EXAM SPECIFICATIONS
FOR
HEALTH LAW

DEFINITION. Health law is the practice of law dealing with federal, state, and local law, rules and regulations, and other jurisprudence affecting the healthcare industry and health care patients. It primarily deals with the operational, regulatory, and transactional legal issues arising from the application of these laws, rules, and regulations to patients, health care providers, health care vendors, and entities which pay for health care services, including without limitation, the relationships among providers, payors, vendors, and patients in the health care industry; and delivery of health care services.

GENERAL INFORMATION. The exam will consist of three essay questions worth 100 points apiece and 100 multiple choice questions worth two points apiece. The essay will require the analysis of facts and explanation of health law issues presented in the facts. The multiple choice questions will require knowledge of a variety of the topics listed below. The required passing score is 350 (of a possible 500 points).

KNOWLEDGE. The purpose of the certification examination is to require an applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in health law.

I. Licensing, Discipline, Credentialing, and Peer Review of Health Care Professionals
   A. Physicians and physician assistants
   B. Nurses, including advanced practice nurses
   C. Multi-disciplinary entities

II. Hospitals and other Health Care Entities
   A. Licensing and certification
   B. Accreditation
   C. Medical staff issues (including peer review processes)
   D. Compliance programs
   E. Operations and patient safety (other than patient care issues)

III. Patient Care Issues
   A. Patient rights, including consent to treatment and advance directives
   B. Confidentiality of patient information, including HIPAA and applicable Texas law, and electronic health records
   C. Hospital transfers and emergency services
   D. Mental health
   E. Clinical research
   F. Abuse and neglect
   G. Theories of civil liability for services furnished to patients

IV. Financial Aspects of Health Care Services
   A. Managed care contracting, networks, and billing
   B. Medicare/Medicaid eligibility, reimbursement, and related issues
C. Antitrust issues in IPAs (including clinical integration) and boycotts
D. Corporate practice of medicine/physician practice structures and contracting

V. Health Care Transactional Issues
   A. Federal and Texas anti-kickback laws
   B. Federal and Texas restrictions on physician referrals to entities with which the physician has a financial relationship (including the federal “Stark” law)
   C. Acquisition and sale of health care entities (i.e., physician practices, ownership transactions in ASCs, imaging centers and specialty hospitals)
   D. Joint ventures
   E. Restrictive covenants (i.e., non-compete, non-solicit, non-hire, confidentiality/nondisclosure of proprietary information)
   F. Tax-exempt issues
   G. Charity care

VI. The Texas Disciplinary Rules of Professional Conduct
   The ethics questions regarding this topic will involve an array of topics of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an applicant is advised to be familiar with all provisions of the TDRPC.

Not all of the above topics will necessarily be covered on a given exam, but applicant should have knowledge of the significant concepts within the topics to be prepared for the exam. Applicants will be tested on all laws in effect at the time of the exam.

SKILLS. An applicant must demonstrate the:
- Ability to communicate effectively to a variety of audiences (e.g., communications addressed to clients, counsel, courts, administrative agencies, etc.)
- Ability to develop and evaluate strategies for solving a problem or accomplishing an objective
- Ability to analyze and apply legal rules and principles
- Ability to analyze, sort and use facts, and to plan and direct factual investigations
- Ability to organize and manage a legal task efficiently within time constraints
- Ability to represent a client consistent with applicable ethical standards
- Ability to invoke and utilize the procedures normally required in the area of specialty including pleadings and filings

STUDY MATERIALS. There are no preparatory courses provided by TBLS. Past exams are not available for review. The following resources are some suggested materials to use for study; however, these resources are not intended to be definitive, but rather provide resources that cover many topics in health care. References to statutes should be understood to include pertinent rules, regulations, and case law.
- Past conference materials from the spring UT and fall THA/SBOT Health Law programs
AHLA conference materials from the Fundamentals in Health Law program (which are not coordinated with the book)


Texas Nursing Practice Act. See, e.g., Tex. Occ. Code Chapters 301, 303, 304, 305

The Joint Commission deemed status for purposes of Medicare and sentinel event/root cause analysis. See The Joint Commission website (purchase of Hospital Accreditation Standards not necessary):

- [http://www.jointcommission.org/StateFederal/deemed_status.htm](http://www.jointcommission.org/StateFederal/deemed_status.htm)
- [http://www.jointcommission.org/SentinelEvents/PolicyandProcedures/se_pp.htm](http://www.jointcommission.org/SentinelEvents/PolicyandProcedures/se_pp.htm)


- Licensure and certification of hospitals and health care professionals. See, e.g., Tex. Health & Safety Code, Ch. 241; Tex. Occ. Code, Title 3, Health Professions; and relevant parts of 22 Tex. Admin. Code, including Part 9 (Texas Medical Board) and Part 11 (Texas Board of Nursing).


