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Health Care ADVISORY ■

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Bill Would Require Reporting of Ownership and Deal Activity for Certain Health Care Entities, Including for Some Private Equity and Venture Capital Investments

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On April 26, the House Energy and & Commerce Committee considered legislation that would, for the first time, create a statutory obligation for certain health care entities to report information about their ownership and merger and acquisition (M&A) activity to the Secretary of Health and Human Services (HHS). Among several other entity types, the bill, currently in draft form, specifically calls out physician practices that are "owned by … a private equity company, or a venture capital firm." Should this bill pass, we expect the focus on private equity (PE) and venture capital (VC) activity to expand through regulations and implementation of the statute.

The bill would apply to the following list of "specified entities":

- Hospitals.
- Physician-owned practices employing more than 25 physicians.
- Physician practices that are *owned by*:
  - Hospitals;
  - Health plans; or
  - A PE company or VC firm.
- Ambulatory surgical centers.
- Independent freestanding emergency departments.

It would require that by January 1, 2024, and annually thereafter, these entities submit to HHS (in a format to be determined by HHS) data on mergers, acquisitions, and changes in ownership for the past year; the name, address, and business structure of the entity's parent company; and any other information about ownership of the entity that is required by HHS, presumably through regulations to be promulgated in the future. Hospitals must also report additional information, including debt-to-earnings ratio, average amount of debt, and real estate leases and purchases, among other data sets. This legislation would delegate authority to the Secretary of HHS to determine additional information that would be required to be disclosed in the future.

All information submitted under the bill would be published by the Secretary by January 1, 2025, including information on the number of owners, changes in tax status, analysis on trends in horizontal and vertical integration, and, as applicable, identifying information of parent companies. Failing to report or submitting false information would subject an entity to civil monetary penalties of up to $5 million. Any new entity that fits within the identified categories and is formed after January 1, 2024 would have to disclose this information within 60 days of its formation.

While reporting legislation that had the potential to impact PE and VC firms has been introduced in the past, this is the first time such legislation has had a hearing before this committee, which is the first step in a bill's potential enactment into law.

It's important to note that we believe this legislation was added to the hearing agenda because some members of the committee believe private equity is accelerating consolidation in the health care industry and that trend is driving up costs in the health care system. The administrator for the Centers for Medicare & Medicaid Services, Chiquita Brooks-LaSure, stated before the committee that the availability of health facility ownership data would make it easier to identify poor performers and understand the impacts of consolidation.

If the bill were to pass in its current form, key aspects would remain unclear, including:

- How would "ownership" be defined – would any investment be reportable or must there be 51% or 100% ownership?
- Would management services organization models that are structured to comply with state corporate practice restrictions trigger reporting obligations?
- How would "parent company" be defined – only the immediate parent, or including grandparent and further removed entities up the corporate chain?
- Would the Secretary exercise the authority granted under the bill to expand the list of specified entities or to focus more attention on PE/VC investment in the health care industry?

The outlook for this legislation is not yet clear because it still requires House and Senate approval, but a hearing before the committee is a significant step toward enactment. Entities with ownership that could be affected by this legislation should continue to actively monitor its status and remain prepared to address potential impacts and remain in compliance.

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