

SENATE No. 2880

Senate, July 17, 2024 -- Text of amendment (163) (offered by Senator Lovely) to the Ways and Means amendment (Senate, No. 2871) to the Senate Bill relative to health care market review.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

1 by striking out section 98 and inserting in place thereof the following section:-

2 SECTION 98. Said chapter 112 is hereby further amended by inserting after section 4 the
3 following 2 sections:-

4 Section 4A. (a) For the purposes of this section and section 4B, the following words shall
5 have the following meanings unless the context clearly requires otherwise:

6 “Clinician without independent practice authority”, a registered practicing clinician who
7 is not a physician, psychologist, licensed independent clinical social worker or nurse practitioner,
8 psychiatric nurse mental health clinical specialist or nurse anesthetist who has independent
9 practice authority pursuant to sections 80E, 80H and 80J.

10 “Health care practice”, a business, regardless of form, through which a registered
11 practicing clinician offers health services; provided, however, that “health care practice” shall
12 not include any entity that holds a license issued by the department of public health pursuant to
13 sections 51, 51M, 51N or 52 of chapter 111.

14 “Licensed independent clinical social worker,” a licensed independent clinical social
15 worker who is licensed to practice in the commonwealth pursuant to sections 130 to 137,
16 inclusive.

17 “Management services organization”, a business that provides management or
18 administrative services to a provider or provider organization for compensation.

19 “Non-profit hospital health system”, a nonprofit entity that directly or indirectly owns or
20 controls at least 1 nonprofit hospital licensed by the department of public health pursuant to
21 chapter 111.

22 “Nurse anesthetist”, an advanced practice registered nurse who registered to practice
23 advanced nursing practice in the commonwealth pursuant to sections 74, 80B and 80H.

24 “Nurse-midwife”, a nurse-midwife who is registered to practice nurse-midwifery in the
25 commonwealth pursuant to sections 74, 80B, 80C and 80G.

26 “Nurse practitioner”, an advanced practice registered nurse who is registered to practice
27 advanced nursing practice in the commonwealth pursuant to sections 74, 80B and 80E.

28 “Physician”, a doctor of medicine or doctor of osteopathy who is registered to practice
29 medicine in the commonwealth pursuant to section 2.

30 “Physician assistant,” a physician assistant who is registered to practice in the
31 commonwealth pursuant to sections 9F and 9I.

32 “Psychiatric nurse mental health clinical specialist”, an advanced practice registered
33 nurse who is registered to practice advanced nursing practice in the commonwealth pursuant to
34 sections 74, 80B, 80E and 80J.

35 “Psychologist”, a psychologist licensed to practice psychology in the commonwealth
36 pursuant to sections 118 to 129B, inclusive.

37 “Registered practicing clinician,” a physician, physician assistant, nurse practitioner,
38 psychiatric nurse mental health clinical specialist, nurse anesthetist, nurse-midwife, psychologist
39 or licensed independent clinical social worker.

40 (b) No person or entity shall own a health care practice or employ registered practicing
41 clinicians except as specified in this section.

42 (c)(1) A majority share of a health care practice shall not be owned, alone or in
43 combination, by any person or entity other than: (i) a nonprofit hospital health system; (ii) a
44 hospital that holds a license issued by the department of public health under chapter 111; or (iii)
45 a registered practicing clinician who: (A) holds a license and, when applicable, a certificate of
46 registration, that is issued by the applicable board of registration, neither of which have been
47 suspended or revoked; and (B) is substantially engaged in delivering health care to patients in the
48 commonwealth through the practice or managing of the health care practice. A violation of this
49 section shall constitute the unauthorized practice of medicine in violation of section 6. Nothing
50 in this section shall permit a nurse-midwife to practice beyond the scope established pursuant to
51 section 80G.

52 (2) It shall constitute the unauthorized practice of medicine in violation of section 6 for
53 any person or entity other than a health care facility or entity that holds a license issued by the
54 department of public health pursuant to sections 51, 51M, 51N or 52 of chapter 111 or a health
55 care practice to employ registered practicing clinicians.

56 (d) Health care facilities or entities that hold a license issued by the department of public
57 health pursuant to sections 51, 51M, 51N or 52 of chapter 111, health care practices and
58 nonprofit hospital health systems shall not directly or indirectly interfere with, control or
59 otherwise direct the professional judgment or clinical decisions of: (i) registered practicing
60 clinicians who receive compensation from the health care facility or entity or health care practice
61 as employees or independent contractors; (ii) a health care practice fully or partially owned or
62 controlled by a hospital that holds a license issued by the department of public health pursuant to
63 chapter 111 or nonprofit hospital health system; or (iii) said health care practice's employees.
64 Conduct prohibited under this subsection shall include, but not be limited to, controlling, either
65 directly or indirectly, through discipline, punishment, threats, adverse employment actions,
66 coercion, retaliation or excessive pressure: (i) the amount of time spent with patients, including
67 the time permitted to triage patients in the emergency department or evaluate admitted patients;
68 (ii) the time period within which a patient must be discharged; (iii) decisions involving the
69 patient's clinical status, including, but not limited to, whether the patient should be kept in
70 observation status, whether the patient should receive palliative care and where the patient
71 should be placed upon discharge; (iv) the diagnosis, diagnostic terminology or codes that are
72 entered into the medical record; or (v) any other conduct the department of public health
73 determines by regulation would interfere with, control or otherwise direct the professional
74 judgement or clinical decisions of clinicians with independent practice authority; provided,
75 however, that the department may establish exceptions to subsections (i) to (v), inclusive, for the
76 appropriate clinical supervision of clinicians without independent practice authority. Such health
77 care facilities or entities, nonprofit hospital health systems or health care practices fully or
78 partially owned by a hospital or nonprofit hospital health system shall not limit the range of

