State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1619/1
TJD:amn

# 2017 ASSEMBLY BILL 798

December 28, 2017 - Introduced by Representatives SANFELIPPO, BERNIER, R. BROOKS, DUCHOW, HORLACHER, HUTTON, JAGLER, KATSMA, KNODL, KOLSTE, KOOYENGA, KREMER, KUGLITSCH, KULP, MURPHY, QUINN, ROHRKASTE, SKOWRONSKI, SPIROS, STAFSHOLT, TAUCHEN, THIESFELDT, TITTL, VORPAGEL, WEATHERSTON, WICHGERS and BALLWEG, cosponsored by Senators KAPENGA, CRAIG, COWLES, MOULTON, STROEBEL and TIFFANY. Referred to Committee on Small Business Development.

AN ACT ***to create*** 49.45 (24d), 146.78 and 600.01 (1) (b) 13. of the statutes; **relating to:** direct primary care program for Medical Assistance recipients and direct primary care agreements.

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***Analysis by the Legislative Reference Bureau***

The bill allows a health care provider and an individual patient or employer to enter into a direct primary care agreement and requires the Department of Health Services to establish and implement a direct primary care program for Medical Assistance recipients. A direct primary care agreement is a contract in which the health care provider agrees to provide routine health services such as screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury, dispensing of medical supplies and prescription drugs, and certain laboratory services for a specified fee over a specified duration. A valid direct primary care agreement outside of the Medical Assistance program must, among other things, state that the agreement is not health insurance and that the agreement alone may not satisfy individual or employer insurance coverage requirements under federal law. The bill exempts direct primary care agreements from the application of insurance law. The bill also allows DHS to investigate complaints related to private direct primary care agreements.

For the direct primary care program for Medical Assistance recipients, the bill specifies requirements that must be in an agreement between a direct primary care provider and DHS and requires DHS to submit a report on implementation of the program. If necessary, DHS must seek federal approval for the program and may not implement the program if the federal government disapproves.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 49.45 (24d) of the statutes is created to read:

49.45 **(24d)** DIRECT PRIMARY CARE PROGRAM. (a) In this subsection:

1. "Primary care provider" means an individual primary care provider, such as a physician, or a collaboration of health care providers that includes at least one individual primary care provider.

2. "Routine health care service" has the meaning given in s. 146.78 (1) (c).

(b) Subject to par. (f), the department shall establish and implement a direct primary care program for Medical Assistance recipients. By October 1, 2018, the department shall issue a request for proposals for at least one primary care provider to implement a direct primary care program that complies with par. (c) for Medical Assistance recipients in at least one location. The department may implement direct primary care programs in different populations of Medical Assistance recipients in different locations. By January 1, 2019, after reviewing the proposals submitted under this paragraph, the department shall enter into a contract with at least one primary care provider to implement a direct primary care program.

(c) No later than March 1, 2019, at any location selected under par. (b), the department shall enter each participant in the direct primary care program under this subsection in an agreement with a primary care provider to provide routine health care service for a capitated fee. The department shall include in the agreement under this paragraph all of the following provisions:

1. The monthly fee for each participant in the direct primary care program is no more than the amount determined under par. (d).

2. A primary care provider providing services to a participant in the direct primary care program may not accept 3rd–party payments for health care services provided to that participant, except the primary care provider may accept retainer fees from any managed care organization with which he or she has a contract.

3. If a participant in the direct primary care program is enrolled in managed care through the Medical Assistance program, all of the following:

a. The managed care provider shall designate a primary care provider who is accepting participants in the direct primary care program to be the care manager for the participant as it relates to access to care and services that are not routine health care services.

b. The managed care provider may not impose conditions on the primary care provider that would alter the delivery of service under a direct primary care agreement.

c. The managed care provider is not liable for increased costs resulting from participation of primary care providers in their network of providers in the direct primary care program.

(d) The department, after consulting with primary care providers who are willing to accept agreements with participants in the direct primary care program, shall determine a monthly fee for an enrollee in each population of Medical Assistance recipients participating in the program such that the average fee would be $70 per month if there are equal numbers of participants from each population.

(e) By March 1, 2020, and annually thereafter, the department shall submit a report under s. 13.172 (3) to the joint committee on finance and the appropriate

standing committees of the legislature with jurisdiction over health, Medical Assistance, or public assistance programs on the implementation of the direct primary care program under this subsection that includes all of the following:

1. The number of participants in the direct primary care program, including the number of participants by population, if applicable.

2. The number and dollar value of all claims to the Medical Assistance program by participants in the direct primary care program.

3. An estimate of the amount of costs saved by providing services to participants under a direct primary care program model.

(f) If the department determines that federal approval is needed to implement the direct primary care program under this subsection, the department shall request from the federal department of health and human services a state plan amendment or waiver of federal Medicaid law to implement this subsection. If a state plan amendment or a waiver is not necessary or if the federal department of health and human services does not disapprove the state plan amendment or the waiver request, the department shall implement this subsection. The department may not implement this subsection if the federal department of health and human services disapproves the state plan amendment or the waiver request.

