DPC SUMMIT

Legal 101: Opt Out of the System and Into Your DPC Practice – Ask the Right Legal and Accounting Questions

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AAFP1.CNF.IO

- Navigate to https://aafp1.cnf.io/ and tap the session titled "Legal 101: Opt Out of the System & Into Your DPC Practice - Ask the Right Legal and Accounting Questions"
- OR just point your phone's camera at the QR code to join directly

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Learning Objectives

1. Discuss options for managing Medicare, Medicaid, Tricare, and Workers' Compensation in a DPC practice, including opting out, hybrid billing, and state-specific private contracting.
2. Explore transitional considerations for moving to DPC, such as selecting malpractice insurance, handling departure penalties, and avoiding noncompete clauses.
3. Evaluate the feasibility of dispensing medications in your DPC practice, considering state regulations, inventory management, and accounting challenges.

Outline

- ADA
- CLIA
- GINA
- HIPAA & HITECH
- OSHA
- NPDB
- Dispensing Medications
- Medicare & Medicaid
- Medical Malpractice

OSHA > HIPAA > GINA

Americans with Disabilities Act
ADA – Patient Facing Considerations

- As DPC physicians we need to have ways for patients with **hearing**, **speech**, and **vision** disabilities to communicate. The ADA applies to **sign language** interpretation needs and has issued this guidance on the matter.
- It also applies to ways in which patients with **transportation difficulties may physically access** your office. Ramps/lifts/signs and other access challenges should be contemplated.
- Does a practice need to have translator services to patients without a disability (those that merely do not speak English)?
  - Not unless you are also accepting federal funding.
  - Those looking to purchase interpreting services should review "Appropriate Use of Medical Interpreters" Am Fam Physician. 2014 Oct 1;90(7):476-480.

https://www.dpcfrontier.com/americans-with-disabilities-act

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Americans with Disabilities Act
ADA – Employee Facing Considerations

- Triggered at the 15-employee FTE threshold
- If you have a disability and are qualified to do a job, the ADA protects you from job discrimination on the basis of your disability. Under the ADA, you have a disability **if you have a physical or mental impairment that substantially limits a major life activity**. The ADA also protects you if you have a history of such a disability, or **if an employer believes that you have such a disability, even if you don't**.
- To be protected under the ADA, you must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.

https://www.eeoc.gov/publications/ada-your-employment-rights-individual-disability

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Clinical Laboratory Improvement Amendments CLIA

- Even if you intend to only perform "waived testing" you still need to pay a fee (file for a waiver), you are subject to audits (to make sure you only do waived tests), and you must maintain extensive documentation (regularly updated) to prove compliance.
- Most DPC practices will likely want to go ahead and apply for a waiver though because these waived tests are commonly performed in physician offices.
- Remember that even if you (meaning the physician) do something as basic as using a microscope to review your own urine samples - then you have "gone too far" and are now operating beyond "waived testing." This action is labeled "Provider Performed Microscopy" and requires approval under 42 CFR 493 meaning that as summarized by AAFP you are "subject to Subparts H (Proficiency Testing), J (Patient test Management), K (Quality Control), M (Personnel), and P (Quality Assurance)."

Clinical Laboratory Improvement Amendments CLIA

- If you wanted to design your practice to avoid needing to register for CLIA at all (not even for their “waived labs” program):
- Order testing that is performed at another testing site
- Ask the patient to purchase and self administer a home test

https://www.dpcfrontier.com/clinical-laboratory-improvement-act

Genetic Information Nondiscrimination Act GINA

- "GINA prohibits **Federal Agencies** from **using** or **relying** on **genetic information** related to employees or applicants for any decision regarding **any aspect of employment**, including but not limited to: hiring, promotion, demotion, seniority, discipline, termination, compensation and any decision regarding terms, conditions or privileges of employment. As is true for all Federal anti-discrimination statutes, GINA also prohibits harassment of an employee or applicant because of his or her genetic information, as well as retaliation against an employee or applicant for filing a GINA-based charge of discrimination, participating in a genetic information discrimination proceeding (such as an investigation or lawsuit), or otherwise opposing discrimination made unlawful by GINA."
- GINA also applies to **private employers** with **15 or more employees**.

https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/genetic-information-nondiscrimination-act-of-2008/guidance

What is Genetic Information? GINA

- a disease or disorder in family members (**family history**);
- an individual's **genetic tests**;
- genetic tests of an individual's family members;
- genetic tests of any fetus of an individual or family member; or
- any request for or receipt of genetic services, or any participation in genetic testing or genetic counseling by an individual or family member.

https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/genetic-information-nondiscrimination-act-of-2008/guidance

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No Restrictions Based on Family History GINA

- "**An employer cannot reassign an employee, based on the employee's family medical history of heart disease**, from a job the employer believes would be too stressful and might eventually lead to heart-related problems for the employee. In short, any employment action based on or taken in reliance on genetic information, even an action that might be intended to benefit the employee, will violate GINA."

https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/genetic-information-nondiscrimination-act-of-2008/guidance

Do the Exceptions Swallow the Rule? GINA

- "Genetic information (such as family medical history) **may be obtained as part of health or genetic services, including wellness programs**, offered by the employer on a **voluntary** basis, if certain specific requirements are met."
- "**Family medical history may be acquired as part of the certification process for FMLA leave**, where an employee is **asking for leave to care for a family member** with a serious health condition."
- "Genetic information may be acquired through commercially and publicly available documents like newspapers, **as long as the employer is not searching those sources with the intent of finding genetic information** or accessing sources from which they are likely to acquire genetic information (e.g., websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination)."
- "Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace **where the monitoring is required by law** or, under carefully defined conditions, where the program is voluntary."
- Genetic information obtained based on **narrowly-drawn requests** for medical information in connection with **ADA "reasonable accommodations"** do not violate GINA.

