



## Concierge Medicine

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"CONCIERGE MEDICINE" or "boutique medicine" generally refer to a private medical practice in which a physician charges some type of retainer fee to patients. In exchange, the physician limits the number of patients accepted and thus offers more personalized services.

Usually, the physician provides periodic "wellness" examinations, meeting with patients for unhurried consultations about their lifestyle and overall health condition. In addition, the physician is available to patients during non-business hours. The physician also may accompany patients on visits to specialists, to ensure they receive quality service. Some physicians even make house calls as part of the concierge service.

Typically, the patient is expected to maintain health insurance for hospitalizations and for specialty and catastrophic care. In addition, the patient is usually expected to pay for laboratory tests and other diagnostic studies.

For patients, the main benefit is more personalized attention. For the physician, there is an opportunity to work more closely with patients, together with the prospect of increased income and fewer billing and collection problems.

The concept is not without controversy. Some physicians are strong proponents of any innovation that regains more control over their practices. Others worry that concierge medicine will create a two-tiered system in which some physicians serve only patients who can pay for a premium product, while others are left with a disproportionate share of those who cannot.

Concierge medicine also raises legal issues. These range from what a physician can do in return for a fixed fee, to how to deal with Medicare patients in a concierge practice, to how to move from managed care to concierge medicine.

### **The Knox Keene Act**

A concierge medicine practice must comply with the Knox-Keene Act - the California law regulating health maintenance organizations ("HMOs"). A person must have a Knox-Keene or HMO license before arranging to provide health care services to subscribers or enrollees in return for prepaid or periodic charge. Thus, a physician cannot promise to provide an unlimited or undefined bundle of medical services in exchange for a periodic payment or prospective retainer.

However, Knox-Keene does not prohibit fee-for-service payments and prospective payment for certain non-medical services. Thus, the concierge medicine physician must carefully define the services a patient receives in exchange for payment.

### **Medicare**

Concierge medicine raises complicated issues for the Medicare program. Recently, Tommy Thompson, the Secretary of Health and Human Services (which oversees Medicare), stated that, "[i]nsofar as the retainer fee under such an agreement is truly for non-covered services, such fees would not appear to be in violation of Medicare law." In

other words, payment can be only for services not already within the scope of what a Medicare-certified physician is supposed to provide. The Secretary cautioned that physicians "are responsible for complying with applicable Medicare requirements."

Thus, a physician may continue to care for Medicare patients, but must be extremely careful to exclude Medicare services from the concierge plan. This can be difficult, given the sweep of Medicare coverage and the complexity of its rules. It may require the use of "Advance Beneficiary Notices" in certain circumstances, followed by submission of a claim to Medicare that the physician believes will not be reimbursed.

It may be simpler to "opt out" of Medicare. A physician who opts out becomes a non-certified provider and agrees not to reenter the Medicare program for at least two years. During this time, the physician may not receive any Medicare reimbursement - and a patient will not be reimbursed by Medicare for the physician's services.

The physician must enter into an agreement with the Medicare beneficiary - with certain prescribed elements - explaining the non-participation and that services are not covered by Medicare. Once this is done, a non-certified physician is not subject to Medicare billing restrictions.

### **Health Plan and IPA Agreements**

A physician must also be careful to terminate any existing health plan or IPA participation agreements (or wait for those agreements to expire) before discontinuing services to any group of health plan/IPA enrollees - or before attempting to institute a new fee structure for them.

### **Abandonment**

A physician who converts to a concierge medicine practice must be careful to avoid abandoning patients who cannot (or do not wish to) be included. The physician must take the same steps as when leaving a medical practice for another job - giving patients notice that care will no longer be provided and providing a reasonable time to find another physician.

As an alternative, the physician can find a successor willing to assume care for patients leaving the practice and give patients the new physician's name.

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