

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 727
Finance

(Senator Lam)

Insurance Law - Application to Direct Primary Care Agreements - Exclusion

This bill defines a “direct primary care agreement” and specifies that such an agreement is not health insurance, a health benefit plan, or long-term care insurance, nor is it subject to provisions governing health insurance or nonprofit health benefit plans. The bill also exempts a primary care provider (or agent) that provides primary care services in accordance with a “direct primary care agreement” from insurance producer licensing requirements.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Direct primary care agreement” means a written contract in which a primary care provider agrees to provide primary care services to a patient for a specified fee and period of time and that (1) is between a patient (or the patient’s legal representative) and a licensed primary care provider that provides specified services; (2) is signed by the patient (or the patient’s legal representative) and the primary care provider (or an agent); (3) authorizes either party to terminate the agreement on written notice; (4) requires that unearned funds be returned to the patient on termination of the agreement; (5) describes the primary health care services to be provided and any ongoing care for which there may be an additional fee; (6) specifies the amount of the periodic fee and any additional fees;

(7) specifies the duration of the agreement and any automatic renewal periods; (8) prohibits the patient from being required to pay more than 12 months of periodic fees in advance; (9) prohibits the primary care provider from billing a third party on a fee-for-service basis; (10) may include a per visit fee; (11) conspicuously states that the agreement is not health insurance and does not meet any individual health insurance mandates; and (12) includes a specified statement about when a primary care provider may or may not decline to accept or discontinue care to a patient.

Current Law: “Health insurance” means insurance of human beings against (1) bodily injury, disablement, or death by accident or accidental means or the expenses of bodily injury, disablement, or death by accident or accidental means; (2) disablement or expenses resulting from sickness or childbirth; and (3) expenses incurred in prevention of sickness or dental care. “Health insurance” includes accident insurance, disability insurance, and each insurance appertaining to health insurance. “Health insurance” does not include workers’ compensation insurance.

For purposes of premium rate review conducted by the Maryland Insurance Administration, “health benefit plan” means (1) a health insurance contract, a nonprofit health service plan contract, or a health maintenance organization contract that includes benefits for medical care or (2) a certificate of health insurance issued or delivered to a Maryland resident under a contract issued to an association located in the State or any other state. “Health benefit plan” does not include coverage only for accident or disability income insurance, coverage issued as a supplement to liability insurance, liability insurance, workers’ compensation, automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, and other specified coverage. “Health benefit plan” is similarly defined with respect to the Maryland Health Benefit Exchange.

Before a person acts as an insurance producer in the State, the person must obtain an insurance producer license and, if acting for an insurer, an appointment from the insurer. Insurance producer licensing requirements do not apply to insurers; specified officers, directors, or employees of an insurer; specified individuals who perform administrative services related to mass marketed property and casualty insurance; specified employers and associations and related officers, directors, employees, and trustees; specified employees of an insurer or organization employed by an insurer; persons whose activities are limited to advertising without the intent to solicit insurance; specified nonresidents who sell, solicit, or negotiate contracts of insurance for commercial property and casualty risks; and salaried, full-time employees who counsel or advise their employer relative to the insurance interests of the employer.

Background: According to the American Academy of Family Physicians (AAFP), the direct primary care (DPC) practice model provides an alternative to fee-for-service billing, charging patients a fee (typically \$30 to \$500 per month) that covers all or most primary

care services, including clinical, laboratory, consultative services, care coordination, and comprehensive care management. Patients are encouraged to have a high-deductible health insurance plan to cover services not included in the DPC agreement. A DPC practice model differs from a concierge model, which requires a fee for enhanced access to the physician and continues to bill insurance for all services.

Per AAFP, the DPC practice model has traditionally been treated as health insurance, but states have gradually moved to exempt DPC from insurance regulations and to instead establish rules governing the model, such as restrictions that prohibit these practices from billing insurers for consultations on a traditional fee-for-service basis.

According to the Direct Primary Care Coalition, at least 32 states (including Virginia and West Virginia) have enacted legislation defining DPC agreements and excluding such agreements from insurance regulation, with legislation pending in 12 states. This bill reflects model state legislation from the Direct Primary Care Coalition.

Small Business Effect: Although several DPC practices already exist in Maryland, the bill may make it easier or more attractive for physicians to establish a DPC practice.

Additional Information

Prior Introductions: SB 315 of 2019 received a hearing in the Senate Finance Committee, but no further action was taken. HB 315 of 2019 received a hearing in the House Health and Government Operations Committee and was subsequently withdrawn. HB 718 of 2018 received a hearing in the House Health and Government Operations Committee and was subsequently withdrawn. Its cross file, SB 531, received a hearing in the Senate Finance Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): American Academy of Family Physicians; Direct Primary Care Coalition; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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