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California in Spotlight as Massachusetts Avoids Bill Targeting Private Equity in Healthcare

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The Massachusetts legislative session for 2024 has come to a close without the passage of a bill that would have targeted private equity in healthcare. Introduced in May 2024, Massachusetts House Bill (HB) 4653 proposed to expand the reach of the Health Policy Commission (HPC) by requiring notice to the HPC of any transactions involving a private equity fund investing in a provider organization, and that same bill was revised by the Massachusetts Senate in July as Senate Bill (SB) 2871.

SB 2871 made substantial changes to the House version, including making any transactions with private equity funds reviewable to assess costs and market impacts, as well as granting the HPC the ability to make adjustments to transactions. It also proposed limiting what a management services company could do for an affiliated friendly PC (professional corporation), with potentially significant impacts to the corporate structure that private equity funds historically have relied on to invest in provider organizations in states with restrictions on the ownership of healthcare practices, such as Massachusetts.

The end of the Massachusetts legislative session without the passage of a bill on this matter comes as a reprieve in a moment of escalating tension for investors in the healthcare sector.

What about the Golden State?

Now all eyes turn to California, where Assembly Bill (AB) 3129 appears to have momentum and is expected to be passed before the end of the California legislative session on August 31, 2024. The bill, which was introduced in response to growing concerns about the increasing involvement of private equity and hedge funds in California's healthcare sector, has undergone a series of major revisions since its introduction.

AB 3129 would require private equity and hedge funds (both defined very broadly) to provide written notice to, and obtain the written consent of, California's attorney general before engaging in any transaction that would result in a change of control of a healthcare facility, provider group, or nonphysician provider. The bill also would prohibit private equity funds and hedge funds from exercising control over the provision of medical, psychiatric, or dental services provided by professional corporations.

The California bill, and others like it, is expected to significantly slow down investment in the provider side of the healthcare sector in states such as California, where investors will need to decide whether they are willing to open themselves up to an attorney general review in connection with their acquisition of – and, perhaps more significantly, their eventual exit from – a provider organization. California and Massachusetts are not the only states where these issues have been raised, and we expect to see more such bills in 2025. Stay tuned for an update on California AB 3129, and its implications, if it is passed before the end of the 2024 legislative session.

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