

1 AN ACT relating to Medicaid ordering, referring, and prescribing providers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in in this section:*

6 *(a) "Direct primary care membership agreement" means a written contractual*
7 *agreement between a primary care provider and an individual patient or the*
8 *legal guardian of the patient that:*

- 9 *1. Is for an agreed-upon fee over an agreed-upon period of time;*
- 10 *2. Describes the primary care services to be provided in exchange for the*
11 *agreed-upon fee;*
- 12 *3. States that the primary care provider shall not bill a health benefit*
13 *plan or the Medicaid program on a fee-for-service basis for the*
14 *primary care services provided under the agreement;*
- 15 *4. Specifies automatic agreement renewal periods;*
- 16 *5. Specifies any additional fees that may be charged for primary care*
17 *services that are not included in the agreement;*
- 18 *6. States that the patient is not required to pay more than twelve (12)*
19 *months of the agreed-upon fee in advance;*
- 20 *7. States that the agreed-upon fee and any additional fees may be paid by*
21 *a third party;*
- 22 *8. Allows either party to terminate the agreement in writing, without*
23 *penalty or payment of a termination fee, after notice;*
- 24 *9. Provides that, upon termination of the agreement by the patient or his*
25 *or her legal guardian, all unearned fees are to be returned to the*
26 *patient, his or her legal guardian, or any third-party payor; and*
- 27 *10. Contains a conspicuous and prominent statement that the agreement:*

- 1 a. Does not constitute a health benefit plan and does not meet any
2 individual health benefit plan mandate that may be required by
3 federal law; and
- 4 b. Is not a Medicaid benefit, is not covered by Medicaid benefits,
5 and does not meet any Medicaid coverage requirements
6 established by state or federal law;
- 7 (b) "Ordering, referring, and prescribing provider" means a Medicaid
8 provider type that does not participate, for billing purposes, with the state
9 Medicaid program, but may order, refer, or prescribe to Medicaid
10 beneficiaries;
- 11 (c) "Primary care" means the screening, assessment, diagnosis, and treatment
12 for the purpose of promotion of health or the detection and management of
13 disease or injury within the competency and training of the primary care
14 provider; and
- 15 (d) "Primary care provider" means a physician as defined in KRS 311.550, a
16 physician's medical practice, an advanced practice registered nurse as
17 defined in KRS 314.011, or an advanced practice registered nurse's
18 practice, that enters into a direct primary care membership agreement with
19 a Medicaid beneficiary.
- 20 (2) The Department for Medicaid Services, and any managed care organization with
21 whom the department contracts for the delivery of Medicaid services, shall not:
- 22 (a) Prohibit a Medicaid beneficiary from entering into a direct primary care
23 membership agreement; or
- 24 (b) Penalize, fine, or otherwise sanction a Medicaid beneficiary for receiving
25 primary care services under a direct primary care membership agreement.
- 26 (3) The Department for Medicaid Services, and any managed care organization with
27 whom the department contracts for the delivery of Medicaid services, shall, in

1 accordance with 42 C.F.R. sec. 455.410, require a primary care provider who
2 enters into a direct primary care membership agreement with a Medicaid
3 beneficiary to enroll with the state Medicaid program as an ordering, referring,
4 and prescribing provider for screening purposes only.

5 (4) Notwithstanding any other provision of law to the contrary, a primary care
6 provider enrolled in the state's Medicaid program as an ordering, referring, and
7 prescribing provider shall not provide a Medicaid beneficiary with a prescription
8 for any Schedule II controlled substance as defined in KRS 218A.060 or
9 Schedule III controlled substance as defined in KRS and 218A.080.

10 (5) Nothing in this section shall require the Department for Medicaid Services, and
11 any managed care organization with whom the department contracts for the
12 delivery of Medicaid services, to reimburse a primary care provider or a Medicaid
13 beneficiary for services provided under a direct primary care membership
14 agreement.

15 (6) The Department for Medicaid Services may promulgate administrative
16 regulations in accordance with KRS Chapter 13A necessary to carry out this
17 section.