

VETERINARY LAW ALERT

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Putting a Collar on Transactions: New York's Bid to Control Veterinary Clinic Transactions

Earlier this fall, the New York State Assembly introduced Assembly Bill 9042, titled *Disclosure of Material Changes to Veterinary Clinics*. If enacted, the bill would amend the current Agriculture and Markets Law to require veterinary clinics to submit notice and documentation to the New York Attorney General ("AG") prior to completing certain sales and other transactions. In addition, it would grant the AG authority to prohibit the acquisition of veterinary clinics deemed to be against the public interest.

Status of the Bill

The bill is in early committee referral stage and is pending before the Agriculture Committee of the New York State Assembly. The bill has not been passed by the New York State Assembly or signed into law.

Notice of Material Changes

Section 442 of Assembly Bill 9042 sets forth the following proposed process. Pursuant to the bill, an acquiring entity of a veterinary clinic, defined to include healthcare providers engaged in veterinary medicine, whether small practices, groups, or management service organizations that provide all or substantially all of the administrative or management services under contract with such clinics, must submit written notice of any transaction involving a "material change" to the Department of Agriculture and Markets (the "Department") no later than fourteen (14) days after the transaction has been agreed to and prior to the consummation of all or any portion of the transaction.

For purposes of the bill, a "material change" shall include any of the following:

- (a) the sale, transfer, lease, or other encumbrance of a material amount (\$200,000 or more) of a veterinary clinic's assets or operations;
- (b) a merger, acquisition, or a contracting affiliation with another vet clinic or provider organization; or

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(c) a capital distribution or similar reduction of a veterinary clinic's equity capital by a material amount or the incursion of an obligation that commits the veterinary clinic to make a capital distribution or similar reduction of equity by a material amount.

Immediately upon receiving the notice, the Department will then submit electronic copies to the antitrust, health care and charities bureaus of the AG's office to assess whether the proposed material change is against the public interest. The Department will also make certain terms of the proposed transaction public on its website. The submission requirements are extensive and, importantly, exempt from disclosure under New York's Freedom of Information Law. As part of the notice requirement, acquiring entity must provide documented related to the following: the transaction, governance, financial materials, organizational charts, a list of ongoing litigation, and details about healthcare investments that have closed or reduced services in the past three (3) years.

Weighing Public Interest

Under Section 443 of Assembly Bill 9042, no person is permitted to sell, transfer, lease, exchange, option, or otherwise encumber a material amount of a veterinary clinic's assets or operations in a manner deemed to be against the public interest unless the AG determines that there is no feasible alternative to prevent a clinic's closure or greater loss of veterinary services.

A transaction is considered against the public interest if it results in any of the following:

- (a) reduced competition or increased costs for veterinary care to pet owners;
- (b) unfair methods of competition or deceptive acts or practices in or affecting veterinary care commerce;
- (c) reduced quality of care;
- (d) reduced access to or availability of veterinary care for pet owners; or
- (e) reduced access to care in a rural, low-income or disadvantaged community

The bill requires that the AG determine whether such transaction is against the public interest and if so, the AG is required to notify the parties within ninety (90) days of receiving the submission from the Department. If the parties do not voluntarily terminate the transaction after receiving the notice, the AG may initiate a legal action to enjoin the transaction. If no determination is made within the ninety (90) day period, the parties may proceed with the transaction, provided, however, that the lack of determination shall not be construed as any ruling or determination if such sale goes against the public interest.

Failure to notify the Department of a proposed transaction may result in civil penalties (to be accrued on a daily basis from the date of violation).

Deal Considerations

Assembly Bill 9042 represents a significant expansion of regulatory oversight in the veterinary industry, establishing a structured framework for pre-closing notification and review of material veterinary transactions in New York. The bill requires acquiring entities to submit comprehensive documentation to the Department of Agriculture and Markets, which is then shared with the AG office to determine whether a transaction is against the public interest.

If the proposed bill is enacted into law in New York, all transactions resulting in a “material change” will be structured with deferred closings, whereby buyer and seller will agree sign an agreement with a deferred closing date, subject to specific requirements and/or conditions. During the deferral period, the buyer and seller will have agreed to the terms of the deal, but legal ownership and payment will be delayed until certain specified conditions – including AG approval – are satisfied. It will also be necessary for buyers and sellers to discuss termination rights upon failure to receive AG approval.

If you are considering selling your New York based veterinary practice or engaging in a transaction in the industry, or for questions about this proposed legislation, please contact:

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