

NASHP Model Law to Address Corporatization, Consolidation, and Closures in Health Care

NASHP Webinar

October 22, 2024

Erin C. Fuse Brown, JD, MPH

Hayden Rooke-Ley, JD

Brown University School of Public Health



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 I:

Enhanced Oversight over Material
Health Care Transactions



 NATIONAL ACADEMY
FOR STATE HEALTH POLICY

Committed to improving the health and well-being of all people across every state.

HOME < BLOG

BLOG / 07-29-24

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

by Vicki Veltri, Maureen Hershey 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 1: Enhanced Transaction Oversight

Policy concern: Traditional antitrust tools can be inadequate to address novel forms of health care consolidation, including private equity and other corporate investment

Response: Strengthen oversight authority over health care transactions in two primary ways

(1) Expanding the Oversight Authority:

- Require **prior notice** of material transactions
- Expand **review** authority
- Enable authority to **block or impose conditions** upon the transaction without a court order

(2) **Expanding role of state health agencies:** vest another state health entity (in addition to the state attorney general) with the authority to review and report on a proposed transaction's broader health care market impact.



NASHP Model Part I:

Review of Proposed Material Change Transactions

NASHP released updated health care transaction oversight model in July 2024:

- Expands scope of **entities** covered:
 - Private equity, management services orgs (MSOs), Real Estate Investment Trusts (REITs), payers, staffing companies
- Expands types of **transactions** covered:
 - Sale-leasebacks, MSO agreements, serial transactions going back 5 years, JVs, closures of key facilities or services, staffing agreements
- Strengthens **enforcement** authority:
 - AG enforcement, penalties, injunctive relief
 - State health agency enforcement
 - Ongoing monitoring of transactions

NASHP Model Law Part II:

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



 NATIONAL ACADEMY
FOR STATE HEALTH POLICYCommitted to improving the health and well-being of all people across every state

ISSUE 1 | 2020

BLOG / 07-29-24

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

by Vicki Veltri, Maureen Henneley-Gutro

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, and potentially to avoid competition, health care continued? And 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

The map displays the following states categorized by CPOM law status:

- Dark Blue (Corporate-practice-of-medicine ban with narrow exceptions):** Washington, California, Colorado, Texas, New York, Massachusetts, Vermont, Maine, New Hampshire, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, Kansas, Nebraska, Iowa, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Missouri, Minnesota, Montana, Wyoming, Idaho, Nevada, Utah, Arizona, New Mexico, Oregon, Alaska, Hawaii.
- Light Blue (Corporate-practice-of-medicine ban with significant exceptions):** Montana, North Dakota, South Dakota, Nebraska, Kansas, Missouri, Illinois, Indiana, Michigan, Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Louisiana, Arkansas, Oklahoma, Kansas, Nebraska, Iowa, Wisconsin, Minnesota, Montana, Wyoming, Idaho, Nevada, Utah, Arizona, New Mexico, Oregon, Alaska, Hawaii.
- White (Basic prohibition on unlicensed practice of medicine):** Montana, North Dakota, South Dakota, Nebraska, Kansas, Missouri, Illinois, Indiana, Michigan, Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Louisiana, Arkansas, Oklahoma, Kansas, Nebraska, Iowa, Wisconsin, Minnesota, Montana, Wyoming, Idaho, Nevada, Utah, Arizona, New Mexico, Oregon, Alaska, Hawaii.

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”

NASHP Model Law Part III:

Transparency of Ownership and
Control of Health Care Entities



 NATIONAL ACADEMY
FOR STATE HEALTH POLICY

Committed to improving the health and well-being of all people across every state.

HOME | BLOG

BLOG | 07-29-24

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

by Vicki Veltri, Maureen Henneley-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 3: Transparency of Ownership/Control



Require all existing health care entities to report information on owners, controlling entities, business structure, including the ultimate owners or controlling parent, subsidiaries, entities under common control, and any management services organizations



Require all health care entities to report any *changes* to ownership or control (would also constitute a material change transaction for notice and review purposes)



Make this information available to the public

NASHP Model Part III: Transparency of Ownership/Control

Part III of NASHP Model requires health care market participants to report ownership and control to the Dep't of Health or other designated state health care entity.

- **Applicability:** group practices, hospitals, health systems, nursing facilities, insurers, PBMs
- **Frequency:** Annually and upon any material change notice (under Part I)
- **Required information to be reported:** Name, location, TIN, NPI, EIN, CCN, NAIC, owners, significant equity investors, control entity, MSO, corporate org chart, subsidiaries, entities under common control, financial reports
- **Enforcement:** DOH/Health Commission administrative penalties, audits

State Policy Options to Address PE Investment in Health Care

Policy Approach	Policy Concerns	State Examples
Health Care Transaction Oversight Authority (NASHP Model Part I)	Consolidation, costs, closures, sale-leasebacks	MA, OR, CA (AG + oversight entity) CT, MN, NY, RI, VT, WA, WI (AG + DOH)
Corporate Practice of Medicine Doctrine, Physician Non-Competes/Non-Disparagement Clauses (NASHP Model Part II)	Professional autonomy, workforce effects, interference with clinical decision-making	OR HB 4130 (introduced 2024) MA S 2871 (introduced 2024) CA AB 3129 (passed leg 2024, vetoed) IN SEA 7 (passed 2023, banning noncompetes for some MDs)
Ownership Transparency (NASHP Model Part III)	Opacity, lack of accountability	Massachusetts provider registry Mass. S 2871 (introduced 2024) Mass. H 4653 (introduced 2024) IN HB 1327 (introduced 2024)
Banning Anticompetitive Contract Provisions (Provider-Payer) (separate NASHP model)	Use of market power in payer contracting	CT HB 6669 (passed 2023) TX HB 711 (passed 2023) NV AB 47 (passed 2021)