



February 9, 2024

The Honorable Rob Nosse  
Chair, House Committee on Behavioral Health and Health Care  
Oregon State Legislature  
900 Court St. NE, Salem Oregon 97301

**RE: ATA ACTION OPPOSITION TO HOUSE BILL 4130**

Dear Chair Nosse and members of the House Committee on Behavioral Health and Health Care,

On behalf of ATA Action and the over 400 organizations we represent, I am writing to express serious concerns about House Bill 4130 and the significant unintended consequences that will result without additional discussion and the further refinement that this legislation warrants.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

Many telehealth medical practices serving Oregon patients – similar to those that deliver care in-person – operate using a model where non-physicians (or “lay entities”) provide administrative support and/or investment capital to a provider or group practice, while the provider controls all clinical decisions, protocols, and patient care. This model allows telehealth providers to maximize time on patients and contract out nonmedical duties, including billing, credentialing, and contracting, to other personnel. Importantly, this structure has provided a way for innovative technologies and medical providers in Oregon to access needed financing and develop new care delivery models, including emerging telehealth companies capable of reaching stigmatized populations in Oregon and throughout the country.

ATA Action has significant concern that House Bill 4130 (“the Act”) would unnecessarily jeopardize this long-established model and disrupt access to care for thousands of Oregonians currently being served by telehealth entities. The Act proposes several sweeping mandates that would upend and prohibit how currently compliant telehealth provider entities contract with lay



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entities for business operations, non-physician expertise, and investment. Specifically, the Act would (1) prohibit non-physicians from any input or contractual safeguards in the leadership of the medical practice they invest in and support, and (2) prohibit any physician shareholder or director of a professional medical corporation from simultaneously having any shares in, or serving as an employee of, a management service organization that supports the medical practice.

ATA Action is not aware of any state with a corporate practice of medicine framework – including “strict” corporate practice states like New York, California, or Texas – that include the sorts of sweeping mandates proposed in this Act. There is a good reason for this: the language and untested concepts proposed here would in practice seem to prohibit or severely limit the ability for medical practices to contract with management and administrative service providers or attract investment, despite proponents claims to the contrary.

First, ATA Action believes the prohibition (Section 1 (3)(a)(A)) on medical corporations from entering into any contracts which include succession agreements will significantly chill investment into the health care innovation sector and in physician practices that are facing increasing cost pressures. As legal commentators have highlighted,<sup>1</sup> physician practices seeking to attract investment will find doing so challenging if non-physician investors have no safeguards to limit financial risk or have a voice in the leadership of the medical group they are supporting and helping to grow. The ability for lay-entities to invest and partner with physicians in new healthcare ventures – while at the same time ensuring physicians have control over treatment decisions – need not be mutually exclusive endeavors. ATA Action recommends taking an approach focused on empowering physician control over actual treatment decisions and care, rather than an approach that restricts their ability to attract and partner with growth investors.

Indeed, ATA and ATA Action’s membership includes physician groups, technology companies, and investors who have partnered to innovate, build, and deploy new and affordable models of care delivery that are currently serving Oregon patients and addressing workforce shortages. This impact cannot be understated, particularly for burgeoning telehealth companies that are treating patients in fields where innovation is desperately needed, like reproductive health, substance use disorder treatment, gender-affirming care, chronic condition management, and behavioral health. Scaling down investment in these delivery models – and demanding resource intensive changes that will be unique to this state– will reduce Oregon patients’ easy and efficient access to the quality health care services they deserve at a time when it is needed most.

Second, ATA Action has concerns for how the Act bans any shareholder or director of the medical corporation from also being employed by or holding any shares in the contracted MSO.

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<sup>1</sup> As one commentator noted when the concept of banning succession agreements was proposed, “How can [PCs] attract investment capital if the investors are not permitted to have any say in the shareholders, officers and directors of the medical business they are supporting.” <https://www.jdsupra.com/legalnews/corporate-practice-of-medicine-on-9931045/>



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(Section 1(1)(f)(A)). Many ATA and ATA Action member entities currently have a physician who is a director or shareholder in a professional medical corporation who also serves as a clinical director or holds a management role in an MSO (the MSO in turn manages the administrative functions and owns the technology powering the telehealth visit). These clinical directors, who bring a wealth of practice experience and a day-to-day perspective of the professional medical corporation, are crucial for ensuring that MSOs understand the effects their business decisions can have on the patients who seek care through their platforms as well as the needs of providers who use the platform to deliver high quality services. Rather than physicians being totally detached and isolated from the MSO infrastructure supporting and helping to grow the medical practice, many telehealth entities have found that having a physician affiliated with both the medical corporation and the MSO improves decision making, provides direct and open lines of communication, and leads to heightened patient and provider satisfaction.

Unfortunately, by eliminating the ability for Oregon licensed practitioners to continue as both practitioners and as in-house advisors to their contracted MSOs or telehealth platforms, House Bill 4130 would prohibit, or at best significantly frustrate, the ability for these MSOs to include this extensive practical knowledge base at the boardroom table. ATA Action acknowledges that under certain circumstances these dual roles can and have posed conflicting ethical duties for physicians. Rather than broadly prohibiting physicians from entering contracts they deem appropriate, ATA Action encourages the Legislature to mitigate these concerns through enforcing existing ethical guardrails and/or requiring the parties clearly delineate and agree to the separate responsibilities.

Finally, ATA Action acknowledges and appreciates the sponsor's intention to introduce an amendment to exempt telehealth entities from the problematic aspects of the legislation discussed above, which will be a positive development for some of our members. This proposed amendment, however, will not apply to our members who, even if primarily offering telemedicine services, maintain a brick-mortar location so that they can provide a holistic range of services. This flexibility for "hybrid care" becomes more important as the DEA may commit to requiring telemedicine providers to conduct an in-person examination prior to prescribing controlled substances – including those to treat substance use disorder or gender-affirming care-- at the end of this year.<sup>2</sup> This amendment would make it impractical for these telehealth providers to expand their offerings to in-person care services where clinically appropriate or required. ATA believes that state health policy must be technology, modality, and site-neutral and requests that any amendment to exempt telehealth entities include those with a physical presence in the state.

ATA Action agrees with the sponsors' overall intent of this Act to ensure that providers have control over their clinical decisions, while also recognizing the instances in our healthcare system where non-physician entities and investors have improperly crossed the line into patient care. The solution to these well-meaning goals, however, is not to hastily implement this broad and onerous Act with untested concepts that will – whether intended or not – restrict the growth

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<sup>2</sup> Indeed, this already is the federal law on telemedicine prescribing; however, the ability to prescribe controlled substances without an in-person visit continues under a COVID-19 era waiver set to expire at the end of the year.



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and development of innovative care models to Oregon patients. Now is not the time to enact barriers to care. Rather, we encourage the Legislature and the Sponsor to continue to work with affected stakeholders on a framework that more narrowly addresses the problem at hand, provides entities with clarity on how the requirements can be practically applied, and considers where enforcement of existing regulation could serve as an alternative pathway to ensure provider independence in delivering patient care.

ATA Action thanks you for your time and interest in telehealth. If you have any questions or would like to discuss further the telehealth industry's perspective, please contact me at [kzebley@ataaction.org](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley".

Kyle Zebley  
Executive Director  
ATA Action