

Regular Session, 2014

SENATE BILL NO. 516

BY SENATORS BUFFINGTON, DORSEY-COLOMB, GUILLORY AND MILLS AND
REPRESENTATIVE STUART BISHOP

HEALTH CARE. Provides for direct primary care. (8/1/14)

AN ACT

To enact Part VII of Chapter 15 of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:1360.81 through 1360.91, relative to direct primary care; to provide for definitions; to provide for prohibitions on discrimination; to provide for direct fees; to provide for prohibited and authorized practices; to provide for acceptance and discontinuation of patients; to provide exemptions from state insurance laws; to provide for business conduct; to provide for annual reports; to provide for violations and penalties; to provide for rules and regulations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part VII of Chapter 15 of Title 37 of the Louisiana Revised Statutes, comprised of R.S. 37:1360.81 through 1360.91, is hereby enacted to read as follows:

PART VII. DIRECT PRIMARY CARE PRACTICE

§1360.81. Definitions

For the purposes of this Part, the terms stated in this Section have the meanings assigned to them, respectively, unless the context otherwise requires:

(1) "Board" means the Louisiana State Board of Medical Examiners.

1 (2) "Direct agreement" means a written agreement entered into between
2 a direct practice and an individual direct patient, the parent or legal guardian
3 of the direct patient, or a family of direct patients whereby the direct practice
4 charges a direct fee as consideration for being available to provide and
5 providing primary care services to the individual direct patient. A direct
6 agreement shall describe the specific health care services the direct practice will
7 provide and be terminable at will upon written notice by the direct patient.

8 (3) "Direct fee" means a fee charged by a direct practice as consideration
9 for being available to provide and providing primary care services as specified
10 in a direct agreement.

11 (4) "Direct patient" means a person who is party to a direct agreement
12 and is entitled to receive primary care services under the direct agreement from
13 the direct practice.

14 (5) "Direct patient-provider primary care practice" and "direct
15 practice" means a physician, group, or entity that meets the following criteria:

16 (a) A physician, group, or entity that satisfies any of the following:

17 (i) A physician who provides primary care services through a direct
18 agreement.

19 (ii) A group of physicians who provides primary care services through
20 a direct agreement.

21 (iii) An entity that sponsors, employs, or is otherwise affiliated with a
22 group of physicians who only provides primary care services through a direct
23 agreement, which entity is wholly owned by the group of physicians or is a
24 nonprofit corporation exempt from taxation under Section 501(c)(3) of the
25 Internal Revenue Code and is not otherwise regulated under Title 22 of the
26 Louisiana Revised Statutes of 1950. Such entity shall not be prohibited from
27 sponsoring, employing, or being otherwise affiliated with other types of health
28 care providers not engaged in a direct practice.

29 (b) Enters into direct agreements with direct patients or parents or legal

1 guardians of direct patients.

2 (c) Does not accept payment for health care services provided to direct
3 patients from any entity subject to regulation under Title 22 of the Louisiana
4 Revised Statutes of 1950.

5 (d) Does not provide, in consideration for a direct fee, services,
6 procedures, or supplies such as prescription drugs except as provided in R.S.
7 37:1360.85(B)(2)(a)(ii), hospitalization costs, major surgery, dialysis, high level
8 radiology, including but not limited to X-ray computed tomography, positron
9 emission tomography, magnetic resonance imaging, or invasive radiology,
10 rehabilitation services, procedures requiring general anesthesia, or similar
11 advanced procedures, services, or supplies.

12 (6) "Health insurance issuer" means an entity subject to the insurance
13 laws and regulations of this state or subject to the jurisdiction of the insurance
14 commissioner that contracts or offers to contract or enters into an agreement
15 to provide, deliver, arrange for, pay for, or reimburse any of the costs of health
16 care services, including a sickness and accident insurance company, a health
17 maintenance organization, a preferred provider organization, or any similar
18 entity, or any other entity providing a plan of health insurance or health
19 benefits.

