

SENATE BILL REPORT

SB 5387

As Reported by Senate Committee On:
Health & Long-Term Care, February 21, 2025
Ways & Means, February 28, 2025

Title: An act relating to the corporate practice of medicine.

Brief Description: Concerning the corporate practice of medicine. [**Revised for 2nd Substitute:** Concerning the corporate practice of health care.]

Sponsors: Senators Robinson, Hasegawa, Liias, Nobles, Riccelli, Stanford and Valdez.

Brief History:

Committee Activity: Health & Long-Term Care: 2/07/25, 2/21/25 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/26/25, 2/28/25 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute Bill

- Prohibits the corporate practice of health care except through a professional service corporation or limited liability company.
- Prohibits individuals not licensed to practice a health care profession from interfering with the clinical decision-making of health care providers providing care at licensed facilities.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5387 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Orwall, Vice Chair; Bateman, Riccelli, Robinson and Slatter.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Muzzall, Ranking Member; Christian and Harris.

Minority Report: That it be referred without recommendation.

Signed by Senators Chapman and Holy.

Staff: Greg Attanasio (786-7410)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5387 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Stanford, Vice Chair, Operating; Trudeau, Vice Chair, Capital; Frame, Vice Chair, Finance; Conway, Dhingra, Hansen, Hasegawa, Kauffman, Pedersen, Riccelli, Saldaña, Wellman and Wilson, C..

Minority Report: Do not pass.

Signed by Senators Gildon, Ranking Member, Operating; Torres, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Dozier, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Cleveland.

Staff: Monica Fontaine (786-7341)

Background: The corporate practice of medicine doctrine provides that, absent legislative authorization, a business entity may not employ health care providers to practice their licensed professions. The Washington State Supreme Court has found that a person or entity practices a profession by either directly engaging in statutorily defined conduct or by employing a licensed individual to engage in such conduct, and has found corporations who employee licensed providers are engaging in the unauthorized practice of medicine. The Court has suggested that the doctrine does not prevent an unlicensed entity from hiring a licensed provider as an independent contractor rather than as an employee.

State statute allows an individual or group of individuals who are licensed to practice a health profession to form a professional services corporation to render the same professional services and become a shareholder or shareholders of that corporation. Statute also allows certain health professions to render their individual professional services through a single professional service corporation. Formation of a professional service corporation does not restrict the application of the Uniform Disciplinary Act (UDA) to those health care providers.

Statute allows a person or group of persons duly licensed or otherwise legally authorized to render the same professional services within this state and may form and become a member

or members of a professional limited liability company for the purposes of rendering professional service. A professional limited liability company is subject to all the provisions that apply to a professional services corporation. Formation of a professional limited liability company does not restrict the application of the Uniform Disciplinary Act (UDA) to those health care providers.

The UDA provides a legal and policy framework for the regulation and oversight of health care providers by the relevant disciplining authorities for each health care profession. Under the UDA, disciplining authorities have the authority to investigate all complaints or reports of unprofessional conduct, as defined under the UDA. Upon a finding, after a hearing, that a license holder has committed unprofessional conduct, the disciplining authority is required to issue an order including appropriate sanctions.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Second Substitute): Professional Service Corporations. Except through the formation of a limited liability company or professional services corporation, it is unlawful for an individual, corporation, partnership, or any other entity without a license to practice a health care profession, own a health care practice, employ licensed health care providers, or otherwise engage in the practice of a licensed health care profession.

In a professional service corporation organized for the purpose of establishing a medical practice, health care providers licensed in this state must:

- hold the majority of each class of shares that are entitled to vote;
- be a majority of the directors; and
- hold all officer positions in the corporation except for secretary and treasurer.

Majority shareholders must exhibit meaningful ownership of a health care practice by substantially engaged in delivering care or managing the practice.

A shareholder, director, or officer of a health care practice organized under this chapter may not:

- own or control shares in, serve as a director or officer of, be an employee of or an independent contractor with, or otherwise participate in managing both the medical practice and a management services organization with which the medical practice has a contract;
- receive substantial compensation or remuneration from a management services organization in return for ownership or management of the medical practice;
- transfer or relinquish control over the sale, the restriction of the sale, or the encumbrance of the sale of the medical practice's shares or assets;
- transfer or relinquish control over the issuing of shares of stock in the medical practice, a subsidiary of the medical practice, or an entity affiliated with the medical practice, or the paying of dividends; or
- enter into any financial arrangement constituting rebating, in violation of state law.

