

California Considers Revisions to Legislation on Health Care Investments and Regulations on OHCA Review

This month, California lawmakers progressed in making changes to AB 3129, the bill proposing to give the California Attorney General (“AG”) approval authority over certain private equity and hedge fund investments in the health care industry, as well as to regulations governing the review process of the California Office of Health Care Affordability (“OHCA”). Critically, the amendments to AB 3129 include the removal of a prohibition on management services agreements between certain health care practices and providers and companies backed by private equity or hedge funds, while OHCA proposes expanding notice requirements to health care entities that are a “subject of” a material change transaction while not necessarily a party to the transaction.

AB 3129

The California Senate Health Committee passed AB 3129 on June 26, 2024, after two rounds of amendments, and the California Senate Judiciary Committee passed the bill as amended on July 2, 2024. The California Senate Appropriations Committee will hear the bill on August 5, 2024. As currently proposed, AB 3129 would: (1) require notice and potential approval by the AG prior to a change of control or acquisition between certain health care practices and providers and private equity groups or hedge funds and (2) limit the ability for private equity companies or hedge funds to exercise certain authority over physician, psychiatric and dental practices.¹

The current draft includes the following key changes compared to the original draft of the bill:

- Health care transactions subject to review by the AG under AB 3129 would be exempted from OHCA’s review.
- “Hedge fund” would include “entities that solely provide or manage debt financing secured in whole or in part by the assets of a health care facility, including, but not limited to, banks and credit unions, commercial real estate lenders, bond underwriters, and trustees.”
- The gross annual revenue threshold for what would constitute a “provider group” was increased from \$10,000,000 to \$25,000,000.
- The AG’s scope of review was expanded to include the “lease, transfer, exchange, option, receipt of a conveyance, creation of a joint venture, or any other manner of purchase, by a private equity group or hedge fund of a material amount of the assets or operations, or a change of control, of a health care facility, provider group, or provider doing business in this state.” A transaction involves a “material amount of the assets or operations” if it

affects more than fifteen percent of the market value or ownership shares of the health care facility, provider group or provider.

- AB 3129 excludes the pledge of assets to secure debt obligations from the scope of review.
- Transactions subject to review by the Department of Managed Health Care would be exempted from review by the AG.
- Transactions between private equity groups and providers below the \$25,000,000 revenue threshold would still be subject to notice and approval by the AG if the private equity group has been involved in a transaction involving a health care facility, provider group, provider, or related health care services in the past seven years.
- The private equity group or hedge fund would be able to seek review of the AG's initial determination through an evidentiary hearing before an administrative law judge (“ALJ”). The ALJ would issue a statement of decision within 60 days after receipt of posthearing briefs, and the AG would issue a final determination within 45 days of receipt of the statement of decision. If the AG did not consent or gave conditional consent to a transaction, the private equity group or hedge fund would be able to seek judicial review of the determination in a superior court.
- AB 3129 enumerates elements of physician, psychiatric and dental practices that the private equity groups and hedge funds would not be allowed to influence, including interference with professional judgment of physicians, psychiatrists, or dentists in determining appropriate diagnostic tests, the need for referrals, overall patient care and the number of patients a practitioner must see in a given time period. The bill also enumerates elements of practice management that private equity groups and hedge funds cannot exercise control over, including ownership of medical records, hiring and firing of professionals and staff, setting parameters for relationships with payors and other health professionals, billing and coding procedures and approving the selection of medical equipment and supplies.
- AB 3129 was revised to remove the prohibition on physician, psychiatric and dental practices entering into management agreements with entities backed by a private equity group or hedge fund in exchange for a fee.

Proposed Updates to OHCA Regulations

On June 26, 2024, the Health Care Affordability Board (the “Board”) presented proposed changes to OHCA’s regulations governing notice and review of certain health care transactions. OHCA’s regulations currently require health care entities that are party to certain material change transactions to notify OHCA at least 90 days prior to the proposed closing date of the transaction.² Among other changes, the amendments proposed by the Board would expand the notice requirements to health care entities that are a “subject of” a material change transaction, even if they are not a party to the transaction. Being a “subject of” a transaction would mean the transaction “concerns a health care entity’s assets, control, responsibility, governance, or operations, in whole or in part.” The proposed changes can be found [here](#). The Board currently plans to post a notice of emergency rulemaking for the amendments on August 6, 2024, and then submit the revisions to the Office of Administrative Law (“OAL”) on August 21, 2024. The Board expects OAL to approve the revisions by September 3, 2024.

Takeaways

The updates to AB 3129 and OHCA show a continued trend toward expanding regulatory oversight of health care transactions in California. While the proposed changes discussed above have yet to take effect, members of and potential investors in the California health care industry should continue to monitor these changes in order to anticipate potential impact on their practices in the future.

[1] Our prior analysis of AB 3129 can be found here: <https://www.polsinelli.com/matthew-t-lin/publications/californias-ab-3129-continues-national-trend-of-scrutinizing-private-equity-investments-in-the-health-care-industry>.

[2] Our analyses of the notice requirements of California's Office of Health Care Affordability can be found here:

<https://www.polsinelli.com/publications/california-health-care-transactions-finalized-regulations-addressing-notice-and-review-requirements-from-the-office-of-health-care-affordability>

<https://www.polsinelli.com/publications/new-california-legislation-and-law-may-have-serious-impact-on-certain-health-care-deals>

<https://www.polsinelli.com/publications/california-regulators-publish-highly-anticipated-draft-regulations-on-mandatory-pre-transaction-notices-for-health-care-entities>

<https://www.polsinelli.com/publications/office-of-health-care-affordability-appears-to-both-limit-and-expand-scope-of-health-care-transaction-notice-requirements-in-latest-draft-regulations>

<https://www.polsinelli.com/publications/office-of-health-care-affordability-publishes-near-final-regulations-on-health-care-transaction-notice-requirements>