

Draw Clear Lines between Medicare and Concierge Medicine

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Given the central importance of Medicare to our healthcare system, it is not surprising that the Centers for Medicare and Medicaid Services (CMS) has shown an awareness of concierge medicine, as more physicians and medical groups adopted it as their practice models. In 2002, the US Department of Health and Human Services (DHHS) received a letter from four Congressmen and one Senator expressing concern that physicians practicing concierge medicine were overcharging senior citizens in the Medicare program (letter to DHHS Secretary Tommy G. Thompson and Inspector General Janet Rehnquist from Henry A. Waxman, et al., March 4, 2002). DHHS responded with a letter to CMS regional administrators stating that physicians could proceed with concierge arrangements as long as they complied with all Medicare requirements (letter to CMS Regional Administrators, "Physician-Patient Retainer Agreements," March 26, 2002). Compliance involved, first and foremost, not charging Medicare beneficiaries for services already covered by Medicare. The concern was that concierge fees, usually in the form of a monthly or annual retainer payment, would cover services for which physicians were already being compensated, either by Medicare directly or by the patient through a deductible or co-insurance payment. DHHS placed the burden on concierge physicians who participate in Medicare to maintain a clear distinction between services covered by concierge fee and services reimbursed by Medicare. (See "Concierge Medicine: Origins, Growth, Controversies, and Implications to Medicare" on page 26, of the January/February issue of *MPM*.)

Opting Out of Medicare

Medicare's somewhat wary acceptance of concierge medicine reflects the complexities of the Medicare reimbursement system. A physician who wishes to establish a concierge practice will be in the easiest position if he or she simply "opts out" of the Medicare program. To do so, the physician must file an affidavit with DHHS stating that he or she will not submit any Medicare claims or receive any direct or indirect payment from Medicare for the next 2 years. In addition, the physician must have a written contract with each concierge patient that includes certain prescribed elements. A physician who has opted out is no longer a Medicare-certified provider. As such, the physician can charge patients, including Medicare beneficiaries, whatever amount is prescribed in the service contract.

A physician who does not opt out of Medicare must be careful to ensure that the concierge fee does not cover any services reimbursed either by Medicare or by the patient as a deductible or copayment. (The inclusion of deductible or copayment amounts in the concierge fee may violate the Medicare rules governing supplemental insurance or "Medigap" plans.) This is true whether the physician is a participating physician who accepts assignment with regard to every Medicare beneficiary and bills the Medicare-prescribed charge, or a nonparticipating physician who may accept or not accept assignment on a patient-by-patient basis in return for being subject to certain limiting charges with respect to all Medicare patients.

Understanding Medicare Coverage

To know what a concierge fee may cover, a physician must understand what Medicare does not cover. Certain types of care, such as the provision of hearing aids or cosmetic surgery, are not reimbursable by Medicare. Accordingly, provision of these services can be subject to separate fee-for-service arrangements, including a concierge payment. Other services, such as nursing home visits or therapy treatments, are covered by Medicare if deemed to be "reasonable and necessary." Otherwise, they are not subject to Medicare reimbursement. A Medicare-certified physician may charge separately for such services if the physician provides the patient with an "advance beneficiary notice" explaining that the patient will be expected to pay separately for the services because

they are not deemed by Medicare to be reasonable and necessary. Since they are not covered by Medicare, all such services can be included in a concierge fee.

Difficulties occur when the contract signed with a Medicare beneficiary by a concierge physician who has not opted out of Medicare appears to include services that are covered and reimbursed by Medicare. For example, Medicare now provides new beneficiaries with an initial physical examination for which it provides reimbursement. It does not cover subsequent wellness examinations, although it does cover examinations that are prompted by a patient complaint. A concierge contract must be careful not to state, or even suggest, that the concierge fee covers either the initial physical examination or any later examination resulting from a patient complaint.

Convenience Services

Medicare has been somewhat ambiguous about the convenience services that are usually the hallmarks of a concierge practice. For example, the Office of the Inspector General (OIG) issued an alert in 2004 noting a recent settlement with a physician who included in a concierge fee certain services that, according to the OIG, were already covered and reimbursable by Medicare. The OIG specifically mentioned the “coordination of care with other providers,” “a comprehensive assessment and plan for optimum health,” and “extra time” spent on patient care. In a somewhat roundabout way, it stated that it had

alleged “based on the specific facts and circumstances” that “at least some of these contracted services were already covered and reimbursable by Medicare” (OIG Alert, “Extra Contractual Charges beyond Medicare’s Deductible, Coinsurance: A Potential Assignment Violation,” March 31, 2004). There has been no definitive statement about other convenience services such as same-day or next-day appointments, mobile telephone and E-mail availability, and longer office visits. Although Medicare has not stated it, the dividing line may be between what is medically necessary (and therefore covered by Medicare) on the one side, and what the patient wants and requests on the other side.

An Uneasy Relationship

The relationship between Medicare and concierge medicine, then, is somewhat uneasy, with Medicare conceding that the two can live together, but at the same time warning Medicare-certified physicians who practice concierge medicine about the need to draw clear lines. Concierge physicians who wish to remain in the Medicare system should be careful to draw those lines and observe them in their relationships with Medicare beneficiaries.

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more than 100 years. Research supports the value of the integrated care delivery model. A 2006 study¹³ found that making lower utilization of acute care hospitals and physician visits could actually lead to better results for patients and prolong the solvency of the Medicare program. In fact, the study found that utilization of these services in the last 2 years of life in the most efficient regions of the country, often characterized by integrated-care delivery models, was 30% less than that of high-cost regions.

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