SUBJECT: Placing direct primary care in statute and distinguishing it from insurance

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Crownover, Naishtat, Blanco, Coleman, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

2 absent — Collier, S. Davis

WITNESSES: For — Chris Larson, Texas Academy of Family Physicians; John Davidson, Texas Public Policy Foundation; (*Registered, but did not testify*: Annie Spilman, National Federation of Independent Business/TX; Amanda Martin, Texas Association of Business; Dan Finch, Texas Medical Association; David Reynolds, Texas Osteopathic Medical Association; Lauren Harkins)

Against — None

On — Mari Robinson, Texas Medical Board; (*Registered, but did not testify*: Pat Brewer, Doug Danzeiser, Margaret Jonon, and Jamie Walker, Texas Department of Insurance)

BACKGROUND: Direct primary care is a model for purchasing and delivering primary health care services in which physicians are paid a fee directly by patients rather than by a third party, typically an insurance company. According to the Texas Academy of Family Physicians, at least 400 direct primary care practices are currently operating in the state. Patients who purchase direct primary care must still maintain health insurance to receive coverage for specialty care and catastrophic events that require hospitalization.

DIGEST: CSHB 1945 would amend Occupations Code, ch. 162 to add subchapter F governing direct primary care.

Definitions. The new subchapter would define “direct primary care” to

mean a primary medical care service provided by a physician to a patient in return for a fee charged by the physician to the patient or the patient's designee, otherwise known as a "direct fee."

A "primary medical care service" under the subchapter would be a patient's main source for regular health services and would include:

- promoting and maintaining mental and physical health;
- preventing disease;
- screening, diagnosing, and treating acute or chronic conditions caused by disease, injury or illness;
- providing patient counseling and education; and
- providing a broad range of preventive and curative health care over a period of time.

A "medical services agreement" would be a signed written agreement through which a physician agreed to provide direct primary care services to a patient in exchange for a direct fee for a period of time agreed to by the physician and the patient or an entity representing the patient.

For purposes of subchapter F, the definition of "physician" in the Occupations Code would include a professional association or limited liability company owned entirely by a physician.

Direct primary care not insurance. The bill would specify that a medical service agreement was not subject to regulation by the Texas Department of Insurance and was not health or accident insurance or coverage under Title 8, Insurance Code, which governs health insurance and other health coverages.

CSHB 1945 further would specify that a physician providing direct primary care was not:

- an insurer or health maintenance organization;
- subject to regulation by the Texas Department of Insurance for providing such care;

- required to obtain a certificate of authority under the Insurance Code; or
- bound by provisions of the Insurance Code that forbid a physician or other provider from waiving a deductible or copayment owed by a person under a health insurance contract.

Other provisions. Under HB 1945, a physician could not bill an insurer or health maintenance organization for direct primary care that was paid under a medical service agreement.

The Texas Medical Board or another state agency, a health insurer, health maintenance organization, or health care provider could not prohibit, interfere with, or initiate a legal proceeding against:

- a physician solely because the physician provided direct primary care; or
- a person solely because the person paid a fee for direct primary care.

The bill would not apply to worker's compensation insurance coverage.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1945 would help create a better health care environment for both physicians and patients. The bill would specify that direct primary care is not health insurance because these practices do not assume risk. Instead, the direct primary care model involves the delivery of certain health care services under a contractual agreement outside the scope of state insurance regulations. Direct primary care provides patients with better access to their primary care physician, while affording physicians more time to spend with their patients instead of dealing with the cost and administrative burden of seeking reimbursement through a health insurance company.

Direct primary care results in lower downstream health care costs. Patients' access and close relationships with their primary care physicians tends to reduce the utilization of more expensive aspects of the health care system, such as hospitalizations, emergency room visits, specialist referrals, and expensive tests and services such as MRIs. Traditional primary care practices spend nearly 65 percent of revenue on overhead. By removing the insurance bureaucracy from the process — including billing, coding, claims processing, and appeals — direct primary care practices report significantly reduced operating expenses.

The bill is necessary legislation, which would make clear in statute that direct primary care is not health insurance. While Insurance Code, sec. 843.073 stipulates that physicians engaged in the delivery of medical care are not acting as insurers, further clarity is needed in statute to create a legal and regulatory environment in which this model can grow in Texas, to the benefit of patients and physicians alike. Other states already have defined direct primary care in statute or are in the process of doing so, and Texas should as well.

By making clear that direct primary care is not insurance, the bill would address concerns about consumer protection and disclosure. Every direct primary care practice in Texas prominently discloses on its website that it is not insurance. In addition, nothing in CSHB 1945 would exempt the physician from common law contract requirements or the oversight of the Texas Medical Board.

OPPONENTS SAY:

CSHB 1945 would be unnecessary and redundant, because Insurance Code, sec. 843.073 already provides that a physician engaged in the delivery of medical care is not required to obtain a certificate of authority under the Texas Health Maintenance Organization Act.

While the bill would specify that direct primary care is not health insurance, it should require practices to inform consumers of this fact and other distinctions between the two models. Consumers considering entering into a direct primary care contract need to know, for example, that it will not pay for specialty care appointments and hospital visits.

Voluntary disclosure of this information by direct primary care practices is not sufficient to protect and notify consumers.

NOTES:

The committee substitute differs from the bill as introduced in that CSHB 1945 includes language that would prevent a physician from billing a health insurer or a health maintenance organization for direct primary care services paid under a medical service agreement. CSHB 1945 also would not apply to worker's compensation insurance coverage.

The Senate companion bill, SB 1018 by Hancock, was considered in a public hearing of the Senate Health and Human Services Committee on April 1 and left pending.