



Legal Issues to Keep in Mind Before Making the Switch to Concierge Medicine

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Getting in to see your doctor is not always as easy as picking up the phone. Often, there is a several-week-long wait for an opening, and the doctor your insurer covered last year may no longer be in-network this year. That is where concierge medicine comes into play. Often termed "direct to consumer" or "direct primary" care, concierge medicine is leaving behind the paperwork and roadblocks tied to insured care and offering primary care and preventative services to individuals at flat membership rates.

For patients, the model comes with benefits like 24/7 access to a physician and same-day or next-day appointments. Some clinics offer family membership rates in addition to individual rates. Often, services extend beyond the typical office visit to include fitness evaluations and personal vitamin need analyses. For those seeking holistic care at a predetermined rate, the concierge model can be incredibly attractive.

Clinicians find benefit in the model, too. In Alabama, some physicians have left their insurance-based practices for the promise of more time with a smaller subset of patients. Even some institutions are getting in on the concierge medicine game, developing clinics under their organizational name that operate on the membership model.

Still, there are important legal considerations for physicians and physician practices considering entering the concierge medicine industry to ensure compliance with federal and state laws.

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- **Consider whether to opt out of Medicare.** Some concierge models will continue to bill Medicare for patient care, especially for services the monthly annual fee does not cover. In that case, physician practices should be aware that it is against the law to charge Medicare beneficiaries a membership fee for services already covered by Medicare, and violation of federal Medicare requirements can result in civil monetary penalties and exclusion from Medicare and other federal health programs. Thus, concierge practices should take precaution when determining which services it offers as part of the concierge package, as anything covered by Medicare should not be included. For example, paying a membership fee for access to a certain provider (who participates in Medicare) would not be permissible.

Practices that, instead, choose to opt out of Medicare can avoid some of the hassles of delineating covered from non-covered services. Still, there are some requirements for opt-out practices too, including that the physician must include certain mandated provisions as part of their private contracts with Medicare beneficiaries. For some physicians, opting out of Medicare is a financial consideration, as Medicare accounts for a significant portion of reimbursements in many practices.

- **Enter into contracts with patients detailing the services provided and the cost.** Contracts with patients should clearly list the services provided by the practice under the membership fee, and should include a list of services *not* covered by the fee. Contracts with patients should also include details regarding payment, including the amount owed, the date it will come due, and the cost of services not covered by the membership fee. If the practice plans to bill insurers, including Medicare, the contract should include information about what services will be billed, billing practices, and the procedures followed. The contract should include termination provisions, term length, and renewal guidelines. Importantly, the contract should be drafted in clear and simple language and signed by patients voluntarily and with full understanding of the terms of the arrangement.
- **Other federal and state laws still apply.** Even though concierge medicine provides the benefit of not having to bill insurers, other laws and regulations may still apply. For example, physician practices may still be subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its privacy provisions if they are engaging in "standard transactions." Alabama laws regarding the practice of medicine also still apply, including scope of practice and licensure rules and regulations. Finally, physicians should check the American Medical Association's guidelines for ethical practices.

The concierge care model has the opportunity to benefit both physicians who are seeking to provide deeper-level care for patients and patients who want greater access to and attention from their primary care physician. However, as concierge care becomes more prevalent, it is important to structure these practices and the arrangements with patients in a legally compliant manner.

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