SENATE BILL 685

C3 1lr2076

By: **Senator Lam**
Introduced and read first time: February 3, 2021
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Insurance Law – Application to Direct Primary Care Agreements – Exclusion

FOR the purpose of authorizing the Health Education and Advocacy Unit in the Division of Consumer Protection of the Office of the Attorney General to assist certain consumers in understanding direct primary care agreements; requiring certain primary care providers to provide the Unit with certain information under certain circumstances; altering the definition of "health insurance" for the purpose of excluding certain direct primary care agreements from the application of certain provisions of insurance law; providing that certain provisions of this Act apply to a direct primary care agreement or direct primary care provider if the direct primary care agreement does not allow the direct primary care provider to take certain actions; providing that certain provisions of insurance law do not apply to certain direct primary care agreements or direct primary care providers; making conforming changes; defining certain terms; and generally relating to the application of insurance law to direct primary care agreements.

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–4A–02(b)(1)
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – Insurance
Section 1–101(a), 11–601(a), 18–101(a), and 31–101(a)
Annotated Code of Maryland
(2017 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 1–101(p)(3), 10–103(b)(7) and (8), 11–601(d)(2)(iii) and (iv), 15–101, and

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

18–101(f)(3)(ii) and (iii)
Annotated Code of Maryland
(2017 Replacement Volume and 2020 Supplement)

BY adding to
Article – Insurance
Section 1–401 and 1–402 to be under the new subtitle "Subtitle 4. Direct Primary Care Agreements"; 10–103(b)(9), 11–601(d)(2)(v), 14–101.1, 18–101(f)(3)(iv), and 31–101(g)(6)
Annotated Code of Maryland
(2017 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

13–4A–02.

(b) (1) (i) The Unit may assist health care consumers in understanding their health care bills **[**and**],** third party coverage, **AND DIRECT PRIMARY CARE AGREEMENTS,** in identifying improper billing or coverage determinations, and in reporting any billing or coverage problems to appropriate entities, including the Division, the Attorney General or other governmental agencies, insurers, or providers.

(ii) Whenever the Unit requests information from an insurer, nonprofit health service plan, **[**or**]** health maintenance organization**, OR PRIMARY CARE PROVIDER THAT PROVIDES DIRECT PRIMARY CARE SERVICES IN ACCORDANCE WITH A DIRECT PRIMARY CARE AGREEMENT** in order to assist a health care consumer for the purposes provided in this paragraph, the insurer, nonprofit health service plan, **[**or**]** health maintenance organization**, OR PRIMARY CARE PROVIDER** shall provide the information to the Unit no later than 7 working days from the date the insurer, nonprofit health service plan, or health maintenance organization received the request.

Article – Insurance

1–101.

(a) In this article the following words have the meanings indicated.

(p) (3) "Health insurance" does not include**:**

(I) workers' compensation insurance**; OR**

(II) A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN SUBTITLE 4 OF THIS TITLE.

SUBTITLE 4. DIRECT PRIMARY CARE AGREEMENTS.

1–401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "DIRECT PRIMARY CARE AGREEMENT" MEANS A WRITTEN CONTRACT BETWEEN A PATIENT OR A LEGAL REPRESENTATIVE OF THE PATIENT AND A DIRECT PRIMARY CARE PROVIDER THAT:

(1) REQUIRES A PRIMARY CARE PROVIDER TO PROVIDE DIRECT PRIMARY CARE SERVICES TO AN INDIVIDUAL PATIENT FOR A SPECIFIED FEE AND PERIOD OF TIME;

(2) DESCRIBES:

(I) THE DIRECT PRIMARY HEALTH CARE SERVICES TO BE PROVIDED IN EXCHANGE FOR PAYMENT OF A PERIODIC FEE; AND

(II) ANY ONGOING CARE FOR WHICH AN ADDITIONAL FEE WILL BE CHARGED;

(3) SPECIFIES THE AMOUNT OF THE PERIODIC FEES AND ADDITIONAL FEES DESCRIBED IN ACCORDANCE WITH ITEM (2) OF THIS SUBSECTION;

(4) SPECIFIES THE DURATION OF THE AGREEMENT AND ANY AUTOMATIC RENEWAL PERIODS;

(5) AUTHORIZES EITHER PARTY TO TERMINATE THE AGREEMENT ON WRITTEN NOTICE TO THE OTHER PARTY;

