

Fundamentals of Healthcare Law

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Abstract: The healthcare industry is one of the largest and most heavily regulated industries in the United States. The healthcare law comprises of many different areas of the law. It combines administrative and regulatory law, health law, contract and tort law, employment law, and judicial precedent. The law regulates access to care, privacy, and patient rights. It also dictates who can receive healthcare services and who should pay for these services. Since healthcare law is a broad area, healthcare lawyers often work in various niche areas. This paper provides an introduction to healthcare law.

Keywords: health law, healthcare law, medical law, public health law.

INTRODUCTION

The healthcare industry is an enormous and lucrative part of the US economy. Americans spent \$4.3 trillion on healthcare in 2021 alone. The healthcare field overlaps with other areas such as civil rights, ethics, healthcare law, constitutional law, tax law, and corporation organization law. People involved in healthcare include patients, policymakers, government agencies and the individuals who run medical facilities.

The following is a non-exhaustive list of organizations and professionals who make up the healthcare industry [1]:

- Health care systems
- Care facilities
- Health care organizations
- Health care providers
- Health care practices
- Physician practices or practice groups
- Mental health facilities
- Insurers, both public and private
- Pharmaceutical companies

These groups are subject to healthcare law. Healthcare and the law are interconnected.

HEALTHCARE LAW

Healthcare law (or health law) is a field of law that encompasses federal, state, and local law, rules, regulations, and other jurisprudence among providers, payers and vendors to the healthcare industry and its patients. It is a broad specialty because it encompasses all of the several types of legal disputes that come up in the health sector. It consists of a wide range of regulatory strategies that may be used to ensure people's health and safety. Areas of law that may fall under the umbrella of health law include contract law, medical malpractice, medical law, administrative law, public health law, tax law, corporations and nonprofit organization, insurance and pension law, employment and labor law, public benefits law, torts, ethics, criminal law, privacy, civil rights, reproductive rights, constitutional law, consent, etc. Some of these areas are illustrated in Figure 1 [2].

Healthcare law is practiced in a wide range of settings: in federal, state, and local government; in legal services organizations; in advocacy nonprofits; and in private public interest law firms, etc. Whether and how individual patients can access health care services lies at the core of a great deal of health law and policy. The ability of individuals to access healthcare through private health insurance raises questions of the affordability of coverage, barriers to coverage, and the adequacy of the specific benefits available [3].

Healthcare law is a broad field. It can be divided into the following four different, but overlapping, components [4-6]

- *Healthcare System:* Healthcare law is concerned with the provision of healthcare within the American health care system—the delivery, financing, and organization of personal medical services. The US has a highly eclectic healthcare system involving both private healthcare and public health care financing. It involves complex judgments about how to allocate healthcare services: access, equity, justice, quality, and cost.
- *Bioethics:* Healthcare law is concerned with bioethics—the ethically and legally appropriate way to structure myriad relationships among healthcare professionals and patients. Bioethics is concerned with enduring issues such as informed consent, confidentiality, and physician fidelity.
- *Public Health:* Healthcare law is concerned with public health. Public health law is concerned with the powers and duties of the state to assure the conditions for populations to be healthy. Public health discusses many topics that are important to assuring healthy populations including tobacco, infectious diseases, and firearms.
- *Global Health Law:* It is not an organized legal system. The international community has made great progress in improving global health. Global health law can affect multiple spheres, ranging from national security, economic prosperity, and sustainable development to human rights and social justice. Each global health problem is shaped by the language of rights, duties, and rules for engagement used in the law. The past two decades have brought revolutionary changes in global health, driven by popular concern over the acquired immunodeficiency syndrome (AIDS), new strains of influenza, and maternal mortality. Globalization has unleashed the spread of communicable and non-communicable diseases, connected societies through vulnerability to common threats.

The study of health law, therefore, involves many subjects in a general legal education such as constitutional law, administrative law, and government law.

HEALTHCARE LAWYERS

Healthcare attorneys play a role in healthcare law and work on multiple areas of law. They work on cases and policies related to access to medical care, the care providers themselves, insurance,

and food and drug safety. Hospitals, healthcare systems, health insurers, and professional associations need lawyers to support legal decisions.

