

RETAINER OR “CONCIERGE” MEDICINE PRACTICES IN MARYLAND

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Impetus for Development of Retainer Medical Practices

- Decreasing reimbursement and increasing overhead forced primary care physicians to increase volume to maintain reasonable compensation
 - Patient panels of 2000+
 - Minimum of 20-25 patient visits per day
 - 15-minute office visits became the norm
- Primary care became largely a triage function, with all but the most routine problems being referred to specialists or even ER
 - Insufficient time to properly diagnose and manage complex medical problems

Impetus for Development of Retainer Medical Practices

- Patients complained of:
 - Lack of time with physician to address complex medical problems
 - Lack of attention to preventive care
 - Long waiting times for appointments
 - Hours spent in physician office waiting rooms
 - Unavailability of physicians by telephone for questions
- Physicians complained of:
 - Burn-out from “assembly-line” approach to medicine
 - Lack of time necessary to provide proper diagnosis and coordination of care
 - Stagnant or declining compensation for longer hours

KEY FEATURES OF RETAINER MEDICAL PRACTICES

- Limited number of patients (<600 v. 2000+) permitting more comprehensive diagnosis, proactive care, and personalized service
- Annual fee (typically \$1500 -\$2500) in addition to or in lieu of per-visit/per-service charges
- Comprehensive annual physical for every patient
- Focus on preventive health care, coordination of specialist care and ancillary services
- Longer office visits; guaranteed same day appointments; house calls
- Patient has 24/7 access to personal physician via cell phone (no answering service or on-call covering physician)

Profile of Typical Retainer Practice Physician/Patient

- Physician
 - 20+ years in practice
 - High degree of patient loyalty; strong personal relationships with patients
 - Takes extra time necessary with patients despite economic pressures – feels burned out as a result
 - Seriously contemplated retirement from medicine due to burn-out
- Patient
 - Older, or has complex or multiple medical problems
 - Values personal relationship with physician
 - “Doctor-phobic”
 - Busy executives, professionals
 - Younger, but desires proactive approach to medical care

MODELS CURRENTLY OPERATING IN MARYLAND

- Two Different Basic Models:
 - “Fee for Non-Covered Services” Model
 - “Fee for Covered Services” Model
- Most retainer medicine practices in Maryland are variations of one of these two basic models

Fee for Non-Covered Services Model

- Annual fee is payment for comprehensive annual physical examination and wellness plan, other services not generally covered by Medicare or private insurance plans
- Office visits and other services are billed on a fee-for-service, “a la carte” basis, as in a traditional model
- Practices using this model usually continue to participate with insurers and Medicare
- Model utilized by MD-VIP, a national concierge medical practice management firm

Fee for Covered Services Model

- Annual fee is payment for comprehensive annual physical examination and wellness plan (often not covered by payors), and other services generally covered by Medicare and private insurers (office visits, blood draws, etc.)
- Prior to Maryland Insurance Administration public hearing (12/19/2008) and subsequent report, some of these practices offered unlimited office visits and other standard in-office primary care services for one flat annual fee

Fee for Covered Services Model

- Practices using this model engage in “private contracting”, terminating their participation with all insurers and “opting out” of Medicare
 - Permits them to avoid statutory and contractual patient “hold harmless” violations, balance billing restrictions and Medicare limiting charge rules
- Physicians operating this model seek simplicity (no insurance billing, minimal number of financial transactions with patients)

LEGAL ISSUES

- Medicare limiting charge, assignment, and private contracting rules
- Contractual and Maryland statutory “hold harmless” provisions and restrictions on “balance billing”
- Maryland statutes and regulations governing the unauthorized “business of insurance”

Medicare Assignment Rules

- Physicians “accepting assignment” from Medicare agree to accept the Medicare fee schedule rate as payment in full for Medicare covered services
- Charging an annual retainer fee for Medicare covered services may violate the physician’s assignment agreement (e.g., the fee is in addition to FFS charges or exceeds the Medicare fee schedule for the services covered)

