To: Chairman Sen. Mary Pilcher-Cook

CC: Vice Chair Sen. Michael O'Donnell

CC: Ranking Minority Member Sen. Laura Kelly

# Testimony Regarding HB 2225

## ***Medical Retainer Agreements***

Madam Chairman, Members of the Committee, thank you for the opportunity to speak on HB 2225. We stand in support of this bill.

The question of whether Direct Primary Care (DPC) practices can be regulated as "insurers," is a significant potential barrier to the growth of this innovative new model of patient care. DPC providers have significant concerns that they could be labeled as "risk-bearing entities" when they provide health care in exchange for a monthly fee, and thus be defined and regulated as insurers. This is highly problematic for several reasons, a few of which I address below.

### I. State Issues

Without specific legislation, The Kansas Insurance Commissioner could now, or in the future, deem DPC practices to be engaged in the business of insurance and subject to regulatory control. This would be a deathblow for the DPC patient care model. Solo practitioners would be unreasonably forced to comply with regulatory and reserve obligations meant to govern insurance entities such as United Healthcare and CIGNA. The regulatory control / requirements would destroy the DPC practice completely. This in turn would deprive patients and employers of a valuable healthcare option, and decrease the value of high deductible health plans.

### II. Federal Issues

If DPC practices are considered "insurers," employees and other individuals with health savings accounts would be prohibited from purchasing DPC membership. Section 223(c) of the Internal Revenue Code prohibits those with high deductible health plans which are combined with Health Savings Accounts (HSAs) from having a *second* health plan. So If DPC is interpreted as a health insurance plan, patients with HSAs will be effectively barred from accessing DPC practices (*i.e.*, a second "health plan"). Thus, employers who cover their workers with a combination of a high deductible plan and an HSA will be prohibited from offering DPC as a health benefit. If DPC model is ever interpreted as "insurance" then that could eliminate DPC as a healthcare option under the ACA.

### III. Stakeholders concerns about regulatory overreach which must be addressed to encourage investment and growth in this healthcare innovation.

Clearly, defining DPC practitioners as "insurers" will be detrimental to this innovative model as well as employers, insurance brokers, and the patients who stand to benefit. Presently, Kansas statutes contain no language specifically defining DPC practices as insurers. So a key question from the committee — and it warrants additional response — is, **" If DPC has never been defined in Kansas as the business of insurance, why is HB 2225 necessary?"** The short answer is, that in order to continue to invest in and expand the DPC model, Kansas physicians and other stakeholders need some level of statutory certainty that DPC will not be regulated out of existence in a year or two.

As stated in earlier testimony, physicians are particularly risk averse. This is especially so when there is a threat of legislative or regulatory interference. Many still feel the aftermath of the Stark laws prohibiting physicians from owning any healthcare enterprise or service to which s/he refers patients. This severely disrupted many physician practices as they were forced, on short notice, to divest themselves of their interests in hospitals, surgical centers, laboratories and other investments — often at steep discounts.

With this in mind, it stands to reason that the lack of definitive Kansas law may make physician investment in DPC practice an unacceptable risk. The fear is that without precise legislation stating otherwise, the question of whether DPC is the business of insurance is open to interpretation. Significantly past experience seems to confirm that a state's insurance commissioner has the power to declare a given practice to be an illegal insurance enterprise even without the statutory authority to do so.

## IV. Experience shows that without legislation, the risk of unfavorable administrative action is real.

The best example is from the State of Maryland, where in 2009, the Insurance Commissioner issued an opinion declaring that virtually all direct practices were subject to Maryland's insurance code. Another example is a case, also in 2009, in which the New York State Insurance Commissioner ("NYIC") asserted that Dr. John Muney's direct pay practice violated the New York insurance laws. NYIC later settled the dispute after Dr. Muney agreed to include only "well visits" in his monthly membership fee and to charge $33.00 for "sick visits." Apparently, in the Commissioner's mind, this modification transformed the operation from an insurance company into a doctor's office.

## V. Legislative solutions similar to HB 2225 are the overwhelming choice of those states which have addressed similar DPC/business-of-insurance concerns.

These examples underscore the problem and demonstrate the need for clear-cut legislation excluding DPC from insurance laws. In fact, the lessons from Maryland and New York likely spurred the growing trend for states to enact legislation specifically excluding DPC from the scope of state insurance regulations. Presently, **Washington, Utah, Oregon, West Virginia, Arizona,**

**Louisiana, and Michigan**, have all passed such legislation — an additional **nine states** have similar legislation pending. Plainly, such concerns are prevalent throughout the states and the consensus appears to be that a legislative solution is needed.

Towards that end, HB 2225, can be the sensible and necessary Kansas solution to a very real problem. The cost of this bill should be negligible, as it will not call for increased regulation or state oversight. DPC physicians will continue to be held to the same standards and oversight as always. The Kansas Board of Healing Arts will not be burdened with any heightened or additional duties. And by proactively removing DPC from the purview of the Office of the Insurance Commissioner, HB 2225 will eliminate potential additional oversight responsibility to the KOIC.

Thank you for the opportunity to present testimony and for considering this crucial legislation.

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