programs for legal specialization. Colorado Ethics Rule 7.4(f) states that any advertisement referencing specialty certification must also include the disclaimer that “Colorado does not certify attorneys as specialists in any field.” Attorneys earning certification through a private certifying program (even if accredited by the American Bar Association) must include a disclaimer stating as much in any advertising.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes, there is a [Health Law Section of the Colorado Bar Association](#).

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: None found.

Connecticut



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition of the “practice of health law” could not be found but the state defines health care as follows:

Conn. Gen. Stat. Ann. § 38a-175(8): “Health care” includes, but shall not be limited to, the following: Medical, surgical and dental care provided through licensed practitioners, including any supporting and ancillary personnel, services and supplies; physical therapy service provided through licensed physical therapists upon the prescription of a physician; psychological examinations provided by registered psychologists; optometric service provided by licensed optometrists; hospital service, both inpatient and outpatient; convalescent institution care and nursing home care; nursing service provided by a registered nurse or by a licensed practical nurse; home care service of all types required for the health of a person; rehabilitation service required or desirable for the health of a person; preventive medical services of all and any types; furnishing necessary appliances, drugs, medicines and supplies; educational services for the health and well-being of a person; ambulance service; and any other care, service or treatment related to the prevention or treatment of disease, the correction of defects and the maintenance of the physical and mental well-being of human beings. Any diagnosis and treatment of diseases of human beings required for health care as defined in this section, if rendered, shall be under the supervision and control of the providers. For additional resources, see [http://www.jud.ct.gov/lawlib/law/health care.htm](http://www.jud.ct.gov/lawlib/law/health%20care.htm)

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: None found.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: None found for health law. Connecticut Rule 7.4A Certification as Specialist states that lawyers may be certified as specialists in the following twenty-seven fields of law, none of which are health law: administrative law; admiralty; antitrust; appellate practice; business bankruptcy; consumer bankruptcy; civil rights and discrimination; civil trial practice; commercial transactions; consumer claims and protection; corporate and business organizations; corporate finance and securities; criminal; environmental; estate planning and probate; family and matrimonial; government contracts and claims; immigration and naturalization; international; labor; military; natural resources; patent, trademark, and copyright; residential real estate; commercial real estate; taxation; and workers’ compensation.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes. See the [Connecticut Bar Association Health Law Section](#).

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: None found.

Delaware



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No actual legal authorities, including statutes, regulations, and case law, defines the practice of health law, but the Health Law Section of the Delaware State Bar Association defines it as “any area of the law or legal practice that touches upon or relates to medical services, health services, or other health-related industries.”

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: None found.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No. Delaware does not offer any state certification programs for any specialty within the practice of law. However, the state does recognize certain certifications accredited by the ABA. Moreover, Ethics Rule 7.4 does not require lawyers to include a disclaimer in their advertisements where the certification is awarded by an organization whose program is accredited by the ABA.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The Delaware State Bar Association Health Law Section.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: None found.

District of Columbia

Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The District of Columbia Bar is organized into specialty areas through sections, one of which is the [Health Law section](#). The section organizes events and education focused on health law. The section is run by a steering committee.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: As a result of being located in Washington, D.C., the practice of health law runs the gamut from a solo practitioner advising on employee health benefit plans under ERISA to government lawyers enforcing the False Claims Act to lawyers focused on lobbying and policy-making on Capitol Hill or at associations. Many large law firms have an office in D.C. with a health care practice.

Florida



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: Yes. Florida's legislature delegates the admission and regulation of attorneys within Florida to the Supreme Court of Florida. Fla. Stat. § 454.021 (2012). Florida's Supreme Court has adopted rules governing the Florida Bar, and in those rules the Court defines "health law" as "legal issues involving federal, state, or local law, rules or regulations and health care provider issues, regulation of providers, legal issues regarding relationships between and among providers, legal issues regarding relationships between providers and payers, and legal issues regarding the delivery of health care services" (Rules Governing the Florida Bar, Rule 6-14.2(a)). The practice of health law means "legal work performed primarily for purposes of rendering legal advice or representation," presumably in the area of health law (Id., Rules 6-14.2(b), 6-3.5(c)(1)).

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. As noted above, Florida's definition of health law includes "legal issues involving federal, state, or local law, rules or regulations and health care provider issues, regulation of providers, legal issues regarding relationships between and among providers, legal issues regarding relationships between providers and payers, and legal issues regarding the delivery of health care services" (Rules Governing the Florida Bar, Rule 6-14.2(a)). However, the state does not appear to distinguish the practice of health law from any other type of law or exclude particular subjects or areas of law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Yes. The Florida Bar permits attorneys to become certified in the practice of health law (Rules Regulating the Florida Bar, Rule 6-14.1; [see also the Florida Bar's certification for health law](#)). In general, an attorney must have practiced law for at least five years prior to becoming certified, must have "demonstrated substantial involvement in the practice of health law" during the 3 years immediately before the application, participated in health-law related educational activities, and passed the Bar's certification examination (Rules Governing the Florida Bar, Rule 6-14.3).

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes. The [Florida Bar Health Law Section](#) "provide[s] a forum for communication and education leading to the improvement and development of the field of health law. Another goal is serving the bar and the public generally in interpreting and carrying out the professional needs and objectives in the area of health law."

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: N/A.

Georgia



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition for the “practice of health law” could not be found. The state does, however, define health care under their Health Care Compact as follows:

“Health Care” means care, services, supplies, or plans related to the health of an individual and includes, but is not limited to:

- (a) Preventative, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body;
- (b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription; and
- (c) An individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual, except any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veterans Affairs, or provided to Native Americans.”

Ga. Code Ann. § 31-48-1.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: None found.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: None found. Rule 7.4 Communication of Fields of Practice generally addresses the communications that a lawyer may make about his or her area of specialty but the Rule does not specify the practice of health law.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes. The [Health Law Section](#) deals with a wide variety of health care law issues relevant to attorneys for hospitals, physicians, insurers, employers, patients and government agencies. These issues include Medicare/Medicaid and private insurance reimbursement issues; medical malpractice; certificates of need and state licensure; health care finance, taxation and antitrust; managed care (HMO and PPO); and hospital staff issues and peer review. The Section publishes a newsletter for its members and conducts educational seminars during the year. The Section also sponsors health law projects among the various Georgia law schools, such as the Georgia Advocate’s Guide to Health Care, prepared by Mercer University School of Law with funding from the Section. The Section co-sponsors with ICLE an annual Health Care Fraud Institute.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: Georgia is a Signatory of the Health Care Compact cited above. For additional discussion on this subject, see Elizabeth Weeks Leonard, *The Rhetoric Hits the Road: State Challenges to the Affordable Care Act Implementation*, 46 U. Rich. L. Rev. 781, 816–18 (2012).



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: Hawaii's statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: Hawaii does not appear to identify specific subjects that constitute health law. Hawaii's statutes contain chapters governing social services, medical torts, and health generally. See, e.g., Haw. Rev. Stat. §§ 346-1—350-5; Haw. Rev. Stat. §§ 671-1—671-37; Haw. Rev. Stat. §§ 321—344-4. However, none of these sections address which subjects specifically constitute health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Attorneys do not have to be licensed or certified to practice health law. Hawaii Rules of Professional Conduct, Rule 7.4 states that a lawyer may communicate the fact that the lawyer practices in a particular field of law, and whether he has been certified as a specialist by a named organization. The comments to Rule 7.4 provide that a lawyer is generally permitted to state that he is a "specialist," practices a "specialty," or "specializes" in a particular field. A lawyer may not say that he is recognized or certified in a particular area, except as provided in Rule 7.4. There does not appear to be any organization that officially recognizes or certifies the practice of health law.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: No. There does not appear to be any professional legal organization related to health law.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.



***Q:** Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No.

***Q:** Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: No.

***Q:** Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: No.

***Q:** Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: The [Health Law Section of the Idaho State Bar](#)

***Q:** Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?*

A: No.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition was not found for the “practice of health law.”

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: The Illinois State Bar Association separates health law and elder law into separate sections, but does not have a separate section for Food, Drug & Device Law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The mission of the [Illinois State Bar Association Health Care Law Section](#):

- to provide a forum for the exchange of ideas and information concerning health care law and the health care industry;
- to inform the public about important health law developments;
- to initiate, promote and review federal and state law relating to health care matters; and
- to further these goals through seminars, publications and other activities.

[Illinois Association of Health Care Attorneys](#)

The Illinois Association of Healthcare Attorneys (IAHA) serves the informational and educational needs of attorneys representing the health care industry, from hospitals and physicians to medical device and pharmaceutical manufacturers.

[Chicago Bar Association YLD Health & Hospital Law Committee](#)

The Committee provides a forum for members to exchange viewpoints and keep up-to-date, by both committee members and guest speakers, on current legal issues and developments related to the health care community. In addition to monthly luncheon meetings and workshops, the Committee presents two seminars during the year, both of which provide in-depth reviews of timely health law providers (ie., physicians, hospitals, and ancillary service providers) and payer and insuring arrangements (ie., PPO, HMO, PSO, and TPA).

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: The Illinois Association of Health Care Attorneys indicates that health law includes hospital and physician issues as well as medical device and pharmaceutical manufacturing. The Chicago Bar Association Young Lawyers Division Health and Hospital Law Committee also includes payer and insurance arrangements in the scope of its annual seminars.

Indiana



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition was not found for the “practice of health law.”

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: The Indiana State Bar Association separates health law and elder law into separate sections, but does not have a separate section for Food, Drug & Device Law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: The Indiana Judicial Branch recognizes a certification in elder law from the Board of Certification of the National Elder Law Foundation (NELF).

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The [Health Law Section of the Indiana State Bar Association](#) promotes the interests of the Section’s members and of the Association in the area of health law, studies and makes appropriate recommendations concerning health law matters, and monitors the developments of this area of practice.

The Indianapolis Bar Association also has a [Health Care interest group](#), organized to “provide a forum for interaction and information exchange to enable its lawyer members to serve their clients more effectively; to produce the highest quality non-partisan educational programs, products and services concerning health law issues; and to serve as a public resource on selected health care legal issues.”

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: Some of the areas on which the [Health Law Section of the Indiana State Bar Association](#) concentrates are: professional liability; managed care; fraud and abuse; social security; long-term care; and ethical issues.



Q: *Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No. Iowa's statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

Q: *Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: Iowa has a single public health statute and it does not identify which subjects constitute health law. See Iowa Code Ann. §§ 135.1—158.16. Additionally, Iowa's regulations pertaining to the Department of Public Health and Department of Human Services do not identify which subjects constitute health law. See Iowa Admin. Code r. 641-1.1(139A)—641-204.2(135); Iowa Admin. Code r. 441-1.1(17A)—441-204.9(234).

However, the Iowa State Bar Association separates health law and elder law into separate sections.

Q: *Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: Attorneys do not have to be licensed or certified to practice health law. The Iowa Rules of Professional Conduct, Rule 32:7.4(a) states that a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

Rule 32:7.4(d) provides that a lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field unless: (1) the lawyer has been certified as

a specialist by an organization that has been approved by the Iowa Supreme Court Attorney Disciplinary board; (2) the name of the certifying organization is clearly identified in the communication; (3) the reference to the certification is truthful, verifiable, and not misleading; and (4) the representation by the lawyer that he or she is certified as a specialist states that the Supreme Court of Iowa does not certify lawyers as specialists and that certification is not required to practice law in the State of Iowa. There does not appear to be an official organization that can certify lawyers in health law pursuant to Rule 32:7.4(d).

Iowa does not appear to have a health law specialization or certification process.

Q: *Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: The Iowa State Bar Association has a Health Law Section designed to “provide an organization in which members who have an interest in health law can meet for discussion and exchange of ideas.” However, the website is password-protected, and there is no specific contact information listed. General questions can be directed to: isba@iowabar.org.

Q: *Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?*

A: No.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition for the practice of health law was not found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: The Kansas State Bar Association separates health law and elder law into separate sections, but does not have a separate section for Food, Drug & Device Law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A:

- [Kansas Bar Association Health Law Section](#), which plans and promotes education programs; support and recommend legislation; distribute information through newsletters, bulletin boards, or other means of communication; and provide networking opportunities for health law practitioners.
- Greater Kansas City Society of Health Care Attorneys
- [Kansas Association of Hospital Attorneys](#) – The Kansas Association of Hospital Attorneys (KAHA) is an organization for attorneys representing or employed by an institutional member of the Kansas Hospital Association.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

Kentucky



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No laws found defining practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No enumeration of subjects that constitute health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Kentucky does not certify specialties in legal fields. SCR 3.130-7.40. There is no board of legal specialization. Kentucky allows lawyers to state or imply that they are “certified”, a “specialist”, an “expert” or “authority” in a particular field of law only if the lawyer has been certified as a specialist by an organization approved by the state or national organization that the attorney demonstrates is qualified to grant such certification to attorneys. SCR 3.130-7.40.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The purpose of the Health Law Section of the [Kentucky Bar Association](#) is to “increase the interest in the field of health law by members of the Association, non-members of the Association, and laypersons and to serve and educate its members in that field of health law.” ([Kentucky Bar Association Health Law Section Bylaws](#))

Kentucky also has an [Elder Law Section](#), the purposes of which are the following:

A. To provide an organization within the Association for persons with an interest in elder law and to further the knowledge and professionalism of members in that field of law;

- B. To provide a forum for mutual help in the practice of elder law and to discuss and form solutions to problems occurring in such practice;
- C. To aid in the development of laws benefitting elder citizens and those concerned with the care and needs of the elderly;
- D. To aid and encourage the presentation of seminars, institutes, programs, publications, and legal panels connected with the Section’s objectives.
- E. To promote the health, welfare, and financial security of elder citizens in accordance with their needs and wishes;
- F. To promote ethical and competent practice in the elder law field;
- G. To disseminate information for the better understanding of the public in matters relating to elder law;
- H. To improve the administration and application of laws, rules, and regulations in elder law matters and to further legitimate legislative objectives; and
- I. To do such other activities as may be necessary and appropriate to fulfill any or all of the foregoing statements of purpose. ([Elder Law Section Kentucky Bar Association By-Laws](#)). All Section meetings are held from 12:00-1:30 p.m. in the Boardroom at the Kentucky Bar Center, which is located at 514 West Main Street in Frankfort.

Kentucky also has a [Workers’ Compensation Law Section](#), the purposes of which are the following:

- A. To promote the exchange of ideas within the Association on matters of interest to Workers’ Compensation counsel, both plaintiff and defense;
 - B. To provide through Association-sponsored programs information relevant to Workers’ Compensation practice;
 - C. To assist Workers’ Compensation counsel in discharging their professional responsibilities to their clients; and
 - D. To enhance the image of the professional capability of Workers’ Compensation counsel.
- [By-Laws Workers’ Compensation Law Section Kentucky Bar Association](#)

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: No.

Louisiana



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. There are no references that attempt to define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. Practitioners do know various areas of law, but there are very few attorneys who practice “health law.”

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No. It is on the agenda for the Louisiana bar association to push for a health law specialization. The Louisiana Supreme Court has a special committee that has previously recognized four specializations in the practice of law, but committee has not recognized a new area of specialization for many years.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: There are health law sections for both the state of Louisiana and the city of New Orleans. Both sections conduct CLEs and pro bono activities dealing with advanced health law directives. The Louisiana bar association also conducts health fairs.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: No, except in the area of medical malpractice where damages are capped. In general, all statutes are similar to those of other states.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No, Maine does not have any laws, regulations, or other legal authorities that define the practice of health law. However, Maine has various laws that parallel federal law as to the rights and responsibilities of patients, health care providers, vendors, and public and private payers.

Generally, patients are entitled to such rights as individualized and humane treatment, informed consent of treatment, privacy, confidentiality, notification of rights, and a fair grievance system among others. See 22 M.R.S.A. § 1719(2); 34-B M.R.S.A. § 3003 (2)(A) – (K). Maine regulates disclosure of confidential patient information by a health care provider in a manner very similar to HIPAA. See 22 M.R.S.A. § 1711-C. It also provides strict guidelines for disclosure of records of confidential information that the state’s Department of Health and Human Services (“Department”) creates, acquires, or retains “in connection with the administration of the Medicaid program and the licensing or certification of hospitals, nursing homes and other medical facilities and entities.” See Id. § 1828.

Hospitals are required to provide “free care” to indigent patients. See 10-144 C.M.R. Ch. 150 § 1.01. Healthcare providers that provide ambulatory and outpatient services must provide charity care to indigent patients if the provider also performs certain services, including but not limited to imaging services, laboratory services, and cardiac diagnostic services. See 22 M.R.S.A. § 1715.

Hospitals are reimbursed by the state for treatment of indigent patients. See Id. § 1708(1). Nursing homes are reimbursed for indigent care based on the reasonable expenses to provide such care, with the same limits as the Social Security Act, Title XIX. See Id. § 1708(3). Healthcare providers are prohibited from knowingly charging patients, their insurers or employers who pay for health care services for correcting certain “mistakes or preventable adverse effects.” See Id. § 1721.

