Direct Primary Care: Terminology, Legal, and Legislative Issues

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DPC Terminology, Legal & Legislative Issues

- Learning Objectives:
  - A) Obtain an understanding of common DPC Terminology
  - B) Appreciate the diversity of DPC offices and locations across the US
  - C) Medicare considerations – "opt out" vs "fee for non-covered service"
  - D) Awareness of the "Business of Insurance" hurdles
  - E) Review state and federal DPC regulatory & policy considerations

Questions We Will Answer

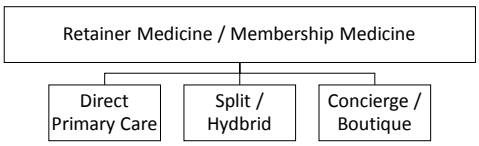
- How may we define Direct Primary Care (DPC)?
- What about "Concierge" medicine?
- How many physician groups are really doing this?
- How does DPC interact with Medicare? (and Medicaid?)
- What are the legal hurdles?
- Which states have DPC legislation?
- Does the Affordable Care Act impact DPC practices?

Direct Primary Care Defined

- For a practice to be defined as DPC, it must be a:

- primary care practice that
- 1) charges a periodic fee for services,
- 2) not bill any third parties on a fee for service basis, and
- 3) any per visit charge must be less than the monthly equivalent of the periodic fee.

Defining Direct Primary Care



- DPC = a periodic fee with no "double dipping"
- Concierge is synonymous with the fee for non-covered services model

Concierge Care Defined

- A primary care practice that
- 1) charges a periodic fee for "non-covered" services, and
- 2) continues to also bill third parties on a fee for service basis

- Concierge practices, such as MDVIP or MD^2, continue to bill third parties in the traditional fee for service fashion *in addition* to the periodic fee

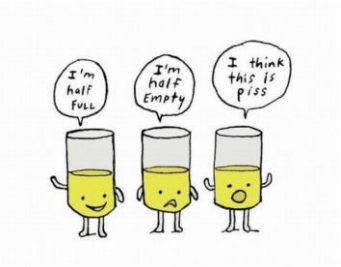
DPC vs Concierge – Cost Differences

- Price is not a component of the definition
- Concierge fees are often much higher
- MD[2] initially charged $20,000 per year for "non-covered" services
- DPC groups often charge around $1,000 per year for all services
- Overhead costs are unchanged in concierge practices

Many Groups Support DPC

- ACOFP – DPC Task Force
- Direct Primary Care Coalition
- American Academy of Family Physicians
  - DPC Interest Groups, Workshops, public policy endorsement
- American Academy of Private Physicians
- Family Medicine Education Consortium
  - Organized multiple DPC National Summits
- American Association of Physicians & Surgeons
- DPC United

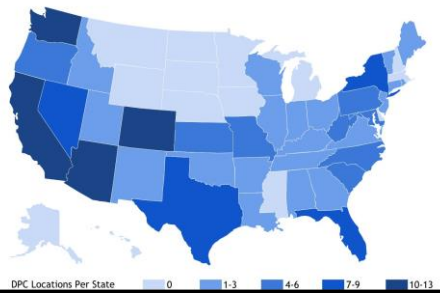
DPC Folks Think Differently



DPC Research Methods

- Located as many DPC practices as possible (100), recorded publicly available data from the practice website:
- Practice Fee Structure
  - Membership ranges (avg of high and low charges for pts > 29 years old)
  - Any per visit fee (average of four visits per year)
  - Any enrollment fee (divided by twelve for a monthly comparison)
- Practice Design (pure DPC or split)
- Medicare status (opt out vs accepting)
- Practice self description (DPC, "Direct," Concierge, other)