A shareholder, who is a licensed health care provider of a health care practice may not relinquish control over or otherwise transfer control over any of the medical practice's administrative, business, or clinical operations that affect clinical decision making or the nature or quality of care that the practice delivers by means of a contract or other agreement or arrangement. This does not prohibit a shareholder who is a licensed health care provider from consulting or collaborating with any person when developing policies or making decisions that affect clinical decision making or the nature or quality of health care provided by the practice, provided that the ultimate decision is made by the shareholder, who is a licensed health care provider.

Facilities Regulation. No person without a license to practice a health care profession in this state, who is employed by, contracted with, or affiliated with a hospital, private establishment, health maintenance organizations (HMOs), health care service contractors licensed as integrated care delivery systems, or ambulatory surgical facility, may interfere with, control, or otherwise direct the professional judgment or clinical decisions of a licensed health care provider employed by, affiliated with, or contracted with the hospital, private establishment, HMOs, health care service contractors licensed as integrated care delivery systems, or ambulatory surgical facility, who is providing care to a patient at the hospital, private establishment, HMOs, health care service contractors licensed as integrated care delivery systems, or ambulatory surgical facility, and acting within their scope of practice. Prohibited conduct includes, as applicable, but is not limited to, controlling, either directly or indirectly, through policy, discipline, punishment, threats, adverse employment actions, coercion, retaliation, or excessive pressure:

- the period of time a provider may spend with a patient;
- the period of time within which a health care provider must discharge a patient;
- the clinical status of the patient;
- the diagnoses, diagnostic terminology, or codes that are entered into the medical record by the health care provider;
- the range of clinical orders available to a health care provider; or
- any other action specified by rule to constitute impermissible interference or control over the clinical judgment and decision making of a health care provider related to the diagnosis and treatment of a patient.

No person without a license to practice a health care profession in this state, who is employed by, contracted with, or affiliated with a nursing home, birthing center, or hospice care center, may interfere with, control, or otherwise direct the professional judgment or clinical decisions of a licensed health care provider employed by, affiliated with, or contracted with the nursing home, birthing center, or hospice care center, who is providing care to a resident or patient of the nursing home, birthing center, or hospice care center, and acting within their scope of practice.

This does not prohibit any policy or requirement that:

- requires a health care provider to comply with applicable laws, coding guidelines, or

- third-party payor requirements; or
- a health care provider must comply with for purposes of credentialing, privileging, quality improvement, peer review, action taken by the Washington medical commission, or the physician health program.

Unprofessional Conduct. A violation of the provisions of this act constitutes unprofessional conduct under the UDA.

Unlicensed Practice of Medicine. The Department of Health (DOH) may investigate complaints related to violations of the professional services corporation regulations in this act as the unlicensed practice of medicine.

Physicians, osteopathic physicians, nurses, acupuncture and Eastern medicine practitioners, mental health counselors, marriage and family therapists, social workers, chiropractors, dentists, dental hygienists, naturopaths, birth doulas, midwives, optometrists, ocularists, occupational therapists, pharmacists, physician assistants, physical therapists, psychologists, massage therapists, dietitians, substance use disorder professionals, and genetic counselors must upon application for a license or license renewal, attest that they are aware of regulations related to the corporate practice of medicine included in this act.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Exempts HMOs and health care service contractors organized as integrated care delivery systems from the corporate practice of health care provisions in the bill.
- Clarifies that unlicensed persons may not interfere with ultimate clinical decision making of health care providers.
- Adds restrictions related to unlicensed persons interfering with the ultimate clinical decision making of health care providers at facilities operated by HMOs and health care service contractors organized as integrated care delivery systems.
- Modifies language related to the policies and requirements that are not subject to the restrictions related to unlicensed persons interfering with clinical decision making.
- Clarifies that only the attorney general may enforce violations by telemedicine companies through the Consumer Protection Act.
- Adds definitions for "licensed health care provider," "health care practice," and "health care profession."

