



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5572/1
TJD:amn

2021 SENATE BILL 889

January 21, 2022 - Introduced by Senators BERNIER, BALLWEG, FELZKOWSKI and KAPENGA, cosponsored by Representatives CABRAL-GUEVARA, ALLEN, ARMSTRONG, BRANDTJEN, DUCHOW, GUNDRUM, HORLACHER, JAMES, KNODL, MURPHY, SORTWELL, TITTL and WICHGERS. Referred to Committee on Government Operations, Legal Review and Consumer Protection.

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

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.

Under the bill, a health care provider may not decline to enter into or may not terminate a direct primary care agreement with a patient solely because of the patient's health status. The bill allows a health care provider to decline to accept a patient for a direct primary care agreement only if the health care provider's practice has reached its maximum capacity or if the patient's medical condition is such that the health care provider is unable to provide the appropriate level and type of primary care services the patient requires. A health care provider is allowed to terminate a direct primary care agreement with a patient only if the patient fails to pay the subscription fee or fails repeatedly to adhere to the treatment plan, the patient has performed an act of fraud or is abusive in a manner described in the bill, the health care provider discontinues operation as a direct primary care provider, or the health care provider believes that the relationship is no longer therapeutic for the patient due to a dysfunctional relationship between the provider and the patient.

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.

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- 1 2. Care that prevents disease.
- 2 3. Screening, diagnosing, and treating acute or chronic conditions caused by
- 3 disease, injury, or illness.
- 4 4. Patient counseling and education.
- 5 5. Provision of a broad spectrum of preventive and curative health care over a
- 6 period of time.
- 7 6. Coordination of care.
- 8 **(2) VALID AGREEMENT.** A health care provider and an individual patient or his
- 9 or her legal representative or an employer may enter into a direct primary care
- 10 agreement. A valid direct primary care agreement meets all of the following criteria:
- 11 (a) The agreement is in writing.
- 12 (b) The agreement is signed by the health care provider or an agent of the
- 13 health care provider and the individual patient, the patient's legal representative,
- 14 or a representative of the employer.
- 15 (c) The agreement allows either party to the agreement to terminate the
- 16 agreement upon written notice to the other party subject to the requirements under
- 17 sub. (3) for termination of the agreement by the health care provider.
- 18 (d) The agreement describes and quantifies the specific primary care services
- 19 that are provided under the agreement.
- 20 (e) The agreement specifies the subscription fee for the agreement and specifies
- 21 terms for termination of the agreement, including any possible refund of fees to the
- 22 patient.
- 23 (f) The agreement specifies the duration of the agreement.

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

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

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

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

17 **(3) PATIENT SELECTION; TERMINATION.** (a) A health care provider may not decline
18 to enter into a direct primary care agreement or terminate a direct primary care
19 agreement with a patient solely because of the patient's health status. A direct
20 primary care provider may decline to accept a patient for a direct primary care
21 agreement for only any of the following reasons:

22 1. The health care provider's practice has reached its maximum capacity.

23 2. The patient's medical condition is such that the health care provider is
24 unable to provide the appropriate level and type of primary care services the patient
25 requires.

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1 (b) A health care provider may terminate a direct primary care agreement with
2 a patient for only any of the following reasons:

3 1. The patient fails to pay the subscription fee or repeatedly fails to adhere to
4 the treatment plan recommended by the health care provider.

5 2. The patient has performed an act of fraud.

6 3. The patient is abusive and presents an emotional or physical danger to the
7 staff or other patients of the health care provider.

8 4. The health care provider discontinues operation as a provider under direct
9 primary care agreements.

10 5. The health care provider believes that the relationship is no longer
11 therapeutic for the patient due to a dysfunctional relationship between the health
12 care provider and the patient.

13 (c) Nothing in this section shall be construed to limit the application of s. 106.52
14 to a health care provider's practice.

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

21 **(5) CONSTRUCTION.** Nothing in this section shall be construed to limit the
22 regulatory authority of the department of safety and professional services or the
23 department of agriculture, trade and consumer protection. Nothing in this section
24 shall be construed to limit the authority of the office of the commissioner of insurance
25 to regulate contracts that do not satisfy the criteria to be a valid direct primary care

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1 agreement under sub. (2) and that meet the definition of insurance under s. 600.03
2 (25).

3 **SECTION 2.** 600.01 (1) (b) 13. of the statutes is created to read:

4 600.01 (1) (b) 13. Valid direct primary care agreements under s. 146.78 (2).

5 (END)