August 09, 2024

The Honorable Anna Caballero
Chair, Senate Appropriations Committee
State Capitol, Room 412
Sacramento, CA 95814

SUBJECT: UPDATED AB 3129 (Wood – as proposed to be amended) — Oppose

Dear Senator Caballero:

Californians deserve greater access to health care services, which requires ongoing investment to preserve and expand care. Assembly Bill (AB) 3129 (Wood, D-Healdsburg) would require certain investors to obtain approval from the California Department of Justice (DOJ) and accept any conditions DOJ imposes. This bill would add significant costs to the state of California and reduce access to health care services.

For these reasons, the California Hospital Association (CHA), on behalf of more than 400 hospitals and health systems, opposes AB 3129.

Unfortunately, the recently proposed amendments do not resolve CHA's concerns and create new questions.

The amendments do not remove hospitals from the bill.

- Section 1190.10(a)(1) claims to exempt for-profit hospitals when a private equity group (PE) or hedge fund (HF) enters into a specified transaction with them. However, after the phrase "except for hospitals that are organized for profit," the language goes on to add "**but including a *health care facility* directly or indirectly,** that controls, is controlled by, under common control, or otherwise affiliated with a hospital" (emphasis added). Hospitals are included in the bill's definition of "health care facility" (see Section 1190(a)(2)(A)(i)). Thus, while the language seems to exempt for-profit hospitals, it then adds them back in. In addition, the language captures affiliated entities (undefined).

- Section 1190.10(a)(4) requires attorney general (AG) consent if a PE/HF enters into a specified transaction with a for-profit hospital's clinic, ambulatory surgery center, skilled nursing facility, lab, imaging center, or other facility.

- Section 1190.10(b) requires all hospitals to obtain AG approval (or a waiver from the AG) if there's any direct or indirect PE or HF investment in the hospital when the hospital (or any directly or indirectly affiliated entity) engages in a specified transaction with:
    - A provider group or
    - A provider, if the hospital has been involved, directly or indirectly, in a transaction involving any health care facility, provider group, provider, or related health care services within the past seven years.

- Section 1190.10(g) requires all hospitals — including for-profit hospitals — and related entities (undefined) to provide notice to the AG before entering into specified transactions with a nonphysician provider or a provider. This applies whether the hospital has any PE/HF involvement or not.

The amendments go beyond private equity groups and hedge funds by imposing a new AG review process on nonprofit hospitals.

Bringing hospitals and related entities into a bill aimed at private equity and hedge funds should have been done in policy committee, not prior to Appropriations committee.

- Section 1190.10(b) requires *all* hospitals to obtain attorney general (AG) approval if there's any direct or indirect PE or HF investment in the hospital, if the hospital engages in a specified transaction with:
    - A provider group or
    - A provider, if the hospital has been involved, directly or indirectly, in a transaction involving a health care facility, provider group, provider, or related health care services within the past seven years.

- Section 1190.10(g) requires all hospitals and related entities (undefined) to provide notice to the AG before they enter into specified transactions with a nonphysician provider or a provider if certain revenue thresholds are met. This applies whether the hospital has any PE/HF involvement or not.

The amendments undermine the recently added due process rights by requiring health care entities to pay AG costs even when the AG loses.

Stakeholders have long been concerned about the lack of due process rights in the current AG review process for nonprofit hospital-to-hospital transactions. The AG's office has been found by several courts over the years to assert jurisdiction where it had none and to abuse its discretion in health care transaction cases. As a result, AB 3129 was previously amended to allow parties who dispute an AG determination to:

- Seek a hearing at the Office of Administrative Hearings (OAH) and
- Seek judicial review by filing a petition for a writ of administrative mandamus in the superior court.

The new proposed amendments would require hospitals and other health care entities to reimburse the AG for its personnel and other costs related to the OAH hearings, even if the administrative law judge overturns the AG's decision.

Across California, hospitals are providing patient care while managing capacity issues brought on by financial instability, workforce challenges, costly seismic construction, and other issues. New investment will be critical to retaining and expanding services.

California policy should be to encourage investment, not make it more difficult. **For these reasons, CHA requests your "no" vote on AB 3129.**

Sincerely,

Meghan Loper, Consulting Lobbyist
California Hospital Association

cc: Assembly Member Jim Wood
Honorable Members of the Senate Appropriations Committee
Agnes Lee, Consultant, Senate Appropriations Committee
Morgan Branch, Consultant, Senate Republican Caucus