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Oregon CPOM Bill Inches Closer to Becoming Law, Targeting Investors and the PPM/Friendly PC Model

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As described in our blog post last year, an increasing number of states across the country are seeking to regulate physician practice management ("PPM") and private equity transactions in the health care sector. As part of this trend, which generally appears to target private capital investors and large health care delivery companies, an Oregon lawmaker recently introduced Oregon House Bill 4130 ("Bill"), which would place material and onerous restrictions upon the traditional PPM structure, pursuant to which a management services organization ("MSO") enters into an exclusive and long-term management services arrangement ("MSA") with a nominee-owned professional entity ("Friendly PC").

The Bill appears to be advancing in the Oregon legislature. It passed the House Committee on Behavioral Health and Health Care on February 20, and it is scheduled for a second and third reading in the House on February 21 and February 22, respectively. Of note, the Bill is supported by former Oregon Governor and former State Senate President, John Kitzhaber, a retired emergency medicine physician. The former Governor published an opinion piece in strong support of the Bill on February 20.

The Bill Would Materially Impact the Traditional PPM/Friendly PC Model In Numerous Ways

Prohibition on Friendly PC Owner Serving at MSO. With respect to PCs formed to engage in the practice of medicine, the current version of the Bill would prohibit a "shareholder, director or officer of a professional corporation" from participating in the management of the PC and voting its shares "on any issue or corporate action that bears on the ownership, management or governance of the professional corporation" if the individual is also a shareholder, director, member, officer, or employee of an MSO "with which the professional corporation has a contract." *See* ORS § 58.375(1)(f)(A) (as proposed).As such, a physician shareholder of a Friendly PC would be prohibited from exercising governance rights over the entity if the physician has a covered relationship with the Friendly PC's MSO.

Restrictions on Friendly PC Succession Planning. The Bill would also generally render ineffective certain succession planning arrangements, such as Succession Agreements or Stock Transfer Restriction Agreements, which are currently disfavored in several other states. Per the Bill, with limited exceptions, a PC "may not provide in the professional corporation's articles of incorporation or bylaws, or by means of a contract or other agreement or arrangement, for removing a director … or an officer described in subsection … except by a majority vote" of the officers or directors. *See* ORS § 58.375(2)(a) (as proposed). Of note, this prohibition, coupled with the prohibition on a shareholder serving in a covered capacity at an MSO, may render a sole shareholder ineligible to exercise any governance rights over the entity, if the shareholder maintained a covered role at the MSO.

Restrictions on MSA and Other Agreement Terms. The broad language of the Bill imposes significant restrictions on transactions involving a PC's assets, business operations, and clinical practices. Specifically, the Bill prohibits a PC, via contract or "other agreement or arrangement," from relinquishing "control" of its assets, business operations, or clinical decision-making. *See* ORS § 58.375(3)(a) (as proposed).

The Bill explicitly defines several methods by which such loss of "control" might be actualized. These include, but are not limited to:

- Sale or transfer of the PC's assets;
- Issue of stock shares in the PC or payment of dividends;
- Setting of terms of employment for physicians, physician assistants and/or nurse practitioners;

- Determining staffing levels;
- Advertising the PC;
- Control of diagnostic coding decisions, determination of clinical standards, protocols and policies for patient care and/or billing and collection; and
- Entering third-party contracts or payor arrangements.

Such restrictions represent a major reworking of longstanding MSO features and functions. For example, PPM/Friendly PC arrangements typically bifurcate non-clinical roles assumed by an MSO and the clinical roles assumed by the Friendly PC. The Bill sweeps into the ambit of the Friendly PC's responsibilities physician compensation and scheduling, terms that may typically be set with the consent or input of the MSO.

As proposed, and in addition to other enforcement powers granted to state regulatory agencies, the Bill would grant the Oregon Secretary of State the power to "administratively dissolve" a PC or limited liability company that violated the provisions of the Bill.

Notably, however, certain narrow exceptions are contemplated. For example, the restrictions do not apply to telemedicine practices with no physical location in the state, hospital affiliates, behavioral health service providers, or Program of All-Inclusive Care for the Elderly ("PACE") organizations.

Additional Restrictions on Practices with Mid-Level Practitioners, and Ban on Physician Restrictive Covenants

The Bill contains further and heightened restrictions on PCs "organized for the purpose of allowing physicians, physician assistants, and nurse practitioners" to jointly render services. *See* ORS § 58.376 (as proposed). Moreover, the Bill would prohibit physician non-competition and non-disparagement agreements, with very limited exceptions, following similar trends on the federal level and in other states. *See* Section 14-16 of the Bill (as proposed).

While the Bill is still subject to further review by the Oregon legislature and may be modified from its current form, stakeholders should expect a significant disruption in the PPM/Friendly PC model if the Bill (or a version thereof) is ultimately codified. As currently drafted, the Bill's prohibitions would generally apply to arrangements entered into or renewed after the Bill's proposed effective date (January 1, 2025), other than the restrictions related to non-competition and non-disparagement arrangements which would be unenforceable even if entered into prior to the effective date. See Section 16-18 of the Bill (as proposed).

Proskauer's health care group will continue to monitor the Bill for developments, and stands ready to advise clients on the impact of this bill and similar bills and regulatory regimes that target transactions in the health care sector.

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