



The State of New Hampshire Insurance Department

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Christopher R. Nicolopoulos
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Bulletin

Docket No: INS 20-005-AB

To: Primary Care Providers
From: Christopher R. Nicolopoulos, Esq. *CRN*
Commissioner
Date: March 16, 2020
Re: Direct Primary Care Agreements

During the 2019 legislative session, HB 508 was passed relative to direct primary care. Direct primary care agreements are written agreements between a primary care provider and a patient, or the patient's legal representative, which provide specified services for a periodic fee. RSA 329:1-e, I(a). Direct primary care agreements are not insurance and not subject to the jurisdiction of the insurance commissioner if they meet the following criteria:

- (a) The agreement is in writing and signed by the primary care provider, or agent, and the individual patient or his or her legal representative.
- (b) The agreement specifies the periodic fee required and any additional fees for services not covered by the periodic fee, and may allow the periodic fee and any additional fees to be paid by a third party.
- (c) The agreement describes the health care services that are covered by the periodic fee.
- (d) The agreement describes the duration of the agreement and any automatic renewal periods.
- (e) The agreement allows either party to terminate the agreement in writing, without penalty or payment of a termination fee, at any time or after notice as specified in the agreement which shall not exceed 90 days.
- (f) The agreement prominently states that the agreement is not health insurance and the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by the agreement.
- (g) The agreement prominently states that the agreement is not workers' compensation insurance and does not replace an employer's obligations under RSA 281-A.

RSA 329:1-e, II. The services covered by the periodic fee may only be services provided by the direct primary care provider or provider group. Such agreements are under the jurisdiction of the Board of Medicine and may be subject to consumer protection regulations under RSA 358-A. Any agreements that do not meet the above requirements may result in regulation by the insurance commissioner.

Primary care providers in contracts with health carriers should carefully consider their rights and responsibilities prior to deciding to offer direct primary care agreements. Health care providers in contracts with health carriers are prohibited from billing, charging, or collecting payment from a covered person for services included in the insurance contract. *See* RSA 420-J:8, I(a). Health carriers include any “entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the commissioner, 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 insurance company, a health maintenance organization, a health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.” RSA 420-J:3, XXIII.

Furthermore, any primary care providers offering direct primary care agreements must make clear to patients that such agreements are not insurance and should be cautious about making any references to insurance products in any advertising. “Making any incomplete comparison of insurance policies,” or “[u]sing any name or title of any policy or class of policies misrepresenting the true nature thereof” are unfair insurance trade practices and could result in regulatory action by the insurance commissioner. RSA 417:4, I.

Questions should be directed to Tyler Brannen, Director of Health Economics, at Tyler.Brannen@ins.nh.gov.