Direct Primary Care: Legislative and Regulatory Update

AAFP Assembly

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What Is Direct Primary Care?

- Comprehensive Primary Care and Prevention Services
- Monthly Fee or Retainer: Payer Agnostic
- No Fee for Service Billing
- Medical Services - Not Insurance or a Health Plan
- Defined in ACA Sec. 1301 (a) (3) and state laws (WA 48.150 RCW)

- DPC Practices Identified in 37 States
- Median fee about $80 per member per month
- Improved Outcomes, Patient Satisfaction
Isn't DPC “Concierge” Medicine?

- **Concierge:** Provider access fees and non-covered services
  - *Patient bills insurance for services – still in a FFS environment*

- **DPC:** Completely outside insurance. Fees cover high access level *plus* all costs of primary care
  - *Misaligned FFS incentives, administrative costs gone from primary care*

- **DPC:** More affordable than concierge, usually lower than $100 per month

- **DPC:** Recognized health reform policy driving improved health outcomes and lower costs. Concierge may well improve care for some—*but only for those who can afford it*
DPC Can Reduce Health Costs by 20%
2013 data: DPC with employers

<table>
<thead>
<tr>
<th></th>
<th>Per 1,000 Qliance patients</th>
<th>Per 1,000 Non-Qliance patients</th>
<th>Difference (Qliance vs. Other)</th>
<th>Savings per patient per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>ER Visits</td>
<td>81</td>
<td>94</td>
<td>-14%</td>
<td>($5)</td>
</tr>
<tr>
<td>Inpatient (days)</td>
<td>100</td>
<td>250</td>
<td>-60%</td>
<td>$417</td>
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<tr>
<td>Specialist Visits</td>
<td>7,497</td>
<td>8,674</td>
<td>-14%</td>
<td>$436</td>
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<tr>
<td>Advanced Radiology</td>
<td>310</td>
<td>434</td>
<td>-29%</td>
<td>$82</td>
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<tr>
<td>Primary Care Visits</td>
<td>3,109</td>
<td>1,965</td>
<td>+58%</td>
<td>($251)</td>
</tr>
<tr>
<td>Savings Per Patient</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>$679</td>
</tr>
<tr>
<td>Total Savings per 1000 (after Qliance fees)</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>$679,000</td>
</tr>
<tr>
<td>% Saved Per Patient</td>
<td></td>
<td></td>
<td></td>
<td>20%</td>
</tr>
</tbody>
</table>

**Data Sources:** All claims data (except prescription claims) from carriers for selected large employers; Qliance EMR data; Employer eligibility data.

**Claims Attribution:** All claims incurred by Qliance patients prior to first Qliance visit were excluded; All employees with any interaction with Qliance included as our patients, even if the employee used another primary care provider (which is possible in some of the plan designs among clients); All claims incurred after any interaction with Qliance included, regardless of employee’s intent to use Qliance as their primary care provider; All non-primary care provider visits included under “specialist” category (such as physical therapy, acupuncture, etc.).

**Population:** Eligible members in employer-sponsored health plan; Employees only, to remove confounding factors from differences in dependent benefits structures and participation variances among clients.
American Academy Of Family Physicians

- DPC: A Centerpiece of AAFP’s Future of Family Medicine Project (2.0)

- DPC Benefits patients by providing substantial savings and a greater degree of access to, and time with, physicians.

- Gives family physicians a meaningful alternative to fee-for-service insurance billing.

- Rewards physicians for whole-person care, reducing negative FFS incentives, and third-party-payer billing overhead. DPC Benefits:
  - more time with patients
  - reduced patient volume
  - fewer medical errors
  - less exposure to risk
  - improved practice collections rates
  - zero insurance filing
Heritage Foundation Study on DPC

- DPC fixes problems with third-party payment, paperwork, and government bureaucracy.
- Data shows excellent outcomes, reduced costs.
- Policymakers should create less restrictive regulations for DPC:
  
  ... Reform the tax code to allow DPC payments through HSAs

- DPC encourages innovation and competition unlike the dysfunctional status quo

  ... the possibilities are endless.
DPC Policy Drivers:
Affordable Care Act Sec. 1301 (A) (3)

- Direct Primary Care Medical Homes may be offered in exchanges combined with insurance (QHP)
- Two plans together must ACA Essential Health Benefits requirements

HHS Rulemaking:
- CMS Rule Establishing Exchanges/QHPs
  - CMS-9989-P (RIN 0938-AQ67)
- DPC Medical Homes are **NOT** insurance
- Based on WA Direct Practice Act (RCW48-150)
- States by State Decisions by Exchange Boards

DPC in exchanges:
- Qliance/Coordinated Care – Washington Exchange (Centene)
- Nextera Health – Colorado Coop 2015
DPC State Legislation

- Defines DPC as a health benefit outside the scope of Insurance regulation:
  - Washington - 48-150 RCW
  - Louisiana – S.B. 516
  - Utah – UT 31A-4-106.5
  - Oregon - ORS 735.500
  - West Virginia- WV-16-2J-1
- Pending:
  - Michigan – S.B. 1033 (As passed by MI Senate)
  - Model Legislation – AAFP, DPCC
DPC Policy Barriers

- **Tax Code: - IRS HSA policy**
  - DPC considered a “second health plan” for HSAs (IRC 223 (c))
  - Not a qualified medical expense under (IRC 213 (d))
  - Not in keeping with ACA Essential Health Benefits Rules
  - Sec. 213 (d) qualified medical expenses: changes ahead?

