

LEGAL UPDATE

Announced Measures to Further Tighten Up WNT for Healthcare Sector Possibly Postponed

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It has been known for some time that the legislator wants to get rid of structures through which healthcare providers 'circumvent' the remuneration ceiling for directors. Following reports about this in the Dutch financial daily FD, Minister Bruins for Medical Care [wrote](#) on 23 November 2017 that he would publish a position on 'creative' private limited liability company (BV) structures in early 2018. On 22 February 2018, minister Bruin and minister Ollongren sent a [letter](#) to the Dutch House of Representatives in which they stated that they intend to amend the Standards for Remuneration Act (WNT). The report on the House committee meetings on this subject was published at the end of May 2018. During these consultations, the Minister stated that a second letter would follow. Time for an update.

Measures in the healthcare sector

Two of the three announced measures relate to (BV structures in) the healthcare sector.

The first measure concerns decoupling the application of the Standards for Remuneration Act from the statutory accreditation of care institutions. Currently, the Standards for Remuneration Act only applies to institutions that have been accredited under the Care Institutions (Accreditation) Act. Therefore, the Standards for Remuneration Act does not apply to BVs that provide care to such accredited institutions as subcontractors.

Placing all institutions that provide care under the Health Insurance Act or Chronic Care Act within scope of the Standards for Remuneration Act will ensure that institutions that provide care under a contract with another institution (i.e. subcontractors) also fall directly within scope of the Standards for Remuneration Act.

The second measure concerns revising the definition of 'affiliated legal entities'. If a senior official works both for an institution subject to the Standards for Remuneration Act ('WNT institution') and for an affiliated legal entity, the sum of the remuneration received from both institutions may not exceed the maximum remuneration standard applicable to the WNT institution. This 'anti-cumulation provision' is an existing provision in the Standards for Remuneration Act, but currently it only has a 'downward' effect. Therefore, only the subsidiary of a WNT institution qualifies as 'affiliated legal entity' (and thus falls within scope of the Standards for Remuneration Act). The intention is to amend this provision so that it will also have an 'upward' effect, meaning that the parent company will also fall within scope of the Standards for Remuneration Act.

What is the current situation?

Minister Bruins has stated that he will soon start a legislative process to draft a bill that is in line with the reconsiderations of the three provisions, which were previously part of the bill for the Act for the Evaluation of the Standards for Remuneration Act.

The [report](#) on the House committee meetings published at the end of May shows that minister Bruins promised to send a letter this spring in which he would discuss in more detail possible structures that are permitted by law but which have not been sufficiently investigated yet the competent regulatory authorities.

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Subsequently, in their letter of 13 July 2018, minister Bruins and minister De Jonge stated that they felt that further research was needed with regard to the broader issue of 'avoidance structures in care' before new legislation could be introduced, also in view of the various bills that have been drafted and the ongoing discussions in this area. It is not clear to us whether this is the letter to which the minister referred during the House committee meetings, as the letter does not specifically relate to the Standards for Remuneration Act.

Initially, minister Bruins planned to bring the bill for the amendment of the Standards for Remuneration Act before the House at the end of the year. Although the recent reports do not specifically discuss the announced measures relating to the Standards for Remuneration Act, we expect that the measures to tighten up this Act will be postponed.

We will obviously keep you informed of the latest developments on both the Standards for Remuneration Act and the current topic of profit distributions in the healthcare sector.

This is a Legal Update from Anne Haverkort.

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