Wellness > GINA; FMLA > GINA; Unsought Public Knowledge > GINA; OSHA > GINA; ADA > GINA

https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/genetic-information-nondiscrimination-act-of-2008/guidance

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What Should an Employer Take Away? GINA

- GINA <<< FMLA, ADA, OSHA
- GINA not violated for optional wellness programs or serendipitous news discovery
- It is recommended that **the following language** be included in any agency correspondence that seeks or could generate receipt of an employee's or applicant's medical information:
- "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of individuals or their family members. To comply with this law, we are asking you not to provide any genetic information when responding to this request for medical information. "Genetic information" that should not be disclosed pursuant to GINA includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, genetic information of a fetus carried by an individual or an individual's family member, and genetic information of an embryo lawfully held by an individual or family member receiving assistive reproductive services. 29 C.F.R. §1635.8 (b)(1)(i)(B)."
- Any questions regarding GINA's coverage or its application to any specific fact situation should be addressed to the Department of Labor's Civil Rights Center.

https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/genetic-information-nondiscrimination-act-of-2008/guidance

What does the HIPAA Acronym Stand for? HIPAA – Question 1

a. Health Information Privacy & Accountability Act
b. Health Information Portability & Accountability Act
c. Health Information Privacy & Administration Act
d. Health Information Portability & Administration Act
e. Hospital Insanity Provides Aloof Administration

https://www.dpcfrontier.com/hipaa

What does the HIPAA Acronym Stand for? HIPAA – Answer 1

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b. Health Information Portability & Accountability Act
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e. Hospital Insanity Provides Aloof Administration

The "P" is not for privacy! HIPAA is mostly describing how to share information.

How often are you required to update your HIPAA "**Risk Assessment**?" HIPAA – Question 2

a. Quarterly (Q 3 months)
b. Semi-Annual (Q 6 months)
c. Annually (Q 12 months)
d. Bi-Annually (Q 24 months)
e. Never – just "set it and forget it"

How often are you required to update your HIPAA "**Risk Assessment**?"

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a. Quarterly (Q 3 months)
b. Semi-Annual (Q 6 months)
c. Annually (Q 12 months)
d. Bi-Annually (Q 24 months)
e. Never – just "set it and forget it"

- Your Annual "Risk Assessment" is your chance to prove that you "give a darn" in the event of a breach and subsequent audit.
- This can greatly mitigate damages.

Which HIPAA form MUST be displayed on your practice website?

HIPAA – Question 3

a. HIPAA Risk Assessment
b. HIPAA Notice of Privacy Practices
c. HIPAA Treatment Consent Form
d. HIPAA Records Release Authorization Form
e. HIPAA Business Associate Agreement

Which HIPAA form MUST be displayed on your practice website?
HIPAA – Answer 3

a. HIPAA Risk Assessment (update it annually, don't post it)

b. HIPAA Notice of Privacy Practices

c. HIPAA Treatment Consent Form (no need to post)

d. HIPAA Records Release Authorization Form (no need to post)

e. HIPAA Business Associate Agreement (no need to post)

- The Risk Assessment is customized highly and updated annually. The other documents typically are of the standard "set it and forget it" variety.

How often are you (and your co-workers) required to do HIPAA training?
HIPAA – Question 4

a. Quarterly (Q 3 months)

b. Semi-Annual (Q 6 months)

c. Annually (Q 12 months)

d. Bi-Annually (Q 24 months)

e. Once, and then only repeat it if there is a breach

How often are you (and your co-workers) required to do HIPAA training?
HIPAA – Answer 4

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b. Semi-Annual (Q 6 months)
c. Annually (Q 12 months)
d. Bi-Annually (Q 24 months)
e. Once, and then only repeat it if there is a breach

- Your "annual training" will typically have a section focused on the privacy rule and the security rule.
- Make sure each employee completes this training and then preserve a record that it was completed. This training documentation and your "Risk Assessment" will be reviewed in the event of a breach.

How many days do you have to supply requested medical records?
HIPAA – Question 5

a. Five
b. Ten
c. Twenty
d. Thirty
e. Forty

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HIPAA – Answer 5

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c. Twenty
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- AND you may not refuse to supply them due to an outstanding bill
- BUT… you may explain where there is a delay and ask for an additional 30-day extension.

