



MEMORANDUM

To: Sen. Deb Patterson, Chair, Senate Committee on Health Care
Sen. Cedric Hayden, Vice Chair, Senate Committee on Health Care
Members of the Senate Committee on Health Care

From: Mark Bonanno, General Counsel and Vice President of Health Policy

Date: March 4, 2025

Re: OMA Comments on SB 951 -5 Amendment

The Oregon Medical Association (OMA) engages in advocacy, policy, and community for over 7,000 physicians, physician associates, and medical and PA students in Oregon so they can remain focused on patient care.

We appreciate the opportunity to provide testimony regarding Senate Bill 951 and the -5 amendment. The OMA has long-supported efforts to better enforce Oregon's corporate practice of medicine doctrine. We value Representative Bowman's leadership and continued willingness to work through amendments to ensure we do no harm to Oregon's medical clinics and clinicians.

Physician Noncompetition Agreements

The OMA formed a task force on the corporate practice of medicine in 2024 and developed a series of key principles about supporting the independence of physician medical decision-making that protects patient access to quality care. One key principle is that the OMA does not support the continued widespread use of physician and physician associate noncompetition agreements.

The -5 amendment tries to work out a level playing field for all physicians no matter where they are employed and we are working to ensure that exceptions to a ban on noncompete agreements do not unintentionally permit continued widespread use. We would like to see the issue clearly tied to a "protectable interest" and that concept already exists in Oregon's law about noncompetition agreements in ORS 653.295.

We believe that physician noncompetes in employment agreements only should be allowed when there is a clear documented protectable interest. Further, if a noncompete is permitted, it might be helpful if the physician is provided a reasonable opportunity to buyout the noncompete. The OMA is advocating for clarity about: when a noncompete is allowed; a reduction in the widespread use of noncompete agreements; and assurances that physicians will be able to remain in a community after leaving prior employment.

Exceptions to the Corporate Practice of Medicine Doctrine

A 1975 Oregon Attorney General Opinion answered a question about whether a hospital may employ a licensed physical therapist. *See* 37 Or. Op. Atty. Gen. 963 (1975). The answer was yes because a hospital is separately licensed to provide medical services and does so through a variety of licensed professionals including physicians. The delivery of healthcare has changed since 1975. About 70% of physicians are employed by a hospital, health system, health plan affiliated organization, or medical clinic. Hospitals also acquire medical clinics and manage them.

We know that hospital ownership is rapidly evolving too and that private equity interests are looking to buy distressed hospitals. Some hospitals in other states have even had the real estate they owned sold out from under them which led to hospital bankruptcies. We would like to see that SB 951 ensures hospitals and their affiliated clinics maintain an organized medical staff as defined in ORS 441.055, and that in the event a hospital acquires or manages a medical clinic that some safeguards are in place to guard against a private equity backed attempt to end run SB 951 and control medical clinics.

Management Services Organizations

There is nothing inherently wrong with an organization that desires to manage a medical practice. Providing access to management expertise and capital for equipment and technology upgrades to a medical practice is a good thing. We acknowledge SB 951 and the -5 amendment are complex. Our reading is that MSOs may indeed bring administrative, business, and clinical efficiencies to a medical clinic, but any sort of control over those efficiencies must not affect the medical decision-making or the quality of medical care. We support that concept 100%. We also want to make sure that any control over the assets of a medical clinic does not permit abuses such as selling real estate to the detriment of the medical clinic and ultimately access to patient care.

Enforcement of SB 951

Our position is consistent about how abuses of the corporate practice of medicine doctrine should be enforced: through the Oregon Attorney General. If a bad actor attempts to make a profit off of medical practice acquisition and control to the detriment of patient care, our Attorney General should be granted specific authority to investigate, prosecute and provide confidentiality protection to physicians who bravely come forward and report on abuses.

The -5 amendment leaves enforcement of SB 951 up to private parties such as physicians who would have to pay attorneys to bring cases. Specifically, the amendment creates two new private rights of action that include the potential for punitive damages. Both new provisions would permit lawsuits against medical clinics and because clinics employ physicians rather than MSOs, the clinics likely bear the brunt of this new approach to enforcing SB 951. We need to guard against doing harm to clinics and find an alternate enforcement path or figure out how to ensure lawsuits do not unintentionally harm medical clinics. We are committed to working on these parts of the bill to achieve that goal.

Finally, it is important to note that this discussion is only one part of additional work needed to ensure the stability of medical practices that have never recovered from the stresses placed on them in recent years and which make them vulnerable to closure or a buyout by larger corporate interests. The OMA looks forward to working with this Committee on the bill and other concepts to help support our healthcare workforce and ensure access by patients to quality medical care.

The Oregon Medical Association (OMA) is the state's largest professional organization engaging in advocacy, policy, community-building, and networking opportunities for Oregon's physicians, physician associates medical students, and physician associate students. The OMA's members speak with one voice as they advocate for policies that improve access to quality patient care, reduce administrative burdens on medical professionals, and improve the health of all Oregonians. Additional information can be found at www.theOMA.org.