



Setting up a Concierge Medical Practice

POINTERS AND PITFALLS

CONTACT INFORMATION FINANCIAL AND NON-FINANCIAL DISCLOSURES

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Hamil Little is a Georgia-based business and healthcare law firm exclusively focused on representing healthcare professionals, medical practices and healthcare businesses in transactions, regulatory and litigation matters. Mr. Little will receive an honorarium for this presentation. Mr. Little is an owner of Hamil Little PC.

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Disclaimer

- ▶ *Information not legal advice*

TO TALK ABOUT

- ▶ OVERVIEW OF CONCIERGE MEDICINE
- ▶ POINTERS AND PITFALLS PITFALLS FOR CONCIERGE MEDICAL PRACTICE

AN OVERVIEW

DEFINING THE MODEL



- ▶ What is “concierge” medicine?

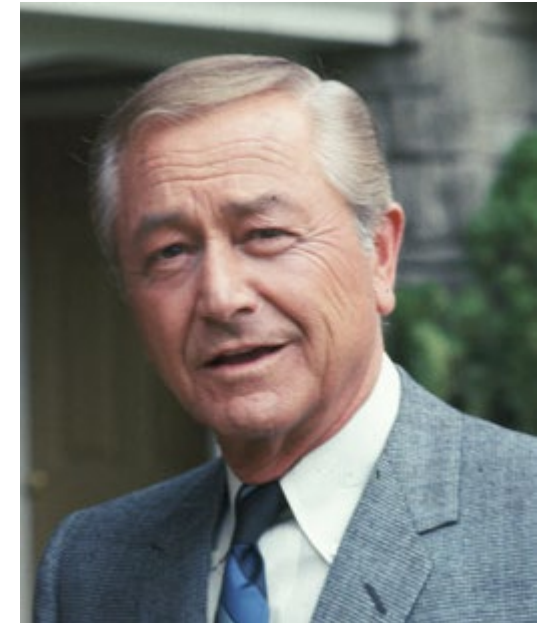
A direct contract between doctor and patient under which ***the patient pays*** for better and more access to an agreed menu of healthcare services and amenities

NOMENCLATURE AND ELEMENTS

- ▶ Some common nomenclature: “concierge” “direct primary care” “retainer” “boutique”
- ▶ Essential elements of model:
 - patient’s advance payment
 - direct contract with patient
 - no (or less) third party payor involvement
 - opportunities not limited to primary care

SO, WHY DO CONCIERGE?

- ▶ **More time** for patient engagement; LESS TIME on paperwork
- ▶ **Avoiding third party payor** constraints, bureaucratic limitations and headaches
- ▶ **Simplifying** by charging an upfront fee (much of the billing and collections procedure can be bypassed depending on the services included with the fee).
- ▶ **More money** ?? Maybe.



EXAMPLE AMENITIES

- ▶ Same day access to your doctor
- ▶ Immediate cell phone and text messaging to your doctor
- ▶ Unlimited office visits with no co-pay
- ▶ Little or no waiting time in the office
- ▶ Focus on wellness and preventive care
- ▶ Unhurried atmosphere
- ▶ Prescription refills
- ▶ Convenient appointment scheduling
- ▶ Dressed up lobby
- ▶ Non-medical services



FINANCIAL MODELS

Revenue Sources

- ▶ Cash from patient
- ▶ “Hybrid” (i.e., cash + third-party payors)
 - ❑ Cash + commercial insurers
 - ❑ Cash + commercial insurers + Medicare

Complexity

Simplest

More Complex

Most Complex

LEGAL ISSUES FOR A CONCIERGE PRACTICE

1. CONTRACT (governs the provider/patient relationship)
2. COMPLIANCE (regulates the provider/protects the patient)
 - State Law
 - ❖ Medical Practice Act
 - ❖ Insurance law
 - ❖ Telemedicine rules
 - ❖ Consumer protection laws
 - ❖ Laws or regulations specific to concierge medicine models or that govern the practice of medicine
 - ❖ Limitations imposed by Third Party Payor contracts (for hybrid concierge practices)
 - Federal Law
 - ❖ HIPAA
 - ❖ Medicare Billing rules



