



Big Problems for Medicare and Concierge Medicine



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ON MARCH 31, 2004, the Office of the Inspector General (OIG) of the Department of Health and Human Services published an OIG Alert on a settlement with a Minneapolis Internist who created a "concierge medicine" practice.

The OIG alert states that a physician can offer concierge medicine services to Medicare patients if the retainer fee does not apply to any services covered by Medicare. However, the OIG's broad interpretation makes it challenging to develop a set of covered services to which the retainer fee can attach without violating the Medicare laws.

The internist created a concierge medicine practice in which patients paid an annual fee of \$600 for services characterized as "not covered by Medicare." Specifically, he provided "coordination of care with other providers," "a comprehensive assessment and plan for optimum health," and "extra time" spent on patient care.

The OIG alleged that "at least some of these contracted services were already covered and reimbursable by Medicare." In other words, the OIG alleged that Medicare covered a portion of these services, even though it did not cover the whole service. As a result, the retainer fee attributable to the covered portion of services was considered an additional payment for covered services. Since Medicare providers cannot charge beneficiaries an additional amount for covered services, the arrangement violated Medicare law.

Given the OIG's broad interpretation of covered services, physicians providing concierge medicine services to Medicare patients must take great care to specifically define the services purchased in exchange for the retainer fee, and ensure that no portion of those services are covered by Medicare. If the OIG can trace any portion of the retainer fee to a covered service, it can dispute the arrangement.

Normally it is so expensive to challenge the OIG's determination that a solo practitioner will not have the finances necessary to contest it. In this case, the Minneapolis physician charged his patients \$600 per year. To settle with the OIG, he paid \$53,400 in civil monetary penalties, and agreed to discontinue his concierge medicine practice. Thus, the settlement was significant despite the low retainer payment.

The OIG Alert and the Minneapolis case that precipitated it suggest that physicians should exercise great caution when offering concierge services to Medicare beneficiaries. Although a physician can theoretically offer concierge medicine services to Medicare patients so long as no part of the retainer fee is used to pay for Medicare covered services, this arrangement may be difficult to implement.

A Medicare-certified physician who intends to offer a concierge plan to Medicare beneficiaries must draft the plan carefully to limit the concierge services to those that are over and above what Medicare covers.

To avoid these problems altogether, concierge physicians can exclude Medicare beneficiaries from participating in their concierge programs or, alternatively, they can opt

out of Medicare altogether and privately contract with beneficiaries for concierge medicine services.

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