SENATE
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S.F. No. 2632

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03/21/2019	1235	Introduction and first reading Referred to Commerce and Consumer Protection Finance and Policy

A bill for an act

relating to health insurance; establishing direct primary care service agreements; authorizing the sale and purchase of short-term insurance; amending Minnesota Statutes 2018, sections 62A.01, by adding a subdivision; 62A.011, subdivision 3; 62A.65, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 62Q.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2018, section 62A.01, is amended by adding a subdivision to read:

Subd. 5. **Direct primary care service agreements.** (a) A direct primary care service agreement under section 62Q.20 is not insurance and is not subject to this chapter. Entering into a direct primary care service agreement is not the business of insurance and is not subject to this chapter or chapter 60A.

(b) A health care provider or agent of a health care provider is not required to obtain a certificate of authority or license under this chapter or chapter 60A, 62C, 62D, or 62N, to market, sell, or offer to sell a direct primary care service agreement that meets the requirements of section 62Q.20.

Sec. 2. Minnesota Statutes 2018, section 62A.011, subdivision 3, is amended to read:

Subd. 3. **Health plan.** "Health plan" means a policy or certificate of accident and sickness insurance as defined in section 62A.01 offered by an insurance company licensed under chapter 60A; a subscriber contract or certificate offered by a nonprofit health service plan corporation operating under chapter 62C; a health maintenance contract or certificate offered by a health maintenance organization operating under chapter 62D; a health benefit certificate

offered by a fraternal benefit society operating under chapter 64B; or health coverage offered by a joint self-insurance employee health plan operating under chapter 62H. Health plan means individual and group coverage, unless otherwise specified. Health plan does not include coverage that is:

(1) limited to disability or income protection coverage;

(2) automobile medical payment coverage;

(3) liability insurance, including general liability insurance and automobile liability insurance, or coverage issued as a supplement to liability insurance;

(4) designed solely to provide payments on a per diem, fixed indemnity, or non-expense-incurred basis, including coverage only for a specified disease or illness or hospital indemnity or other fixed indemnity insurance, if the benefits are provided under a separate policy, certificate, or contract for insurance; there is no coordination between the provision of benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor; and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor;

(5) credit accident and health insurance as defined in section 62B.02;

(6) designed solely to provide hearing, dental, or vision care;

(7) blanket accident and sickness insurance as defined in section 62A.11;

(8) accident-only coverage;

(9) a long-term care policy as defined in section 62A.46 or 62S.01;

(10) issued as a supplement to Medicare, as defined in sections 62A.3099 to 62A.44, or policies, contracts, or certificates that supplement Medicare issued by health maintenance organizations or those policies, contracts, or certificates governed by section 1833 or 1876, section 1851, et seq.; or section 1860D-1, et seq., of title XVIII of the federal Social Security Act, et seq., as amended;

(11) workers' compensation insurance;

(12) issued solely as a companion to a health maintenance contract as described in section 62D.12, subdivision 1a, so long as the health maintenance contract meets the definition of a health plan;

(13) coverage for on-site medical clinics; ~~or~~

(14) coverage supplemental to the coverage provided under United States Code, title 10, chapter 55, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)~~.~~; or

(15) coverage provided under a direct primary care service agreement described under section 62Q.20.

Sec. 3. Minnesota Statutes 2018, section 62A.65, is amended by adding a subdivision to read:

Subd. 7b. **Extended short-term coverage.** (a) Notwithstanding subdivision 7, a health carrier may offer a short-term coverage health plan that meets, at a minimum, the requirements of paragraph (b). To be eligible to purchase a health plan described in this subdivision, an individual must purchase a direct primary care services arrangement under section 62Q.20. The individual must maintain coverage under the direct primary care service arrangement for each plan year.

(b) For purposes of this subdivision, "short-term coverage" means an individual health plan that:

(1) is issued to provided coverage for 365 days;

(2) is renewable for up to three consecutive years if the individual maintains a direct primary care services arrangement;

(3) does not cover any preexisting conditions for the first 12 months of coverage, including preexisting conditions that originated during a previous identical policy or contract with the same health carrier where coverage was continuous between the previous and the current policy or contract;

(4) is available with an immediate effective date and without underwriting upon receipt of a completed application indicating eligibility under the health carrier's eligibility requirements, provided that coverage including optional benefits may be offered on a basis that does not meet this requirement;

(5) covers maternity care and mental health;

(6) is guaranteed renewable if the individual maintains a direct primary care provider arrangement; and

(7) must have a lifetime and annual dollar limit of at least $1,000,000.

(c) For purposes of this subdivision, "preexisting condition" means a condition for which the individual received medical treatment, diagnosis, care, or advice within a 60-month

period immediately preceding the plan's effective date. Preexisting condition includes conditions that produced any symptoms which would have caused a reasonable person to seek diagnosis, care, or treatment within the 60-month period.

(d) An individual who elects to purchase extended short-term coverage under this subdivision must sign an acknowledgment that includes the following statement, in 14-point boldface type: "I was offered the opportunity to purchase a health plan that includes all federally required and state-required health benefit mandates, and I declined to purchase this coverage. I understand that by choosing this coverage I may have to pay out-of-pocket costs for health services that are not covered by this plan. Individuals, families, and employees are free to choose a health plan that does not include some or all state-required and federally required health benefit mandates. There are no penalties for choosing a health plan that does not include some or all state-required and federally required health benefit mandates."

Sec. 4. **[62Q.20] DIRECT PRIMARY CARE SERVICE AGREEMENT.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Direct agreement" or "direct primary care service agreement" means a written agreement entered into between a direct primary care practice and a direct patient, or a direct primary care practice and the direct patient's legal representative, in which the primary care direct practice charges a direct fee as consideration for being available to provide and providing direct primary care services to the direct patient.

