Oregon Imposes Major Restrictions on PC-MSO Models (SB 951)

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Oregon has enacted some of the nation's strictest corporate practice of medicine (CPOM) restrictions, targeting digital health companies and private equity-backed healthcare providers that use the affiliated professional corporation model (often called a "friendly physician" or "PC-MSO" model) — a common structure that allows lay entities to secure the services of physicians without owning a medical practice or employing physicians directly.

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Background

In a typical PC-MSO structure, a management services organization (the MSO) provides turnkey management services (and, often, a related technology platform) to a professional entity (the PC), which operates a medical practice that delivers clinical services to patients. In compliance with state CPOM restrictions, the PC-MSO model allows non-physicians to manage the business side of medical practices, while licensed professionals retain control over the practice of medicine and related clinical decisions. Though widely used, particularly by digital health providers, and even endorsed in a recent federal advisory opinion, [1] this structure is under increasing regulatory scrutiny.

As we detail below, Oregon's new law, SB 951, is the latest state effort that reshapes the regulatory landscape for how MSOs interact with PCs, posing compliance challenges for digital health providers operating in the state.

SB 951 at a Glance

MSO Restrictions: Among other things, and subject to limited exceptions, the new law prohibits MSOs and their shareholders, directors, members, managers, officers and employees from:

- *Ownership and Control*: Owning or controlling a majority of a managed PC's shares;
- *Operational Involvement*: Serving as an officer, director, employee, or contractor of both the MSO and the managed PC, or otherwise receiving compensation from the MSO for providing management services to the managed PC;[2]
- *Voting*: Voting through proxy or other mechanism the shares of a managed PC;
- *Restricting Transfer of PC Shares*: Contracting to control or restrict the sale or transfer of a PC's shares, interests, or assets or otherwise causing the PC to issue shares (commonly referred to as "succession agreements", "share transfer restriction agreements" and "continuity of care agreements");[3]

- *Financing:* Paying dividends from the PC or acquiring or financing the acquisition of the majority of the shares of PC; or
- *De Facto Control:* Exercising "de facto control" over a PC's administrative, business or clinical operations in a manner that affects the PC's clinical decision-making or the nature or quality of medical care that the PC delivers. "De facto control" includes, but is not limited to, exercising ultimate decision-making authority over:
    - Hiring/firing licensed health care professionals, setting their work schedules or compensation for, or otherwise specifying terms of employment of licensees;
    - Setting clinical staffing levels, specifying the period of time a licensee may see a patient, or setting clinical standards or policies;
    - Making diagnostic coding decisions, setting policies for billing and collection, or setting the prices, rates or charges for services;
    - Advertising a PC's services under the name of an entity that is not a PC; or
    - Negotiating, executing, performing, enforcing or terminating contracts with third-party payors or persons who are not employees of the PC.

Notwithstanding the foregoing restriction, SB 951 expressly permits the MSO to support the managed PC for the above activities, purchase/lease PC assets, and otherwise provide management support over the PC's business operations (such as accounting, budgeting, legal compliance, etc.).

Exceptions to MSO Restrictions: The law creates several exceptions to the restrictions discussed above, such as for:

- *Certain Facilities and Providers:* Hospitals, hospital-affiliated clinics, long-term care and residential care facilities, PACE organizations, medical groups acting as MSOs, and certain behavioral health providers.
- *Minority Owners of PCs:* An individual who provides health care services for or on behalf of a PC if that individual: (A) does not own or control more than 10% of the PC's total shares or interests; (B) is not a shareholder, director, member, manager, officer or employee of an MSO; and (C) is compensated at market rate for the health care services and the individual's employment with, and services provided to, the MSO are consistent with the individual's professional obligations, ethics and duties to the PC and the individual's patients.
- *Telehealth Providers:* Out-of-state telehealth entities without a physical presence in Oregon (other than a location necessary for federal controlled substance prescribing compliance). However, this exception is limited in that it only exempts out-of-state telehealth providers from SB 951's restrictions regarding ownership and control, operational involvement, and voting.

