New California Proposed Law Would Require Attorney General Consent for Private Equity Healthcare Transactions (AB 3129)

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Government scrutiny of health care transactions continues to grow. The California Office of Health Care Affordability's pre-transaction notice rules don't take effect until April, but already lawmakers are proposing new oversight rules – this time focused squarely on private equity and hedge funds. On February 16, 2024, California Attorney General Rob Bonta and Assembly Speaker pro Tempore Jim Wood introduced AB 3129, which would:

- Require private equity groups and hedge funds to provide notice to, and obtain the consent of, the California Attorney General (AG) before entering into an acquisition or change of control transaction with a health care facility or provider group;
- Require private equity groups and hedge funds to provide notice to the AG of any acquisition or change of control transaction with providers and nonphysician providers that meet certain annual revenue thresholds; and
- Impose restrictions on private equity groups' and hedge funds' relationships and contracts with physician or psychiatric practices.

Transactions with Health Care Facilities and Provider Groups – Notice & Consent

AB 3129 imposes notice and consent requirements on private equity groups and hedge funds for any acquisitions or change of control transactions with a "health care facility" or "provider group."

As defined in the bill, "*health care facility*" means a "facility, nonprofit or for-profit corporation, institution, clinic, place, or building where health-related physician, surgery, or laboratory services are provided, including, but not limited to, a hospital, clinic, long-term health care facility, ambulatory surgery center, treatment center, or laboratory or physician office located outside of a hospital." And a "provider group" means "a group of providers of 10 or more providers that provide health-related physician, psychiatric, surgery, or laboratory services to consumers or a group of providers of two to nine individuals that provide health-related physician, psychiatric, surgery, or laboratory services to consumers that generate annual revenue of ten million dollars ($10,000,000) or more."

Unless the AG grants a waiver based on a party's demonstrable financial difficulties, private equity groups and hedge funds would be required to provide written notice to the AG at least 90 days before a change of control or acquisition. The notice would need to contain information sufficient for the AG to: (1) evaluate the nature of the transaction; and (2) determine whether the transaction may have a substantial likelihood of anticompetitive effects or create a significant effect on health care access or availability. After completing its evaluation, the AG can either approve, deny, or impose conditions to the transaction.

Once the AG has issued its decision, any party to the transaction can ask the AG to reconsider its decision and/or seek judicial review by writ of mandate to the superior court.

Transactions with Providers – Notice Only

AB 3129 would also require private equity groups and hedge funds to provide notice to the AG of any acquisition or change of control transaction with (1) a "nonphysician provider" that has annual revenue greater than $4,000,000 or (2) a "provider" that has annual revenue between $4,000,000 and $10,000,000.

As defined in the bill, "*nonphysician provider*" means "a group of two or more individuals that are licensed [under Division 2 of the Business and Professions Code] that does not provide health-related physician, surgery, or laboratory services to consumers." And "provider" means "any group of two to nine individuals, except for a provider group, that provides health-related physician, psychiatric, surgery, or laboratory services to consumers."

As currently drafted, AB 3129 does not specify a deadline for private equity groups and hedge funds to notify the AG of these transactions with providers. However, if the bill moves forward, it seems possible that legislators might align this notice timing with the 90-day timeline for transactions with health care facilities and provider groups.

Arrangements with Physician and Psychiatric Practices

In addition to its pre-transaction notice and consent requirements, AB 3129 would also:

- Prohibit private equity groups and hedge funds from controlling or directing any physician or psychiatric practice with which they are involved in any manner. Types of prohibited control and direction include: (i) influencing or entering into contracts on behalf of that practice or its providers, (ii) influencing or setting rates, and (iii) influencing or setting patient admission, referral or provider availability policies.
- Prohibit physician or psychiatric practices from entering into any agreement or arrangement with any entity controlled in whole or in part by a private equity group or hedge fund in which that private equity group or hedge fund provides management services in exchange for a fee. However, revenue-sharing arrangements would be permitted.
- Prohibit the inclusion of non-compete and non-disparagement provisions in any contract (i) involving the management of a physician or psychiatric practice by a private equity group or hedge fund; or (ii) involving the sale of real estate or other assets owned by a physician or psychiatric practice to a private equity group or hedge fund.

Why It Matters

Existing law requires nonprofit corporations that operate or control health facilities to obtain the AG's written consent 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 significant delay, to transactions involving the transfer of nonprofit hospitals. By extending this requirement for AG approval to private equity or hedge fund acquisitions and change of control transactions, AB 3129, if signed into law, would have a similar effect on all such transactions in California. Further, the bill's prohibitions on certain arrangements with physician and psychiatric practices could upend countless MSO agreements, operating agreements and shareholders agreements, and other common business arrangements.

What's Next?

California bills are not heard in a policy committee until 30 days after they have been introduced. Since AB 3129 was introduced on February 16, it could be heard by the Assembly Health Committee as early as March 18, 2024. Hooper, Lundy & Bookman will continue tracking AB 3129's development and provide timely updates and guidance.

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