

# SENATE BILL 685

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By: **Senator Lam**

Introduced and read first time: February 3, 2021

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Insurance Law – Application to Direct Primary Care Agreements – Exclusion**

3 FOR the purpose of authorizing the Health Education and Advocacy Unit in the Division  
4 of Consumer Protection of the Office of the Attorney General to assist certain  
5 consumers in understanding direct primary care agreements; requiring certain  
6 primary care providers to provide the Unit with certain information under certain  
7 circumstances; altering the definition of “health insurance” for the purpose of  
8 excluding certain direct primary care agreements from the application of certain  
9 provisions of insurance law; providing that certain provisions of this Act apply to a  
10 direct primary care agreement or direct primary care provider if the direct primary  
11 care agreement does not allow the direct primary care provider to take certain  
12 actions; providing that certain provisions of insurance law do not apply to certain  
13 direct primary care agreements or direct primary care providers; making conforming  
14 changes; defining certain terms; and generally relating to the application of  
15 insurance law to direct primary care agreements.

16 BY repealing and reenacting, with amendments,  
17 Article – Commercial Law  
18 Section 13–4A–02(b)(1)  
19 Annotated Code of Maryland  
20 (2013 Replacement Volume and 2020 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article – Insurance  
23 Section 1–101(a), 11–601(a), 18–101(a), and 31–101(a)  
24 Annotated Code of Maryland  
25 (2017 Replacement Volume and 2020 Supplement)

26 BY repealing and reenacting, with amendments,  
27 Article – Insurance  
28 Section 1–101(p)(3), 10–103(b)(7) and (8), 11–601(d)(2)(iii) and (iv), 15–101, and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 18–101(f)(3)(ii) and (iii)  
 2 Annotated Code of Maryland  
 3 (2017 Replacement Volume and 2020 Supplement)

4 BY adding to  
 5 Article – Insurance  
 6 Section 1–401 and 1–402 to be under the new subtitle “Subtitle 4. Direct Primary  
 7 Care Agreements”; 10–103(b)(9), 11–601(d)(2)(v), 14–101.1, 18–101(f)(3)(iv),  
 8 and 31–101(g)(6)  
 9 Annotated Code of Maryland  
 10 (2017 Replacement Volume and 2020 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
 12 That the Laws of Maryland read as follows:

13 **Article – Commercial Law**

14 13–4A–02.

15 (b) (1) (i) The Unit may assist health care consumers in understanding  
 16 their health care bills [and], third party coverage, **AND DIRECT PRIMARY CARE**  
 17 **AGREEMENTS**, in identifying improper billing or coverage determinations, and in  
 18 reporting any billing or coverage problems to appropriate entities, including the Division,  
 19 the Attorney General or other governmental agencies, insurers, or providers.

20 (ii) Whenever the Unit requests information from an insurer,  
 21 nonprofit health service plan, [or] health maintenance organization, **OR PRIMARY CARE**  
 22 **PROVIDER THAT PROVIDES DIRECT PRIMARY CARE SERVICES IN ACCORDANCE WITH**  
 23 **A DIRECT PRIMARY CARE AGREEMENT** in order to assist a health care consumer for the  
 24 purposes provided in this paragraph, the insurer, nonprofit health service plan, [or] health  
 25 maintenance organization, **OR PRIMARY CARE PROVIDER** shall provide the information  
 26 to the Unit no later than 7 working days from the date the insurer, nonprofit health service  
 27 plan, or health maintenance organization received the request.

28 **Article – Insurance**

29 1–101.

30 (a) In this article the following words have the meanings indicated.

31 (p) (3) “Health insurance” does not include:

32 (I) workers’ compensation insurance; **OR**

33 (II) **A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN**  
 34 **SUBTITLE 4 OF THIS TITLE.**

1                   **SUBTITLE 4. DIRECT PRIMARY CARE AGREEMENTS.**

2   **1-401.**

3           **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
4 **INDICATED.**

5           **(B) “DIRECT PRIMARY CARE AGREEMENT” MEANS A WRITTEN CONTRACT**  
6 **BETWEEN A PATIENT OR A LEGAL REPRESENTATIVE OF THE PATIENT AND A DIRECT**  
7 **PRIMARY CARE PROVIDER THAT:**

