

# healthcare law basics final

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## SPEAKERS

Wendy Rubas, Intro Music, Amanda Burke



### Intro Music 00:01

Welcome to Working Smarter, concise compliance conversations featuring Wendy Rubas. Sponsored by VillageMD, primary care physicians practice medicine, the way you always wanted. Data, resource,s and clinical decision support to care for your patients inside and outside the exam room.



### Wendy Rubas 00:23

Hi, welcome to Working Smarter. I'm Wendy Rubas, General Counsel of VillageMD. Today we're talking about we're going back to basics. And we're repeating our our theme of helping our listeners look smarter and get questions answered that maybe they're too embarrassed to ask to do this. I'm so thrilled to have Amanda Burke. Amanda has a Master's of Science in law from Northwestern University School of Law, which is just one of our favorite programs. She comes to us with a background in law. She's worked in health care as well. And Amanda, so thrilled to have you in my department. And thank you for joining me today. How are you?



### Amanda Burke 01:02

I'm doing great. Thank you, Wendy, for that introduction. I'm very excited to take part in the podcast today.

W

Wendy Rubas 01:08

Thank you for joining me. And if I know, one thing I love about Amanda is she tells me the truth. And she will speak truthfully about what we're doing. So you've been such a great asset to our department. We're so glad to have you. And thanks for joining. So Amanda, coming into the legal risk compliance department at VillageMD, anything you've observed any patterns or trends that you've seen?

A

Amanda Burke 01:32

Yes, actually, I feel that we get certain questions from people. And sometimes you can feel like you're too scared to ask these questions out loud. But we get certain questions over and over again. And I feel like it's a good opportunity to answer some of these questions for people and so they feel more confident when they're going in meetings or other settings.

W

Wendy Rubas 01:53

Yes, our mission is to help our workforce look and feel smarter. This is a question that I think we've been hearing with regard to COVID. Okay, we have local Texas, let's say for example, rules on masks. We have state rules, there are sometimes municipal or county rules. And then we of course, have federal OSHA as well as CDC guidance. So the question is, what do I do when there's a federal and a state law on the same thing? What do you tell people?

A

Amanda Burke 02:26

That's a great question. I think a lot of people have that those questions, just the easiest thing to do is follow the guidance that is stricter, go with that one first. And then there may be a preemption if we're going more specific with it. But if we're going to just keep it basic for the purposes of this podcast, just follow the strictest guidance out of all of the ones that you see or hear about.

W

Wendy Rubas 02:54

So Amanda, what is that expression? It's like don't do this or no...

A

Amanda Burke 02:58

Don't try this at home.

W Wendy Rubas 03:00  
Right. Don't try preemption analysis at home.

A Amanda Burke 03:03  
Yeah. That's usually something a lawyer is gonna have to take care of.

W Wendy Rubas 03:08  
Right. But if you want an answer right now, just do the stricter thing. Okay. That's easy. Okay. Amanda, next question. Well, actually, Wendy, I have a question for you if that's okay. Yes.

A Amanda Burke 03:21  
So what if I go to the doctor's office or anywhere? And I am confused about something. So I do what most people do I go on Google, and I search for my answer. And then a guidance document comes up. Should I trust it? Or, you know, how do I even follow that document?

W Wendy Rubas 03:42  
This is every professional today. I know, our physicians get people in have the Web MD print out of their condition. Okay. And lawyers have this to where people come and they have something off the internet. Okay. And so the answer should you trust it? It's going to depend, of course, and that's why people love lawyers, because we always say it depends. But let's just take a minute and talk about what it is. Okay? If it's law, that means it's, it's a statute passed by a legislature state or federal, or its executive branch, that's regulations, and those we would consider law. And those we would obviously trust those unless they're out of date. So in our shop, we of course, make sure that they're the most current, but those are trustable. Now, every executive, a branch produces all kinds of other things that are not laws, there. It's hard to publish regs, there's all these rules and how you have to do it and things. So they do put out lots of guidance. And actually, over the last four years, we saw more of this sub regulatory guidance than ever before in my career. Part of that was because of COVID. There just wasn't time. Part of it was an administrative kind of style, where you were almost getting these memos. Just other things, and it did get really hard to figure out is can I trust this? Okay? But the sub regulatory guidance the answer to can you trust it is probably, but it depends. And it's worth just taking a second to go. The thing about law and acts is that they're slow. And they're very general, because they're slow.

