



MEMORANDUM

To: Rep. Rob Nosse, Chair, House Behavioral Health and Health Care Committee
Rep. Travis Nelson, Vice-Chair, House Behavioral Health and Health Care Committee
Rep. Christine Goodwin, Vice-Chair, House Behavioral Health and Health Care Committee
Members of the House Behavioral Health and Health Care Committee

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

Date: February 9, 2024

Re: OMA Comments in Support of HB 4130

The Oregon Medical Association (OMA) engages in advocacy, policy, and community for over 7,000 physicians, physician assistants, and medical and PA students in Oregon. The association serves and supports members in their efforts to practice medicine better, improve the health of Oregonians and provide the best care for their patients.

We were registered to testify at the public hearing on February 7, 2024, in support of efforts to enforce Oregon's corporate practice of medicine doctrine, and the hearing was closed before our testimony could be heard. As we have shared with Representative Bowman, we would like to see HB 4130 succeed with amendments that ensure we do no harm to Oregon's medical clinics and clinicians. We are now providing input on the dash one amendment.

Oregon is losing independent medical clinics to large company ownership because clinics cannot keep up with the escalating cost and administrative burden of a heavily regulated industry. And given no tangible regulatory relief on the horizon, it should be no surprise that clinics are now facing Hobson's choice: either sell to a larger company or close.

The stated goal of the bill is to ensure that licensed clinicians and not corporations are in charge of patient care. We absolutely agree with that goal. We recognize, however, that the regulatory levers the state legislature has available to head off the negative effects of a corporate takeover of medical practices are limited. Again, OMA agrees with efforts to better enforce the doctrine that keeps clinicians in charge of medical decisions. What levers to use to avoid causing struggling clinics simply to close is more of a challenge.

OMA would prefer to see the doctrine employed to address bad conduct associated with activities that reduce access to care, reduce quality of care, or increase the price of care. In other words, we want to ensure that we are not placing the sole regulatory burden on clinics and clinicians but rather shift that burden to corporate interests seeking to takeover medical practices. In short, while we are fully supportive of the concept, we do believe there are ideas that need to be explored through amendments and ongoing monitoring and subsequent legislative work to ensure Oregon is in fact doing no harm to its clinics and clinicians.

ENFORCEMENT PROVISIONS

We believe any investigation and enforcement activity related to the acquisition of medical practices by corporate interests should be conducted through the Oregon Department of Justice (DOJ) which has an entire division devoted to investigating and prosecuting anticompetitive business practices in Oregon. When we hear about medical practice takeovers that reduce quality of care, reduce access to medically necessary services, and raise the price and cost of care, those clearly anticompetitive activities seem more appropriate for enforcement action by the Oregon DOJ. We are beginning to see a similar enforcement approach being taken at the federal level where the Federal Trade Commission is investigating the negative effects of medical practice acquisitions.

Calling this out in legislation like HB 4130 would help send a strong message that Oregon is watching and will step in when and, hopefully before, patient care suffers. The current approach in the amendment appears to establish the Oregon Health Authority (OHA) as the arbiter of what complaints get passed along to the Oregon Department of Justice about merger and acquisition activity not anticompetitive business practices. There already is an analysis of merger and acquisition activity in health care by OHA. Going back to the goal of the bill, if there is conduct that interferes with patient care by clinicians, we believe that clinicians who have legitimate concerns about such conduct should have a place to go in state government to raise their concerns safely and, more importantly, ensure the agency they talk with has the ability to properly investigate the concerns. Simply put, we believe that is the Oregon DOJ.

REDUCE CLINICIANS ADMINISTRATIVE BURDEN

We believe that the lever of focusing on clinics and clinicians and making them responsible for checking all the boxes of regulatory compliance for a medical entity should be focused on the companies that seek to acquire and manage the medical entity. Imposing new and potentially unlimited reporting requirements on or forcing the administrative dissolution of a medical entity feels like it should be the last lever applied, not the first. Notably, the federal Corporate Transparency Act now requires registered business entities to file reports with the Treasury Department about the beneficial owners of the business. We must ask if federal rules about sharing that data with states have been analyzed to avoid duplicative reporting requirements for clinics. In short, however, perhaps imposing reporting requirements on or forcing the dissolution of the companies acquiring medical practices should be the first lever applied.

ENSURE CLINICIANS CAN PRACTICE MEDICINE

We agree that physicians and physician assistants should be free to provide their clinical services anywhere their license allows them to practice and to do so without fear of losing their job or their license for speaking up when business decisions clearly interfere with medical decisions and are not in the best interests of patients. We would want to ensure that any new provisions placed into the Oregon Medical Practices Act do not unnecessarily create new liability or disciplinary actions for those physicians or physician assistants. For example, in the bill and amendment there is a new definition of “disciplinary action.” The provision contains terms like discrimination and demotion not intended to create new reporting requirements by the licensee to the Oregon Medical Board. Also, there is new language in the amendment that appears to restrict a physician from practicing anywhere except within a hospital, PC, LLC or LLP. We are guessing the amendment's intent is not to prevent physicians from serving in a school-based clinic, a summer camp, or other locations not within those four limited locations and assume that will be addressed in future amendments.

We understand from the public hearing that there may be carve outs from application of the bill for telehealth companies, hospitals, and potentially others. Our concern with exceptions is the impact on physicians and physician assistants. Any exception should keep a level playing field for all Oregon physicians and physician assistants regarding noncompete agreements. To that end, if the exceptions move forward in future amendments, those amendments should clarify that a “protectable interest” under ORS 653.295 does not include the provision of medical services by an individual licensed to practice medicine in Oregon through an agreement between an employer and employee.

In closing, thank you for taking steps toward enforcing Oregon’s corporate practice of medicine doctrine. We welcome further discussion on the bill, we stand ready to help work through the concepts in the bill, and we look forward to seeing more support for Oregon’s clinics and clinicians.

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 assistants, medical students, and physician assistant 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.