The state workers comp agency provides you with a valid subpoena demanding a copy of your patients' medical records.
HIPAA – Question 6

a. You MAY DECLINE this records request because you "don't do worker's comp"
b. You may refuse this records request because you did not treat the patient the day of the MVA
c. You MUST provide the requested information, you CANNOT charge a fee, you MAY log it in your Accounting of Disclosures Log
d. You MUST provide the requested information, you MAY charge a fee, you MUST log it in your Accounting of Disclosures Log
e. You MUST provide the requested information, you MUST charge a fee, you MAY log it in your Accounting of Disclosures Log

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e. You MUST provide the requested information, you MUST charge a fee, you MAY log it in your Accounting of Disclosures Log

Your "Accounting of Disclosures" Log is usually kept on paper (not in the EMR) and it must date back at least six years.

Which of the following would NOT be logged in your HIPAA Accounting of Disclosures Log?
HIPAA – Question 7

a. Subpoena from a local court in a criminal investigation signed by a judge
b. Subpoena from the state workers compensation agency signed by a bureaucrat
c. Subpoena from a defense attorney signed by the defense attorney
d. Subpoena from a plaintiff's attorney signed by your patient & the plaintiff's attorney
e. ALL of these must be logged

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At what point after the date of service are you permitted to shred old records?
HIPAA – Question 8

a. HIPAA does not specify – this is a state law question
b. Six years
c. Seven years
d. Eight years
e. Nine years

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You believe that a HIPAA breach occurred at the town hospital. You tell the patient that:
HIPAA – Question 9

a. He should get a medical malpractice attorney and file suit for millions in damages

b. He should contact local law enforcement

c. He should file a complaint with the Office for Civil Rights

You believe that a HIPAA breach occurred at the town hospital. You tell the patient that: HIPAA – Answer 9

a. He should get a medical malpractice attorney and file suit for millions in damages
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Which of the following items are "protected health information?" HIPAA – Question 10

a. Photographic image (not including the face)
b. Medical Record Number
c. IP Address
d. City, county, and state of residence (without exact street address)
e. All of the above are considered HIPAA PHI (Protected Health Information)

Which of the following items are “protected health information?”
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Which of the following should sign a business associate agreement with your practice?
HIPAA – Question 11

a. The general surgeon down the street where you routinely refer patients
b. The hospital down the street where you often admit patients and have privileges
c. The hospital down the street where you often admit patients but do NOT have privileges
d. An insurance company to which you are NOT credentialed but often requests info
e. Your accounting firm

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You offer sphenopalatine ganglion blocks to your patients with migraines. An urgent care across town referred a new patient to you for this particular procedure. With the referral the urgent care sent along records demonstrating that the patient had been to their facility weekly for acute severe migraines four weeks in a row. You can see the full office notes. You had not requested these notes and the patient tells you he agreed to the referral to see you today but he did not sign any records release with the urgent care.

HIPAA – Question 12

a. This is a HIPAA violation
b. This falls within the treatment exception
c. This falls within the payment exception
d. This falls within the operations exception

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These are the three broad categories of information sharing within HIPAA. T, P, & O

You are ordering a brain MRI for a patient with new onset seizures. He has a $6,000 high deductible health plan. With his initial seizure he stayed home and did not go to the ER. He has not spent anything towards his deductible this year. If he "uses" his insurance to get a "discount" price then his out of pocket price for the MRI will be $2,000 at the local "in network" hospital. The hospital offers $1,000 brain MRIs for patients without insurance. Under HITECH (Health Information Technology for Economic & Clinical Health Act):

HIPAA – Question 13

a. This patient has a right to demand that the hospital provide him with the $1,000 option
b. This patient has a right to demand that the hospital provide him with a cash price
c. This patient has to pay the insurance negotiated rate of $2,000
d. This patient has to initially pay the $2,000 rate and then may request a $1,000 refund.

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a. This patient has a right to demand that the hospital provide him with the $1,000 option

b. This patient has a right to demand that the hospital provide him with a cash price

c. This patient has to pay the insurance negotiated rate of $2,000

d. This patient has to initially pay the $2,000 rate and then may request a $1,000 refund.

Your patient decided that it was in his best interest to pay cash for a multiparametric prostatic MRI. To force the hospital to provide him with a cash price he invoked his rights under HITECH (Health Information Technology for Economic & Clinical Health Act). Under HITECH he is guaranteed the option to pay cash for a service for privacy purposes. The hospital must then avoid sharing the MRI results with his insurance company. This is because the insurance company can no longer rely on which HIPAA information sharing exception:

HIPAA – Question 14

a. Treatment

b. Payment

c. Operations

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HIPAA – Answer 14

a. Treatment

b. Payment

c. Operations

One year later the patient returns to the hospital for a prostatectomy. In this case he decided to use his insurance. The insurance company asks or his medical record to approve the procedure. The hospital shares his entire medical record including urology consult visits and the multiparametric prostate MRI results. Was this permitted under HIPAA?

HIPAA – Question 15

a. Yes, this lands within the treatment exception

b. Yes, this lands within the payment exception

c. Yes, this lands within the operations exception

d. No, this fails the treatment exception

e. No, this fails the payment exception

One year later the patient returns to the hospital for a prostatectomy. In this case he decided to use his insurance. The insurance company asks or his medical record to approve the procedure. The hospital shares his entire medical record including urology consult visits and the multiparametric prostate MRI results. Was this permitted under HIPAA?

