



NMNEC Concept: **Health Care Law**

Mega Concept: Professional Nursing

Category: Care Delivery

Concept Name: Health Care Law

Concept Definition:

Legislation and regulation pertaining to delivery of health care and nursing practice.

Categories:

Health care law is derived from legislation, regulation, and litigation. Health care law is created at the local, state, and federal levels. These laws have a direct impact on health care delivery, the business of health care, and the relationship between providers and recipients of health care. The dynamic nature of law creates an ongoing, evolving health care delivery environment.

Health care law is a complex interweaving of these three categories.

1. **Legislation:** The creation of law through the federal or state legislatures, commonly known as statutory laws.
2. **Administrative Law and Regulation:** The specific rules that promote and enforce the legislative policy. Regulatory agencies are given the authority via legislation to create and enforce these specific rules. The primary federal regulatory agency is the U.S. Department of Health and Human Services.
3. **Litigation:** “The process of filing a lawsuit and seeking the help of the courts to redress a perceived wrong” (Masters, 2013, p. 526). The judicial branch of government is tasked with interpreting statutory law, relevant regulations, and precedents as they apply to a situation that now exists. The judicial branch is expected to make a decision or establish a rule, creating what is known as case law.

Attributes and Criteria:

Laws and regulations are created by government agencies that have the authority. These are either legislative, agency, or judicial bodies.

Within the Context of Nursing/Health Care:

Health care law influences nearly every aspect of nursing either directly or indirectly. Federal law



NMNEC Concept: Health Care Law

and regulations supersede state laws. Individual states regulate licensing, scope of practice, and discipline of nurses. Case law can have a far-reaching impact.

- Federal laws that directly impact health care
 - Constitutional law
 - Social Security Act of 1965 (Medicaid and Medicare)
 - Social Security Amendment of 1983
 - Omnibus Budget Reconciliation Act of 1986
 - Examination and Treatment for Emergency Medical Conditions and Women in Labor Act (commonly known as Emergency Medical Treatment and Labor Act of 1986 [EMTALA])
 - Americans with Disabilities Act of 1990 (ADA)
 - Patient Self-Determination Act of 1991
 - Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - Patient Protection and Affordable Care Act of 2010
 - Other federal laws
- State laws that directly impact health care
 - Licensing of professionals – scope of practice
 - Licensing of health care institutions
 - Laws related to public health and disease prevention/control (immunization, public health/safety)
 - Good Samaritan laws
 - Consent
 - Advance directives
 - Physician-assisted suicide (death with dignity)
- Common law/case law
 - Right to die (“In re Quinlan,” 1977)
 - Abortion rights (*Roe v Wade*, 1973)
- Torts
 - Negligence/malpractice
 - Employer/employee liability
- Criminal liability
 - Insurance fraud
- Political advocacy
- Initiatives and propositions



NMNEC Concept: **Health Care Law**

Knowledge:

It is essential for nurses to be knowledgeable about health care law in order to consciously comply with local, state and federal health care laws.

Nurses need to be able to:

- Work within their state's scope of practice
- Recognize abuse or neglect and report suspected abuse or neglect to the appropriate agency
- Recognize situations that do not comply with health care laws
- Recognize and describe the elements of malpractice and professional liability
- Describe the elements of consent
- Understand quality control regulation
- Understand the policy-making process

Skills:

It is necessary to have the ability to utilize tools that demonstrate compliance with health care laws.

Nurses need to be able to:

- Record relevant data as required by law and professional standards
- Initiate action to protect patient rights
- Meet requirements for maintaining a professional license
- Administer nursing care in accordance with the prescribed standard of care
- Maintain confidentiality

Attitudes:

Nurses' personal and professional attitudes are instrumental in shaping their nursing practice.

Nurses need to be able to:

- Value their own role in creating and complying with health care laws
- Develop an attitude of collaboration to work with legislators and regulatory agencies to ensure compliance with health care laws and creation of health care laws that further promote and enhance the delivery of high-quality health care
- Be enthusiastic participants in the process of policy making



NMNEC Concept: **Health Care Law**

Interrelated Concepts:

Health care law is part of a complex process that influences the provision of health care. Health policy is guided by governments or other authorized entities. Ethical decision making is a process used to ensure that actions are reasonable and justified. Health care economics influences the provision of care, which is also regulated by health care law.

- Health policy
- Ethics
- Health care economics

Exemplars:

New Mexico Nursing Education Consortium (NMNEC) Required Exemplars:

- Health Insurance Portability and Accountability Act (HIPAA)
- Nurse Practice Act

Optional Exemplars:

- Liability
- Standards of practice
- Obligation to report
- Advance directives



NMNEC Concept: Health Care Law

References:

American Cancer Society. (2016) *Patient Self-Determination Act (PDSA)* Retrieved from <https://www.cancer.org/treatment/finding-and-paying-for-treatment/understanding-financial-and-legal-matters/advance-directives/patient-self-determination-a>

Americans with Disabilities Act (ADA) of 1990, Pub. L. 110-325. Retrieved from <https://www.ada.gov/pubs/ada.htm>

Examination and Treatment for Emergency Medical Conditions and Women in Labor Act (EMTALA), Section 1867 of 42 U.S.C. 1395dd. Retrieved from https://www.ssa.gov/OP_Home/ssact/title18/1867.htm

Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191. Retrieved from <https://www.gpo.gov/fdsys/pkg/PLAW-104publ191/pdf/PLAW-104publ191.pdf>

In re Quinlan: One court's answer to the problem of death with dignity. (1977) *Washington & Lee Law Review*, 34(1), 285-308. Retrieved from <http://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=2281&context=wlulr>

Masters, Y. (2013). Health care law. In J. F. Giddens (Ed.), *Concepts for nursing practice* (pp. 525-534). St. Louis, MO: Elsevier.

Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509. 100 Stat. 1874 (1986). Retrieved from http://ssa.gov/OP_Home/comp2/F099-509.html

Patient Protection and Affordable Care Act of 2010, Pub. L 111-148. 124 Stat. 119 (2010). Retrieved from https://www.ihs.gov/ihcia/includes/themes/newihstheme/display_objects/documents/home/PL111_148_PPACA.pdf

Roe V. Wade, 410 U.S. 113. (1973). Retrieved from <https://www.law.cornell.edu/supremecourt/text/410/113>

Social Security Amendments of 1965, Pub. L. No.89-97. 79 Stat. 286 (1965). Retrieved from

Page 5 of 6

2018.01.18 NMNEC Curriculum Committee. 2018.03.29 NMNEC Leadership Council. This work is the product of the New Mexico Nursing Education Consortium (NMNEC) and may be used by NMNEC members for educational non-profit purposes. For all other persons seeking to use this work, in whole or in part, prior approval of the NMNEC Leadership Council is required. For permission or license to use the work, contact the NMNEC offices at 505-272-1964 or nmnecc@salud.unm.edu



NMNEC Concept: **Health Care Law**

http://ssa.gov/OP_Home/comp2/F089-097.html

Social Security Amendments of 1983, Pub. L. No 98-21. 97 Stat. 65 (1983). Retrieved from

http://www.ssa.gov/OP_Home/comp2/F098-021.htm

Resources:

Austin, N. (2017). Health care law. In J. G. Giddens (Ed.), *Concepts for nursing practice* (2nd., pp. 553-540. St. Louis, MO, Elsevier.