



CALIFORNIA HEALTH ADVOCATES  
Medicare: Policy, Advocacy and Education



# Concierge Doctors and Medicare

Presented by:  
Diane Caradeuc  
SMP Trainer  
August 28, 2014

# Today's Question

**Can a doctor charge a  
Medicare beneficiary  
Concierge Fees?**



*ANSWER*

**IT DEPENDS!!**

# What is Concierge Medicine?

- For many of us, we might think of the TV show:


**ROYAL PAINS**

# What is Concierge Medicine?\*

## ❖ Known by different names:

- Retainer medicine
- Membership medicine
- Cash-only medicine
- Direct Care

\* Slides 5 -11, from Wikipedia: Concierge Medicine

- 
- While similarities exist in different concierge practices, differences exist greatly in:
    - Their Structure
    - Their Payment Requirements
    - Their Form of Operation
  - Specifically:
    - **Level of Service**
    - **Fees Charged**

# Business Models for Concierge Medicine

## ❖ Fee for Care (FFC)

- Retainer fee, paid monthly to yearly, regardless of received services
- Covers mostly direct doctor services
- Usually requires additional cash payments for things like lab work or x-rays

## ❖ Fee for Extra Care (FFEC)

- Similar to the FFC
- Pay a retainer fee
- Additional services billed to Medicare or other insurance



# Features of FFC or FFEC

- Same day access to physician
- Direct phone contact with physician
- Unlimited office visits with no co-pay
- Little or no office waiting time
- Fewer patients in the practice
- Extra time with physician
- Convenient appointment times
- Some plans can be purchased with pre-tax dollars (via HSA or FSA)

## ❖ **Hybrid Concierge Model**


- Physician charges retainer or membership fee for non-covered insurance services (includes Medicare)
- Physician bills Medicare or insurance for the covered services

# Why the Hybrid Model?\*

- Physician can have both concierge and non-concierge patients
- Concierge patients will receive some enhanced services
- Non-concierge patients will be able to retain their physician without extra costs

# Development of Concierge Medicine\*

- 1996 – Dr. Howard Maron and Scott Hall, established MD2 in Seattle WA and in Oregon.
  - Annual Retainer fee was \$13,200 and \$20,000 per family.
- 2000 – Virginia Mason Medical Center in Seattle had concierge medical services in its facilities.
- Slides 12 – 16, from Concierge Medicine Today, dated April 29, 2013

- 
- 2000 – MDVIP, founded in Florida, is a management firm that has over 300 concierge practices from AZ to RI
  - 2001 – AMA writes Principles of Medical Ethics (concierge physician guidelines)
  - 2002 – CMS issues position paper on concierge medicine

- 2003 – American Society of Concierge Physicians was formed. Later called Society for Innovative Practice Design (or SIMPD).
- 2003 – AMA issues guidelines for boutique practices.
- 2003 – DHHS rules concierge medical practices are not illegal.
- 2005 – Concierge Medicine Today begins (for news on concierge medicine)

- 2008 – With 35 Concierge practices, Orange County appears to be the leading hub of concierge medicine.
- 2008 – Concierge Physician of Orange County (CPOC) is founded as a non-profit group of existing concierge physicians.
- 2009 – MDVIP is acquired by Procter & Gamble

- 2010 – SIMPD reorganizes and is now the American Academy of Private Physicians (AAPP)
- 2010 – AAPP forms first local chapter in Orange County
- 2010 – Per Concierge Medicine Today, over 60% of programs offered to patients cost less than \$136/month.



# Today's Question

**Can a doctor charge a  
Medicare beneficiary  
Concierge Fees?  
(Is it fraud or abuse if he  
does?)**

# To Answer the Question

One needs to answer two questions:

1. What is the Physician's Relationship to Medicare?
2. What are the Concierge fees to cover?

# First Step

## Know the Physician's Relationship to Medicare:

- Physician Is Enrolled in Medicare
  - Participating Physicians
  - Non-Participating Physicians
  - Opted-Out Physicians
- Physician Never Enrolled in Medicare  
(Or, Dis-enrolled from Medicare)
  - Physician may have also opted-out

# Enrolled Physicians

## Participating Physician

- Must accept the Medicare approved amount as payment in full
- Must provide ABNs when appropriate
- Can only charge the beneficiary the co-insurance and any unmet deductible
- Must bill Medicare

## **Non-participating Physicians**

- Allowed payment is limited to 115% of Medicare approved amounts for unassigned claims
- Must provide ABNs when appropriate
- Can charge the beneficiary up to 115% of the approved amount (limiting charge) for unassigned claims
- Must bill Medicare

## Opted-out Physicians

- Must file opt-out form with CMS
  - Will be out of program for 2 years (with renewal options)
- Must contract with beneficiary
- *Payments are whatever was agreed to in the contract*
- Neither the physician nor the beneficiary can submit a claim to Medicare
  - No ABN will be issued

# Never Enrolled Physicians

If they see a Medicare Beneficiary:

## **Bound by Section 1848 (g) of the SS Law:**

(4) Physician submission of claims.

