DEPARTMENT OF
Managed
Health Care

Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency

Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814-2725
Your Telephone number here -Phone
Your FAX number here -Fax
Your email address here

THIS IS NOT AN INTERPRETIVE OPINION

May 15, 2009

[redacted]

RE: INQUIRY REGARDING CONCIERGE MEDICAL PRACTICE

Dear [redacted]:

Thank you for your January 30, 2009 inquiry to the Department of Managed Health Care ("DMHC" or "Department") regarding your client's proposed "concierge" medical practice ("Program"). Pursuant to California Health and Safety Code section 1344, the DMHC has the discretion to issue interpretive opinions resolving questions of law that arise under the Knox-Keene Act ("Act"). In this case, the DMHC declines to issue a formal opinion. However, I reviewed the pertinent law and can provide limited informal guidance based on the information you provided.

Background of your request

You state that the Program proposes to charge up to 200 patients a basic monthly fee in exchange for certain pre-defined health care services. Although these services have yet to be fully defined, you anticipate they will include items such as 24-hour physician access, annual executive-style physicals, next-day appointments, nutrition and wellness counseling, and other services typically not covered by Medicare or private-sector health insurance plans. Fees would at all times be paid out-of-pocket by each participating patient, and your client would not submit any claims for reimbursement for services rendered through the Program.

The specific issues you raise are:

1. Whether the proposed Program constitutes a health care service plan for purposes of the Act; and

2. Whether the Program qualifies for an exemption from the licensing requirements of the Act.

Discussion

1. The proposed Program constitutes a health care service plan under the Act.

Health and Safety Code section 1345, subdivision (f)(1), defines a health care service plan as:

> Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

The Program appears to charge a prepaid or periodic charge. A prepaid charge is a charge issued in advance of any health care services rendered and a periodic charge is a charge recurring at regular intervals. So far, there has only been one exception where a charge issued prior to the rendering of health care services does not constitute a prepaid charge – if the payment is made in advance to a provider solely for ease of administration and the provider returns any unused portion of the advanced payment upon request, the advanced payment is essentially a fee-for-service payment for a specific number of services instead of a prepaid or periodic charge. Your correspondence indicates that the Program will charge each patient a basic monthly fee in exchange for certain pre-defined health care services. Consequently, without additional facts to the contrary, the Program proposes to charge a prepaid or periodic charge.

The Program also includes health care services because it offers subscribers and enrollees physician services and preventive health services in exchange for a fee. The Act does not specifically define the term "health care services," but defines "basic health care services" to include physician services (including consultation and referral) and preventive health services.[1] Physician services offered by the Program include services such as "24-hour physician access." Other services, such as "next-day appointments," "annual executive-style physicals," and "nutrition and wellness programs," also constitute physician services if performed by a physician, or preventive health services if rendered by a non-physician (Title 28, California Code of Regulations section 1300.67(a) defines preventive health services to include "under a physician's supervision, reasonable health appraisal examinations on a periodic basis" and "effective health education services"[2]).

Finally, the proposed Program "arranges" for the provision of health care services to subscribers or enrollees. According to the Care Entrée decision, a plan "arranges" to provide healthcare services within the meaning of section 1345, subdivision (f)(1), when it, among other things, makes preparations for the provision of health care services, plans for the provision of health care services, brings about agreements or contracts for the provision of health care services, takes measures for the provision of health care services, or gives instructions for the provision of health care services.[3] Here, the Program makes preparations for the provision of health care

[1] Health & Saf. Code § 1345, subd. (b).
[2] Cal. Code Regs., tit. 28, § 1300.67, subd. (a).
[3] In the Matter of the Cease and Desist Order Issued to The Capella Group, Inc., d/b/a Care Entrée (2006) OAH No. N2005100840, at <http://www.dmhc.ca.gov/healthplans/gen/pdecisions/ccgi.pdf> [as of May 15, 2009].

services by enrolling members and assigning each member as a patient, plans for the provision of health care services by limiting the number of patients to 200, enters into agreements or contracts with patients for the provision of physician services or preventive health services, takes measures for the provision of health care services by examining patients and determining which health care services to provide, and gives instructions for the provision of heath care services by referring patients to specialists as necessary.

Thus, the Program constitutes a health care service plan and must obtain a license to operate as such.[4]

2. Based on the facts as submitted, the Department cannot determine whether or not the Program qualifies for an exemption.

The director of the DMHC may, in her discretion, exempt an entity from the Act if she finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under the Act and if the regulation of the persons or plan contracts is not essential to the purposes of the Act.[5] Based on the facts set forth in your January 30, 2009 inquiry, the DMHC does not have any evidence that the Program satisfies these requirements. For example, your correspondence does not explain how an exemption for concierge medical practices would not be detrimental to the subscriber or enrollee in the event they fail to receive adequate health care services. Moreover, your correspondence does not explain how an exemption for concierge medical practices would not adversely affect the ability of licensed plans to maintain an affordable, accountable, and robust managed care delivery system.

Thank you for submitting your request to the Department. This informal guidance letter is based on the information you provided. Should any of the facts change, this guidance letter may be impacted as well. If you have any additional questions or wish to provide more detailed information, please contact me at (916) 324-5735.

Sincerely,

David Bae
Staff Counsel
Office of Legal Services

DB:db

[4] Health & Saf. Code § 1349.
[5] Health & Saf. Code § 1343, subd. (b).