8                   **(1) REQUIRES A PRIMARY CARE PROVIDER TO PROVIDE DIRECT**  
9 **PRIMARY CARE SERVICES TO AN INDIVIDUAL PATIENT FOR A SPECIFIED FEE AND**  
10 **PERIOD OF TIME;**

11                   **(2) DESCRIBES:**

12                           **(I) THE DIRECT PRIMARY HEALTH CARE SERVICES TO BE**  
13 **PROVIDED IN EXCHANGE FOR PAYMENT OF A PERIODIC FEE; AND**

14                           **(II) ANY ONGOING CARE FOR WHICH AN ADDITIONAL FEE WILL**  
15 **BE CHARGED;**

16                   **(3) SPECIFIES THE AMOUNT OF THE PERIODIC FEES AND ADDITIONAL**  
17 **FEES DESCRIBED IN ACCORDANCE WITH ITEM (2) OF THIS SUBSECTION;**

18                   **(4) SPECIFIES THE DURATION OF THE AGREEMENT AND ANY**  
19 **AUTOMATIC RENEWAL PERIODS;**

20                   **(5) AUTHORIZES EITHER PARTY TO TERMINATE THE AGREEMENT ON**  
21 **WRITTEN NOTICE TO THE OTHER PARTY;**

22                   **(6) IS SIGNED BY THE PATIENT OR A LEGAL REPRESENTATIVE OF THE**  
23 **PATIENT AND THE DIRECT PRIMARY CARE PROVIDER; AND**

24                   **(7) INCLUDES THE FOLLOWING CONSUMER PROTECTIONS:**

25                           **(I) A REQUIREMENT THAT UNEARNED FUNDS BE RETURNED TO**  
26 **THE PATIENT ON TERMINATION OF THE AGREEMENT; AND**

27                           **(II) A CONSPICUOUS STATEMENT THAT THE AGREEMENT:**

1                                   1.     IS NOT HEALTH INSURANCE; AND

2                                   2.     DOES NOT MEET ANY INDIVIDUAL HEALTH  
3 INSURANCE MANDATES.

4           (C)   (1)   “DIRECT PRIMARY CARE PROVIDER” MEANS A PRIMARY CARE  
5 PROVIDER THAT:

6                               (I)    IS LICENSED UNDER THE HEALTH OCCUPATIONS ARTICLE;

7                               (II)   PROVIDES DIRECT PRIMARY CARE SERVICES WITHIN:

8                                   1.     THE SCOPE OF PRACTICE OF THE PRIMARY CARE  
9 PROVIDER’S LICENSE; AND

10                               2.     THE ORDINARY COURSE OF BUSINESS OR PRACTICE  
11 OF A PROFESSION; AND

12                               (III)   PROVIDES DIRECT PRIMARY CARE SERVICES FOR A  
13 PERIODIC FEE IN ACCORDANCE WITH A DIRECT PRIMARY CARE AGREEMENT.

14           (2)   “DIRECT PRIMARY CARE PROVIDER” INCLUDES AN AGENT THAT:

15                               (I)    ENTERS INTO A DIRECT PRIMARY CARE AGREEMENT ON  
16 BEHALF OF A DIRECT PRIMARY CARE PROVIDER; OR

17                               (II)   BILLS FOR DIRECT PRIMARY CARE SERVICES PROVIDED  
18 UNDER A DIRECT PRIMARY CARE AGREEMENT.

19           (D)   “DIRECT PRIMARY CARE SERVICES” MEANS ROUTINE HEALTH CARE  
20 SERVICES INCLUDING:

21                               (1)    SCREENING, ASSESSMENT, DIAGNOSIS, AND TREATMENT  
22 PROVIDED FOR THE PURPOSE OF PROMOTING HEALTH; AND

23                               (2)    DETECTION, MANAGEMENT, OR PREVENTION OF DISEASE OR  
24 INJURY.

25   1-402.

