

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 817

Introduced by Riepe, 12; Hilkemann, 4; Hughes, 44; Kolterman, 24;
Stinner, 48.

Read first time January 08, 2016

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to health care; to adopt the Direct Primary
- 2 Care Agreement Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known and may be
2 cited as the Direct Primary Care Agreement Act.

3 Sec. 2. (1) It is the intent of the Legislature to promote personal
4 responsibility for health care and cost-effective delivery of health care
5 by enabling the innovative use of direct primary care practice agreements
6 for primary medical care in order to improve access to medical care,
7 reduce the use of emergency departments for primary care, and allow
8 emergency departments to treat emergencies more effectively and reduce
9 costs.

10 (2) The purpose of the Direct Primary Care Agreement Act is to
11 confirm that direct primary care agreements that meet the requirements of
12 the act do not constitute insurance or function as a qualified health
13 plan pursuant to any federal mandates.

14 Sec. 3. For purposes of the Direct Primary Care Agreement Act:

15 (1) Direct agreement means a direct primary care agreement entered
16 into on or after the effective date of this act meeting the requirements
17 of section 4 of this act;

18 (2) Direct patient means an individual or family that is party to a
19 direct agreement and is entitled to receive primary care services under
20 the direct agreement from the direct provider;

21 (3) Direct provider means (a) a physician or nurse practitioner who
22 is licensed under the Uniform Credentialing Act, who specializes or is
23 board-certified in general practice, family medicine, internal medicine,
24 or pediatrics, and who provides primary care services through a direct
25 agreement, (b) a group of physicians or nurse practitioners who are
26 licensed under the Uniform Credentialing Act, who specialize or are
27 board-certified in general practice, family medicine, internal medicine,
28 or pediatrics, and who provide primary care services as a group through a
29 direct agreement, or (c) an entity that sponsors, employs, or is
30 otherwise affiliated with a group of physicians or nurse practitioners,
31 which physicians or nurse practitioners are licensed under the Uniform

1 Credentialing Act, specialize or are board-certified in general practice,
2 family medicine, internal medicine, or pediatrics, and provide only
3 primary care services as a group through a direct agreement if (i) the
4 entity is wholly owned by the group of physicians or nurse practitioners
5 or is a nonprofit corporation exempt from taxation under section 501(c)
6 (3) of the Internal Revenue Code of 1986 and (ii) the entity is not
7 otherwise regulated as a health care service contractor, health
8 maintenance organization, or disability insurer. Such an entity is not
9 prohibited from sponsoring, employing, or being otherwise affiliated with
10 other types of health care providers not engaged in a direct agreement;

11 (4) Direct service charge means a charge for primary care services
12 provided by, or to be provided by, the direct provider to the direct
13 patient. Direct service charge includes a charge in any form, including a
14 periodic retainer, membership fee, subscription fee, or other charge paid
15 under a direct agreement;

16 (5) Patient's representative means a guardian or other person
17 holding a power of attorney for health care; and

18 (6) Primary care means general health care services of the type
19 provided at the time a patient seeks preventive care or first seeks
20 health care services for a specific health concern. Primary care may
21 include, but not be limited to:

22 (a) Care which promotes and maintains mental and physical health and
23 wellness;

24 (b) Care which prevents disease;

25 (c) Screening, diagnosing, and treating acute or chronic conditions
26 caused by disease, injury, or illness;

27 (d) Providing patient counseling and education; and

28 (e) Providing a broad spectrum of preventive and curative health
29 care over a period of time.

30 Sec. 4. (1) In order to be a valid direct agreement for purposes of
31 the Direct Primary Care Agreement Act, a direct agreement between a

1 direct provider and a direct patient or the patient's representative in
2 which the direct provider charges a direct service charge as
3 consideration for being available to provide and for providing primary
4 care services to the direct patient shall meet the following
5 requirements:

6 (a) A direct agreement shall be in writing;

7 (b) A direct agreement shall be signed by the direct provider or an
8 agent of the direct provider and the direct patient or the direct
9 patient's representative;

10 (c) A direct agreement shall describe the scope of the primary care
11 services included in the direct agreement;

12 (d) A direct agreement shall state each location where primary care
13 services may be provided and whether out-of-office services are included;

14 (e) A direct agreement shall specify the direct service charge and
15 any other charges for primary care services not covered by the direct
16 service charge;

