

99-055

PROFESSIONS AND OCCUPATIONS: MEDICINE AND OTHER HEALING ARTS.

INSURANCE: HEALTH SERVICES PLANS — HEALTH MAINTENANCE ORGANIZATIONS.

Whether violation of practice of medicine and other specialties has occurred requires factual determination by Board of Medicine or other appropriate regulatory authority. Physician-patient contract establishing prepayment plan for provision of professional services is not health services plan or health care plan established by health maintenance organization that is subject to insurance licensure and regulation by State Corporation Commission.

The Honorable Thomas G. Baker Jr.
Member, House of Delegates
November 29, 1999

You request guidance regarding a specific contractual arrangement between a physician and her patients.

A physician has designed three medical care payment plans for her patients labeled "Contractual Outpatient Medical Care for the Uninsured or Poorly Insured" ("plan program").¹ The plans are arranged according to age groupings and health status.² Patients pay an annual cost for each plan. The contract specifies the coverages that patients who have paid their annual cost will receive and also lists coverages that are excluded from the plans.³ You ask whether the plan program violates any state statute regarding the provision of medical care or medical insurance. You also inquire whether there are any special applications, requirements or regulations to oversee or monitor the plan program. You include with your request an opinion from the Bureau of Insurance of the State Corporation Commission concluding that the plan program is exempt from licensure as a health services plan.⁴

With respect to statutes governing the provision of medical services, §§ 54.1-2900 through 54.1-2973 of the *Code of Virginia* define the practice of medicine and other specialties regulated by the Board of Medicine (the "Board"), establish eligibility requirements for licensure in the Commonwealth, and detail the unprofessional conduct that may subject a licensee of the Board to professional discipline.⁵ The limited facts presented do not suggest any violation of these statutory provisions. A particular violation of any such statutes, however, requires a factual determination to be made by the Board or other appropriate regulatory authority.⁶

With respect to whether the plan program violates state insurance statutes, the State Corporation Commission is the state agency charged with regulation of insurance companies.⁷ Chapter 42 of Title 38.2, §§ 38.2-4200 through 38.2-4235 governs health services plans. Section 38.2-4200(B) provides:

Nothing contained in this chapter shall prohibit any physician
(i) as an individual, ... from entering into agreements directly with
his own patients, ... involving payment for professional services
to be rendered or made available in the future.

The program plan is an agreement entered into between the physician and her patients. The agreement sets forth an annual cost for each of three plans covering or excluding specific medical care services. Based on these limited facts, including the assertion that the payment plan as specified in the contract will be offered to the physician's patients, it is my opinion that the

program plan is an agreement directly entered into by the physician and her patients⁸ involving payment for the physician's services, and, therefore, falls within this exception.

Additionally, a recognized principle of statutory construction is that the interpretation given to a statutory provision by the state agency charged with its enforcement is entitled to great weight.⁹ The Bureau of Insurance of the State Corporation Commission concludes that the program plan is exempt from licensure as a health services plan pursuant to § 38.2-4200. I concur in the Bureau's determination that the program plan is not a health services plan subject to insurance licensure.

It is also my opinion that the program plan is not a health care plan subject to the requirements of Chapter 43 of Title 38.2, §§ 38.2-4300 through 38.2-4323. Chapter 43 governs the establishment and licensure of health maintenance organizations. Specifically, § 38.2-4300 defines "health maintenance organization" as "any person who undertakes to provide or arrange for one or more health care plans." This statute defines "health care plan" as "any arrangement in which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services ... as distinguished from mere indemnification against the cost of the services, on a prepaid basis."

Generally, prepaid health care plans are organizations licensed under Title 38.2 and fall within the definition of "insurance company."¹⁰ A 1990 opinion addressing the issue of whether a self-insured employee benefit plan is a "health care plan" under Title 38.2 notes that "the definitions in § 38.2-4300 indicate that a 'health care plan' is a plan provided by a 'health maintenance organization' that actually arranges for or provides health care services."¹¹ The opinion concludes that, "unless it is established as a licensed health maintenance organization, a self-insured employee benefit plan does not offer 'health care plan[s].'"¹² Similarly, it is my opinion that a contract between a physician and her patients establishing a set payment to cover the provision of specific services does not make the physician a "health maintenance organization" administering a "health care plan" as contemplated by Chapter 43 of Title 38.2.

With respect to your final inquiry, because it is my opinion that the program plan constitutes a contract between a physician and her patients and is not subject to the insurance regulatory authority of the State Corporation Commission, I am aware of no regulations of the Commission that would apply to such a plan.

¹You include a copy of the physician's plan program with your letter.

²The ages under the three plans range from 4 to 65 and over, and health status ranges from basically healthy to two or more chronic diseases.

³Coverages under the three plans include unlimited office visits; up to four basic in-office laboratory tests, if needed; routine physicals; sample drugs, if available; and the shots and EKGs specified under plans two and three. Excluded coverages include nonsampled drugs, specialized laboratory tests, specialist physician costs, hospital care, and x-rays.

⁴Letter from Douglas C. Stolte, Deputy Commissioner, Financial Regulation Division, Bureau of Insurance, State Corporation Commission, to you (June 4, 1999). I note that this opinion is premised on the assumption that the physician is contracting directly with her own patients and that the plan program is not a vehicle for direct marketing or solicitation.

⁵1992 Op. Va. Att'y Gen. 147, 148.

⁶Compare 1984-1985 Op. Va. Att'y Gen. 230, 231 (concluding that determination of whether physician who dispenses medications to his own patients solely for their own convenience, as

opposed to dispensing them for supplementation of his income, is factual question to be resolved on individual case basis by Boards of Medicine and Pharmacy).

⁷"All companies, domestic, foreign, and alien, transacting or licensed to transact the business of insurance in this Commonwealth are subject to ... regulation by the [State Corporation] Commission." Section 38.2-200(A).

⁸*Compare* § 32.1-127.1:03(B) (defining "patient" as "a person who is receiving or has received health services from a provider").

⁹*Forst v. Rockingham*, 222 Va. 270, 276, 279 S.E. 2d 400, 403 (1981); Op. Va. Att'y Gen.: 1990 at 175, 176; 1989 at 354, 356.

¹⁰"*Insurance company*' means any company engaged in the business of making contracts of insurance." Section 38.2-100. The Commissioner of Insurance of the State Corporation Commission administers "the insurance laws of this Commonwealth." *Id.* (defining "Commission," "Commissioner of Insurance"). See 1982-1983 Op. Va. Att'y Gen. 645, 646 (concluding that prepaid health care plans are organizations licensed under Chapter 42 of Title 38.2 and would therefore fall within definition of "insurance company").

¹¹1990 Op. Va. Att'y Gen. *supra* note 9, at 176.

¹²*Id.*