Massachusetts: Expansion of Oversight Authority — New Notice of Material Change Form for Health Care Transactions

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The Massachusetts Health Policy Commission (the HPC), an independent state agency that works to improve affordability of health care for residents of the Commonwealth, released Advance Guidance (before finalization of new regulations) for "Providers" and "Provider Organizations" considering transactions subject to the HPC's updated Notice of Material Change (MCN) process. This Advance Guidance was issued on March 20, 2025, in anticipation of the April 8, 2025 effective date of amendments to M.G.L. c. 6D, § 13 pursuant to Chapter 343 of the Acts of 2024. The Advance Guidance alerts providers to upcoming changes in requirements for certain types of transactions, including an expanded regulatory definition of "Material Change", an increased authority to issue requests for information, and certain logistics to the form required when filing an MCN.

Background

As discussed in our prior blog, "Massachusetts: New Year, New Law — Governor Signs "An Act enhancing the market review process" (House Bill No. 5159)," Governor Maura Healey signed into law Chapter 343 of the Acts of 2024 on January 8, 2025. The legislation aims to increase oversight and regulation over a variety of health care transactions taking place in the Commonwealth. This includes enhancing scrutiny by entities such as the HPC, the Center for Health Information and Analysis (CHIA), the Office of the Attorney General, and the Division of Insurance, specifically regarding private equity investors and management service organizations (MSOs). Additionally, the new law mandates licensing for Urgent Care Centers and introduces licensing requirements for a newly established category known as Office-Based Surgical Centers.

To that end, the law strengthens the HPC's market oversight authority to review "Material Changes" to "Providers" or "Provider Organizations" as required by Mass. Gen. Laws ch. 6D, § 13, which include companies:

> in the business of health care delivery or management, […] that represents one or more health care Providers in contracting with Carriers or third-party administrators for the payments of Health Care Services; provided, that a Provider Organization shall include, but not be limited to, physician organizations, physician-hospital organizations, independent

practice associations, Provider networks, accountable care organizations and any other organization that contracts with Carriers for payment for Health Care Services.

The Advance Guidance issued by the HPC provides requirements for the new triggering events and MCN process in advance of regulatory amendments to the current regulations, found at 958 CMR 7.02. "Providers" or "Provider Organizations" are still required to submit an MCN to the HPC 60 days in advance of the effective date of a "Material Change." Information on these additional triggering events will allow the HPC to monitor the health care market and the ability of the Commonwealth's health care system to deliver high quality, cost-effective care for all residents.

Advance Guidance

Beginning April 8, 2025, the definition of a "Material Change" that triggers the filing requirement for an MCN will be expanded to include:

1. **Significant expansions in a "Provider or "Provider Organization's" capacity**, which includes *any* increase to a "Provider" or "Provider Organization's" capacity that requires an Application for Substantial Capital Expenditure (defined at 105 CMR 100 as generally being in excess of the then-current Expenditure Minimum) to be submitted to the Massachusetts Department of Public Health's Determination of Need Program;

2. **Transactions involving a significant equity investor which result in a change of ownership or control of a "Provider" or "Provider Organization**," which includes any investment by an equity investor that will change the ownership of a "Provider" or "Provider Organization" or any investment in excess of US$10M that results in an equity investor having significant control over a "Provider" or "Provider Organization," e.g., the potential to appoint a board member(s), make key business decisions (e.g., hiring or terminating staff);

3. **Significant acquisitions, sales, or transfer of assets** including, but not limited to, real estate sale lease-back arrangements as well as the sale of any licensed facility or the sale of real property assets where Health Care Services are delivered for the purposes of a real estate lease-back arrangement; and

4. **Conversion of a "Provider" or "Provider Organization" from a nonprofit entity to a for-profit entity**.

Additionally, the Advance Guidance describes the expansion of authority to request information from other "Providers," "Provider Organizations," or "Payors" to be provided within 21 days of such request from the HPC. Effective April 8, 2025, the HPC will have expanded authority to request information from significant equity investors and other parties involved in a given transaction.

Under Mass. Gen. L. ch. 6D, § 13(c)(2), as updated by Section 24 of Chapter 343 of the Acts of 2024, when a Material Change involves a "significant equity investor," the HPC can identify specific information required to accompany the MCN submission. This may include details such as the significant equity investor's capital structure, overall financial condition, ownership, and management structures, and audited financial statements, among other relevant items. Currently, the HPC does not mandate that such information be publicly disclosed as part of the MCN form; however, it reserves the right to request this information confidentially during its review process. The HPC will maintain the confidentiality of all nonpublic information and documentation received in connection with an MCN or cost and market impact review, as requested by the involved parties.

Finally, as previewed by the HPC Advance Guidance, the HPC has posted a revised MCN Form that "Providers" and "Provider Organizations" should use beginning on April 8, 2025.

Conclusion

The Advance Guidance issued by the HPC provides insights for "Providers" and "Provider Organizations" preparing for organizational changes subject to the MCN process. Released ahead of amendments to M.G.L. c. 6D, § 13 pursuant to Chapter 343 of the Acts of 2024 — which take effect on April 8, 2025 — this guidance outlines important updates including an expanded definition of "Material Change," associated clarifying terms, broader authority for the HPC to request information related to such changes, and specific logistical adjustments in the required MCN Form. As this Advance Guidance has not gone through the proper rulemaking process, affected individuals should provide comments to the HPC about areas of disagreement or concern via email (HPC-Notice@mass.gov).

For more information, please join us at our upcoming webinar with the Healthcare Financial Management Association on April 30, "Private Equity and Health Care – A Policy Discussion." The registration link is available here.

Foley is here to help you address the short and long-term impacts in the wake of legal changes. We have the resources to help you navigate these and other important legal considerations related to business operations and industry-specific issues. Please reach out to the authors, your Foley relationship partner, or to our Health Care Practice Group and Health Care & Life Sciences Sector with any questions.

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