- **DPC not offered in FFS Medicare/Medicaid** – the nation’s highest utilizers of health care
  - Qliance/Centene in Medicaid managed care in Washington
  - Iora Health/Humana in Medicare Advantage in 2015
  - SGR “Permanent Doc Fix” bills anticipate DPC as an “Advance Payment Model”

- **State Insurance Regulations**
  - Need to clarify that DPC practices fall outside insurance regulation
  - Some commissioners permissive
  - Other states need legislation
Congress to IRS: Apply ACA Definition of DPC to HSAs

- Sec. 213 (d) of Internal Revenue Code DPC payments not a qualified medical expense.

- Sec. 223(c) individuals with HDHP/HSA = no second health plan.

- ACA, state laws define DPC as a primary care service and not a health insurance plan, IRS does not.

- Sens. Cantwell, Murray, Rep. McDermott:
  - IRS: Please harmonize IRS policy with HHS ACA essential health benefit rules.

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, D.C. 20224

June 17, 2014

Dear Commissioner Koskinen:

We appreciate the time and effort the Internal Revenue Service (IRS) has dedicated to the implementation and enforcement of the Affordable Care Act (ACA) (P.L. 111-148). As you may know, one provision of the ACA, Section 1301 (a) (3), would allow direct primary care (DPC) medical homes to be offered in state marketplaces in combination with qualified health plans, as long as the two plans together fully satisfy plan standards under ACA. The Washington Health Benefit Exchange currently provides such an offering in the Seattle area.

Washington has long been an innovator in health care, and we are proud that our state has pioneered the development of direct primary care medical homes. In DPC medical homes, there are no pre-existing condition exclusions, no disagreements over covered treatments or insurance forms to be filled out, and no deductibles or co-pays. Instead, a single low monthly fee covers all primary care services. Additionally, Section 1301 (a) (3) is based on the precedent of a Washington state law, the Washington state Direct Practice Act, which defined direct practice standards and created appropriate consumer protections for patients in DPC medical homes. This state legislation, along with similar laws in other states, also makes it clear that while an employer may offer a DPC medical home as a health benefit, it is not an insurance product, and is not subject to insurance regulations.

On July 15, 2011, the Department of Health and Human Services (HHS) proposed federal regulations on ACA provisions relating to the treatment of direct primary care medical homes in affordable health insurance exchanges, (CMS-9997-F). The regulations clearly state in Sec. B, Part 156 (g) § 156.245: “Direct primary care medical homes are not insurance.” That rule became final without modification on March 12, 2012. The adoption of this rule makes it clear that a DPC medical home is a benefit that can be offered within an exchange, but on its own is not a health plan or insurance product subject to risk or capitalization requirements as insurers and HMOs.

Employers in our state, both small and large, see the value in this model and want to offer the DPC medical home as a benefit, often paired with an insurance plan that covers more expensive care and hospitalization. High deductible health plans (HDHP) are often well suited for a match with a DPC medical home. As noted above, ACA regulations promulgated by HHS have specified that DPC medical homes are not health insurance products. We have been
IRS Response

• IRS reviewing qualified medical expenses under IRC Sec. 213 (d)

• Will Consider Congressional Input

• Second Health Plan – Not limited to Insurance products

• Coverage would be permitted if DPC care restricted to preventive care.

June 30, 2014

The Honorable Patty Murray
United States Senate
Washington, DC 20510

Attention: Charlene MacDonald

Dear Senator Murray:

I am responding to your letter of June 17, 2014, regarding direct primary care (DPC) medical home plans. As you noted, DPC medical home plans can be offered in state marketplaces in combination with qualified health plans as long as the two plans together fully satisfy plan standards under the Affordable Care Act (ACA). You asked that the IRS and the Treasury Department review our policy and guidance in light of the ACA provision on DPC home plans.

The IRS and the Treasury Department are in fact reviewing the rules regarding what constitutes medical care expenses under section 213(d) of the Internal Revenue Code (the Code). That project is on the 2013-14 Treasury and IRS Priority Guidance Plan. We will consider your input as part of the process of promulgating that guidance.

You also commented on the fact that a DPC medical home plan constitutes a second health plan under section 223 of the Code relating to health savings accounts (HSAs). We recognize that the preamble to the proposed Health and Human Services regulations indicated that DPC medical home plans are not insurance, as you noted in your letter. However, the concept of a second plan under section 223(c)(1)(A)(ii) is not restricted to insurance.

Of course, coverage under a DPC medical home plan can still be paired with an insurance plan that covers more expensive care and hospitalization, such as a high deductible health plan (HDHP). For an individual to be eligible to make tax-deductible contributions to an HSA, however, the individual must be covered by an HDHP and no other plan that is not an HDHP, unless the other plan is disregarded coverage under section 223(c)(1)(B) or preventive care. A DPC medical home plan appears not to be one of the listed disregarded coverage plans in section 223(c)(1)(B). When that is the case, an individual would not be eligible to make tax-deductible contributions to an HSA while covered by both an HDHP and a DPC medical home plan, unless the DPC medical home plan provided only preventive care.
Family and Retirement Health Investment Act

- S.1031/H.R.2194
  - Hatch/Paulsen

- Sec. 116 clarifies that DPC is not a health plan

- Sec. 203 – DPC is a qualified medical expense

- Individuals with HSAs would be able to use DPC and pay fees with pre-tax HSA funds
Additional DPC Legislation

- **S. 2000: The SGR Repeal and Medicare Provider Payment Act of 2014**
  - Permanent SGR – “Doc Fix” DPC as “Alternative Payment Model”

- **H.R. 1133: Direct MD Care Act** – Bill Cassidy MD (R-LA)
  - Creates DPC Medicare and Dual Eligible Pilot

- **State Legislation:**
  - MI - S.B. 1033. LA - S.B. 516 Becomes Law,
  - Model Legislation
  - OK, TX, ID, Other states expected to introduce legislation