Healthcare attorneys may be responsible for litigation, public health, human rights, life sciences, corporate law, health care fraud, medical malpractice cases, and difficult ethical choices, particularly at the beginning and end of life. They ensure that providers comply with healthcare statutes and regulations. Some healthcare lawyers may advise clients about healthcare or personal injury rights, or represent their clients in court. Others are involved in litigation, antitrust, and compliance matters [7]. A typical healthcare lawyer is shown in Figure 2 [8].

Healthcare lawyers engage in the following practices [7,9]:

- *Litigation*: Health lawyers often represent individual plaintiffs and defendants on issues such as medical malpractice and denials of coverage.
- *Regulation*: The delivery of health care in the US is highly regulated. Regulatory compliance is essential to all aspects of the healthcare business. Government-employed lawyers typically work in regulatory practice. They are often responsible for drafting, commenting on or revising agency regulations. Government agencies are vigorously enforcing antitrust laws to encourage robust competition for the benefit of consumers.
- *Legal Advising*: Attorneys may provide legal advice on varying issues. For example, healthcare attorneys working in hospitals may advise on informed consent or medical liability issues. Healthcare lawyers can offer legal counsel to organizations facing antitrust lawsuits. They can offer legal counsel on bioethics, kickbacks, privacy, and licensing.
- *Direct Client Service*: Lawyers can work in public interest, providing direct client service to those without the financial ability to pay for legal help.
- *Policy and Legislative Advocacy*: The work of a healthcare lawyers may include a variety of tasks, including extensive research on laws.
- *Transactional*: Institutional transactional lawyers in healthcare may help draft and negotiate contracts or advise on compliance matters.
- *Health Care Fraud and Abuse*: Fraud abuse can run rampant in healthcare organizations, leading to criminal charges. Healthcare lawyers help providers avoid fraud and abuse allegations. An example of healthcare fraud is billing a health insurer for services not performed.
- *Medical Malpractice*: This is an area where law and medicine are interconnected.

Doctors cannot discriminate because of disability, abandon a patient, or not render services in an emergency. Medical malpractice is a legal cause of action that occurs when a medical or health care professional, through a negligent act or omission, deviates from standards in their profession, thereby causing injury or death to a patient.

APPLICATIONS

Healthcare law is a broad, diverse, and dynamic field of law. It applies in nearly every part of our society. It is applied in the following areas:

- *Public Health Law*: This focuses on the duties of the government to achieve to improve public health, which is the health of the general population. It focuses on legal issues in public health practice and on the public health effects of legal practice. Some researchers suggest a tension in public health law regarding institutions' duties to protect public health and their duties to protect individual freedom. This indicates that public health policymakers may face a dilemma between being perceived as not protecting public health or as not protecting individual liberty [10].

- *Mental Health Law:* Mental health legislation (MHL) is required to ensure a regulatory framework for mental health services, which provide psychiatric therapy to individuals struggling with various mental health challenges. One of the major aims of MHL is that all people with mental disorders should be provided with treatment based on the integration of mental health care services into the primary healthcare. MHL plays a crucial role in community integration of persons with mental disorders and the improvement of access to care at community level. It is vital and essential to have MHL in every nation [11].
- *Affordable Care:* Americans have no universal, legal right to healthcare, unlike other developed nations such as United Kingdom and Canada. The US Constitution does not set forth an explicit right to healthcare, and the Constitution is never interpreted as guaranteeing a right to health care services from the government for those who cannot afford it. Congress has enacted numerous statutes, such as Medicare, Medicaid, and the Children's Health Insurance Program, that establish and define specific statutory rights of individuals to receive health care services from the government [12]. Congress has enacted numerous statutes, such as Medicare, Medicaid, and the Children's Health Insurance Program, that establish and define specific statutory rights of individuals to receive healthcare services from the government. In 2010, Congress enacted the Affordable Care Act (ACA). On March 23, 2010, President Obama signed comprehensive health reform, the Patient Protection and Affordable Care Act, into law. The healthcare reform law is sometimes referred to as "Obamacare." Its primary goal is to make affordable health insurance available to more people. It requires most US citizens and legal residents to have health insurance. The ACA has successfully expanded coverage and provided hundreds of health plans for consumers to choose from. The rule helps ensure that patients have access to the right provider, at the right time, in an accessible location. President Trump and Republicans in Congress have pledged to repeal and replace the ACA, and unsuccessfully advocated several proposals to do so in Congress in 2017 [13]. On May 4, 2017, the House of Representatives passed the American Health Care Act (AHCA), a legislation to repeal and replace several major provisions of the ACA. Protest to save ACA is displayed in Figure 3 [14].
- *Nursing Home Law:* Elderly citizens are usually taken care of a nursing home, as typically illustrated in Figure 4 [15]. Nursing home abuse attorneys pursue justice for victims. Abuse may be experienced in an assisted living facility or residential care facility, which is meant to care for a family member or loved one. No matter what form it takes, nursing home abuse is illegal and needs to be stopped. If your loved one passed away suddenly or unexpectedly in a nursing home or residential care facility, and you suspect neglect or abuse was involved, you may be entitled to compensation [16].

