

**Connecticut Law Changes Reporting and  
Governance Requirements for Health Care Entities:  
Part 2: Requirements Applicable to  
Hospitals and Medical Foundations**

by **Purvi B. Maniar; Joseph J. Kempf, Jr.; and Lindsay M. Borgeson**

**April 2015**

---

In recent years, we have seen an acceleration in the rate at which health care entities are consolidating and restructuring their organizations in response to the changing regulatory environment. Recent legislation passed in Connecticut represents another example of states' continuing efforts to monitor and regulate competition with respect to health care services provided within their own borders. Connecticut Public Act Number 14-168, entitled "An Act Concerning Notice of Acquisition, Joint Ventures, Affiliations of Group Medical Practices and Hospital Admissions, Medical Foundations and Certificates of Need," which went into effect late last year, establishes new reporting requirements for health care entities such as hospitals, physician groups, and medical foundations. In Part 1 of this Client Alert,<sup>1</sup> we discussed the new notification requirements applicable to physician groups in Connecticut. In this part, we discuss the new requirements applicable to hospitals, hospital systems, and medical foundations.

Under the new law, a hospital, hospital system, or medical foundation that merges, affiliates, or consolidates with a physician group practice, or purchases a membership interest in a physician group practice, makes a "material change" requiring the parties to the transaction to notify the Connecticut Attorney General.<sup>2</sup>

The Connecticut Attorney General's Office requires that notice be submitted 30 days prior to the effective date of the proposed transaction. The notice is to include

---

<sup>1</sup> The full text of Part 1 of the Client Alert, which discussed how the law impacts physician groups, is available at <http://www.ebglaw.com/publications/connecticut-law-establishes-new-reporting-and-governance-requirements-for-health-care-entities-part-1-requirements-applicable-to-physician-groups-with-connecticut-locations/>.

<sup>2</sup> P.A. 14-168(c)(1)(B), and P.A. 14-168(c)(2)(B)(ii). Additionally, a transfer of ownership from a physician group practice to a hospital would require a certificate of need application. P.A. 14-168(a)(14). The requirements for a certificate of need are outside the scope of this Client Alert.

information about the nature of the transaction and the entities and physicians who will be parties to the transaction.<sup>3</sup>

Additionally, a hospital is required to submit annual reports detailing the activities of the hospital's physician group practices<sup>4</sup> to the Connecticut Attorney General and the Connecticut Department of Public Health, on or prior to December 31 of each year. The report must include several categories of information, such as a description of the relationship between the hospital and each group practice, the names and specialties of each physician practicing medicine with the group practice, addresses of service locations of the group practice and a description of the services provided at each location, and the primary area served by each location.<sup>5</sup>

The hospital or health system's annual reporting requirements are triggered only with respect to any entities that qualify as a "group practice," which is defined, broadly speaking, as two or more full-time equivalent physicians, legally organized in a partnership, limited liability company[,] medical foundation, "not-for-profit corporation, faculty practice plan or other similar entity," in which the physicians provide "substantially the full range of [routine] services ... through the joint use of shared office space, facilities, equipment or personnel," and the physicians' services are billed through the group, or the income from the group is "distributed in accordance with methods previously determined by members of the group." Thus, assets that the hospital purchases directly, or physicians who are directly employed by the hospital, which are not considered "material changes," do not need to be included in the annual report.

The new law also amends the governance requirements for medical foundations.<sup>6</sup> Under the new law, any person or entity that is not a member of the medical foundation will not be able to appoint or elect foundation board members.<sup>7</sup> Furthermore, the law prohibits an employee of a for-profit hospital, health system, or medical school from sitting on the board of directors of a medical foundation organized by a nonprofit hospital or health system.<sup>8</sup> Similarly, the law prohibits employees of a nonprofit hospital or health system from sitting on the board of a medical foundation organized by a for-

---

<sup>3</sup> See Office of the Connecticut Attorney General, "Notice of Material Change Form," *available at*: <http://www.ct.gov/ag/cwp/view.asp?a=2105&Q=553102> (last visited Apr. 8, 2015).

<sup>4</sup> P.A. 14-168(1)(a)(10); see also Office of the Connecticut Attorney General, "Notice of Material Change Form," *available at*: <http://www.ct.gov/ag/cwp/view.asp?a=2105&Q=553102> (last visited Apr. 8, 2015).

<sup>5</sup> P.A. 14-168(f); Office of the Connecticut Attorney General and Office of Health Care Access of the Connecticut Department of Public Health, "Filing Instructions," page 2, *available at*: <http://www.ct.gov/dph/cwp/view.asp?a=3902&q=556534&dphNav=%7C56589%7C> (last visited Apr. 8, 2015).

<sup>6</sup> In its definition of "medical foundation," the law refers to the definition of "medical foundation" in chapter 594b of the general statutes. P.A. 14-168(6). Chapter 594b of the general statutes then continues, in Article 33, to explain that "any hospital or health system may organize and become a member of a medical foundation ... for the purpose of practicing medicine and providing health care services as a medical foundation through employees or agents of such medical foundation." CT Gen. Stat. § 33-182bb(a).

