The Affordable Care Act: Law and Policy Governing Private Health Insurance

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Course Description
The Patient Protection and Affordable Care Act—President Obama’s signature health reform legislation—has significantly impacted the health care system. Through changes to the regulation of private health insurance, federal subsidies for low-income people, individual and employer mandates, and dramatic expansion of the Medicaid program, millions of Americans have gained health insurance. Yet, implementation of the law’s most significant reforms has been challenging, and the law faces threats of repeal and replacement in 2017.

This course will examine the regulation of private health insurance with an emphasis on the issues that the Affordable Care Act was designed to address. Specifically, the course will explore regulatory changes such as new market reforms and health insurance marketplaces; the impact of federal and state approaches to implementation; legal and regulatory challenges; and areas where changes are anticipated. Guest lectures by speakers including legal experts, health policy experts, state and federal regulators, consumer advocates, and insurers will provide students with an in-depth understanding of how the Affordable Care Act has been implemented and what it means for millions of consumers across the country.

Course Learning Objectives
The primary objective of the course is to teach students about the regulation of private health insurance at the federal and state level, with the rare opportunity to witness real-time changes to this complex system. Through this course, students will gain practical experience in identifying and analyzing federal and state laws, regulations, and administrative materials. Students will also gain a broader understanding of regulatory advocacy, its significance in administrative law, and how it has affected Affordable Care Act implementation. By the end of the course, students will be able to describe how private health insurance is regulated at the federal and state level, the major reforms ushered in by the Affordable Care Act, federal and state progress in Affordable Care Act implementation, and likely areas of changes to the law given real-time debates.

Required Texts
Selected readings from multiple authors

Evaluation
Students will be evaluated on the basis of a take-home exam designed to test knowledge of legal and policy issues related to private health insurance, Affordable Care Act implementation, and likely areas of changes. Students will also be asked to identify, distribute, and be prepared to discuss a news article on a current topic relevant to the course.
Course Schedule
The majority of the readings are publicly available through the links listed below – if you have any difficulty accessing the readings, please let Prof. Keith know at [email]. Given the dynamic nature of Affordable Care Act implementation, the syllabus may change in response to new developments; however, you will be notified of any changes ahead of time.

**Unit 1: The Role of Private Insurance in the U.S. Health Care System**

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| 1/19 | The Evolution of Our Private Health Insurance System | In this session, we will discuss the history of the U.S. health coverage system, including the status of coverage prior to the Affordable Care Act and the historical factors that made the enactment of the Affordable Care Act such a significant advance. | • Stone, *Struggle for the Soul of Health Insurance*  
• Aaron, *The Future of the Affordable Care Act: A Debate on Its Effects* |
| 1/26 | The Regulation of Private Health Insurance: An Overview | In this session, we will discuss the federalist regulatory scheme under which private health insurance is regulated, identify the major private health insurance markets, and highlight prior federal protections and state protections. | • Claxton, *How Private Insurance Works: A Primer*  
• Jost, *The Regulation of Private Health Insurance* (pgs. 1-5, 8-9, 17-21)  
• Pollitz et al., *How Accessible is Individual Health Insurance for Consumers in Less-Than-Perfect Health? Executive Summary* |

