

Model Policy to Address Corporatization, Consolidation, and Closures in Health Care

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NASHP Model Law: Addressing to Corporatization of Health Care, Consolidation, Closures

<https://nashp.org/a-model-act-for-state-oversight-of-proposed-health-care-mergers/>

| | Policy Approach | Policy Concerns |
|---|---|--|
|  | Health Care Transaction Oversight Authority (NASHP Model Part I) | Consolidation, costs, closures, sale-leasebacks |
|  | Strengthening the Prohibition on Corporate Practice of Medicine, Banning physician noncompetes, nondisparagement agreements (NASHP Model Part II) | Professional autonomy, workforce effects, interference with clinical decision-making |
|  | Ownership Transparency (NASHP Model Part III) | Opacity, lack of accountability |

NASHP Model Law Part II:

Strengthening Protections of Health
Care Professionals from Corporate
Control: CPOM, Restrictive
Covenants



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Addressing Corporatization of Health Care, Consolidation, and Closures: Updated NASHP Market Oversight Model Legislation

by [Vicki Veltri](#), [Maureen Hensley-Quinn](#)

Part I: Enhanced Oversight over Material
Health Care Transactions

**Part II: Strengthening the Ban on the
Corporate Practice of Medicine**

Part III: Creating Transparency in
Ownership and Control of Health Care
Entities

Policy 2: Strengthening the Corporate Practice of Medicine Prohibition

- **Policy concern:** Corporate control over *physicians and other independent practitioners* (e.g., PE, Optum, etc)
- **What it is:** The Corporate Practice of Medicine (CPOM) doctrine generally bans unlicensed lay entities from owning, employing, or controlling medical practices. Stems from ban on the unlicensed practice of medicine.
- **What it isn't:** CPOM does not address corporate/for-profit control of *hospitals* or other facilities
- **Why it needs strengthening:** CPOM laws eroded over time, coinciding with the “managed care” revolution, with exceptions (HMOs, Hospitals) and nonenforcement.
- Corporations contractually circumvent CPOM bans to exert *de facto* control over a medical practice they did not formally own through MSOs and “friendly PCs”

Perspective
SEPTEMBER 14, 2023

A Doctrine in Name Only — Strengthening Prohibitions against the Corporate Practice of Medicine

Jane M. Zhu, M.D., M.P.P., M.S.H.P., Hayden Rooke-Ley, J.D., and Erin Fuse Brown, J.D., M.P.H.

In the late 1800s, corporations began hiring U.S. physicians and profiting directly from their services without being bound by professional ethics considerations. Concerned about this commercialization of medicine, in health care continued? And potentially to avoid competi- how can the CPOM doctrine be

ployer, with 70,000 salaried or affiliated physicians, and retailers such as Amazon, CVS, and Walgreens have spent billions of dollars expanding their primary care footprint in nearly every state. Private-equity investors have reached penetration rates of more than

Legend:

- Corporate-practice-of-medicine ban with narrow exceptions
- Corporate-practice-of-medicine ban with significant exceptions
- Bare prohibition on unlicensed practice of medicine

Alaska
Hawaii

4

NASHP Model Part II: Strengthening CPOM

- **Add or clarify CPOM prohibition in statute:**
 - Prohibit unlicensed lay-entities from owning, employing, or controlling medical practices
 - Prohibit any unlicensed lay-entities from interfering with clinical decisions
- **Regulate Friendly PC/MSO structure (does not ban MSOs)**
 - Restrict dual compensation / control of PC and MSO
 - Require that licensed professionals maintain ultimate control over clinical and business decisions in contracts with management services organizations (MSOs)
 - Enumerate types of clinical and business decisions that implicate CPOM
 - Ban or limit non-competes, gag-clauses
- **Protections for employed physicians** (e.g., by hospitals or other exempted entities)
 - Ban or limit non-competes, gag-clauses
 - Noninterference with clinical decisions
- **Multiple routes of enforcement: AG, administrative agency, private actions**
 - Private enforcement (by aggrieved employee or competitor) can supplement administrative enforcement, whistleblower as “private AG”