Additional Restrictions: SB 951 also restricts the use of the following agreements with licensees:

- *Non-Competes:* Generally deemed void and unenforceable, with narrow exceptions – e.g., during the first 3 years of the licensee's employment or if the licensee owns 10% or more of entity's outstanding interests.
- *Non-Disclosures and Non-Disparagements:* Generally deemed void and unenforceable, again, with narrow exceptions – e.g., if an MSO or hospital, or hospital terminated the licensee's employment (or the licensee voluntarily left employment) or if the restriction is part of a negotiated settlement with an MSO or hospital.

Enforcement

Any arrangement that violates SB 951's prohibitions will be considered void and unenforceable. If an MSO violates the law, affected licensees and PCs can sue for actual damages, file for an injunction to stop the conduct, or seek other equitable remedies. Courts may also award punitive damages and attorney's fees.

Timeline

The law's restrictions on PC-MSO independence and restrictions on restrictive covenants take effect January 1, 2026, for (i) MSOs and PCs that are incorporated or organized in Oregon and (ii) agreements entered into or renewed, on or after June 9,

2025. The law's restrictions take effect January 1, 2029, for (i) MSOs and PCs that are incorporated or organized in Oregon and (ii) agreements entered into or renewed, prior to June 9, 2025.

However, while many of SB 951's provisions have yet to take effect, Oregon legislators are already drafting amendments to the law via HB 3410. The proposed changes would, among other things, extend ownership restrictions to MSO contractors, allow MSOs to compensate personnel for providing management services to a managed PC, lower the ownership threshold for non-compete exceptions to 1.5% (*i.e.*, a reduction from SB 951's 10% ownership threshold), and allow 5-year non-competes (instead of a 3-year limit) for licensed healthcare professionals in designated health professional shortage areas.

Bottom Line for Digital Health and Other Providers using PC-MSO Structure

Providers operating or considering operating in Oregon should evaluate their PC-MSO arrangements to determine whether they require changes to comply with Oregon's new CPOM regime. Specific issues to consider include:

1. *Review PC-MSO Arrangements:* Providers operating or considering operating in Oregon should evaluate their PC-MSO arrangements, ownership structures, and legal agreements to determine whether they require changes to comply with Oregon's new CPOM regime. For example, does the management services agreement ensure that the PC retains ultimate decision-making authority – and the PC in fact does exercise such authority – over (i) the employment of clinical staff, (ii) clinical staffing, standards, and policies, and (iii) coding, pricing, billing, and collections?
2. *Limited Use of Restrictive Covenants:* Providers should carefully limit their use of non-compete, non-disclosure, and non-disparagement provisions – checking to see if a statutory exception applies and conferring with legal counsel as necessary.
3. *Plan for the 2026 / 2029 Transition Periods:* Providers should take note of the effective dates and determine whether their structures qualify for the delayed January 1, 2029, compliance timeline.
4. *Expect Closer Regulatory and Judicial Scrutiny:* While unique in the extent of its restrictions, SB 951 reflects the broader national scrutiny of MSOs and private equity-backed structures in healthcare. Digital health and other providers using the PC-MSO model should anticipate that regulators, competitors, and other market participants may challenge their arrangement on the basis of alleged CPOM violations.

Digital health and other providers using the PC-MSO have long had to navigate the confusing, and often frustrating, thicket of restrictive state CPOM laws and rules. Oregon's SB 951 – and the anticipated changes from HB 3410 – represent the latest development in regulating this common structure. As other states—like California—consider similar laws to regulate MSOs and related health care transactions, providers should closely monitor developments and reassess their corporate and compliance strategies accordingly.

[1] *See* https://oig.hhs.gov/documents/advisory-opinions/10339/AO-25-03.pdf.

[2] This restriction poses a particular challenge because, on its face, it appears to prohibit an MSO employee or contractor from receiving compensation for providing management and administrative services to a PC with which the MSO has a contract for management services. In other words, it prohibits the core function of a MSO. But Oregon legislators seem to have realized this mistake and HB 3410 (discussed below) fixes the issue by removing this restriction.

[3] Exceptions to this provision, however, allow an MSO to control or restrict the PC's shares, interest or assets in certain limited circumstances, such as the suspension or revocation of the PC's owner's license or felony indictment of the PC owner.

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