17 (f) A direct agreement shall specify the duration of the direct
18 agreement, whether renewal is automatic, and procedures for renewal if
19 required;

20 (g) A direct agreement shall specify the terms of the direct
21 agreement and the conditions upon which the direct agreement may be
22 terminated by the direct provider, including at least thirty days' notice
23 to the direct patient in accordance with section 71-2085;

24 (h) A direct agreement shall state that the direct agreement is
25 terminable at will by written notice from the direct patient to the
26 direct provider;

27 (i) A direct agreement shall state that if a party provides written
28 notice of termination of the direct agreement, the direct provider is
29 required to refund to the direct patient all unearned direct service
30 charges within thirty days after the date of the notice of termination;

31 (j) A direct agreement shall prominently state in writing that the

1 direct patient is required to pay the direct provider for any service not
2 specified in the direct agreement and not otherwise covered by insurance;
3 and

4 (k) A direct agreement shall include a notice that reads
5 substantially as follows:

6 NOTICE: This direct primary care agreement does not constitute
7 insurance and is not a medical plan that provides health insurance
8 coverage for purposes of any federal mandates. This direct primary care
9 agreement only provides for the primary care services described in the
10 agreement. It is recommended that insurance be obtained to cover medical
11 services not provided for under this direct primary care agreement. You
12 are always personally responsible for the payment of any additional
13 medical expenses you may incur.

14 (2) A direct provider shall ensure that a copy of a direct agreement
15 is given to each direct patient at the time the patient signs the direct
16 agreement.

17 Sec. 5. A direct provider shall provide a written disclaimer on or
18 accompanying each application for primary care services under a direct
19 agreement with the direct provider and any guidelines distributed by or
20 on behalf of the direct provider that informs a patient of his or her
21 financial rights and responsibilities and that states that the direct
22 provider will not bill a health insurance carrier for services covered
23 under the direct agreement. The disclaimer shall also include a notice
24 that reads substantially as follows:

25 NOTICE: This direct primary care agreement does not constitute
26 insurance and is not a medical plan that provides health insurance
27 coverage for purposes of any federal mandates. This direct primary care
28 agreement only provides for the primary care services described in the
29 agreement. It is recommended that insurance be obtained to cover medical
30 services not provided for under this direct primary care agreement. You
31 are always personally responsible for the payment of any additional

1 medical expenses you may incur.

2 Sec. 6. (1) A direct provider shall not refuse to accept a new
3 direct patient or discontinue care to an existing direct patient solely
4 because of the patient's health status.

5 (2) A direct provider shall provide at least sixty days' advance
6 notice to an existing direct patient of any change to the direct service
7 charge applicable to the patient.

8 (3) A direct provider shall not pay for health care services covered
9 by an agreement rendered to patients by direct providers other than the
10 direct providers in the same direct primary care practice or their
11 employees.

12 Sec. 7. (1) A direct agreement is not insurance and is not subject
13 to Chapter 44.

14 (2) Neither a direct provider nor an agent of a direct provider is
15 required to obtain a certificate of authority or license under Chapter 44
16 to market, sell, or offer to sell a direct agreement.

17 (3) A direct provider shall not bill an insurer for services
18 provided under a direct agreement. A patient may submit a request for
19 reimbursement to an insurer if permitted under a policy of insurance.
20 This subsection does not prohibit a direct provider from billing
21 insurance for services not provided under a direct agreement.

22 Sec. 8. A direct provider may accept payment of direct service
23 charges directly or indirectly from third parties. A direct provider may
24 accept all or part of a direct service charge paid by an employer on
25 behalf of an employee who is a direct patient. A direct provider shall
26 not enter into a contract with an employer relating to direct agreements
27 between the direct provider and employees of that employer other than to
28 establish the timing and method of the payment of the direct service
29 charge by the employer.

30 Sec. 9. A direct agreement shall not be sold or transferred by
31 either party without the written consent of the other party to the direct

1 agreement.

2 Sec. 10. Subject to the restrictions established in the Direct
3 Primary Care Agreement Act, a direct provider may accept payment of
4 direct service charges directly or indirectly from the medical assistance
5 program under the Medical Assistance Act or any entity contracting with
6 the State of Nebraska to provide managed care in the medical assistance
7 program subject to any necessary approval from the federal Centers for
8 Medicare and Medicaid Services.

9 Sec. 11. A direct provider may provide primary care services to a
10 patient who is not a party to a direct agreement with that provider and
11 may receive payment for the services.