<sup>7</sup> P.A. 14-168 amending CT Gen. Stat. § 33-182bb(a)(1).

<sup>8</sup> P.A. 14-168 amending CT Gen. Stat. § 33-182bb(a)(2)(A).

profit entity.<sup>9</sup> Finally, no person is allowed to simultaneously sit on the board of a medical foundation organized by a for-profit entity and the board of a medical foundation organized by a nonprofit entity.<sup>10</sup> Commentators have suggested that this distinction is based on Connecticut's desire to limit the influence of outside for-profit entities on nonprofit health care entities.<sup>11</sup>

The law places additional restrictions on the ability of entities to be members of medical foundations. One of the changes is that a "hospital, health system or medical school may organize and be a member of *no more than one* medical foundation."<sup>12</sup> As a practical matter, the new membership limitations will prevent hospitals, health systems, and medical schools from participating in multiple medical foundations to gain undue influence throughout Connecticut. Furthermore, since hospitals may only be a member of one medical foundation, and only members may appoint or elect the board of directors of the medical foundation, the ability of hospitals to influence other medical foundations will also be curtailed. Prohibiting for-profit hospitals, health systems, and medical schools, together with their employees, from being on the board of directors of a nonprofit medical foundation further suggests that Connecticut wants to control how active for-profit entities are in the nonprofit health care market.<sup>13</sup> Other commentators have suggested that the law is meant to limit the market share of for-profit entities in Connecticut.<sup>14</sup>

In addition to the governance changes, medical foundations have new reporting requirements. Medical foundations must annually file their mission statement and a description of their services with the Office of Health Care Access division of the Connecticut Department of Public Health. The filing must include any significant changes made to a medical foundation during the year and relevant financial information.<sup>15</sup> The information collected will be displayed on the Office of Health Care Access's website for the public to view.<sup>16</sup>

---

<sup>9</sup> P.A. 14-168 amending CT Gen. Stat. § 33-182bb(a)(2)(B).

<sup>10</sup> P.A. 14-168 amending CT Gen. Stat. § 33-182bb(a)(2)(C).

<sup>11</sup> "Connecticut Health Law 2014 Legislative Update" (July 2014) (hereinafter "Legislative Update"), available at: <http://www.shipmangoodwin.com/connecticut-health-law-2014-legislative-update> (last visited Apr. 8, 2015).

<sup>12</sup> P.A. 14-168 amends CT Gen. Stat. § 33-182bb(f) to include the quoted text, emphasis added.

<sup>13</sup> "Governor Malloy signs bill making significant health law changes" (June 4, 2014), available at: <http://www.lexology.com/library/detail.aspx?g=5ab73c30-4036-4762-a60e-d414e3f09143> (last visited Apr. 8, 2015).

<sup>14</sup> "This legislative change is clearly intended to control the entry of for-profit hospital and hospital systems into the Connecticut market by virtue of the establishment or ownership of medical foundations or other physician groups." Legislative Update, *supra* note 11.

<sup>15</sup> P.A. 14-168 amends CT Gen. Stat. § 33-182bb(d) to include the following language:

A medical foundation shall, annually, provide the office with a statement of its mission, a description of the services it provides, a description of any significant change in its services during the preceding year and other financial information as reported by the medical foundation's most recently filed Internal Revenue Service return of organization exempt from income tax form, or any replacement form adopted by the Internal Revenue

Taken as a whole, the changes suggest that Connecticut wants to clearly delineate nonprofit and for-profit areas among health care providers by limiting individuals and entities to being involved in only one or the other. Additionally, the collection of information for public consumption illustrates that Connecticut wants to subject its medical foundations to both greater oversight and greater public accountability.

The new Connecticut law is indicative of the national expansion in the regulation of transactions among health care entities. A similar example is the recent growth of state Certificate of Public Advantage (“COPA”) requirements that overlap with the new Connecticut law as both seek to increase state oversight of collaborations between health care entities in order to reduce the risk of anticompetitive behavior. North Carolina currently uses COPA,<sup>17</sup> and New York passed similar regulations in December 2014. New York health care entities can now seek a COPA to obtain state approval of “collaborative arrangements,” such as a merger or clinical integration.<sup>18</sup> As the trend in industry consolidation continues, additional states may adopt approaches similar to these states to monitor and regulate entity level transactions in the health care industry.

The speed with which hospitals, health systems, and medical foundations can adapt to the new governance and reporting requirements and the enthusiasm with which the Connecticut Department of Public Health and the Connecticut Attorney General’s Office seek to enforce the law will likely determine how demonstrably the law defines the future landscape of health care in Connecticut. While the long-term effects of the law remain to be seen, the new notification and reporting requirements are clear. Hospitals and physician groups must bear in mind notification requirements when considering new transactions, and hospitals, physician groups, and medical foundations should plan to comply with annual filing requirements.