**SECTION 2.** 146.78 of the statutes is created to read:

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

(a) "Direct primary care agreement" means a contract between a health care provider and an individual patient or his or her legal representative or employer in which the health care provider agrees to provide routine health care services to the individual patient or employees for an agreed–upon fee and period of time.

(b) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (p).

(c) "Routine health care service" means any of the following:

1. Screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury.

2. Dispensing of medical supplies and prescription drugs in the health care provider's office or facility including payments for the medical supplies and prescription drugs.

3. Laboratory services including routine blood screening or routine pathology screening performed by a laboratory that meets any of the following criteria:

a. The laboratory is associated with the health care provider that is a party to the direct primary care agreement.

b. The laboratory has entered into an agreement with the health care provider that is a party to the direct primary care agreement to provide the laboratory services without charging a fee to the individual patient or employer for those services.

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

(a) The agreement is in writing.

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

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

(d) The agreement describes and quantifies the specific routine health care services that are provided under the agreement.

(e) The agreement specifies the fee for the agreement.

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

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

(h) The health care provider and the patient are prohibited from billing an insurer or any other 3rd party for the routine health care services provided under the agreement.

(i) The agreement prominently states, in writing, that the individual patient must pay the provider for all services that are not specified under the agreement and are not otherwise covered by insurance.

**(3)** INVESTIGATION AUTHORITY. The department may investigate complaints related to direct primary care agreements under this section. The department may require a health care provider to provide the department with a copy of the direct primary care agreement and additional records related to the agreement. The department shall refer any complaints about individual health care providers or any allegations of unprofessional conduct to the department of safety and professional services or the appropriate examining board.

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

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

**(END)**

State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0250/1
TJD:emw&ahe

# ASSEMBLY SUBSTITUTE AMENDMENT 1,

# TO ASSEMBLY BILL 798

January 26, 2018 – Offered by Representative SANFELIPPO.

AN ACT ***to create*** 49.45 (24d), 146.78 and 600.01 (1) (b) 13. of the statutes; **relating to:** direct primary care pilot study for Medical Assistance recipients and direct primary care agreements.

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***Analysis by the Legislative Reference Bureau***

This substitute amendment allows a health care provider and an individual patient or employer to enter into a direct primary care agreement and requires the Department of Health Services to create a work group to study direct primary care for Medical Assistance recipients and propose a pilot program. A direct primary care agreement is a contract in which the health care provider agrees to provide routine health services such as screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury. A valid direct primary care agreement outside of the Medical Assistance program must, among other things, state that the agreement is not health insurance and that the agreement alone may not satisfy individual or employer insurance coverage requirements under federal law. The substitute amendment prohibits discrimination in the selection of patients to enter into a direct primary care agreement. The substitute amendment exempts direct primary care agreements from the application of insurance law.

The substitute amendment requires DHS to convene a work group including managed care organizations, hospitals, health systems, and health care providers,

including physicians who practice under direct primary care agreements, to study integrating direct primary care agreements into the Medical Assistance program in a manner that minimizes disruption of the Medical Assistance managed care structure. DHS is required to, in consultation with the work group and any other applicable regulatory agencies, propose a direct primary care pilot program in the Medical Assistance program and, by December 31, 2018, submit that proposal and any recommendations of it or the work group to a standing committee in each house of the legislature with jurisdiction over health, as determined by the presiding officer of each house. The substitute amendment requires each committee to conduct a hearing on the report. Each committee must then introduce legislation on a direct primary care pilot program in the Medical Assistance program based on its findings as a result of the hearing.

The substitute amendment also requires DHS, in consultation with the work group, to study and submit a report to the same legislative committees regarding the implementation of an alternative payment model for potentially preventable hospital readmissions of Medical Assistance recipients.

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

**SECTION 1.** 49.45 (24d) of the statutes is created to read:

49.45 **(24d)** DIRECT PRIMARY CARE PROGRAM STUDY; ALTERNATIVE PAYMENT MODEL.

(a) In this subsection, "direct primary care agreement" has the meaning given in s. 146.78 (1) (a).

(b) As soon as practicable after the effective date of this paragraph .... [LRB inserts date], the department shall convene a work group including managed care organizations, hospitals, health systems, and health care providers, including physicians who practice under direct primary care agreements, to study integrating direct primary care agreements into the Medical Assistance program under this subchapter in a manner that minimizes disruption of the Medical Assistance managed care structure. The department, in consultation with the work group and any other applicable regulatory agencies, such as the federal department of health and human services, shall propose a direct primary care pilot program in the Medical

Assistance program and, by December 31, 2018, shall submit that proposal and any recommendations of the work group or the department to a standing committee in each house of the legislature with jurisdiction over health, as determined by the presiding officer of each house. If the proposed pilot program includes providing services to children who are Medical Assistance recipients under direct primary care agreements, the direct primary care agreements under the pilot program shall provide the children access to a physician.

