



---

---

## WISCONSIN LEGISLATIVE COUNCIL

---

---

Jessica Karls-Ruplinger, Acting Director

TO: SENATOR ALBERTA DARLING

FROM: <sup>BL.</sup> Brian Larson, Senior Staff Attorney, and <sup>AB</sup> Andrea Brauer, Staff Attorney

RE: Comparison of Provisions in State Direct Primary Care Legislation

DATE: September 17, 2018

At your request, we have prepared the attached comparison of direct primary care (DPC) laws enacted in 25 other states,<sup>1</sup> and proposed DPC legislation in Wisconsin: 2017 Assembly Bill 798, as amended by Assembly Substitute Amendment 1 to 2017 Assembly Bill 798 (referred to collectively as "AB 798" unless otherwise noted).<sup>2</sup> States that have enacted DPC legislation generally exempt DPC from state insurance law and create a separate framework for regulating DPC. The attached comparison lists major provisions of states' DPC laws by general categories. Under each category, the applicable provisions in AB 798 are included first, followed by provisions used in other states that differ from AB 798, if any. The comparison is intended for background and discussion, and it is not a complete summary of AB 798 or the DPC laws enacted in other states.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

BL:AB:jal  
Attachment

---

<sup>1</sup> The following states are included in the attached chart: Alabama, Arkansas, Arizona, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Nebraska, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming.

<sup>2</sup> The Assembly passed AB 798, as amended by Assembly Substitute Amendment 1, but no version of it was passed by the Senate. See <https://docs.legis.wisconsin.gov/2017/proposals/ab798> and <https://docs.legis.wisconsin.gov/2017/proposals/sb670>.

PAGE 1 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
Attachment to Memorandum to Senator Darling, September 17, 2018

**POTENTIAL SCOPE OF A DPC PRACTICE**

**Scope of Services That DPC Includes (i.e., definition of “primary care”)**

<p><b>AB 798 and 13 States:</b> CO, FL, ID, IN, KS, KY, LA, MI, MS, TN, UT, WA, WV</p>	<p>DPC may only include “primary care,” which is defined similarly to the definition recognized in federal guidance, to mean or specifically include: “routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury.”<sup>1</sup></p>
<p><b>5 States:</b> AL, AR, MO, OK, WY</p>	<p>DPC may include services defined more generally as “health care services,” instead of primary care.</p>
<p><b>3 States:</b> IA, NE, TX</p>	<p>DPC may only include “primary care,” which is defined partly with respect to timing of services, to mean: “general health care services of the type provided at the time a patient seeks preventive care or first seeks health care services for a specific health concern,” including a list of services such as care that promotes health or prevents disease, treatment of acute conditions, or coordination of care.</p>
<p><b>2 States:</b> ME, OR</p>	<p>DPC may only include “primary care,” which is defined to mean: “outpatient, nonspecialty health care services or the coordination of health care for the purpose of: (1) promoting or maintaining mental health and physical health and wellness; and (2) the diagnosis, treatment of management of acute or chronic conditions caused by disease, injury or illness.”</p>

<sup>1</sup> AB 798 as introduced, and Michigan’s, Kansas’s, and Utah’s DPC laws, also specifically include language related to lab work, in addition to the definition of primary care described above.

PAGE 2 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
Attachment to Memorandum to Senator Darling, September 17, 2018

<b>AZ:</b>	DPC may only include “primary health care,” which is defined to mean: “conducting all components of primary care that is ordered and supervised by a primary care provider, including medical visits, laboratory testing, imaging, pathology testing, prescribing and administering medication and other medical procedures that may be performed or supervised by a primary care provider with training and experience in that procedure.”
------------	---

**Authorization to Offer DPC**

<b>AB 798<sup>2</sup> and 5 States:</b> AL, <sup>3</sup> ID, <sup>4</sup> ME, <sup>5</sup> NE, <sup>6</sup> TN <sup>7</sup>	DPC may be offered by a specified list of licensed health care practitioners (see footnotes for examples).
<b>8 States:</b> AR, KS, ME, MI, VA, WV, WA, WY	DPC may be offered by any licensed health care practitioner acting within the scope of his or her license.
<b>3 States:</b> LA, MO, TX	DPC may only be offered by physicians.

<sup>2</sup> AB 798 authorizes the following individual practitioners to enter a DPC agreement: nurses, chiropractors, dentists, physicians, physician assistants, perfusionists, respiratory care practitioners, physical therapists, physical therapist assistants, podiatrists, dietitians, athletic trainers, occupational therapists, occupational therapy assistants, optometrists, pharmacists, acupuncturists, psychologists, social workers, marriage and family therapists, professional counselors, speech-language pathologists, audiologists, speech and language pathologists, massage therapists, and bodywork therapists. The bill also authorizes participation in DPC practice by a partnership, corporation, or limited liability company of any of the provider types described above; a licensed hospice; a cooperative health care association that directly provides services through salaried employees in its own facility; an inpatient health care facility; a community-based residential facility; or a rural medical center.

