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LEGAL BRIEFING: HEALTH LAW

NYSBA HEALTH LAW LIVE UPDATE: CONCIERGE MEDICINE V. PRIMARY CARE ~ Pg. 1 of 2

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January 25, 2017

**Concierge Medicine v. Direct Primary Care: Establishing and Structuring Innovative Physician Practice Models**

*This update is one of several updates drafted and published live from the New York State Bar Association's Annual Meeting in New York City – January 25, 2017*

Vito Grasso Executive VP, NYS Academy of Family Practitioners, Albany  
Philip Eskew, DO, Esq. MBA, Founder DPC Frontier, General Counsel Proactive MD, WMCI Site  
Medical Director, Corizon Health, Cheyenne, Wyoming  
Wayne Lipton, CEO, Concierge Choice Physicians, New York City

Primary care providers are being attracted more and more to direct payment models from patients using concierge models due to ever increasing administrative costs and decreasing margins. For Vito Grasso, he also finds that the collegiality and professional status for primary care physicians has been eroded by the ever increasing administrative crunch. Meeting the legal challenges leads physicians to spend less time with patients and more time performing administrative tasks.

Data shows that direct care models have been increasing over the last few years, even if in small ways. In 2012, Mr. Grasso reports, the number of physicians in direct care models was at 4%. In 2015 that number had increased to 6% and it is anticipated that the number has crawled higher since the last reported data. Imagining a world where 10% of all primary care physicians refuse to take insurance and work off of a direct payment model would surely have major impacts on the health care system overall.

Legal questions abound in this world. Philip Eskew, a physician and attorney, commented on the role of state laws and regulations interpreting direct primary care models as an “HMO” or “Insurance” when risk sharing models are involved. He also noted the role of the federal government on the models, where ACO statutes specifically allow for direct primary care as does the IRS.

In both Mr. Grasso's and Dr. Eskew's minds, direct primary care is differentiated from concierge medicine in how it is defined. Since concierge medicine is not legally defined, the expansion of direct primary care has a leg up in some states that have direct laws on the issue. New York conversely allows us to piece together a clear path forward with direct primary care by finding ways out of the insurance law and definition as a health maintenance organization. Among the tips given to avoid the HMO tag is to charge in arrears and not up front.

Speaking on behalf of concierge medicine, Mr. Wayne Lipton, showed how concierge models are less a revolution and more of a small modification within a vertically integrated system. Many models for concierge medicine exist, but one of the differences with direct pay care is that concierge models can keep you in “the system” of insurance that still exists. Hybrid models being developed in the concierge system

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helps to mitigate the risk for physicians starting to enter into this market who are concerned there won't be enough patients.

Primarily concierge models are seen in more urban settings right now, but the dynamics are shifting and some practices in rural areas are making the shift. The primary driver is the longer amount of time that physicians feel they can spend with their patients, including the use of technology like smart phones to have more communication.

On questions of quality, Mr. Lipton felt that both physician and patient participants likely skew the data towards people who care more about the management of their own care. This likely impacts any study or analysis of care and he therefore rejects many of the results that have been reported to date.

In drawing the distinction between concierge models and direct care models Mr. Lipton also felt that the concierge model's currently developed existence and track record makes it easier to understand.

If you have any questions about this Legal Briefing, please contact any attorney of our Firm at 585-730-4773.

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