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Healthcare Alert

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Connecticut seeks increased oversight of healthcare entity transactions

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Connecticut's Governor Lamont proposes strengthening the review of healthcare entity transactions.

What's the impact?

- Would expand the Connecticut Attorney General's oversight of healthcare transactions that might currently evade state government review
- May allow the Attorney General's Office to consult with the Office of Health Strategy on quality, access, and affordability concerns
- Could lead to a broader range of "healthcare entities" to be subject to material healthcare transaction review if certain revenue thresholds are met or private equity is involved

On January 23, 2025, Connecticut Governor Ned Lamont announced his legislative proposals to be considered by the Connecticut General Assembly for fiscal year 2025, which includes Governor's Bill No. 6873 to enhance state review of material healthcare transactions. The governor's expressed motivation behind this bill is to ensure that quality healthcare services continue to be accessible to Connecticut residents within a healthcare industry that has

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undergone significant and rapid changes, particularly with regard to ownership and management of healthcare entities.

Currently, Connecticut law (Conn. Gen. Stat. § 19a-486i) has two triggers requiring parties to a transaction to provide notice to the state. First, the law provides that transactions requiring notice in accordance with the federal Hart-Scott-Rodino Antitrust Act (HSR) are also required to simultaneously provide notice of the HSR filing to the Office of the Connecticut Attorney General (OAG) and, upon a request by the OAG, submit a copy of the information; however, we note that Connecticut's Notice of Material Transaction Form instructs parties to attach a copy of the HSR filing with the notification.[1] Second, "material change transactions" that result in a "material change" to the business or structure of a group practice comprised of physicians ("physician group practice")[2] are required to submit notice of the transaction to the OAG and the Executive Director of Connecticut's Office of Health Strategy (OHS) at least thirty (30) days prior to closing. With regard to physician group practices, a material change currently includes:

- A combination (by merger, consolidation, or other affiliation);
- An acquisition (by asset or equity purchase) of substantially all assets or equity interests of the physician group practice; and/or
- The employment of all or substantially all of the physicians of a physician group practice with or by (a) another physician group practice that results in a physician group practice with eight (8) or more physicians, or (b) a hospital or hospital system (or entity organized or controlled by a hospital or hospital system) or a captive professional entity.

This alert highlights key changes proposed to the notice requirements for material transactions including the addition of a third trigger involving healthcare entities which includes physician group practices, providers, provider organizations, and healthcare facilities.

Timing

The proposed law seeks to provide the OAG and OHS more time to review a notice of material change and would extend the current notice requirement from thirty (30) days to sixty (60) days prior to the effective date of the transaction.

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[1] The bill proposes to update the law to reflect the current practice and require parties to submit a copy of the HSR filing when submitting notice.

[2] Note, the current law also includes a 30-day notice requirement related to hospitals and health systems which the bill proposes expanding the types of transactions subject to the notice requirement to include transfers impacting governance and control of the hospital or hospital system and requiring the notice 60 days prior to the change. This alert, however, focuses on the material change notice requirements applicable to physician group practices and the new notice requirements applicable to "healthcare entities."

There is also the potential for a delay to the closing of the transaction if the OAG determines the need for a cost and market review. In such a case, the OAG may extend review until thirty (30) days after the release of the final cost and market impact report.

Expanding the law's reach, including on private equity

The legislative proposal purports to expand the scope of transactions that require submission of notice to the OAG. In addition to physician group practice and hospital transactions that are considered material under the current law, the bill seeks to require notice for a new category of material change transactions involving "healthcare entities" in Connecticut. While a "healthcare entity" includes physician group practices, hospitals and hospital systems which are covered under the current law, the definition proposes to expand the reach of the law to healthcare providers[3] outside of a physician group practice and previously not included (such as dentists), provider organizations (which include management services organizations (MSOs), and other health facilities including outpatient surgical facilities, mental health facilities, substance use disorder treatment facilities and other facilities requiring certificate of need review. While this new trigger applies to a wider range of healthcare parties, the bill includes additional thresholds or criteria which must be met for the notice requirement to be triggered, including that a healthcare entity must (i) have total assets, annual revenues, or anticipated annual revenues for new entities of at least $10,000,000.00 (including both in-state and out-of-state assets or revenues), or (ii) include a private equity entity.[4] This new reporting requirement also has the potential to be more far reaching as the transaction does not need to be a single transaction to meet materiality thresholds but can also include a series of related transactions that occur within a five (5) year period and that, taken together, would amount to a material change transaction. Upon meeting such criteria, the following types of transactions would be considered a "material change transaction":

- A corporate merger involving one or more healthcare entities;
- An acquisition (of at least twenty percent (20%) of the assets or operations) of one or more health entities by a healthcare system, private equity group, hedge fund, publicly traded company, real estate investment trust, MSO or health carrier, or any subsidiaries thereof. An acquisition can be accomplished by direct or indirect means (such as through a lease or option);

[3] The definition of "healthcare providers" as persons licensed in the state to provide professional services has not changed and includes all licensed providers including physicians, nurse practitioners, dentists, etc.

[4] The bill defines a "private equity entity" as "any entity that collects capital investments from individuals or entities and purchases, as a parent company or through another entity that the private equity entity completely or partially owns or controls, a direct or indirect ownership share of a healthcare entity or management services organization," and specifies that it "does not include a venture capital firm exclusively funding a start-up company or any other early-stage business."

- Any change in control of a health entity by an arrangement or agreement in which any other person, corporation, partnership, or entity acquires all or substantially all direct or indirect control over the operations of a healthcare entity;
- The formation of a partnership, joint venture, accountable care organization, parent organization, or MSO for the purpose of administering contracts with health carriers, third-party administrators, pharmacy benefit managers, or healthcare providers;
- A sale, purchase, lease, affiliation, or transfer of control of a board of directors or governing body of a healthcare entity; or
- Real estate or lease agreement involving not less than twenty percent (20%) of the assets of a healthcare entity.

Additional notice information

In addition to expanding the law's reach, if enacted, the bill would require parties subject to the law to disclose additional information to the OAG and OHS along with the written notice. Parties to a material transaction would be required to submit survey analyses, study documents, and reports prepared by the parties to evaluate the transaction including with respect to market shares, competition, and potential for growth and expansion. Further, while the notice under the current law is limited to identifying physician members of the practice, the proposed law requires members that are physician assistants, advanced practice registered nurses, and nurse midwives to be disclosed, as well as the names of owners with a direct or indirect ownership interest of five percent (5%) or more of a resulting healthcare entity organized by, controlled by, or otherwise affiliated with a hospital or hospital system, and the name of the MSO contracting with the resulting healthcare entity and the scope of such management services. The OAG may also request additional information that it deems necessary to fulfill its obligations under the law.

Review process by attorney general and Office of Health Strategy

Governor Lamont's proposed legislation aims to expand review beyond antitrust concerns and establish a review process involving both the OAG and OHS. If the transaction would not otherwise require a certificate of need, the OAG shall share information and consult with OHS in assessing the transaction's effect on access, quality, and affordability of healthcare in the parties' primary service areas. Further, upon enactment, the OAG would have authority that it does not currently have to intervene and would be permitted to impose conditions on the parties in order to let the transaction proceed, if the OAG determines any issues of concern regarding access, quality, and affordability of healthcare.

Nixon Peabody will continue to monitor these proposed changes in the coming months and will report further on the budget bill's impact on healthcare transactions.

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