Interestingly, a nursing facility that is a Medicaid participant must also participate in the Medicare health insurance for the aged program as a skilled nursing facility; and is required to bill Medicare for patient services before billing Medicaid. See Id. § 1812-H.

Healthcare providers found to be in violation of Maine’s false claims act are subject to restitution, treble damages, plus costs to the Department. See Id. § 15. Maine has a self-referral prohibition that is quite similar to the federal Stark Law, see Id. § 2085; with civil penalties of \$2000.00 per violation. See Id. § 2086.

The Department’s decisions as to false claims violations are governed by the Maine Administrative Procedure Act, 5 M.R.S.A. § 8001 et. Seq. Judicial review in Superior Court is only available to providers once all administrative remedies have been exhausted, or if judicial review of the Department’s final action would fail to provide an appropriate remedy. See Id. § 11001.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No, Maine makes no such distinction.

Q: Does your jurisdiction require or permit any legal body within its jurisdiction to license or certify the practice of health law?

A: No, Maine neither requires nor permits any legal body to license or certify the practice of health law.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The Maine State Bar Association has a voluntary [Health Law Section](#) that conducts CLE events which are certified by the MSBA.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: No, there is nothing unique to Maine that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law. However, the MSBA states the Health Law Section is very active, which helps to provide MSBA members with a more complete understanding of all aspects of the practice of health law.

Maryland



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: Most of the relevant law is found in the Health-General and Health-Occupations Articles of Maryland's Annotated Code and their accompanying regulations in COMAR (The Code of Maryland Regulations).

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: Not necessarily, but the Maryland BAR health law section offers a "health law mentor program." The purpose of the program is "to provide University of Maryland and University of Baltimore law students who are interested in careers in health law with access to practicing health law attorneys in Maryland to discuss career options in health law and to obtain advice regarding career decisions and the practice of health law."

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: There is not a legal body in Maryland required to license or certify the practice of health law but there is a certification program at the University of Maryland Carey School of Law.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The Maryland State Bar has a [Health Law Section](#). Its stated purposes are:

1. To bring together members of the MSBA interested in health law
2. To promote the continuing legal education of the bar in health law
3. To sponsor health law publications for the benefit of the bar and public
4. To work on a cooperative basis to improve the law and promote the interest of the public and members of the bar in health law

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: Carolyn Jacobs of the Maryland Bar's Health Law Section provided;

"The only really unique aspect of Maryland health law is that we have an all payer system. Hospital rates are set by the Maryland Health Services Cost Review Commission and all payer pay those rates. Thus we are not subject to Medicare PPS."

Massachusetts



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. Massachusetts's statutes, administrative code, and case law do not define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law? If so, please provide any basis for that distinction.

A: N/A

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: N/A

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Massachusetts Bar Association, Health Law Section

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: N/A

Michigan



***Q:** Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No. Michigan's statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

***Q:** Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: Michigan does not appear to identify specific subjects that constitute health law. Michigan's statutes contain chapters governing health generally, mental health, and hospitals. See, e.g., Mich. Comp. Laws Ann. §§ 333.1011—333.26569; Mich. Comp. Laws Ann. §§ 330.1001—330.3101; Mich. Comp. Laws Ann. §§ 331.1—331.505. These sections do not enumerate what subjects specifically constitute health law. However, the State Bar of Michigan separates health law and elder law into separate sections.

***Q:** Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: Attorneys do not have to be licensed or certified to practice health law. Michigan Rules of Professional Conduct, Rule 7.4 provides that a lawyer may communicate the fact that the lawyer does or does not practice in a particular field of law. Michigan does not appear to have a health law specialization or certification process.

***Q:** Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: Yes. The State Bar of Michigan has a [Health Care Law Section](#).

***Q:** Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?*

A: No.

Minnesota



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: Chapters 144 through 159 of the Minnesota Statutes are devoted to Health. In addition, other statutory chapters and provisions address Insurance (Chapters 59A through 79A), Medicaid Program (256B), Non-Profit Organizations (Chapter 317A), etc. While the below citations only represent a fraction of these provisions that address the rights of patients, providers, and payers, the citations are an effort to capture commonly referenced provisions. Administrative rules that interpret statutory provisions are not included.

- Minnesota Health Records Act (Minn. Stat. § 144.291 et seq.)
- Patients Bill of Rights (144.651)
- Consent of Minors for Health Services (144.341)
- Health Care Information, Review Organizations (145.61)
- Minnesota Living Will Act (145B.01 et seq.)
- Health Care Directives (145C.01 et seq.)
- Board of Medical Practice (147.001)
- Physician Assistants, Licensing (147A.001)
- Minnesota Commitment and Treatment Act (253B.01)
- Medical Assistance for Needy Persons (256B.001)

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: See above.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A:

- The Minnesota State Bar Association (MSBA) offers several Certified Legal Specialists (e.g. Civil Trial, Criminal, Labor and Employment, and Real Property) but not for Health Law.
- Hamline University, through its Health Law Institute, offers Health Law, Compliance, and Online Compliance Certificates for its students.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes, the [MSBA has a Health Law Section](#) and Hamline University has a [Health Law Institute](#).

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

Mississippi



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. Mississippi's statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: Mississippi does not appear to identify specific subjects that constitute health law. Mississippi's statutes and regulations contain chapters governing public health, public welfare, physicians, and health generally. See, e.g., Miss. Code Ann. §§ 41-3-1.1—41-125-23; Miss. Code Ann. §§ 43-1-1—43-61-11; Miss. Code Ann. §§ 73-25-1—73-25-95; Miss. Code R. 15-21-1—15-21-78:1.15. However, none of these sections address which subjects specifically constitute health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Attorneys do not have to be licensed or certified to practice health law. Mississippi Rules of Professional Conduct, Rule 7.6 provides that a lawyer may communicate that he has been certified or designated in a field of law by a named organization or authority, but only if the certification or designation was granted by an organization or authority whose specialty certification or designation program is accredited by the American Bar Association. Additionally, Rule 7.6 provides that a lawyer may communicate a certification or designation in a particular field by a non-ABA organization or authority, but must disclose such fact and disclose that there is no procedure in Mississippi for approving certifying or designating organizations. Mississippi does not appear to have a health law specialization or certification process.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes. The Mississippi Bar has a [Health Law Section](#) that “addresses issues of concern to attorneys devoted to dealing with the administration of health care.”

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition for the practice of health law was not found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: The Missouri Bar Association separates Elder Law and Health and Hospital Law into two separate committees.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A:

- Missouri Bar Association - [Health & Hospital Law Committee](#)
Health and Hospital Law Committee scope: The scope of this committee is to promote the development and understanding of the law and administrative regulations as they relate to health and hospitals.
- [Missouri Society of Health Care Attorneys](#)
The goal of the Missouri Society of Health Care Attorneys is to promote high standards of professional ethics, education and effectiveness in the area of legal services to health care providers, contractors and related entities, through:
 - The exchange of information among health care attorneys and among hospital administrators; and
 - Furthering the professional and technical development of health care attorneys.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

Montana



Q: *Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No. Montana’s statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

Q: *Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: Montana does not appear to identify specific subjects that constitute health law. Montana’s statutes and regulations contain chapters governing health and safety, malpractice lawsuits, social services, and public health and human services. See, e.g., Mont. Code Ann. §§50-1-101—50-79-501; Mont. Code Ann. §§ 27-6-101—27-6-704; Mont. Code Ann. §§ 53-1-102—53-20-611; Mont. Admin. R. 37.1.101—37.117.101. These sections do not enumerate what subjects specifically constitute health law. However, the State Bar of Montana separates health law and elder assistance into separate sections.

Q: *Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: Attorneys do not have to be licensed or certified to practice health law. The Montana Rules of Professional Conduct, Rule 7.4(a) provides that a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law and that his practice is limited to or concentrated in a particular field of law, so long as the communication is not false or misleading.

Additionally, Rule 7.4(d) provides that a lawyer shall not state or imply that he is certified as a specialist in a particular field of law, unless: (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association, and; (2) the name of the certifying organization is clearly identified in the communication. Montana does not appear to have a health law specialization or certification process.

Q: *Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: Yes. The State Bar of Montana has a [Health Care Law Section](#) designed to “provide opportunities for health care attorneys licensed in Montana to interact with one another through educational activities.”

Q: *Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?*

A: No.

Nebraska



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition for the practice of health law was not found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: A call to the Nebraska State Bar Association provided that Nebraska does have an Elder law section, but no health law or other health-related sections of the Bar Association.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The state bar association does not have a health law section, nor is it aware of any other organized association of health care attorneys.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

Nevada



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition for the practice of health law was not found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: As described below, the Nevada State Bar has an Insurance and Health Law Section. The Section members who practice health law meet regularly as a sort of sub-committee to focus on health-specific legal issues, as distinguished from general insurance issues. However, the jurisdiction does not specifically recognize specific subjects applicable only to health law through any written authority.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Insurance and Health Law Section of the State Bar of Nevada

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

New Hampshire



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: A definition for the practice of health law was not found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes. The [New Hampshire Bar Association](#) has a “Health Law Section,” through which those who practice in the area of health care law participate in CLEs, general informational and educational sessions, and updates.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: No.

New Jersey



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes, the [New Jersey's State Bar Association](#) Health Law Section has meetings that cover general health care law subjects and which gives presentations to non-health care lawyers.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: None.

New Mexico



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. New Mexico's statutes, administrative code, and case law do not define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: New Mexico's statutes, administrative code, and case law do not enumerate the subjects that constitute the practice of health law.

The State Bar of New Mexico Health Law Section's Bylaws define the field of health law as including but not limited to "the representation of hospitals or hospital associations, nursing homes or nursing home associations, physicians or associations of physicians, pharmacists or associations of pharmacists, or other health care providers, federal or state agencies involved in administering, providing, or regulating health care or health care providers, or insurance companies or insurance associations specializing in health care providers(.)"

The New Mexico Board of Legal Specialization's Standard for Legal Specialization defines Health Law as "the practice of law dealing with legal issues involving federal, state or local law, rules or regulations and health care provider or health care payer issues, regulation of health care providers and health care payer, legal issues regarding relationships between and among providers, legal issues regarding relationships between providers and payer, including health insurers, and legal issues regarding the delivery of health care services, including legal advice and counseling on risk management and quality issues, policies and procedures, and patient safety issues. The practice of Health Law does not include representation of plaintiffs/claimants or health care providers in medical malpractice or professional liability actions."

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: New Mexico Rules of Professional Conduct, Rule 16-704(D): "A lawyer who is certified in a particular area of the law by an organization other than the New Mexico Board of Legal Specialization may so state..."

The New Mexico Board of Legal Specialization lists Health Law as a possible certification. The requirements for certification include application, payment of a fee, being in good standing with the New Mexico Bar, minimum five years engaged in the practice of law, substantial involvement and competency in Health Law practice as a New Mexico attorney during the three years preceding application, and CLEs in Health Law related areas. Certification lasts for five (5) years.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The [State Bar of New Mexico, Health Law Section](#)

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

New York



***Q:** Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No.

***Q:** Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: No.

***Q:** Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: No.

***Q:** Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: The [New York State Bar Association's Health Law Section](#).

***Q:** Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?*

A: No.

North Carolina



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. North Carolina's statutes, administrative code, case law, and legal organizations (the state bar and state bar association) do not appear to define the practice of health law. The North Carolina Bar Association's Health Law Section "addresses legal issues related to health care including medical malpractice, health care provider regulation and health insurance," but the statement is one of purpose, not a legally binding definition. [Health Law Section, North Carolina Bar Association](#).

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. North Carolina's General Statutes contain numerous chapters governing public health, health care facilities and services, and hospitals. See, e.g., N.C. Gen. Stat. §§ 58-65-1, 130A-1 et seq., 131E-1 et seq. However, neither these sections, nor the North Carolina statutes governing the unauthorized practice of law, N.C. Gen. Stat. § 84-4, address the subjects that fall within the domain of the practice of health care law. North Carolina's administrative code also does not contain a definition of health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No. North Carolina permits attorneys to be certified as specialists, but the state does not provide an opportunity for attorneys to specialize in the practice of health care law. In 2012, the [North Carolina State Bar Board of Legal Specialization](#) permitted attorneys to specialize in several subject areas, but health law is not one of them.

North Carolina, however, does permit attorneys to become specialized in the area of elder law. Attorneys seeking to become specialists in elder law must complete the North Carolina State Bar Board of Legal Specialization's

application, pay a fee, and take the National Elder Law Foundation's certification examination. In addition, an attorney must be substantially involved in the practice of elder law for five years prior to his application, take CLE credits in the area of practice, and must demonstrate qualification in the specialty through peer review. See [Rules of the Standing Committees of the North Carolina State Bar](#), Subchapter D, § .2905. Certification is valid for five years and may be renewed. Id. § .2906.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

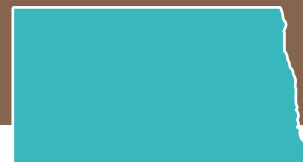
A: Yes. There are two voluntary organizations in North Carolina that help organize the practice of health law in the state as well as a local bar committee that oversees legal and medical issues.

- The North Carolina Bar Association [Health Law Section](#) sponsors CLE programs, publishes a newsletter and addresses issues related to health care. It also provides a list of resources to attorneys.
- The [North Carolina Society of Health Care Attorneys](#) "provide[s] professional education and other services to North Carolina attorneys who have an interest in health care law". It publishes a newsletter in cooperation with the Health Law Section of the North Carolina Bar Exam, and it seeks to facilitate communication among attorneys with an interest in health care law.
- The [Mecklenburg County Bar has a Medical/Legal Committee](#) that "[e]ncourages understanding and cooperation between the members of the MCB and the members of the Mecklenburg County Medical Society."

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: N/A.

North Dakota



***Q:** Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No. North Dakota's statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

***Q:** Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: North Dakota does not appear to identify specific subjects that constitute health law. North Dakota's statutes and regulations contain chapters governing health and safety, mental and physical illness or disability, the Department of Human Services, and the State Department of Health. See, e.g., N.D. Cent. Code Ann. §§ 23-01-01—23-46-05; N.D. Cent. Code Ann. §§ 25-01-01—25-18-15; N.D. Admin. Code §§ 75-01-02-01—75-09.1-09-19; N.D. Admin. Code §§ 33-01-01-01—33-43-01-26. These sections do not enumerate what subjects specifically constitute health law. However, the North Dakota State Bar Association has an elder law section and neither has nor references a health law section.

***Q:** Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: Attorneys do not have to be licensed or certified to practice health law. The North Dakota Rules of Professional Conduct, Rule 7.4 provide that a lawyer may communicate that the lawyer does or does not practice in a particular field. Rule 7.4I provides that a lawyer may communicate the fact that the lawyer has been certified as a specialist by a named organization, provided that the communication states the name of the organization and that there is no procedure for approving certifying organizations. This statement is not necessary if the organization has been accredited by the American Bar Association or if the lawyer completed a certification program sponsored by a state bar association. North Dakota does not appear to have a health law specialization or certification process.

***Q:** Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: No.

***Q:** Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?*

A: No.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No, but there are several sections of the Ohio Revised Code and Ohio Administrative Code that cover “health law”-related topics, such as:

- Ohio Rev. Code §§ 3701 et seq. (health and safety)
- Ohio Rev. Code §§ 3923 et seq. (sickness and accident insurance)
- Ohio Rev. Code §§ 1751 et seq. (health insuring corporations)
- Ohio Rev. Code §§ 3963 et seq. (health care contracts)
- Ohio Rev. Code § 4715 (dentists, dental hygienists); § 4723 (nurses); § 4730 (physician assistants); § 4731 (physicians)
- Ohio Admin. Code §§ 3701 et seq. (Ohio Department of Health)
- Ohio Admin. Code §§ 3901 (health care insurance)

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A:

- The [Ohio State Bar Association](#) has a Health Care Law Committee, which exists to facilitate and encourage communication among members of the legal profession interested in health care law. Additionally, an affiliate of the Ohio Hospital Association, the Society of Ohio Healthcare Attorneys, is organized for the purpose of providing a forum for the exchange of information among attorneys serving Ohio hospitals and for monitoring emerging legal issues and developing case law pertaining to Ohio health care.
- The Ohio Hospital Association’s Society of Ohio Healthcare Attorneys

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: N/A

Oklahoma



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No, there are no laws in Oklahoma that define the practice of “health law”.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: There is a [Health Law Section](#) of the [Oklahoma Bar Association](#) (OBA) open to all licensed lawyers in the state. The Section invites a speaker every year to the Oklahoma Hospital Association’s (OHA) annual meeting and thereby provides CLE but does not attempt to provide CLE beyond that. The group is fairly inactive since most of its activities occur through the [Oklahoma Health Lawyers Association](#) (OHLA), which is an affiliation of the OHA. It permits lobbying whereas the OBA does not. The OHLA also sponsors a law clerk to serve an internship at the [Oklahoma State Department of Health](#).

