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California Governor Vetoes Transaction Review Law, But Bill's Rapid Advancement Underscores a Shifting Regulatory Landscape

Health Care Law Brief on **October 25, 2024**

This article was initially published as a Bulletin for the AHLA's Physician Organizations Practice Group.

California Assembly Bill 3129[1] ("AB3129"), which targeted for regulatory review a variety of health care transactions involving "private equity groups" and "hedge funds," was vetoed by Governor Gavin Newsom on September 28, 2024.[2]

Key Takeaways

- State officials in a number of states have attempted to pass transaction review laws that impose regulatory barriers to private investments in the health care sector.
- Proponents of these laws cite to the proverbial "bad apples" among private equity backed health care practices and facilities in support of the laws.
- Opponents of transaction review laws argue that the proposals add additional regulatory burdens on an industry already burdened by a significant regulation, and the laws risk alienating investors with the capital and expertise to help improve fragmented health care delivery systems.

Overview of AB 3129

AB3129 passed in the California Assembly and Senate on August 31, 2024. Had it been signed into law, it would have granted the California Attorney General with express consent rights over covered transactions.

Under AB3129, a “private equity group” or “hedge fund” (as defined in the bill) would need to provide at least 90-day pre-closing notice to the Attorney General, and obtain the Attorney General’s consent, prior to closing a transaction with (i) a “health care facility” other than a hospital, (ii) a “provider group” (i.e., ten or more providers, or greater than $25M in revenues) or (iii) a “provider” if the private equity group or hedge fund has been involved, directly or indirectly, in a transaction involving a health care facility, provider group, provider, or related health care services within the past seven years (e.g., add-on acquisitions). In addition to the transaction-related notice and consent obligations imposed under the law, AB3129 would have introduced express statutory prohibitions related to the corporate practice of medicine (“CPOM”) doctrine, concepts which were previously largely addressed, informally, in state guidance documents.

AB3129 would have marked a second major shift in the regulation of private equity and hedge fund investments in health care entities within the State. Indeed, AB3129 would have become effective just a few months after the review process required by the newly-formed California Office of Health Care Affordability (“OHCA”) had become effective.

Whereas the OHCA review process does not vest regulators with any affirmative rights to approve a transaction, AB3129 would have granted such authority to the Attorney General, thereby materially expanding the State’s regulatory authority over health care deal-making. In vetoing the bill, Governor Newsom noted that OHCA was already tasked with a review process similar to what was contemplated by AB3129.

AB3129’s Purpose Portrays Health Care Investors in a Negative Light

The California Attorney General’s prior denouncements of private equity and its role as a sponsor of AB3129 sponsor is noteworthy. Earlier this year, the California Attorney General issued a press release on February 20, 2024, in which the Attorney General declared that “private equity ownership in the healthcare industry has more than doubled in the last decade, often leading to higher healthcare costs, poor quality, and less access to care,” and that “too often, private equity has served corporate profiteers by maximizing their profits at the expense of access, quality, and affordability of healthcare for Californians.”[3]

The bill's author echoed the California Attorney General's concerns. In the Senate's Floor Analysis[4] (published 8/29/2024), the bill's author expressed concern that there was "no oversight for these transactions," and that private equity transactions "have resulted in accelerated consolidation, which in turn, reduces competition and creates monopolies that use leverage to increase prices, negotiate higher fees…," which reflected similar concerns described in the Assembly's Floor Analysis.[5]

In light of the above viewpoints expressed by California officials, it is unsurprising that AB3129 largely took the form of a regulatory barrier to health care transactions that targeted the growing industry of private equity backed health care practices and facilities.

Failure of AB3129 Reflects a Similar Stalled Bill in Oregon

In recent months, state legislators in various states have attempted to introduce laws that would target private equity transactions and their business models.

For example, earlier this year, an Oregon lawmaker introduced Oregon House Bill 4130 ("HB4130"), which would have placed material and onerous restrictions upon the traditional physician practice management structure, pursuant to which a management services organization ("MSO") enters into an exclusive and long-term management services arrangement with a nominee-owned professional entity.[6] Of note, HB4130 would have, in part, prohibited a "shareholder, director or officer of a professional corporation" from participating in the management of the PC and voting its shares "on any issue or corporate action that bears on the ownership, management or governance of the professional corporation" if the individual is also a shareholder, director, member, officer, or employee of an MSO "with which the professional corporation has a contract." *See* ORS § 58.375(1)(f)(A) (as proposed). As such, a physician shareholder of a professional entity would be prohibited from exercising governance rights over the entity if the physician has a covered relationship with the professional corporation's MSO.

HB4130 died on March 4, 2024, after it failed to reach the Senate Floor, but it's chief sponsor pledged to reintroduce the Bill as soon as the opportunity arises.[7] Much like AB3129, HB4130 was introduced to address perceived issues with private equity investors. However, unlike AB3129's transaction review mechanism which was focused on competition and the perceived negative impacts of health care dealmaking, HB4130 instead sought to regulate the business models adopted by private equity firms, by expanding Oregon's CPOM doctrine and the prohibitions associated with the CPOM.

Looking Ahead

Governor Newsom's veto of AB3129 represents a positive development for: (i) private equity investors looking to expand in California's health care market; (ii) existing private equity backed physician practices; and (iii) physician practices that seek third-party investment. Absent the veto, AB3129 had the potential to depress health care transactions in California, thereby affecting existing and future investments.

However, the fact that AB3129 in California and HB4130 in Oregon advanced so far underscores a growing trend: state legislators, concerned about a relatively recent surge in health care transactions, are increasingly interested in scrutinizing and regulating such transactions, particularly those involving private equity. As such, relevant stakeholders, ranging from private equity investors, physician shareholders in existing private equity backed practice structures, and practices that seek third-party investment, should expect that, in this climate, lawmakers and advocacy groups may continue to push for additional regulatory measures to review health care dealmaking.

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[1] Assemb. B. 3149, 2023-2024 Sess. (Cal. 2024) (vetoed), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB3129.

[2] Letter from Gov. Gavin Newsom to Members of the Cal. State Assemb. (Sept. 28, 2024), https://www.gov.ca.gov/wp-content/uploads/2024/09/AB-3129-Veto-Message.pdf.

[3] Press Release, Attorney General Rob Bonta, Attorney General Bonta, Assembly Speaker pro Tempore Wood Introduce Legislation to Strengthen Review of Private Equity Healthcare Transactions and Abuses (Feb. 20, 2024), https://oag.ca.gov/news/press-releases/attorney-general-bonta-assembly-speaker-pro-tempore-wood-introduce-legislation.

[4] Senate Floor Analysis, at 7 (Cal. Aug. 29, 2024), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB3129 .

[5] Assemb. Floor Analysis (Cal. Aug. 31, 2024), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB3129 .

[6] H.B. 4130, 2024 Reg. Sess. (Or. 2024), https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4130.

[7] Lynne Terry, High-stakes bill limiting private equity in health care stalls amid Republican opposition, Oregon Capital Chronicle, Mar. 7, 2024.

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