

South Carolina Department of Insurance

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

Financial Regulation & Solvency Division
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Columbia, South Carolina 29201

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March 28, 2016

Walter H. Cartin, Esquire
Parker Poe Adams & Bernstein, LLP
1201 Main Street, Suite 1450
Columbia, SC 29201

Re: Living Well Family Medicine
Proposed Concierge Medicine Practice

Dear Mr. Cartin:

After reviewing the proposed Concierge Medicine Practice and applicable state law, we have concluded that the proposed program, as represented in your letter dated January 27, 2016, does not constitute insurance as that term is defined under South Carolina law. Set out below is a summary of the Department's analysis.

South Carolina Code Ann. §38-1-20(5) defines insurance as a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. After a review of the proposed Concierge Medicine Practice, the Department does not consider it to fall within the definition of insurance as defined in S.C. Code § 38-1-20 (25). The Concierge Medicine Practice as described in your letter does not contain an indemnification component and there is no traditional "transfer of risk."

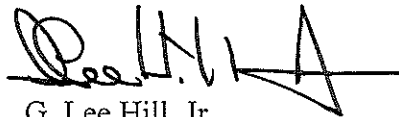
South Carolina Code Ann. §38-33-20(8) defines a health maintenance organization to mean "...a person who undertakes to provide or arrange for basic health care services to enrollees for a fixed prepaid premium." The South Carolina Code provides that "basic health care services" means "...emergency care, inpatient hospital and physician care, and outpatient medical services." S.C. Code Ann. 38-33-20(1) The description of the Concierge Medicine Practice in your letter represents that the program does not provide or arrange for basic health care services as defined in S.C. Code Ann. 38-33-20(1).

It is our understanding from reviewing the documentation provided in your letter that:

1. The services to be provided under the proposed program are limited to medical care provided by Dee H. Carter, M.D. There is no provision for payment to any other individual or entity nor will services be provided by any individual or entity other than the physicians and employees of Dee H. Carter, M.D., Living Well Family Medicine, LLC.
2. Monthly membership dues will be paid at the end of each month and are designed to provide access to the services provided by Dee H. Carter, M.D., Living Well Family Medicine, LLC. The patient will be charged after the patient has access to the services provided under the Agreement.
3. The plan as outlined does not involve a risk transfer but rather operates as a payment to secure access to physician's services.
4. The fact that this plan is not health insurance will be printed in bold type on the membership agreement signed by members and on any printed materials associated with the program.
5. Program materials will not be distributed to insurance agents and no solicitation or contract will be made with insurance agents to promote program membership.

For these reasons and based upon the continued accuracy of the representations in your letter the Department has concluded that the proposed Concierge Medicine Practice does not constitute the business of insurance or a health maintenance organization and is not subject to regulation by the South Carolina Department of Insurance. Should my understanding of the terms of the proposed plan not be accurate or should the terms and conditions of the plan change at any time, please advise us immediately so that we might review those changes.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Lee Hill, Jr.", with a stylized flourish at the end.

G. Lee Hill, Jr.
Deputy Director
Financial Regulation & Solvency Division
SC Department of Insurance

cc: Michael Shull
Chief Financial Analyst



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Charleston, SC
Charlotte, NC
Columbia, SC
Raleigh, NC
Spartanburg, SC

January 27, 2016

RECEIVED

JAN 27 2016

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

VIA HAND DELIVERY

Rachel Y. Harper, Esquire
Associate General Counsel
South Carolina Department of Insurance
1201 Main Street, Suite 1000
P.O. Box 100105 (29202)
Columbia, SC 29201

Re: **Living Well Family Medicine
Proposed Concierge Medicine Practice**

Dear Ms. Harper:

On behalf of our client, Dee H. Carter, M.D., I am writing to request that the Department review the information provided herein and issue a written letter determining that the concierge medicine practice Dr. Carter proposes to establish is not "insurance," as that term is defined by South Carolina law. See S.C. Code Ann. § 38-1-20(25).

Dr. Carter owns and operates Living Well Family Medicine, LLC ("Practice"), a South Carolina limited liability company, with its principal, and sole, place of business located at 214 Old Chapin Road, Lexington, South Carolina 29072. The Practice is a family medicine practice, and Dr. Carter is the sole physician practicing at the Practice.

Dr. Carter proposes to establish a concierge medicine practice ("Proposed Concierge Program"). Dr. Carter plans to practice solely as a concierge medical physician effective April 1, 2016, at which time she will opt out of participation in the Medicare program and decline to accept all forms of third-party insurance. Dr. Carter will operate solely on an established fee for service basis through an executed agreement with the patient.

In order to assist the Department in its assessment of the Proposed Concierge Program, I have reproduced the questions the Department presented in inquiry of another unrelated concierge practice. Of course, we will provide upon request any additional information that the Department might require.

- 1. What type of medical practice is involved? Is it an individual or group practice? If it is a group practice, are all physicians in the group involved with the program and available to see any patient who is a member or must a member only see his or her primary physician in the group?**

As noted above, Dr. Carter is a family medicine physician, and the Practice is a family medicine practice. Dr. Carter is currently the sole physician practicing at

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the Practice. She is assisted by a licensed practical nurse ("LPN"). Although there are no current plans to do so, the Practice could expand in the future to include other family medicine physicians or mid-level practitioners (i.e., physician's assistants, nurse practitioners). In that event, all providers would participate in the Proposed Concierge Program and would treat each other's patients as necessary.

