OHCA Waives Impact Review for First Material Change Notice Submitted (with the Assistance of HLB) and Proposes Revised Regulations

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PROFESSIONAL

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HLB assisted the Rehabilitation Center of Santa Monica Operating Company LP with filing the first – and thus far, *only* – Material Change Notice with California's Office of Health Care Affordability. Following the Office's request to the facility for additional information, it deemed the submission complete on April 12, 2024. On May 16, 2024, the Office notified the operator and HLB that it had determined that a cost and market impact review was not required for the transaction. As described in the Material Change Notice (available through the Office's website here), the facility's lease was expiring, and this transaction involved the transfer of operations and certain assets of the facility to a new operator.

The Cost and Market Impact Review regulations (described in our alerts here and here), apply to certain "health care entities" (payers and related entities, providers, fully integrated delivery systems and pharmacy benefit managers) that meet certain asset or revenue thresholds, or are located in a primary care shortage area, and that engage in a "material change transaction." If the transaction is a material change transaction, the participating health care entities that meet the reporting thresholds (or are located in a primary care shortage area) are required to notify the Office of the transaction no less than 90 days before it closes. If the Office determines that a cost and market impact review is warranted, the closing could be delayed for months, while the Office conducts its review, solicits comments to its preliminary report, and then finalizes its review. Transactions subject to that review are not permitted to close until 60 days after the Office issues its final report. There is understandable concern in the industry about the how broadly the Office might cast its net in determining whether to conduct a CMIR.

The decision of the Office not to conduct a review in the Santa Monica transaction was not surprising given the routine nature of the transaction, but it is still unclear how intrusive the Office will be in reviewing reportable transactions. An aggressive approach would hinder the agility of health care entities in reacting efficiently to changing market demands and modified strategic objectives, both of which are often paramount to controlling costs in delivering health care services.

What's next? Last week, HCAI released proposed revisions to the regulations (available here). Comments on the proposed revisions will be accepted until May 30, 2024, and the draft revisions are on the agenda for discussion at the Office's public board meeting scheduled for May 22." The existing regulations contain a number of ambiguities. Indeed, the uncertainty and confusion created by the existing

regulations may be the primary reason no other material change notices have been filed to date. For example, the Office is proposing to revise 22 CCR §97435(b), regarding who must file (assuming it is a material transaction), to include not just health care entities that are "a party to" a material change transaction, but also those health care entities that are "a subject of" the material change transaction. Until that proposed language is finalized, it may very well be that industry participants will not report transactions solely between lay entities that result in a change of the majority ownership of a health care entity. While the proposed revisions would clear up some of the existing regulations' ambiguities, many others remain unaddressed. The upcoming HCAI meeting and comment period are an opportunity for further clarity.

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