Proposed California Law Would Mandate AG Approval for Almost All Hospital Affiliations with Other Providers

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On June 18, 2020, the California Senate Appropriations Committee is scheduled to hold a hearing on California Senate Bill 977, which would require any hospital system, private equity group, or hedge fund to obtain California Attorney General (AG) approval before entering into an affiliation or acquisition with a health care facility or provider, including, for example, hospitals, clinics, ambulatory surgery centers, or physicians, when the transaction is valued over $500,000. The bill also requires notice to the AG of any such transactions valued at $500,000 or less.

For those transactions requiring AG approval, the AG must either grant or deny consent, or waive the approval requirement. With regard to the decision to approve or deny consent, the bill provides that the AG shall deny consent unless the requester demonstrates that the affiliation or acquisition will result in a substantial likelihood of clinical integration, a substantial likelihood of increasing the availability and access of services to an underserved population, or both. The bill further provides that the AG may deny consent if there is a substantial likelihood of anticompetitive effects that would outweigh the substantial likelihood of clinical integration, the substantial likelihood of increasing the availability and access of services to an underserved population, or both. For those transactions requiring notice, the bill provides that the AG must either indicate he or she has no objections to the transaction or indicate the proposed transaction raises substantial competitive concerns, such that the hospital must seek AG approval to move forward.

Existing law requires a nonprofit corporation that operates or controls a health facility to obtain the written consent of the AG prior to any sale or transfer of ownership or control of a material amount of its assets. This process has historically added layers of complexity, and often significant delay, to transactions involving the transfer of nonprofit hospitals. By extending this requirement for AG approval to any of a wide range of hospital and other transactions valued over $500,000, the bill, if signed into law, will have a similar effect on all such transactions in California. Further, as currently drafted, the bill does not provide for any clear processes for AG approval or opportunities to appeal the AG's decision. The burdensome process for AG approval, coupled with the finality of the AG's decisions, will likely significantly limit, and even deter, hospital affiliations and acquisitions throughout the state.

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On or before June 16, 2020, interested parties have the opportunity to contact their state senators to express their views on the bill and its potential impact on hospital and other transactions in California.

For further information, please contact Lloyd Bookman, Charles Oppenheim or Nina Marsden in Los Angeles, or your regular Hooper, Lundy & Bookman contact.

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