CLIENT ALERTS & INSIGHTS

Healthcare Private Equity Investment: As Federal Headwinds Subside, a Gale Warning Goes Up in Many States

FEBRUARY 25, 2025

Authors: Jason S. Greis, Christopher DeGrande, Frank Carsonie

Private equity (PE) investment in the U.S. healthcare sector faces a complex and evolving regulatory and legislative landscape. Both federal and state authorities are intensifying scrutiny of PE investment, driven by concerns about market consolidation, quality of care, corporate profiteering and lack of financial transparency. As "headwinds" mount, particularly at the state level, PE firms and the healthcare businesses in which they invest must be prepared to adapt their consolidation strategies.

Federal Regulation and Legislation Related to Healthcare PE Will Likely Decrease

At the federal level, agencies such as the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have heightened their oversight of PE activities in healthcare in recent years. In March 2024, the FTC conducted a workshop examining private equity's influence in the sector, expressing concerns over investment strategies that could undermine competition and affect care quality. Subsequently, in May 2024, the FTC and DOJ initiated a joint public inquiry to identify PE transactions potentially detrimental to quality care and that could dampen competition. The agencies sought public comment on the impact of various acquisitions involving private investment on patient safety, cost, and quality of care. Former FTC Chair Lina Khan, whose term concluded in September 2024, cautioned against lax oversight of PE firms, particularly highlighting risks associated with practices like "strip and flip" and roll-ups that could lead to increased costs and diminished care quality. These efforts signaled a robust federal intent (at least under the former Biden administration) to monitor and regulate PE investment in healthcare.

The 2024 federal legislative session also saw the introduction of two pieces of legislation aimed at curbing healthcare PE - The Health Over Wealth Act introduced by Senator Ed Markey (D-Mass) and The Corporate Crimes Against Health Care Act introduced by Senator Elizabeth Warren (D-Mass). This legislation would require PE sponsors to provide enhanced public reporting and obtain licenses to make healthcare investments. PE sponsors and healthcare executives could potentially be subject to criminal and civil penalties if their actions are found to result in patient harm. Little substantive action has been taken to date on these bills and they currently remain mired in committee.

The political landscape, however, also influences federal regulatory approaches. While the Biden administration adopted an assertive stance toward regulating PE investment in healthcare, many commentators believe that President Trump's administration will likely take actions to spur PE investment and prioritize deregulation. President Trump has repeatedly made comments about decreasing the corporate tax rate that could benefit PE firms, and his administration has already

taken significant steps to prioritize deregulation. For example, on January 31, 2025, President Trump signed Executive Order 1492 requiring that whenever an agency promulgates a new rule, regulation, or guidance, it must identify at least ten existing rules, regulations, or guidance to be repealed. Then on February 19, 2025, President Trump issued another Executive Order reaffirming his administration's policy "to focus the executive branch's limited enforcement resources on regulations squarely authorized by constitutional Federal statues, and to commence the deconstruction of the overbearing and burdensome administrative state." The Order instructs agencies to review their existing regulations within 60 days to identify regulations that could be rescinded or modified, and to review ongoing civil or criminal enforcement proceedings to determine whether enforcement "is compliant with the law and Administration policy."

State Regulatory and Legislative Challenges Show Signs of Rapid Intensification of Healthcare PE Scrutiny

State governments are also actively addressing PE investments in healthcare with legislative measures aimed at enhancing transparency and protecting public interests. In February 2025, for example, California introduced Senate Bill 351 (SB 351), targeting the involvement of PE groups and hedge funds in managing physician and dental practices. This bill seeks to reinforce the state's existing prohibitions on the corporate practice of medicine and dentistry and prevent corporate entities from exerting undue influence over clinical decision-making. SB 351 is a revival of aspects from Assembly Bill 3129, which was vetoed by Governor Gavin Newsom in September 2024. The reintroduction of this legislation underscores ongoing concerns about the impact of PE on healthcare delivery in the state.