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: No.

Oregon



***Q:** Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No.

***Q:** Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: While there is no statutory definition of “health law” or “the practice of health law,” the Oregon State Bar (OSB) Committee on Continuing Legal Education published the Oregon Health Law Manual, volumes 1-4, that address the legal topics encountered by health care attorneys. They were last updated in 2003. Currently, OSB Legal Publications is developing a new edition of Health Law in Oregon that will replace all four volumes of the Oregon Health Law Manual. Until then, the citations for the OHLM are:

- 1 Oregon Health Law Manual (Oregon CLE 2003)
- 2 Oregon Health Law Manual (Oregon CLE 1997)
- 3 Oregon Health Law Manual (Oregon CLE 1998)
- 4 Oregon Health Law Manual (Oregon CLE 2001)

***Q:** Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: No.

***Q:** Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: Oregon State Bar Health Law Section

***Q:** Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?*

A: No.

Pennsylvania



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: Pennsylvania does not have any laws pertaining to the practice of health law as a specific legal field.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: Pennsylvania does not provide any specific denotation of health law versus non-health law. Like most other states, Pennsylvania splits areas that may fit under the same general subheading of health law into several different titles, including Aging, Insurance and Professional and Vocational Standards.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The Pennsylvania Bar Association does not have a health law section but it includes an [Elder Law Section](#) and a [Workers' Compensation Section](#).

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: Pennsylvania publishes the *Pennsylvania Public Health Law Bench Book*, which describes Pennsylvania Health Law from a practical and historical perspective. The Bench Book was developed by the Administrative Office of Pennsylvania Courts and the University of Pittsburgh Graduate School of Public Health Center for Public Health Preparedness.

Rhode Island



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A:

- Healthcare Quality Reporting Program—Mission is to promote quality in the state’s health care system by developing a health care quality performance measures and reporting program to guide quality improvement initiatives.
 - Work collaboratively with health care providers and others interested in health care quality to determine appropriate, tested, reliable, and accurate quality measures.
 - Identify existing sources of information (or data) and measures.
 - Strive to ensure that data is collected from enough patients to draw statistically valid conclusions.
 - Protect the privacy of patient information.
 - Publicly report on quality measures related to: health plans, home health agencies, hospitals, nursing homes and physicians’ information technology adoption
- Rhode Island Department of Health
 - Rules and Regulations for Determination of Need for New Health Care
 - Equipment and New Institutional Health Care Services [R23-15-CON] are promulgated pursuant to the authority conferred under RIGL Chapters 23-15 and 42-35, and are established for the purpose of establishing prevailing standards and procedures regarding the determination of need for the development of new health care equipment and new institutional health services. These current amendments are being promulgated for the purpose of implementing changes mandated by PL 2009-287, PL 2011-151-15 and PL 2011-250.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: No.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession’s understanding of what is meant by the practice of health law?

A: No.

South Carolina



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. South Carolina's code of laws, administrative code, case law, and Health Care Law Section of the South Carolina bar do not appear to define the practice of health care law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: The South Carolina Code of Laws Annotated contains a Title that addresses Health in the state. The title is voluminous, but certain laws require health care professionals to comply with CDC recommendations. S.C. Code. § 44-30-40 (2011). South Carolina law also governs patients' and doctors' rights with respect to health care records. Id. § 44-115-10 et seq. In addition, the state has adopted a bill of rights for residents of long-term care facilities. Id. § 44-81-10 et seq.

Neither Title 44, nor the Code section addressing the unauthorized practice of law, S.C. Code § 40-5-310 (2011), address the specific subjects covered under health care law. South Carolina's administrative code also does not appear to define the subject matter contained in "health law."

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No. South Carolina permits attorneys to become certified as a specialist in four areas of law under the purview of the Supreme Court of [South Carolina's Commission on CLE and Specialization](#), but health care law is not among the approved specialties.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes. The South Carolina Bar has a section on Health Care Law. The Section holds regular meetings, provides the public with information concerning South Carolina's health laws, and conducts CLEs for the benefit of attorneys in South Carolina.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: N/A.

South Dakota



***Q:** Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No. South Dakota's statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

***Q:** Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: South Dakota does not appear to identify specific subjects that constitute health law. South Dakota's statutes and regulations contain chapters governing public health and safety, mentally ill persons, the Department of Health, and covered medical services under the Department of Social Services. See, e.g., S.D. Codified Laws §§ 34-1-1.1—34-49-23; S.D. Codified Laws §§ 27A-1-1—27A-15-59; S.D. Codified Laws §§ 1-43-1—1-43-34; S.D. Admin. R. 67:16:01:01—67:16:47:14. These sections do not enumerate what subjects specifically constitute health law. However, the State Bar of South Dakota has an elder law committee, and neither has nor references a health law committee.

***Q:** Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: Attorneys do not have to be licensed or certified to practice health law. The South Dakota Rules of Professional Conduct, Rule 7.4 provide that a lawyer may communicate that the lawyer does or does not practice in a particular field. Rule 7.4(d) provides that the American Bar Association is the appropriate regulatory authority to accredit specialty certification programs according to the standards established by the ABA. Under Rule 7.4(e), a lawyer cannot state or imply that he is certified as a specialist unless: (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the ABA, and; (2) the name of the certifying organization is identified in the communication. South Dakota does not appear to have a health law specialization or certification process.

***Q:** Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: No.

***Q:** Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?*

A: No.

Tennessee



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: Tennessee does not define the practice of health law. Many state laws and regulations, however, address the rights and responsibilities of patients, providers and vendors, as well as public and private payers. Further, several opinions from the Attorney General and case law also impact the rights and responsibilities of these parties. Like most states, health care remains a highly regulated industry in Tennessee.

More Information:

- <http://www.lexisnexis.com/hottopics/tncode/> (Tennessee Code Annotated)
- <http://www.state.tn.us/sos/rules/> (Tennessee Rules and Regulations)

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: Tennessee does not define the subjects that constitute health law. As noted in the answer to question 3, Tennessee does recognize fourteen distinct areas of the legal profession that attorneys may seek certification in.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No. The Tennessee Commission on Continuing Legal Education and Specialization certifies licensed attorneys as specialists in fourteen areas. The Commission does not certify attorneys as specialists in health law.

More Information:

- <http://www.cletn.com/LawCertB.aspx>
- <http://www.cletn.com/Specialists.aspx>

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The Tennessee Bar Association, a strictly voluntary association, operates a [Health Care Law Section](#). The section works to educate its members on federal, state and local health care laws. In addition to its nationally-recognized annual Health Law Forum, the Section offers an annual primer on health law for attorneys new to the practice of health law and regular newsletters covering current topics. The Section's members regularly lead CLE courses on health law topics.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: The Section works diligently to inform clients, colleagues, and the general public about the practice of health law and offers an annual primer on the practice of health law for attorneys unfamiliar with health law issues.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: The Health Law Council of the State BAR of Texas defines health law according to legal issues including Confidentiality of health care records, Advance Directives, Mental Health Treatment, Health Care Decision-Making, Access to Health Care, Reporting Requirements, Charity Care, Voluntary and Involuntary Mental Health Services as well as a Patient's Right to Refuse Psychotropic Medication.

Access to medical services in Texas for patients who are not privately insured is maintained by minimum standards of health care such as required emergency services and services provided by County Public Hospitals. Texas law also requires non-profit hospitals to provide a certain amount of charity care each year. (Tex. Health & Safety Code § 311). For-profit hospitals are not required by the State of Texas to provide charity care but some have financial assistance programs.

The Medical Practice Act of the Texas Occupations Code regulates the practice of Health Care Professions. (3 Texas. Occupations Code. Chapter 151). The Texas Hospital Licensing Law of the Administrative Code provides that the Department of State Health Services shall administer and enforce hospital licensing. (25 Texas. Administrative Code, Chapter 133).

The Texas Department of Insurance is the agency in charge of administering the rules and procedures of the State's HMO and PPO plans. Chapter 13 of the Texas Insurance Code governs issuers of Preferred Provider Benefit Plans, issuers of Exclusive Provider Benefit Plans, the general public and provides definitions for relevant health law terms including "health care provider", "health insurance policy", "hospital", "institutional provider", "insurer", and "physician." (Tex. Ins. Code § 1301.001).

The Texas Health and Human Services Commission's Medicaid Office oversees the Medicaid program and the Texas Medicaid & Healthcare Partnership is the State's contractor ("TMHP"). TMHP administers Long Term Care, Family Planning, Children with Special Health Care Needs Services, and the Texas Health Steps Medical/Dental Comprehensive Care Programs.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: Texas has a Board of Legal Specialization that is the only governing body in the state authorized to certify attorneys in legal specialty areas.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Members of the Texas State BAR's Health Law Section administer the Texas Board of Legal Specialization's annual health law specialization examination.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The **Health Law Section** of the State BAR of Texas provides a publication entitled "Know Your Rights" as a service to legal practitioners and the public. Activities of the section also include updating case-law, cataloging the various county and local health law association meetings around the state, providing access to client alerts and newsletters for attorneys practicing within the field of health law, and providing other informational articles on a continual basis.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: The Health Law Section of the State BAR of Texas "is dedicated to supporting health law practitioners across the state (and even the country) in every practice setting."



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. Utah's statutes, administrative code, and case law do not define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. Utah's statutes, administrative code, and case law do not enumerate the subjects that constitute the practice of health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: None found.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: [Utah State Bar, Health Law Section](#)

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A:

Vermont Statutes Annotated Title 18 is devoted to health care, specifically:

1. Patient Bill of Rights—VT Title 18 Chpt 42, Bill of Rights for Hospital Patients;
2. Title 18 Chpt 42A, Patient's Bill of Rights for Palliative Care and Pain Management;
3. Two years ago Vermont passed a comprehensive health care reform bill that addressed insurance companies responsibilities and patient responsibilities related to reimbursement. Title 18 Chpt 220, Green Mountain Care Board. The Green Mountain Care Board was the board responsible for health care reform in Vermont.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No specialized definition or certification for the practice of health law in Vermont.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: Vermont does not have any specific regulations related to the practice of health law. Vermont only have regulations related to health care in general, which is found in Title 18.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Yes, The [Vermont Bar Association](#), Health Law/PR-Doctors Section.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: Both federal and state health care reform are going to significantly change the rights and responsibilities of everybody in health care.

Virginia



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: There is no definition for the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: No. There is no distinction made that specifies what the practice of health law entails.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: There are two bar association groups in Virginia. The [Virginia State Bar](#), a governmental group and the [Virginia Bar Association](#), a private group. Both groups have health law sections. There are no prerequisites to join either, other than to pay dues. Both groups provide CLEs specific to health law.

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: N/A

Washington



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: None found.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: The [Washington State Society of Healthcare Attorneys](#), in collaboration with the Washington State Hospital Association, has published the Washington Health Law Manual, 3rd Ed. The Manual is a reference guide to the legal issues faced by lawyers who represent or are employed by health care providers.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: [Washington State Society of Healthcare Attorneys](#)

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

West Virginia



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: West Virginia does not have any laws pertaining to the practice of health law as a specific legal field.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: West Virginia does not explicitly say that there are areas that are health law and areas that are not.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law? If so, please provide the relevant authorities and/or a brief description of that license or certification process.

A: No.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: The West Virginia State Bar has the following health related committees:

- [Law and Medicine](#)
- [Elder Law](#)
- [Veterans and Military Affairs](#)
- [Workers' Compensation](#)
- [Social Security](#)
- [Commission on Children and the Law](#)

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.



***Q:** Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?*

A: No. Wisconsin's statutes, administrative code, case law, and legal organizations do not appear to define the practice of health law.

***Q:** Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?*

A: Wisconsin does not appear to identify specific subjects that constitute health law. Wisconsin combines health-related law into two statutes. See, e.g., Wis. Stat. Ann. §§ 140—162 (Public Health); Wis. Stat. Ann. §§ 250—255 (Health). These sections do not enumerate what subjects specifically constitute health law. However, the State Bar of Wisconsin separates health law and elder law into separate sections.

***Q:** Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?*

A: Attorneys do not have to be licensed or certified to practice health law. The Wisconsin Rules of Professional Conduct, Rule 7.4 provide that a lawyer may communicate that the lawyer does or does not practice in a particular field. Under Rule 7.4(d), a lawyer cannot state or imply that he is certified as a specialist unless: (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the ABA, and; (2) the name of the certifying organization is identified in the communication. Wisconsin does not appear to have a health law specialization or certification process.

***Q:** Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?*

A: Yes. The [State Bar of Wisconsin](#) has a Health Law Group. However, the site is password protected.

***Q:** Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?*

A: No.

Wyoming



Q: Does your jurisdiction have any laws, regulations or other legal authorities that define the practice of health law, specifically the body of law that addresses the rights and responsibilities of patients, health care providers, health care vendors and those public and private entities that pay for health care services?

A: No. Wyoming's statutes, administrative code, and case law do not define the practice of health law.

Q: Does your jurisdiction identify or enumerate those specific subjects that constitute health law and/or those subjects that are better categorized as another body of law?

A: Wyoming's statutes, administrative code, and case law do not enumerate the subjects that constitute the practice of health law.

Q: Does your jurisdiction require or permit any legal body within your jurisdiction to license or certify the practice of health law?

A: None found.

Q: Does your jurisdiction organize the practice of health law through any bar association, society or other organization for the conduct of continuing legal education in the subject of health law or other activities to improve the delivery of health law services to the public?

A: Wyoming State Bar, Health Law Section

Q: Is there any relevant information about your jurisdiction that could affect the scope of the legal profession's understanding of what is meant by the practice of health law?

A: No.

Health Law and Pro Bono Clinics and Externships



The Results of Our Research

As law schools compete to provide practical experience to their students to enhance their ability to obtain employment, law schools are faced with the need to determine what skills are best taught to make their students most attractive to employers. Identifying those skills can be challenging. In today's highly competitive marketplace, it no longer seems sufficient to train students to "think like lawyers;" they must now prepare them to "act like lawyers." A law school's clinic program and externship opportunities should allow it to produce well-rounded, skilled law students who are prepared to "hit the ground running" when they start practicing law.

For this chapter, we examined the varied clinical and externship programs sponsored by law schools around the country to discern a consensus on what skills should be taught and what methods might be used to teach those skills. Clinics and externships will be discussed separately. We are hopeful that the analysis will provide helpful suggestions to be sampled by law schools that want to establish or improve their current clinic/externship arrangements.

Issues and Obstacles

The types of health law clinics and externships that exist across law schools vary a great deal depending on a number of factors. For example, a law school located in a state capitol may afford students opportunities to work for state legislative bodies and executive branch agencies, thereby exposing them to the legislative and regulatory processes. In other instances, the law school may have a long-standing relationship with a legal services program and a commitment to serve the needs of the less fortunate in their community.

Another important difference between law schools is the degree to which they have developed a health law program. As one would expect, the more developed a school's health law infrastructure, the more clinical and externship opportunities are available to students. For those who have made that resource commitment, their students have the potential to graduate with greater knowledge and skills to address health law issues, especially if the law school has developed a clinic program that deals directly with health law

issues and has created partnerships with organizations or industries that accept their students for externships.

Finally, students in both clinics and externships are likely to acquire important experience and skills but the degree to which students learn broader health law themes and skills varies greatly depending on the clinic and externship placement. Law firms seeking to employ recent law school graduates seem to favor those who possess the practical skills that enable them to understand litigation or transactional issues and an understanding of the law surrounding the industry whose needs are served by that law firm. Thought should be given to the clinic or externship program's pedagogical goals to ensure they provide students with practical skills that will be immediately useful to a private or public sector law firm.

Guidance for Clinics

Our review of law school clinics' structure and focus revealed great variation in what they emphasized and how they were organized. Their areas of emphasis appear to fall into six categories: 1) general health law, 2) mental health law, 3) disability law, 4) elder law, 5) medical-legal partnerships, and 6) legislative.

While it is attractive for students to provide assistance to those less fortunate in our society as part of their clinical experience, the clinic must be careful to avoid too narrow a focus in subject matter that might prevent the law student from becoming knowledgeable about a broader range of health law issues. Law schools should consider not only the skills imparted in a clinical setting but also the broader understanding of the health care system and health care delivery. For example, some law school clinics deal exclusively with mental health law issues. Ideally, with that subject as its base, clinics can make sure that students are exposed to the rigors of developing the analytical skills necessary to navigate the complex regulatory structures that often stand in the way of obtaining necessary mental health services. In addition, such a clinic can expose students to a broad range of issues affecting the delivery of mental health services or access to such services by the clinic's clients.

