

## HB 4130 B -B12, -B13, -B14, -B15 STAFF MEASURE SUMMARY

### Senate Committee On Rules

---

**Prepared By:** Daniel Dietz

**Meeting Dates:** 3/4

---

#### **WHAT THE MEASURE DOES:**

The measure updates Oregon's corporate practice of medicine standards to keep decisions regarding the administration of a health care business separate from decisions regarding the delivery of health care. It also restricts noncompetition agreements and disciplinary actions by a health care business against physicians.

#### Detailed Summary

Applies new provisions to existing requirements for officers of a professional corporation, except the secretary and treasurer, to be licensees of the Oregon Medical Board or Oregon State Board of Nursing. Defines "management services organization" (MSO). Prohibits a shareholder, director, or officer of a corporation organized for the purpose of practicing medicine ("professional corporation") from taking specified actions in relation to an MSO that the professional corporation has a contract with, including:

- Owning or controlling shares in both the professional corporation and MSO
- Setting certain conditions on employment for physicians
- Removing a director or officer except by majority vote of shareholders with specified exceptions for fiduciary duty violations, Oregon Medical Board disciplinary actions, and fraud
- Relinquishing control over assets, business operations, or clinical practices or decisions
- Giving a proxy to vote the shares of the professional corporation

Exempts shareholders who have control over less than five percent of shares or whose share ownership is incidental. Exempts specified professional corporations, including:

- Corporations solely and exclusively engaged in telemedicine
- Program of All-Inclusive Care for the Elderly (PACE) organizations
- Mental health or substance use disorder crisis line providers
- Urban Indian health programs
- Recipients of a Tribal Behavioral Health or Native Connections program grant
- Specified behavioral health care providers
- Hospitals

The measure additionally requires holding companies to comply with requirements for professional corporations. Makes noncompetition, nondisclosure, and nondisparagement agreements void and unenforceable, with specified exceptions, beginning on the 91st following sine die. Remaining provisions become operative January 1, 2031.

*FISCAL: Has minimal fiscal impact*

*REVENUE: No revenue impact*

#### **ISSUES DISCUSSED:**

#### **EFFECT OF AMENDMENT:**

-B12 The -B12 amendment clarifies restrictions and exceptions in the B-engrossed version of the measure for management services organizations (MSOs) that contract with professional corporations formed for the purposes of practicing medicine.

## HB 4130 B -B12, -B13, -B14, -B15 STAFF MEASURE SUMMARY

### Detailed Summary:

- Specifies definition of "control" for purposes of the measure
- Exempts professional corporations and MSOs with contracts formed before January 1, 2025, that meet certain requirements related to officers and control
- Allows an employee of the MSO to own up to ten percent of shares in the professional corporation
- Specifies that professional corporations are only prohibited from transferring control over only those operations that may affect clinic decision making or the nature or quality of medical care
- Allows a physician who serves as officer of a professional corporation to serve as officer of an MSO if the physician does not receive compensation from the MSO
- Removes express prohibition on limiting access to or obscuring pricing for physicians

*FISCAL: Has minimal fiscal impact*

*REVENUE: No revenue impact*

The -B13 amendment replaces the B-engrossed version of the measure. It directs the Legislative Policy and Research Office (LPRO) to study the effects of business entities engaging in the practice of medicine and establishes a work group to provide input on a report to the Legislative Assembly.

### Detailed Summary:

Directs LPRO to study:

- the fiduciary duties of business entities that contract with or employ licensed health care professionals
- the adequacy of existing laws to ensure that licensed professionals remain in control of clinical practices
- whether MSO contracts, conflicts of interest, noncompete clauses, or other practices have disrupted the practices of licensed professionals
- remedies that would effectively preserve the role of licensed professionals and protect patients

The -B13 amendment additionally directs LPRO to convene a work group and to produce a report to include input from the work group along with LPRO's independent research and evaluations. Requires LPRO to submit the report to interim committees of the Legislative Assembly by November 1, 2024.

*-B13 FISCAL: Fiscal impact issued*

*REVENUE: No revenue impact*

-B14 The -B14 amendment adds to the B-engrossed version of the measure a provision that specifies conditions for when the Oregon Health Authority may approve the transfer of members from one dental care organization (DCO) to another.

### Detailed summary:

- Defines "dental care organization"
- Allows providers to communicate directly with members about options for continuing care

*FISCAL: May have fiscal impact, but no statement yet issued.*

*REVENUE: May have revenue impact, but no statement yet issued*

-B15 The -B15 amendment includes the same clarifications and exemptions about Management Service Organizations (MSOs) that are included in the proposed -B12 amendment, but with an additional clarification about the requirement for a vote by shareholders to approve an action by the MSO that materially affects the interests of its minority owners.

*FISCAL: Has minimal fiscal impact*

REVENUE: No revenue impact

**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, including Oregon (see ORS 58.375 et seq).

Despite longstanding limitations on the corporate practice of medicine, scholars have identified ways in which non-physicians are able to own and control health care practices ([link](#) to Zhu et al, A Doctrine in Name Only, *New England Journal of Medicine* (2023)). In some cases, a management services organization (MSO) may form a contract with a professional health care corporation that allows the MSO to make decisions about delivery of care. 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](#)).