They can't be changed frequently. So they're very general. So they don't do a good job of answering your question, you're not going to really get the deets out of an act, it's in as in, especially in health law, it's very hard, you'll do better if we can find the regs, they tend to have more detail, more information, more guidance, the sub regulatory guidance, even though I told you, it's not as reliable, that's the goods if you can get it because it's usually like, it's like the cliff notes. It's like a cheat sheet. So lawyers working in my department, we don't just look at sub regulatory, we start with act, then we go to reg. That's the order of precedence of legal research. But if you're just trying to get a quick answer to something and you do find some regulatory guidance, it's probably reliable unless it's out of date. And so it's a it's a fair bet, as long as it's official, and it came from that agency. And it's not out of date, you can probably trust it. Sometimes, you know, we look at court cases as well. And, of course, they don't provide binding policy, what they do is answer a specific problem. But they give us holdings and guidelines and things that we can look at to determine how is something going to be applied if it's an enforcement or lawsuit situation in the future.

A

Amanda Burke 06:36

Wow, Wendy, that was a lot of information that was good and useful. So to be sure, I understand, the biggest thing you want us to know is make sure that the sub regulatory guidance we find, which is probably going to be the easiest thing for the general public to understand is up to date. And accurate.

W

Wendy Rubas 06:55

Yes.

A

Amanda Burke 06:56

Okay, great.

W

Wendy Rubas 06:58

That can be tricky. So you might need a lawyer, but it should have a date on it. And you should be able to tell that for the most part.

A

Amanda Burke 07:05

That's helpful. So then I have one more question I have to shoot back to you. Because you did the last was amazing. The question is, what rules apply when it comes to our

insurance? Like our health insurance? And we know it's complicated, but it's still a question that everyone wants to understand.

W

Wendy Rubas 07:26

This is such a complicated question. And it comes up, sometimes people will say, well, they'll say, Medicare doesn't prohibit this. So it's okay. Right. You know, we recently had the opportunity to talk to Zeke Emanuel, which was so interesting. And he was one of the architects of the Affordable Care Act. And he talked about one of the regrets that he has, and in hindsight, looking at our, the system that we have, and he said, it's so complicated, that it's and we just, we also just did a podcast on attribution and just talking about to a consumer, do they even know, okay, what their insurance is? And most the time? The answer's no, the rules that apply to your insurance are different, if they're private, and even inside of private, the laws that apply are different. If it is self insured, in which case, we look at ERISA. And for the most part, the state insurance codes don't fully apply. Then if it's a fully insured plan, then we are we have a state insurance code, and not ERISA, as well as the multiple other, of course, laws, whether that's HIPAA, whether that's, you know, infoblox, I mean, there's many other sources of law. But But this specific laws applying to your plan, depend on whether it's fully insured or self insured course, if that's if it's private, of course, then if it's on the exchange, there's other rules and things that apply to exchange plans. If you're in a Medicare plan, the rules are going to depend on things that most Medicare beneficiaries probably can't even answer. Are you in a fee for service plan? Are you in a Medicare Advantage? most consumers don't know how to answer that. But the rules are very different. And even the coverage is different. And if you're in a fee for service, then are you in an ACO? Are you in a DCE? And so the rules are going to be different. And so that's start, that's where it does start to get very complicated. And it takes you know, a lot of work just to kind of sort it all out and keep it straight. We've seen rapid change to these rules over the last four years rapid, fast change the most of my lifetime ever in administration. And already we're going to see some of that start to flip back around in the next four years. So as they say, watch this space. I guess we're gonna see a lot more change happening here. I guess it's worth saying that all of that is really just talking about sort of Medicare or your insurance. Amanda This is something that I love to look at this picture. And I really actually Wish I could get a poster and just like, look at this in my office because I'm just so fascinated by all of the different parts of CMS. Each one of these parts has laws, they have regs, they have many of them have grant programs, they have procedures, they have things that they're putting out. And so even just inside a CMS, it's much more CMS could have a tagline or more than Medicare. You know, there's a lot of other things that they're doing that that we have to be mindful of as well.

A Amanda Burke 10:33  
Yeah. It's definitely a more complicated system than I think people are aware of, but they know that.

W Wendy Rubas 10:44  
So Amanda, thank you so much for everything you do for VillageMD. It's a good time to be a VillageMD, isn't it?

A Amanda Burke 10:53  
It's amazing time

W Wendy Rubas 10:54  
And you've made such a contribution already in the time you've been here. So, so thankful to have you as part of the team and thank you for joining us today.

A Amanda Burke 11:02  
Thank you. My pleasure, and I hope to come back.

I Intro Music 11:06  
Thank you to our sponsor, VillageMD. We hope you will join us for future concise compliance conversations.