

## **Warning - Transaction Delays Expected. State Notice Requirements Ahead for Health Care M&A!**

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An increasing number of states are requiring advance notice of health care transactions. These requirements may delay transactions or result in confidential information becoming accessible to the public. Effective August 1, 2023, [New York](#)[1] enacted legislation that requires health care entities involved in material transaction(s) to provide written notice to the New York Department of Health at least 30 days prior to the closing of the transaction. In enacting the legislation, New York joined [Connecticut](#)[2], [Massachusetts](#)[3], [Nevada](#)[4], [Oregon](#)[5], [Rhode Island](#)[6], and [Washington](#)[7] as states that already require notice of certain health care transactions. This reflects a growing concern among regulators that healthcare M&A, especially Private Equity backed acquisitions, may require additional oversight or approval due to concerns about increased healthcare costs or corporate practice of medicine. [California](#)[8], [Illinois](#)[9] and [Minnesota](#)[10] are the latest states to enact health care transaction reporting requirements. While these requirements will not take place until 2024, we are highlighting each state's notification requirements and sharing recommendations on how private equity investors can best prepare for and navigate these new requirements.

### **California**

California implemented a notice requirement with the espoused goal of evaluating transactions that may have a material impact on the cost, quality, and market consolidation of California health care programs. California will begin accepting notices of health care transactions beginning January 1, 2024, for transactions that will close on or after April 1, 2024. Transactions closing prior to April 1, 2024, are exempt. Under the notice requirements, health care entities must submit the notice of the transaction at least 90 days prior to the closing of a material transaction to California's Office of Health Care Affordability ("OHCA"). The statutory definition of a "health care entity" is broad enough to encompass most health care businesses and is even more broadly defined under California's proposed emergency regulations which are to be finalized and become effective before the end of the year. Further, while a seller entity may be small enough to avoid the reporting, the purchaser will likely qualify.

California's proposed emergency regulations also provide that OHCA will conduct a 60-day preliminary review to determine whether the transaction must undergo a Cost and Market Impact

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Review (CMIR). If a CMIR is deemed to be necessary, the CMIR will be completed within 90 days of the final decision by OHCA to conduct a CMIR, however, OHCA may extend the CMIR review by 30 days if it needs additional time to complete the review. OHCA may also toll the time periods when waiting for documentation related to the transaction or if waiting on other state or federal regulatory agencies or courts to review the transaction which may impact OHCA's review of the transaction.

On November 28, 2023, California posted [notification](#) of the proposed emergency regulatory action and OHCA's plans to file the emergency rulemaking package with the Office of Administrative Law ("OAL") at least 5 working days after the date of the notice. Upon filing, OAL will have 10 calendar days within which to review and make a decision on the proposed emergency action. If approved, OAL will file the regulations with the Secretary of State and the emergency regulations will become effective. When finalized, the proposed emergency regulations will provide more detail regarding health care entities, what circumstances require notice, and more information regarding the CMIR process. Health care providers and private equity investors that contemplate a transaction closing on or after April 1, 2024, in California will want to closely follow the release of the finalized regulations and consult legal counsel on the implications of the notice of health care transactions which could significantly delay the transaction.

## **Illinois**

Illinois will also require notice of transactions, effective January 1, 2024. Health care facilities and provider organizations that are parties to a covered transaction must provide notice of the transaction to the Attorney General no later than 30 days prior to the closing or effective date of the transaction.

The purpose of the reporting is to allow the Attorney General the necessary information and time to determine if it desires to conduct an investigation or enforce state or federal anti-competitive laws then or at a later date. The Attorney General is provided a 30-day period to review and request additional information which will trigger an additional 30-day delay on the transaction from the date of the submission of the additional information. As a result, a transaction is subject to a minimum 30 day hold on completing a transaction.

## **Minnesota**

On May 26, 2023, the Governor of Minnesota signed into law specific reporting requirements for certain categories of health care transactions. This reporting requirements vary depending on the annual revenues of the health care entities and increase in scope and scale on January 1, 2024.

The first phase of the regulations became effective in May 2023. This phase requires notice and data reporting to the Attorney General and Minnesota Commissioner of Health of all transactions where: (1) the health care entity involved in the transaction has average revenue of at least \$80 million per year; or (2) the transaction will result in an entity projected to have average revenue of at least \$80 million per year once the entity is operating at fully capacity. Notice must be provided at least 60 days before the proposed completion date of the transaction.

Effective January 1, 2024, the reporting requirements broaden to include health care entities with lower annual revenues but for this category, the health care entity must provide certain data requirements to the Commissioner at least 30 days before the proposed completion date of the transaction, or, within 10 business days of the date the parties first reasonably anticipate entering into the transaction if the expected completion is less than 30 days.

## Key Considerations:

These reporting requirements require the disclosure of sensitive information to state agencies and can result in significant transaction delays. While many of these requirements are new or even still evolving, it is important for any purchaser or seller to take these requirements into account and to consult with counsel to strategically plan how to mitigate the impact. Investors and sellers should work with their attorneys to carefully monitor the changing landscape around reporting and take steps to modify deal timelines wherever possible to close prior to the dates that reporting requirements go live and strategically assess what information must be disclosed and identify mechanisms to protect the confidentiality of such reports.

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[1] See also, N.Y. Pub. Health L. §§ 4550-4552.

[2] Conn. Gen. Stat. § 19a-486i.

[3] Mass. Gen. Laws Ch. 6D §13.

[4] Nev. Rev. Stat. § 598A.370.

[5] Oregon Revised Statute §§ 415.500 *et seq.*; Oregon Admin. Rules 409-070-0000 *et seq.*

[6] See the State of Rhode Island Hospital Conversions Act.

[7] Wash. Rev. Code Ann. § 19.390.030.

[8] Cal. Health & Safety Code §§ 127500 *et seq.*

[9] Illinois HB-2222.

[10] [Minnesota HF 402](#).

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