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HOUSE BILL NO. 685

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 28, 2016)

(Patron Prior to Substitute—Delegate Landes)

A BILL to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6404, relating to direct primary care agreements.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6404, as follows:

CHAPTER 64.**DIRECT PRIMARY CARE AGREEMENTS.****§ 38.2-6400. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Direct primary care agreement" means a written agreement that:

1. Is entered into between a direct primary care practice and a direct primary care patient;
2. Authorizes the direct primary care practice to charge a periodic fee, specified in the agreement, as consideration for providing ongoing primary care to the direct primary care patient;
3. Describes the specific primary care the direct primary care practice will provide for the direct primary care patient;

4. Does not require that more than 12 months of the periodic fee be paid in advance;

5. Provides that (i) any periodic fee is not earned by the direct primary care practice until the applicable month for which the periodic fee has been paid is completed and (ii) upon termination of the agreement all unearned periodic fees are returned to the patient;

6. Provides that any per visit charge shall be less than the monthly equivalent of the periodic fee;

7. Prominently states the disclaimer set forth in subsection A of § 38.2-6401; and

8. Specifies (i) the maximum term of the agreement and (ii) that, notwithstanding such maximum term, the agreement is terminable at any time by the direct primary care patient at will upon written notice to the direct primary care practice.

"Direct primary care patient" means an individual who is party to a direct primary care agreement and is entitled to receive primary care from the direct primary care practice pursuant to the terms of the direct primary care agreement. "Direct primary care patient" includes any person authorized by law to enter into a contract on behalf of an individual who is incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

"Direct primary care practice" means (i) a health care provider who furnishes primary care through a direct primary care agreement, (ii) a group of health care providers who furnish primary care through a direct primary care agreement, or (iii) an entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care through a direct primary care agreement, which entity is wholly owned by the group of health care providers, and which health provider, group of health providers, or entity:

1. Enters into direct primary care agreements with direct primary care patients;

2. Does not accept a third party fee for service payments from any health carrier or other person subject to regulation under this title for health care services provided to direct primary care patients; and

3. Does not provide, in consideration for the periodic fee, any services other than primary care.

Nothing in this definition shall require a health care provider to exclusively participate in direct primary care agreements or prohibit a health care provider from seeking reimbursement for services rendered outside of a direct primary care agreement.

"Health care provider" or "provider" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with the laws of the Commonwealth.

"Health carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the Commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any other entity providing a plan of health insurance, health benefits, or health care services.

"Network" means the group of participating providers and facilities providing health care services to a particular health carrier's health plan.

60 "Periodic fee" means a fee charged by a direct primary care practice as consideration for being
61 available to provide and providing primary care as specified in a direct primary care agreement.

62 "Primary care" means routine health care services, including screening, assessment, diagnosis, and
63 treatment for the purpose of promotion of health and the detection and management of disease or
64 injury.

65 **§ 38.2-6401. Direct primary care agreement requirements; disclosures; disclaimer.**

66 A. Every direct primary care agreement shall include the following disclaimer:

67 "This agreement does not provide comprehensive health insurance coverage. It provides only the
68 provision of primary care as specifically described in this agreement."

69 B. A direct primary care practice shall make the following written information available to
70 prospective direct primary care patients by prominently disclosing in marketing materials and retainer
71 medical agreements that:

72 1. The direct primary care agreement is not insurance;

73 2. The direct primary care practice provides only the limited scope of primary care specified in the
74 direct primary care agreement;

75 3. A patient is required to pay for all services provided by the direct primary care practice that are
76 not specified in the direct primary care agreement; and

77 4. The agreement standing alone does not satisfy the health benefit requirements as established in
78 the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended.

79 C. A direct primary care agreement (i) shall not be entered into with a group of subscribers and (ii)
80 shall be signed by the individual direct patient who is a party to the direct primary care agreement.
81 Nothing in this subsection prohibits the presentation of marketing materials to groups of potential direct
82 primary care patients.

83 D. A comprehensive disclosure statement shall be distributed to all direct primary care patients with
84 their participation forms. Such disclosure shall (i) inform the direct primary care patients of their
85 financial rights and responsibilities to the direct primary care practice as provided for in this chapter,
86 (ii) encourage direct primary care patients to obtain and maintain insurance for services not provided
87 by the direct primary care practice, and (iii) state that the direct primary care practice will not bill a
88 health carrier for services covered under the direct primary care agreement.

89 **§ 38.2-6402. Prohibited practices.**

90 With respect to services furnished under a direct primary care agreement, no direct primary care
91 practice may:

92 1. Enter into a participating provider contract with any health carrier or with any health carrier's
93 contractor or subcontractor that provides for the provision of health care services to a direct primary
94 care patient;

95 2. Submit a claim for payment to a health carrier or a health carrier's contractor or subcontractor,
96 to a self-insured plan, or to the state medical assistance program, with regard to any health care
97 services provided to direct primary care patients covered by their direct primary care agreement; or

98 3. With respect to services provided through a direct primary care agreement, be identified by a
99 health carrier or any health carrier's contractor or subcontractor as a participant in the carrier's or
100 any carrier's contractor or subcontractor network for purposes of determining network adequacy or
101 being available for selection by an enrollee under a health carrier's benefit plan.

102 **§ 38.2-6403. Payment of periodic fees from a health savings account, flexible spending
103 arrangement, or health reimbursement arrangement.**

104 A. For any direct primary care patient who enters into a direct primary care agreement under this
105 chapter and who has established a health savings account in compliance with 26 U.S.C. § 223, or who
106 has a flexible spending arrangement or health reimbursement arrangement, fees under the direct
107 primary care patient's direct primary care agreement may be paid from such health savings account or
108 reimbursed through such flexible spending arrangement or health reimbursement arrangement, subject to
109 any federal or state laws regarding qualified expenditures from a health savings account, or
110 reimbursement through a flexible spending arrangement or a health reimbursement arrangement.

111 B. The employer of any direct primary care patient described in subsection A may:

112 1. Make contributions to such direct primary care patient's health savings account, flexible spending
113 arrangement, or health reimbursement arrangement to cover all or any portion of the periodic fees
114 under the direct primary care patient's direct primary care agreement, subject to any federal or state
115 restrictions on contributions made by an employer to a health savings account, or reimbursement
116 through a flexible spending arrangement, or health reimbursement arrangement; or

117 2. Pay the periodic fees directly to the physician under the direct primary care agreement.

118 **§ 38.2-6404. Direct primary care agreement not insurance.**

119 A. The provisions of this title, except the provisions of this chapter, shall not apply to a direct
120 primary care agreement.

121 B. A direct primary care practice or any provider or other entity that conducts or participates in a

122 *direct primary care practice in accordance with the requirements of this chapter is not:*
123 *1. A health carrier and shall not be subject to the jurisdiction of the Commission; or*
124 *2. Required to obtain a certificate of authority or license under this title to market, sell, or offer to*
125 *sell a direct primary care agreement.*
126 *C. Entering into or executing the terms of a direct primary care agreement shall not be considered*
127 *to be engaging in the business of insurance for purposes of this title.*
128 *D. A direct primary care agreement is not a contract of insurance, subscription contract, or health*
129 *plan and is not subject to regulation by the Commission.*