On January 8, 2025, Massachusetts Governor Maura Healey signed House Bill 5159 (HB 5159) into law, expanding regulation over PE investments in the state's healthcare sector. This legislation imposes stringent financial reporting requirements on PE investors, real estate investment trusts (REITs), and management services organizations (MSOs) involved in healthcare. The law aims to enhance transparency and enable regulators to monitor the financial practices of entities influencing healthcare delivery, ensuring that patient care remains the primary focus. Many other states, including California, Connecticut, Illinois, Indiana, Massachusetts, Minnesota, Nevada, New York, Oregon, and Washington, have also passed, or are considering enacting, laws requiring parties to disclose transactions involving private equity investment before closing a deal. Many of these state antitrust-style laws are based on model legislation from the National Academy for State Health Policy, which was created as a tool for states to increase oversight of healthcare transactions that could result in provider consolidation and increased cost of care. Many commentators believe that as the federal deregulation pendulum swings strongly in one direction, some states (especially traditionally "blue" states) could attempt to counterbalance the federal government's approach with additional state regulations intended to address perceived gaps in federal regulation and enforcement.

Finally, although the FTC attempt to ban employment non-compete agreements failed in 2024, states continue to actively regulate and scrutinize the use of non-compete covenants. Currently, four states ban the use of non-competes entirely, and thirty-three states, plus Washington, D.C., have legislation restricting their use. For example, a new bipartisan bill was recently introduced (SB 11) in the Ohio Senate that would ban Ohio employers from entering into noncompete with Ohio workers (see Benesch Client Alert

). As it becomes more difficult to bind providers to noncompete covenants following the closing of a PE transaction, especially where providers are critical to healthcare infrastructure in a particular community, PE firms could become concerned that they may not receive "the benefit of their financial bargain" if the owners of a seller healthcare business can immediately compete with a buyer following the closing of a deal.

Implications for Private Equity Investors

The intensifying regulatory environment presents a variety of challenges for healthcare PE investors:

1. **Increased Compliance Costs:** Enhanced reporting and transparency requirements necessitate robust compliance frameworks, leading to higher operational costs.
2. **Strategic Reassessment:** Investors may need to reevaluate acquisition strategies, particularly concerning roll-up practices and management agreements, to align with new regulations.
3. **Increased Time to Close:** State pre-transaction notification laws may increase the amount of time needed to close PE deals in some states and could result in enhanced scrutiny of deals where there are concerns that a transaction could decrease availability or quality of care or increase costs.
4. **Scrutiny Over Noncompetes May Change How PE Firms Protect their Investment:** In states preventing or significantly restricting employment noncompetes, PE investors could lose an important tool for ensuring they receive the benefit of their financial bargain after a deal closes. PE firms will either need to turn to alternative contractual protections to safeguard their investment in target companies or alternatively, the purchase price in some deals will need to account for this risk.
5. **Uncertainty in Federal Oversight:** The transition to a new federal administration and an unpredictable President introduces uncertainty regarding future regulatory approaches, requiring investors to stay adaptable and informed.
6. **State-by-State Variability:** Divergent state regulations compel investors to navigate a patchwork of laws, complicating multi-state investment strategies.

In conclusion, healthcare private equity investors must adeptly navigate a dynamic regulatory and legislative landscape. Proactive engagement with evolving policies at both federal and state levels is essential to mitigate risks and capitalize on opportunities within the healthcare sector.

Jason Greis is a partner in Benesch's Healthcare+ Practice Group. He may be reached at jgreis@beneschlaw.com or 312.624.6412.

Christopher DeGrande is a partner in Benesch's Healthcare+ Practice Group. He may be reached at cdegrande@beneschlaw.com or 312.624.6364.

Frank Carsonie is Chair of Benesch's Healthcare+ Practice Group. He may be reached at fcarsonie@beneschlaw.com or 614.223.9361.