26           (A)   (1)   THIS SECTION APPLIES TO A DIRECT PRIMARY CARE AGREEMENT  
27 OR A DIRECT PRIMARY CARE PROVIDER PROVIDING DIRECT PRIMARY CARE  
28 SERVICES UNDER A DIRECT PRIMARY CARE AGREEMENT, IF THE DIRECT PRIMARY

1 CARE AGREEMENT DOES NOT ALLOW THE DIRECT PRIMARY CARE PROVIDER TO:

2 (I) BILL A THIRD PARTY ON A FEE-FOR-SERVICE BASIS FOR  
3 DIRECT PRIMARY CARE SERVICES COVERED UNDER THE DIRECT PRIMARY CARE  
4 AGREEMENT;

5 (II) CHARGE A PER-VISIT FEE GREATER THAN THE MONTHLY  
6 EQUIVALENT OF THE PERIODIC FEE PROVIDED FOR IN THE DIRECT PRIMARY CARE  
7 AGREEMENT;

8 (III) REQUIRE A PATIENT TO PAY MORE THAN 12 MONTHS OF A  
9 PERIODIC FEE IN ADVANCE; AND

10 (IV) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
11 SUBSECTION, DECLINE TO ACCEPT A NEW PATIENT OR DISCONTINUE CARE TO AN  
12 EXISTING PATIENT SOLELY BECAUSE OF THE HEALTH STATUS OF THE PATIENT.

13 (2) A DIRECT PRIMARY CARE AGREEMENT MAY ALLOW A DIRECT  
14 PRIMARY CARE PROVIDER TO:

15 (I) DECLINE TO ACCEPT A PATIENT BECAUSE:

16 1. THE PRIMARY CARE PROVIDER HAS REACHED  
17 MAXIMUM CAPACITY; OR

18 2. THE PATIENT'S MEDICAL CONDITION IS SUCH THAT  
19 THE PRIMARY CARE PROVIDER IS UNABLE TO PROVIDE THE APPROPRIATE LEVEL  
20 AND TYPE OF PRIMARY CARE SERVICES THE PATIENT REQUIRES; OR

21 (II) DISCONTINUE CARE FOR A PATIENT BECAUSE:

22 1. THE DIRECT PRIMARY CARE PROVIDER PROVIDES  
23 THE PATIENT NOTICE AND OPPORTUNITY TO OBTAIN CARE FROM ANOTHER  
24 PRIMARY CARE PROVIDER; AND

25 2. A. THE PATIENT FAILS TO PAY THE PERIODIC FEE  
26 REQUIRED BY THE DIRECT PRIMARY CARE AGREEMENT;

27 B. THE PATIENT HAS PERFORMED AN ACT OF FRAUD;

28 C. THE PATIENT REPEATEDLY FAILS TO ADHERE TO THE  
29 RECOMMENDED TREATMENT PLAN;

1                   **D. THE PATIENT IS ABUSIVE AND PRESENTS AN**  
 2 **EMOTIONAL OR PHYSICAL DANGER TO THE STAFF OR OTHER PATIENTS OF THE**  
 3 **DIRECT PRIMARY CARE PROVIDER; OR**

4                   **E. THE PRIMARY CARE PROVIDER DISCONTINUES**  
 5 **PROVIDING ANY DIRECT PRIMARY CARE SERVICES UNDER ANY DIRECT PRIMARY**  
 6 **CARE AGREEMENT.**

7           **(B) THE FOLLOWING PROVISIONS OF THIS ARTICLE DO NOT APPLY TO**  
 8 **DIRECT PRIMARY CARE AGREEMENTS OR DIRECT PRIMARY CARE PROVIDERS:**

9                   **(1) PROVISIONS REGARDING HEALTH INSURANCE AS:**

10                   **(I) THE TERM IS DEFINED UNDER § 1–101 OF THIS TITLE; AND**

11                   **(II) IT IS REGULATED UNDER TITLE 15 OF THIS ARTICLE;**

12                   **(2) LICENSING REQUIREMENTS IN § 10–103 OF THIS ARTICLE;**

13                   **(3) PROVISIONS REGARDING HEALTH BENEFIT PLANS AS THE TERM**  
 14 **IS DEFINED UNDER §§ 11–601 AND 31–101 OF THIS ARTICLE;**

15                   **(4) PROVISIONS REGULATING NONPROFIT HEALTH SERVICE PLANS**  
 16 **IN TITLE 14, SUBTITLE 1 OF THIS ARTICLE; AND**

17                   **(5) PROVISIONS REGARDING LONG–TERM CARE INSURANCE AS THE**  
 18 **TERM IS DEFINED UNDER § 18–101 OF THIS ARTICLE.**

19 10–103.