\* \* \*

*This Client Alert was authored by **Purvi B. Maniar**; **Joseph J. Kempf, Jr.**; and **Lindsay M. Borgeson**. Please contact any of the authors or a member of the Health Care and Life Sciences practice at Epstein Becker Green with any questions about this Client Alert or the recent changes to the Connecticut law.*

### **About Epstein Becker Green**

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973

---

Service, or, if such medical foundation is not required to file such form, information substantially similar to that required by such form (emphasis added).

The underlined text above is the new language added by P.A. 14-168.

<sup>16</sup> P.A. 14-168 further amends CT Gen. Stat. § 33-182bb(d) to include the following language: “The Office of Health Care Access shall make such forms and information available to members of the public and accessible on said office’s Internet web site.”

<sup>17</sup> N.C. Gen. Stat. § 131E-192.1, *et seq.*

<sup>18</sup> New York State Department of Health, “Certificate of Public Advantage (COPA),” [http://www.health.ny.gov/health\\_care/medicaid/redesign/copa/](http://www.health.ny.gov/health_care/medicaid/redesign/copa/) (last visited Apr. 8, 2015).

# HEALTH CARE & LIFE SCIENCES

as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in offices throughout the U.S. and supporting clients in the U.S. and abroad, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit [www.ebglaw.com](http://www.ebglaw.com).

## IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of: (i) avoiding any tax penalty, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

If you would like to be added to our mailing list or need to update your contact information, please contact Lisa C. Blackburn at [lblackburn@ebglaw.com](mailto:lblackburn@ebglaw.com) or 202-861-1887.

<b>BALTIMORE</b> Helaine I. Fingold Joshua J. Freemire Thomas E. Hutchinson* John S. Linehan	<b>NEW YORK</b> Jeffrey H. Becker Lindsay M. Borgeson Michelle Capezza Aime Dempsey Kenneth W. DiGia Jerrold I. Ehrlich Gregory H. Epstein Hanna Fox James S. Frank Arthur J. Fried John F. Gleason Robert D. Goldstein Robert S. Groban, Jr. Gretchen Harders Bethany J. Hills Jennifer M. Horowitz Kenneth J. Kelly Joseph J. Kempf, Jr. Basil H. Kim Stephanie G. Lerman Leonard Lipsky Purvi Badiani Maniar Wendy G. Marcari Eileen D. Millett Shilpa Prem* Jackie Selby Catherine F. Silie Victoria M. Sloan Steven M. Swirsky David E. Weiss Benjamin M. Zegarelli	<b>NEWARK</b> John D. Barry Christina Burke Joan A. Disler James P. Flynn Diana M. Fratto Gary W. Herschman Laurajane B. Kastner Daniel R. Levy Theodora McCormick Maxine Neuhauser Mollie K. O'Brien Anjana D. Patel Victoria Vaskov Sheridan Erica F. Sibley Scheherazade A. Wasty Jack Wenik Sheila A. Woolson	<b>WASHINGTON, DC</b> Alan J. Arville Kirsten M. Backstrom Clifford E. Barnes James A. Boiani Selena M. Brady George B. Breen Merlin J. Brittenham* Lee Calligaro Tanya V. Cramer Anjali N.C. Downs Jason E. Christ Steven B. Epstein John W. Eriksen Wandaly E. Fernández Daniel C. Fundakowski Brandon C. Ge Stuart M. Gerson Daniel G. Gottlieb M. Brian Hall, IV Philo D. Hall Douglas A. Hastings Richard H. Hughes, IV* Marshall E. Jackson Jr. S. Lawrence Kocot William G. Kopit Ali Lakhani Amy F. Lerman Christopher M. Locke Katherine R. Lofft Mark E. Lutes Teresa A. Mason	David E. Matyas Colin G. McCulloch Frank C. Morris, Jr. Evan J. Nagler Leslie V. Norwalk René Y. Quashie Jonah D. Retzinger Serra J. Schlanger Bonnie I. Scott Deepa B. Selvam Lynn Shapiro Snyder Adam C. Solander David B. Tatge Daly D.E. Temchine Bradley Merrill Thompson Linda V. Tiano Carrie Valiant Patricia M. Wagner Robert E. Wanerman Meghan F. Weinberg Constance A. Wilkinson Kathleen M. Williams Lesley R. Yeung
<b>BOSTON</b> Emily E. Bajcsi Barry A. Guryan				
<b>CHICAGO</b> Ryan R. Benz Amy K. Dow Kevin J. Ryan				
<b>HOUSTON</b> Mark S. Armstrong				
<b>LOS ANGELES</b> Adam C. Abrahms Ted A. Gehring Paul A. Gomez J. Susan Graham		<b>PRINCETON</b> Anthony Argiropoulos Thomas Kane Andrew Kaplan	<b>SAN DIEGO</b> Kim Tyrrell-Knott	
		<b>STAMFORD</b> Ted Kennedy, Jr. David S. Poppick		

*\*Not Admitted to the Practice of Law*

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.