HIPAA – Answer 15

a. Yes, this lands within the treatment exception
b. Yes, this lands within the payment exception
c. Yes, this lands within the operations exception
d. No, this fails the treatment exception
e. No, this fails the payment exception

Your DPC patient panel has 499 active patients. Your EMR released all records on the dark web.

HIPAA – Question 16

a. Notify the patients that this breach occurred with details within sixty days.
b. Notify the HHS Secretary of the breach within sixty days.
c. Notify prominent media outlets in your geographic area that a breach occurred.
d. All the above

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Your DPC patient panel has **501** active patients. Your EMR released all records on the dark web.

HIPAA – Answer 17

a. Notify the patients that this breach occurred with details within sixty days.

b. Notify the HHS Secretary of the breach within sixty days.

c. Notify prominent media outlets in your geographic area that a breach occurred.

d. All the above

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HITECH

- **HITECH Privacy Implementation:**
- 1) Have the patient sign a request that information relative to self-paid services not be disclosed (usually called a Restrictions on Uses and Disclosures Form)
  2) Flag this information so that it is not shared with the "health plan"
  3) Inform the patient about the need to make the same request downstream (pharmacies, labs, specialists)
- **HITECH Privacy Summary**
- All HIPAA "covered entities" MUST have a process and refusal to share PHI must be of patient's "own free will"
  Medicare (May accept cash payments, but limiting charges apply)
  Medicaid (May or may not provide an exception (no exceptions in KY & CO))
  HMO laws (state based) (May or may not provide an exception)
  Private Insurance Contracts (Federal law trumps terms of private agreements)
- For a detailed academic summary of the information above, please see my discussion here: Exercising Patient Rights Under the HITECH Act, Eskew P, J Am Phys Surg, 2019;24:50-52.

https://www.dpcfrontier.com/hitech

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HITECH

- All HIPAA "covered entities" MUST have a process and refusal to share PHI must be of patient's "own free will"
  - If the hospital refuses, patient may file a complaint with the HHS Office of Civil Rights https://www.hhs.gov/hipaa/filing-a-complaint/index.html
- Medicare (May accept cash payments, but limiting charges apply)
- Medicaid (Often no exception, certainly not in KY & CO))
  - HMO laws (state based) (Usually do not provide an exception)
- Private Insurance Contracts may prohibit it – who cares!
  - Federal law trumps the terms of private contracts
  - This is NOT an HHS defense for a nonresponsive hospital or specialist

https://www.dpcfrontier.com/hitech

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A worker presents to your office for a fitness for duty assessment. Which of the following questions do you need to answer as part of your assessment?

OSHA – Question 1

a. Can the worker perform essential job functions (based on a written list of those functions from the employer?
b. Can the worker perform work safely?
c. Does the worker meet any external standards (industry or government) to perform work?
d. Does the worker need accommodations to perform work?
e. All the above

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Which of the following workers have OSHA mandated medical surveillance exams?
OSHA – Question 2

a. Asbestos
b. Benzene
c. Cadmium
d. Lead
e. All the above

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a. Asbestos
b. Benzene
c. Cadmium
d. Lead
e. All the above

True or False? OSHA – Question 3

I am a small employer. We only employ ten people, so I don't need to worry about keeping OSHA records for injuries and illnesses (See Standard 1904(a)(2)). We also do not need to have a written fire prevention plan.

- True
- False

True or False?
OSHA – Answer 3

I am a small employer. We only employ ten people, so I don't need to worry about keeping OSHA records for injuries and illnesses (See Standard 1904(a)(2)). We also do not need to have a written fire prevention plan.

- **True**
- False

An employer is permitted to keep employee exposure records, including workplace hazardous exposure monitoring (i.e. noise levels, air monitoring), biological monitoring (i.e. blood lead level), analytical methodologies related to monitoring results, and/or safety data sheets (SDS's).

OSHA – Question 4

a. True, OSHA rules > HIPAA privacy for this limited data set

b. True, HIPAA does not apply if the record is generated by the employer

c. False, this data is protected unless there is state-based worker's compensation litigation

d. False, this data is protected by GINA (Genetic Information Nondiscrimination Act)

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When doing occupational health work which of the following laws can be applied to compel the release (or to refuse the release) of information?

OSHA Question 5

a. OSHA (Occupational Safety & Health Administration)
b. HIPAA (Health Information Portability & Accountability Act)
c. ADAAA (Americans with Disabilities Act Amendments Act)
d. GINA (Genetic Information Nondiscrimination Act)
e. All the Above

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c. ADAAA (Americans with Disabilities Act Amendments Act)
d. GINA (Genetic Information Nondiscrimination Act)
e. All the Above

OSHA Summary

1) If you are a solo DPC physician with zero employees - congratulations, you do not need to worry about OSHA.
2) Place the required OSHA poster on a wall in your practice where employees will see it
3) Review all standards, especially the Bloodborne Pathogen and Hazard Communication standards
    - Expect employees to complete reviews of each as part of annual training
    - This training typically accompanies HIPAA training

https://www.dpcfrontier.com/osha

No Dirty "M" Words (Even if accurate) Malingering, Manipulating, Munchausens

- Chart with an "open note" mentality – ideally big screen live format
- Belittling
  - Only bad physicians work in this clinic.
- Fawning
  - They say you are the best physician.
- Filibustering
  - Argues, changes the subject, does not want to leave
- Splitting
  - "But the other doctor prescribed it for me."
- Threatening
  - I'll report you to the board of medicine.

