OLR Bill Analysis

sHB 6873

AN ACT STRENGTHENING THE REVIEW OF HEALTH CARE ENTITY TRANSACTIONS.

SUMMARY

Existing law requires prior notice to the attorney general before parties may complete a transaction resulting in (1) a material change to a physician group practice's business or corporate structure or (2) an affiliation between one hospital or hospital system and another, so the attorney general can review the transaction under the antitrust laws. This bill extends and modifies this law in various ways, including adding to the types of entities and transactions subject to review and in some cases requiring consultation between the attorney general and Office of Health Strategy (OHS).

It makes certain changes to the current requirements, such as requiring parties to give earlier notice and adding to the information that group practices must provide.

It expands the list of transactions that require prior notice to the attorney general. For example, it requires parties to give notice for a material change transaction, or series of them over a five-year period, involving a health care entity with total assets or annual revenues, or anticipated annual revenues, of $10 million or more. It also requires this notice (without an asset or revenue threshold) for health care entity transactions that include private equity entities, but not venture capital firms exclusively funding start-ups or other early-stage businesses.

For these purposes, "material change transactions" include, among other things, (1) a corporate merger; (2) the acquisition of 20% or more of an entity's assets or operations; or (3) the formation of certain types of entities, such as a management services organization (MSO), for the purpose of administering contracts with providers, carriers, or certain

others.

The bill allows the attorney general to share information provided under these provisions with OHS. If the attorney general identifies antitrust concerns with a proposed transaction, he may impose conditions for it to continue. He may also do this, or may require the parties to obtain a certificate of need (CON, see BACKGROUND), if he and OHS have concerns over the transaction impacting health care access, quality, and affordability.

Among other things, the bill also:

1. applies these notice provisions and related requirements to transactions involving hospitals licensed in other states (in some cases, it is unclear whether this is enforceable if the out-of-state hospitals have no presence in Connecticut);

2. subjects any person or entity who fails to comply with the bill or related requirements, or willfully or knowingly gives false or incorrect information, to a daily fine of up to $1,000; and

3. makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2025

CHANGES AND EXPANSIONS TO NOTICE AND REPORTING REQUIREMENTS

Material Change to Physician Group Practices (§ 1(c) & (d))

Existing law requires parties engaging in any transaction resulting in a material change to a group practice to give the attorney general prior written notice. The bill requires notice at least 60 days before the transaction's effective date, rather than 30 days as under current law.

Under existing law, the parties must also provide written notice to OHS within 30 days after the transaction takes effect.

Scope of Covered Transactions. For purposes of this notice requirement, a material change currently includes (among other transactions) the employment of all, or substantially all, of a group

practice's physicians by (1) another group practice, resulting in a group of eight or more physicians or (2) certain other entities (see below). The bill extends the notice requirements to the employment of a group practice's department or division by other practices or entities.

Under existing law, this notice requirement applies when a group's physicians are employed by (1) a hospital or hospital system; (2) a captive professional entity; (3) a medical foundation; or (4) another entity organized or controlled by, or otherwise affiliated with, the hospital or hospital system (in this analysis, "hospital-affiliated entity"). The bill specifies that this includes employment through the practice's ownership transfer to any of these entities.

Expanded Contents. Along with the notice, the bill requires the parties to give the attorney general each survey analysis, study document, and report prepared by or for their officers or directors to evaluate the transaction's potential impact on market shares, competitors, sales growth, or expansion into product or geographic markets.

The bill also expands certain components of the existing notice requirements. It requires the parties to include the names and specialties of the physician assistants (PAs), advanced practice registered nurses (APRNs), and nurse-midwives in the group (and who will continue with the group after the transaction), instead of just the physicians as under current law.

It also requires the notice to include:

1. the names of any individual or entity with 5% or greater direct or indirect ownership in the resulting hospital-affiliated entity after the transaction, and

2. the name and scope of service of any MSO for the resulting health care or hospital-affiliated entity after the transaction.

Under the bill, an MSO is an entity that, through a contract or agreement, provides management, administrative support, and other

services to a group practice, hospital or hospital system, captive professional entity, medical foundation, or other hospital-affiliated entity.

