

**HB 4130 C STAFF MEASURE SUMMARY****Carrier:** Sen. Steiner**Senate Committee On Rules****Action Date:** 03/04/24**Action:** Do pass with amendments to the B-Eng bill. (Printed C-Eng.)**Vote:** 3-2-0-0**Yeas:** 3 - Lieber, Manning Jr, Steiner**Nays:** 2 - Hansell, Knopp**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Daniel Dietz**Meeting Dates:** 3/4**WHAT THE MEASURE DOES:**

The measure adds restrictions and requirements to agreements between professional corporations formed to practice medicine and management services organizations (MSOs), requiring that licensed providers control decisions about the practice and delivery of health care.

**Detailed Summary**

For medical practices that are subject to laws for professional corporations, the measure says:

- an officer in a professional corporation **may not own shares or serve as director** of an MSO that has a contract with the professional corporation;
- an officer in a professional corporation who owns or controls an MSO that has a contract with the corporation **may not set terms of employment** for providers in the professional corporation;
- a professional corporation may not provide in its bylaws for the **removal of a provider** except when an exception applies, or in cases of professional discipline, violation of fiduciary duty, or fraud; and
- a professional corporation may not take actions that **relinquish control** over clinical operations or business decisions that affect care by:
  - restricting the sale of assets or issuing stock;
  - relinquishing control over employment decisions; and
  - setting clinical standards or polices. The MSO may still provide management services, but may not exert ultimate control.

**Exemptions**

The measure has exemptions for specific medical practices, including:

- Hospitals and Health Systems (historically exempt from corporate practice laws);
- Telemedicine providers;
- Providers of Programs of All-Inclusive Care for the Elderly (PACE);
- Urban Indian health programs and tribal behavioral health grantees;
- Behavioral health and opioid treatment providers (includes crisis lines); and
- Long-term and residential care.

**Exceptions**

Three exceptions may apply to practices that would otherwise be subject to the measure.

1. The measure allows a professional corporation to own a controlling interest in the MSO.
2. The measure allows a physician who is an officer of the professional corporation to serve as director or officer of the MSO if:
  - the contract between the professional corporation and the MSO was formed prior to January 1, 2025; AND

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- the physician who serves as manager of the MSO does not receive compensation for serving as manager and director from the MSO; AND
  - any action by the MSO that affects minority owners of the MSO is approved by a vote of *more* than the majority of shares in the MSO (majority + 1)
    - Calculation of shares to determine majority must include shares held by the professional corporation
    - Shareholders may not give proxy vote to professional corporation shares
3. The measure allows a person to own an interest in both the professional corporation and the MSO if:
- the person owns less than 10 percent of shares in the professional corporation; AND
  - the shares are not provided as compensation by the MSO; AND
  - any other compensation from the MSO is market rate.

### **Enforcement of Professional Corporation Laws**

- Oregon Health Authority may submit a complaint to the Secretary of State that the professional corporation violated rules
- The Secretary of State may dissolve the corporation or revoke/inactivate its certificate or authority

### **Noncompete and Nondisclosure**

- A noncompetition agreement is void and unenforceable between a provider in a professional corporation that has a contract with an MSO
  - Unless the provider is a shareholder with at least a 25 percent interest in the professional corporation
- A nondisclosure (or nondisparagement) agreement is void and unenforceable between a provider and an MSO, or between a provider and a hospital

### **Operative and effective dates**

- New requirements for professional corporations, their officers, and MSOs apply to contracts made or renewed after January 1, 2031
- Limits on non-disclosure and nondisparagement clauses apply to contracts made or renewed after the measure's effective date on January 1, 2025

### **ISSUES DISCUSSED:**

- Locus of control for decisions about health care delivery
- Exceptions that allow a business to own the majority of a professional corporation formed to practice medicine
- Exemptions for hospitals and health systems and for behavioral health providers
- Nondisclosure and noncompete clauses

### **EFFECT OF AMENDMENT:**

Clarifies exceptions to requirements for officers and shareholders of professional corporations formed to practice medicine and management services organizations.

### **BACKGROUND:**

The corporate practice of medicine doctrine is a body of laws and policies based on the idea that allowing non-physicians to make decisions about health care delivery could be ethically problematic for physicians and result in lower quality care for patients. The doctrine traces back to a code adopted by the American Medical Association in 1846 ([link](#) to The Corporate Practice of Medicine, Vanderbilt Law Review (1987)). By the early twentieth century, many states adopted laws prohibiting non-physicians to hold controlling stakes in health care practices. Over 30 states have some form of prohibition on the corporate practice of medicine.

Oregon's corporation laws say that licensed providers must have the majority interest in a professional corporation formed to practice medicine (*see* ORS 58.375 et seq). Some professional corporations form contracts with businesses called management services organizations (MSOs) to oversee business operations. These contracts may allow the MSO to have a controlling interest in the medical practice, which means that someone

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who is not a licensed provider can make business decisions impacting the delivery of health care. ([link](#) to Zhu et al, A Doctrine in Name Only, *New England Journal of Medicine* (2023)). In its informational hearings on September 27, 2023, the Senate Committee on Health Care heard testimony on these issues and their impact on quality of care ([link](#) to meeting materials).

Investor-owned delivery of care has attracted increased attention recently in response to the growing role of non-physicians, particularly private equity investors, expanding into health care markets. In Oregon, examples of this include UnitedHealth Group purchasing Oregon Medical Group ([link](#)) and trying to buy the Corvallis Clinic ([link](#)), and Amazon purchasing One-Medical ([link](#)).