Direct Primary Care Practice Distribution

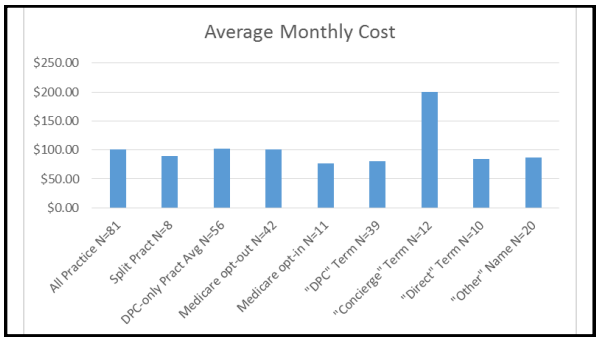


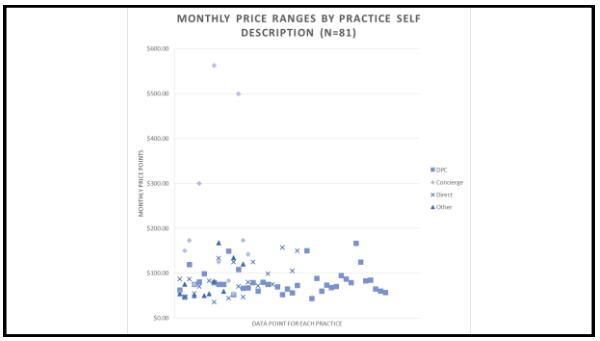
Results

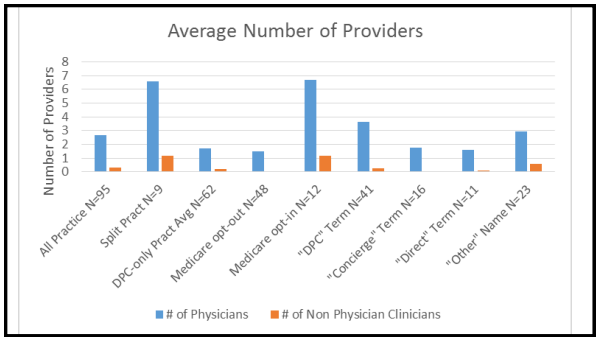
- All Practice average monthly cost = $100.55 (range $35.67 to $562.50)
- All Practice Median monthly cost = $79.00

- Self Described DPC average monthly cost= $80.68
- Self Described Concierge average monthly cost= $199.59
- Split practice average monthly cost= $89.57
- Opted Out practice average monthly cost= $100.47

- Enrollment Fee = $82.63 (only 24 of 81) (range $29 to $300)
- Per Visit Fee = $16.85 (only 17 of 81) (range $5 to $35)







What's in the Name?

- Only 44 of 100 practices located in the study referred to themselves using the term "Direct Primary Care"
- 17 did (inaccurately) self describe using the term "concierge," which can lead to confusion for both patients and policy makers, although it did correlate with a higher membership price
- Many other adjectives were used to describe each DPC practice
- "If you have seen one DPC practice, you have seen one DPC practice"

Charging a Per Visit Fee

- Approach used by only 17 out of 81 practices with price info
- Average of $16.85, Median of $20 with range of $5 to $35
- The fee does not appear to affect the number of in-office visits
  - Qliance and Access Healthcare data suggests an avg of slightly under four in-office visits per year
  - Other DPC docs report an avg of 1% of patient panel requires services daily, supporting an avg of slightly under four (3.65) office visits per year as well

Charging an Enrollment Fee

- Only used by 24 of 81 practices with price info
- Average of $82.63, Median $77.50
- Range of $29 to $300

Limitations

- Complicated pricing structures
- Lack of price transparency among all websites
- Scope of practice variance

Summary Findings

- DPC is Affordable
  - Median $80 per month, Average $100 per month
- Over 90% of practices are small and independent
- Per visit fees are used by less than 1/4 of DPC practices
- Enrollment fees are used by less than 1/3 of DPC practices
- Public price perception is accurate
  - DPC – affordable
  - Concierge - expensive
- Flexible geographic location – 36 states, rural or urban

Medicare

- "Opting Out"
  - Must be actively renewed every two years
  - Legally safer option (False Claims Act, Stark, etc.)
  - Ideal for a "Pure" DPC practice
- "Non-covered Services"
  - Terminology game – must stay one step ahead of the government
  - Moonlighting is less complicated
  - More common in "Hybrid" practices