(6) IS SIGNED BY THE PATIENT OR A LEGAL REPRESENTATIVE OF THE PATIENT AND THE DIRECT PRIMARY CARE PROVIDER; AND

(7) INCLUDES THE FOLLOWING CONSUMER PROTECTIONS:

(I) A REQUIREMENT THAT UNEARNED FUNDS BE RETURNED TO THE PATIENT ON TERMINATION OF THE AGREEMENT; AND

(II) A CONSPICUOUS STATEMENT THAT THE AGREEMENT:

1. IS NOT HEALTH INSURANCE; AND

2. DOES NOT MEET ANY INDIVIDUAL HEALTH INSURANCE MANDATES.

(C) (1) "DIRECT PRIMARY CARE PROVIDER" MEANS A PRIMARY CARE PROVIDER THAT:

(I) IS LICENSED UNDER THE HEALTH OCCUPATIONS ARTICLE;

(II) PROVIDES DIRECT PRIMARY CARE SERVICES WITHIN:

1. THE SCOPE OF PRACTICE OF THE PRIMARY CARE PROVIDER'S LICENSE; AND

2. THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION; AND

(III) PROVIDES DIRECT PRIMARY CARE SERVICES FOR A PERIODIC FEE IN ACCORDANCE WITH A DIRECT PRIMARY CARE AGREEMENT.

(2) "DIRECT PRIMARY CARE PROVIDER" INCLUDES AN AGENT THAT:

(I) ENTERS INTO A DIRECT PRIMARY CARE AGREEMENT ON BEHALF OF A DIRECT PRIMARY CARE PROVIDER; OR

(II) BILLS FOR DIRECT PRIMARY CARE SERVICES PROVIDED UNDER A DIRECT PRIMARY CARE AGREEMENT.

(D) "DIRECT PRIMARY CARE SERVICES" MEANS ROUTINE HEALTH CARE SERVICES INCLUDING:

(1) SCREENING, ASSESSMENT, DIAGNOSIS, AND TREATMENT PROVIDED FOR THE PURPOSE OF PROMOTING HEALTH; AND

(2) DETECTION, MANAGEMENT, OR PREVENTION OF DISEASE OR INJURY.

1–402.

(A) (1) THIS SECTION APPLIES TO A DIRECT PRIMARY CARE AGREEMENT OR A DIRECT PRIMARY CARE PROVIDER PROVIDING DIRECT PRIMARY CARE SERVICES UNDER A DIRECT PRIMARY CARE AGREEMENT, IF THE DIRECT PRIMARY

CARE AGREEMENT DOES NOT ALLOW THE DIRECT PRIMARY CARE PROVIDER TO:

(I) BILL A THIRD PARTY ON A FEE–FOR–SERVICE BASIS FOR DIRECT PRIMARY CARE SERVICES COVERED UNDER THE DIRECT PRIMARY CARE AGREEMENT;

(II) CHARGE A PER–VISIT FEE GREATER THAN THE MONTHLY EQUIVALENT OF THE PERIODIC FEE PROVIDED FOR IN THE DIRECT PRIMARY CARE AGREEMENT;

(III) REQUIRE A PATIENT TO PAY MORE THAN 12 MONTHS OF A PERIODIC FEE IN ADVANCE; AND

(IV) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, DECLINE TO ACCEPT A NEW PATIENT OR DISCONTINUE CARE TO AN EXISTING PATIENT SOLELY BECAUSE OF THE HEALTH STATUS OF THE PATIENT.

(2) A DIRECT PRIMARY CARE AGREEMENT MAY ALLOW A DIRECT PRIMARY CARE PROVIDER TO:

(I) DECLINE TO ACCEPT A PATIENT BECAUSE:

1. THE PRIMARY CARE PROVIDER HAS REACHED MAXIMUM CAPACITY; OR

2. THE PATIENT'S MEDICAL CONDITION IS SUCH THAT THE PRIMARY CARE PROVIDER IS UNABLE TO PROVIDE THE APPROPRIATE LEVEL AND TYPE OF PRIMARY CARE SERVICES THE PATIENT REQUIRES; OR

(II) DISCONTINUE CARE FOR A PATIENT BECAUSE:

1. THE DIRECT PRIMARY CARE PROVIDER PROVIDES THE PATIENT NOTICE AND OPPORTUNITY TO OBTAIN CARE FROM ANOTHER PRIMARY CARE PROVIDER; AND