20           (b) The licensing requirements of this section do not apply to:

21                   (7) a person who is not a resident of the State who sells, solicits, or  
 22 negotiates a contract of insurance for commercial property and casualty risks to an insured  
 23 with risks located in more than one state insured under the contract if:

24                   (i) the person is otherwise licensed as an insurance producer to sell,  
 25 solicit, or negotiate that insurance in the state where the insured maintains its principal  
 26 place of business; and

27                   (ii) the contract insures risks located in that state; [or]

28                   (8) a salaried, full–time employee who counsels or advises the employee’s  
 29 employer relative to the insurance interests of the employer or of the subsidiaries or  
 30 business affiliates of the employer, provided that the employee does not sell or solicit

1 insurance or receive a commission; OR

2 **(9) A PRIMARY CARE PROVIDER THAT PROVIDES PRIMARY CARE**  
3 **SERVICES IN ACCORDANCE WITH A DIRECT PRIMARY CARE AGREEMENT AS**  
4 **SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.**

5 11-601.

6 (a) In this subtitle the following words have the meanings indicated.

7 (d) (2) "Health benefit plan" does not include:

8 (iii) the following benefits if offered as independent, noncoordinated  
9 benefits:

10 1. coverage only for a specified disease or illness; and

11 2. hospital indemnity or other fixed indemnity insurance;

12 [or]

13 (iv) the following benefits if offered as a separate policy, certificate,  
14 or contract of insurance:

15 1. Medicare supplemental health insurance, as defined in §  
16 1882(g)(1) of the Social Security Act;

17 2. coverage supplemental to the coverage provided under  
18 Chapter 55 of Title 10, United States Code; and

19 3. similar supplemental coverage provided to coverage under  
20 an employer sponsored plan; OR

21 **(V) A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN**  
22 **TITLE 1, SUBTITLE 4 OF THIS ARTICLE.**

23 **14-101.1.**

24 **THIS SUBTITLE DOES NOT APPLY TO A DIRECT PRIMARY CARE AGREEMENT AS**  
25 **SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.**

26 15-101.

27 This title does not apply to:

28 (1) a policy of liability or workers' compensation and employer's liability  
29 insurance;

1 (2) a group or blanket policy, except as otherwise provided in this title;

2 (3) reinsurance; [or]

3 (4) a life insurance, endowment, or annuity contract, or contract  
4 supplemental to a life insurance, endowment, or annuity contract that contains only those  
5 provisions relating to health insurance that:

6 (i) provide additional benefits in case of dismemberment, loss of  
7 sight, or death by accident or accidental means;

8 (ii) provide additional benefits for long-term home health care and  
9 long-term care in a nursing home or other related institution; or

10 (iii) operate to safeguard the contract or supplemental contract  
11 against lapse or to provide a special surrender value, special benefit, or annuity in the event  
12 that the insured or annuitant becomes totally and permanently disabled, as defined by the  
13 contract or supplemental contract; **OR**

14 **(5) A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN TITLE 1,**  
15 **SUBTITLE 4 OF THIS ARTICLE.**

16 18-101.

17 (a) In this title the following words have the meanings indicated.

18 (f) (3) "Long-term care insurance" does not include:

19 (ii) a life insurance policy that:

20 1. accelerates the death benefit specifically for:

21 A. one or more of the qualifying events of terminal illness;

22 B. a medical condition that requires extraordinary medical  
23 intervention; or

24 C. permanent institutional confinement;

25 2. provides the option of lump-sum payments for the benefits  
26 listed in item 1 of this item; or

27 3. does not make benefits or eligibility for benefits  
28 conditional on receipt of long-term care; [or]



1 (iii) a certificate that is issued under an out-of-state employer group  
2 contract; OR

3 (IV) A DIRECT PRIMARY CARE AGREEMENT AS SPECIFIED IN  
4 TITLE 1, SUBTITLE 4 OF THIS ARTICLE.

5 31-101.

6 (a) In this title the following words have the meanings indicated.

7 (g) **(6) "HEALTH BENEFIT PLAN" DOES NOT INCLUDE A DIRECT PRIMARY**  
8 **CARE AGREEMENT AS SPECIFIED IN TITLE 1, SUBTITLE 4 OF THIS ARTICLE.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2021.