20 (7) "Physician" means a natural person who is the holder of an
21 allopathic (MD) degree or an osteopathic (DO) degree from a medical college
22 in good standing with the board who holds a license, permit, certification, or
23 registration issued by the board to engage in the practice of medicine in the
24 state of Louisiana.

25 (8) "Primary care" means routine health care services, including
26 screening, assessment, diagnosis, and treatment for the purpose of promotion
27 of health, and detection and management of disease or injury.

28 §1360.82. Prohibition on discrimination

29 Except as provided in R.S. 37:1360.86, no direct practice shall decline to

1 accept any person solely on account of race, religion, national origin, the
2 presence of any sensory, mental, or physical disability, education, or economic
3 status.

4 **§1360.83. Direct fee**

5 A. A direct practice shall charge a direct fee on a periodic basis. The
6 amount of the fee and the periodic basis upon which such fee shall be paid shall
7 be included in the provisions of the direct agreement. The fee shall represent the
8 total amount due for all primary care services specified in the direct agreement
9 and may be paid by the direct patient or on his behalf by others.

10 B. A direct practice shall maintain appropriate accounts and provide a
11 history of payments and services received upon a request of a direct patient.

12 C. If a direct patient chooses to pay more than one periodic direct fee in
13 advance, the funds shall be held in a trust account and paid to the direct
14 practice as earned at the beginning of each period. Any unearned direct fees
15 held in trust following receipt of termination of the direct agreement shall be
16 promptly refunded to the direct patient.

17 D. A direct fee schedule applying to an existing direct patient may not be
18 increased over the annual negotiated amount more frequently than annually.
19 A direct practice shall provide advance notice to existing patients of any change
20 within the fee schedule applying to those existing direct patients. A direct
21 practice shall provide notice of any change in the fee not less than sixty days
22 from the date of the change.

23 **§1360.84. Prohibited and authorized practices**

24 A. A direct practice shall not:

25 (1) Enter into a participating provider contract with any health
26 insurance issuer or with any health insurance issuer's contractor or
27 subcontractor to provide health care services through a direct agreement except
28 as set forth in Subsection B of this Section.

29 (2) Submit a claim for payment to any health insurance issuer or any

1 health insurance issuer's contractor or subcontractor for health care services
2 provided to direct patients as covered by their agreement.

3 (3) With respect to services provided through a direct agreement, be
4 identified by a health insurance issuer or any health insurance issuer's
5 contractor or subcontractor as a participant in the health insurance issuer's or
6 any health insurance issuer's contractor or subcontractor network for purposes
7 of determining network adequacy or being available for selection by an enrollee
8 under a health insurance issuer's benefit plan.

9 (4) Pay for health care services covered by a direct agreement rendered
10 to direct patients by providers other than the providers in the direct practice or
11 their employees, except as described in Subsection B of this Section.

12 B. A direct practice and provider may:

13 (1) Enter into a participating provider contract with a health insurance
14 issuer for purposes other than payment of claims for services provided to direct
15 patients through a direct agreement. Such physicians shall be subject to all
16 other provisions of the participating provider contract applicable to
17 participating providers, including but not limited to the right to:

18 (a) Make referrals to other participating providers.

19 (b) Admit the carrier's members to participating hospitals and other
20 health care facilities.

21 (c) Prescribe prescription drugs.

22 (d) Implement other customary provisions of the contract not dealing
23 with reimbursement of services.

24 (2) Pay for charges associated with:

25 (a) The provision of routine lab and imaging services.

26 (b) Dispensing, at no additional cost to the direct patient, of prescription
27 drugs prescribed by the direct provider in accordance with state law and
28 regulations promulgated by the board.

29 (3) Charge an additional fee to direct patients for supplies, medications,

1 and specific vaccines provided to direct patients that are specifically excluded
2 under the agreement, provided the direct practice notifies the direct patient of
3 the additional charge, prior to their administration or delivery.

