

Minority Report
A-Engrossed
Senate Bill 951

Ordered by the Senate April 4
Including Senate Minority Report Amendments dated April 4

Sponsored by nonconcurring members of the Senate Committee on Health Care: Senators HAYDEN, LINTHICUM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Says that a person that gives money to, or owns part of, a firm that gives medical care may not direct or control the way that a doctor or other health care provider does medical work. Lets a health care provider dispute an act or practice of the person before the provider's licensing board. (Flesch Readability Score: 60.3).

[Digest: Stops people in charge of companies that do not do medical work from running both the company and another entity that does medical work. Stops companies from telling their workers that they cannot work for someone else, say that the company is bad or speak out about bad acts. Stops companies from punishing those who speak out. (Flesch Readability Score: 61.3).]

[Prohibits a management services organization, an individual who works as an independent contractor with a management services organization or a shareholder, director, officer or employee of a management services organization from owning or controlling shares in, serving as a director or officer of, being an employee of, working as an independent contractor with or otherwise managing, directing the management of or participating in managing a professional medical entity with which the management services organization has a contract for management services. Specifies what conduct constitutes ownership or control of a professional medical entity.]

[Voids noncompetition agreements, nondisclosure agreements and nondisparagement agreements between certain business entities and medical professionals, with specified exceptions, and prohibits the business entities from retaliating against the medical professional for violating the void agreements.]

[Punishes violations of specified provisions of the Act as an unlawful trade practice under the Unlawful Trade Practices Act.]

[Declares an emergency, effective on passage.]

Prohibits a health care investor or health care funder from directing or controlling the clinical practice or professional medical judgment of a health care provider or limiting a health care provider's choices, decisions or judgments regarding certain aspects of health care.

Allows a health care provider or professional medical entity that disputes an act or practice of a health care investor or health care funder to petition the health care provider's licensing board to mediate the dispute or to make a finding that the act or practice violates the Act.

Punishes a violation of the Act by a maximum of five years' imprisonment, a fine of up to \$125,000, or both, if the Oregon Medical Board determines that the violation constitutes an unlawful practice of medicine. Allows a health care provider's licensing board to impose a civil penalty of not more than \$5,000 for each violation if the board determines that a health care investor's or health care funder's act or practice falls within a health care provider's scope of practice.

A BILL FOR AN ACT

1
2 Relating to the practice of health care.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section:**

5 (a) "Board" has the meaning given that term in ORS 413.164.

6 (b) "Health care funder" means a person that provides money, materials, in-kind services
7 or materials, capital investment or any other contribution of value to a professional medical

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **entity for the purpose of enabling the professional medical entity to engage in the practice**
2 **of medicine or to enable the professional medical entity to render professional health care**
3 **services to patients.**

4 **(c) “Health care investor” means a person, other than a health care provider, that owns**
5 **or controls shares or an ownership interest in a professional medical entity.**

6 **(d) “Health care provider” has the meaning given that term in ORS 413.164.**

7 **(e) “Professional medical entity” means:**

8 **(A) A professional corporation, as described in ORS 58.375;**

9 **(B) A professional corporation, as described in ORS 58.376; or**

10 **(C) A limited liability company or foreign limited liability company with authority to**
11 **transact business in this state, a partnership or foreign partnership with authority to**
12 **transact business in this state, a limited partnership or foreign limited partnership with au-**
13 **thority to transact business in this state or a limited liability partnership or foreign limited**
14 **liability partnership with authority to transact business in this state, any of which is or-**
15 **ganized for the purpose of practicing medicine or for the purpose of allowing physicians,**
16 **physician associates and nurse practitioners to jointly render professional health care ser-**
17 **vices.**

18 **(2) A health care investor or health care funder may not:**

19 **(a) Direct, control or attempt to direct or control the clinical practice or professional**
20 **medical judgment of a health care provider or limit a health care provider’s choices, deci-**
21 **sions or judgments with respect to:**

22 **(A) Developing a treatment plan;**

23 **(B) Prescribing or recommending medications or medical devices for a patient;**

24 **(C) Referring a patient to a specialist or other provider;**

25 **(D) Specifying staff-to-patient ratios in a clinical setting; or**

26 **(E) Whether to engage or not engage in any other activity that constitutes the practice**
27 **of medicine, as described in ORS 677.085, or that otherwise falls within the scope of practice**
28 **of a health care provider; or**

29 **(b) Restrict or attempt to restrict funding for a professional medical entity in a manner**
30 **that would affect a health care provider’s clinical practice or the nature or quality of health**
31 **care that the health care provider delivers to a patient.**

32 **(3)(a) A health care investor or health care funder that engages in an act or practice**
33 **prohibited under subsection (2) of this section:**

34 **(A) Violates ORS 677.080 (4) and commits a Class C felony, as provided in ORS 677.990 (2),**
35 **if the Oregon Medical Board determines that the violation constitutes an unlawful practice**
36 **of medicine; and**

37 **(B) Engages in an unlawful practice of a health care provider’s profession if a board that**
38 **issues a license to a health care provider determines that the health care funder’s or health**
39 **care investor’s act or practice falls within the scope of practice of a health care provider to**
40 **whom the board issued a license.**

41 **(b) A board that makes a determination described in paragraph (a)(B) of this subsection**
42 **may impose a civil penalty of not more than \$5,000 for each instance of a violation and in the**
43 **case of a continuing violation may impose a civil penalty for each day of the violation for a**
44 **total amount that does not exceed \$100,000.**

45 **(4)(a) A health care provider or professional medical entity that disputes an act or prac-**

1 **tice of a health care investor or health care funder that is or may be prohibited under sub-**
2 **section (2) of this section may petition the board that issues the health care provider's**
3 **license to mediate the dispute or to make a finding that an act or practice of the health care**
4 **investor or health care funder is a violation of subsection (2) of this section.**

5 **(b) If the Oregon Medical Board determines that an act or practice described in para-**
6 **graph (a) of this subsection is a violation of subsection (2) of this section, the Oregon Medical**
7 **Board may, in addition to and not in lieu of imposing a civil penalty under subsection (3)(b)**
8 **of this section, refer the matter to an appropriate law enforcement official for prosecution.**

9 **(c) A board may not consider a health care provider's petition to the board under para-**
10 **graph (a) of this subsection a ground for suspending, revoking or refusing to grant or renew**
11 **a license or as grounds for discipline, unless the board finds that the health care provider**
12 **made the petition in bad faith or on false or fraudulent grounds.**

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