

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”



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”