4 §1360.85. Acceptance or discontinuation of patients; third-party payments

5 A. A direct practice shall not decline to accept new direct patients or
6 discontinue care to existing patients solely because of the patient's health status.

7 A direct practice may decline to accept a patient if the practice has reached its
8 maximum capacity, or if the patient's medical condition is such that the
9 provider is unable to provide the appropriate level and type of health care
10 services in the direct practice. As long as a direct practice provides a patient
11 notice and the opportunity to obtain care from another physician, a direct
12 practice may discontinue care for a direct patient if any one of the following
13 conditions is satisfied:

14 (1) The patient fails to pay the direct fee under the terms required by the
15 direct agreement.

16 (2) The patient has performed an act that constitutes fraud.

17 (3) The patient repeatedly fails to comply with the recommended
18 treatment plan.

19 (4) The patient is abusive and presents an emotional or physical danger
20 to the staff or other patients of the direct practice.

21 (5) The direct practice discontinues operation as a direct practice.

22 B. Subject to the restrictions established in this Part, a direct practice
23 may accept payment of direct fees directly or indirectly from third parties. A
24 direct practice may accept a direct fee paid by an employer on behalf of an
25 employee who is a direct patient. However, a direct practice shall not enter into
26 a contract with an employer relating to direct practice agreements between the
27 direct practice and employees of that employer other than to establish the
28 timing and method of the payment of the direct fee by the employer.

29 §1360.86. Direct practice not an insurer

1 A direct practice that complies with the provisions of this Part, is not a
2 health insurance insurer and not subject to the provisions of nor the regulations
3 under Title 22 of the Louisiana Revised Statutes of 1950.

4 §1360.87. Conduct of business; prohibitions

5 A person shall not make, publish, or disseminate any false, deceptive, or
6 misleading representation or advertising in the conduct of the business of a
7 direct practice or relative to the business of a direct practice.

8 §1360.88. Misrepresenting the terms of a direct agreement

9 A person shall not make, issue, circulate, or cause to be made, issued, or
10 circulated, a misrepresentation of the terms of any direct agreement, the
11 benefits or advantages promised thereby, or use the name or title of any direct
12 agreement misrepresenting the nature thereof.

13 §1360.89. Direct agreement requirements; disclaimer

14 A.(1) A direct agreement shall include the following disclaimer:

15 "This agreement does not provide comprehensive health insurance
16 coverage. It provides only the health care services specifically described."

17 (2) A direct agreement may not be sold to a group and may not be
18 entered with a group of subscribers. A direct agreement shall be an agreement
19 between a direct practice and an individual direct patient.

20 (3) Nothing shall prohibit the presentation of marketing materials to
21 groups of potential subscribers or their representatives.

22 B. A comprehensive disclosure statement shall be distributed to all direct
23 patients with their participation forms. The disclosure shall inform a direct
24 patient of his financial rights and responsibilities to the direct practice as
25 provided for in this Part, encourage a direct patient to obtain and maintain
26 insurance for services not provided by the direct practice, and state that the
27 direct practice will not bill a health insurance issuer for services covered under
28 the direct agreement. The disclosure statement shall include contact
29 information for the board.

§1360.90. Rules

The board may promulgate all rules and regulations that are necessary and proper to effectuate the provisions of this Part.

§1360.91. Violations

Violations of this Part shall constitute unprofessional conduct and subject violators to any and all sanctions which may be pursued by the board pursuant to R.S. 37:1285.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Christopher D. Adams.

DIGEST

Buffington (SB 516)

Proposed law provides for direct primary care practice.

Proposed law defines "board", "direct agreement", "direct fee", "direct patient", "direct patient-provider primary care practice" and "direct practice", "health insurance issuer", "physician", and "primary care".

Proposed law prohibits certain types of discrimination by a direct practice.

Proposed law provides for a direct fee.

Proposed law provides a direct practice shall charge a direct fee on a periodic basis. The amount of the fee and the periodic basis upon which such fee shall be paid shall be included in the provisions of the direct agreement. The fee shall represent the total amount due for all primary care services specified in the direct agreement and may be paid by the direct patient or on his behalf by others.

