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

Professors Katie Keith & Jennifer Mishory

Course Description
The Patient Protection and Affordable Care Act—President Obama’s signature health reform legislation—has the potential to transform the accessibility, adequacy, and affordability of private health insurance as well as add to the growing momentum for universal health coverage around the world. Through significant changes to the regulation of private health insurance, federal subsidies for low-income workers, individual and employer mandates, and dramatic expansion of the Medicaid program, an estimated 32 million Americans are expected to gain insurance once the Affordable Care Act is fully implemented.

Yet, because the Affordable Care Act adopts the United States’ existing complex federalist regulatory scheme, states and the federal government have much to do to implement the law’s most significant reforms and implementation has proven challenging as stakeholders work to achieve the law’s goal of near-universal coverage. This course will examine 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 exchanges; and analysis and discussion of federal and state Affordable Care Act implementation. The course will also explore the Affordable Care Act’s shortcomings, including regulatory challenges and areas where future reforms are likely needed. 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 is being 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 as a result of the Affordable Care Act. 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 the concept of regulatory advocacy, its significance in administrative law, and how it affects Affordable Care Act implementation as well as improve critical thinking and analytic skills by identifying regulatory challenges in the Affordable Care Act and its implementing regulations. 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 areas where future reforms may be necessary.
**Required Texts**

J. Quadagno, *One Nation, Uninsured: Why the U.S. Has No National Health Insurance*
Selected readings from multiple authors (to be posted online)

**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, federal and state Affordable Care Act implementation to date, and likely areas of future reform. Students will also be assigned a week during which it is their responsibility 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 [contact information].

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

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| 1/21  | 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. | • Quadagno, *One Nation, Uninsured*  
• Stone, *Struggle for the Soul of Health Insurance* |
|       |                                                                      |                                                                                                                                                                                                           |                                                                                                   |
| 1/28  | 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, highlight prior federal protections and state protections, and introduce the reforms of the Affordable Care Act. | • Claxton, *How Private Insurance Works: A Primer*  
• Jost, *The Regulation of Private Health Insurance*  
• Pollitz et al., *How Accessible is Individual Health Insurance for Consumers in Less-Than-Perfect Health? Executive Summary*  
• Kaiser Family Foundation, *Summary of the Affordable Care Act* (skim) |

Unit 2: The Affordable Care Act: Key Provisions

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| 2/4   | 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 other initiatives had not. This session will feature guest lecturers who can provide insight into past reform efforts and why we ended up with the reform package we have today. | • Oberlander, *Long Time Coming: Why Health Reform Finally Passed*  
• Roy, *How the Heritage Foundation, a Conservative Think Tank, Promoted the Individual Mandate*  
• Newhouse, *Assessing Health Reform’s Impact on Four Key Groups of Americans* |

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### 2/11
**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
- Kirk, *Riding the Bull: Experience with Individual Market Reform in Washington, Kentucky, and Massachusetts* (to be provided)
- Blumberg & Holahan, *The Individual Mandate – An Affordable and Fair Approach to Achieving Universal Coverage*
- Blumberg et al., *Why Not Just Eliminate the Employer Mandate?*
- Internal Revenue Serv., Notice 2014-69, *Group Health Plans that Fail to Cover In-Patient Hospitalization Services*
- Andrews, *Bipartisan Effort Revises Health Rule for Small Businesses*

### 2/25
**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.

- Public Health Service Act §§ 2701, 2702, 2704, 2711, 2713, 2714, 2712, 2719
- Affordable Care Act § 1302, 1311, 10103
- Chaikind et al., *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act*
- Keith, *Implementing the Affordable Care Act: State Action on 2014 Market Reforms*
- CCIIO, *Compliance and Enforcement*

### 3/3
**Private Market Reforms (cont’d) and Health Insurance Exchanges**

In this session, we will continue to discuss implementation of the Affordable Care Act’s market reforms as well as the law’s new health insurance marketplaces.