79 clinical orders available to registered practicing clinicians either directly or by configuring the
80 medical record to prohibit or significantly limit the clinical order options available.
81 Nondisclosure or non-disparagement agreements regarding subsections (i) to (v), inclusive, to
82 which health care practices or registered practicing clinicians are a party shall be considered void
83 and unenforceable. Any policy or contract that has the effect of violating this subsection shall be
84 void and unenforceable and shall be considered the unauthorized practice of medicine in
85 violation of section 6. If a court of competent jurisdiction finds a policy, contract or contract
86 provision void and unenforceable pursuant to this subsection, the court shall award the plaintiff
87 reasonable attorney's fees and costs. Nothing in this section shall limit the ability of any person
88 to bring any action relating to defamation, disclosure of confidential or proprietary information
89 or trade secrets or similar torts.

90 (e) All health care practices shall provide written certification that the health care practice
91 meets the requirements in this section to the department of public health at the time of formation
92 and on a biennial basis thereafter. Health care practices shall, at the time that such registered
93 practicing clinicians are hired or affiliated with the practice and within 30 days of providing
94 certification to the department of public health pursuant to this section, provide a copy of the
95 most recent certification to all registered practicing clinicians who: (i) engage in providing health
96 services at the health care practice; and (ii) do not hold any ownership interest in the health care
97 practice.

98 (f) Health care practices shall file with the department of public health a registration
99 application containing such information as the department may reasonably require, including, but
100 not limited to: (i) the identity of the applicant and of the registered practicing clinicians that
101 constitute the practice; (ii) any management services organization under contract with the health

102 care practice; (iii) a certified copy of the health care practice's certificate of organization, if any,
103 as filed with the secretary of the commonwealth, or any applicable partnership agreement; (iv)
104 the address of the health care practice; (v) the services provided by the health care practice; and
105 (vi) any information the department, in consultation with the health policy commission and the
106 center for health information and analysis, deems relevant for the state health plan and focused
107 assessments pursuant to section 22 of chapter 6D and the health care resources inventory
108 pursuant to section 9 of chapter 12C. The application shall be accompanied by a fee in an amount
109 to be determined pursuant to section 3B of chapter 7. All health care practices registered in the
110 commonwealth shall renew their certificates of registration with the department every 2 years.
111 The department shall share information relevant to the state health plan and focused assessments
112 pursuant to said section 22 of said chapter 6D with the commission and information relevant to
113 the health care resources inventory pursuant to said section 9 of said section 12C with the center.

114 (g) All health care practices with more than 1 registered practicing clinician that
115 constitutes the practice shall designate a registered practicing clinician at the practice to serve as
116 health care director; provided, however, that the designated clinician shall hold a license issued
117 by the applicable board of registration and, when applicable, a certificate of registration issued
118 by said board, neither of which have been suspended or revoked. The director shall be
119 responsible for implementing policies and procedures to ensure compliance with local
120 ordinances and state and federal laws and regulations governing the practice of medicine or the
121 practice of nursing, including regulations promulgated and policies established by the applicable
122 board. The applicable board may impose discipline against the licenses of the director and
123 registered practicing clinicians who own and control the health care practice for failure of the
124 health care practice to comply with local ordinances and state and federal laws and regulations

125 governing the registered practicing clinician’s practice, including regulations promulgated and
126 policies established by the applicable board.

127 (h) The department of public health may promulgate regulations to establish minimum
128 requirements for the conduct of a health care practice, including, but not limited to: (i)
129 compliance with this section; (ii) maintenance and access to medical records; and (iii) in the
130 event of a planned closure of the health care practice or an unplanned event that prevents the
131 health care practice from continuing operations, the development of a continuity plan to: (A)
132 ensure access to medical records, (B) provide notice to patients, and (C) assist patients with
133 transitioning to a new provider.