Some law school clinics are run essentially by full-time faculty. Others use adjunct faculty. While decisions in that

regard may be a function of the school's financial resources, faculty selection plays a major role in the program's effectiveness and how the program is carried out. Adjunct faculty can expose students to private practitioners and the private practitioners to the students, enhancing a student's ability to obtain employment. On the other hand, full-time faculty may do a better job of meeting curriculum goals and imparting broader knowledge of the health law issues confronting the clinic and its students.

Another important issue is ensuring that clinic students are given the opportunity and guidance to develop work product (documents, briefs, etc.) that can be used as a tangible example of the quality of work they are likely to do for a future employer. A standard part of the hiring process for law employers is to review the student's written work product. A clinic that allows the students to create written work product that can be shared with employers to enhance their attractiveness as new hires can give the law school a competitive advantage in placement.

Detailed, written evaluations can also be useful for law students attempting to secure employment upon graduation. However, this can become a resource issue, especially for clinics that depend mostly on adjunct faculty. An effective evaluation system requires uniformity and other standards so that, not unlike letter or number grades, the results are comparable.

New York state has begun requiring law students to complete a certain number of pro bono hours before they are eligible to become licensed as attorneys in that state. It is too early to tell whether this represents a trend that will move across the country. Law school clinics may be able to meet this requirement if other states adopt a similar policy. Other states allow law students, especially in their final year, to represent clients in court under proper supervision. Law schools in states where this is permitted need to have the infrastructure necessary to provide proper training to the law students and monitor the quality of the student's work-product to ensure the clinic's clients are receiving quality representation.

Guidance for the Traditional Externship Model

Traditional legal externship programs offer law schools an opportunity to provide their students with practical experience in the health law field. Many law schools have existing externship programs that can be expanded to include a health law focus. Externship programs generally involve placing law students with outside agencies to perform unpaid legal work for academic credit. Generally, these placements fall into one of five categories: 1) public interest organizations; 2) federal, state, and local government agencies; 3) trade associations; 4) hospitals or health systems; and 5) companies dealing with health care, including insurers, pharmaceutical and device manufacturers, and others. In order to gain credit, the externship must be unpaid and the law school must ensure supervision that is sufficiently adequate to meet the externship standards set forth by the American Bar Association (ABA).

Range of Health Law Placements

The field of health care law is broad and relatively unique because it is defined by an industry rather than a legal specialty. This broad understanding of the field allows for an expansive range of externship opportunities. One of the first steps to consider is finding community partners that will provide projects for, and supervise, law students. Types of health law externship sites to consider include:

- Public interest organizations focusing on advocacy and/or litigation relating to public benefits, social security, disability, equality, children's rights, education, and others. Any organization that works to promote health and wellness among the population can be categorized as a "health law" opportunity;
- Federal, state, and local government agencies dealing in matters of health, including specialized agencies dealing only in health care, including departments of public health or health technology, or organizations with a broader focus that have departments dedicated to health care, including consumer fraud, privacy, etc.;
- Trade associations that focus on health care providers (e.g. the American Medical Association); patients (e.g.

the Center for Medicare Advocacy); organizations (e.g. the American Hospital Association); or products (e.g. BIO);

- Hospitals or health care systems—public or private—including legal, compliance, and/or risk management departments;
- Other companies dealing in health care, including insurers, pharmaceutical and medical device companies, and others.

Most law schools disallow or discourage students from externing in law firms because law firms are often in a better position than governmental and non-profit organizations to compensate law clerks.

Once a school has a relationship with an externship site, the school should consider whether additional opportunities with that site can be explored, which may increase the number of opportunities that interested students have in an organization with which there is already an existing relationship.

Administrative and Supervisory Issues

There are many components to establishing proper relationships with externship sites. Of primary importance is ensuring adequate workload and supervision of the student. It is therefore useful to provide an externship “manual” to externship supervisors that outlines the law school’s expectations for the supervisor. A follow-up phone call and site visit is important when establishing a new placement to ensure the placement meets the student’s and faculty’s needs and fulfills ABA accreditation standards. Important issues to discuss with field placement supervisors before an externship commences (and to encourage over time for ongoing placements) are as follows:

- The student must be primarily supervised by an attorney. This is more of a problem in work settings that focus primarily on policy. However, most health policy offices employ an attorney in some capacity who may agree to review the extern’s work and provide appropriate supervision and feedback.
- Externship sites must be willing and able to identify appropriate projects that involve the proper knowledge level and skills for students in a JD or LLM program.

Students should not perform rudimentary office tasks; they need to be challenged and engaged in legal and policy analysis.

- The supervising attorney should provide appropriate feedback and evaluation for all tasks assigned to the student. This includes reviewing and commenting on the student’s work.
- The supervisor should be encouraged to include the student in as many day-to-day activities in the office as possible, including on- and off-site meetings, conference calls, and presentations.
- To ensure a steady, manageable stream of work, the supervisor should develop a system to manage the extern’s workload, especially if the supervisor is out of the office for any reason. Such a system can include a process whereby all of the student’s assignments are channeled through a single person (usually the supervisor) and appropriate feedback is given by anyone who assigns work to the extern. Weekly meetings between the supervisor and extern are optimal to ensure a satisfactory educational experience for the student.
- Faculty supervisors should ensure a method of regular communication with each site to ensure compliance with requirements for student feedback. Schools should also provide guidance for externship sites in identifying appropriate projects for student externs.

There are also a number of administrative issues that must be resolved before a student’s externship commences:

- Sites may require the school to sign an affiliation agreement or provide evidence of student insurance, etc.
- Sites must ensure that the student has a work station and access to the site’s computer network as necessary to complete her assigned tasks.
- The student should be able to complete all necessary application processes, including obtaining necessary clearances and entrance identification cards before the externship commences so that she can start working on substantive matters starting her first day.

Course/Tutorials

A successful externship program must provide academic oversight and provide a system for monitoring student work

and feedback. The American Bar Association sets standards for study outside the classroom, which includes externship programs. The applicable ABA standard (305) is attached as Appendix B. Schools must abide by ABA standards for instructional components. Among others, these include the establishment of goals for the program, faculty teaching and supervision, feedback on student performance from sites, regular communication with sites, and student reflection.

To meet the ABA requirements and to create a routinized program for all students completing externships, most law schools create an externship course. Course components often include supervision of student performance through the collection of feedback from each site, instruction aimed to enhance professional skills development, and student reflection. The number of credit hours a student receives for an externship varies with the number of hours worked at the externship site. These credits can be graded or ungraded (pass/fail) in accordance with each school's policy.

Schools without faculty resources to create a specialized course can meet the ABA's supervisory and tutorial requirements by ensuring that faculty supervision includes the opportunity for student reflection by, for example, requiring individual meetings with the student and periodic reflective memos. In this case, schools will still find the program easiest to administer on a consistent basis if the school develops a set of standards for academic credit, faculty supervision, feedback collection from sites, and student reflection.

Guidance for the Hybrid Pro Bono Externship Model

In considering how health law programs can provide students opportunities to engage in pro bono activities that relate to health law and policy questions, we first describe existing models that allow students to engage in public service activities. These existing models—externships, health law clinics, and service activities—give students an opportunity to use their developing legal skills to provide a tangible benefit to those who need health-related legal services. However, we note that existing models may be missing an opportunity to support the organizations that are arguably providing the majority of health-related services

to low income populations: legal services organizations. These organizations, such as the [Maryland Disability Law Center](#), provide advocacy and litigation services in the areas of public benefits, social security, and disability, many of which involve the client's health and/or her access to health care. While health law students can, and do, extern or volunteer at these organizations, there appear to be few developed programs to join health law students and legal aid organizations on a consistent, ongoing basis. Externship placements tend to be student-driven, meaning the student contacts and secures the externship on her own or uses an approved list of placements, meaning the externship site has the student's assistance when—and if—a student initiates the contact. Such sporadic support, while valuable to the student and organization at the time of the externship, leaves an organization without a consistent and reliable source of assistance. Ideally, the pro bono externship program envisioned here would be able to provide a sustainable source of students who, with faculty supervision, can enhance the organization's ability to provide legal services over a long period of time.

With the needs of legal service organizations in mind, we are proposing a “pro bono externship” model that is designed to provide a consistent pipeline of externs to a legal services organization. This proposal is not based on an existing program but designed by AHLA members with experience in running health law clinic and externship programs. We hope this proposal will encourage health law programs to think about how best to leverage the skills and energy of health law faculty and students to benefit the valuable work of legal services organizations.

Under this pro bono externship model, a law school (or multiple law schools working together) will create an externship placement at a legal services organization and have a process in place to ensure, to a reasonable extent, that a student or students will be selected and placed at the organization every semester, including the summer.

Critical to this model is the active role that law school faculty must take to create and support the pro bono externship placement, rather than following the student-driven externship model. Also, this type of externship experience will depend on law school faculty working closely with the leadership of the legal services organization to establish

the placement. It is important that the site supervisors understand the law school's externship program, its goals, and ABA requirements relating to externships. Further, law school faculty are in the best position to know what kinds of projects are appropriate for students at different points in their law school education and what type of feedback is useful to students.

A memorandum of understanding will help establish parameters that address, for example, how students will be selected (i.e. whether the law school or the site will select students or a combination of the two); whether students in a certain year of law school or graduate program should be given preference; if students should take particular classes prior to the placement; what documents (statement of interest, transcript, resume, writing sample, etc.) should be submitted with the application; how students will be supervised and evaluated; and the responsibilities of each organization to communicate if any concerns arise. The placement should be approved by the law school body that is responsible for approving externship placements.

As an initial step, a "pilot" semester will provide useful insight regarding the placement's strengths and areas where improvement is needed. At semester's end, students and site supervisors can "debrief" to help identify any concerns with the placement that can be resolved before moving ahead with a more formal arrangement.

Many law schools create an externship course while others provide externs with individualized tutorials in order to meet ABA requirements and create a routinized program for all students completing externships. If a pro bono externship program is established, either an externship course or individualized tutorial would be appropriate to meet the ABA standard. However, the faculty member, in consultation with the site supervisor, could consider a training session before the externship starts to provide basic substantive background to the student(s) or, during the course of the externship, provide a tutorial that focuses on the type of work and issues the student will likely tackle during his or her externship.

The main challenge to implementing this model is ensuring a steady supply of qualified students. To this end, we make the following suggestions:

- Faculty and site supervisors should advertise the position to students via email describing the placement, the organization, the tasks the extern will undertake, number of credits available, application instructions, and contact information.
- Faculty should actively reach out to students to solicit applicants via email.
- Faculty should create a webpage that includes information about the externship. The webpage should be linked to the health law and externship program websites.
- Start recruiting early. Start advertising and implementing the selection process at least three months prior to start of each semester.
- The pro bono externship should be discussed in externship and health law information sessions and forums as appropriate so that students become aware of the opportunity.
- The supervising faculty member and/or student health law organization may want to host a panel with members of the legal services organization and clients (if appropriate) to talk about the organization's work and solicit future externs. After externs have served in the organization, they can become part of the panel.

Given the importance of a steady stream of students, we concluded that law schools in the same geographical area might want to consider joining forces to establish a pro bono externship program with a legal services organization. On this point, the ABA externship standards specifically note "[w]hen appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program." If more than one law school joins together to create a pro bono externship program, it is critical that the schools and site supervisor work together before the program commences so that all are in agreement regarding relevant program details.

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Problem Sets and Teacher's Manual

Member volunteers of the American Health Lawyers Association have worked over an extended multi-month period to develop problems that can accompany the text books used in law schools' Health Survey courses. Provided here are exemplars of the draft problems developed as of June, 2014. More volunteers are needed to continue developing this indispensable resource for those teaching Health Law in law schools. If you wish to volunteer, please contact Robert Taflinger at rtaflinger@healthlawyers.org or Professor Kathleen Boozang at Kathleen.boozang@shu.edu.

Problem #1: Entity Formation and the Corporate Practice of Medicine

You represent a plastic surgeon who specializes in a new procedure that involves the use of a laser that trims away excess fat with minimal bleeding. This new procedure allows people to shed weight quickly and the recovery is much shorter than with liposuction. The physician only accepts cash for this procedure and most insurance companies do not cover cosmetic procedures that are not associated with a medical problem. The physician would like to market this procedure but she is too busy in the office due to the popularity of the procedure to put together an advertising and marketing campaign. She has been approached by a marketing company who wants to help her with the campaign for the new procedure. The marketing company suggests an arrangement where the marketing company would form a limited liability company (NewCo) together with the physician, where the physician's only duty would be to perform and bill for the laser procedure in return for 70% equity in NewCo, and the marketing company would receive 30% equity in NewCo in exchange for the marketing and advertising work. The physician would continue to perform and bill for all other plastic surgery procedures in her office under her current professional corporation entity. The physician wants to know if such an arrangement is legal? What do you advise her? Where would you look for this information?

Issues:

1. Can your client create a corporate entity (or LLC) such that the marketing company has an ownership interest in a medical practice? Students should articulate the proposed arrangement would implicate the corporate practice of medicine doctrine and that this is a state doctrine, which may be codified or found in case law. If the state has a prohibition on the corporate practice of medicine and restricts the practice of medicine

to licensed individuals or professional corporations, partnerships, or associations, then the physician would not be able to enter into the arrangement. If the state has no restriction on the corporate practice of medicine there may be other issues with the arrangement (see ii).

2. Can a physician enter into an agreement with a non-physician where the non-physician provides advertising and marketing services and expertise in return for a percentage of revenues generated by the physician as a result of the non-physician's advertising and expertise? Depending on the state, the splitting of professional fees, also known as "fee-splitting" by physicians with individuals or groups other than with medical professionals in the same group practice, can result in the loss of a medical license and/or civil or even criminal fines and penalties.

Where to look:

State statutes and regulations governing the corporate practice of medicine, including the state medical practice act, health facilities laws and state case law.

Possible Solutions:

Rather than giving the marketing company an ownership interest in a joint venture, the physician can enter into a Management Services Agreement with the marketing company to provide certain non-clinical related management and administrative services to her current professional corporation, including marketing and advertising. Management companies often contract to perform the services on a cost-plus fee (rather than a revenue-based percentage) or other fixed fee basis. To avoid scrutiny, it is important that any fee arrangement be consistent with fair market value and otherwise commercially reasonable.

Problem #2: Corporate Governance and Tax Exemption

You are general counsel for Benevolent Health System, a tax-exempt, 501(c)3, non-profit hospital and health system in your small city. Benevolent has been having serious financial problems recently and its CEO and Chairman of the Board of Directors, Dr. Jones, is exploring potential partnerships with insurance companies to improve revenue and secure funding for much needed improvements to Benevolent's aging facilities. Benevolent is the only hospital located on the west side of the city and the only alternative in the city to Regional General, the large academic medical center across town. In the course of discussions with the Board of Directors of Benevolent, you find out that Dr. Jones has been taking executives from Express Insurance, a for-profit health insurance plan in your state, to professional baseball games in a luxury box seat, paid for by the Hospital. Dr. Jones's wife has a 30% ownership interest in Express Insurance. You also know that Dr. Jones receives \$1,000 month in a car allowance from Benevolent to lease a Mercedes GLK SUV. One of the Board of Directors has informed you that if Express Insurance does not partner with Benevolent, it is very likely that Benevolent would have to merge with Regional General to survive or shut its doors. Benevolent's Board of Directors would prefer that Benevolent remain a non-profit, tax exempt health system and that it not be acquired by, or merged with, another health system. What issues do you see with Dr. Jones's behavior with the insurance company or with his car lease? What would be the concerns with Benevolent partnering with Express Insurance? In the event a deal with Express Insurance doesn't work out, are there any concerns with Benevolent merging with Regional?

Issues:

1. Dr. Jones and public charities: Students should recognize that because Benevolent is a tax exempt public charity, its resources should not be used for the private inurement or benefit of individuals and any such private inurement or benefit can jeopardize the tax exempt status of the organization, or subject the hospital to significant penalties and tax liabilities.
- a. The fact that Dr. Jones is entertaining a transaction with Express Insurance and Dr. Jones's wife is a part owner of Express Insurance is considered a conflict of interest, which Dr. Jones should disclose to Benevolent's Board of Directors. Such disclosure would be required under Dr. Jones's fiduciary duty to the Board of Directors and may also be expressly required by Benevolent's conflicts of interest policy. Non-profits should have a written conflict of interest policy- the IRS provides a model policy. In addition, non-profits must file an annual form, IRS Form 990, which asks among other things whether the organization has a conflicts of interest policy. The Board of Directors should collect all relevant information from Dr. Jones and follow the conflicts of interest policy to determine whether Dr. Jones should refrain from participating in any decision making related to the Express Insurance transaction. Students should consider what some factors might be that would inform the Board's decision. One factor might be an analysis of what Dr. Jones's position will be after the consummation of a transaction with Express. Will Dr. Jones receive a hefty buy-out or if he stays, will his compensation increase significantly?

