

Legal Brief

Direct Primary Care Agreements

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of July 1, 2021; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

A “direct primary care agreement,” is a contract between a primary care provider and an individual patient or his or her legal representative, in which the health care provider agrees to provide primary care services to the individual patient for an agreed-upon fee and period of time.

A “direct primary care agreement” is not insurance and is not subject to title 58 of South Dakota codified law; therefore, a primary care provider or agent of a health care provider is not required to obtain a certificate of authority or license to market, sell or offer to sell a primary care agreement.

Discussion

Direct Primary Care Agreement

Per SDCL 34-54-1, a "Direct primary care agreement," is a contract between a primary care provider and an individual patient or his or her legal representative in which the health care provider agrees to provide primary care services to the individual patient for an agreed-upon fee and period of time.

A direct primary care agreement is not insurance and is not subject to title 58 of South Dakota codified law. Therefore, a primary care provider or agent of a health care provider is not required to obtain a certificate of authority or license under this act to market, sell, or offer to sell a direct primary care agreement; however, to be considered a direct primary care agreement, the agreement, as stated in SDCL 34-54-3, must meet all of the following requirements:

1. Be in writing;
2. Be signed by the primary care provider or agent of the primary care provider and the individual patient or his or her legal representative;
3. Allow either party to terminate the agreement on written notice to the other party;
4. Describe the scope of primary care services that are covered by the periodic fee;
5. Specify the periodic fee and any additional fees outside of the periodic fee for ongoing care under the agreement;
6. Specify the duration of the agreement and any automatic renewal periods;
7. Require that no more than twelve months of the periodic fee be paid in advance and that upon discontinuing the agreement, all unearned funds are returned to the patient; and
8. Prominently state in writing that the agreement is not health insurance.

Accepting patients/Discontinuing care

Direct primary care practices may not decline to accept a new direct primary care patient or discontinue care to an existing patient solely because of the patient's health status. However, a direct practice may decline to accept a patient if the practice has reached its maximum capacity, or if the patient's medical condition is such that the provider is unable to provide the appropriate level and type of primary care services the patient requires so long as the direct primary care practice provides the patient notice and opportunity to obtain care from another physician. The direct primary care practice may discontinue care for a direct primary care patient if:

1. The patient fails to pay the periodic fee;
2. The patient has performed an act of fraud;
3. The patient repeatedly fails to adhere to the recommended treatment plan;
4. The patient is abusive and presents an emotional or physical danger to the staff or other patients of the direct practice; or
5. The direct primary care practice discontinues operation as a direct primary care practice.

Related SDCL 34-54-1 Definitions:

"Primary care provider," is an individual or other legal entity that is licensed, registered, or otherwise authorized to provide primary care services in the state, including an individual or other legal entity whose practice is professionally associated with the individual or other legal entity.

"Direct primary care practice," a practice that: a) Charges a periodic fee for services; b) Does not bill any third parties on a fee-for-service basis; and c) Limits any per visit charge to less than the monthly equivalent of the periodic fee.

"Primary care service," any service for the purpose of promotion of health or the detection and management of disease or injury within the competency and training of the primary care provider, including screenings, assessments, diagnoses, and treatments.

Conclusion

A "direct primary care agreement" is not considered insurance and therefore, any individual or other legal entity that is licensed, registered, or otherwise authorized to provide primary care services in the state, for any service for the purpose of promotion of health or the detection and management of disease or injury within the competency and training of the primary care provider, including screenings, assessments, diagnoses, and treatment, may enter into a "direct primary care agreement" as long as the agreement meets all of the requirements in SDCL 34-54-3.