(A) For services furnished on or after September 1, 1990, within 1 year after the date of providing a service for which payment is made under this part on a reasonable charge or fee schedule basis, a physician, supplier, or other person-

(i) shall complete and submit a claim for such service on a standard claim form specified by the Secretary to the carrier on behalf of a beneficiary, and

(ii) may not impose any charge relating to completing and submitting such a form.

# Catch-22

- Physician who is not enrolled, cannot submit a claim to Medicare although still required to do so
  - Therefore, beneficiary can use CMS-1490S to submit the claim to the MAC
- Claim is processed and paid as if provider was enrolled but non-participating
  - Claim is processed as unassigned
  - No ABN is issued since provider must be enrolled to issue one



# Another Option for Never Enrolled Physician:

## ❖ **To Opt-out from Medicare**

- Same rules previously stated apply
  - File opt-out form
  - Contract with Beneficiary
  - No claims to Medicare
  - Payment to physician based on beneficiary contract

# Step Two

## **Know what Concierge Payments are Expected and What They are for:**

- Payment could be an annual fee
  - Usually a list of “enhanced” services are included in annual fee
  - Example: coordination of care with other providers; comprehensive assessment and plan for optimum health; extra time spent on patient care
- Payments could be a set of fees for specific services
  - Example: completing non-Medicare forms, weekend hours, renewing prescriptions

# Today's Question

**Can a doctor charge a  
Medicare beneficiary  
Concierge Fees?  
(Is it fraud or abuse if he  
does?)**

# Answer

## I. Opted Out Physicians

(enrolled or never enrolled)

- Payments are guided by the beneficiary contract
- Contract Fees could result in payments higher than the Medicare fee schedule for same service and is allowed
- **No Medicare Payment** is ever made
- *Concierge fees would not violate any Medicare provisions*

## 2. Participating Physicians

- Allowed to charge beneficiaries for extra items or services not covered by Medicare
- Allowed to charge unmet Medicare deductible and coinsurance
- NOT ALLOWED to charge anything extra for services covered by Medicare
- *Concierge fees could easily violate Medicare rules unless clearly for non-covered Medicare services*

### 3. Non-Participating Physicians

- Allowed to charge beneficiaries for extra items or services not covered by Medicare
- Allowed to charge up to the Limiting Charge (115% of Medicare allowed amount) for unassigned claims
- NOT ALLOWED to charge more than limiting charge for services covered by Medicare for unassigned claims
- *Concierge fees could violate Medicare payment rules*

## 4. Never Enrolled Physicians and did not opt-out

- Allowed to charge beneficiaries for extra items or services not covered by Medicare
- Allowed to charge up to the Limiting Charge (115% of Medicare allowed amount)
- NOT ALLOWED to charge more than limiting charge for services covered by Medicare
- *Concierge fees most likely violate Medicare payment rules*

# Concierge Fee Examples

- Annual Membership or Retainer Fees, or
- Cash Services
  - Copying Medical Records
  - House Calls or Hospital Visits
  - Filling out forms
  - Accident Related medical evaluation
  - Second opinion
  - No show or cancellation



- **Extra Services during the day, after 6pm or on days off**
  - ✓ Services include phone advice, consults, prescription
- **Requirement to make an office appointment to get a prescription renewal or pay a fee**

# Concierge Medicine and ACA\*

## Clause in the Affordable Care Act

- Allows direct primary-care (form of concierge medicine-no billing to insurance for services) to count as ACA-compliant insurance if:
  - Bundled with a wraparound catastrophic medical policy for emergencies

\*From Wall Street Journal, Nov. 10, 2013

# References

March 31, 2004

OIG ALERT ISSUED

- ❖ OIG Alerts Physicians About Added Charges for Covered Services
- Extra Contractual Charges Beyond Medicare's Deductible, Coinsurance: **A Potential Assignment Violation**
- Violation can result in substantial penalties and exclusion from Medicare and other Federal health care programs

# CMS References

- MLN SE0421 OIG Alert about Charging Extra for Covered Services
- MLN MM6874 Beneficiary-Submitted Claims
- MLN MM6081 Private Contracting/Opting Out of Medicare
- Booklet: Advance Beneficiary Notice of Non-coverage ICN 006266
- IOM 100-02 (Medicare Benefit Policy Manual), Chp 15, Section 40.13

# Some Facts

- January 2011: 96% of physicians billing Medicare were participating
- Fiscal Year 2011: 99.3% of submitted claims were assigned claims
- Per CMS, 9500 physicians opted-out in 2012

- Per a 2013 AARP article, about 5000 physicians in 24 states have become “direct primary care” physicians as stated by a researching consultant (i.e., doctor accepts no insurance)-a form of concierge medicine
- Of an estimated 5500 Concierge practices, about two-thirds charge less than \$135 per month.

# 2013 Great American Physician Survey

- 40% of physicians would pick a different career if doing it over
- 52% report they can't see moving to a concierge practice model
- 43% report they'd consider a direct pay model
- 59% report they work from 41 to 60 hours/week
- Only 14% plan to leave medicine in next 5 years



# QUESTIONS?

Thank you.