2. A. THE PATIENT FAILS TO PAY THE PERIODIC FEE REQUIRED BY THE DIRECT PRIMARY CARE AGREEMENT;

B. THE PATIENT HAS PERFORMED AN ACT OF FRAUD;

C. THE PATIENT REPEATEDLY FAILS TO ADHERE TO THE RECOMMENDED TREATMENT PLAN;

D. THE PATIENT IS ABUSIVE AND PRESENTS AN EMOTIONAL OR PHYSICAL DANGER TO THE STAFF OR OTHER PATIENTS OF THE DIRECT PRIMARY CARE PROVIDER; OR

E. THE PRIMARY CARE PROVIDER DISCONTINUES PROVIDING ANY DIRECT PRIMARY CARE SERVICES UNDER ANY DIRECT PRIMARY CARE AGREEMENT.

(B) THE FOLLOWING PROVISIONS OF THIS ARTICLE DO NOT APPLY TO DIRECT PRIMARY CARE AGREEMENTS OR DIRECT PRIMARY CARE PROVIDERS:

(1) PROVISIONS REGARDING HEALTH INSURANCE AS:

(I) THE TERM IS DEFINED UNDER § 1–101 OF THIS TITLE; AND

(II) IT IS REGULATED UNDER TITLE 15 OF THIS ARTICLE;

(2) LICENSING REQUIREMENTS IN § 10–103 OF THIS ARTICLE;

(3) PROVISIONS REGARDING HEALTH BENEFIT PLANS AS THE TERM IS DEFINED UNDER §§ 11–601 AND 31–101 OF THIS ARTICLE;

(4) PROVISIONS REGULATING NONPROFIT HEALTH SERVICE PLANS IN TITLE 14, SUBTITLE 1 OF THIS ARTICLE; AND

(5) PROVISIONS REGARDING LONG–TERM CARE INSURANCE AS THE TERM IS DEFINED UNDER § 18–101 OF THIS ARTICLE.

10–103.

(b) The licensing requirements of this section do not apply to:

(7) a person who is not a resident of the State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under the contract if:

(i) the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business; and

(ii) the contract insures risks located in that state; **[**or**]**

(8) a salaried, full–time employee who counsels or advises the employee's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit

insurance or receive a commission**; OR**

(9) A PRIMARY CARE PROVIDER THAT PROVIDES PRIMARY CARE SERVICES IN ACCORDANCE WITH A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.

11–601.

(a) In this subtitle the following words have the meanings indicated.

(d) (2) "Health benefit plan" does not include:

(iii) the following benefits if offered as independent, noncoordinated benefits:

1. coverage only for a specified disease or illness; and

2. hospital indemnity or other fixed indemnity insurance; **[**or**]**

(iv) the following benefits if offered as a separate policy, certificate, or contract of insurance:

1. Medicare supplemental health insurance, as defined in § 1882(g)(1) of the Social Security Act;

2. coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and

3. similar supplemental coverage provided to coverage under an employer sponsored plan**; OR**

(V) A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.

14–101.1.

THIS SUBTITLE DOES NOT APPLY TO A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.

15–101.

This title does not apply to:

(1) a policy of liability or workers' compensation and employer's liability insurance;

(2) a group or blanket policy, except as otherwise provided in this title;

(3) reinsurance; **[**or**]**

(4) a life insurance, endowment, or annuity contract, or contract supplemental to a life insurance, endowment, or annuity contract that contains only those provisions relating to health insurance that:

(i) provide additional benefits in case of dismemberment, loss of sight, or death by accident or accidental means;

(ii) provide additional benefits for long–term home health care and long–term care in a nursing home or other related institution; or

(iii) operate to safeguard the contract or supplemental contract against lapse or to provide a special surrender value, special benefit, or annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract**; OR**

(5) A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.

18–101.

(a) In this title the following words have the meanings indicated.

(f) (3) "Long–term care insurance" does not include:

(ii) a life insurance policy that:

1. accelerates the death benefit specifically for:

A. one or more of the qualifying events of terminal illness;

B. a medical condition that requires extraordinary medical intervention; or

C. permanent institutional confinement;

2. provides the option of lump–sum payments for the benefits listed in item 1 of this item; or

3. does not make benefits or eligibility for benefits conditional on receipt of long–term care; **[**or**]**

(iii) a certificate that is issued under an out–of–state employer group contract**; OR**

(IV) A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.

31–101.

(a) In this title the following words have the meanings indicated.

(g) **(6) "HEALTH BENEFIT PLAN" DOES NOT INCLUDE A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.