(c) Within 60 days of receiving the proposed pilot program under par. (b), each committee shall conduct a hearing on the proposal. Each committee shall introduce legislation in the 2019 legislative session on a direct primary care pilot program in the Medical Assistance program based on its findings as a result of the hearing.

(d) By June 30, 2019, the department, in consultation with the work group created under par. (b), shall study and submit a report to each legislative committee identified under par. (b) regarding the implementation of an alternative payment model for potentially preventable hospital readmissions of Medical Assistance recipients.

**SECTION 2.** 146.78 of the statutes is created to read:

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

(a) "Direct primary care agreement" means a contract between a health care provider and an individual patient or his or her legal representative or employer in which the health care provider agrees to provide routine health care services to the individual patient or employees for an agreed–upon fee and period of time.

(b) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (p).

(c) "Routine health care service" means screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury.

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

(a) The agreement is in writing.

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

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

(d) The agreement describes and quantifies the specific routine health care services that are provided under the agreement.

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

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

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

(h) The health care provider and the patient are prohibited from billing an insurer or any other 3rd party on a fee–for–service basis for the routine health care services provided under the agreement.

(i) The agreement prominently states, in writing, that the individual patient must pay the provider for all services that are not specified under the agreement.

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

**(3)** PATIENT SELECTION. In selecting patients with whom to enter into a direct primary care agreement, a health care provider may not discriminate 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, race, religion, sex, sexual orientation, or any other protected class. A health care provider may base fees under a direct primary care agreement on age.

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

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

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

**(END)**

# WISCONSIN LEGISLATIVE COUNCIL
# AMENDMENT MEMO

| 2017 Assembly Bill 798 | Assembly Substitute Amendment 1 |
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| *Memo published*: **February 9, 2018** | *Contact*: **Andrea Brauer, Staff Attorney** |

2017 Assembly Bill 798 ("the bill") and Assembly Substitute Amendment 1 ("the substitute amendment") create a framework for the use of a direct primary care model within Medical Assistance (MA) and on the private market. In direct primary care, a provider agrees to offer an unlimited amount of specified routine health care services for a monthly fee.

## DEFINITION OF "ROUTINE HEALTH CARE SERVICES"

The bill defines "routine health care services" to mean screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and treatment for the purpose of promotion of health or the detection and management of disease or injury. The bill also includes specific provisions on laboratory services and dispensing of medical supplies and prescription drugs, which are removed by the substitute amendment.

## DIRECT PRIMARY CARE WITHIN MA

The bill requires the Department of Health Services (DHS) to contract with one or more primary care providers to implement a direct primary care program for MA recipients. DHS must enter participants into a direct primary care agreement to receive routine health services from one of these providers for a monthly fee, as will be specified in the agreement. After the program is implemented, DHS must submit annual reports to the Legislature.

The substitute amendment removes these provisions and instead requires DHS to convene a work group to propose a direct primary care pilot program. A hearing must be held on the proposal, and legislation must be introduced following the hearing. The work group is also directed to submit a report regarding implementation of an "alternative payment model" for potentially preventable hospital readmissions of MA recipients.

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## DIRECT PRIMARY CARE ON THE PRIVATE MARKET

Current statutes do not specifically state how direct primary care agreements should be regulated on the private market. However, the Office of the Commissioner of Insurance has taken the position that a direct primary care agreement, in which a provider agrees to pay a discrete set of routine health care services for a predetermined fee, is not regulated as insurance because it does not involve risk distribution.

### The Bill

The bill authorizes any health care provider, as that term is defined in s. 146.81 (1) (a) to (p), Stats., to enter into a direct primary care agreement with an individual patient or his or her legal representative or employer to provide routine health care services for an agreed-upon fee and time. These agreements are specifically excluded from state insurance law. The bill also specifies that the agreements must be in writing and must include a list of disclosures. DHS may investigate complaints related to direct primary care agreements and must refer complaints about providers to the Department of Safety and Professional Services or the appropriate examining board.

### The Substitute Amendment

The substitute amendment contains the same provisions as the bill with regard to the use of direct primary care on the private market, except as follows. First, it modifies some of the terms that must be in the written agreement, and also requires that the agreement state in writing that the direct primary care payments may not count towards the patient's insurance deductibles or out-of-pocket expenses. Second, it prohibits direct primary care providers from discriminating in selecting patients based on a list of factors including age, health status, and pre-existing conditions. Third, it specifies that direct primary care providers who wish to be part of an insurance network must still comply with the insurance carrier's terms of participation. Finally, it removes DHS's oversight of direct primary care agreements.

## BILL HISTORY

Representative Sanfelippo offered Assembly Substitute Amendment 1 on January 26, 2018. On February 7, 2018, the Assembly Committee on Small Business Development recommended adoption of the amendment and passage of 2017 Assembly Bill 798, as amended, each on a vote of Ayes, 9; Noes, 4.

AB:jal