Medicaid and Traditional Insurance

- Do not sign any *traditional* third party contracts!
  - This would give insurance companies leverage to block your DPC efforts
  - You can "go public" with denials of coverage (Brian Forrest has an example)
- Always have each patient sign an individual contract with your practice (even when brought to you by an employer or other group)
- The ONLY appropriate role of a third party in DPC is payment
  - These agreements should not have any effect on your documentation or price
  - Medicaid managed care pilot (Qliance)
  - Medicare Advantage (Iora)
  - Eventually more patients via state run insurance exchanges

The "Business of Insurance"

- State Insurance Commissioners argue that DPC is too much risk
  - Membership contract amounts to the "unlawful sale of insurance"
- No case law directly on point
  - Huff v St. Joseph's Mercy Hospital of Dubuque Corporation
- IRS definition anticipated related to Health Savings Accounts
  - Would be additional persuasive evidence that DPC is not a "health plan"
- Each state may approach this issue independently
  - Six states have passed laws designed to address this concern
- Wise contract terminology will be your defense – minimize "risk"

States with DPC Laws

- The Good
  - Washington
  - Utah
  - Louisiana
  - Michigan
- The Bad
  - Oregon
- The Ugly
  - West Virginia
- The Irrelevant
  - Arizona
- Pending
  - Georgia
  - Idaho
  - Mississippi (SB 2687)
  - Missouri (HB 769)
  - New Hampshire (SB 176)
  - Oklahoma (SB 560)
  - Texas (HJR 109)
  - Florida

State	Washington	West Virginia	Oregon	Utah	Arizona	Louisiana	Michigan
Date Passed	2007	2006	2011	2012	2014	2014	2015
Title	Direct Patient-Provider Primary Health Care	Preventive Care Pilot Program	Requirements for Certification as Retainer Medical Practice	Medical Retainer Agreements	Direct Primary Care Provider	Direct Primary Care Practice	Medical Retainer Agreements
Phrases Defined	Requires that a "direct fee" be charged on a monthly basis, no definition or use of term periodic fee	"primary care" poorly defined using terms basic and simple,	"primary care" = outpatient, nonspecialist, "retainer medical fee" poorly defined	"Routine" health care services	Poor definition of "DPC Provider Plan", Poor definition of "Primary Care Provider"	failed to define periodic fee, vague definition of "direct fee"	"Routine" health care services
"Not Insurance"	Yes (& HMO)	Yes	Unclear - the only time the phrase "not insurance" is used is in the mandatory disclosures section	Yes	Yes	Yes	Yes
Reporting Obligations	Yes	Yes - Severe	Yes	None	No	No	No
Mandatory Disclosure	Yes	No	Yes (in both contracts and marketing materials)	Brief "not insurance"	No	Yes	Brief "not insurance"
Discontinue Care Provision	Yes	No	No	None	No	Yes	None
"Double Dipping" Prohibition	No	No	No	Yes	No	No	Yes
Marketing Restrictions	No	Severe	No, only via disclosure requirements	No	No	No	No
Inadvertent Pilot/Exchange Ban	Potentially	No	Likely	Potentially	No	Potentially	Potentially
Promotion of DPC/MH in exchange	No	No	No	No	No	No	No
Scope	Mild restrict, primary care is broadly defined	Narrow	Narrow	Broadly defined	Broad	Mild restrict, primary care is broadly defined	Broadly defined
Policing Authority	Must submit annual statements to the insurance commissioner	HCA & Ins Commish	Dept of Ins - may investigate and subpoena, broad authority to adopt new rules	None	None	LA St Med Bd	None
Separate License needed	No	Yes	Yes	No	No	No	No

Discontinuing Care Provisions (WA, LA)

- Patient participates in fraudulent activity
- Patient fails to pay for services
- Patient is abusive and is an emotional/physical danger to DPC
- Patient "repeatedly fails to comply with the recommended txt plan"
- DPC discontinues operations as a DPC

Required Disclaimer (Louisiana)

