SB 351: California Proposes New Restrictions on Private Equity Management of Medical and Dental Practices

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On February 12, 2025, California Senator Cabaldon introduced SB 351, a legislative proposal aimed at regulating the involvement of private equity groups and hedge funds in physician and dental practices within the state. This bill would represent another step in California's ongoing efforts to address concerns about the influence of private equity and hedge fund investment in health care. SB 351 also would bolster the state's longstanding prohibition on the corporate practice of medicine and dentistry.

PROFESSIONAL

MICHAEL SHIMADA
Associate
San Francisco

ROBERT F. MILLER
Partner
Los Angeles
San Diego

Background

California legislators passed a bill last year, AB 3129, that contained almost identical language to this new SB 351. AB 3129 imposed restrictions on private equity groups' and hedge funds' relationships and contracts with physician, dental, and psychiatric practices. Governor Newsom ultimately vetoed AB 3129, however, citing concerns related to its other provisions that would have imposed Attorney General notice and consent requirements on private equity groups and hedge funds entering into certain health care transactions.

Key Provisions of SB 351

SB 351 seeks to "ensure that clinical decisionmaking and treatment decisions are exclusively in the hands of licensed health care providers" by prohibiting private equity groups and hedge funds from interfering with the professional judgment of physicians and dentists. The bill outlines specific activities that these investment entities are barred from engaging in, including:

1. **Clinical Decisionmaking**: Private equity groups and hedge funds would be prohibited from making determinations about diagnostic tests, referrals, consultations, treatment options and patient care, and the number of patients seen or hours worked by physicians or dentists.
2. **Control Over Care Delivery**: SB 351 also prohibits private equity groups and hedge funds from exercising control over the following administrative aspects of a practice that arguably relate to care delivery: (A) owning or otherwise controlling the content of patient medical records, (B) selecting, hiring, or firing physicians, dentists, allied health staff, and medical assistants based on clinical competency or proficiency, (C) setting the parameters under which physicians or dentists enter into contracts with payers, (D) setting the parameters under

which a physician or dentist enter into contracts with other physicians or dentists for the delivery of care, (E) making decisions regarding coding and billing procedures for patient care services, and (F) approving the selection of medical equipment and medical supplies for the physician or dental practice.

3. **Non-Disparagement and Non-Compete Clauses**: SB 351 prohibits the inclusion of non-disparagement and post-termination non-compete provisions in any contract (i) involving the management of a physician or dental 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 dental practice to a private equity group or hedge fund.

Why It Matters

SB 351 reflects a broader national trend of scrutinizing private equity investments in healthcare. While this bill omits last year's AB 3129's regulatory approval requirements for transactions involving private equity and hedge funds, the recently introduced AB 1415 proposes to subject those transactions to review by the Office of Health Care Affordability. SB 351 would impose significant limitations on private equity groups' and hedge funds' operational involvement in medical and dental practices. While the California Medical Board's 1999 guidance already caution against many of the activities detailed in SB 351, the bill codifies existing best practices based on that guidance. Similarly, while California's general prohibition on non-compete agreements already limit private equity groups' and hedge funds' ability to include non-compete provisions in their agreements with medical and dental practices, SB 351's prohibition on non-competes and non-disparagements goes further. Taken together, these restrictions could upend arrangements under countless MSO agreements, purchase agreements, operating agreements, shareholders' agreements, and other common business agreements.

What's Next?

California bills are not heard in a policy committee until 30 days after they have been introduced. Since SB 351 was introduced on February 12, it could be heard by the Assembly Health Committee as early as March 14, 2024. Hooper, Lundy & Bookman will continue tracking SB 351's development and provide timely updates and guidance.

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