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Carbon Health Settlement Continues Pattern of Heightened California CPOM Enforcement

Key Takeaways

- A recent settlement between the California Attorney General and Carbon Health continues a pattern of heightened CPOM enforcement, highlighting the AG's focus on MSO control over physician-owned medical practices and related consumer protection concerns.
- The settlement reinforces that CPOM issues often arise alongside allegations of false or misleading advertising and billing communications.
- Providers using California PC/MSO structures should evaluate existing arrangements in light of heightened enforcement, including whether governance, day-to-day operations and public-facing communications align with longstanding California CPOM requirements.

The California Attorney General (AG) recently entered into a settlement with Carbon Health and its founder, Eren Bali, based (in part) on alleged violations of California's corporate practice of medicine (CPOM) prohibitions. The Carbon Health settlement continues a pattern of enforcement actions and public statements by the AG signaling a strict interpretation of CPOM requirements.

AG Alleges Extensive MSO Control Over Medical Practices

Like the AG's recent settlement with Aspen Dental, the complaint against Carbon Health contains material allegations of false and deceptive advertising related to insurance coverage and billing practices that the AG alleged misled and harmed California patients.

The AG also alleges a string of CPOM violations centered around the Carbon Health management services organization's (MSO) inappropriate and excessive control over California medical practices, including that:

- The MSO had complete control over advertising, billing, finances, maintenance and use of patient records, selection of medical equipment, payor contracting and the hiring, firing and compensation of licensed medical professionals associated with the "Carbon Health" name;

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- Carbon Health’s affiliated medical practices required the MSO’s consent to make asset purchases, incur debt, or enter contracts worth more than \$1,000; and
- The MSO retained an assignable option (and security interest in physician equity) in affiliated medical practices, pursuant to which the MSO could transfer ownership of said medical practices to another physician at its sole discretion.

The complaint included alleged public statements by Carbon Health personnel, including members of the C-suite, allegedly illustrating the undue control of non-professionals over clinical services, such as statements that the MSO “runs our company” (ostensibly referring to the medical practices), sets the corporate vision for “how healthcare should be for patients” and referring to the MSO as a leading “medical service provider.”

Settlement Requires Structural Changes and Financial Penalties

The settlement includes \$4.4 million in penalties against Carbon Health and \$100,000 against Mr. Bali personally. It also includes injunctive provisions requiring Carbon Health to change its organizational structure so that a non-medical management company can no longer control or hold ownership interests in physician-owned medical practices. Carbon Health is required to allow physicians to have independent control over medical decisions and practice operations and is further required to fix its billing practices and correct alleged misleading statements about in-network status. Notably, the AG pursued this enforcement action and penalties notwithstanding Carbon Health’s bankruptcy.

Enforcement Reflects Continued Focus on CPOM and Consumer Protection

Both the Aspen Dental and Carbon Health settlements arise from fact patterns that include meaningful allegations of false and misleading advertising and similar deceptive trade practices. While CPOM structures are clearly a focus for the AG, a significant theme emerging from the settlement pattern is that other consumer protection issues materially increase the risk of enforcement for providers operating in this environment.

Other common threads include the AG’s focus on an MSO’s ability to force the physician to transfer ownership of the practice entities — a point of emphasis for the AG following the amicus brief in the Art Center case and Aspen Dental settlement. The AG also took Carbon Health to task for violations of CPOM restrictions that have long been part of California’s regulatory landscape, such as MSO control over payor contracting decisions, the hiring and firing of licensed clinical personnel and the final selection of medical equipment.

Practical Takeaways for California PC/MSO Structures

For providers utilizing a PC/MSO structure in California, the Carbon Health settlement offers a few key insights:

1. The AG has demonstrated an aggressive stance on CPOM enforcement, and providers should take the possibility of enforcement seriously in evaluating and structuring these relationships.
2. Longstanding California CPOM restrictions, like those outlined in SB 351 and California Medical Board, guidance, should still be observed.
3. Even PC/MSO structures that have taken care to document their relationships appropriately should evaluate the practical, daily interactions between the MSO and the clinical practices to ensure CPOM safeguards are working as intended.
4. Apart from CPOM structures, providers should evaluate their public-facing and patient communications to ensure compliance with California laws regarding marketing and advertising – violations of these laws invite scrutiny beyond the content of any

advertisements and could lead to larger structural concerns. Public statements and descriptions about MSO or lay entity/layperson interactions or control over affiliated medical practices (or other professional entities) should also be carefully considered.

There are almost certainly more pending CPOM enforcement actions from the AG in the works that have not yet been made public. Going forward, health care stakeholders will still need to take into account the further developments in the *Art Center* case as that unfolds in order to assess compliance risk and determine what type and scope of changes to existing friendly PC/MSO models and agreements may be warranted. However, in light of the current trend of heightened enforcement, now is the time for thoughtful review of existing arrangements and agreements with sophisticated health care legal counsel.

For more information on health care, corporate structuring and regulatory compliance, contact Paul Gomez, Ryan Thurber, Matthew Lin or your regular Polsinelli attorney.