

House Behavioral Health and Health Care Committee
Oregon State Legislature
900 Court St. NE, H-484
Salem, OR 97301



AMERICAN
ECONOMIC
LIBERTIES
PROJECT

February 7, 2024

Dear Chairman Nosse, Vice Chairs Goodwin and Nelson, and Members of the Committee,

The American Economic Liberties Project is a research and advocacy organization working to reduce the power dominant corporations have over our economy and democracy. As such, we write in support of HB 4130, which will close loopholes in Oregon's corporate practice of medicine law and reverse the harmful trend of the corporatization of medicine.

This law will effectively stall the accelerating trend in which our health system is becoming controlled by a combination of private equity investors and giant corporate behemoths like UnitedHealth Group and CVS. We hope the bill will pass into law, and hope other states will follow suit to reclaim American medicine and revive this country's traditional prohibitions on corporate control of medical practices.

Almost three quarters of physicians are now salaried employees, with most practices owned by a corporate entity.¹ This trend has been accelerated by giant national health conglomerates like UnitedHealth Group and CVS,² retailers like Amazon entering healthcare,³ and private equity investors rolling up medical practices to raise prices and cut costs.⁴

Corporate ownership, where private equity or otherwise, leads to a range of harms to patients and healthcare providers, including higher prices for patients and payers,⁵ worse

¹ Physicians Advocacy Institute. "PAI Avalere health report on trends in physician employment and acquisitions of medical practices: 2019-2021," April 2022, <https://www.physiciansadvocacyinstitute.org/PAI-Research/Physician-Employment-and-Practice-Acquisitions-Trends-2019-21>.

² Bob Herman, "UnitedHealth Group now employs or is affiliated with 10% of all physicians in the U.S.," Stat News, November 29, 2023, [https://www.statnews.com/2023/11/29/unitedhealth-doctors-workforce/#:~:text=UnitedHealth%20Group%20now%20employs%20or,all%20physicians%20in%20the%20U.S.&text=UnitedHealth%20Group%20has%20about,all%20physicians%20in%20the%20U.S.](https://www.statnews.com/2023/11/29/unitedhealth-doctors-workforce/#:~:text=UnitedHealth%20Group%20now%20employs%20or,all%20physicians%20in%20the%20U.S.&text=UnitedHealth%20Group%20has%20about,all%20physicians%20in%20the%20U.S.;); Nathaniel Meyersohn, "CVS wants to be the doctor for Medicare patients," CNN Business, February 9, 2023, <https://www.cnn.com/2023/02/09/business/cvs-oak-street-health/index.html>.

³ Rebecca Pifer, "Amazon closes \$3.9B buy of One Medical," Healthcare Dive, February 22, 2023, <https://www.healthcaredive.com/news/amazon-closes-39b-buy-of-one-medical/643245/>.

⁴ Robert Pearl, "Private Equity and the Monopolization of Medical Care," Forbes, February 20, 2023, <https://www.forbes.com/sites/robertpearl/2023/02/20/private-equity-and-the-monopolization-of-medical-care/?sh=5c9a2d882bad>; Richard Scheffler et al., "Monetizing Medicine: Private Equity and Competition in Physician Practice Markets," American Antitrust Institute, Petris Center, and Washington Center for Equitable Growth, July 10, 2023, https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf.

⁵ Alexander Borsa, et al., "Evaluating trends in private equity ownership and impacts on health outcomes, costs, and quality: systematic review," The BMJ, 2023; 382, <https://doi.org/10.1136/bmj-2023-075244>.

patient outcomes,⁶ higher mortality rates for patients,⁷ and general demoralization for medical professionals.⁸

For over 100 years, most states in the country, Oregon included, have had corporate practice of medicine (CPOM) laws on the books to prevent this sort of conflict of interests. CPOM laws prohibited medical practices from being owned by anyone other than a licensed physician or medical professional, on the understanding that there was an intrinsic conflict between physician's professional obligations of care to their patients and the profit-oriented obligations of corporations to maximize returns to their shareholders.⁹