This process is important in order to justify to the IRS that a final decision to partner with Express was made in compliance with a conflict of interest policy and therefore private inurement was not a reason for the transaction. Entertaining Express Insurance individuals at a baseball game may not be an issue if the purpose of the outing is to secure a deal with Express that will benefit Benevolent, but the cost should be reasonable and there would likely be a private benefit issue if Dr. Jones's wife is attending the games.
- b. As for the car lease, compensation and benefits for public charity executives should be in line with other organizations of the same size and budget, whether for profit or non-profit. The amount of the car lease in this case may be considered excessive based on the size of the Benevolent's budget and ongoing financial distress. Such "excess benefit transactions" can give rise to tax liabilities and penalties for the organization.

2. Partnering with Express: Beyond the private inurement issues with Dr. Jones's wife, because Express is a for profit corporation, there are restrictions on how any transaction is structured so that Benevolent does not lose its tax exempt status. The IRS has issued rulings and guidance about joint ventures between tax-exempt, non-profit entities, and for profit entities. The IRS uses a facts and circumstances approach to determine whether a joint venture between a tax exempt organization and for profit organization jeopardizes tax exempt status but the key factors include the degree of exclusive control the exempt organization exercises over certain aspects of the joint venture's and whether the joint venture operates in a manner consistent with the exempt organization's charitable purposes. Some specific questions to ask would be:

- a. Do the governing documents of the joint venture prevent the for-profit from engaging in any activities that would jeopardize tax exempt status?
- b. Do the governing documents of the joint venture require all contracts and transactions, whether with the venturers or other parties, to be at arm's length and at fair market value prices?
- c. Does the tax-exempt organization have an equal voice in making business decisions with respect to the joint venture?
- d. Is the allocation of profits and losses of the venture in proportion to each party's capital contribution?

In addition, the student should recognize that state non-profit corporate law, will dictate what happens in the event of a fundamental transaction (sale, merger, dissolution) and will govern how charitable assets may be transferred (whether to a for profit or another non-profit) in order to preserve the charitable assets of the hospital system in trust for the benefit of the public. Sales or mergers of non-profit hospitals often require court approval of the transaction before assets can be distributed.

3. Merging with Regional: Although this may be the transaction of last resort, it may also face significant scrutiny from the Federal Trade Commission (FTC) and the Department of Justice Antitrust Division under the antitrust laws. Students should understand that either agency may challenge a hospital merger that removes the only competitor from the market place.

Where to Look:

State corporate law (particularly the non-profit code, if any) and case law regarding officer fiduciary duties, IRS statutes and guidance re: public charities, federal case law involving interpretation of IRS rulings, state laws relating to fundamental transactions of nonprofit organizations, FTC/ Department of Justice Guidance re: hospital mergers.

Possible Solutions:

The student should advise Dr. Jones that he must disclose the fact that his wife has an ownership interest in Express Insurance and any other relevant factors to Benevolent's Board of Directors. The student's ultimate decision regarding Dr. Jones's recusal, should be based on an analysis of the facts and circumstances based on Dr. Jones's disclosures. In addition, in light of Benevolent's ongoing financial distress, the student should evaluate the monthly car stipend in light of Benevolent's current budget to assess whether it is reasonable. Any negotiations with Express should include a discussion of charitable assets are to be handled to maintain compliance with federal and state laws regarding tax exempt and non-profit organizations. Finally, if the only option available to Benevolent is closure or merging with Regional, both organizations should be prepared to make the case to the FTC/DOJ that the community would suffer far greater harm if the only hospital on the west side of the city is forced to shut its doors.

Problem #3: Fraud and Abuse

Your client, the general counsel at a pharmaceutical company, has called you to discuss an issue that came up with one of its sales representatives. In the past, you have helped the company with its compliance program and you know the company provides all sales representatives with annual compliance training. The sales representative was recently voted the top sales person in the company related to the volume of sales of their newest blockbuster drug for heartburn, Rapid Relief, which is reimbursed under Medicare Part D prescription plans and the state Medicaid program. In the process of investigating a harassment claim against the sales representative's supervisor, the general counsel found out that the sales representative has been bringing weekly meals at lunchtime to the top prescribing physician of Rapid Relief, Dr. Smith, and his office staff for the last three months. The meals are modest in price and all come from the same restaurant, which is owned by Dr. Smith's wife. The supervisor had issued the sales representative a warning to stop bringing weekly meals to the doctor one month ago as it conflicted with the company's compliance policy regarding interactions with healthcare professionals. When you discuss the matter with the sales representative, she says that without the weekly meals the physician will stop writing prescriptions for Rapid Relief and so she must continue to bring the meals. She also says that this is all just retaliation by her supervisor for reporting the harassment claim. The general counsel recognizes that there are some fraud and abuse issues here, what are they? He also asks how he should proceed with the sales representative; he tells you that he does not want to fire her in light of the fact that she is their top sales person and this was discovered in the course of a harassment investigation.

Issues:

1. Anti-Kickback/Stark: The student should identify that the provision of meals on a frequent basis to a physician who prescribes the company's medications that are reimbursed by Medicare and Medicaid may give rise to a claim under federal and state anti-kickback laws. The federal anti-kickback statute (AKS), 42 U.S.C. § 1320a-7b(b), imposes criminal penalties on any person that knowingly and willfully solicits, receives, offers, or pays any remuneration (including any kickback, bribe, or

rebate) directly or indirectly, overtly or covertly, in cash or in kind, to any person, in return for or to induce such person to do either of the following:

- a. Refer an individual to a person for the furnishing or arranging for the furnishing of an item or service for which payment may be made in whole or in part under a federal health care program, or
- b. Purchase, lease, order, or arrange for or recommend the purchasing, leasing, or ordering of any good, facility, service, or item for which payment may be made in whole or in part under a federal health care program.

Students should be able to articulate that the AKS does offer safe-harbors. Here, the instructor may want to discuss the fact that merely because the relationship does not fall into a safe-harbor does not necessarily make the conduct illegal, but it will enjoy greater scrutiny in the event of a government investigation and that this contrasts with the Stark law, which is a strict liability statute, and relationships with referring providers must fall under one of its exceptions. The fact that the physician's wife owns the restaurant where the meals come from may be additional cause for concern under the anti-kickback law. In addition, the meals would be considered "nonmonetary compensation" under the Stark law, which is implicated because there is a financial relationship between a referring provider and a designated health service (outpatient prescription drugs). Students should understand there is an annual cap on nonmonetary compensation (for 2013: \$380).

2. Self-Disclosure Obligations: There may also be self-disclosure requirements under OIG guidance that necessitate the return of any Medicare funds the company received based on Dr. Smith's prescriptions. Students should understand that Section 6402 of Patient Protection and Affordable Care Act (PPACA), made the identification of an overpayment by a provider an "obligation" to repay the government for purposes of the False Claims Act. If the provider fails to return an overpayment (whether to the Medicare carrier or to the government through a self-disclosure protocol) within

sixty days of the identification of such overpayment, the company will have liability under the False Claims Act and may incur significant penalties including \$5,500 to \$11,000 per claim, treble damages and possible Medicare exclusion (the so-called economic death penalty).

3. **Ethical Obligations:** The instructor may use this opportunity to discuss the ethical obligations of the attorney if the client has identified an overpayment and fails to return the payment as required by law. Although there is the attorney-client privilege, the attorney rules of professional conduct also state that is professional misconduct to participate in dishonesty, fraud, deceit or misrepresentation (ABA Rule 8.4). These situations occur with increasing frequency and students should be aware that the government has prosecuted in-house counsel related to the attorney's alleged participation in fraud, albeit with limited success (See *U.S. v. Christi R. Sulzbach.*). Students should understand the importance of documenting all advice given to a client to create a paper trail in the event of an investigation.

Where to Look:

Federal and state fraud and abuse statutes, particularly anti-kickback statutes, Agency Opinions or Guidance from Health and Human Services, OIG and the Food and Drug Administration, federal and state sunshine reporting acts and regulations, Industry Organization Guidance from PhRMA and American Medical Association.

Possible Solutions:

The Company has provided the sales representative with the appropriate compliance training and she has been counseled to stop the behavior. Because the anti-kickback-law is an intent based statute and she has clearly stated that she has no intention of stopping the practice of delivering weekly meals, she should be terminated. The company should evaluate whether it needs to proceed under the OIG self-disclosure protocol for anti-kickback violations, depending on the amount of the claims. There are labor and employment issues related to the sexual harassment claim, which should be handled separately from the compliance issue.

Problem #4: Corporate Practice

Your client, a physical therapist, holds a state license to practice her profession. For liability and tax reasons, her practice has long been incorporated under the state's general business corporation act. It operates several other lines of business, including a holistic massage parlor and an herbal remedies store. Her husband owns 50% of the company. The corporation's articles of incorporation state its purposes to be "to engage in any business for which a corporation lawfully may be formed in this state," a common formulation.

Your client's therapists provided physical therapy (PT) services to Mr. Jones, who suffered a minor closed head injury and required back surgery due to injuries in an automobile accident. The therapy contributed substantially to Mr. Jones's recovery and he was happy with the service. However, Mr. Jones's auto insurer has denied payment. Mr. Jones, citing advice of his lawyer, has also refused to pay. He has filed a complaint with the state Attorney General as well, claiming that because therapists are required to be licensed or registered in your state under the health professions statute, your client's business is providing a professional service and should be incorporated under the state Professional Services Corporations Act, rather than the business corporation act. Professional therapy services are outside the permitted purposes of a general business corporation, he says, so your client's company had no legal authority to provide them, or, of course, to charge for doing so.

Under the Professional Services Corporations Act, only professional services may be offered, and only licensed professionals may own shares or serve as directors.

Evaluate Jones's and the insurer's positions for the client. Do you recommend that the client make any changes to her entity's corporate form, or take any other actions to preclude similar future problems? Is it worthwhile for you to seek state clarification on the ambiguous legal issues?

Issues:

1. Is the corporate practice of medicine doctrine in effect in your state? If so, is that due to statute, common law, or other authority, e.g., attorney general opinion?
2. Does the doctrine apply to other "learned" or professional services, and thus restrict other health professionals

from practicing in general business corporate form? If so, is physical therapy a “profession” for purposes of the doctrine? If the source of the principle in your state is statutory, the obvious question is what that statute says and how it defines a “professional” for these purposes. The corporate practice of medicine doctrine is part of a broader and old legal philosophy that views incorporation of professions with suspicion. It may be useful to examine its origin in the “learned profession” doctrine in corporate law, and its original scope (medicine, law, theology).

3. An interesting comparison could be made to the rules of the legal profession, which in most states, independent of state law, restrict the combination of law practice and nonprofessional for-profit businesses. See Model RPC 5.4. Further, the class could discuss the more pragmatic approach shown by AMA Ethics Opinion 8.0501, which addresses control issues but does not restrict the form of an organized medical business.
4. If the client’s PT service is improperly incorporated, what right does the insurer or patient have to raise the issue, if the client provided satisfactory services? Did he not get exactly what he paid for? Does the form of the client’s business render her license make her services less valuable than that of similarly licensed but differently organized providers?

Where to Look:

The doctrine exists under state law. Look in state corporation codes; court opinions; possibly rules or decisions professional licensing boards.

Possible Solutions:

1. Reincorporate the entity as a professional services corporation. Careful attention should be paid to the permitted ownership and purposes of such an entity, however. State statutes may limit ownership to persons licensed to practice the professional service(s) the entity offers, or may require the entity to offer only one professional service. In either case, the other lines of business and the husband’s ownership would have to be spun off into other entities. While the non-PT husband may not own shares of the professional corporation, the client could hold stock with him in the spinoff massage

and herbal remedy entity. That may result in unwanted tax consequences for the current owners. IT may also require re-enrollment of the new professional entity as a participating provider with the public and private payment programs, a costly process that often results in interrupted cash flow.

2. Ask the state attorney general for an advisory opinion. Ordinarily, this must be done on a private person’s behalf by a legislator or other public official, since the attorney general is lawyer to the state, not its citizens. This could be dangerous, however, since once the opinion is issued, the client is on notice that the AG would consider a quo warranto action to dissolve the business corporation or force it out of the PT business.
3. Sue the patient and his insurer, and get the issue resolved as the defense is adjudicated.

Further Information for the Instructor:

This problem asks whether PT ought to be treated under the corporate practice (learned professions) doctrine at all. Where a statute does not mandate professional incorporation of a therapy service, discussion might ask whether the usual rationales for the doctrine, including the need to preserve independent professional judgment, may not seem to apply to PT, where the therapists’ services historically are ordered by physicians and not truly self-initiated. Modern educational requirements for PT practice are increasing, however. Many new PTs begin practice with a doctorate degree. In some states PTs have independent prescribing authority, thus taking over the role formerly reserved to physicians. That expanded responsibility suggests that if the state applies the doctrine at all, it may yet be an appropriate restraint on the business side of this health profession. The 50% interest held by a non-therapist in the client’s business tends to support further the idea that this health care service might be in danger from purely mercenary, non-professional forces.

Another contemporary issue to address is the effect of health care reform, and its encouragement of Accountable Care Organizations. ACOs are in many ways contrary to the concept of freestanding professional units, urging sharing of risk among institutional, professional and business suppliers of health care. Maybe the concept of the pristine and independent professional practice is obsolete.

Here is another level of this exercise, based on Michigan law: In 1955 the Attorney General of your state, responding to an inquiry from a legislator, issued an opinion that contained the following core pronouncement:

The practice of osteopathic medicine is a ‘learned profession.’ Traditionally, learned professions (law, medicine and theology) have not been permitted to practice as corporate entities by virtue of what is sometimes referred to as the ‘learned profession doctrine.’

* * * * *

Thus, neither the practice of medicine nor the furnishing of osteopathic medical services is a lawful corporate purpose permitting formation of a corporation pursuant to our state’s general Business Corporation Act. Neither may a corporation contract with other persons to provide professional medical services through the officers, agents or employees of the corporation.

The legislature responded in 1972 by passing the Professional Service Corporations Act, authorizing the creation of professional corporations but restricting their activities to the professional services for which they are formed. In its most recent version, that act appears to address a number of professions, without regard to the traditional three:

“A licensed person or group of licensed persons may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of this act, for the purpose of rendering the professional service for which a license is issued.”

“Licensed person” means an individual who is duly licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or agency of this state or another jurisdiction. The term includes an entity if all of its owners are licensed persons.

“Professional service” means a type of personal service to the public that requires that the provider obtain a license or other legal authorization as a condition precedent to providing that service. Professional service includes, but is not limited to, services provided by

a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiropodist, physician’s assistant, architect, professional engineer, land surveyor, or attorney-at-law.

*At the same time, the Business Corporation Act was amended to exclude professional services from the permitted purposes of a corporation created under that more general statute. Both statutes provide that the state Attorney General may initiate an action (*quo warranto*) to enjoin the conduct of business outside the legally permitted purposes of any corporation. The Attorney General has never actually brought such an action against a professional corporation in Michigan.*

One good inquiry may be why professions would want to be included under such a law, such as limiting access to their fields of work and excluding “conglomerate” entities from linking their economic turf with other businesses, for example, offering veterinary services through pet supply stores or physician assistant offices in large drug or department stores. Lawyers like their self-imposed restraints, apparently.

*The 1972 Act is a broad one, well beyond the AG opinion that prompted it. Because PTs are licensed in Michigan, they may incorporate only as PCs. The analysis might stress that PT does not fall within the sorts of health professions listed in the 1972 Act, applying a slightly adulterated version of *eiusdem generis*. That law’s list is fairly eclectic (it comes from an actual state law), so its value in that regard may be limited. How like or unlike are therapists from veterinarians and land surveyors? The letter might also point out (weakly) that the 1972 act was prompted by the AG opinion of several years before, and that at that time the only learned profession discussed in this context was medicine.*

*As to the consequences for the client in this case: There is nothing in the 1972 act that suggests that a person doing business with a corporation may raise *ultra vires* as a defense to an otherwise legitimate claim. Defective incorporation does not bar Pts’ collection for services. *Miller v Allstate*, 275 Mich.App. 649; 739 N.W.2d 675(2007). A second ground of recovery might well be a claim in quantum meruit. While recovery under that cause ordinarily will be prevented in the presence of an explicit contract, there is none here, as*

the company does not participate with the carrier. Therefore, it might be able to recover the reasonable value of its services.

Getting the Government's Opinion:

Many states' administrative procedure laws provide for declaratory rulings. The client might consider two avenues for that. One would be a ruling from the insurance regulatory authorities, addressing whether the carrier may resist payment based on allegedly defective incorporation of the client's company, as in *Miller v Allstate*. Another would be directed to the state agency responsible for administering the corporation acts, seeking its answer as to whether PT is a "professional service" under the 1972 law. Given the position of the AG in 1955, it's unlikely that that officer would allow the agency to take a different position. The client should be warned, as well, that she will have to live with the answer she gets.