(c) "Direct fee" means a fee charged by a direct primary care practice as consideration for being available to provide and providing primary care services to a direct patient as specified in the direct agreement.

(d) "Direct patient" means an individual who is party to a direct agreement and entitled to receive primary care services under the direct agreement from the direct primary care practice.

(e) "Direct primary care practice" or "direct practice" means a primary care provider who furnishes primary care services through a direct agreement.

(f) "Primary care provider" means a physician licensed under chapter 147 or an advanced practice registered nurse licensed under sections 148.171 to 148.285, authorized to engage in independent practice and qualified to provide primary care services. Primary care provider includes an individual primary care provider or a group of primary care providers.

(g) "Primary care services" means:

(1) routine health care services, including (i) screening, assessment, diagnosis, and treatment to promote health, and (ii) the detection and management of disease or injury within the competency and training of the primary care provider;

(2) medical supplies and prescription drugs that are administered or dispensed in the primary care provider's office or clinic; and

(3) laboratory work, including routine blood screening and routine pathology screening, performed by a laboratory that is either associated with the direct primary care practice or is not associated with the direct primary care practice but has entered into a contract with the practice to provide laboratory work without charging a fee to the patient for the laboratory work.

Subd. 2. **Direct primary care services agreement requirements.** (a) To be considered a direct primary care service agreement for purposes of this section, the direct agreement must:

(1) be in writing;

(2) be signed by the primary care provider or agent of the primary care practice and the direct patient or the patient's legal representative;

(3) allow either party to terminate the direct agreement upon written notice to the other party within the time period specified in the direct agreement and consistent with this section;

(4) describe the scope of the primary care services covered under the direct agreement;

(5) specify the fee to be paid on a monthly basis or as specified in the direct agreement; and

(6) specify the duration of the direct agreement.

(b) The direct agreement must clearly state that (1) a direct primary care service agreement is not considered health insurance, (2) a direct primary care service agreement does not meet the requirements under federal law mandating individuals to purchase health insurance, and (3) the fees charged in the direct primary care service agreement may not be reimbursed or applied toward a deductible under a health plan offered through a health plan company.

Subd. 3. **Acceptance and discontinuance of patients.** (a) A direct practice is prohibited from declining to accept a new patient or discontinuing care to an existing patient solely on the basis of the patient's health status. A direct practice may decline to accept a patient if:

(1) the practice has reached its maximum capacity;

(2) the patient's medical condition prevents the practice from being able to provide the appropriate level and type of primary care services the patient requires; or

(3) the patient has previously terminated a direct agreement with the direct practice within the preceding year.

(b) A direct patient or the patient's legal representative may terminate a direct agreement for any reason by providing written notice to the direct practice. Termination of the direct agreement is effective the first day of the month following the month the termination notice is provided to the direct practice or as specified in the direct agreement.

(c) A direct practice may terminate the direct agreement only if the direct patient:

(1) fails to pay the monthly fee;

(2) has performed an act of fraud;

(3) has repeatedly failed to adhere to the recommended treatment plan; or

(4) is abusive and presents an emotional or physical danger to the staff or other patients.

The direct practice must promptly provide notice of termination to the direct patient or the patient's legal representative. The notice of termination must state the reason for the termination and the effective date of the termination.

(d) Notwithstanding paragraph (c), a direct practice may also discontinue care to a direct patient if the direct practice discontinues operation as a direct primary care practice. Notice must be provided to the direct patient or the patient's legal representative specifying the effective date of the termination. Notice must be sufficient to provide the patient with the opportunity to obtain care from another provider.

Subd. 4. **Direct fees.** (a) The direct fee charged must represent the total amount due for all primary care services specified in the direct agreement that were provided to the direct patient within the specified time period. The direct fee must not vary from patient to patient based on the patient's health status or sex. The direct fee may be paid by the direct patient, the patient's legal representative, or on the patient's behalf by a third party. The direct fee may be billed at the end of each monthly period or may be paid in advance for a period not to exceed 12 months.

(b) If a patient chooses to pay the monthly fee in advance, the funds must be held by the direct practice in a trust account with the monthly fee paid to the direct practice as earned at the end of each month.

(c) Upon receipt of a written notice of termination of the direct agreement from a direct patient or the patient's legal representative, the direct practice must promptly refund the unearned direct fees amount held in trust. If the direct practice discontinues care for any reason described under subdivision 3, the direct practice must promptly refund to the direct patient the unearned direct fees amount held in trust and at a prorated amount of the direct fee earned for the current month, based on the date the notice of termination was sent to the direct patient or the direct patient's legal representative.

(d) A direct practice is prohibited from increasing the monthly fee that has been negotiated with an existing direct patient more frequently than on an annual basis. A direct practice must provide advance notice of at least 60 days to existing patients of any change in the direct fee.

Subd. 5. **Conduct of business.** (a) A direct practice must maintain appropriate accounts for payments made and services received by a direct patient. Upon request, a direct practice must provide any data requested to the direct patient or the patient's legal representative.

(b) A direct practice must not submit a payment claim to a health plan company for a primary care service provided to a direct patient that is covered by a direct agreement.

(c) A person is prohibited from making, publishing, or disseminating any false, deceptive, or misleading representation or advertising related to the direct practice's business.

(d) A person is prohibited from making, issuing, or circulating, or causing to be made, issued, or circulated, a misrepresentation of a direct agreement's terms or the benefits or advantages promised, or use the name or title of a direct agreement to misrepresent the nature of a direct agreement.

Subd. 6. **Other care not prohibited.** A direct primary care practice is not prohibited from providing services to other patients under a separate contract with a health plan company.

Subd. 7. **Enforcement.** A violation of this section constitutes unprofessional conduct and may be grounds for disciplinary action under chapter 147.