**Unit 2: The Affordable Care Act: Key Provisions**

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| 2/2  | The Politics of Health Reform | In this session, we will explore the history of reform efforts, with an emphasis on the legislative history and the reason the Affordable Care Act succeeded where prior health reform initiatives had not. | • Oberlander, *Long Time Coming: Why Health Reform Finally Passed*  
• Roy, *How the Heritage Foundation, a Conservative Think Tank, Promoted the Individual Mandate*  
• Jost, *Day One and Beyond: What Trump’s* |
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| 2/9  | The Individual Mandate and Employer Responsibility | In this session, we will discuss the shared responsibility provisions, including the requirement for individuals to maintain minimum essential coverage and employers’ responsibility to offer coverage. **Note:** Please come to class prepared to defend or oppose 1) the individual mandate and 2) the employer mandate. You will be assigned one position for each mandate and partner with your peers to defend your assigned position. | • 26 U.S.C. §§ 4980H, 5000A  
• Blumberg & Holahan, *The Individual Mandate – An Affordable and Fair Approach to Achieving Universal Coverage*  
• Blumberg et al., *Why Not Just Eliminate the Employer Mandate?*  
• Andrews, *Bipartisan Effort Revises Health Rule for Small Businesses* |
| 2/16 | Private Market Reforms Under the Affordable Care Act | In this session, we will discuss the Affordable Care Act’s most significant reforms to the regulation of private health insurance including, but not limited to, new rating restrictions, guaranteed issue requirements, the ban on preexisting condition exclusions, and the coverage of essential health benefits. | • Chaikind et al., *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act* (pgs. 10-18)  
• Keith et al., *Implementing the Affordable Care Act: State Action on 2014 Market Reforms*  
• CCIIO, *Compliance and Enforcement*  
• Giovanelli et al., *State Action to Reform the Individual Health Insurance Market* |
| 3/2  | Health Insurance Exchanges | In this session, we will discuss implementation of the Affordable Care Act’s new health insurance marketplaces, state policy decisions, and ongoing questions related to implementation. | • 42 U.S.C. §§ 18031, 18032  
• Dash et al., *Key Design Decisions for State-Based Exchanges*  
• Kaiser Family Foundation, *Explaining Health Reform: Questions About Health Insurance Subsidies* |
| 3/9  | Legal Challenges to the Affordable Care Act | In this session, we will discuss the landmark legal decisions that have heavily influenced implementation of the Affordable Care Act, including those focused on the individual mandate, the marketplace establishment, and cost-sharing | • *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012) (Sections I, III, and IV of Roberts opinion only)  
• *King v. Burwell*, 576 S. Ct. ____ (2015) (majority opinion only) |
In this session, we will provide an overview of the Affordable Care Act’s other most significant reforms – including changes to the delivery system, Medicare, Medicaid, and public health – and discuss the impact that these reforms have had on private coverage.

- Hurley, *Republicans Win Obamacare Legal Challenge, Add to Insurer Concerns*
- Kaiser Family Foundation, *The ACA and Medicaid Expansion Waivers*
- Commonwealth Fund, *The Affordable Care Act and Medicare*
- Hiltzik, *Here’s the Anti-Obamacare Lawsuit that Just Might Deserve to Win*
- Health Affairs, *The Prevention and Public Health Fund*

### Unit 3: Administrative Rulemaking and the Evolution of the Affordable Care Act

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| 3/30 | Review of Administrative Rulemaking and Case Studies in Implementation | In this session, we will provide a brief review of the rules that agencies must follow during the administrative rulemaking process and use case studies to highlight the diverse implementation of the Affordable Care Act, the way that key interests were represented, and the prominent role played by sub-regulatory guidance. | • Congressional Research Service, *A Brief Overview of Rulemaking and Judicial Review* (skim for review purposes)  
• Silver-Greenberg & Pilon, *How College Health Plans are Failing Students*  
• 77 Fed. Reg. 16453, 16453-70 (March 21, 2012)  
• Comment letter from Young Invincibles (to be provided)  
• Comment letter from UnitedHealth (to be provided) |
| 4/6  | Case Studies in Implementation (cont’d) | In this session, we will continue to discuss administrative implementation of the Affordable Care Act using three additional case studies. | • Bagley & Levy, *Essential Health Benefits and the Affordable Care Act: Law and Process*  
• Keith et al., *Will New Laws in States with Federally Run Health Insurance Marketplaces Hinder Outreach?*  
• Giovanelli et al., *Under Pressure: An Update* |
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| 4/13 | The Future of Health Reform | In this session, we will discuss new developments related to efforts to repeal, replace, or amend the Affordable Care Act and the implications for consumers and other stakeholders | Ryan, *A Better Way* (pgs. 13-28)  
Roy, *Transcending Obamacare* (pgs. 6-10, 22-36) |
| 4/20 | The Future of Health Reform (cont’d) | In this session, we will continue to discuss new developments related to efforts to repeal, replace, or amend the Affordable Care Act and the implications for consumers and other stakeholders | TBD |
| 4/27 | Review | In this session, we will provide a brief overview of the course, discuss the final exam, and answer any questions about the material covered. | None |