Reorganizing the Business:

Suppose the client cannot establish that the entity is properly incorporated. Could the client re-form the PT business as a freestanding corporation under the 1972 act? It is unlikely that under that statute the non-therapist partner could retain any ownership in the professional corporation, so other arrangements between the partners would have to be worked out. In place of cash or an increased interest in some other venture, the therapist could grant an option to her existing corporation to purchase all of her stock in the new, therapy-only PC of which she could be the sole shareholder. In the event that control issues arose between the client and her partner, the optionee corporation could call the option and assign it to another therapist it felt more able to control. That is a technique that is sometimes employed in states that still adhere to the doctrine.

Finally, an astute class member might point out that if the ancillary health-related businesses, like the herbal remedy store, refer their customers to the professional corporation for PT services, the federal anti-kickback statute might apply because of the shared ownership, if those patients are supported by Medicare, Medicaid or TriCare. Not part of the topic, but it does show how pushing on the system in one place can result in dislocation somewhere else.

Problem #5: Facility Licensing

(Based on nursing home regulation materials in Barry R. Furrow et al., *Health Law* (2000))

Mr. Phillips, age 90, has been admitted to a Medicare-certified nursing home for rehabilitation following hospitalization for stroke. The stroke affected not only his balance and coordination, but his cognition as well. He is declining, rather than improving. Under the applicable state law, his attending physician and one psychologist have certified that he is unable to participate in his own medical decision making, and so his daughter has assumed the role of attorney-in-fact for health care, as provided in his own written advance directive.

Mr. Phillips is commonly referred to by his Navy title, "Commander." He and his family are proud of his military record. The Commander's intermittent mental disorientation sometimes leads him to try to get up from the wheelchair to which he is confined, and when he does so he falls immediately. He is unable to get back into the chair on his own. His pride, or his disorientation, makes him object strenuously to the assistance of aides in those circumstances, and he will not tolerate a full-time one-on-one attendant, which he calls a "wet-eared babysitter." No amount of counseling or teaching has avoided this problem. Although the Commander is not injured in the falls (he is physically strong), his family thinks that if the Commander were completely in control of his faculties, he would be appalled at what they call his "groveling on the floor." They want his falling to be controlled, somehow.

The Director of Nursing, the social worker, and the attending physician meet with the Commander and his family, including his empowered daughter. Several options are discussed, including further teaching and counseling (not expected to be effective), one-on-one aide attendance, to which all agree the Commander objects, a wheelchair lap belt, and medication to relieve the ideation and restlessness that is leading to the falls. It is agreed that the Commander will be prescribed a medication that is known to reduce agitation and that the medication regime will be reviewed each week to adjust the dosage to the lowest effective amount. The family is aware that the medication will also further dull the Commander's cognition and communication

abilities, but they think that the approach best preserves his dignity. The daughter signs the care plan, and the physician issues the appropriate orders. Over the next two months, the dosage is reduced by about 50%, and later increased slightly, until nursing staff, physician and family agree the best balance has been achieved.

A week later the state survey agency visits the facility for the annual survey. It declares that the medication is not appropriate, and so the facility has violated the Commander's right to be free from restraints under 42 USCA 1396r(A)(c) (1)(A)(ii) (reproduced in the course book) which states that a resident has:

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

The Centers for Medicare and Medicaid Services (CMS) State Operations Manual, Appendix PP, expands on the regulation, giving guidance to state surveyors, stating that:

Convenience is defined as any action taken by the facility to control a resident's behavior or manage a resident's behavior with a lesser amount of effort by the facility and not in the resident's best interest.

The facility believes that it was obligated to follow the physician's medication orders. The family is furious that the survey agency would not honor their care choices, protecting the Commander from the pattern of falling, in the way they think best for him. They don't believe that the facility is medicating the Commander out of "convenience."

The family was assured when the Commander was admitted to the facility that it honored the federal Patient Self-Determination Act of 1990 (PSDA), which requires any Medicare certified nursing home "to ensure that legally valid advance directives and wishes otherwise documented are implemented to the extent permissible under State law..."

Should the citation be upheld? Whose judgment of the Commander's best interests should prevail?

Issues:

1. Fans of administrative law will find many things in this problem; however, it is not aimed at those issues. The issues may be worked out even if all the levels of statutory and administrative authority are assumed to be binding.
2. Do the federal rule and guideline really prohibit the use of these chemical "restraints" on the Commander? A licensing (or here, comparable certification) problem should always begin with measuring the alleged or observed conduct against the written standards that apply. The presumed "expertise" of administrative agencies can produce overenthusiasm and freelancing.
 - a. Under the rule, the resident has the right to be free of "restraints." If that right belongs to the resident, and he (through his legal representative) has chosen to waive that right to some degree, can there be a violation here? The countervailing consideration, often raised by advocacy groups, is that some residents without representatives, and some families, may be too easily swayed by facility staff who really do want to restrain or drug residents to make them more manageable. On its face, though, the rule expresses a right belonging to the resident, not a power belonging to the survey agency. If the facility can demonstrate a reasonable and knowing waiver of the right, the charge should fail. (In practice, CMS will not honor a resident choice for restraint which it would not permit to be imposed without consent, and would enthusiastically defend an appeal of this citation.)
 - b. The rule prohibits restraints imposed (within this hypothetical) for "convenience" and not required to treat the resident's medical symptoms. The agency has defined "convenience" to include two elements: to manage a resident's behavior with a lesser amount of effort by the facility and not in the resident's best interest. Chemical restraint of the resident is more convenient than one-on-one attendance or continually picking him off the floor. But the definition has two elements, stated in the conjunctive: the restraint must also be NOT in the resident's best interest. The fact that the medication

regime was generated at an interdisciplinary care planning conference, at which the Commander's daughter represented his interests, suggests that the plan is in his best interests. Should the survey agency take the daughter's bona fides at face value? Perhaps the therapy makes her feel better, rather than the Commander. Who gets to define "best interest?"

- c. What is the impact of the PSDA on the situation? Under that federal law, which is part of the Medicare act, the Medicare-certified nursing home must honor the Commander's advance directive. A durable power of attorney is an advance directive under that statute. Thus, one may argue credibly that the Commander, while in full possession of his mental abilities, decided that his daughter was the best person to determine his best interests in health care matters. Unless her actions are plainly injurious to the Commander, in which case a probate court might relieve her of her powers, her decisions should be taken as his. Thus, the issue returns to the definition of "Convenience" and its impact on the elements of the violation under the rule itself.
3. The problem raises a fundamental policy issue, specifically, the extent to which an individual may expect to be completely in control of a service (in this case, nursing home services) for which the individual does not pay. The restraint rule would not apply in a nursing home that requires all residents to pay privately. The government benefit comes with strings. The division of consumer and payor underlies almost every policy debate in health care in the US.

Where to Look:

The Medicare act is far too general to be of use here; even the rules are quite opaque. In practice, manuals and guidelines serve as virtual rules in this system (something which CMS denies, of course). Those cases which go into the federal hearing system are published online and in the CCH Medicare and Medicaid Guide as decisions of the DHHS Departmental Appeals Board or Decisions of the Secretary. Federal district courts are empowered to review those few cases that are not exhausted by the administrative procedures.

Further Information for the Instructor:

CMS has taken the position that its surveyors' judgment about the propriety of restraints is to be followed, even where the physician and family, or even the resident, disagree. Self-determination in Medicare-supported health care has its limits. See the CMS advisory, attached.

Patient self-determination itself is a component of "quality," as most people see it. The Medicare Conditions of Participation, along with the PSDA, require that advance directives and powers of attorney be honored. The hypothetical raises the question of who really gets to say what "quality" is. One might ask whether, if the residents and families of a nursing facility are satisfied with the services provided, any agency should have the power to declare them deficient. On the other hand, is this really a different question from that presented by an insurer's coverage of one medication to the exclusion of another, similar one?

This problem is also an example of internal conflict between federally-established standards of nursing home practice and the concurrent obligation of facilities to follow physician orders in matters of medication. 42 CFR 483.60, part of the Medicare Conditions of Participation, provides, in part:

A facility must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident

The CMS State Operations Manual, Appendix PP, expands:

Compliance with 42 CFR 483.60, F425, Pharmaceutical Services

The facility is in compliance with this requirement, if they provide or arrange for:

- *Each resident to receive medications and/or biologicals as ordered by the prescriber;*
- *The development and implementation of procedures for the pharmaceutical services;*
- *The services of a pharmacist who provides consultation regarding all aspects of pharmaceutical services; and*
- *Personnel to administer medications, consistent with applicable state law and regulations.*



American Bar Association Standard 305: Study Outside The Classroom

- (a) A law school may grant credit toward the J.D. degree for courses or a program that permits or requires student participation in studies or activities away from or outside the law school or in a format that does not involve attendance at regularly scheduled class sessions.
- (b) Credit granted shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.
- (c) Each student's academic achievement shall be evaluated by a faculty member. For purposes of Standard 305 and its Interpretations, the term "faculty member" means a member of the full-time or part-time faculty. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.
- (d) The studies or activities shall be approved in advance and periodically reviewed following the school's established procedures for approval of the curriculum.
- (e) A field placement program shall include:
 - (1) a clear statement of the goals and methods, and a demonstrated relationship between those goals and methods to the program in operation;
 - (2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;
 - (3) a clearly articulated method of evaluating each student's academic performance involving both a faculty member and the field placement supervisor;
 - (4) a method for selecting, training, evaluating, and communicating with field placement supervisors;
 - (5) periodic on-site visits or their equivalent by a faculty member if the field placement program awards four or more academic credits (or equivalent) for field work in any academic term or if on-site visits or their equivalent are otherwise necessary and appropriate;
 - (6) a requirement that students have successfully completed one academic year of study prior to participation in the field placement program;
 - (7) opportunities for student reflection on their field placement experience through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student can earn four or more academic credits (or equivalent) in the program for fieldwork, the seminar, tutorial, or other means of guided reflection must be provided contemporaneously.

Interpretation 305-1

Activities covered by Standard 305(a) include field placement, moot court, law review, and directed research programs or courses for which credit toward the J.D. degree is granted, as well as courses taken in parts of the college or university outside the law school for which credit toward the J.D. degree is granted.

Interpretation 305-2

The nature of field placement programs presents special opportunities and unique challenges for the maintenance of educational quality. Field placement programs accordingly require particular attention from the law school and the Accreditation Committee.

Interpretation 305-3

A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. This interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement.

Interpretation 305-4

(a) A law school that has a field placement program shall develop, publish and communicate to students and field instructors a statement that describes the educational objectives of the program.

(b) In a field placement program, as the number of students involved or the number of credits awarded increases, the level of instructional resources devoted to the program should also increase.

Interpretation 305-5

Standard 305 by its own force does not allow credit for Distance Education courses.



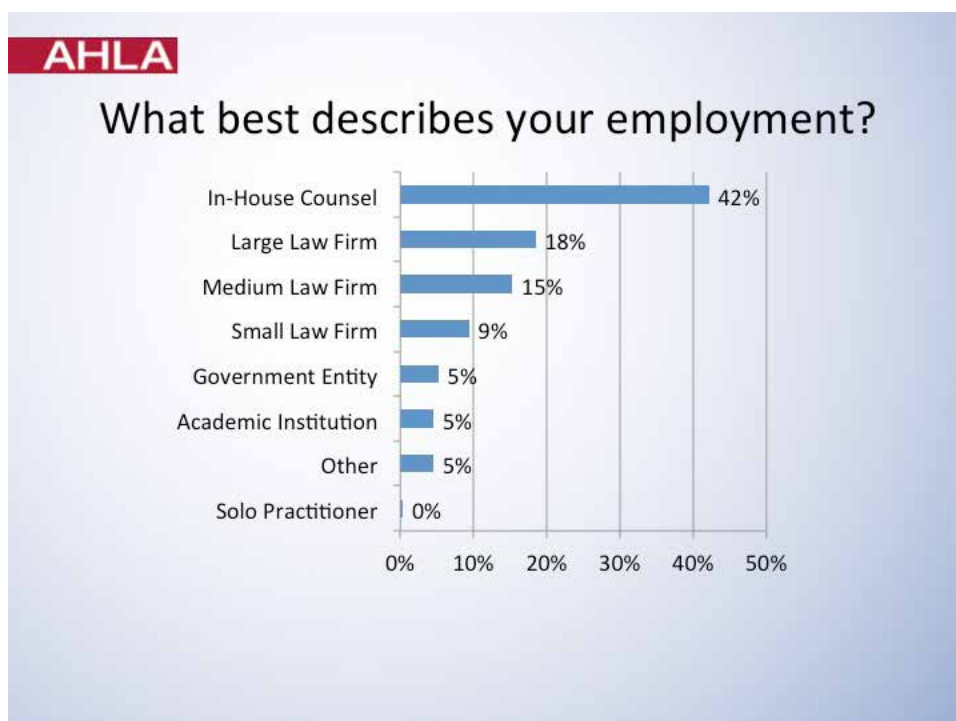
AHLA's Survey Questions To Employers*

1. What best describes your employment?
 - a. Large law firm
 - b. Medium law firm
 - c. Small law firm
 - d. Solo practitioner
 - e. In-house counsel
 - f. Government entity
 - g. Academic institution
 - h. Other
(Note: The survey was sent to 5,000 AHLA members who graduated from law school more than eight years ago, of which 500 worked in government and 2,000 in corporate/in-house counsel settings. In-house members provided the greatest number of responses, which may explain the disproportionate numbers from that source. "Other" included in-house compliance officer and legal publishing.)
2. What percentage of your practice would you characterize as health law related?
3. What percentage of your work is best described by each of the following health law practice areas?
 - a. Transactional
 - b. Regulatory
 - c. Litigation
 - d. Administrative
 - e. Malpractice
 - f. Compliance
 - g. Other *(Note: survey respondents included the following in the "Other" category: fraud prosecution; contracting; labor; HIPAA; government affairs; risk management; performance improvement; bioethics; state law policy analysis; arbitration and mediation; legislative matters; and medical disability benefits.)*
4. Generally, whom do you represent in your health law practice? (check all that apply)
 - a. Hospitals
 - b. Physician groups
 - c. Individual physicians
 - d. Post-acute care (nursing facilities, home health or hospice)
 - e. Life science companies
 - f. Individuals
 - g. Government agencies
 - h. Health insurance companies
 - i. Other non-physician primary care providers
 - j. Other *(Note: survey respondents included the following in the "Other" category: laboratories and durable medical equipment companies; mental health center; surgery centers; consulting/management firms; employers; dialysis providers; state university; trade association; therapy and behavioral health; health information exchanges; clinical research entity; third-party administrator; federally qualified health center; pharmacy benefit management organization; medical schools; insurance brokers.)*
5. What subject areas are included in your health law practice? (check all that apply)
 - a. Food and Drug Administration Law
 - b. Medical Malpractice
 - c. Clinical Research
 - d. Real Estate
 - e. Compliance
 - f. Fraud and Abuse
 - g. Healthcare Finance and Administration
 - h. Bioethics
 - i. Reimbursement
 - j. Medicare and Medicaid
 - k. Licensure
 - l. Certificate of Need
 - m. Health Insurance Portability and Accountability Act
 - n. Tax Law
 - o. Antitrust Law
 - p. Corporate law
 - q. Other *(Note: survey respondents included the following in the "Other" category: municipal bond law; medical residency; employment law; canon law; institutional policies; contracts; health information technology; intellectual property; state regulatory matters, provider contracting, and managed care; physical and information security; executive compensation; mental health; end-of-life issues; securities law; Americans with Disabilities Act; rehabilitation, civil rights; biotechnology, life sciences; and accreditation standards.)*

