CLIENT ALERTS & INSIGHTS

Updates to Reporting Requirement of Dental Support Organizations' Mergers and Acquisitions in Indiana

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Current Law and Reporting Requirements

Indiana currently has a reporting requirement related to health care entity mergers and acquisitions that requires parties to covered health care entity transactions-including Dental Support Organization ("DSO") transactions-to provide written notice to the Office of Attorney General at least 90 days prior to the date of the merger or acquisition. Ind. Code § 25-1-8.5-1 *et seq.*

What is a DSO Transaction?

A DSO transaction, in the context of a dental or specialty practice, such as an oral surgery practice, refers to the processes where a DSO, typically backed by a private equity firm or some other form of financial backer, enters into a transaction with one or more dental/specialty practices. As part of the transaction, the DSO acquires the nonclinical assets of that dental/specialty practice and enters into an administrative services agreement (also referred to as a support services agreement) with the surviving practice to provide all nonclinical administrative services, while the practice entity, owned by a licensed professional, oversees the practice's clinical operations. These transactions involve the sale of a dental practice's assets in a number of different forms and structures, depending upon the parties involved, their operational methodology, back-office capabilities, involvement of the financial backers, and their ultimate exit strategy.

What is the Current Reporting Requirement?

The Indiana reporting requirement, which became effective July 1, 2024, defines "health care entities" as "any organization or business that provides diagnostic, medical, surgical, dental treatment or rehabilitative care," insurers, pharmacy benefit managers ("PBMs"), and private equity partnerships.

Any health care entity that is "involved in" a merger or acquisition with another health care entity, with total assets between the parties of $10M, is required to report the transaction to the Attorney General at least 90 days prior to closing. Ind. Code § 25-1-8.5-1 *et seq*. The notification requirements allow the Attorney General to issue an investigative demand, but the requirements do not give authority for approval or disapproval of the transaction.

Practice Note: In our experience with the reporting requirement, the Office of the Attorney General, after completing its initial review, generally has follow-up questions for the reporting parties that require a written or oral response, and in some instances, both. And, once those responses have been submitted, addressing each of the Attorney General's inquiries, each transaction has

concluded with the Attorney General granting notices to the parties that "no further action" is necessary, allowing the parties to finalize their transaction and close.

Changes to Transaction Reporting Requirement

On May 6, 2025, Indiana enacted HB 1666. This bill modifies the reporting requirements outlined above, as well as creates requirements related to reporting ownership information of health care entities. Additionally, the bill allows for the Attorney General to investigate market concentration of health care entities.

Effective July 1, 2025, HB 1666 clarifies that the definition of health care entity does not include a health care provider that is majority owned, or would be majority owned after the merger or acquisition, by an Indiana-licensed health care practitioner who routinely furnishes health care services in the practitioner-owned practice. See HB 1666 § 9. Since many DSO transactions in Indiana involve the DSO purchasing the assets of a health care provider that is majority owned by Indiana-licensed health care practitioners who routinely furnish health care services in the practice, this change exempts many DSO transactions from the original reporting requirement. That is, if the transaction involves the DSO on one side, which would be considered a health care entity under the law, and a health care provider on the other side, that is majority owned by an Indiana dentist who furnishes dental services in the practice, that transaction would not be subject to reporting requirements.

Practice Note: In DSO transactions, we have certain DSOs that form a new practice with a "friendly doctor" licensed in Indiana, who replaces the selling dentist/specialist upon closing of that transaction. The friendly doctor, while maintaining the state law legal rights of ownership, does not perform services in the relevant dental/specialty practice. In that instance, the transaction would be subject to the reporting requirement. In other DSO transactions, where the selling dentist/specialist remains the legal owner after the transaction is consummated and is also the dentist/specialist that is actually performing the day-to-day clinical services, that transaction would not be required to be reported.

Investigations of Market Concentration

Beginning July 1, 2025, the bill also allows the Attorney General to "investigate the market concentration of a health care entity," including by issuing a civil investigative demand to that entity. HB 1666 § 10. Under the current statute, the Attorney General already has the ability to issue a civil investigative demand when a health care entity submits a transaction notice. Since the current statute already allows for the Attorney General to have investigative powers related to transactions, it is not clear whether the bill's indication of the Attorney General's ability to investigate the market concentration specifically expands the Attorney General's current powers. With earlier versions of the bill expanding on this power, it is important that we continue to monitor changes to these Indiana laws.

Additional Information

The enacted bill also creates a new reporting requirement for health care entities doing business in Indiana and has other updates and changes to the current law. The text of the bill can be found here.

The text of Indiana's current reporting statute may be found here.

For additional questions, please contact:

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