CLIENT ALERTS & INSIGHTS

Ohio to Require Hospitals to be Licensed

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On July 1, 2021, Governor Mike DeWine signed into law the FY 2022-23 Budget which included a provision that will require Hospitals to be licensed in Ohio for the first time in the State's history (the "Ohio Hospital Licensure Law")[1]. Under the Ohio Hospital Licensure Law, Ohio hospitals will need to be licensed by September 30, 2024, and the Ohio Department of Health ("ODH") has until September 30, 2022 to promulgate the implementing regulations.

Historically, Ohio's regulations and oversight of hospitals has been limited to a registration, survey, and reporting framework administered by ODH, stopping short of requiring hospitals to be licensed by the State.[2]

The Ohio Hospital License Law defines a "hospital" as "an institution or facility that provides inpatient medical or surgical services for a continuous period longer than twenty-four (24) hours." The definition of hospital includes children's hospitals but exempts certain facilities such as ambulatory surgical centers, nursing homes, federally operated hospitals, and hospice facilities.[3]

The Ohio Hospital Licensure Law also requires ODH to promulgate rules and regulations implementing the hospital licensure requirements. ODH is required to create rules for the hospital licensure requirements, establishing health, safety, welfare, and quality standards, by September 30, 2022.[4]

The Ohio Hospital Licensure Law includes the following key provisions:

- Initial applications may be accepted starting September 30, 2022, subject to ODH's forthcoming rules. A fee will be owed in addition to specifying the number of beds, including skilled nursing and long-term care beds.
- A hospital license will be valid for a three-year period unless revoked or suspended.
- A survey and corresponding inspection fee may be required unless a hospital submits a copy of its most recent on-site survey report from CMS or approved accrediting organization and is in "deemed status."

- ODH is required or authorized to promulgate regulations for health, safety, welfare, and quality standards[5]regarding:
  - The operation of: (a) maternity and newborn care units; (b) transplant and stem cell services; (c) cardiac catheterization services; (d) open heart surgery services; and (e) operation of radiation therapy services.
  - Identifying, monitoring, and reporting requirements for any contagious, environmental, or infectious diseases, illnesses, or health conditions, as well as unusual infectious agents or biological toxins for which treatment is provided to patients.
  - Technical assistance measures with respect to: (a) infectious diseases, including measures to prevent and control their spread; (b) quality improvement projects, including health equity and disparities; (c) population health initiatives; (d) data analytics, and (e) workforce recruitment and development.
  - Data reporting and emergency preparedness.

- A licensed hospital must have a governing board that oversees the hospital's management and the privileging of the hospital's medical staff.
- For hospital transfers or sales, an application for license transfer must be submitted to ODH within thirty (30) days of the assignment, sale, or transfer.
- If ODH determines a hospital has violated any requirement under the licensure law or adopted rules, ODH may provide a thirty (30) day notice period in which to correct the deficiency, and then may impose a civil monetary penalty ranging from $1,000 to $250,000, with additional penalties of $1,000 to $10,000 per day of operation without a license. ODH may also seek to enjoin the hospital from operating.

Please contact one of the authors below or a member of the Benesch Healthcare+ Practice Group if you have questions regarding the information contained in this Client Alert. Benesch will continue to monitor forthcoming rules from ODH regarding the implementation of the new hospital licensure law.

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[1] House Bill ("H.B.") 110, 134th Gen. Assemb., Reg. Sess. (Ohio 2021); the hospital licensure law will be codified under Ohio Revised Code Chapter 3722.

[2] R.C. § 3701.07; *see also* the Ohio Department of Health: Hospitals website page, available at, https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/hospitals/hospitals.

[3] H.B. 110 (Enrolled Version) from pp. 2006-2016; certain facilities are exempt from the licensure requirement, including but not limited to: ambulatory surgical facilities, nursing homes, federally

operated hospitals, Ohio Department of Developmental Disabilities' contracted facilities, hospitals licensed under R.C. § 5119.33; residential facilities under R.C. § 5119.34, facilities housing individuals with developmental disabilities under R.C. § 5123.19, community addiction services providers under R.C. § 5119.01, a healthcare individual or group practice site, a licensed hospice facility, a licensed pediatric respite care facility, a health maintenance organization that does not operate a hospital.

[4] H.B. 110; R.C. § 3722.06.

[5] R.C. § 3722.06; R.C. § 3722.09.