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A Health Care Law Update

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The Rise of State-Required Health Care Transaction Notices

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Although they are currently still in the minority, a growing number of states are enacting or proposing legislation that requires applicable parties to provide notice of pending health care transactions. With its recently effective law, the Indiana General Assembly explained that the focus of such legislation is to mitigate the harm of transactions that lessen competition and enable cost increases. Most states have adopted a similar rationale for enacting such requirements and have adopted different variations of a similar process to complete the requisite notice activities. However, health care entities need to be aware that the additional requirements that some states have included in their regulations can add complexity to transactions.

Washington, which was one of the first states to enact such legislation, requires that prior notice be given to the attorney general at least 60 days before the effective date of a proposed "material change," which includes a merger or acquisition involving two or more hospitals, hospital systems, and provider organizations (which may be as modest as an acquisition between two health care practices each having only seven or more providers). The attorney general then has the opportunity to request additional information and determine whether or not to investigate the transaction for potential anticompetitive conduct or consumer harm.

Similarly, Oregon requires notice to be provided to the state no later than 180 days before closing of the transaction. Following receipt of notice, there is a 30-day review period in which the state can approve, approve with conditions, or decide to conduct a more comprehensive review of the transaction. In 2024, both California and Illinois enacted laws that require varying levels of notice and approval from respective state regulatory agencies.

Some of the state laws are generally applicable only to transactions above a certain dollar amount. However, the amounts are not consistent and there are often other potential factors. Further, state legislatures appear to be considering further expanding or modifying state specific requirements and parameters. For example, within the last few weeks, only a governor's veto prevented an additional California law that would have required private equity investors to obtain consent from the state attorney general for certain health care

investments (which would have been a second notice and review process at the state level in California in certain instances).

There are various considerations that health care entities should consider as a result of growing support for such legislation. First and foremost, the notice and approval requirements impose additional timing constraints on a transaction. As illustrated above, different states require different notice periods and have different thresholds of applicability. Therefore, it is important for providers and others involved in health care transactions to be aware of the requirements in their state to remain in compliance. In addition to timing considerations, individuals and entities contemplating entering into a transaction in the health care market should understand the effect such transaction may have on competition, costs, and other considerations that may cause their state agency to flag the transaction as one that is incongruent with the state's view of what the market should look like.

Bodman PLC's Health Care Practice Group can provide guidance on this matter and others and provide practical advice to meet your needs. To discuss these or any other legal issues affecting your organization, please contact Brandon Dalziel at (313) 393-7507 or bdalziel@bodmanlaw.com or Grace Connolly (313)-393-7563 or gconnolly@bodmanlaw.com. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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