6. How many health law attorneys does your organization employ?
7. Which statement most accurately reflects your firm, business or agency's health law hiring practices?
 - a. I/We hire new law school graduates to practice health law
 - b. I/We hire lawyers with at least 1-2 years of experience practicing law, but that practice does not have to be in health care
 - c. I/We hire lawyers with at least 1-2 years of experience in health law
 - d. I/We hire lawyers with 3 or more years of experience practicing law, but that practice does not have to be in health care
 - e. I/We hire lawyers with 3 or more years of experience in health law
8. How strongly would you value the following attributes in a recent law school graduate for a health law related job at your firm, business, or agency (based on rankings of very strong; strong; somewhat; and immaterial to hiring):
 - a. Prior non-legal experience working in the health care or life sciences industry
 - b. Health law certificate received from JD program
 - c. Significant number of health law courses in JD transcript
 - d. Masters of Law (LLM) in Health Law
 - e. Other related-graduate level degree (MPH, MHA, MBA with emphasis on health)
9. Rank in the order you would find to be the most useful skill for a recent law school graduate interviewing for a health law position at your firm, business or agency:
 - a. Drafting basic contracts
 - b. Analyzing basic fraud and abuse scenarios
 - c. Analyzing base client problems
 - d. Drafting basic litigation documents, such as motions
 - e. Gathering facts from clients
 - f. Making oral presentations
 - g. Analyzing federal or state laws and regulations relating to health care entities
 - h. Drafting correspondence to clients
 - i. Drafting basic administrative agency materials
 - j. Drafting legislation, rules, and regulations
10. Is there a particular law school or health law program that you believe produces better qualified health law associates? If yes, what sets that program apart?
11. How important would you find the following courses on an entry-level candidate's JD transcript? (Based on rankings of very strong; strong; somewhat; and immaterial to hiring)
 - a. Survey course in health law (i.e., one semester, multi-topic course)
 - b. Administrative Law
 - c. Corporate/Business Law
 - d. Basic course in Tax Law
 - e. Statutory interpretation or course with heavy emphasis on interpreting statutes and regulations
 - f. Antitrust Law
 - g. Course focused in a specific health law subject area (i.e., health care finance and administration, fraud and abuse, food and drug law, medical malpractice, bioethics, disability or mental health law, HIPAA, etc.)
 - h. Writing/paper-based courses in addition to the law school's required legal research and writing course
 - i. Other (*Note: survey respondents included the following in the "Other" category: externships in healthcare (multiple); presence and persuasion; contract drafting; knowledge of the industry/delivery of care; internship at an employer; government relations; presentation of legal issues to non-lawyers; HIPAA; health care reimbursement/basic coding; basic finance; Veterans or military law; negotiations; and transactions.*)
12. Do you find that students who participated in health law externships, journals, moot courts or clinics are better prepared for health law related work at your firm, business or agency than students who participated in more general law school activities?
13. What types of externships/clinics would you recommend to law students who want to practice health law at your firm, business or agency?
14. How important is it for a new health lawyer to have a broad understanding of the business side of health care? (Based on rankings of very important; somewhat important; not very important; and not important at all)

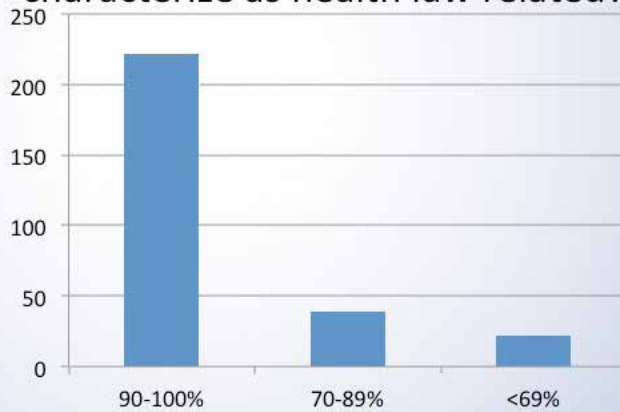
15. How important is it for a new health lawyer to understand how health care is paid for? (Based on rankings of very important; somewhat important; not very important; and not important at all)
 16. How important is it for a new health lawyer to have an understanding of health care ethics (i.e., end of life decision making)? (Based on rankings of very important; somewhat important; not very important; and not important at all)
 17. How important is it for a new health lawyer to have an understanding of business ethics? (Based on rankings of very important; somewhat important; not very important; and not important at all)
 18. How important is it for a new health lawyer to have an understanding of laws other than U.S. laws? (Based on rankings of very important; somewhat important; not very important; and not important at all)
 19. Do you routinely require new health law associates to attend CLE courses on basic health law matters (for example, AHLA's Fundamentals of Health Law program)? If so, which courses do you typically ask your associates to attend and why?
 20. How would you characterize the breadth of the health law curriculum at the law schools from which your firm, agency or organization hires? (Based on rankings of excellent; adequate; inadequate; and do not know)
 21. How would you characterize the depth of the health law curriculum at the law schools from which your firm, agency or organization hires? (Based on rankings of excellent; adequate; inadequate; and do not know)
 22. How long does it typically take for most recent law school graduates to become proficient in analyzing basic health law issues (i.e., without close supervision and without missing material issues)? (Based on rankings of less than 6 months; between 6 months to one year; between one to two years; and more than two years)
 23. How would you rate most recent law school graduates' preparation for practice in each of the following health law practice areas? (on a scale of 1-5 with 5 being able to analyze complex issues; 4—able to analyze basic issues; 3—basic understanding of concepts but additional instruction needed for effective analysis, 2—some background knowledge but additional instruction in basic concepts needed; and 1—little to no background knowledge)
 - a. Transactional
 - b. Regulatory
 - c. Litigation
 - d. Administrative
 - e. Other
 24. Do you believe recent law school graduates entering the field of health law have the necessary skills or knowledge base after graduation from law school? If not, what one skill or area of knowledge would you recommend be added?
 25. Do you believe that law schools can enhance a law student's preparation for a career in health law with initiatives specific to the field of health law?
 26. What initiatives, if any, could law schools take to improve a recent law school graduate's preparation to enter health law practice?
 - a. Increase the number of health law subjects covered in health law courses
 - b. Increase the depth of the health law subjects covered in health law courses
 - c. Increase the number of health law specific externships and clinics available to students
 - d. Increase access to transactional skills-based courses
 - e. Other *(Note: survey respondents included the following in the "Other" category: Use more adjuncts who have been in practice; I am more interested in whether an associate wants to make health law a career; Focus on core bar courses; I can teach them health law once I hire them; Teach health law in isolation from other topics because it is applied so differently; Provide more opportunities to work in teams; Bring in guest speakers from the private sector; Create joint programs with the medical school; Rigor in learning to think; Make what they learn in law school less Socratic and more practical.)*
- *A varied selection of employers who graduated from law school more than eight years ago and who are from different practice settings were surveyed, including those from law firms, solo practice, government agencies, academia, corporate, and in-house settings.*

Survey Results



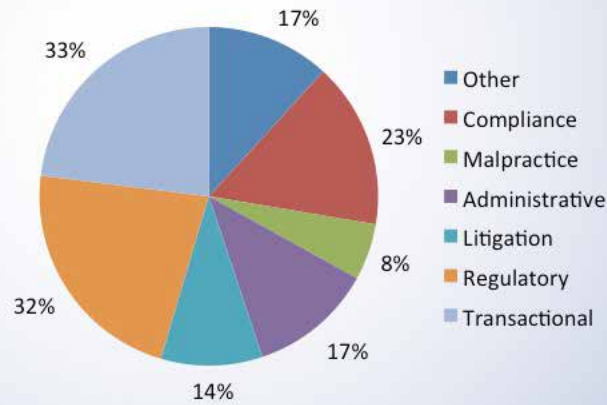
AHLA

What percentage of your practice would you characterize as health law related?

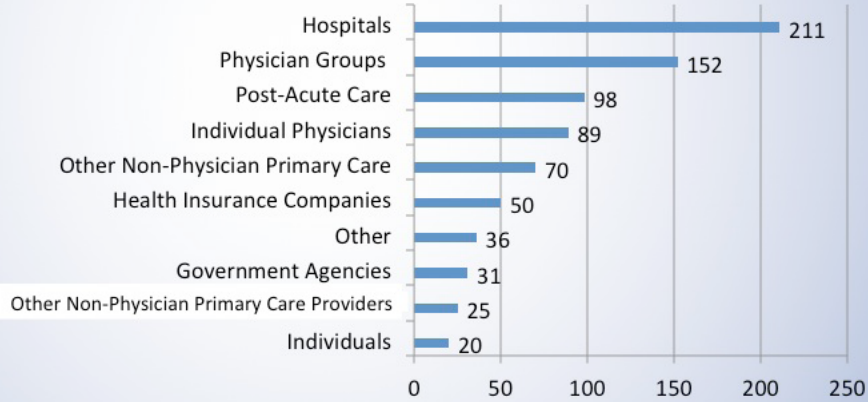


AHLA

What percentage of your work is best described by each of the following health law practice areas?



Generally, whom do you represent in your health law practice?

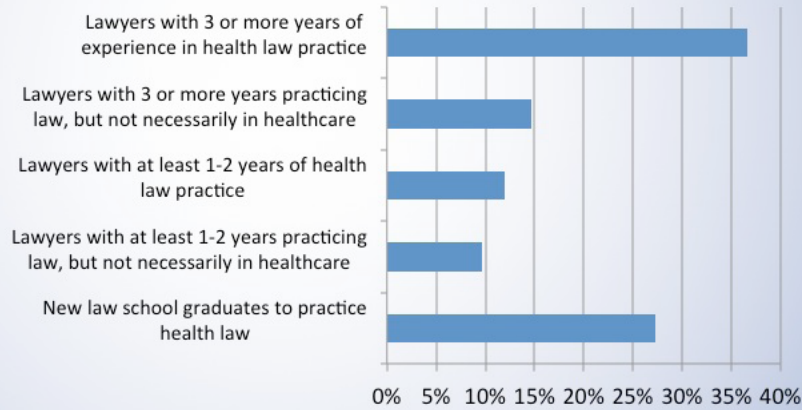


What subject areas are included in your health law practice?



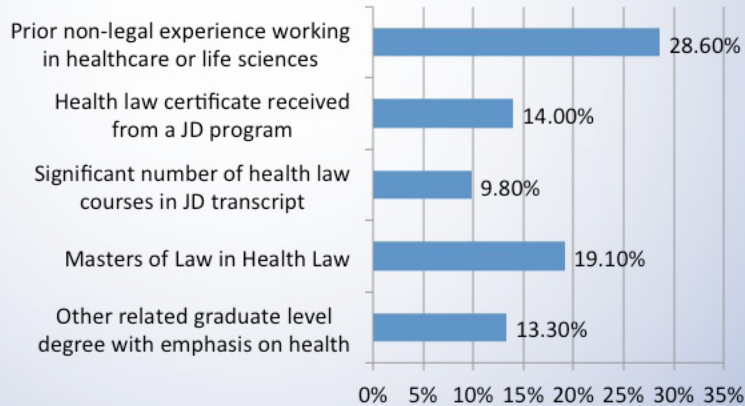
AHLA

What statement most accurately reflects your firm, business, or agency's health law hiring practices?



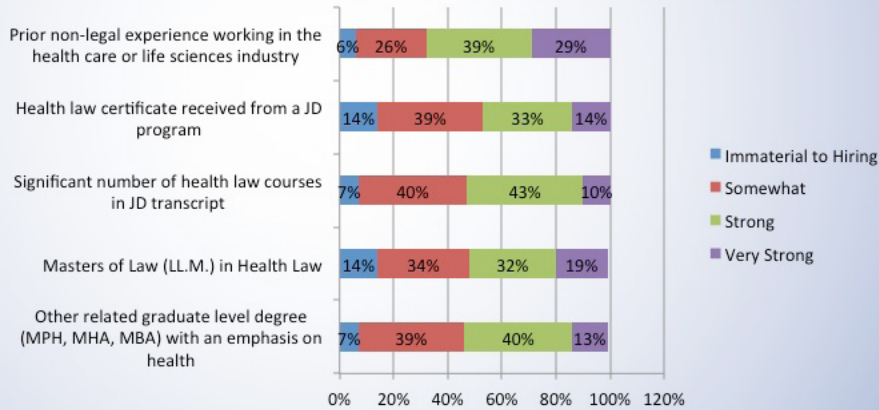
AHLA

How strongly would you value the following attributes in a recent law school graduate for a health law related job at your firm, business or agency?



*Graph shows only Very Strong responses

How strongly would you value the following attributes in a recent law school graduate for a health law related job at your firm, business, or agency:

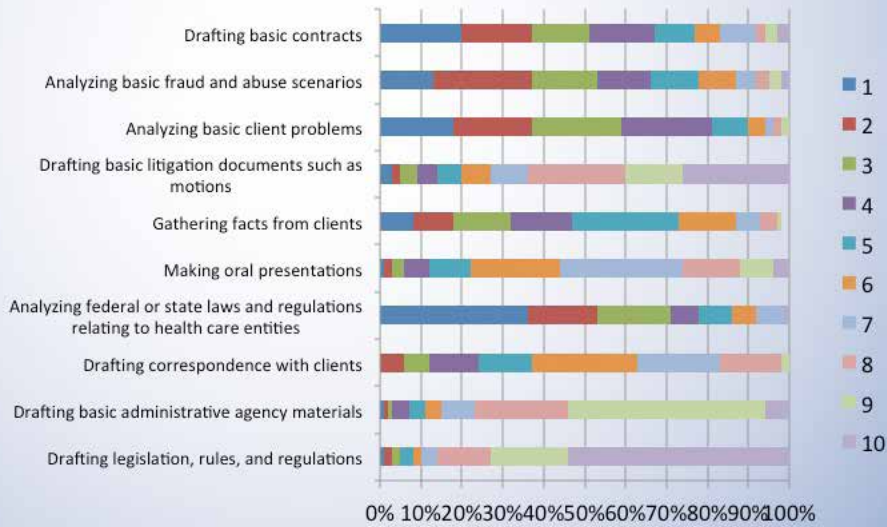


Rank in the order you would find the most useful skill for a recent law school graduate interviewing for a health law position at your firm, business or agency.

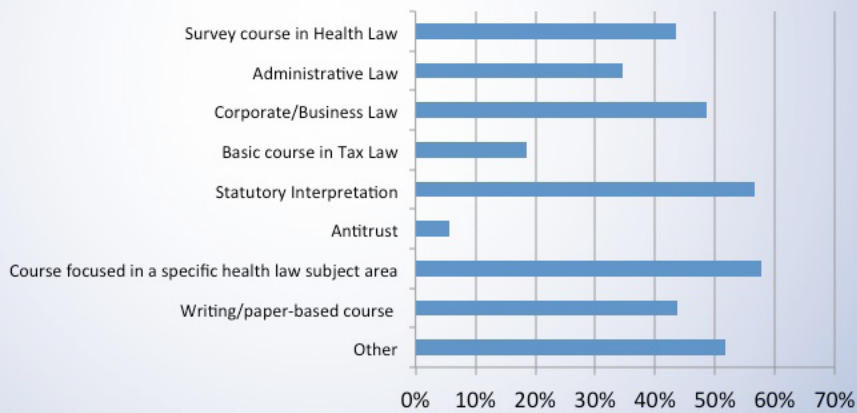


*Graph shows the percentages for respondents top ranking only.

Rank in the order you would find the most useful skill for a recent law school graduate interviewing for a health law position at your firm, business or agency.



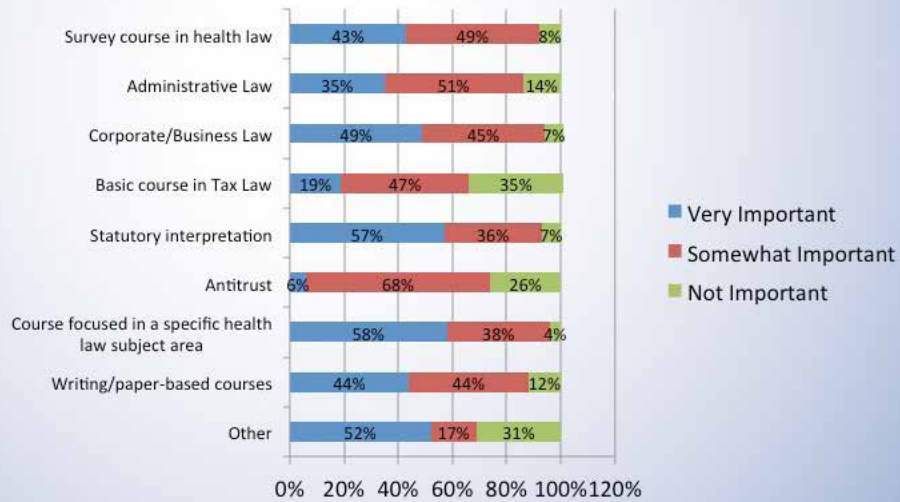
How important would you find the following courses on an entry-level candidate's JD transcript?



*Graph shows only Very Important responses

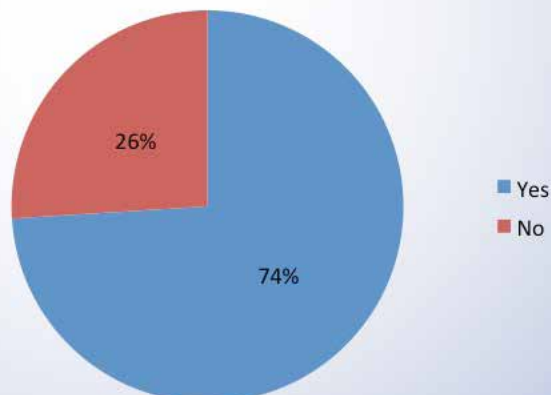
AHLA

How important would you find the following courses on an entry-level candidate's JD transcript?