134 Section 4B. (a) This section shall apply only to health care practices that are not owned or
135 controlled by hospitals licensed by the department of public health under chapter 111 or
136 nonprofit hospital health systems. It shall be a violation of this section for a management services
137 organization or other entity that is not a health care practice to exercise control over clinical
138 decisions of a health care practice. A management services organization, or any other
139 organization that is not a health care practice, that does the following shall be considered to have
140 control over the clinical decisions of the health care practice: (i) managing, supervising,
141 evaluating or recommending promotion or discipline of any owner of or registered practicing
142 clinician associated with the health care practice; (ii) negotiating with third-party payers on
143 behalf of a health care practice without first obtaining informed consent from the health care
144 practice’s owners; (iii) advertising or otherwise presenting as a health care practice or provider of
145 health care services; or (iv) performing any other functions that the department of public health
146 determines, by regulation, confers to a management services organization or any other entity that

147 is not a health care practice the ability to control the clinical decisions of the health care practice
148 or its registered practicing clinicians.

149 (b) A health care practice shall maintain ultimate decision-making authority over: (i)
150 personnel decisions involving registered practicing clinicians, including, but not limited to,
151 employment status, compensation, hours or working conditions; (ii) coding or billing decisions;
152 (iii) the selection and use of property, including, but not limited to, real property, medical
153 equipment or medical supplies; (iv) the number of patients seen in a given period of time or the
154 amount of time spent with each patient; (v) the appropriate diagnostic test for medical
155 conditions; (vi) the use of patient medical records; (vii) referral decisions; or (viii) any other
156 function or decision that the department of public health determines, by regulation, confers to a
157 management services organization or any other entity that is not a health care practice the ability
158 to control the clinical decisions of a health care practice or its registered practicing clinicians.

159 (c) It shall be a violation of this section for a management services organization or any
160 other entity that is not a health care practice to include in an agreement with any health care
161 practice provisions that would: (i) restrict the ability of the health care practice or practice owner
162 to exercise complete, unfettered control and discretion over the finances or capital of the health
163 care practice, including, but not limited to, restricting the ability to create, buy or sell stock, issue
164 dividends or sell the health care practice; (ii) restrict the ability of a person who owns stock in
165 the health care practice to transfer, alienate or otherwise exercise unfettered discretion and
166 control over their stock; (iii) restrict, in any way, the ability of the health care practice or
167 clinicians with independent practice authority associated with the health care practice to provide
168 health care services in any place, for any entity or in any form otherwise permitted by law; (iv)
169 restrict the ability of the health care practice to contract with another management services

170 organization for management or administrative services upon expiration of the current contract;
171 (v) limit the ability of the health care practice or the practice's owners, employees or agents to
172 publicly discuss the business relationship between the health care practice and the management
173 services organization; provided, however, that this provision shall not limit the ability of any
174 person to bring any action relating to defamation, disclosure of confidential or proprietary
175 information or trade secrets or similar torts; (vi) limit access to, take control from or otherwise
176 obscure from any registered practicing clinicians providing services in connection with the health
177 care practice, the price, rate or amount of the charges for their services; (vii) establish, supervise,
178 manage or otherwise control the health care practice's officers or directors; or (viii) create any
179 other situation the department of public health determines, by regulation, could create the
180 possibility of allowing the management services organization to control the clinical decisions of
181 the health care practice or registered practicing clinicians.

182 (d) No management services organization shall have any ownership interest in or direct
183 or indirect control over health care practices for which the management services organization
184 provides services. No health care practice shall have any ownership interest in or direct or
185 indirect control over a management services organization unless the management services
186 organization is fully owned, alone or in combination, by: (i) health care practices substantially
187 engaged in delivering health care to patients in the commonwealth; (ii) registered practicing
188 clinicians who both: (A) hold a license from the applicable board of registration and, when
189 applicable, a certificate of registration that is issued by said board, neither of which have been
190 suspended or revoked, and (B) are substantially engaged in delivering health care to patients in
191 the commonwealth; or (iii) hospitals that hold a license issued by the department of public health
192 pursuant to chapter 111 or non-profit hospital health systems. For the purposes of this subsection,

193 a de minimis interest in a publicly traded company held in a mutual fund, index fund or similar
194 financial instrument shall not be considered an ownership interest.

195 (e) No person may serve as a director, officer, employee or contractor for both a
196 management services organization and a health care practice for which the management services
197 organization provides services; provided, however, that this subsection shall not apply when a
198 management services organization is fully owned, alone or in combination, by: (i) health care
199 practices substantially engaged in delivering health care to patients in the commonwealth; (ii)
200 registered practicing clinicians who both: (A) hold a license from the applicable board of
201 registration and, when applicable, a certificate of registration that is issued by said board, neither
202 of which have been suspended or revoked; and (B) are substantially engaged in delivering health
203 care to patients in the commonwealth; or (iii) hospitals that hold a license issued by the
204 department of public health pursuant to chapter 111 or nonprofit hospital health systems.

205 (f) A violation of this section shall constitute the unauthorized practice of medicine in
206 violation of section 6 or the unauthorized practice of nursing in violation of section 80E, 80H or
207 80J. Any provision of a contract or agreement that has the effect of violating this section shall be
208 void and unenforceable. If a court of competent jurisdiction finds a policy, contract or contract
209 provision void and unenforceable pursuant to this section, the court shall award the plaintiff
210 reasonable attorney's fees and costs.

211 (g) The department of public health, in consultation with the health policy commission,
212 shall promulgate regulations to effectuate the purposes of this section.