<sup>3</sup> Alabama’s DPC law authorizes a licensed physician or dentist to be a DPC provider. Additionally, under Alabama law, a licensed chiropractor may enter into a “chiropractic care agreement” with a patient to form an arrangement that is similar to DPC for chiropractic services.

<sup>4</sup> Idaho’s DPC law authorizes a natural person licensed to provide health care services in the field of pediatrics, family medicine, internal medicine, or dentistry to be a DPC provider.

<sup>5</sup> Maine’s DPC law authorizes a licensed physician or other advanced health care practitioner to be a DPC provider.

<sup>6</sup> Nebraska’s DPC law authorizes a physician or nurse practitioner who specializes in general medicine, family medicine, internal medicine, or pediatrics to be a DPC provider.

<sup>7</sup> Tennessee’s DPC law authorizes a licensed physician or chiropractor to be a DPC provider.

PAGE 3 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
Attachment to Memorandum to Senator Darling, September 17, 2018

<p><b>AB 798 and 21 states:</b>          AL, AZ, CO, FL, IA, ID,          IN, KS, KY, LA, ME,          MI, MO, MS, NE, OR,          TN, TX, UT, WA, WV</p>	<p>In addition to the individual practitioners who may offer DPC (described above), group practices or entity providers may also provide DPC.</p>
--	---

CONSUMER PROTECTION DISCLOSURES

Disclosures Regarding DPC Services

<p><b>AB 798 and 22 states:</b>          AL, AR, AZ, CO, FL,          IA, ID, IN, KS, KY, LA,          ME, MI, MS, NE, OR,          TN, UT, VA, WA, WV,          WY</p>	<p>The DPC agreement must describe<sup>8</sup> the services that are included under the agreement.</p>
<p><b>AB 798 and 18 states:</b>          AL, AR, AZ, CO, FL,          ID, IN, KS, KY, MI, MS,          NE, OR, TN, VA, WA,          WV, WY</p>	<p>The DPC agreement must specify the fee for the agreement.</p>

<sup>8</sup> AB 798, Michigan, and Kansas require that the DPC agreement describe *and quantify* the services included under the DPC agreement.

PAGE 4 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
Attachment to Memorandum to Senator Darling, September 17, 2018

<p><b>AB 798 and 13 states:</b>  AL, FL, IA, ID, IN, KS,  KY, MI, MS, NE, TN,  WA, WV</p>	<p>The DPC agreement must specify the duration of the agreement.</p>
<p><b>AB 798 and 9 states:</b>  AR, AZ, IA, KS, MI,  MS, NE, OR, VA</p>	<p>The DPC agreement must state that the patient must pay the DPC provider for all services that are not specified under the agreement.</p>

Disclosures Regarding DPC and Insurance

<p><b>AB 798 and 22 states:</b>  AL, AR, AZ, CO, FL,  IA, ID, IN, KS, KY, ME,  MI, MO, MS, NE, OR,  TN, TX, UT, VA, WA,  WY</p>	<p>The DPC agreement must state that DPC is not insurance or is not regulated under state insurance law.</p>
<p><b>AB 798 and 16 states:</b>  AL, AR, CO, FL, IA, ID,  KS, KY, ME, MS, NE,  TN, UT, VA, WA, WY</p>	<p>The DPC agreement must state that DPC may not satisfy the individual mandate under federal law.</p>
<p><b>AB 798 and 4 states:</b> AL,  AR, NE, ME</p>	<p>The DPC agreement must state that DPC fees might not be credited towards deductible and out-of-pocket expenses under the patient's health insurance, if he or she has health insurance.</p>
<p><b>AB 798 and 3 states:</b> AL,  CO, TN</p>	<p>The DPC agreement must include information stating that some services provided under the agreement may be covered by any health insurance policy that the patient may have.</p>

PAGE 5 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
Attachment to Memorandum to Senator Darling, September 17, 2018

<b>AB 798 and 2 states:</b> AL and TN	The DPC agreement must state that patients are encouraged to consult with their insurance carrier before entering into a DPC agreement.
<b>4 states:</b> IA, ID, VA, WA	The DPC agreement must state that patients are encouraged to purchase health insurance to cover health care services outside of the DPC agreement.

Other Consumer Protection Disclosures

<b>TN:</b>	The DPC agreement must state that if a DPC provider breaches the agreement, the provider may be liable for damages and subject to professional discipline.
<b>OR:</b>	The DPC agreement must include other disclosures required by a designated state agency by rule.

OTHER REQUIREMENTS OF DPC PROVIDERS

Third-Party Payments

<b>AB 798 and 13 states:</b> AZ, IA, ID, IN, KS, LA, ME, MI, NE, OR, TX, UT, WA	DPC providers or patients are explicitly prohibited from billing insurance for services provided under the DPC agreement.
<b>AB 798 and 5 states:</b> CO, FL, MS, VA, TX	Employers are allowed to enter into DPC agreements on their employees' behalf.