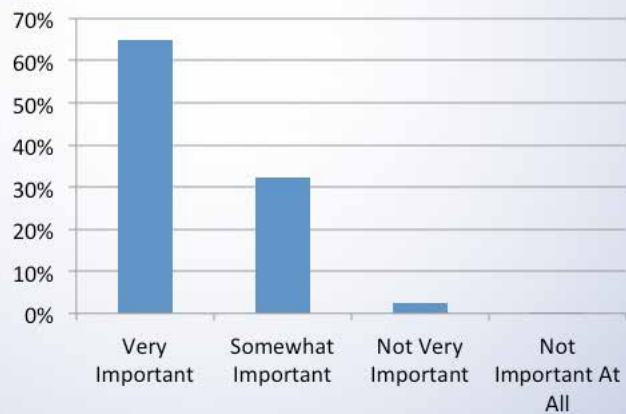
AHLA

Do you find the students who participated in health law externships, journals, moot court, or clinics are better prepared for health related work at your firm, business or agency?



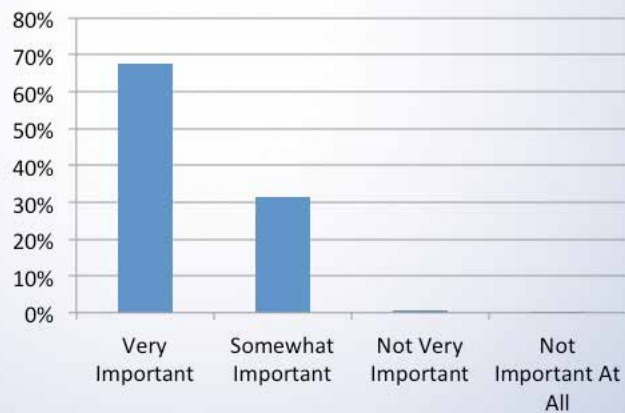
AHILA

How important is it for a new health lawyer to have a broad understanding of the business side of healthcare?

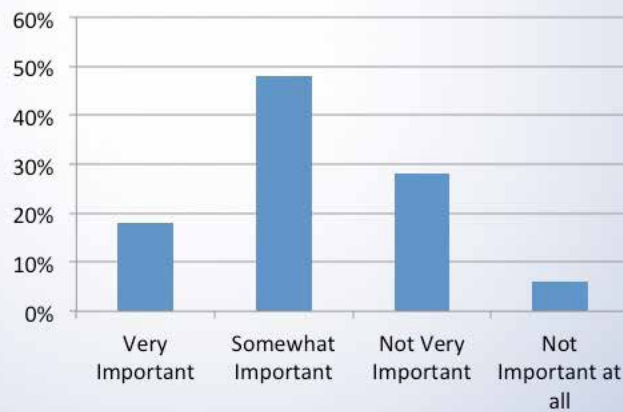


AHILA

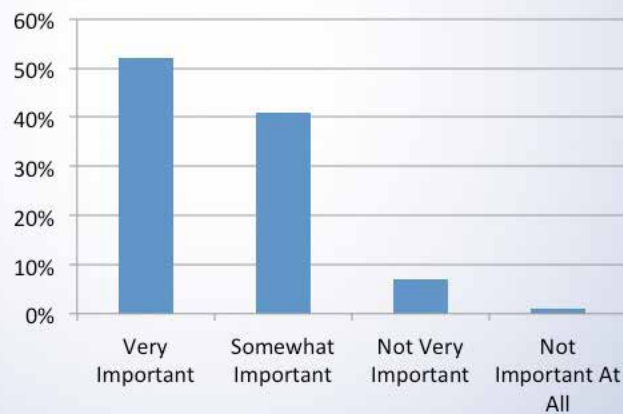
How important is it for a new health lawyer to understand how healthcare is paid for?



How important is it for a new health lawyer to have an understanding of healthcare ethics (i.e., end-of-life decision making)?

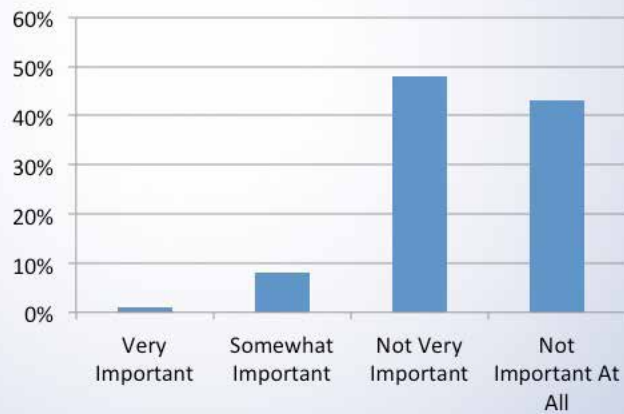


How important is it for a new health lawyer to have an understanding of business ethics?



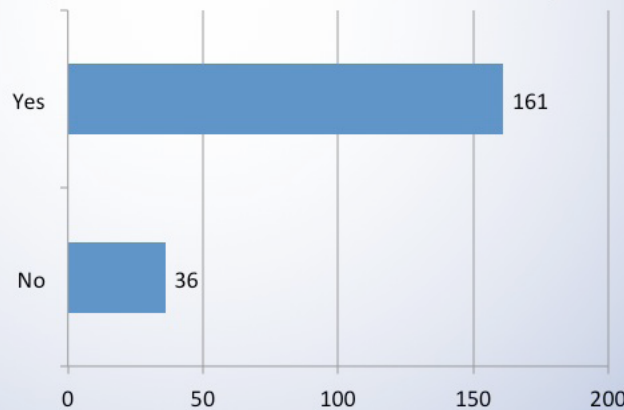
AHLA

How important is it for a new health lawyer to have an understanding of laws other than U.S. laws?



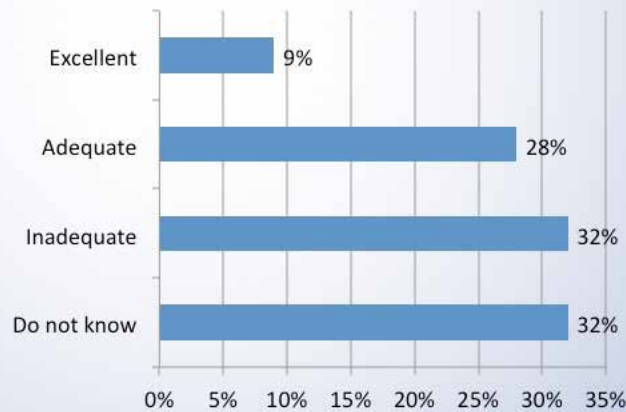
AHLA

Do you routinely require new health law associates to attend CLE courses on basic health law matters (for example, AHLA's Fundamentals of Health Law program)? If so, which courses do you typically ask your associates to attend and why?



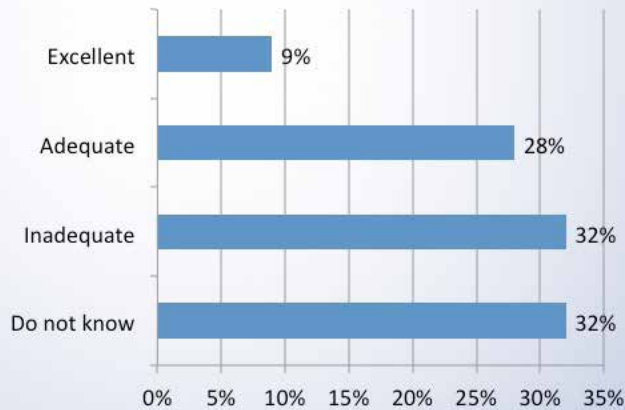
AHLA

How would you characterize the **BREADTH** of the health law curriculum at the law schools from which your firm hires?



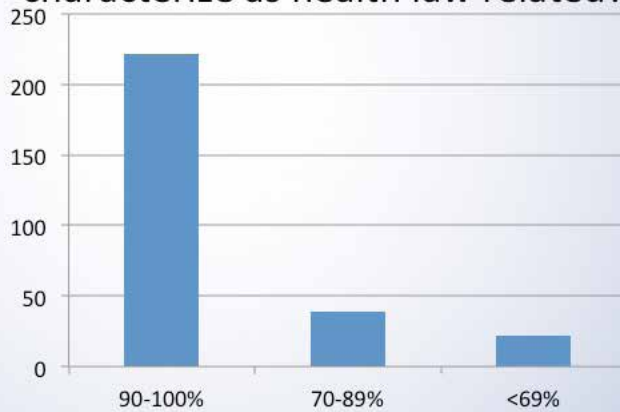
AHLA

How would you characterize the **DEPTH** of the health law curriculum at the law schools from which your firm hires?



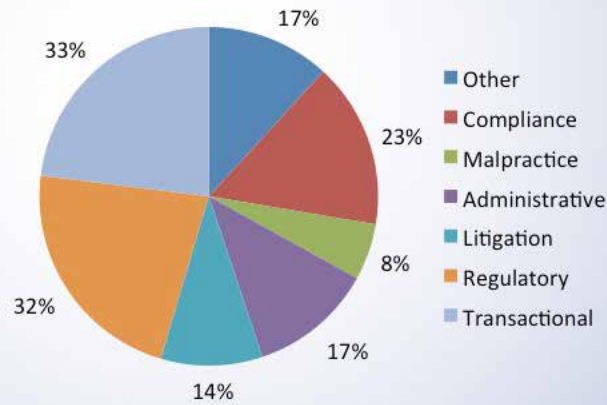
AHLA

What percentage of your practice would you characterize as health law related?

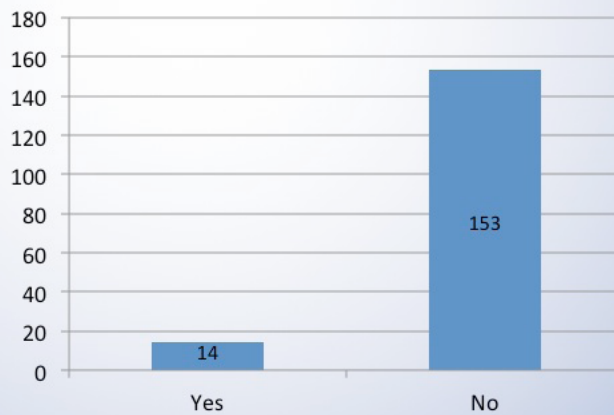


AHLA

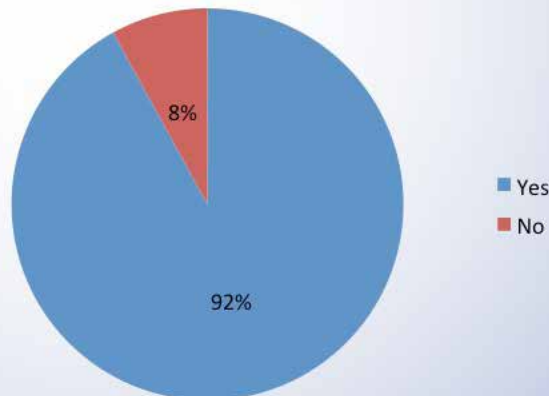
What percentage of your work is best described by each of the following health law practice areas?



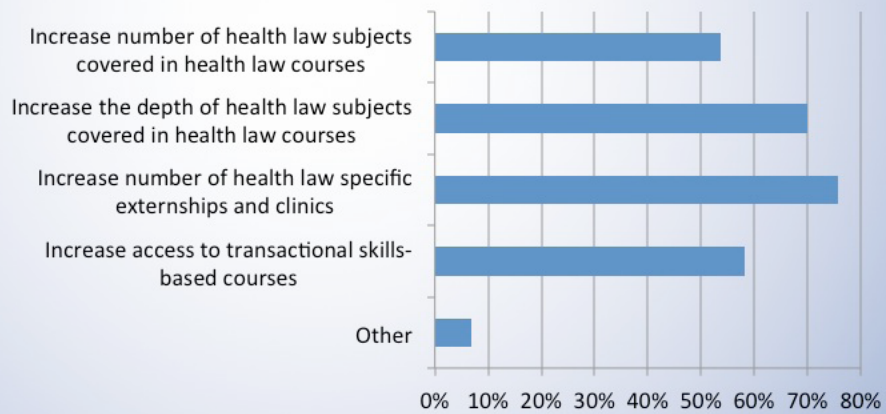
AHLA Do you believe recent law school graduates entering the field of health law have the necessary skills or knowledge base after graduation from law school? If not, what one skill or area of knowledge would you recommend be added?



AHLA Do you believe law schools can enhance a law student's preparation for a career in health law with initiatives specific to the field of health law?



What initiatives, if any, could law schools take to improve recent law school graduates' preparation to enter health law practice?



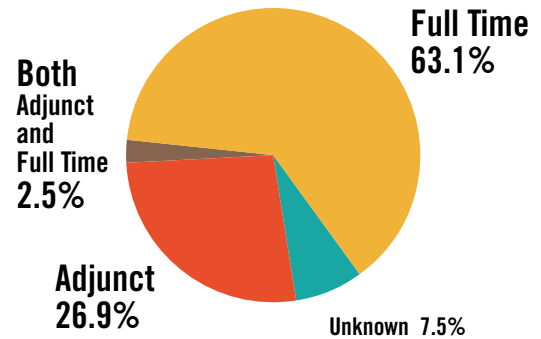


Health Law Survey Courses Offered by ABA-Accredited Law Schools*

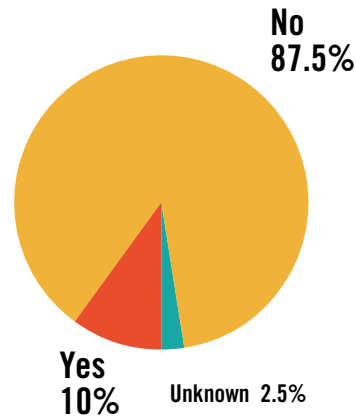
Does the law school offer a Health Law Survey course?



If the school does offer a Health Law Survey course, is it taught by adjunct or full time faculty?



Does the law school offer a Health Law L.L.M.?

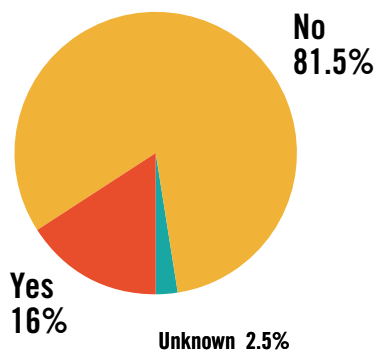


*As of November 2013



ABA-Accredited Law Schools that Require Pro Bono Service for Graduation*

Is pro bono work required to graduate from law school?



For schools requiring pro bono service to graduate, how is the requirement determined?*

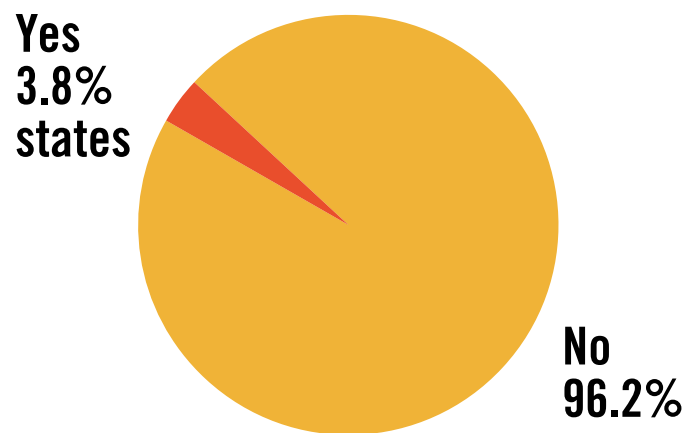
School	Pro Bono Requirements
California Western	50 hours
Charleston	30 hours
Charlotte	20 hours
Columbia	40 hours
Denver	50 hours
District of Columbia	40 hours
Drexel	50 hours
Florida State	20 hours
Gonzaga	30 hours or 3 credits in externship
Hamline	24 hours
Harvard	40 hours
Illinois	40 hours
Loyola–Los Angeles	40 hours at an organization approved by the law school
Massachusetts	Hours equivalent of 1 week in Pro Bono
Memphis	40 hours of law-related public service
Nevada	Successful completion of a community service program
New Mexico	Successful completion of a six-credit clinic course
Northeastern	Successfully completing a full-time public interest co-op comprised of spending 11 weeks and 35 hours per week (385 hours) in a public interest work setting; taking a law school clinic; performing 30 hours of pre-approved legal pro bono work; or doing a public interest independent study
Northern Kentucky	50 hours
Pennsylvania	70 hours
Roger Williams	50 hours
St. Thomas (Florida)	40 hours - at least 20 hours of pro bono legal services and the remainder can be community service
St. Thomas (Minnesota)	50 hours
Southern Methodist	30 hours
Stetson	60 hours
Texas Wesleyan	30 hours
Thomas M. Cooley	Measured in credit hours
Touro	50 hours
Tulane	30 hours
Washington and Lee	40 hours
Washington	60 hours
Western New England	20 hours

*As of November 2013



States that Require Pro Bono Service to Maintain License*

Is pro bono work required to maintain one's state license?



*As of November 2013



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