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Understanding the Issues Related to Concierge Medicine

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Since its introduction in the mid-1990 in Seattle Washington, a growing number of medical practitioners have converted their medical practices into Concierge practices, or joined concierge practice networks. These practitioners have found fulfillment, flexibility, and financial gain; they can once again enjoy practicing medicine, and reduce or eliminate completely the hassle of dealing with managed care companies. In a concierge practice, also known as boutique medicine or retainer medicine, the physician's patients pay an annual retainer fee, typically between \$1,500 and \$1,800 above and beyond any health insurance co-payments or deductibles. In exchange the patient receives enhanced services from the provider. Concierge Medicine is now being considered by a broader spectrum of providers which, has undoubtedly been triggered by the financial strain that physicians are experiencing simply to keep their medical practices viable in an economic environment where reimbursement for services provided is falling and medical malpractice insurance rates are increasing.

In theory and in practice, if structured correctly, both the physician and the patient benefit from this arrangement. In exchange for the retainer fee, patients often have access to their physician or a member of his group 24 hours a day 7 days a week and highly personalized services including a health and wellness plan, extended appointment times, minimal waiting time, luxury robes, internet access, shower facilities, and house calls.¹

Models of Practice

The first model of concierge practice is the standard retainer model where the provider requests an annual or other periodic installment retainer and in exchange provides enhanced or premium care to the patient. In the second model of concierge care, in exchange for the retainer fee (which is often greater than the fee in model one practices), the patient receives the services provided to model one concierge patients as well as primary care from the physician. The model two patients must often still retain their own health insurance to cover hospital visits, tests and specialist care. The third type of concierge practice model is the fee for service model. Practitioners utilizing this model may choose whether or not to participate with insurance companies. Regardless, the physician charges a flat fee per visit in addition to the fee for the consultation and other medical services or treatments rendered to the patient.

Federal Law, State Law and Contractual Considerations

Concierge Medicine has triggered heated ethical and legal debates at the state and federal level. Contractual issues with HMOs and other third party payors also arise. The focus of the debate is whether collecting a retainer (1) violates state and federal public health laws and (2) constitutes the practice of insurance which would subject the provider's practice to more stringent regulation.²

¹ Hoffman W., Fed up, some doctors turn to 'boutique medicine'. ACP-ASIM Observer.October 2001. American College of Physicians-American Society of Internal Medicine. Available at: http://www.acponline.org/journals/news/oct01/new_model.htm. Accessed June 12, 2007.

² Insurers are required by the law of every state to meet various solvency and licensing requirements which is why determining whether retainer medicine constitutes insurance is such a critical question.

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Federal: For providers who only participate in the Medicare program, the good news is that in 2002, a favorable opinion letter was issued by the Secretary of Health and Human Services. This letter explained that the Medicare rules that governed how much a physician could charge for services are not determinative of how much a physician can charge for non-covered services. Thus, as long as the retainer fee paid for services that were truly not covered by Medicare, then these fees were not in violation of Medicare Law or the False Claims Act.³ The HHS Office of the Inspector General in an alert dated March 31, 2004, affirmed this analysis, stating that “Medicare participating providers can charge Medicare beneficiaries extra for items that are not covered by Medicare.” However, this alert cautioned that retainer fees for providing a service such as “extra time” with a Medicare beneficiary constituted a violation of the Medicare regulations.⁴

State: Few states have clearly analyzed the issues that arise in concierge practices but among the states that have are New York and New Jersey. The New York State Department of Health, in an opinion letter dated April 16, 2004, stated that it was the interpretation of the department that many of the services that are claimed to be included in the cost of retainers (24 hour care, coordination of necessary benefits and case management) are already required services under state law. Therefore, charging a retainer fee constitutes double-billing.⁵ For similar reasoning, The New Jersey Department of Health and Senior Services rendered an opinion in 2003 that insurance, network and provider agreements involving concierge practices were inherently suspect, “not acceptable and should be terminated immediately.”⁶

Contractual: A concierge physician’s provider agreements with managed care companies must be reviewed for potential conflicts. For example, if a provider represents that the retainer fee buys the patient an enhancement of healthcare services already covered by an insurance company, the insurer will view the treatment of concierge patients who are enrollees of their plan as discriminatory as compared to the services provided to patients who are enrollees of said plan but not paying the retainer.⁷ Further, discrimination between insured individuals is typically addressed in state insurance statutes and regulations. In New York State, providing better waiting rooms and expedited appointments to retainer patients constitutes discrimination under state law.⁸

Concierge practitioners can be found in many states including Florida, New York and Massachusetts, New Jersey and California, Oregon and Washington. Even in these states it is unclear as to exactly how a concierge practitioner can satisfy state laws and regulations pertaining to the practice of medicine and insurance. Overall, there are more unanswered questions than answers with regard to how a respective state’s department of health or department of insurance will treat a concierge practitioner. As such, before a practitioner whose entrance into the concierge market is otherwise attainable begins the transition, he would be well advised to seek competent counsel as well as the guidance of a mentor or consultant. ♦

³ Legal Issues Involved in Concierge Medical Practices, http://www.wnj.com/concierge_jrm_3_2005 Accessed June 20, 2007.

⁴ Office of the Inspector General, *OIG Alerts Physicians About Added Charges For Covered Services* (2004).

⁵ Letter from New York Commissioner of Health to Health Insurance Industry CEO’s (April 16, 2004).

⁶ State of New Jersey Dept. of Health and Senior Services. *Impermissible Practice of Retainer Medicine by Network Physicians*. Trenton, NJ: State of New Jersey Dept. of Health and Senior Services; August 8, 2003. Bulletin 2003-02.

⁷ Carnahan, Sandra J., *Currents in Contemporary Ethics: Concierge Medicine: Legal and Ethical Issues*

⁸ Letter from New York Commissioner of Health to Health Insurance Industry CEO’s (April 16, 2004).