

LEGISLATIVE BILL 817

Approved by the Governor March 30, 2016

Introduced by Riepe, 12; Hilkemann, 4; Hughes, 44; Kolterman, 24; Stinner, 48; Baker, 30; Brasch, 16; Fox, 7; Coash, 27; Schnoor, 15; Davis, 43; Groene, 42; Kintner, 2.

A BILL FOR AN ACT relating to health care; to adopt the Direct Primary Care Agreement Act.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

(3) Direct provider means (a) a physician or nurse practitioner who is licensed under the Uniform Credentialing Act, who specializes or is board-certified in general practice, family medicine, internal medicine, or pediatrics, and who provides primary care services through a direct agreement, (b) a group of physicians or nurse practitioners who are licensed under the Uniform Credentialing Act, who specialize or are board-certified in general practice, family medicine, internal medicine, or pediatrics, and who provide primary care services as a group through a direct agreement, or (c) an entity that sponsors, employs, or is otherwise affiliated with a group of physicians or nurse practitioners, which physicians or nurse practitioners are licensed under the Uniform Credentialing Act, specialize or are board-certified in general practice, family medicine, internal medicine, or pediatrics, and provide only primary care services as a group through a direct agreement if (i) the entity is wholly owned by the group of physicians or nurse practitioners or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and (ii) the entity is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer. Such an entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct agreement;

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

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

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

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

(b) Care which prevents disease;

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

(d) Providing patient counseling and education; and

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

Sec. 4. (1) In order to be a valid direct agreement for purposes of the Direct Primary Care Agreement Act, a direct agreement between a direct provider and a direct patient or the patient's representative in which the direct provider charges a direct service charge as consideration for being available to provide and for providing primary care services to the direct patient shall meet the following requirements:

(a) A direct agreement shall be in writing;

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

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

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

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

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

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

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

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

(j) A direct agreement shall prominently state in writing that the direct patient is required to pay the direct provider for any service not specified in the direct agreement and not otherwise covered by insurance; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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