

More Regulations Affecting Physicians and Hospitals

OHCA and Attorney General's Office to Regulate Physician Mergers

Three New Magic Numbers: '2', '8' and '30'

It was a short legislative session this year, but long enough to impose a mishmash of new regulatory requirements on physicians and hospitals. The Legislature also - grudgingly - opened the door for 'for-profit' entities to employ physicians.

If you are a physician group of two or more and contemplating a merger with another group or a sale to a hospital, these regulations affect you. Further, if you are a group practice with thirty or more physicians, you are now subject to certain annual reporting requirements.

1) Physician Mergers and Acquisitions are Now Regulated.

Effective October 1, 2014

There is increasing concern by the Legislature that as hospitals in Connecticut are consolidating, physician practices are also consolidating to the point where there may be anti-trust violations. Senate Bill No. 35 (the "Act") requires that any physician group (two or more physicians) give written notice to the Attorney General at least 30 days before any merger, consolidation or affiliation with an entity that allows joint negotiations with third parties over payment rates. The Attorney General will review the proposed merger to determine if it violates Connecticut's Anti-Trust laws.

This applies to a variety of transactions, including:

- A group practice merging with another group practice, where the resulting practice is eight or more physicians;
- A group practice (two or more doctors) merging with a hospital, hospital system, captive professional entity, medical foundation or any other entity controlled by a hospital or hospital system, regardless of the size of the resulting medical group;

If you have any questions about the issues addressed here, or any other matters involving Health Care issues, please call 860-240-6000 and ask to speak with one of our Health Care attorneys.

Heather O. Berchem

Marcel J. Bernier

Jacqueline DeAndrus Bucar

Frank M. Capezzer

Dena M. Castricone

Melissa A. Federico

Robert V. Giunta, Jr.

Lauren Filiberto Hopwood

H. Kennedy Hudner

William J. Keenan, Jr.

Paul E. Knag

Mark F. Korber

Kenneth L. Levine

Michael E. McDonough

David A. Menard

Natale A. Messina

Hugh F. Murray, III

Alfred E. Smith, Jr.

Stephanie Sprague Sobkowiak

- Sale of all or substantially all of the assets of the group practice or equity interests of a group practice (e.g., stocks, membership interest or partnership interest) to another group where the resulting new group has eight or more doctors;
- Sale of all or substantially all of the assets of the group practice or equity interests of a group practice (e.g., stocks, membership interest or partnership interest) to a hospital, health care system, etc., regardless of the resulting number of physicians;
- The employment of all or substantially all of the physicians in a group by another group if it results in a group with eight or more doctors; or
- The employment of all or substantially all of the physicians in a group by a hospital or hospital system, regardless of the number of resulting physicians.

2) Large Physicians Groups Must Report Annually to Attorney General.

Effective October 1, 2014

Beginning December 31, 2014 and each year thereafter, (i) hospital affiliated practices of any size and (ii), groups of 30 or more physicians that are not owned by hospitals have to report to the Attorney General and Department of Public Health, detailing:

- The names and specialties of each physician;
- Locations of the group practice and what services are offered there; and
- The primary service area of each of the offices of the practice.

This is the basic information needed by the Attorney General's Office to determine the market share of each group practice. Using that data, the Attorney General will be able to determine whether any hospital is obtaining too large a share of certain specialties in its market area, or if any physician practice is at risk of having monopoly power.

3) Certificates of Need (CON) - Hospitals Acquiring Physicians Groups.

Effective July 1, 2014

- A CON will be required for the sale of a "group practice" (defined here as eight or more physicians) that is acquired by any entity other than another physician or group. So if the group is being acquired by a Medical Foundation or a hospital, a CON will be needed.
- In the CON application, the applicant must show the acquisition will not negatively impact the diversity of health care providers and patient choice in the market.
- The applicant must also show that any consolidation in the physician market arising from the acquisition will not adversely affect health care costs or accessibility to care.
- There is, however, a presumption in favor of approving the CON if the purchase by the hospital arises from a proposal for sale by the physicians.

4) Public Hearing Required When For-Profit Acquires Not-For-Profit Hospital.

Effective July 1, 2014

There is a new requirement that whenever a for-profit entity acquires a not-for-profit hospital, the parties must hold a public hearing within thirty days after filing the CON application. The hearing must be held in the city where the new hospital will be located.

5) For-Profits can be Members of a Medical Foundation.

Effective from passage

This bill makes it clear that for-profits can be members of a medical foundation and employ physicians. However, no employee or representative of a for-profit hospital or health system may sit on the board of a not-for-profit medical foundation, and vice versa. Nor may anyone sit, at the same time, on the boards of for-profit and not-for-profit medical foundations.

6) Hospitals Must Contact Patient's Physicians if Requested.

Effective October 1, 2014

As of October 1, 2014, whenever a patient is admitted, the hospital is required to ask the patient if the patient wants his or her physician to be notified of the admission. If the answer is "yes," the hospital shall make a reasonable effort to notify the physician within 24 hours.

The Governor is expected to sign this Act by early June. If you have any questions about the Act and its impact on your practice, please contact your Murtha Cullina health care attorney or Kennedy Hudner at 860.240.6029 or khudner@murthalaw.com.