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NY Governor Proposes New Oversight of Transactions Involving Physician Practices, Other Health Care Entities

New oversight of transactions involving investor-backed physician practices is among the proposals New York Gov. Hochul offered in her executive budget. See [Health and Mental Hygiene Article VII, Part M](#). The proposal, which was released on February 1, is already drawing scrutiny and could become the subject of intensive lobbying efforts. The proposed legislation would authorize the Department of Health (DOH) to review “material transactions” involving physician practices and other health care entities. In setting forth the purpose of the proposal, the Governor identified the following key reasons for the new regulatory authority:

- There is an increasing number of physician practices that are being managed by entities that are investor-backed;
- These entities, and physician practices in general, are far less regulated and have less oversight than hospitals, home care agencies, hospice providers, behavioral health providers, and insurers;
- Transactions involving changes of control in these less-regulated entities currently are not subject to any state review;
- The concentration of investor-backed physician practices is a significant contributor to health care cost inflation;

- The shift toward these entities has resulted in patient volume moving away from community hospitals and their ambulatory care networks, undermining their financial sustainability.

Material Transactions Subject to the New Process

The proposal would require certain health care entities, including physician practices, management service organizations (MSOs), and non-insurance subsidiaries and affiliates of insurance companies, to file a written notice and application of a material transaction. A “material transaction” would include not only mergers and acquisitions but also the formation of affiliations, partnerships, joint ventures, accountable care organizations, and MSOs (to the extent the purpose of such an entity is to administer contracts between health care providers and health plans, third-party administrators, and other entities). Clinical affiliations formed for the purpose of collaborating on clinical trials, or graduate medical education programs and transactions involving hospitals, home care agencies, and hospice providers, would be exempt from the review process.

Proposed Review Process

Under the proposed review process, the health care entity would be required to submit to DOH a notice of the material transaction at least 30 days prior to the desired closing date. Such submission would include:

- the names of the parties to the transaction;
- copies of the agreements governing the terms of the transaction;
- identification of the locations where health care services are currently provided by each party and the revenue generated at these locations;
- any plans to reduce or eliminate services or participation in specific health plan networks;
- proposed closing date;
- brief description of the nature and purpose of the proposed transaction, including the impact on cost, quality, access, health equity, and competition in the impacted markets (which may be supported by data and a formal market impact analysis).

DOH would evaluate the submission and would be authorized to consider the following:

- the financial condition of the parties to the transaction (this likely would require the parties to provide audited financial statements and other detailed financial information);
- the character and competence of the parties, as well as their officers and directors (i.e., a background check);
- the source of funds for the transaction; and
- whether the potential positive impacts outweigh the potential negative effects on cost, access, health equity, and health outcomes.

DOH would be required to provide the public with notice of the proposed transaction and allow for public comment. In addition, DOH would be authorized to retain independent entities, such as actuaries, accountants, and other professionals, to assist with its review. The cost of such independent entities would be borne by the submitter at DOH’s discretion.

Given the scope of transactions that would be subject to the proposed review process, and the detailed analysis contemplated, DOH would likely exercise its right to pause the process in order to seek additional information or to analyze the impact of the proposed transaction because 30 days would not be sufficient time for DOH to complete its review. Applications not addressed by DOH within 30 days of receipt would be deemed approved.

Contributions to State-Controlled Funds

The proposal would provide DOH with the authority to require the health care entity to engage in certain “undertakings” as a condition of approval of the material transaction. The conditions would include investments in the communities affected by the transaction. DOH would also be empowered to require contributions to state-controlled funds, such as the Health Care Transformation Fund established in 2018.

Penalties

Failure to adhere to the law, if enacted, could result in a civil monetary penalty of \$10,000 per day, and DOH could refer the transaction to the Attorney General for enforcement.

Next Steps

The Governor and Legislature will negotiate the budget in the coming weeks, and the Legislature will need to determine whether to accept, modify or reject the proposal. As with other aspects of the Governor’s health budget, there likely will be significant lobbying efforts related to this proposal as interested parties make their views known to the Governor and the Legislature.

The final budget is due to be enacted on April 1 and this proposal, if adopted, would apply to material transactions closing on or after April 1, 2024. If enacted, DOH, in consultation with the Department of Financial Services, would be required to propose regulations implementing the law, including further defining the transactions subject to review.

If this proposal is not adopted during budget negotiations, it may still be considered during the remainder of the legislative session, which provides another opportunity for input on the proposal.

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