

This is a sample of the instructor resources for Dean M. Harris, *Contemporary Issues in Healthcare Law and Ethics, Fourth Edition*. The complete instructor resources include

- test bank
- model answers to end-of-chapter activities
- PowerPoint slides for each chapter

This sample includes the PowerPoint slides for Chapter 1.

If you adopt this text, you will be given access to the complete materials. To obtain access, e-mail your request to [hapbooks@ache.org](mailto:hapbooks@ache.org) and include the following information in your message:

- Book title
- Your name and institution name
- Title of the course for which the book was adopted and the season the course is taught
- Course level (graduate, undergraduate, or continuing education) and expected enrollment
- The use of the text (primary, supplemental, or recommended reading)
- A contact name and phone number/e-mail address we can use to verify your employment as an instructor

You will receive an e-mail containing access information after we have verified your instructor status. Thank you for your interest in this text and the accompanying instructor resources.

\* \* \*

PLEASE NOTE: This book is also available in e-book format at [CourseSmart](#), [CafeScribe](#), and [Kno](#). Rental access is available at CourseSmart and Kno for 50% off the print list price. Perpetual access is available at CafeScribe and Kno at list price. For more information, please visit one of these preferred partners or contact us at [hapbooks@ache.org](mailto:hapbooks@ache.org).



# **USING THE LAW TO PROMOTE OUR POLICY GOALS AND ETHICAL PRINCIPLES**

**Contemporary Issues  
in Healthcare Law and Ethics  
(Fourth Edition)  
Dean M. Harris  
Instructors' Support for Chapter 1**



**Copyright 2014 Health Administration Press**

Copying and distribution of this PDF is prohibited without written permission.  
For permission, please contact Copyright Clearance Center at [www.copyright.com](http://www.copyright.com)



**“There ought to be a law!”**



**Copyright 2014 Health Administration Press**

Copying and distribution of this PDF is prohibited without written permission.  
For permission, please contact Copyright Clearance Center at [www.copyright.com](http://www.copyright.com)

# **Reforming the healthcare system means changing healthcare laws**

- When we talk about reforming the system, we are really saying that we need to change the laws that regulate the system.
- We want to reform the healthcare system to achieve our policy goals of (1) access; (2) quality; and (3) cost control.
- Really, what we are saying is “there ought to be a law” to accomplish those goals.

# But what kind of healthcare law should we create to meet those goals?

- What should the proposed law provide?
- Deciding what a proposed law should provide is *not merely* an issue of drafting (what words should be used).
- Rather, several alternatives are available.
- Each alternative will have its own advantages and disadvantages (pros and cons).
- The task is to select the alternative that will be most effective and efficient in achieving our policy goals.

# Should we use one federal law or several state laws?

- The federal government can create uniform, nationwide laws.
- Also, the federal government has more money than state governments to implement and enforce new laws.
- But state governments might be more responsive to local conditions and local needs.
- Also, state governments can experiment with new approaches (to determine what works best).

# **We should choose the most effective approach to accomplish our goals**

- Using a regulatory approach (e.g., licensing of healthcare facilities and professionals)
- Using a private right of action in civil court for damages (such as a claim by a patient against a physician for medical malpractice)
- Using the government's practical power as a large-scale buyer of healthcare services (by imposing requirements on healthcare providers who want to participate in government payment programs).



# Then, we need to decide where to draw the line

- Where should we draw the line between lawful conduct and unlawful conduct?
- In developing a new law or changing an existing law, we need to draw a line.
- We must be able to say that everything on one side of the line is lawful (and everything on the other side is unlawful).
- To be fair, the line must be clear (so that people have notice of what is prohibited and will be able to conform their behavior to the requirements of law).



# **We want to stop bad conduct without interfering with socially useful activities**

- If the rules of law are too weak, they will not be effective in accomplishing our policy goals.
- But if the rules are too strict, they will be:
  - too hard to follow
  - too hard to enforce
  - too costly for society
- Also, we want to minimize the unintended consequences that often occur when we develop a new law or change an existing law.

# **How do healthcare laws relate to changes in the U.S. healthcare system?**

- Obviously, the U.S. healthcare system is undergoing significant change.
- How do existing healthcare laws respond to those changes?
- How do existing laws promote those changes?
- How do existing laws interfere with or prevent those changes?

# **Sometimes, we can apply or adapt existing laws to new factual situations**

- In some circumstances, we can apply (or adapt) existing legal rules to new situations.
- For example, a set of rules has existed for many years to govern the relationships between physicians and hospitals (Chapter 7).
- When physicians began to develop relationships with other types of healthcare organizations (such as networks and preferred provider organizations), we applied the existing rules to those new relationships.

# Sometimes, we need to develop new laws to handle new types of problems

- For example, to prevent fraud and abuse of government payment programs, we had developed a complex set of rules to regulate financial incentives to provide more tests, treatment, referrals, and admissions (Chapter 8).
- When the Medicare program transitioned from a system of retrospective, cost-based reimbursement to a system of prospective payment, a new law was needed to prevent hospitals from giving financial incentives to physicians to *reduce* the level of care provided to Medicare patients.

# **Sometimes, existing laws can interfere with change in the healthcare system**

- For example, the 2010 health reform legislation promotes the development of accountable care organizations (ACOs) under Medicare's Shared Savings Program (in which groups of healthcare providers work together deliver coordinated care).
- But, participation in an ACO raises potential problems under existing laws about fraud and abuse (as well as antitrust laws).
- Congress recognized that some carefully tailored waivers or exceptions from existing laws would be needed to facilitate the development of ACOs without eliminating other important functions of those laws (Chapters 8 and 9).

# **In many ways, the study of health reform is the study of healthcare law**

- The Patient Protection and Affordable Care Act (ACA) was enacted by Congress in 2010 in two parts (as Public Law No. 111-148 and Public Law No. 111-152).
- The ACA creates some new federal laws and makes significant changes to some existing federal laws (on subjects such as Medicare, fraud and abuse, and tax-exempt hospitals).
- The ACA requires federal agencies to issue many new federal regulations (which also are a type of law).
- The Supreme Court (a court of law) made a decision about the ACA under the U.S. Constitution (which is our highest law).
- Thus, studying and understanding healthcare law is necessary to understanding health reform.