Under the bill, "health care entities" are health care providers, health care facilities as defined under the CON law (see BACKGROUND), provider organizations, group practices, and pharmacy benefit managers (PBMs).

Generally, "provider organizations" are entities such as physician organizations, physician-hospital organizations, independent practice organizations, provider networks, accountable care organizations (ACOs), or MSOs in the health care delivery or management business that represent providers in contracting with carriers for health care services payments.

Affiliations or Transfers (§ 1(e))

Existing law requires prior notice to the attorney general for transactions leading to an affiliation of one hospital or hospital system with another. As with group practice material changes, the bill requires the notice at least 60 days, rather than 30 days, before the transaction's effective date. It also extends this notice requirement to the following transactions:

1. transfers that impact or change a hospital's or hospital system's governance or controlling body, including affiliations or mergers, or

2. transfers of a controlling interest in any entity that possesses or controls, directly or indirectly, at least 20% of a health care facility.

Other Material Change Transactions (§ 1(f))

The bill imposes similar notice requirements on a wider range of health-care related transactions. It requires the parties to give the attorney general at least 60 days' notice before the transaction takes effect.

This requirement applies to any (1) material change transaction (see below), or series of related transactions over a five-year period that, taken together, would amount to a material change transaction, involving an in-state health care entity with total assets or annual revenues (or anticipated annual revenues) of $10 million or more, including assets or revenues from other states, or (2) material change transaction involving a private equity entity.

A private equity entity is any entity that collects capital investments and purchases direct or indirect ownership in a health care entity or MSO (it may buy this ownership as a parent company or through another entity it completely or partially owns or controls). But the term excludes venture capital firms exclusively funding start-ups or other early-stage businesses.

Material Change. For this purpose, the bill defines a material change transaction as any of the following involving a health care entity:

1. a corporate merger;

2. an acquisition of 20% or more of an entity's assets or operations (including insolvent entities) by direct or indirect purchase in any manner (e.g., lease, transfer, or exchange), such as by a health care system, private equity group, hedge fund, publicly traded company, real estate investment trust (REIT), MSO, health carrier, or their subsidiaries;

3. any affiliation or arrangement that leads to a change in an entity's control in which another person or entity acquires direct or indirect control over all or most of its operations;

4. the formation of a partnership, joint venture, ACO, parent organization, or MSO for the purpose of administering contracts with carriers, third-party administrators, PBMs, or providers;

5. a sale, purchase, lease, affiliation, or transfer of control of an entity's board or governing body; or

6. a real estate sale or lease of 20% or more of an entity's assets.

Premerger Notification Federal Filing (§ 1(b))

Federal law generally requires parties to mergers or acquisitions above certain dollar thresholds to first notify the Federal Trade Commission and Department of Justice, and they cannot finalize the deal until a waiting period passes (or the agency doing the review grants early termination of the period) (15 U.S.C. § 18a). Under existing state law, if the transaction involves a hospital, hospital system, or other health care provider, the parties also must notify the state attorney general.

The bill requires the parties to give the attorney general a copy of the federal filing. Current law requires them to do so only upon his request.

Attorney General Review and Information Sharing (§ 1(g) & (h))

The bill allows the attorney general to request the parties to any of these transactions to submit additional information needed to carry out his duties under these provisions.

Under the bill, as under current law, the attorney general must maintain and use the written information he receives under these provisions in compliance with the Connecticut Antitrust Act. The bill specifically requires him to evaluate the transaction's compliance with antitrust laws.

For all covered transactions, the bill allows the attorney general to share the parties' submitted information with the OHS commissioner, so that she many consult with him. OHS must keep this information in its custody and generally not release it, as under existing antitrust law (see BACKGROUND).

Conditions on Approval or CON Requirement (§§ 1(h) and (i) & 2)

The bill requires the attorney general, when reviewing a covered transaction that would not otherwise require a CON, to consult with OHS on how the transaction would affect health care access, quality, and affordability in the parties' primary service areas.

