

Direct Primary Care: An Emerging Alternative to Traditional Primary Care

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The Direct Primary Care (DPC) model is a type of retainer practice arrangement. Retainer practice arrangements generally feature a direct contract between a physician (or physician group) and a patient, where the patient pays a periodic fee in exchange for access to a defined range of primary care services. DPC practices charge this periodic fee but differ from traditional retainer practice arrangements in the following ways:



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- DPC arrangements do not bill third parties on a fee-for-service basis.
- Any per-visit charge (or cost to the DPC practice) must be less than the monthly equivalent of the periodic fee.

The services covered under a DPC arrangement vary by arrangement but typically include preventive care, basic illness treatment for both acute and chronic conditions, and care coordination.

DPC Legal Considerations

The primary regulatory compliance consideration in evaluating the legality of a DPC arrangement is whether a DPC practice is engaging in an insurance business by collecting a membership fee in exchange for providing a host of primary care services. If the practice is engaging in an insurance business, it must hold an insurance license and comply with a multitude of state insurance laws. DPC arrangements resemble the basic insurance relationship when an insured pays a premium to an insurer in exchange for the insurer covering the costs of insurable events.

New York law does not specifically address DPC arrangements, but New York has hinted how it would treat DPC arrangements in a 2009 Department of Financial Services (DFS) advisory opinion (OGC Op. No. 09-02-02 2009), which examined whether a New York medical practice that, in exchange for a monthly fee of \$79 per month, provided “unlimited visits” for “comprehensive medical services” and “unlimited sick visits” for an additional \$10 fee per visit was conducting an unlicensed insurance business.

The DFS concluded that the practice was engaged in an insurance business because the benefits that the practice provided were dependent on the happening of a “fortuitous event” (the need for health care) which was beyond the control of the practice and its patients. As a result, the practice needed an insurance license because the practice bore the risk of loss if the costs to provide services exceeded the monthly fees paid by its patients.

The opinion did not, however, categorically prohibit all such membership agreements in New York State. The DFS noted:

“However, a service plan where there is a prepaid membership fee, and certain services occasioned by the happening of a fortuitous event are offered for an additional fee per service which is

discounted from the usual fee, does not constitute the doing of an insurance business, and does not require an insurance license by the Department, provided that the fees cover the cost of rendering the service, including reasonable overhead.”

Key Takeaways

Until New York passes legislation to exclude DPC practices from “doing an insurance business,” New York providers considering the DPC model should do the following:

- Ensure that the regular, periodic fee to be charged to patients only includes coverage for non-fortuitous events like an annual physical or required vaccines.
- For services that address fortuitous events – e.g., sick visits – charge a separate fee and ensure that the fee to be charged exceeds the practice’s cost to render the service, including overhead costs.

DPC arrangements foster increased access to a patient’s primary care physician. Studies indicate that increased access to a patient’s primary care physician

may result in improved health outcomes.

Patients should be aware, however, that a DPC membership alone does not ensure comprehensive access to health care, including hospital and specialty care, and does not provide comprehensive coverage for non-primary care types of health care services.

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