

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 14-168—sSB 35
Public Health Committee
Appropriations Committee
Judiciary Committee

AN ACT CONCERNING NOTICE OF ACQUISITIONS, JOINT VENTURES, AFFILIATIONS OF GROUP MEDICAL PRACTICES AND HOSPITAL ADMISSIONS, MEDICAL FOUNDATIONS AND CERTIFICATES OF NEED

SUMMARY: This act makes several changes affecting medical group practices, medical foundations, the certificate of need (CON) process for health care facilities, and hospital conversions from nonprofit to for-profit. Specifically, it:

1. requires parties to certain transactions that materially change the business or corporate structure of a medical group practice to notify the attorney general (AG) (§ 1);
2. requires parties to certain transactions involving a hospital, hospital group, or health care provider that are subject to federal antitrust review to (a) notify the AG and (b) upon request, provide him a copy of the information filed with the federal agencies (§ 1);
3. requires the AG to maintain and use any of the above written information he receives in compliance with the Connecticut Antitrust Act (§ 1);
4. requires (a) hospitals and hospital systems with affiliated group practices and (b) unaffiliated group practices with 30 or more physicians to annually report specified information to the AG and Department of Public Health (DPH) (§ 1);
5. allows a for-profit hospital or health system to organize and become a medical foundation member, limits who may serve on a foundation's board of directors, and changes medical foundation reporting requirements (§§ 2 & 3);
6. requires hospital personnel to ask patients, upon admission, whether the patient wants the hospital to notify his or her doctor of the admission (§ 4);
7. requires a CON for the ownership transfer of certain group medical practices to a hospital or specified health care entities, and makes related changes (§§ 5-8);
8. adds to the factors DPH's Office of Health Care Access (OHCA) must consider when reviewing a CON application (§ 7); and
9. for hospital conversions, requires the purchaser and hospital to hold a hearing on the CON determination letter, allows conditions to be placed on the conversion's approval, and changes one factor in the DPH commissioner's consideration of whether to approve the application (§§ 9-11).

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The act also makes technical and conforming changes.
EFFECTIVE DATE: Various, see below.

§ 1 — MEDICAL GROUP PRACTICES

Transactions Requiring Notification

The act requires parties engaging in any transaction resulting in a material change to a group practice to notify the AG in writing at least 30 days before the transaction's effective date.

A group practice consists of two or more physicians organized in a partnership, professional corporation, limited liability company, medical foundation, not-for-profit corporation, faculty practice plan, or other similar entity in which:

1. each physician provides substantially the full range of services they normally provide through the joint use of office space, facilities, equipment, or personnel;
2. member physicians provide and bill substantially all of their services in the group practice's name, and payments are treated as group receipts; or
3. the group's overhead expenses and income are distributed by a method determined by group members.

A group practice's business or corporate structure is materially changed if the group practice engages in any of the following transactions with (1) another group practice resulting in a group practice of eight or more physicians or (2) a hospital, hospital system, captive professional entity, medical foundation, or other entity organized or controlled by the hospital or hospital system:

1. a merger, consolidation, or affiliation;
2. a substantial capital stock, membership or equity interest, property, or asset acquisition;
3. the employment of all or substantially all of the group practice's physicians; or
4. the acquisition of an insolvent group practice.

Under the act, a material change also includes the latter two transactions if they involve entities otherwise affiliated with a hospital or hospital system.

The notification must identify each party and describe the material change as of the notice date, including:

1. a description of the nature of the proposed relationship among the parties;
2. the name and specialty of each physician who (a) is a member of the group practice that is the subject of the transaction and (b) will practice with the resulting group practice, hospital, or other medical entity;
3. the names of the business entities that will provide services following the transaction's effective date, including the address for each location where the services are to be provided;
4. a description of the services to be provided at each location; and
5. the primary service area each location will serve (i.e., the smallest number of zip codes from which the group practice draws at least 75% of its patients).