If the attorney general identifies any antitrust concerns with a transaction, he may offer the parties conditions, as he finds appropriate,

for the transaction to proceed unchallenged. If the attorney general, in consulting with OHS, identifies health care-related concerns and the transaction would not otherwise need CON approval, he may (1) offer the parties conditions for the transaction to proceed or (2) require a CON.

Extended Review Period for Certain Transactions (§ 1(e))

By law, OHS must conduct a cost and market impact review (CMIR) of CON applications that propose to transfer a hospital's ownership if the purchaser is (1) an in- or out-of-state hospital or hospital system that had net patient revenue exceeding $1.5 billion for fiscal year 2013 or (2) organized or operated for profit (CGS § 19a-639f).

For transactions covered by the above notice provisions that are also subject to CMIR requirements, the bill allows the attorney general to extend the review period until 30 days after the final CMIR report's release.

Hospital Reporting on Affiliated Group Practices (§ 1(j))

Existing law requires hospitals and hospital systems to annually report to OHS and the attorney general on the physician group practices they own or control. The bill requires them to report the names and specialties of the PAs, APRNs, and nurse-midwives in the group, instead of just the physicians as under current law.

Penalties and Other Review Authority (§§ 1(m) & (n))

The bill establishes a $1,000 daily civil penalty for anyone who fails to comply with the new provisions in the bill or related provisions in current law or willfully or knowingly gives false or incorrect information. This applies to (1) requirements for parties to give notice of the covered transactions discussed above, (2) existing reporting requirements for hospitals or hospital systems about their group practices (see above) or affiliations with other hospitals or hospital systems, or (3) existing reporting requirements for other practices with 30 or more physicians.

Under the bill, the attorney general must impose these penalties and

recover them through a civil lawsuit. The penalties apply to each day that the violation continues or the information is false or incorrect. The court, upon the attorney general's application, may grant equitable relief (e.g., an injunction) that it determines necessary or appropriate.

The bill specifies that its provisions do not limit or interfere with the existing authority of the attorney general, OHS, or other state agencies to review any transaction.

BACKGROUND

Certificate of Need Program

By law, OHS's Health Systems Planning Unit administers the state's CON program for health care facilities. Under this program, these facilities must generally receive CON approval when establishing new facilities or services, changing ownership, acquiring certain equipment, or terminating certain services.

Under the CON law, "health care facilities" are hospitals, specialty hospitals, freestanding emergency departments, outpatient surgical facilities, state-operated facilities that provide services eligible for reimbursement under federal Medicare or Medicaid law, central service facilities, mental health facilities, substance abuse treatment facilities, and any other facility requiring a CON. The term includes any of these facilities' parent companies, subsidiaries, affiliates, or joint ventures, or any combination of them (CGS § 19a-630).

Confidential Information in Antitrust Investigations

The law generally prohibits public disclosure of confidential materials related to antitrust investigations. But it allows the attorney general to disclose material to someone testifying in an antitrust investigation (other than one involving mergers or acquisitions) when the attorney general or his designee reasonably (1) determines its use is necessary to bring out evidence of a suspected violation and (2) believes the person providing the testimony is an author or recipient of the confidential material or has read it or is aware of its substance (CGS § 35-42(i)).

Related Bills

sSB 1332 (File 133), favorably reported by the Aging Committee, prohibits private equity companies and REITs from acquiring or increasing their ownership interest, operational control, or financial control in a nursing home.

sSB 1480 (File 387), favorably reported by the Human Services Committee, requires nursing homes or hospitals to be free of new ownership interests by private equity companies or REITs in order to be eligible for Medicaid reimbursement.

sSB 1507, favorably reported by the Public Health Committee, prohibits (1) private equity companies and REITs from acquiring or increasing their ownership interest, operational control, or financial control in a hospital or health system and (2) health care facilities and MSOs from interfering with or otherwise directing the clinical decisions of health care practices or clinicians with independent practice authority at these facilities or at health care practices.

COMMITTEE ACTION

Public Health Committee

Joint Favorable
Yea 24 Nay 8 (03/21/2025)