

KIRKLAND & ELLIS

Kirkland Alert

Proposed California Legislation Imposes Attorney General Approval Requirements

21 June 2022

AB-2080, The Health Care Consolidation and Contracting Fairness Act of 2022, (the "Bill") was recently passed by the California State Assembly. The Bill was then referred to the California State Senate (the "Senate") Committee on Health and the Committee on the Judiciary on June 8, 2022, where it is currently under review. This Bill is the California legislature's third attempt in as many years to enact legislation that would regulate for-profit investment in healthcare by establishing an approval process similar to what currently applies to nonprofit healthcare facilities. As drafted, the Bill's scope is broad and applies to a large number of healthcare investments in California. The Bill must be passed by August 31, 2022, to be considered in the current term.

If passed the Bill will go into effect on January 1, 2023, subject to implementation and rulemaking by the California Attorney General. The Bill would require parties to transactions involving a for-profit medical group, hospital or hospital system, skilled nursing facility or acute care psychiatric hospital, healthcare service plan, health insurer or pharmacy benefit manager with a deal valuation \$15 million or greater to get the written consent of the Attorney General to conduct any of the following:

- The sale, transfer, lease or other disposal of a material amount of assets;
- The transfer of control, responsibility or governance of a material amount of assets or operations; or
- The substitution of a new corporate member or members that transfers the control of, the responsibility for, or the governance of the corporation.

Parties subject to the Bill will be required to provide the Attorney General with notice 90 days prior to the proposed transaction taking effect, or at the same time any other state or federal agency is notified, whichever is earlier. In response, the Attorney General may approve, give conditional consent to, or not consent to, a transaction and

may consider any relevant factors, including whether the transaction may have a significant impact on the following:

- Market competition or costs for payors, purchasers or consumers;
- Quality of care, including the ability to offer culturally competent and appropriate care;
- The access to, or availability of, healthcare for payors, purchasers and consumers; or
- Maintenance of access to care in a rural, low-income or disadvantaged community.

The Attorney General may also assess whether the proposed change is in the public interest.

If the transaction constitutes a “Major Transaction,” the Attorney General must also conduct one or more public meetings in the county in which the acquired entity is located. The definition of “Major Transaction” varies by entity type as follows:

Entity Type	"Major Transaction"
Healthcare service plan, health insurer, pharmacy benefit manager	A transaction or agreement that affects a significant number of enrollees, involves a material amount of assets, or adversely affects subscribers or enrollees or the stability of the healthcare delivery system
Hospital or hospital system	The same factors set forth in California Corporations Code Section 5914 that would require a nonprofit health facility to seek Attorney General approval
Medical groups	To be defined by AG regulations

We will continue to monitor the situation. If you have questions, please reach out to one of the authors below or your regular Kirkland contact.

Authors

Chad D. Ehrenkranz

Partner / New York

Katie M. Sullivan

Partner / Washington, D.C.

Dennis Williams

Partner / New York

Related Services

Practices

- Healthcare & Life Sciences Transactions
- Transactional

This publication is distributed with the understanding that the author, publisher and distributor of this publication and/or any linked publication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, portions of this publication may constitute Attorney Advertising.

© 2022 Kirkland & Ellis LLP.