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Publications

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OHCA Publishes Updated Draft Emergency Regulations Implementing AB 1415

Key Updates

- On Sept. 11, OHCA released revised proposed emergency regulations implementing AB 1415, retaining many provisions from the May 15 proposed regulations while introducing several significant changes for private equity sponsors, hedge funds, MSOs and other investors in the California health care sector.
- The changes expand filing requirements and categories, broaden OHCA's visibility into investor control and transaction structures and increase disclosure requirements and production burdens.

Why It Matters

- For investors and providers in the California health care sector, prior analyses under the May Draft (as defined below) may no longer be sufficient, and pending or anticipated transactions may require renewed assessment of notice obligations, timing, costs and deal value as the regulations move through OAL review.

Next Steps

- Investors and providers should revisit analyses prepared under the May Draft and monitor the development of these regulations to evaluate how any final changes may affect future California health care transactions.

On Sept. 11, the California Office of Health Care Affordability (OHCA) released revised proposed emergency regulations (September Draft) governing material change transaction notices and cost and market impact reviews (CMIRs). While the September Draft keeps many of the additions in OHCA's May 15 proposed regulations (May Draft), it contains several significant changes from the May Draft that are particularly relevant to private equity sponsors, hedge funds, management services organizations (MSOs) and other investors in the California health care sector.[1] Overarching themes of the changes appear to be 1) the expansion of filing requirements and categories, 2) a heightened focus on control over health care entities and 3) expanded disclosure requirements and production burdens.

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Related Capabilities

- Health Care
- Health Care Mergers & Acquisitions

The regulations are open to public comment for a limited five-day period under the emergency regulation procedures and will be submitted to the Office of Administrative Law (OAL) no earlier than five business days after September 11, 2026. OAL will have 10 calendar days to review the regulations. For context, it is worth noting that OAL made material revisions to OHCA's current regulations before approving them, so it is possible that we may see additional changes to the September Draft before the regulations are published in final form.

A brief assessment of some material changes in the September Draft follows:

1. PE and Hedge Fund Threshold Increased from 5% to 10%

One of the most significant investor-facing changes is the increase in the ownership threshold applicable to certain private equity and hedge fund transactions. Under the May Draft, a transaction could trigger notice where a private equity group or hedge fund obtained 5% or more of the assets, equity, debt or liabilities of a qualifying health care entity or MSO. The September Draft raises that threshold to 10%. This change should reduce filing risk for some passive minority investments. Importantly, however, the regulations continue to focus on investor rights and ownership percentage. Transactions involving rights to appoint or replace management, exercise vetoes, influence operations or indebtedness, manage the entity, charge fees or control the use of capital may still fall within the regulatory framework.

2. MSO Rules Reworked

The September Draft reorganizes the treatment of MSOs. The May Draft included a detailed regulatory definition of an MSO, including criteria tied to hospital ownership, physician relationships, common directors or investors and affiliations with other health care entities. The September Draft instead incorporates the statutory definition of "management services organization" and moves many of the substantive criteria into the filing-threshold provisions.[2]

Notably, the September Draft removes the May Draft's express trigger for a 25% or greater change in MSO ownership. The revised provision instead expands the focus of that prong on transfers of control, responsibility or governance of a health care entity.

3. Expanded Sponsor and Portfolio Disclosure

Although some transaction thresholds have been relaxed, the September Draft expands OHCA's visibility into investor structures. Private equity and hedge fund disclosures now extend to health care entities and MSOs directly or indirectly owned, controlled or financed by participating asset managers and funds. Organizational chart requirements also reach entities controlled by or under common control with the ultimate parent or its shareholders. The September Draft also adds a requirement to disclose certain options, compensation and other financial incentives for officers, directors and persons with management or operational responsibility, including incentives contingent on closing.

4. Broader Scrutiny of Investment Structures

Finally, OHCA broadens one CMIR screening factor from transactions involving a real estate investment trust (REIT) to transactions involving a "REIT or other investing party" where the transaction terms could weaken the financial condition of a health care entity or place access to care at risk. For investors, the September Draft reflects a mixed direction: certain numerical triggers are more permissive, but OHCA is seeking greater transparency into control rights, sponsor structures, financing relationships, debt to enterprise value or

debt to equity ratios, MSO arrangements and transaction economics.

Takeaways

For investors and providers, the September Draft is a mixed development. OHCA has relaxed certain bright-line triggers, notably by increasing the private equity and hedge fund ownership threshold from 5% to 10% and removing the May Draft's express 25% MSO ownership-change trigger, but it has simultaneously expanded scrutiny of investor control rights, sponsor and portfolio structures, financing relationships, MSO arrangements and transaction-related compensation. The September Draft also appears to add significantly to the amount of analysis required to assess whether OHCA's notice and filing requirements apply and how to meet those requirements. Investors and providers who evaluated California transactions under the May Draft should therefore revisit those analyses and look out for further potential changes after the OAL reviews and finalizes the regulations.

Investors and providers in the California health care sector should continue to monitor the development of these regulations to evaluate whether future transactions may be subject to pre-closing notice, and if so, balance the potential additional time and cost-related burdens against the expected benefits and value of pending or anticipated transactions on the horizon for later this year and beyond.

To discuss how the September Draft may affect pending or anticipated California health care transactions, please contact Paul Gomez, Ashley Osak, Matthew Lin or your preferred Polsinelli attorney.

[1] Our analysis of the May Draft can be found here: https://www.polsinelli.com/publications/ohca-ab-1415-health-care-transactions-private-equity-hedge-funds-msos

[2] The September Draft contains additional and more prescriptive criteria for filing, making careful review and analysis even more important in determining whether OHCA's filing and review requirements apply.