Paranoia querulans is a type of delusional disorder that involves persistent persecutory delusions, constant quarreling, and a tendency to sue. These patients would theoretically benefit from psychiatry, but will likely refuse to see them, or would simply sue them and everyone else they meet. Don't "pass the buck."

DPC SUMMIT

Medical Malpractice = Four Elements

- Duty
  - Most states: physician-patient relationship
  - Some states: Foreseeability of harm (**no free curbsides in Minnesota**)
  - Interpreted broadly to include collaboration, supervision and utilization management roles
- Breach
- **Causation**
  - (usually a "battle of the experts" unless it is a "res ipsa loquitur" case)
    - Many states require a named/certified expert before the case is allowed to proceed
  - Who was the cause? What percentage attribution? Joint or Several Liability?
  - What was the standard of care? (vary by specialty or geography?)
  - NEVER become a "free expert" by finger pointing
    - This rewards attorney for unnecessarily making you a defendant
- Damages
  - Economic (never limited by damages cap)
  - Noneconomic (pain, suffering, loss of consortium) (might be limited by damages cap)

DPC SUMMIT

Medical Malpractice Insurance
Occurrence vs Claims Made Policies

- An occurrence policy is preferred over a claims-made policy.
- Occurrence policies cover all acts that occurred during the term of coverage, even if the claim is filed after termination of the policy and/or your employment.
- Claims made policies only cover claims announced during the life of the policy, and thus "tail" coverage must be purchased upon cessation of the claims-made policy. Employers will often attempt to burden the physician with purchasing tail coverage, especially if the physician terminates the contract early.
- If employer has a claims made policy with a "built in tail" then this has the effect of an occurrence policy… if employer does not go bankrupt
- Pay attention to the minimum amounts of liability coverage recommended by your state. Note that some states cap medical malpractice non-economic damages, but the cap may only apply if you purchase the minimum qualifying amount of coverage.

https://www.jpands.org/vol23no1/eskew.pdf

DPC SUMMIT

Medical Malpractice Insurance
Occurrence vs Claims Made Policies

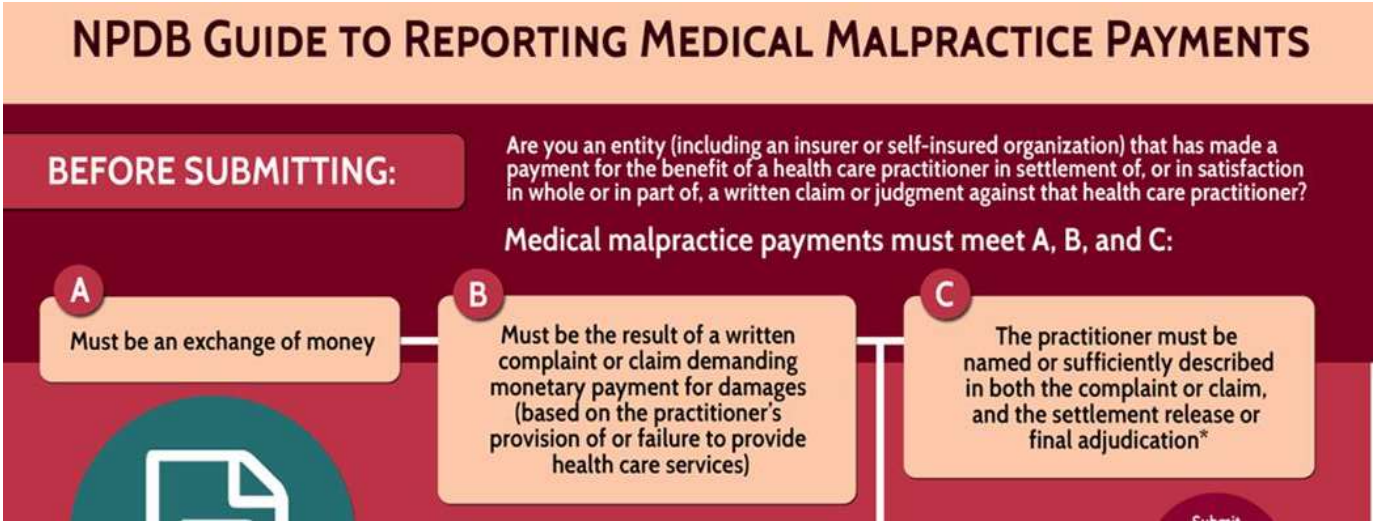
- Independent Broker
  - Shop multiple insurance carriers, compare reputations
  - DPC Discount (due to small panel size = fewer potential plaintiffs)
  - Does the state have a mandatory or optional "patient compensation fund"
  - Multiple policies needed if operating in multiple states?
  - Collaborative agreement liability? Part time roles? (Corrections, ER, Hospice)
- What else is included with your insurance coverage?
  - Legal expenses covered in the event of board complaint as well?
  - Risk mitigation CME? Medical informational database access?
  - Free legal advice with *potential* claim or medical board complaint
- Occurrence vs Claims Made + Tail (traditional vs built in)
  - Traditional Tail = Automatic purchase burden around $60,000 when you leave
  - Built-In Tail = Entity purchases tail, you bear purchase risk in event of bankruptcy
- If you decide to "go bare" without medical malpractice insurance
  - Note that insurance is required in CO, CT, KS, MA, NJ, RH, WI
  - Reforms & caps only apply to insured in IN, NE, NM, NY, PA, WY, WV