PAGE 6 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
Attachment to Memorandum to Senator Darling, September 17, 2018

<p><b>9 states:</b> AR, CO, IA, KY, ME, MO, NE, UT, WY</p>	<p>Third-party payments are explicitly authorized.</p>
--	--

Provisions Related to DPC Fee Arrangements

<p><b>AB 798:</b></p>	<p>DPC providers are explicitly authorized to base fees on age.</p>
<p><b>5 states:</b> AL, IA, IN, KY, TN</p>	<p>If a DPC provider requires prepayment for services, the patient may not be required to pay for more than 12 months of services in advance.</p>
<p><b>2 states:</b> NE, TX<sup>9</sup></p>	<p>DPC providers are explicitly authorized to charge patients on a fee-for-service basis.</p>
<p><b>2 states:</b> AZ and WA</p>	<p>DPC providers are explicitly prohibited from basing fees on health status or sex.</p>

Selection or Acceptance of Patients

<p><b>AB 798 and 3 states:</b> CO, OR, WA</p>	<p>DPC providers may not discriminate in selecting or accepting patients based on health status. In addition, they may not discriminate in selecting or accepting patients based on a list of additional factors such as age, gender, disability, and race.<sup>10</sup></p>
---	--

<sup>9</sup> Texas law allows DPC physicians to charge fees in any of the following forms: a monthly retainer; membership fee; subscription fee; fee paid under a DPC agreement; or a fee for each service, visit, or episode of care.

<sup>10</sup> AB 798 prohibits DPC providers from discriminating in selecting patients based on age, citizenship status, color, disability, gender or gender identity, genetic information, health status, existence of a preexisting medical condition, national origin, race, religion, sex, sexual orientation, or any other protected class.



PAGE 7 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
 Attachment to Memorandum to Senator Darling, September 17, 2018

<p><b>4 states:</b> IA, MS, NE, WA</p>	<p>DPC providers may not discriminate in selecting or accepting patients based on health status, but may decline to select or accept patients on other grounds.</p>
<p><b>4 states:</b> AL, CO, MS, WA</p>	<p>Notwithstanding any nondiscrimination requirements that might apply, DPC providers may decline to select or accept a patient if certain conditions are met, such as if the DPC practice is at its maximum capacity, or the patient's health conditions exceed the training or capabilities of the DPC provider.</p>

Termination of Patients

<p><b>AB 798 and 15 states:</b>          AL, AR, AZ, CO, ID, KS, KY, LA, MI, MO, MS, NE, TN, UT, WA</p>	<p>DPC patients may terminate a DPC contract for any reason, pursuant to specified procedures.</p>
<p><b>AB 798 and 12 states:</b>          AR, CO, ID, KS, KY, MI, MO, MS, NE, TN, UT, WA</p>	<p>DPC providers may terminate a DPC contract with a patient for any reason, pursuant to specified procedures.</p>
<p><b>4 states:</b> AL, MS, NE, WA</p>	<p>Notwithstanding any nondiscrimination requirements that might apply, DPC providers may terminate a DPC contract with a patient for cause.</p>
<p><b>OR:</b></p>	<p>DPC providers may not terminate a patient based on health status. In addition, they may not terminate a patient based on a list of additional factors such as age, gender, disability, and race.</p>



PAGE 8 – PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
 Attachment to Memorandum to Senator Darling, September 17, 2018

Other Requirements

<p><b>AB 798 and 2 states:</b> VA, WA</p>	<p>DPC providers may only participate in a network of a health insurance carrier subject to specified conditions.</p>
<p><b>2 states:</b> OR, WA</p>	<p>It is an unfair business practice to misrepresent the terms of a DPC agreement.</p>

ADMINISTRATIVE OVERSIGHT

<p><b>AB 798 (as introduced, but not as amended) and 1 state:</b> OR</p>	<p>A designated state agency is explicitly authorized to investigate complaints and refer DPC providers for disciplinary or other proceedings, if appropriate.</p>
<p><b>2 states:</b> OR, WA</p>	<p>A designated state agency is explicitly authorized to create additional requirements related to DPC by rule, in addition to any general rulemaking authority that may already exist under the statutes.</p>
<p><b>CO:</b></p>	<p>The state DPC law is not subject to enforcement by the state attorney general or district attorneys.</p>
<p><b>TX:</b></p>	<p>State agencies and health insurers are explicitly prohibited from prohibiting, interfering with, or initiating a legal proceeding against a DPC provider solely because the person is participating in a DPC arrangement as authorized under state law.</p>

PAGE 9 - PROVISIONS IN DIRECT PRIMARY CARE LEGISLATION  
Attachment to Memorandum to Senator Darling, September 17, 2018

**WA:**

DPC practices must submit annual statements to the state insurance commissioner's office specifying the number of providers in each practice, the total number of patients being served, the average direct fee being charged, and the providers' names. The commissioner must also report annually to the Legislature on DPC practices, including participation trends, complaints received, voluntary data reported by DPC providers, and any necessary modifications to the state's DPC law.