



## 2019 SENATE BILL 28

February 8, 2019 - Introduced by Senators KAPENGA, DARLING, TIFFANY, BERNIER, CRAIG, KOOYENGA, NASS and STROEBEL, cosponsored by Representatives SANFELIPPO, BROOKS, DITTRICH, DUCHOW, FELZKOWSKI, GUNDRUM, HORLACHER, HUTTON, JAGLER, KATSMA, KITCHENS, KNODL, KUGLITSCH, KULP, LOUDENBECK, MURPHY, NOVAK, PETERSEN, PLUMER, QUINN, RAMTHUN, ROHRKASTE, SKOWRONSKI, SORTWELL, SPIROS, STAFSHOLT, TAUCHEN, THIESFELDT, TITTL, TUSLER, VANDERMEER, VORPAGEL and WICHGERS. Referred to Committee on Health and Human Services.

1     **AN ACT to create** 146.78 and 600.01 (1) (b) 13. of the statutes; **relating to:** direct  
2           primary care agreements.

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### *Analysis by the Legislative Reference Bureau*

This bill exempts valid direct primary care agreements from the application of insurance law. A direct primary care agreement, as defined in the bill, is a contract between a health care provider that provides primary care services under the provider's scope of practice and an individual patient, or his or her legal representative, or an employer in which the health care provider agrees to provide primary care services to the patient or employee for an agreed-upon subscription fee and period of time. A valid direct primary care agreement is signed and in writing and does all of the following: 1) allows either party to terminate the agreement upon written notice and specifies the terms for termination and the subscription fee; 2) describes and quantifies the specific primary care services that are provided under the agreement; 3) specifies the duration of the agreement; 4) prominently states that the agreement is not health insurance and may not satisfy insurance coverage requirements under federal law; 5) prohibits the provider and patient from billing an insurer or any other third party on a fee-for-service basis for the primary care services included in the subscription fee under the agreement; 6) prominently states that the individual patient, or employer if applicable, is responsible for paying the provider for all services that are not included in the subscription fee under the agreement; and 7) prominently states that the patient is urged to consult with any health insurance carrier the patient has before entering the agreement, that some services provided under the agreement may be covered by any health insurance the

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patient has, and that direct primary care fees may not be credited toward deductibles or out-of-pocket maximum amounts under any health insurance the patient has. The bill prohibits a health care provider from discriminating on the basis of age, citizenship status, color, disability, gender or gender identity, genetic information, health status, existence of a preexisting medical condition, national origin, religion, sex, sexual orientation, or any other protected class when selecting patients for entering into direct primary care agreements. The health care provider, however, may base subscription fees under a direct primary care agreement on age.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 146.78 of the statutes is created to read:

2           **146.78 Direct primary care agreement. (1) DEFINITIONS.** In this section:

3           (a) “Direct primary care agreement” means a contract between a health care  
4 provider and an individual patient or his or her legal representative or an employer  
5 in which the health care provider agrees to provide primary care services to the  
6 individual patient or employee for an agreed-upon subscription fee and period of  
7 time.

8           (b) “Health care provider” means a health care provider under s. 146.81 (1) (a)  
9 to (p) that provides primary care services under the provider’s scope of practice.

10           (c) “Primary care services” means outpatient, general health care services of  
11 the type provided by a main source for regular health care services for patients at the  
12 time a patient seeks preventive care or first seeks health care services for a specific  
13 health concern and includes all of the following:

14           1. Care that promotes and maintains mental and physical health and wellness.

15           2. Care that prevents disease.

16           3. Screening, diagnosing, and treating acute or chronic conditions caused by  
17 disease, injury, or illness.

18           4. Patient counseling and education.

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1           5. Provision of a broad spectrum of preventive and curative health care over a  
2 period of time.

3           6. Coordination of care.

4           **(2) VALID AGREEMENT.** A health care provider and an individual patient or his  
5 or her legal representative or an employer may enter into a direct primary care  
6 agreement. A valid direct primary care agreement meets all of the following criteria:

7           (a) The agreement is in writing.

8           (b) The agreement is signed by the health care provider or an agent of the  
9 health care provider and the individual patient, the patient's legal representative,  
10 or a representative of the employer.

11           (c) The agreement allows either party to the agreement to terminate the  
12 agreement upon written notice to the other party.

13           (d) The agreement describes and quantifies the specific primary care services  
14 that are provided under the agreement.

15           (e) The agreement specifies the subscription fee for the agreement and specifies  
16 terms for termination of the agreement, including any possible refund of fees to the  
17 patient.

18           (f) The agreement specifies the duration of the agreement.

19           (g) The agreement prominently states, in writing, that the agreement is not  
20 health insurance and that the agreement alone may not satisfy individual or  
21 employer insurance coverage requirements under federal law.

22           (h) The health care provider and the patient are prohibited from billing an  
23 insurer or any other 3rd party on a fee-for-service basis for the primary care services  
24 included in the subscription fee under the agreement.

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1 (i) The agreement prominently states, in writing, that the individual patient  
2 or the employer, if applicable, is responsible for paying the provider for all services  
3 that are not included in the subscription fee under the agreement.

4 (j) The agreement prominently states, in writing, that the patient is  
5 encouraged to consult with his or her health insurance carrier, if the patient has  
6 health insurance, before entering into the agreement, that some services provided  
7 under the agreement may be covered under any health insurance the patient has,  
8 and that direct primary care fees might not be credited toward deductibles or  
9 out-of-pocket maximum amounts under the patient's health insurance, if the  
10 patient has health insurance.

11 **(3) PATIENT SELECTION.** In selecting patients with whom to enter into a direct  
12 primary care agreement, a health care provider may not discriminate on the basis  
13 of age, citizenship status, color, disability, gender or gender identity, genetic  
14 information, health status, existence of a preexisting medical condition, national  
15 origin, race, religion, sex, sexual orientation, or any other protected class. A health  
16 care provider may base subscription fees under a direct primary care agreement on  
17 age.

18 **(4) INSURANCE NETWORK PARTICIPATION.** A health care provider who has a  
19 practice in which he or she enters into direct primary care agreements may  
20 participate in a network of a health insurance carrier only to the extent that the  
21 provider is willing and able to comply with the terms of the participation agreement  
22 with the carrier and meet any other terms and conditions of network participation  
23 as determined by the health insurance carrier.