DPC SUMMIT

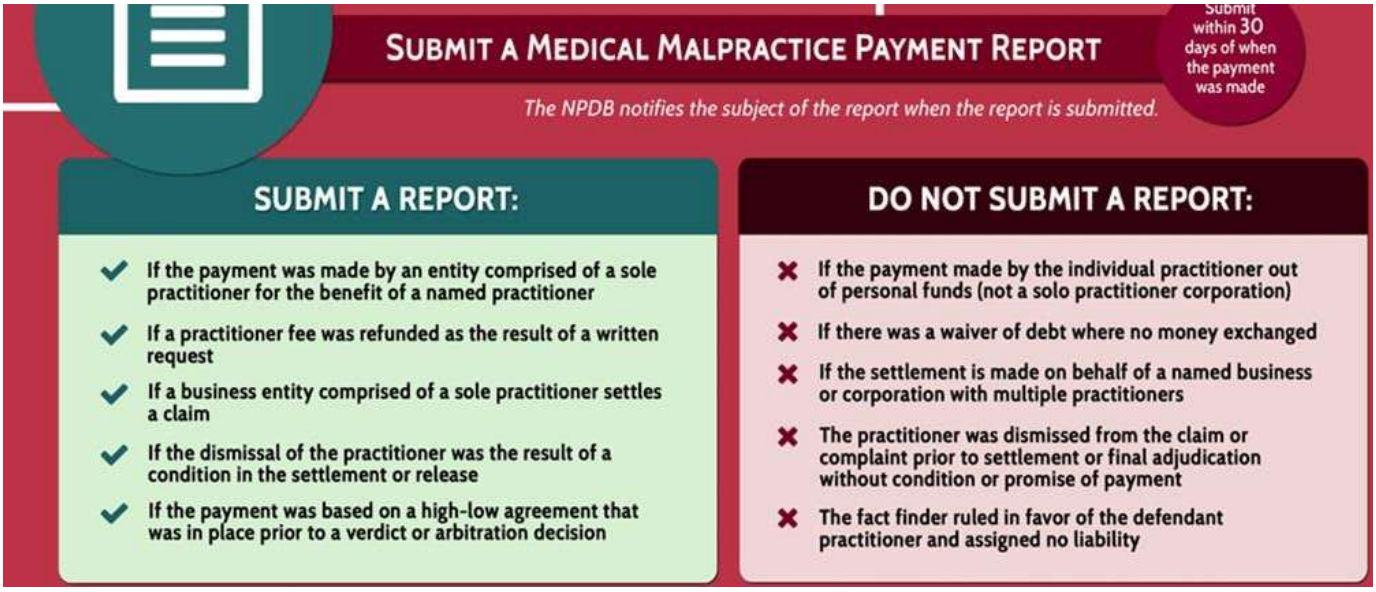
Potential Medical Malpractice Claim? You fear that there may be an allegation?

- Confidential emails to your attorney are protected from discovery
- Email the attorney in the "to" section and **NOT the "cc" section**. Also include the word confidential in the title of the email
- You may also seek advice from your medical malpractice carrier and the carrier may involve local counsel when needed
- Is there a "consent to settle" clause in place?
- Will you have assistance with a "mere" board complaint?
- Is this some other form of litigation? (ADA, Civil Rights)
- Will there be a report to the National Practitioner Data Bank?

