

Is Concierge Care Right for You?

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Primary care physicians are declining in number, largely because of heavy patient loads, poor reimbursement levels, and insufficient time for properly evaluating patients. One option for physicians wishing to continue practicing in primary care is to reform their practices into what is known as "concierge care." The underlying philosophy of concierge care is that of a "membership practice" in which patients pay an annual fee in exchange for enhanced physician services, such as same day appointments, longer appointment times, 24-hour telephone access to physicians and coordinated referrals to specialists. Physicians may limit the number of patients in the practice, self-regulate the time spent with each patient, and determine the membership fee amount charged independent of payor re-

imbursement rates.

Utopia in primary care? Sounds like the ideal practice, right? Not so fast! Concierge care's growth around the country has prompted scrutiny under the watchful eyes of Medicare, the Office of Inspector General (the "OIG"), and various state government agencies, including the Washington Office of the Insurance Commissioner (the "OIC"), resulting in new guidance, rules, and state law.

Medicare and the OIG. In March 2002, Medicare published guidance on concierge care in general, stating that concierge care membership fees collected from Medicare beneficiaries may constitute prohibited charges if those charges are for services already covered by Medicare. In addition, the OIG issued an Alert in March of 2004, stating that "when participating providers request any other payment for covered services from Medicare patients they are liable for substantial penalties and exclusion from Medicare and other federal healthcare programs." In other words, participating physicians who charge Medicare enrollees for services already covered by Medicare, other than the applicable deductible and coinsurance amounts, are violating the physician's assignment agreement, in which the physician agrees to accept the Medicare fee schedule amount for all covered services provided to

Medicare beneficiaries. Non-participating providers must also observe this guidance, because even though non-participating providers do not accept the Medicare fee schedule amount as payment in full for covered services, they are still limited as to the amount they may charge Medicare beneficiaries.

They really mean it! In 2003 and 2007, the OIG entered into settlement agreements with physicians operating concierge practices on the basis that the physicians had overcharged beneficiaries in violation of the physicians' assignment agreements. The OIG asserted that the physicians had charged Medicare beneficiaries a membership fee for services already covered and reimbursable by Medicare. The settlement agreements, however, did not specify which services were covered. The result: a compliance challenge and a desire for more clear-cut guidance.

Opting out is an alternative. To steer clear of these overpayment issues, physicians may opt out of Medicare altogether by agreeing to not submit for two years claims for reimbursement of any services provided to Medicare beneficiaries. By opting out, physicians are not limited in what they may charge concierge care patients for services, whether or not the services are covered by Medicare.

What's all this talk about insurance? In 2007, the Washington

OIC published an opinion in support of proposed concierge care legislation stating that providers who practice concierge care assume risk by accepting prepayment for an unknown amount or type of services, and are therefore considered health care service contractors subject to OIC regulation. However, the OIC went on to say that given the limited amount of risk and potential harm to consumers, the full scope of regulation is not practical or warranted. In the end, the Washington legislature approved legislation codified at RCW 48.150, adopting rules for the operation of concierge care practices.

Washington law. Those physicians who decide that concierge care is their desired form of practice should carefully consult the Washington statute; failure to comply constitutes unprofessional conduct enforceable under RCW

18.130.180. These requirements include:

- Concierge care physicians may provide only primary care services, as defined in the statute, in exchange for the membership fee by entering into a written agreement with patients that must describe the services to be provided and be terminable at will by the patient.
- Insurance carriers may not be billed and patients may not be charged more than the membership fee for the primary care services. Concierge care physicians may bill insurance carriers and patients for services provided outside the scope of the primary care services described in the written agreement with the patient.
- The membership fee must be charged to patients monthly and may not be increased more

frequently than annually.

- The concierge care practice may not accept or decline patients based on health status, race, religion, disability, education, economic status, or sexual orientation, and the membership fee may not vary based on health status or sex.

Focus on the future. Both CMS and the Washington state government are monitoring concierge care. Washington concierge care practices must submit annual reports to the OIC. In December 2012, the OIC will submit a study to the legislature analyzing whether concierge care improves or reduces access to care, increases consumer costs, and provides adequate consumer protection. CMS has implemented an agency wide effort to monitor Medicare beneficiaries' access to care, including a focus by the Seattle regional office on the impact of concierge care on



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access to care. The future promises evolving regulation, which mandates careful attention to compliance.

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