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Transactions Involving Antitrust Review

Under certain circumstances, if an individual doing business in Connecticut files merger, acquisition, or other market concentration information with the Federal Trade Commission (FTC) or Department of Justice (DoJ) in compliance with the Hart-Scott-Rodino Antitrust Improvements Act (15 USC § 18a, HSR Act), the act requires the person to provide the AG written notification of the filing and, if he requests it, a copy of the information. This requirement applies only if a hospital, hospital system, or other health care provider is a party to the merger or acquisition.

Annual Reporting for Hospitals and Certain Group Practices

By December 31, 2014, and annually thereafter, the act requires each (1) hospital or hospital system with an affiliated group practice of any size and (2) unaffiliated group practice with 30 or more physicians to file a written report with the AG and DPH commissioner. The report must include:

1. the name and specialty of each physician practicing within the group practice;
2. the names of the business entities that provide services as part of the group practice, including the addresses for each location where services are provided;
3. a description of the services provided at each location; and
4. the primary area served by each location.

The act requires hospitals and hospital systems with an affiliated group practice to also include a description of the nature of their relationship with the group practice.

EFFECTIVE DATE: October 1, 2014

§§ 2 & 3 — MEDICAL FOUNDATIONS

For-Profit Entities as Medical Foundation Members

The act allows a for-profit hospital or health system to organize and become a member of a medical foundation to practice medicine and provide health care services through employees or agents who are licensed physicians, chiropractors, podiatrists, or optometrists. Existing law already allows (1) nonprofit hospitals and health systems and (2) medical schools meeting certain criteria to do this.

The act prohibits any hospital, health system, or medical school from becoming a member of more than one medical foundation. By law, a medical foundation must be a nonprofit entity.

Board of Directors

The act prohibits granting the authority to appoint or elect a board member to any person or entity that is not a member of the medical foundation.

It prohibits (1) an employee, (2) a representative, or (3) an individual who owns or controls a for-profit hospital, health system, or medical school from serving on the board of a medical foundation organized by a nonprofit entity and

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vice versa. It also prohibits an individual from simultaneously serving on the boards of a medical foundation organized by a for-profit and nonprofit entity.

Reporting

The act requires a medical foundation to annually report to OHCA, instead of within 10 business days of OHCA's request, a (1) mission statement and description of the services it provides and (2) description of any significant changes in its services during the preceding year as reported on its most recently filed Internal Revenue Service (IRS) return of organization exempt from income tax form.

The act requires a medical foundation to include in its report to OHCA other financial information required by the IRS form. If the medical foundation is not obligated to file the form, the act requires the foundation to report to OHCA information substantially similar to that required by the IRS form.

The act also requires OHCA to make the above information available to the public and accessible on its website.

EFFECTIVE DATE: Upon passage

§ 4 — NOTIFYING PATIENTS' PHYSICIANS OF HOSPITAL ADMISSIONS

The act requires hospital personnel, when admitting a patient, to promptly ask the patient if he or she wants the hospital to notify the patient's physician of the admission. If the patient chooses such notification, hospital personnel must make reasonable efforts to contact the patient's physician as soon as practicable, but within 24 hours after the request.

EFFECTIVE DATE: October 1, 2014

§ 7 — CON APPLICATION GUIDELINES

Generally, the law requires a health care facility to obtain a CON from OHCA when it proposes to (1) establish new facilities or services, (2) change its ownership, (3) purchase or acquire certain equipment, or (4) terminate certain services.

The act adds to the factors that OHCA must consider when reviewing a CON application, whether the applicant has satisfactorily demonstrated that:

1. the proposal will not negatively impact the diversity of health care providers and patient choice in the region and
2. any consolidation resulting from the proposal will not adversely affect health care costs or access.

By law, OHCA must consider several factors when reviewing a CON application regarding, among other things, health care quality and accessibility, service utilization, public need, and cost effectiveness.

EFFECTIVE DATE: July 1, 2014

§§ 5-8 — CON FOR MEDICAL GROUP PRACTICES

CON Requirement

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The act requires a group practice of eight or more full-time equivalent physicians to obtain from OHCA a CON before transferring ownership to any entity other than a physician or physician group, unless the parties signed a sale agreement to transfer ownership on or before September 1, 2014.

