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Wallace
4/5/23

CS FOR SENATE BILL NO. 45(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS WILSON, Hughes, Myers

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to insurance; relating to direct health care agreements; relating to the
2 duties of the director of the division of insurance in the Department of Commerce,
3 Community, and Economic Development; relating to unfair trade practices; and
4 providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 21.03 is amended by adding a new section to read:

7 **Sec. 21.03.025. Direct health care agreements.** (a) A health care provider or
8 health care business and a patient or the representative of a patient may enter into a
9 direct health care agreement. Health care services provided under a direct health care
10 agreement are limited to the type of health care services that a primary care provider
11 may provide to a patient. A patient is not eligible to enter into a direct health care
12 agreement under this section if the patient is eligible to receive assistance under
13 AS 47.07 (Medical Assistance for Needy Persons) or AS 47.08 (Assistance for
14 Catastrophic Illness and Chronic or Acute Medical Conditions).

(b) A direct health care agreement must

(1) describe the health care services that the health care provider or health care business makes available to the patient in exchange for payment of a periodic fee and each location at which the health care services are available;

(2) specify

(A) the amount of the periodic fee a patient or the representative of a patient pays in exchange for the health care services that the health care provider or health care business makes available to the patient;

(B) the period covered by the periodic fee under (A) of this paragraph; and

(C) additional fees that the health care provider or health care business may charge in addition to the periodic fee, including cancellation fees;

(3) identify and include contact information for a representative of the health care provider or health care business that is responsible for receiving and addressing

(A) a complaint made by a patient relating to the agreement;

and

(B) a request made by a patient to amend the agreement, including a patient's request to change the name of the representative of the patient or the patient's mailing address, physical address, telephone number, electronic mail address, or other personal information;

(4) prominently state that the agreement is not health insurance and does not meet an individual or other health insurance mandate that may be required by federal law; and

(5) prominently state that the patient is not entitled to the protections under AS 21.07 (Patient Protections Under Health Care Insurance Policies) or AS 21.36 (Trade Practices and Frauds).

(c) A patient or the representative of a patient may terminate a direct health care agreement in writing within 30 days after entering into the agreement. If a patient or representative terminates an agreement under this subsection, the health care

provider or health care business shall, not later than 30 days after the patient or representative terminates the agreement, refund to the patient or representative payments made under the agreement, less payments made for services the health care provider or health care business has already performed that are not included in the periodic fee.

(d) A health care provider or health care business may immediately terminate a direct health care agreement if

(1) a patient's behavior threatens the safety of the health care provider, the staff of the health care provider or health care business, or other patients of the health care provider or health care business;

(2) a patient engages in disrespectful, derogatory, or prejudiced behavior that is within the patient's control and the patient does not stop the behavior even after the health care provider or the staff of the health care provider or health care business requests the patient to stop the behavior; or

(3) a patient or the representative of a patient breaches the terms of the agreement.

(e) A patient or the representative of a patient may immediately terminate a direct health care agreement if a health care provider or a health care business breaches the terms of the agreement.

(f) A health care provider or health care business may not change the periodic fee under the agreement more than once a year and shall provide at least 45 days' written notice of a change in the periodic fee. If a health care provider or health care business increases the amount of the periodic fee, a patient or the representative of a patient may terminate the agreement by providing to the health care provider or health care business written notice of the termination not later than the day before the date on which the change to the periodic fee is scheduled to take effect.

(g) Except as otherwise provided in this section and in AS 45.45.915, a health care provider, a health care business, a patient, or the representative of a patient may terminate a direct health care agreement for any reason in writing after at least 30 days' notice.

(h) A health care provider or health care business may charge a termination

1 fee only for termination of an agreement by a patient or the representative of a patient
2 under (c) or (g) of this section. The termination fee may not exceed an amount equal to
3 one month's cost of the periodic fee.

4 (i) Upon termination of an agreement under (f) or (g) of this section, the
5 patient shall pay the health care provider or health care business the periodic fee,
6 prorated through the date of termination of the agreement, and any additional fees for
7 services the health care provider or health care business has already performed that are
8 not included in the periodic fee.

9 (j) A health care provider or health care business may bill a patient or the
10 representative of a patient for the periodic fee only after the end of the period to which
11 the periodic fee applies.

12 (k) A patient's employer may pay the periodic fee and additional fees the
13 patient owes a health care provider or health care business under a direct health care
14 agreement. A payment by the employer under this subsection does not constitute
15 engaging in the business of insurance or underwriting in this state, and the employer is
16 not an insurer, a health maintenance organization, a health care insurer, or a medical
17 service corporation by virtue of the payment.

18 (l) A direct health care agreement and health care services provided under a
19 direct health care agreement are not subject to AS 21.07 (Patient Protections Under
20 Health Care Insurance Policies) or AS 21.36 (Trade Practices and Frauds), but are
21 subject to other consumer protection statutes and regulations, including AS 45.45.915.

