DIRECT PRIMARY CARE ARRANGEMENTS SURVEY



McDermott Will & Emery



INTRODUCTION

Direct-to-consumer healthcare arrangements can sometimes implicate state insurance laws, especially when those arrangements involve the provision of unlimited healthcare services for a fixed fee. Yet both providers and patients are increasingly interested in entering into these direct contracts, and state insurance regulators are paying attention.

In approximately half of US states, new laws explicitly exempt direct primary care (DPC) arrangements from insurance regulation. These laws often apply to a narrow scope of arrangements and require providers to build patient protections into their contracts – such as clear cancellation and refund terms.

While these new laws provide certainty for some providers, questions remain:

- How could these arrangements be regulated in states that have not passed direct primary care laws?
- How might regulators think about arrangements that are close to, but fall outside of, those described in the state laws (such as arrangements covering certain types of specialty care)?

McDermott is closely tracking these laws and advising clients on what they mean for different business models. This is a high-level guide to the current state laws on DPC arrangements.

If you are interested in purchasing a more detailed 50-state summary, obtaining help with evaluating a particular arrangement, or getting support with patient contract and communication materials, please **contact our team**.

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KEY CONSIDERATIONS

- Many of the laws follow a model act, but there is significant variation from state to state
- Some state DPC laws only apply to physicians; others include clinicians such as physician assistants, nurse practitioners and dentists
- Whether a physician group or intermediary entity can take advantage of the regulatory protection of a DPC law varies by state
- Some state laws are explicitly limited to primary care, while others are broad enough to include mental health and specialist services
- Some states require providers to impose caps or limitations on the number of services offered under a direct patient arrangement
- Many states explicitly mandate that a provider's monthly membership fee must exceed the per-visit charge for a single service
- Some states allow employers or health plans to pay the monthly fee, while others prohibit such third-party payor arrangements
- Most states regulate the content of the DPC agreement and many require that specific disclaimers be included; because these disclaimers vary by state, an agreement with patients residing in multiple states may require a long list of regulatory language
- Most state laws include consumer protection requirements, such as prohibiting practices from charging an annual fee up front, limiting how often providers can make changes to the periodic fees, and mandating that practices adopt liberal cancellation and prorated refund policies

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Last Updated April 2024

STATES WITH DPC LAWS

STATE	DOES STATE HAVE A DPC LAW?	DPC CITATION
Alabama	Yes	Ala.Code 1975 § 22-7A-1(b)
Arizona	Yes	Ariz. Rev. Stat. Ann. § 44-1799.91
Arkansas	Yes	Ark. Code Ann. § 23-60-104(b)
Colorado	Yes	Colo. Rev. Stat. Ann. § 6-23-101
Florida	Yes	Fl. Stat. § 624.27
Georgia	Yes	Ga. Code Ann. § 33-7-2.1
Idaho	Yes	Idaho Code Ann. § 39-9206
Indiana	Yes	Ind. Code § 25-1-10-4
Iowa	Yes	Iowa Code § 135N.1(6)
Kansas	Yes	Kan. Stat. Ann. § 65-4978(b)
Kentucky	Yes	Ky. Rev. Stat. Ann. § 311.6201
Louisiana	Yes	La. Stat. Ann. § 37:1360.86
Maine	Yes	Me. Stat. tit. 22, § 1771
Michigan	Yes	Mich. Comp. Laws Ann. § 500.129
Mississippi	Yes	Miss. Code Ann. § 83-81-5

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STATE	DOES STATE HAVE A DPC LAW?	DPC CITATION
Missouri	Yes	Mo. Ann. Stat. § 376.1800
Montana	Yes	Mont. Code Ann. § 50-4-105
Nebraska	Yes	Neb. Rev. Stat. § 71-9502
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 329:1-e
North Carolina	Yes	N.C. Gen. Stat. Ann. § 58-3-8
Ohio	Yes	Ohio Rev. Code Ann. § 3901.95
Oklahoma	Yes	Okla. Stat. Ann. tit. 36, § 4604(E)
Oregon	Yes	Or. Rev. Stat. Ann. § 731.036
South Dakota	Yes	S.D. Codified Laws § 34-54-2
Tennessee	Yes	Tenn. Code Ann. § 63-1-504
Texas	Yes	Tex. Occ. Code Ann. § 162.253
Utah	Yes	Utah Code Ann. § 31A-4-106.5
Virginia	Yes	Va. Code Ann. § 54.1-2997(A)
Washington	Yes	Wash. Rev. Code Ann. § 48.150.060
West Virginia	Yes	W. Va. Code Ann. § 30-3F-3
Wyoming	Yes	Wyo. Stat. Ann. § 26-1-104

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STATES WITH PROPOSED GUIDANCE OR PENDING LEGISLATION

STATE	DOES STATE HAVE A DPC LAW?	PROPOSED LEGISLATION OR STATE GUIDANCE
Alaska	No, But Guidance or Proposed Legislation	***Proposed Legislation*** 2023 Ak. S.B. 45, 33d Ak. Leg., Reg. Sess. (Ak. 2023). (Passed by Senate on 5/10/2023; returned to House Labor and Commerce Committee on 1/31/24)
Maryland	No, But Guidance or Proposed Legislation	2009 Maryland Insurance Administration (MIA) Report on "Retainer" or "Boutique" or "Concierge" Medical Practices and the Business of Insurance that includes recommendations related to these types of practice structures. Md. Ins. Admin., Report on "Retainer" or "Boutique" or "Concierge" Medical Practices and the Business of Insurance (2009).
Massachusetts	No, But Guidance or Proposed Legislation	A 2016 letter from the Commissioner of Insurance to a DPC practice in Massachusetts, confirming the DPC practice may continue to operate in the state, while the state continues to review DPC model of care, under the current set of DPC operations as outlined in the letter. Letter from Daniel R. Judson, MA Comm'r of Ins., to William Mandell, Couns. To Gold Care Direct Primary Care (Mar. 4, 2016).
Pennsylvania	No, But Guidance or Proposed Legislation	***Proposed Legislation***: House Bill 886, The Medical Service Agreement Act

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STATE	DOES STATE HAVE A DPC LAW?	PROPOSED LEGISLATION OR STATE GUIDANCE
		(referred to the Insurance Committee on Apr. 10, 2023)
South Carolina	No, But Guidance or Proposed Legislation	***Proposed Legislation***: House Bill 4157, Direct Primary Care Agreement (sent to the Committee on Labor, Commerce and Industry on Mar. 15, 2023)
Wisconsin	No, But Guidance or Proposed Legislation	***Proposed Legislation*** House Bill 953 (introduced Jan. 12, 2024) and Senate Bill 905 (introduced Jan. 11, 2024) (companion bills)

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INACTIVE STATES AS OF APRIL 2024

THE BELOW STATES DO NOT HAVE DIRECT PRIMARY CARE LAWS IN PLACE AT THIS TIME

- California
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Illinois
- Minnesota
- Nevada
- New Jersey
- New Mexico
- New York
- North Dakota
- Rhode Island
- Vermont

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