- "This agreement does not provide comprehensive health insurance coverage. It Provides only the health care services specifically described." (WA, LA)
- Inform the patient of his financial rights & responsibilities to DPC
- Encourage patient to maintain insurance for non DPC services
- State that DPC will not bill a health insurance issues for DPC services
- Include contact information for the state medical board

West Virginia "Preventive Care Pilot Program"

- Initially limited to six sites
- Program expires (again) on June 30, 2016 (grandfathering available)
- Health Care Authority – full control of provider selection (Cert of Need)
- All fees, marketing materials, and forms are subject to prior approval from the insurance commissioner
- No marketing (except for known uninsured or known HDHP = $3,000)
- Mandatory 6 month wait for employer to purchase DPC conversion
- Must submit income tax returns to HCA
- http://www.hcawv.org/Pilot/AttchA.htm
- "Primary Care" defined using terms "basic" and "simple"

State by State Summary

- Terminology problems continue
  - Only 3 of the 6 states with legislation even use the term DPC
- Any DPC definition (if provided) is poor
  - Only Washington, Louisiana, and Arizona offer some type of definition
  - A broad definition is contained in the Affordable Care Act
- States where DPC could be more difficult
  - Vermont
  - West Virginia
  - Oregon

State Model Legislation Recommendations

- Define DPC using 3 part definition
- Should contain a clear "NOT Insurance" provision
  - This is consistent with the "not a health plan" language in the ACA
- Mandatory contract and advertisement "not insurance" disclaimers
- No separate state registration should be necessary
- Require an individual contract with each patient
- List recommended discontinuation of care contract language
- Broadly define primary care scope of practice
- Promote formation of "wrap around" insurance policies

Affordable Care Act

- Sec 10104 HHS "shall permit a qualified health plan to provide coverage through a qualified direct primary care medical home plan that meets criteria established by the Secretary…"

Qualified Health Plan

- Essential Health Benefits
  - Ambulatory patient services
  - Emergency services (reduced)
  - Hospitalization (reduced)
  - Maternity and newborn care
  - Mental health / substance abuse / behavioral health
  - Prescription drugs (reduced)
  - Rehabilitative and habilitative services and devices
  - Laboratory services (reduced)
  - Preventive and wellness services and chronic disease management
  - Pediatric services including oral and vision care

Federal Register HHS Rules

- "Direct primary care medical home plan" = an arrangement where a fee is paid by an individual, or on behalf of an individual, directly to a medical home for primary care services, consistent with the program in Washington
- "Primary care services" = routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury

Federal Register HHS Rules

- "We considered allowing an individual to purchase a direct primary care medical home plan and separately acquire wrap-around coverage. However DPCMHs are providers, not insurance companies… allowing a separate offering would require consumers to make two payments for full medical coverage, adding complexity…"

Federal Register HHS Rules

- "While we recognize the importance of accreditation and quality assurance, we are not establishing that direct PCMHs be accredited in order to participate in QHP networks. We encourage QHP issuers to consider the accreditation, licensure, or performance of all network providers."
- "We do not interpret that phrase as including providers of non-primary care services, such as specialists."
- "We are not directing exchanges to create incentives for contracting with direct PCMHs. We encourage exchanges to promote, and QHP issues to explore, innovative models of delivery along the care spectrum."

Top 3 Legal Advisements

- If you decide to start a DPC practice:
- Consider the "Business of Insurance"
- Opt out of Medicare
  - (and avoid signing standard Private Insurance and Medicaid contracts)
- Go "all in"
  - Hybrid practices are legally riskier
  - Hybrid practices have higher overhead

Broad Predictions

- DPC will grow exponentially over the next five to ten years
- IRS will change Health Savings Account interpretation
- Wrap-around “catastrophic” insurance plans will be offered
- Will likely represent over half of the primary care market in 10 years
- Increased interest in primary care, physician ratio will improve
- Litigated victories against initial insurance commissioner challenges
- Second series of suits will later be filed based upon scope
- Triple aim actually achieved!

Any Questions?

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