MN Legislature Considers Limiting PE Investment in Healthcare

March 28, 2024

On February 22, 2024, the Minnesota legislature introduced a bill (SF-4392 and companion bill HR-4206) which seeks to curb the control and acquisition over certain healthcare providers by private equity companies and real estate investment trusts (REITs). If enacted, the bill would prohibit private equity companies and REITs from acquiring or increasing any operational or financial control over, or ownership interest in, certain health care providers. This moratorium would be effective August 1, 2024.

Broad Application

The bill applies broadly to "providers", which is defined as individuals or entities that provide health or medical care services within Minnesota for a fee. This includes fee for service, capitation, or any other arrangement in which a provider receives compensation in exchange for providing healthcare services or has the authority to directly bill a group purchaser, health plan, or individual for healthcare services. Effected providers expressly include nursing homes, clinics, ambulatory surgical centers, dental organizations, physician organizations, hospitals, and integrated provider and plan systems.

Private equity companies subject to the bill's prohibition include publicly traded or non-publicly traded entities that collect capital investments from individuals or entities.

As written, the bill restricts private equity and REIT investments in two ways.

- Ownership Prohibition: The bill bans private equity companies and REITs from increasing its current ownership interest in healthcare providers or acquiring an ownership interest. This applies to both direct and indirect ownership interests. An ownership interest is defined as possession of equity in capital, stocks, profits, or ownership of real estate on which a provider operates. Due to broadly defined terms, the bill would seemingly prohibit professional associations and other independent, for-profit healthcare entities from collecting capital investments from its owners.

- Control Prohibition: Private equity companies and REITs would also be prohibited from increasing or acquiring operational or financial control over providers. Operational control is defined as influencing or directing the actions or policies of any part of a provider; or choosing, appointing, or terminating a board member, manager, managing member, senior employee, consultant, or other individual or entity that participates in the operational oversight of a provider. The bill notably does not distinguish control over

administrative or backend services from clinical decision-making. However, replacing the provider's directors or employees in the normal course of business would still be permissible.

What this Means for Minnesota Providers

This bill is another step in a legislative landscape of heightened government oversight and regulation in healthcare transactions. Last year, Governor Walz signed into law Minnesota Statute 145D.01 which requires advance notice and reporting of certain healthcare entity transactions to the Minnesota Attorney General and Minnesota Department of Health. This law also prohibits healthcare entities from entering into a transaction that will substantially lessen competition or tend to create a monopoly or monopsony. In enacting this law, Minnesota joined a growing number of states with similar healthcare antitrust legislation.

SF-4392/HF-4206 furthers a budding state trend focusing on restricting the relationship between private equity companies and healthcare providers. In this past legislative session, Oregon considered HB-4130, which prevented private equity companies from controlling medical practices. This excluded hospitals, long-term care facilities, and telemedicine providers. Provisions requiring government oversight into acquisitions and ownership of hospitals was passed as SB-15 in New Mexico. California is contemplating a broader mergers and acquisition bill, AB-3129, which would require private equity companies to receive consent from the California Attorney General's Office to conduct a transaction with healthcare facilities and provider groups. This bill specifically prohibits private equity companies from contracting for management services in exchange for fees with certain providers, setting rates with third parties, or influencing or setting patient admission, referral or availability policies. Indiana's SB-9 would require notice to its Attorney General before private equity companies and healthcare entities engage in a merger or acquisition. The Federal Trade Commission launched an inquiry to solicit comments on March 5, 2024, expressing concern that transactions between private equity companies and providers "may lead to a maximizing of profits at the expense of quality care."

SF-4392/HF-4206 stands to have a significant impact on Minnesota health care providers—particularly those that currently rely on, or are considering, outside investment. Lathrop GPM's Health Law Team will continue monitoring SF-4392/HF-4206 and other legislative proposals effecting health care providers.

If you have questions regarding the implications of SF-4392/HF-4206 or health care transactions generally, please contact Julia Reiland, Libbi Wilson, or any member of the Lathrop GPM Health Law Team.