- The acquisition or sale of health care facilities and products

- Antitrust including U.S. Department of Justice & Federal Trade Commission, “Statements of Antitrust Enforcement Policy in Health Care” (1996) & “Improving Health Care: A Dose of Competition” (2004); see also Heartland Surgical Specialty Hospital, LLC v. Midwest Division, Inc.d/b/a/HCA Midwest Division, 527 F. Supp. 2d 1257 (D. Kan. 2007) (Note – this link requires a Westlaw subscription)

- Federal and Texas anti-kickback laws and civil monetary penalties laws (including 42 U.S.C. §1320a-7b), the pertinent safe harbor regulations (including 42 CFR §1001.952) and OIG advisory opinions, fraud alerts, bulletins, open letters, and other OIG guidance. See [http://oig.hhs.gov](http://oig.hhs.gov); see also Tex. Occ. Code, Ch. 102 and Ch. 165.155

- Federal and Texas restrictions on a physician’s referrals to entities with which the physician has a financial relationship including the federal “Stark” law (section 1877 of the Social Security Act, codified at 42 U.S.C. § 1395nn, and section 1903(s) of the Social Security Act, codified at 42 U.S.C. §1396b) and Stark rules (42 CFR §§411.350-411.389)
Blackmail

- Elements and guidelines of Compliance Programs, including their predicate under the Federal Sentencing Guidelines. See OIG website on compliance guidance for hospitals and an overview of corporate integrity agreements: http://oig.hhs.gov/fraud.asp
- Choice of entity relating to the formation of medical groups and joint ventures among managed care organizations, hospitals, physicians, and other persons and entities including the various partnerships, corporations, and limited liability companies described in the Tex. Bus. Org. Code
- The certification of Texas non-profit healthcare organizations by the Texas Medical Board. See Tex. Occ. Code Ch. 162.001(b) and pertinent provisions of the Tex. Ins. Code, Ch. 844
- Covenant Not To Compete. See Tex. Bus. & Com. Code Ch. 15.50 et seq.
- Texas Corporate Practice of Medicine doctrine. See, e.g., Flynn Bros. v. First Medical Associates, 715 S.W.2d 782 (Tex. App. - Dallas 1986)
- Medicare and Medicaid Eligibility, Coverage, Payment, Reassignment, and Appeal Rights.
  - Eligibility: Social Security Act §§1811, 1818, 1818A, 1831, 1836, 1851, and 1902(a)(10); 42 U.S.C. §§1395c, 1395i-2 and 2A, 1395j, 1395o, 1395w-21, and 1396a(a)(10)
  - Coverage: Social Security Act §§1812, 1832, 1852(a) and (b), and 1862; 42 U.S.C. §§1395d, 1395k, 1395w-22(a) and (b), and 1395y
  - Payment: Social Security Act §§1813, 1814(a) and (b), 1833(t), 1842, 1848, 1853, 1886, 1895, and 1927; 42 U.S.C. §§1395e, 1395f(a) and (b), 1395l(t), 1395u, 1395w-4, 1395w-23, 1395ww, 1395fff, and 1396r-8
  - Reassignment: Social Security Act §§1815, 1842(b)(6), and 1902(a)(32); 42 U.S.C. §§1395g, 1395u(b)(6), and 1396e(a)(32)
  - Appeal Rights: Social Security Act §1852(g); 42 U.S.C. §1395w-22
See also Medicare cites under Item 8 above for Certification
• Advance Directives including Texas Advance Directives Act, Tex. Health & Safety Code Ch. 166 and Texas Determination of Death Act, Tex. Health & Safety Code Ch. 671.001, Subchapter A

• Confidentiality and medical record privacy including the privacy rules of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas confidentiality laws. See, e.g., 42 U.S.C. §§290dd-2, 1301 et seq.; 45 C.F.R. Parts 160, 162, and 164; www.hhs.gov/ocr/privacy; 42 C.F.R. Part 2 (substance abuse patient records); Tex. Health & Safety Code, Ch. 181, Chs. 241.151-241.156, Ch. 595, Ch. 611; Tex. Occ. Code, Ch. 159. See also the concept of a physician’s duty to warn third parties, e.g., Thapar v. Zezulka, 994 S.W.2d 635 (Tex. 1999); Providence Health Center v. Dowell, 262 S.W.3d 324 (Tex. 2008)


• Indigent Care and Treatment Act. See, e.g., Tex. Health & Safety Code, Ch. 61

• Texas Charity Care Statute. See, e.g., Tex. Health & Safety Code Chs. 311.041-.048

• Mental Health. See, e.g., Tex. Health & Safety Code Chs. 571.003, 571.004, 571.0066, 571.020 (Selected general provisions); Ch. 572 (Voluntary Inpatient Mental Health Services); Chs. 573.001, .002, .011, .021, .022 (Selected provisions concerning Emergency Detention); Chs. 574.004, 574.009, 574.011, 574.031, 574.032, 574.042; 574.101-110 (Selected provisions concerning court-ordered mental health services); Ch. 575.014 (Private Hospital Transfer Law); Ch. 576 (Rights of Patients); Ch. 577.011; Ch. 577.012 (Private psychiatric hospital record requirements); Ch. 578 and 25 Tex. Admin Code Ch. 601.7 (Electroconvulsive Therapy (ECT)); Tex. Health & Safety Code Ch. 611 (Confidentiality of Mental Health Records) and Tex. Civ. Prac. & Rem. Code, Ch.137 (Declaration for Mental Health Treatment)

• Federal protection of human subject of medical investigations. See, e.g., 21 C.F.R. Parts 50, 54 and 56; and 45 C.F.R. Part 46

• Unapproved uses of approved drugs and devices. See e.g., Food and Drug Administration Information Sheet Guidelines: www.fda.gov/oc/ohrt/irbs


• Nurse staffing requirements for hospitals and psychiatric hospitals. See Tex. Health & Safety Code Ch. 257