POLSINELLI

Publications

February 14, 2025 • Updates

California Reintroduces Legislation to Restrict Private Equity Management of Health Care Providers

The California legislature has introduced a bill that would implement some of the same restrictions on private equity health care investments as last year's AB 3129.[1] SB 351, introduced this week, includes some of the same language from AB 3129 that would limit the authority of affiliates of private equity companies when entering into management agreements with physicians and dentists, but does not include AB 3129's language requiring notice and consent of the California Attorney General (AG) for certain private equity health care transactions. The text of the proposed legislation is available here. While SB 351 shows that California is doubling down on restricting friendly physician arrangements, it largely reflects many of California's existing laws and requirements prohibiting the corporate practice of medicine and dentistry.

Overview of Bill Language

SB 351 defines "private equity group" as "an investor or group of investors who primarily engage in the raising or returning of capital and who invests, develops or disposes of specified assets" and does not include "natural persons or other entities that contribute, or promise to contribute, funds to the private equity group, but otherwise do not participate in the management of the private equity group or the group's assets, or in any change in control of the private equity group or the group's assets."

The current draft of the bill prohibits a private equity group "involved in any manner with a physician or dental practice... including as an investor in that physician or dental practice or as an investor or owner of the assets of that practice" from:

- Interfering with the professional judgment of physicians or dentists in making health care decisions, including any of the following:
    - 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.
    - Determining how many patients a physician or dentist shall see in a given

Related People

- Paul A. Gomez
- Ashley N. Osak
- Matthew T. Lin

Related Capabilities

- Health Care
- Health Care Mergers & Acquisitions

period of time or how many hours a physician or dentist shall work.

- Exercising control over, or being delegated the power to do, any of the following:
  - Owning or otherwise determining the content of patient medical records.
  - Selecting, hiring or firing physicians, dentists, allied health staff and medical assistants based, in whole or in part, on clinical competency or proficiency.
  - Setting the parameters under which a physician, dentist or physician or dental practice shall enter into contractual relationships with third-party payers.
  - Setting the parameters under which a physician or dentist shall enter into contractual relationships with other physicians or dentists for the delivery of care.
  - Making decisions regarding coding and billing procedures for patient care services.
  - Approving the selection of medical equipment and medical supplies for the physician or dental practice.

Additionally, SB 351 requires that any contract involving the management of a physician or dental practice, or the sale of real estate or other assets owned by a physician or dental practice to a private equity group, or any entity controlled by a private equity group, shall not include any clause barring any provider in that practice from competing with that practice in the event of a termination or resignation of that provider from that practice, or from disparaging, opining or commenting on that practice.

The bill further entitles the California AG to injunctive relief and other equitable remedies for enforcement of the prohibitions. The bill also notes that it is not meant to narrow any existing California law addressing the corporate practice of medicine or dentistry.

Takeaways

SB 351 demonstrates that California continues to follow a national trend of interest in regulating private equity investments in the health care industry and strengthening or reiterating prohibitions on the corporate practice of medicine and dentistry. However, the bill largely reiterates existing laws regulating the corporate practice of medicine and dentistry that apply beyond private equity, including laws barring the interference of professional medical judgment by unlicensed persons or corporations.

Importantly, the bill does not appear to prohibit most health care MSO arrangements if the prohibitions noted above are complied with, a welcome departure from certain recent prior bills also aimed at private equity investments in health care. Nevertheless, members of the health care industry that are in management arrangements with private equity affiliates should review those arrangements to ensure that they are compliant with existing corporate practice restrictions, but also to ensure that such arrangements would comply with SB 351 if passed into law.

[1] AB 3129 was passed by both the California Assembly and Senate and was ultimately vetoed by Governor Newsom. Our prior discussions of AB 3129 can be found here:

https://www.polsinelli.com/publications/californias-ab-3129-continues-national-trend-of-scrutinizing-private-equity-investments-in-the-health-care-industry

https://www.polsinelli.com/publications/california-considers-revisions-to-legislation-on-health-care-investments-and-regulations-on-ohca-review

https://www.polsinelli.com/publications/california-legislation-requires-consent-for-

investment-funds-in-healthcare

https://www.polsinelli.com/publications/governor-newsom-vetoes-ab-3129