Proposed law further provides a direct practice shall maintain appropriate accounts and provide a history of payments and services received upon a request of a direct patient. Further provides if a direct patient chooses to pay more than one periodic direct fee in advance, the funds shall be held in a trust account and paid to the direct practice as earned at the beginning of each period. Any unearned direct fees held in trust following receipt of termination of the direct agreement shall be promptly refunded to the direct patient.

Proposed law provides a direct fee schedule applying to an existing direct patient may not be increased over the annual negotiated amount more frequently than annually. A direct practice shall provide advance notice to existing patients of any change within the fee schedule applying to those existing direct patients. A direct practice shall provide notice of any change in the fee not less than 60 days from the date of the change.

Proposed law provides a direct practice shall not:

- (1) Enter into a participating provider contract with any health insurance issuer or with any health insurance issuer's contractor or subcontractor to provide health care services through a direct agreement except as set forth in the proposed law.
- (2) Submit a claim for payment to any health insurance issuer or any health insurance issuer's contractor or subcontractor for health care services provided to direct patients

as covered by their agreement.

- (3) With respect to services provided through a direct agreement, be identified by a health insurance issuer or any health insurance issuer's contractor or subcontractor as a participant in the health insurance issuer's or any health insurance issuer's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a health insurance issuer's benefit plan.
- (4) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in proposed law.

Proposed law provides a direct practice and provider may:

- (1) Enter into a participating provider contract with a health insurance issuer for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such physicians shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:
 - (a) Make referrals to other participating providers.
 - (b) Admit the carrier's members to participating hospitals and other health care facilities.
 - (c) Prescribe prescription drugs.
 - (d) Implement other customary provisions of the contract not dealing with reimbursement of services.
- (2) Pay for charges associated with:
 - (a) The provision of routine lab and imaging services.
 - (b) Dispensing, at no additional cost to the direct patient, of prescription drugs prescribed by the direct provider in accordance with state law and regulations promulgated by the Louisiana State Board of Medical Examiners (the board).
- (3) Charge an additional fee to direct patients for supplies, medications, and specific vaccines provided to direct patients that are specifically excluded under the agreement, provided the direct practice notifies the direct patient of the additional charge, prior to their administration or delivery.

Proposed law provides a direct practice shall not decline to accept new direct patients or discontinue care to existing patients solely because of the patient's health status. 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 health care services in the direct practice.

Proposed law provides as long as a direct practice provides a patient notice and the opportunity to obtain care from another physician, a direct practice may discontinue care for a direct patient if any one of the following conditions is satisfied:

- (1) The patient fails to pay the direct fee under the terms required by the direct agreement.
- (2) The patient has performed an act that constitutes fraud.

- (3) The patient repeatedly fails to comply with 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.
- (5) The direct practice discontinues operation as a direct practice.

Proposed law provides, subject to the restrictions established in proposed law, a direct practice may accept payment of direct fees directly or indirectly from third parties. A direct practice may accept a direct fee paid by an employer on behalf of an employee who is a direct patient. However, a direct practice shall not enter into a contract with an employer relating to direct practice agreements between the direct practice and employees of that employer other than to establish the timing and method of the payment of the direct fee by the employer.

Proposed law provides a direct practice is not an insurer.

Proposed law provides a person shall not make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a direct practice or relative to the business of a direct practice.

Proposed law provides a person shall not make, issue, circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any direct agreement, the benefits or advantages promised thereby, or use the name or title of any direct agreement misrepresenting the nature thereof.

Proposed law provides for direct agreement requirements.

Proposed law provides the board may promulgate all rules and regulations which are necessary and proper to effectuate the proposed law.

Proposed law provides violations of the proposed law shall constitute unprofessional conduct and subject violators to any and all sanctions which may be pursued by the board pursuant to present law.

Effective August 1, 2014.

(Adds R.S. 37:1360.81-1360.91)