POINTERS AND PITFALLS

GET THE CONTRACT RIGHT

- ▶ “Patient Enrollment Agreement,” “Patient Agreement,” “Membership Agreement”
- ▶ The Enrollment Agreement should be in writing and cover:
 - enrollment term
 - pricing and payment terms
 - cancellation and refund
 - menu of services
 - ❖ what services are included
 - ❖ what services are not included (i.e., available but for an extra cost)
 - ❖ what services are not available



OTHER CONTRACT POINTERS

- ▶ Be careful making contractual promises: nothing should be “unlimited”
- ▶ Be clear about the nature of your business: that you are not “insurance,” will not bill insurance, cannot promise what the insurer will do
- ▶ Contractually obligate the patient to communicate truthfully
- ▶ Be clear that your services are not available to Medicare beneficiaries

MORE CONTRACT POINTERS

- ▶ Click acceptance and/or other ways to amend and update
- ▶ Make sure the responsible party signs
- ▶ Use exhibits, attachments or schedules to have a comprehensive document
 - patient consents
 - notice of privacy practices
 - patient acknowledgements
 - patient certifications
 - financial authorizations (credit card, bank accounts, etc)

MARKETING: SOME “DO-S” AND “DON’T-S”



“Do-s”

- Do have your attorney review your website and promotional materials
- Do have an amazing website
- Do focus on “amenities”/emphasize greater access and preventive care
- Do make clear that you are not providing an insurance plan (and not billing insurance)
- Do show that the value of your menu of services justifies the cost

“Don’t-s”

- Do not overstate the case
 - Your services are not “unlimited” (everything has limits)
 - Nothing is “guaranteed”
 - Promises should be carefully stated (and limited)
- Do not charge for services covered by Medicare



BEWARE MEDICARE BILLING RULES

- ▶ Medicare doesn't cover membership fees for concierge care.
- ▶ Doctors who accept assignment can't charge extra for Medicare "covered services." This means the membership fee can't include additional charges for items or services that Medicare usually covers unless Medicare won't pay for the item or service.
- ▶ Doctors who don't accept assignment can charge more than the Medicare-approved amount for Medicare-covered services, but there's a 15% limit called the "Limiting charge".
- ▶ All Medicare doctors (regardless of whether or not they accept assignment) can charge you for items and services that Medicare doesn't cover.
- ▶ Doctors who don't "accept assignment" (i.e., have opted out of Medicare) must disclose this to Medicare enrollees and the patient must pay the doctor's full cost.
- ▶ See: <https://www.medicare.gov/coverage/concierge-care>

MORE ON MEDICARE LIMITATIONS AND “COVERED SERVICES”

- ▶ If you “opt out” of Medicare participation you have the option of private contracting at private rates not subject to Medicare limiting charges
- ▶ If you don’t choose to opt out of Medicare, be careful about concierge services that could be considered Medicare-covered services.
- ▶ Medicare’s limiting charge rules prohibit you from charging a Medicare beneficiary more than a fixed percentage over its fee schedule for covered services – if you include features that enhance or waive copayments for covered services you may violate the limiting charge or assignment rules
- ▶ Also, CMS has expressed a concern that the annual retainer may be considered an insurance policy, since it may cover services Medicare does not (such as an annual physical) and thus violate Medicare supplemental insurance provisions

PRIVACY ISSUES

- ▶ HIPAA considerations
- ▶ If you have a hybrid practice, where you combine traditional and fee-paying patients, and you use a separate company to provide concierge services, there may be a need for a business associate agreement with that company. Be sure you maintain privacy if you communicate with patients via texts or emails.
- ▶ Those who transition to a care model that doesn't require submission of claims to Medicare and other carriers may not be subject to the Privacy and Security provisions of HIPAA (to the extent that they don't meet the definition of a covered entity under the law.) Essentially, they don't engage in electronic transactions (e.g. electronic claims, benefit verifications, or receive electronic and remittance advice).
- ▶ Must continue to abide by state laws and common law restrictions pertaining to privacy and confidentiality.
- ▶ TIP: Have a HIPAA consultant perform a HIPAA risk assessment/analysis. Inexpensive due diligence.

QUESTIONS?

HIRE A PROFESSIONAL

- ▶ Each concierge model is inherently unique and will raise compliance and legal risks that need to be identified and navigated.
- ▶ Be very careful of these arrangements and set them up appropriately.



THANK YOU!

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