Medicare Assignment Rules

- OIG's March 31, 2004 Fraud Alert cites "coordination of care with other providers," "a comprehensive assessment and plan for optimum health," and "extra time" spent on patient care as possible Medicare covered services for which a physician may not charge extra
- Physician who does not accept assignment (i.e., patient, not physician, is paid directly by Medicare) is not subject to the assignment rules

Medicare Limiting Charge Rules

- Prohibit physician from charging Medicare beneficiary more than a fixed % over Medicare fee schedule amount for Medicare covered services
- Retainer fee, if paid for Medicare covered services, may violate these rules as well
- Physician who “opts out” of Medicare is not subject to these rules (but is subject to the “private contracting” rules)

Medicare Private Contracting

- Physician must opt out of Medicare for 2 years by filing affidavit with carrier
- Physician who has opted out may not receive payment from Medicare for any services
- Patient receiving Medicare covered services from such a physician may not submit a claim for such services to Medicare or receive any reimbursement from Medicare
- Physician must enter into written contract with each Medicare beneficiary patient containing certain mandated provisions

"BALANCE BILLING"

- Maryland HMO Act provides that enrolled members must be “held harmless” for the cost of any covered services.
- This provision is also contained in state approved agreements between physicians and HMOs.
- Physicians may generally only receive the contractual payment from the HMO plus any deductible, copay or coinsurance paid directly by the patient.
- Billing the patient for any amount above those permissible charges (usually the difference between negotiated rates and physician’s full charges) constitutes impermissible “balance billing” .

PAYOR CONTRACT RESTRICTIONS ON BALANCE BILLING

- Standard Hold Harmless Provision:
 - “Physician hereby agrees that in no event, including, but not limited to nonpayment by HMO, insolvency of HMO, or breach of this Agreement, shall Physician bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against Members or persons other than HMO for services provided pursuant to this Agreement.”
 - If annual retainer includes fees for services that may be covered by the HMO (office visits, blood draws, etc.), hold harmless provision is implicated.

MARYLAND STATUTORY PROHIBITION ON BALANCE BILLING

- Hold Harmless provisions are contained in Health General 19-710(i) and (p).
- Ban on balance billing applies to all providers, not just HMO participating providers:
 - “A health care provider or any representative of a health care provider may not collect or attempt to collect from any subscriber or enrollee any money owed to the health care provider by a health maintenance organization issued a certificate of authority to operate in this State.”
- If retainer includes charges for HMO covered services, hold harmless may be violated.

Maryland Private Contracting

- Maryland Attorney General has opined that non-participating providers may enter into “private contracts” with HMO members for the receipt of otherwise covered services without violating ban on balance billing. Opinion of the Attorney General 00-030 (November 21, 2000) .
- Permissible if HMO:
 - Does not authorize the service,
 - Refer the patient to the practitioner, or
 - Receive any claim for payment from the physician or the member.

Maryland Private Contracting II

- Hold harmless does not apply to non-covered services, so Retainer Physician may bill patient for such services without violating ban on balance billing.
- If physician is non-participating with HMO, private contracting option allows physician to bill HMO member for covered services without violating hold harmless.
- See MedChi waiver form at:
 - <http://www.medchi.org/lawandadvocacy/HMOwaiver.asp>

"BUSINESS OF INSURANCE"

- See analysis in “Report on ‘Retainer’ or ‘Boutique’ or ‘Concierge’ Medical Practices and the Business of Insurance (MIA-2008-12-002 January 2009):
- Unauthorized “business of insurance” under Maryland law may be implicated if retainer payment is viewed as a fixed “premium” and there is transfer of risk of loss for a determinable contingency.
 - Indicators of business of insurance:
 - Unlimited visits or other services
 - No limits on size of patient panel
 - Fee does not bear any fair market value relationship to proposed services
 - Physician bears risk for services of other providers
 - Patient agreement is non-terminable during year and/or no pro-rated refund available