

# Legal Challenges for the Start Up DPC Practice

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DPC Nuts & Bolts to 2.0

Irving, Texas

# Outline

- Contracting
  - Insurance Companies
  - Individual Patients
  - Employers
  - Vendors & Consultants
- Pure or Hybrid
  - Early Cash Flow
  - Opting Out of Medicare
- General Compliance

# Contracting – Insurance Companies

- Freedom of Contract
  - Often Individual Physician
  - Often at Physician’s Employer Level
- Separate LLC?
- Inpatient Only?
- Old Non-competes?
  - Use CPOM
  - Use new DPC status
- Notice of Termination
  - Often 90 days

# Contracting – Individual Patients (1)

- Consider your state law (DPC/Insurance Code)
- Scope (precisely defined)
- Billing (in arrears)
- Disclosures
  - “Not insurance”
  - Any relevant status (with Medicare, Medicaid, etc)
- Activation
- Termination
- Refundable
  - Enrollment fee (keep), other prepaids refundable

# Contracting – Individual Patients (2)

- Ongoing primary care (not insurance)
- Not an emergency (pt should call 911)
- No expectation to file 3rd party claims
- Agreement in isolation does not meet ACA
- I am enrolling voluntarily
- Nontransferable agreement
- For complaints – will first notify the practice
- Do NOT expect controlled substances

# Contracting – Employers (1)

- Employer Receives
  - Aggregated (blinded) outcomes data
  - A contract for payment
  - Charge a PMPM, not a PEPM
- Patient Receives
  - An Individual Contract
  - Flexibility to join or leave the practice
  - Privacy

# Contracting – Employers (2)

- Large Employers with Stop Loss
  - Long Sales Cycle
  - On-site vs near-site
  - Brokers (different language, plan design)
  - Third Party Administrators
  - Human Resources
- Small Employers (less than 50 & ACA exempt)
  - Short Sales Cycle
  - Often no other plans to worry about
  - Consider §4980(D) of IRC (\$100 per day excise tax)

# Contracting - Consultants

- Fee Arrangements
  - Can implicate “Unlawful Fee Splitting”
  - Can implicate “Corporate Practice of Medicine”
- Ask about actual **DPC** Experience!
  - DPC is not Concierge – wrong experience
  - Use Free Resources first



# Contracting – Vendors

- “We are HIPAA compliant!”
- Where is your BAA?
- Which services actually secure PHI?
- Training: 1) Your employees? 2) Ours?
- How is your data stored? Is it backed up?
- Have you been audited?
- Do you have a HIPAA Report on Compliance?
- How many DPC practices do you serve?
- How would you define DPC?

# Pure vs Hybrid

- Independent vs Network vs Employed
- Cash Flow Considerations
  - Gradual Transition or “lights off, lights on”
  - Traditional Moonlighting
  - “Opted Out” Moonlighting
- Patient Panel Predictions
  - Background (Medicare? Medicaid?)
  - Source (Individuals, Employers, Health Sharing)
  - Who is price sensitive in your community?

# Medicare “Opt Out” Considerations

- “Opt Out” = pure practice open to all ages
- Remain in = hybrid, FFNCS, or not open to all
- “Opted Out” Moonlighting is possible
  - Urgent / Emergent Care Exception
  - Workers Compensation
  - Hospice (purely administrative) role
  - Correctional (prison) medicine
  - Part time on-site direct primary care clinic

# Medicare “Opt Out” Logistics

- After June 17, 2015 – only need to file one affidavit (MACRA update)
- Quarterly Windows (due 30 days prior)
  - January 1, April 1, July 1, October 1
- Private Contract with the patient
- Do NOT “disenroll” or file form 1490s
- You can still order labs, prescribe, etc

# Medicare “Opt Out” Private Contract Terms

- Patient accepts full responsibility for payment
- Agrees not to submit a claim to Medicare
- Agrees that Medicare limits do not apply
- Supplemental plans may elect not to pay
- This is NOT an emergency situation

# Advertising Mistakes

- Unlimited
- 24/7
- Higher Quality
- Covered
- Utilization

# General Compliance (Yesterday)

- HIPAA
- Medicaid (KY vs TX)
- In Office Dispensing
- Pathology “Direct Billing” laws
- Laboratory “Direct Billing” laws (NY, NJ)
- Patient Abandonment (if practice transition)
- CLIA
- OSHA

# What if the patient asks (1)?

- Can I get out of the ACA “tax” just by signing up with your practice?
- I can’t come in to pick up my meds today, will you just mail them to my house?
- Will you code this as an “annual physical?”
- Will you swipe my HSA card?
- Will you fill out this prior authorization form?



## What if the patient asks (2)?

- I'm traveling out of state next week, can we just keep our follow up appointment via telemed?
- Can I NOT sign your standard HIPAA form?
- To leave the practice with a refund?
- To rejoin the practice?

# Questions?

- Email me [PHIL@dpcfrontier.com](mailto:PHIL@dpcfrontier.com)