22 (m) Offering or executing a direct health care agreement does not constitute
23 engaging in the business of insurance or underwriting in this state. A direct health care
24 agreement is not insurance, health insurance, health care insurance, or a health care
25 insurance policy. A health care provider or health care business is not an insurer, a
26 health maintenance organization, a health care insurer, or a medical service
27 corporation by virtue of the offering or execution of a direct health care agreement or
28 the provision of health care services under a direct health care agreement. A certificate
29 of authority or license to market, sell, or offer to sell a direct health care agreement or
30 health care services under a direct health care agreement is not required to offer or
31 execute a direct health care agreement or provide health care services under a direct

health care agreement.

(n) The director shall adopt regulations regulating direct health care agreements that are consistent with this section. In addition to any other penalty provided by law, if the director determines under AS 21.06.170 - 21.06.240 that a health care provider or health care business has violated a provision of this section, the director may

(1) impose

(A) a civil penalty of not more than \$10,000 for each violation;

or

(B) if the director determines that the person wilfully violated the provisions of this section, a civil penalty of not more than \$25,000 for each violation; and

(2) prohibit the health care provider or health care business from entering into or renewing a direct health care agreement.

(o) An order issued by the director that levies a civil penalty must specify the period within which the civil penalty must be fully paid. The period may not be less than 15 days or more than one year after the date of the order.

(p) In this section,

(1) "direct health care agreement" means a written agreement between a health care provider or health care business and a patient or the representative of a patient to provide health care services in exchange for payment of a periodic fee;

(2) "health care business" means a business licensed by the state that is entirely owned by physicians licensed under AS 08.64 who have established residency in the state under AS 01.10.055;

(3) "health care insurance" has the meaning given in AS 21.12.050(b);

(4) "health care insurer" has the meaning given in AS 21.54.500;

(5) "health care provider" has the meaning given in AS 21.07.250;

(6) "health care service"

(A) means a health care service or procedure that is provided in person or remotely by telemedicine or other means by a health care provider for the care, prevention, diagnosis, or treatment of a physical or mental illness,

health condition, disease, or injury;

(B) does not include "emergency services" as defined in AS 21.07.250;

(7) "health insurance" has the meaning given in AS 21.12.050;

(8) "health maintenance organization" has the meaning given in AS 21.86.900;

(9) "medical service corporation" has the meaning given in AS 21.87.330;

(10) "primary care provider" has the meaning given in AS 21.07.250.

* **Sec. 2.** AS 45.45 is amended by adding a new section to read:

Sec. 45.45.915. Direct health care agreements. (a) A health care provider or health care business may not decline to enter into a direct health care agreement with a new patient or terminate a direct health care agreement with an existing patient solely because of the patient's race, religion, color, national origin, age, sex, physical or mental disability, marital status, change in marital status, pregnancy, parenthood, or any other characteristic of a class of persons protected by a state law that prohibits discrimination.

(b) A health care provider or health care business may decline to enter into a direct health care agreement with a new patient if the health care provider or health care business

(1) is unable to provide to the patient the health care services the patient requires; or

(2) does not have the capacity to accept new patients.

(c) A health care provider or health care business may terminate a direct health care agreement with an existing patient based on the patient's health status only if the health care provider is unable to provide to the patient the health care services the patient requires or in accordance with AS 21.03.025.

(d) A health care provider or health care business may not make, publish, disseminate, circulate, broadcast, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, broadcast, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice,

1 circular, pamphlet, letter, or poster, or over a radio or television station, or in any other
2 way, an advertisement, announcement, or statement containing an assertion,
3 representation, or statement that is untrue, deceptive, or misleading with respect to

4 (1) the terms of or the benefits or advantages provided by a direct
5 health care agreement;

6 (2) the characterization of a direct health care agreement, including the
7 characterization of a direct health care agreement as health insurance or an alternative
8 to health insurance;

9 (3) the business of a direct health care agreement.

10 (e) In this section,

11 (1) "direct health care agreement" has the meaning given in
12 AS 21.03.025(p);

13 (2) "health care business" has the meaning given in AS 21.03.025(p);

14 (3) "health care provider" has the meaning given in AS 21.07.250;

15 (4) "health care service" has the meaning given in AS 21.03.025(p);

16 (5) "health insurance" has the meaning given in AS 21.12.050.

17 * **Sec. 3.** AS 45.50.471(b) is amended by adding a new paragraph to read:

18 (58) violating AS 45.45.915 (direct health care agreements).

19 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **TRANSITION: REGULATIONS.** The director of the division of insurance may adopt
22 regulations necessary to implement this Act. The regulations take effect under AS 44.62
23 (Administrative Procedure Act), but not before the effective date of the law implemented by
24 the regulation.

25 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

26 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect September 1, 2023.