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Legislative and Regulatory Actions Impacting Private Equity in Health Care

Client Alert

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In recent years, the role of private equity in health care has come under scrutiny from regulators and policymakers because of concerns about potential impact on the cost and quality of care. Recent legislative and regulatory actions at both federal and state levels aim to address these concerns and regulate the influence of private equity in health care. This update provides an overview of some recent health law developments and their potential impacts.

Federal Legislative Actions

Health Over Wealth Act^[1]

Introduced July 25, 2024, by Senator Edward Markey (D-MA) and Rep. Pramila Jayapal (D-WA), this legislation would increase transparency and accountability for private equity firms in health care. The Act would require annual reporting to the Department of Health and Human Services (HHS) on various financial and operational metrics. It also would mandate private equity firms to obtain a license from HHS for health care transactions, with the potential for license revocation for non-compliance. Finally, the Act would enhance protections for workers and includes provisions for escrow accounts to ensure operational continuity in case of financial disruptions.

Additionally, under the Health Over Wealth Act, private equity-owned health care facilities must inform the public and allow for public comments before closing or reducing services. The Act also proposes the creation of an HHS task force to examine the influence of private equity and consolidation in the health care sector, potentially limiting their roles to safeguard public health. Moreover, health care entities looking to sell or lease property to real estate investment trusts (REITs) would need to seek HHS approval, which could be denied if the transaction threatens the

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Debra A. Geroux
Shareholder

Mark R. Lezotte
Of Counsel

Robert H. Schwartz
Shareholder

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financial stability of the entity or public health. Finally, the legislation also aims to eliminate tax loopholes for REITs.

Regulatory Oversight of Private Equity Ownership in Health Care^[2]

On March 5, 2024, the Federal Trade Commission (FTC), the Department of Justice's (DOJ) Antitrust Division, and the HHS launched a joint cross-government public inquiry into private-equity firms and other corporations' increasing control over health care. The cross-government inquiry was launched to assist the federal regulatory agencies in understanding the impact of certain health care transactions involving private equity and other corporate owners on patient health, health care workforce safety, quality of care and affordability of health care services.

State Legislative Actions

- *New York: Article 45-A.* Enacted in February 2024, this law requires public notification for any health care entity increasing in-state revenues by \$25 million or more within a 12-month period due to mergers, acquisitions, affiliations, joint ventures, or partnerships.
- *Oregon: HB 4130.* Scheduled for reintroduction in 2025, this Bill seeks to prohibit undue influence by private equity-owned management services organizations over medical corporations. It includes restrictions on stock transfer agreements, non-compete clauses, and nondisclosure agreements that limit physician mobility and whistleblower protections.
- *California: AB 3129.* This proposed legislation requires written approval from the Attorney General for transactions involving significant control changes by private equity or hedge funds in health care. It prohibits private equity firms from directly controlling or influencing physician practices.
- *Colorado.* In a notable settlement, Colorado's Attorney General Phil Weiser resolved an investigation into USAP's alleged anti-competitive practices, resulting in monetary relief and modifications to non-compete agreements.

Implications

These legislative and regulatory actions signify a growing scrutiny of private equity's role in health care. Organizations, particularly those involved in mergers, acquisitions, or operational management of health care entities, should be aware of these developments. Enhanced reporting requirements, potential licensing needs, and increased state-level oversight could impact strategic decisions and compliance obligations.

The evolving landscape of private equity regulation in health care underscores the importance of staying informed about legal and regulatory changes. Butzel will continue to monitor these developments and provide guidance to navigate this evolving landscape effectively.

For further details on this legislation and their potential impact on your organization, please contact the authors of this Client Alert or your Butzel attorney.

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Debra A. Geroux

248.258.2603

geroux@butzel.com

Mark R. Lezotte

313.225.7058

lezotte@butzel.com

Robert H. Schwartz

248.258.2611

schwartzrh@butzel.com

[1] Health Over Wealth Act.

[2] See FTC March 5, 2024 Press Release: Federal Trade Commission, the Department of Justice and the Department of Health and Human Services Launch Cross-Government Inquiry on Impact of Corporate Greed in Health Care Federal Trade Commission ([ftc.gov](https://www.ftc.gov)).