2. ***Please provide a copy of all documents to be used in connection with the program, including any brochures, marketing material, and a copy of the contract with the individuals signing up for the program. What type of evidence of membership will be provided to members? If this will be in the form of a membership card, please provide a copy.***

The Practice has not yet developed any marketing materials; however, any marketing materials which might be developed would be similar to marketing materials for a traditional primary care practice, with the exception that the alternative pricing model would be highlighted.

Prior to receiving services, each patient who wishes to participate in the Proposed Concierge Program will execute a Concierge Medicine Patient Agreement ("Agreement"), a copy of which is enclosed for your reference. The Agreement clearly sets forth the rights, duties, and obligations of the patient and the Practice. Each patient will be provided a copy of the Agreement upon execution. No membership cards will be provided; however, the Practice will maintain a copy of the fully-executed Agreement.

3. ***Will there be any medical underwriting? Will there be any pre-existing condition exclusions or limitations?***

There will not be any medical underwriting or pre-existing condition exclusions or limitations. The sole limitations with respect to the care provided are related to the scope of Dr. Carter's practice. For example, the Agreement expressly provides that Dr. Carter does not provide obstetrical, mid-wife, or other similar services. Other types of services that may be outside of Dr. Carter's scope of practice will likewise not be provided under the Agreement. Should a patient require or request health care services that the Practice is unable to provide, the Practice will make an appropriate referral.

4. ***How will the program be advertised or marketed? Who will collect the membership fee? Will this program be marketed to the uninsured only? Will Medicare or Medicaid patients be allowed to join as members?***

In addition to word-of-mouth advertising and referrals from other providers, the Practice plans to meet with local employers to present membership as an employee benefit for employers with high-deductible health plans.

The Practice will collect the membership fee directly from the patients in accordance with the terms of the Agreement. The membership fee is charged each month at the end of the month. Thus, the patient will only be charged after the patient has access to the "Services" provided under the Agreement.

The program will be marketed to all patients, both insured and uninsured; however, the Practice will not accept any governmentally funded health care program benefits (e.g., Medicare, Medicaid) or any other private insurance. In fact, Dr. Carter will opt out of participation in the Medicare program. In order to comply with the requirements for opting out of Medicare, all patients covered by Medicare will be required to execute a Medicare Beneficiary Acknowledgement form, a copy of which is enclosed for your reference, which explains their rights as a Medicare patient.

5. *Will there be any deductibles or co-pays?*

There are no deductibles or co-pays. The monthly fee covers all the "Services" provided under the Agreement. The patient will be charged additional fees for medicines dispensed, if the patient opts to have the Practice dispense medications. Also, the patient will be required to pay additional fees to cover any required laboratory or other diagnostic tests.

6. *What is the 'specified period of time' that the contract will cover? How is termination of the contract handled?*

The term of the Agreement is month-to-month until terminated. The patient may terminate the Agreement at any time, and any fees due will be pro-rated through the date of termination. The Practice may terminate the Agreement upon thirty (30) days written notice.

7. *Once the initial membership fee is set, is it subject to change? What are the contract provisions regarding a future change in the amount of the fee?*

Yes, the fee is subject to change; however, the patient would be given no less than thirty (30) days prior notice before any change in the pricing schedule would take effect.

8. *Are routine exams, well-checks covered? Is there any prescription drug coverage? Are there any provisions for payment to third parties, not employed directly by the practice? Are outside pathology fees for reading certain tests included?*

Any services provided by the Practice are covered by the membership fee, and all services covered are set forth in the Agreement. There is no prescription drug coverage. The patient has the option to have certain medications dispensed by the Practice. The costs of any medications dispensed will be an additional charge which will be billed to the patient at the end of the month along with the membership fee. The Practice contracts with a laboratory (Quest). The patients will pay the Practice the agreed upon price for the laboratory services. The lab will bill the Practice, and the Practice will bill the patients. The membership fee does not cover the costs of labs or any other diagnostic testing.

9. *Will there be any limits on the number of members? What does the practice plan in the event enrollment exceeds expectations?*

Rachel Y. Harper, Esquire
January 27, 2016
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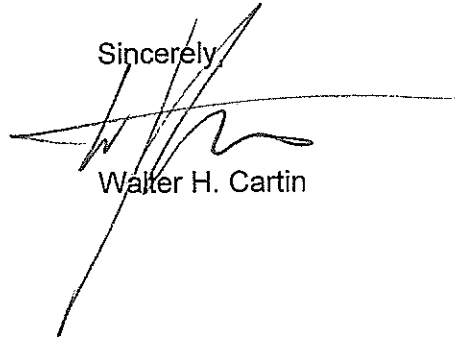
The Practice will be limited to approximately 600 patients. As soon as the Practice reaches the desired number of patients, the Practice will stop taking new patients.

As noted above, included for your review are the Agreement and all exhibits, including the Medicare Beneficiary Acknowledgement form. Based upon the foregoing, the Proposed Concierge Program should not meet the definition of insurance. Therefore, I respectfully request that the Department issue a written determination that the Proposed Concierge Program is not insurance under South Carolina law and is not subject to regulation by the Department.

If I can provide you with any additional information or documentation, please do not hesitate to contact me. Thank you, as always, for your prompt attention to this matter.

With best regards, I am

Sincerely

A handwritten signature in black ink, appearing to read 'Walter H. Cartin', is written over a horizontal line. The signature is stylized and somewhat cursive.

Walter H. Cartin

WHC

cc: G. Lee Hill Jr.
Dee H. Carter, M.D.