



MEMORANDUM

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

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

Date: February 26, 2024

Re: OMA Comments on HB 4130-A

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 support efforts to better enforce Oregon's corporate practice of medicine doctrine through HB 4130. We value Representative Bowman's leadership on the bill and willingness to work through amendments that ensure we do no harm to Oregon's medical clinics and clinicians.

You have heard testimony related to this bill that 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. Because there is no tangible regulatory relief on the horizon, it should be no surprise that clinics are now facing Hobson's choice of either selling to a larger company or closing. We firmly believe in the bill's stated goal to ensure that licensed clinicians remain in charge of patient care and there is more to do beyond this legislative session.

MONITORING IMPLEMENTATION

Because our medical clinics are struggling, they do need access to capital and efficient management teams to help them remain viable and allow clinicians to focus more of their time on patient care versus paperwork. We understand the bill represents a balance between safeguarding our medical clinics and allowing those practices to access reasonable capital investment and management services.

The bill feels complex because health care has become increasingly complex. No single clinician reasonably could stand up a medical clinic and hope to deliver care to patients and meet all of the regulatory burdens associated with a seemingly simple patient office visit. We want to work to ensure that regulatory compliance under the bill for medical clinic business structures as well as agreements with management services organizations (MSOs) is minimized. As a result, it will be critical to gather information about implementation of the bill to ensure the restrictions on the relationship between clinics and MSOs are having their intended effect.

We also will need to monitor the impact of the bill given its unusual expansion of the Oregon Medical Practices Act to look at employment practices of physicians and physician assistants. The enforcement provisions added to the Act point to the Oregon Bureau of Labor and Industries as one avenue for employees to file complaints about employment practices and that makes sense. The bill, however, also appears to call for complaints to be brought directly against medical clinics which we believe places a new and significant legal burden on clinics. This issue needs to be resolved with an amendment to the current version.

FUTURE ENFORCEMENT

While we understand the bill focuses more on structure of medical clinics and provisions of employment agreements, there will have to be attention paid to investigating and responding to improper conduct associated with activities that reduce access to care, reduce quality of care, or increase the price of care. That conduct should sound familiar because it is considered anticompetitive. At the federal level, we are beginning to see the Federal Trade Commission investigate the negative effects of medical clinic acquisition. A similar approach should be adopted here by the Oregon Department of Justice which has an entire division devoted to investigating and prosecuting anticompetitive business practices in the state.

RETAINING OREGON'S CLINICIANS

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. The concept of a corporation imposing a noncompete agreement on physician employees simply for practicing medicine is no longer something that should be supported. We understand that the sponsor wants to see this as a level playing field for all physicians not just those who work in clinics. We agree. If there is an elimination of noncompete provisions and limitations on nondisparagement or nondisclosure provisions in physician employment agreements in Oregon, those elements of the bill should be applicable to all employers not just clinics. Forcing some physicians to leave their communities or the state because restrictive provisions may be allowed by one category of employer and not others is unfair and would lead to the continued reduction in our health care workforce. This potential unfairness issue needs to be resolved with an amendment to the current version.

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.