

Publications

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California Legislature Advances Bills Impacting Private Equity and Management Services Organizations

Key Takeaways

- The California legislature is advancing two bills that focus on the role of private equity groups, hedge funds and management services organizations in the state's health care industry.
- AB 1415, as amended, would expand oversight by requiring MSOs to notify the Office of Health Care Affordability (OHCA) of asset sales and changes of control. It defines MSOs as covering a wide range of administrative functions although the most recent amendments potentially narrow the number and types of entities that will be considered MSOs. SB 351, while narrower, clarifies where private equity groups and hedge funds may provide advisory support and confirms that physicians and dentists must retain ultimate authority.
- If enacted, these bills would increase compliance obligations for MSOs and reinforce restrictions on private equity participation in health care — signaling heightened scrutiny and potential new burdens for industry stakeholders.

How the Amendments Would Affect Stakeholders

Two bills moving through the California legislature — AB 1415 and SB 351 — continue to advance with amendments that could significantly affect how private equity groups, hedge funds and management services organizations operate in the state's health care industry.

While the amended SB 351 largely aligns with current law, AB 1415, as amended, would impose a new compliance burden on management services organizations contracting with California health care providers. The most significant amendment to AB 1415 would require management services organizations to report transactions involving the sale of assets or change of control of management services organizations to OHCA — reporting obligations that currently only apply to transactions involving payors, providers and fully integrated delivery systems.

The amendments to SB 351 are narrower, but one notable change would allow private equity groups and hedge funds to assist and consult on certain decisions of medical and dental practices in ways otherwise prohibited by the bill, provided the physician or dentist

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retains ultimate authority and control over those decisions.¹

Tracking the Bills' Progress

AB 1415 was recently passed by the Senate Appropriations Committee, amended by the Senate, and set for a third reading and vote by the Senate. SB 351 has likewise advanced, being cleared by the Assembly Committee on Appropriations, amended by the Assembly, and set for a third reading and vote by the Assembly.

Members of the California health care industry should continue to monitor both bills as they move forward for final consideration.

Summary of the Key Amendments to AB 1415

- Revising the definition of “management services organization” to exclude entities that own one or more health facilities as defined in subdivisions (a) or (b) of Section 1250 of the Health and Safety Code. Note that subdivisions (a) and (b) of Section 1250 of the Health and Safety Code include general acute care hospitals and acute psychiatric hospitals, but exclude other health facilities like skilled nursing facilities, intermediate care facilities and hospice facilities.
- Requiring management services organizations to notify OHCA of the types of transactions currently subject to notice when entered into by health care entities, including the sale of a material amount of a management services organization’s assets or the change of control of a management services organization.
- Removing the proposed amendment that would have made the list of entities defining a “provider” a non-exhaustive list, leaving the current exhaustive list of “provider” entities in place.
- Removing the proposed addition of health systems to the list of “provider” entities.
- Requiring OHCA to adopt regulations eliminating duplicative reporting if a noticing entity or health care entity was required to submit notice under more than one provision of OHCA’s statutory transaction reporting requirements. It remains to be seen how OHCA’s regulations implementing this mandate would minimize the duplicative reporting requirements for noticing entities and health care entities.

Summary of the Key Amendments to SB 351

- Specifying that private equity groups or hedge funds may not set the clinical competency or proficiency parameters under which physicians or dentists contract with other practitioners for delivery of care.
- Retaining prohibitions on private equity groups and hedge funds from exercising control over certain aspects of medical and dental practices — such as determining the content of patient medical records, hiring and firing professional staff and setting parameters for payor contracting — but adding a carve-out for any person to assist or consult with a physician or dental practice on such decisions, provided the physician or dentist retains ultimate authority.
- Rendering any agreement in violation of SB 351’s restrictions on contracts with private equity groups and hedge funds void, unenforceable and against public policy.
- Allowing confidentiality clauses barring disclosure of material nonpublic information about private equity groups and hedge funds that is not generally available to the public — while prohibiting private equity groups and hedge funds from including non-compete and non-disparagement clauses in certain contracts with physicians and dentists — except that such clauses may not bar disclosures required by law or disclosures protected by SB 351’s prohibition on non-disparagement clauses.

1 Our prior discussion of AB 1415 and SB 351 can be found here:

<https://www.polsinelli.com/publications/ab-1415-california-assembly-passed>

<https://www.polsinelli.com/publications/california-bill-seeks-to-expand-scope-of-ohca-review>

<https://www.polsinelli.com/publications/california-reintroduces-legislation-restrict-private-equity-health-care-management>