- Giovannelli et al., *State Action to Reform the Individual Health Insurance Market*
- Affordable Care Act §§ 1301, 1303, 1311, 1312
- Dash et al., *Key Design Decisions for State-Based Exchanges*
- Kaiser Family Foundation, *Explaining Health*
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| 3/17  | Health Insurance Exchanges (cont’d)                | In this session, we will conclude our discussion of implementation of the Affordable Care Act’s new health insurance marketplaces, state policy decisions, and ongoing questions related to implementation. | • CCIIO, [Final 2016 Letter to Issuers in the Federally-Facilitated Marketplaces](https://www.cms.gov/CCIIO/Resources/Industry-Letter/Downloads/CCIIO-Letter-to-Issuers-Federally-Facilitated-Markets-2016.pdf)  
• Review previous week’s reading |
| 3/24  | 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 contraceptive coverage, among others. | • [Nat’l Fed’n of Indep. Bus. v. Sebelius](https://www.supremecourtus.gov/opinions/12pdf/11-13579.pdf), 132 S. Ct. 2566 (2012)  
• Jost, [House Can Sue Administration Over ACA Cost-Sharing Reduction Payments](https://www.healthaffairs.org/do/10.1377/hlthaff.2014.2229/s7-2288/full)  
| 3/31  | Beyond Private Health Insurance                    | 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. | • Kaiser Family Foundation, [The ACA and Medicaid Expansion Waivers](https://kff.org/medicalexpansion/2015/05/the-aca-and-medicaid-expansion-waivers/)  
• Commonwealth Fund, [The Affordable Care Act and Medicare](https://commonwealthfund.org/funding-opportunities)  
• Hiltzik, [Here’s the Anti-Obamacare Lawsuit that Just Might Deserve to Win](https://www.law.com/articles/2015/02/03/here-s-the-anti-aca-lawsuit-that-just-might-deserve-to-win_0.html)  
• Health Affairs, [The Prevention and Public Health Fund](https://www.healthaffairs.org/do/10.1377/hlthaff.2014.2229/s7-2288/full)  
• Kliff, [The Incredible Shrinking Prevention Fund](https://www.healthaffairs.org/do/10.1377/hlthaff.2014.2229/s7-2288/full) |
# Unit 3: Administrative Rulemaking and the Evolution of the Affordable Care Act

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| 4/7   | 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. This session will include a discussion on implementation of requirements related to 1) medical loss ratios; and 2) student health plans. | • Congressional Research Service, *A Brief Overview of Rulemaking and Judicial Review* (skim)  
• 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)  
• Affordable Care Act § 2718  
• Corlette, *NAIC Brings Up Medical Loss Ratio Again* |
| 4/14  | Case Studies in Implementation (cont’d)                               | In this session, we will continue to discuss administrative implementation of the Affordable Care Act and will discuss implementation of requirements related to 1) essential health benefits; 2) navigators; and 3) nondiscrimination.                                                                                                               | • 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 on Restrictive State Insurance Marketplace Consumer Assistance Laws*  
• 78 Fed. Reg. 42824, 42831-33 (July 17, 2013)  
• *St. Louis Effort for AIDS v. Huff*, No. 14-1520 (8th Cir., 2015)  
• Keith et al., *Nondiscrimination Under the Affordable Care Act*  
• NHeLP & The AIDS Institute, *Complaint to*                                                                                     |
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| 4/21  | Emerging Issues and Potential Loopholes | In this session, we will discuss the reasons why the Affordable Care Act may not deliver on its promise of quality, affordable health coverage for all with an emphasis on section 1332 waivers, transitional policies, association health plans, and stop loss coverage, among other topics. | Jost, *Loopholes in the Affordable Care Act: Regulatory Gaps and Border Crossing Techniques and How to Address Them*  
Affordable Care Act §§ 1332, 1333 |
| 4/28  | 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 |