However, in practice, corporate owners and their legal counsel have developed a range of ways to skirt the spirit of these laws.¹⁰ Corporate investors use layers of shell corporations such as "management services corporations" or "physician management companies" to maintain that a medical practice is owned by a licensed medical professional on paper, all while in practice the corporate investor holds all of the effective power to decide how much money is spent on care, what staffing levels should be, how many hours should be spent with each patient, and what prices for different medical services or procedures should be. This legal maneuvering, treating CPOM laws and patient care as a game to be navigate in the pursuit of profit, undermine the spirit of these laws.¹¹

HB 4130 addresses this by systematically closing off all of these loopholes to block corporate owners or investors from owning or indirectly controlling the medical decisions of doctors and physicians when it comes to the care for their patients. Not only does it prohibit the legal maneuverings of indirect corporate ownership, but it also specifically prohibits corporate entities from setting work schedules, employment terms, staffing levels, diagnostic coding decisions, clinical standards, or billing practices, all of which should appropriately remain with licensed physicians.

Furthermore, HB 4130 also prohibits corporate owners from enforcing noncompete agreements in healthcare, an increasingly common practice under which medical

⁶ Sneha Kannan, et al., "Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition," JAMA, December 26, 2023, [https://jamanetwork.com/journals/jama/article-abstract/2813379?guestAccessKey=e0cef9be-d55c-4bcf-8892-412af8f24355&utm_source=For The Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfi&utm_term=122623](https://jamanetwork.com/journals/jama/article-abstract/2813379?guestAccessKey=e0cef9be-d55c-4bcf-8892-412af8f24355&utm_source=For%20The%20Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfi&utm_term=122623).

⁷ NBER Digest, "How Patients Fare When Private Equity Funds Acquire Nursing Homes," April 2021, <https://www.nber.org/digest/202104/how-patients-fare-when-private-equity-funds-acquire-nursing-homes>.

⁸ Noam Scheiber, "Why Doctors and Pharmacists Are in Revolt," New York Times, December 5, 2023, <https://www.nytimes.com/2023/12/03/business/economy/doctors-pharmacists-labor-unions.html>.

⁹ American Medical Association Advocacy Resource Center, "Issue brief: Corporate practice of medicine," 2015, <https://www.ama-assn.org/media/7661/download>.

¹⁰ Jane M. Zhu, et al., "A Doctrine in Name Only — Strengthening Prohibitions against the Corporate Practice of Medicine," New England Journal of Medicine, September 14, 2023, <https://site-krvx5vp.wsecdn1.websitedn.com/uploads/f7d99a37c1d7401eb2c0df687ae40aff.pdf?v=232409084840>.

¹¹ For an example of corporate guidance for circumventing these laws, see Matt Wilmot, Wes Scott, and Ethan Rosenfield, "Corporate Practice of Medicine Doctrine: Increased Enforcement on the Horizon?" Nelson Mullins, January 17, 2023, https://www.nelsonmullins.com/idea_exchange/blogs/healthcare_essentials/enforcement/corporate-practice-of-medicine-doctrine-increased-enforcement-on-the-horizon.

professionals are stuck in jobs in corporate-owned medical practices. This leaves doctors unable to speak up about harmful or unsafe conditions for patients, unable to switch to a better practice, or even to leave to begin their own medical practice more responsive to patient needs.¹²

With the harms and costs stemming from corporate ownership only growing over time as private equity firms and healthcare conglomerates buy up more medical practices, it is more important than ever that leaders like yourself stand up to implement policies like HB 4130, to keep medicine in the hands of doctors and other medical professionals who will put the patient over profits. In advancing this important bill, you are updating and reinvigorating an important tradition in American healthcare, and we can only hope to see other lawmakers across the country follow your lead to introduce and pass similar laws.

Sincerely,

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American Economic Liberties Project

¹² Tara Oakman and Emily McGrath, "Noncompete Agreements for the Health Care Workforce Put Profits over Patients," The Century Foundation, August 14, 2023, <https://tcf.org/content/commentary/noncompete-agreements-for-the-health-care-workforce-put-profits-over-patients/>.