BENEFITS AND CHALLENGES

Healthcare law shapes the landscape of healthcare delivery in powerful ways. It protects patient privacy, especially when it comes to what doctors and hospitals can share about you. Healthcare law provides almost endless possibilities for meaningful work. One benefit of being a healthcare lawyer is that healthcare law provides an attorney with a highly marketable skill set.

Local, state, and federal governments frequently change their healthcare policies. There is the need for healthcare attorneys to keep themselves current on federal and state laws affecting their clients. Healthcare law is an intellectually challenging area that is always changing.

CONCLUSION

Healthcare law is a growing field. Rapid growth in this healthcare industry causes a high level of demand for attorneys who specialize in healthcare law. If you aspire to be a healthcare lawyer, you should understand that practicing healthcare law does not mean you are required to concentrate in healthcare law during law school. To choose the right law school, you need some criteria to help you filter through the nearly 200 law programs accredited by the American Bar Association. Specializing in niche areas of healthcare law will allow the aspiring lawyer to

become familiar with the language of health law and be able handle complex legal issues. More information about healthcare law can be found in the books in [17-39].

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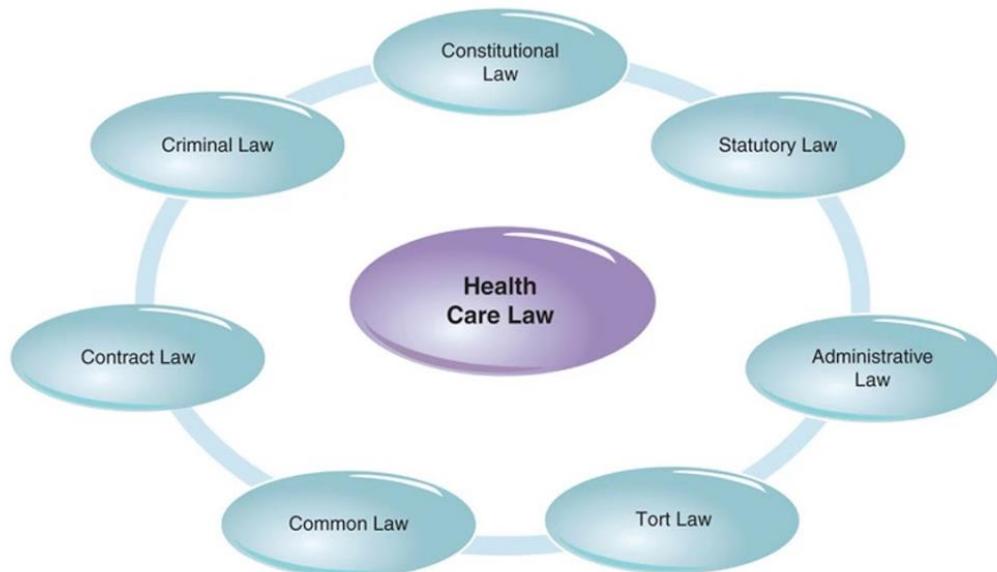


Figure 1 Areas of law that fall under the umbrella of healthcare law [2].



Figure 2 A typical healthcare lawyer [8].



Figure 3 Protest to save ACA [14].



Figure 4 Elderly citizens in a nursing home [15].