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (First Substitute):

- Applies practice ownership and control restrictions to health care practices and not just medical practices.
- Removes the requirement that licensed provider shareholders be located in the state to exert meaningful control of the practice and allows them to demonstrate control by

- engaging in delivering care or managing the practice.
- Clarifies that a shareholder, who is a licensed health care provider, may not relinquish control of any function that affects clinical decision making or patient care and removes the list of specific acts that would constitute relinquishing control.
 - Clarifies that a licensed provider shareholder may work with any person when developing policies affecting patient care, as long as the provider is the ultimate decision maker.
 - Provides clarification on the hospital exemption and adds a telemedicine exemption to the corporate practice of health care provisions.
 - Clarifies language related to facilities regulation that no unlicensed person may interfere with the clinical decision making of a provider acting within their scope, removes the catch all provision allowing DOH to specify additional prohibited acts in rule, and allows exceptions for complying with the law, regulations, or other circumstances.
 - Adds language explicitly giving DOH authority to investigate violations of Section 1 as the unlicensed practice of medicine.
 - Adds an effective date of January 1, 2027, to the bill.
 - Changes the title to an act related to the corporate practice of health care.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2027.

Staff Summary of Public Testimony on Original Bill (Health & Long-Term Care):

The committee recommended a different version of the bill than what was heard. PRO: This bill would help prevent further encroachment by private equity into health care in the state. Patients should receive care they need not based on corporate interests. Private equity acquisitions in health care is on the rise and associated with increased cost and decreased quality. Doctors need to retain control of clinical decision making. This bill centers healthcare back to patient care. Patients do not benefit from the corporatization of medicine.

CON: This bill should focus on clinical decision making. As it is currently written it would prohibit existing telehealth practices.

OTHER: Clinical autonomy is important but this bill would limit financial investment from management service organizations. Infrastructure and capital needs are more than what a licensed provider can do on their own. Financial support from management services organizations expands access to care. Physician should not be held accountable for actions of a corporation. This bill duplicates existing restrictions for dentistry. The hospital exception in section 1 should be clarified.

Persons Testifying (Health & Long-Term Care): PRO: Senator June Robinson, Prime Sponsor; Jane Beyer, Office of the Insurance Commissioner; Kay Funk, MD; Sam Hatzenbeler, Economic Opportunity Institute; Sulan Mlynarek, SEIU Healthcare 1199NW; Debra Glasser; Emily Brice, Northwest Health Law Advocates.

CON: Kyle Zebley, ATA Action.

OTHER: Dr. Jarrod Durkee, Medical Scanning Consultants, PA (MSCPA); Eingun James Song, Frontier Dermatologist; Steven Kaptik, MD, Washington Gastroenterology; Julia Lamb, MD, Pacific NW Fertility and IVF Specialists/ IVY Fertility; Chris Knapp, MultiCare; Dr. Shayna Lemke, Jefferson Healthcare; Dr. Arooj Simmonds, Providence; Lisa Thatcher, Washington State Hospital Association; Roman Daniels-Brown, Association of Dental Support Organizations; Sean Graham, Washington State Medical Association; Rose Feliciano, TechNet; Jennifer Ziegler, Association of Washington Health Care Plans; Kate White Tudor, Rayus Radiology.

Persons Signed In To Testify But Not Testifying (Health & Long-Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Private equity purchases are growing substantially. Acquisitions have increased from 4 in 2014 to 97 in 2023. Firms buy an anchor practice and then buy additional practices to have significant bargaining leverage with insurers. This bill puts decisions with clinicians, where it belongs. This bill will help manage outside business interests that drive up health costs because there is tension between maximizing benefit and maximizing profits. Under this bill, partnerships will be able to continue but there will be guardrails. Patients do not benefit from the current structure.

CON: Clinical autonomy needs to be preserved. It's difficult for independent providers to remain independent. Partnering with organizations help physicians manage costs. This bill would not allow the partnerships to continue.

OTHER: This bill would require structural changes at hospitals. Providers don't work in isolation, and unlicensed staff are often involved in the process. This bill lists prohibitions and exemptions, but there are conflicts between what is prohibited and what is exempt. Providers are not administrators, and they would be under this bill. The current structures have been working and this bill would outlaw partnerships and big hospitals would pick up the pieces. Practices have concerns about the impact this bill will have on their operations, and some may need to cease operations. The listed prohibited activities will impact patient care.

Persons Testifying (Ways & Means): PRO: Jane Beyer, Office of the Insurance Commissioner; Emily Brice, Northwest Health Law Advocates.

CON: Vicki Christophersen, Washington Independent Physician Practice Assoc..

OTHER: Cara Helmer, Washington State Hospital Association; Lisa Thatcher, Washington State Hospital Association; Kate White Tudor, Rayus Radiology; Sean Graham, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.