Application Review Period

By law, when OHCA determines that it received a completed CON application, it must notify the applicant and post the notice on its website. The act requires OHCA, within 60 days of posting such notice, to review and issue a decision on an application involving a group practice's transfer of ownership, if the transfer offer is made in response to a request for proposal (RFP) or similar voluntary offer for sale (hereafter referred to as a "voluntary transfer of ownership"). For all other CON applications, existing law establishes a 90-day review period. By law, OHCA may extend the review period of any CON application for an additional 60 days, when the applicant requests it or shows good cause.

The act also creates a presumption in favor of approving applications for a group practice's voluntary transfer of ownership.

Public Hearings

By law, OHCA may hold a public hearing on any CON application, and must do so for any properly filed and complete application if three or more people, or an individual representing an entity with five or more people, requests it in writing.

For properly filed and completed CON applications for a group practice's voluntary transfer of ownership, the act instead requires OHCA to hold a public hearing if 25 or more people, or an individual representing 25 or more people, request it in writing. As under existing law, the request must be made within 30 days of OHCA's determination that the application is complete.

EFFECTIVE DATE: July 1, 2014

§§ 9-11 — NONPROFIT HOSPITAL CONVERSIONS

By law, a nonprofit hospital needs the approval of the AG and DPH commissioner to transfer a material amount of its assets or operations or to change the control of its operations to a for-profit entity. The act makes changes to the approval process.

Hearing on CON Determination Letter

By law, before completing a transfer, the hospital and prospective purchaser must concurrently submit a CON determination letter to the commissioner and AG, (1) stating the parties' names and addresses; (2) briefly describing the proposed agreement's terms; and (3) estimating the capital expenditure, cost, or value associated with the proposed agreement. The commissioner and AG must review the letter, with the AG determining whether the proposed agreement requires approval under the nonprofit conversion law.

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The act requires the purchaser and hospital to hold a hearing on the contents of this letter, no later than 30 days after the commissioner and AG receive it. The hearing must be held in the municipality where the new hospital would be located. At least two weeks before the hearing, the hospital must provide public notification of the hearing in a newspaper for at least three consecutive days. The notice must contain substantially the same information as the letter, and must be provided in a newspaper with substantial circulation in the affected community.

Under the act, the purchaser and hospital must record and transcribe the hearing and make the recording or transcript available to the commissioner, AG, or public upon request.

By law, if the agreement requires the approval of the AG and commissioner, they must hold at least one joint public hearing in the hospital's primary service area before approving or disapproving the agreement (CGS § 19a-486e).

Conditions on Approval

The act specifically allows the commissioner and AG, when approving an application, to place any conditions on their approval that relate to the purposes of the conversion law.

Factors in DPH Commissioner's Determination

By law, the commissioner must deny an application under the nonprofit conversion law unless she makes certain findings.

Under prior law, one such finding was that the affected community would be assured of continued access to affordable health care. Under the act, the health care must be high quality as well as affordable. The act also specifies that the continued access is after accounting for any proposed change impacting hospital staffing.

EFFECTIVE DATE: Upon passage

BACKGROUND

HSR Act Thresholds

The HSR Act requires parties to certain proposed transactions (e.g., mergers, acquisitions, and joint ventures) to file a report with the FTC and DoJ and observe a waiting period before completing the transaction. This allows federal regulators to review the proposal and ensure its compliance with federal antitrust laws. Generally, an HSR filing is required if, due to the transaction, the buyer would acquire or hold: (1) over \$303.4 million worth of the seller's stock or assets or (2) between \$75.9 million and \$303.4 million worth of the seller's stock or assets and meets additional criteria.

By law, the FTC annually updates the filing threshold requirements to reflect changes in the gross national product. The above thresholds took effect February 24, 2014.

Connecticut Attorney General Antitrust Powers

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Under the Connecticut Antitrust Act, the AG may investigate a potential monopoly, restraint of trade, or other action intended to reduce competition. In the course of an investigation, the AG may issue subpoenas and other demands for related documents. Violations of the antitrust act carry civil penalties of up to \$1 million.

OLR Tracking: ND:JO/JR:JKL:ro