National Practitioner Data Bank



National Practitioner Data Bank



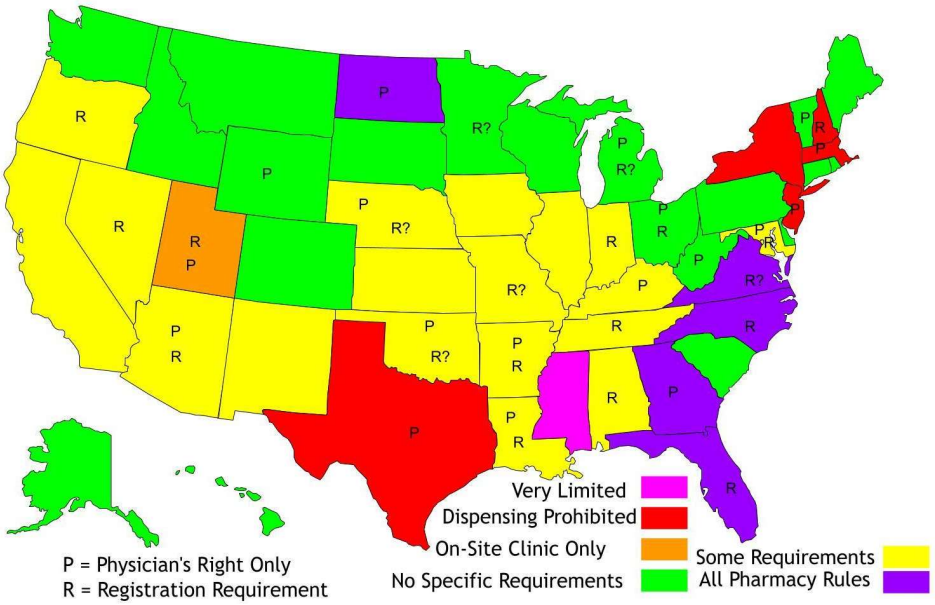
DPC SUMMIT

What type of activity must be reported to the National Practitioner Data Bank?

- What if there was a verbal concern and threat of litigation followed by a monetary exchange? **No**
- What if no individual practitioners were named and only the corporation was named? **No**
- What if the payment was made by a sole practitioner out of personal funds? **No**
- What if the company just agreed to waive amounts owed (forgive debt) by the patient? **No**

DPC SUMMIT

Physician Dispensing Regulations



https://www.dpcfrontier.com/dispensing-medications

Dispensing Medications

- Florida - $100 fee
- Louisiana - $75 fee
- **Maryland - $1050 fee, long application**
- **Massachusetts – Prohibited**
- Montana – $ Fee with registration (amount unknown)
- Nebraska - **$625 Fee**
- **Nevada - $300 Fee (paid again with any address change), voluminous application & rules**
- **New Hampshire – Prohibited**
- **New Jersey – Prohibited** (except **student health ctr**, fam planning/prenatal clinics)
- **New York – Prohibited** except if **>10 miles from a pharmacy**, allergies, oncology, AIDS, or **affiliated with a postsecondary institution**
- North Carolina - $75 Fee
- Oregon - $100 Fee
- **Texas – Only in specific rural areas (county with fewer than 5,000 people, office not within 15 miles of a pharmacy), otherwise prohibited**
- **Utah – onsite clinic only** (unless oncology med), **prepackaged (no pill counter)**, $110 fee
- Virginia - $240 fee

Registration?
Fee?
Physician only – or NP or PA too?
May you repackage?
Delegation? (zero in Mississippi)
Policy Autonomy? (See GA example)

https://www.dpcfrontier.com/dispensing-medications

Medicare
"Opting out" or Participating?

- The ONLY reason to opt out of Medicare is if you want to
  - 1) see a Medicare patient,
  - 2) under private contract,
  - 3) for covered services.
- **All three of these must be true**, or it is not worth your trouble
- Most new DPC physicians DO NOT opt out immediately
  - They build a wait list of Medicare patients that want to join the practice
  - The waitlist grows over time
  - The desire to moonlight decreases over time (as DPC revenue increases)
- When the waist is long enough and moonlighting is no longer necessary then a two-year commitment is less scary

https://www.dpcfrontier.com/opting-out-of-medicare

DPC SUMMIT

Medicaid – "Ordering, Referring & Prescribing" Participating? Disenroll?

- NEVER under any circumstance in Kentucky or Colorado
- "Ordering, Referring & Prescribing" (ORP Status)
  - The Medicaid equivalent of "opting out"
  - You are still credentialed with Medicaid, but promise not to bill them
- Participating
  - Traditional enrollment that generally prohibits privately contracting for "covered services"
- Disenroll
  - If your state does not offer ORP status then this might be your only choice
  - Outside of KY and CO you have the ability to privately contract
  - Medicaid will likely ignore your orders for labs, meds, referrals, DME, etc.

https://www.dpcfrontier.com/medicaid

DPC SUMMIT

Wyoming = Best State Law Defining DPC
Wyo. Stat. Ann. § 26-1-104(a)(vi) and § 26-22-301(c)

- This (insurance) code does not apply to:
- (vi) A direct primary care agreement. A direct primary care agreement means a written agreement that:
- (A) Is between a patient or their legal representative and a health care provider;
- (B) Allows either party to **terminate** the agreement in writing, **without penalty or payment of a termination fee**, at any time or after notice as specified in the agreement which notice shall not exceed sixty (60) days;
- (C) **Describes the health care services to be provided** in exchange for payment of a periodic fee;
- (D) **Specifies the periodic fee required and any additional fees** that may be charged;
- (E) May allow the periodic fee and any additional fees to be paid by a third party;
- (F) **Prohibits the provider from charging or receiving additional compensation for health care services included in the periodic fee**; and
- (G) Conspicuously and prominently **states that the agreement is not health insurance and does not meet any individual health insurance mandate that may be required by federal law**.

https://www.dpcfrontier.com/wyoming

DPC SUMMIT

How Large Do You Want Your Practice To Be?

