

# California Codifies Limitations on Private Equity Involvement in Health Care

Insights

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California Governor Newsom has signed [SB 351](#), which codifies limitations around the involvement of private equity groups and hedge funds in physician and dental practices in California.

SB 351 bars private equity firms and hedge funds that invest in physician and dental practices from interfering with physicians' or dentists' clinical decision making, such as:

- determining what diagnostic tests are appropriate for a particular condition;
- determining the need for referrals to, or consultation with, another physician, dentist, or licensed health professional;
- being responsible for the ultimate overall care of the patient, including treatment options available to the patient; and
- determining how many patients a physician or dentist must see in a given period of time or how many hours a physician or dentist must work.

The law also prohibits private equity firms and hedge funds from exercising control, or having power, over:

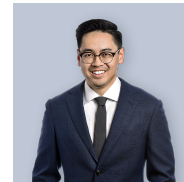
- owning or otherwise determining the content of medical records;
- selecting, hiring, or firing clinical staff based on clinical competency or proficiency;
- setting the parameters under which a practice enters into contractual relationships with third-party payers;
- setting the clinical competency or proficiency parameters under which a physician or dentist must enter into contractual relationships with other physicians or dentists;
- making billing and coding decisions; and
- approving the selection of medical equipment and medical supplies.

If the activities above sound familiar to savvy readers, it's because SB 351 closely follows existing guidance from the Medical Board of California [on the corporate practice of medicine](#). A later amendment to the legislation included in the final law clarified that the law does not prohibit an unlicensed person or entity from assisting, or consulting with, a physician or dental practice with respect to the six decisions and activities described immediately above, provided that the physician or dentist retains the ultimate responsibility for, or approval of, those decisions and activities.

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SB 351 also prohibits the inclusion of certain 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. SB 351, however, does not affect the validity of sale of business noncompete agreements or otherwise valid non-disclosure agreements relating to material nonpublic information. We also note that SB 351's prohibition on certain non-disparagement provisions appears to go further than the prohibition imposed by 2021's "Silenced No More Act" ([SB 331](#)).

Although SB 351 does not change California's existing corporate practice of medicine prohibition, it does signal legislators' and the Attorney General's heightened scrutiny of private equity and hedge fund investments in health care. Management services organizations, health care providers, and their respective investors should review their contracts and business arrangements to ensure compliance with SB 351. They should also review the recently signed [AB 1415](#), which would expand California's health care pre-transaction notice requirements to management services organizations and private equity groups."

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