	FTE Trigger	Notice	Training	Details
ACA	50			Affordable Care Act mandates health insurance purchases at the fifty-employee threshold.
ADA	15			Debates about "reasonable" accommodations
FMLA	50	Poster		12 weeks unpaid (except for benefits) time off per 12-month period
HIPAA			Annual	Breach rates go up as employee numbers and turnover increase (intelligence and education become more challenging)
OSHA	11	Poster	Annual	At 11 you must keep an injury log
EEOC	15	Poster		Risk of litigation around pregnancy, gender identity, GINA information, Age 40+, Retain employment records, report workforce data
FLSA		Poster		$7.25 Federal Minimum Wage, Overtime (1.5x) if more than 40 hours per week, No holiday pay required. Poster Required. Applies to employers with annual sales of $500,000 or more or involved in interstate commerce. (You likely have a state minimum wage requirement that already applies as well.)
GINA	15			It is illegal for an employer to require an applicant or employee to answer questions about family medical history during an employment-related medical exam (fitness for duty or pre-employment physical). Genetic info can be obtained as part of a voluntary wellness program or to comply with FMLA request documentation.

CLIA = only self administered testing? HIPAA = pursue the narrow “country doctor” exception?

DPC SUMMIT

Practice Expansion Via Telemed or Traditional

- As you add states of operation your administrative burden increases exponentially. Each state has a different medical practice act and different set of rules and requirements that must be followed.
- Consider the case of Dr. Margaret Daley Carpenter of Nightingale Medical. She is a New York resident licensed to see patients in NY, TX and LA that prescribed medications for abortion that are legal in NY but illegal in TX and LA.
  - Medical boards might debate jurisdiction
  - Attorney generals might debate jurisdiction and disagree on enforcement
  - Location of the patient at time clinical relationship is established matters

Accounting Introduction

- Cash vs Accrual Basis

- Balance Sheet
- Assets = Liabilities (Debt) + Owner's Equity
- Carries over year to year
- What is an asset? Something that has future value (prepaid rent, accounts receivable)
- What is an expense? Something that had past value (utility payments)

- Income Statement
- One year period – how much money did we make? How well did we use our assets?
- Timing and estimation are the hard parts

- Cash Flow Statement (accrual vs cash method)
- Where is the money located?
- Is the business fundamentally sound?
- Compare cash flow from operating activities (vs financing vs investing activities)

Accounting Introduction

- Accounts Receivable and Medical (Bad) Debt
- Membership management software should be used to accept payment around time of service
  - Typically no more than a month in advance (avoiding an escrow burden)
  - Typically no more than a month behind (avoiding a creditor burden)
- Credit Reporting Rules (Medical Debt treated differently)
  - Tip! Patients should not "acknowledge" old debt (3-6 yrs?) by paying any amount (with hospitals) as this will restart the clock
- Local Hospital Litigation Rates (frequency of litigation for nonpayment)
  - Contested? Wage Garnishment? Local Small Claims Court Rules
  - Reference Pricing Price Transparency Pursuits via HITECH

Detailed Reading List (Reminders from 2024)

- State Medical Practice Act
  - Definition of Direct Primary Care (often carved out of insurance code)
  - Collaboration Rules, Ownership (CPOM) rules, Fee splitting (marketing) rules, Specific CME rules
  - Dispensing regulations (may also requiring reading board of pharmacy documents)
- Medicare Provider Manual language
  - Preserve full moonlighting flexibility (wait for waitlist to ↑ and moonlighting to ↓)
  - No third parties except for Medicare (hybrid) but paired with RPM & CCM (less annoying than FFS)
  - No third parties except for PACE program work (Tricare pilot? Indian Health Service?)
  - Opt out of Medicare (2-year commitment) – moonlighting in correctional medicine (maybe VA, hospice, IHS)
  - Play the old fee for noncovered services (old-style concierge) legal game (not cheap, keeps 3rd part FFS hassles)
- Medicaid Provider Manual language
  - Participating Status, OPR Status, or Not enroll (disenroll)
- Contracts
  - Medical Malpractice Insurance Agreement (appropriate amounts? Included benefits?)
  - Old & New Employment Agreements (negating noncompetes, avoiding paybacks, timing your post-bonus departure)
  - Stopping third party insurance agreements (watch notice timelines, navigate any patient abandonment concerns)
  - Brokers, Marketers, EMRs, Labs, Wholesalers, Membership Management, Payroll / HR / Accounting / Benefits software
  - DPC patient membership agreement & Large Employer Service Agreements & Health Sharing Ministry or TPA Agreements
- HIPAA and HITECH Compliance
  - Hospitals often violate patient's rights (this is easier as a small DPC practice) Ransom wear insurance? (via vendor?)
- False Claims Act – Risk with contracted billing? Leaving (retiring) as a whistleblower?
- Sham Peer Review - Do you *want* to have any hospital privileges?

Speaker Information

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AOA Subspecialty Board Certified in Correctional Medicine
AOA Subspecialty Board Certified in Addiction Medicine
AOA Certificate of Added Qualifications in Occupational Medicine
FAA Designated Aviation Medical Examiner
CDME Certified FMCSA Medical Examiner

Live Content Slide

When playing as a slideshow, this slide will display live content

Social Q&A for Legal 101: Opt Out of the System & Into Your DPC Practice - Ask the Right Legal and Accounting Questions

QUESTIONS?

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