

New York Proposes Expansion of Disclosure Requirements for Material Health Care Transactions

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Governor Kathy Hochul released the proposed Fiscal Year 2026 New York State Executive Budget on January 21, 2025 (FY 26 Executive Budget). The FY 26 Executive Budget contains an amendment to Article 45-A of New York's Public Health Law (hereinafter, the Disclosure of Material Transactions Law), which has been in effect since August 1, 2023. The law currently requires parties to a "material transaction" to provide 30 days pre-closing as well as post-closing notice to the New York State Department of Health (DOH). Since the law has taken effect, DOH has received notice of 9 material transactions, the details of which are listed on its [website](#). If enacted, the amendment will change the reporting parties' notice requirement, extend waiting periods, and increase DOH's oversight of material health care transactions.

Existing Pre-Closing Notice Requirements

The Disclosure of Material Transactions Law currently requires a written notice to be submitted to DOH at least 30 days prior to the proposed material transaction's closing. A transaction will be considered "material" if any of the below occur, whether in a single transaction or through a series of related transactions during a rolling 12-month period that results in a health care entity increasing its gross in-state revenues by \$25 million or more:

- A merger with a health care entity;
- An acquisition of one or more health care entities, including, but not limited to, the assignment, sale, or other conveyance of assets, voting securities, membership, or partnership interest or the transfer of control (which is presumed if any person, directly or indirectly, owns, controls, or holds with the power to vote, 10% or more of the voting securities of a health care entity);
- An affiliation or contract formed between a health care entity and another person; or
- The formation of a partnership, joint venture, accountable care organization, parent organization, or management service organization for the purpose of administering contracts with health plans, third-party administrators, pharmacy benefit managers, or health care

providers.

The law requires all “health care entities”, defined under Article 45-A of New York’s Public Health Law to include physician practices or groups, management services organizations or similar entities that provide all or substantially all administrative or management services under contract with at least one physician practice, provider-sponsored organizations, health insurance plans, and any other health care facilities, organizations, or plans that provide health care services in New York (except for insurers or pharmacy benefit managers regulated by the New York State Department of Financial Services), to submit the notice to DOH. Such notice must include:

- The names of the parties to the transaction and their current addresses;
- Copies of any definitive agreements governing the terms of the material transaction, including pre- and post-closing conditions;
- Identification of all locations where each party provides health care services and the revenue generated in the state from such locations;
- Any plans to reduce or eliminate services and/or participation in specific plan networks;
- The closing date of the transaction;
- A brief description of the nature and purpose of the proposed transaction;
- The anticipated impact of the material transaction on cost, quality, access, health equity, and competition in the markets the transaction will impact, which may be supported by data and a formal market impact analysis; and
- Any commitments by the health care entity to address anticipated impacts.

Change to Pre-Closing Notice Requirement

The proposed amendment to the Disclosure of Material Transaction Law would modify the timing and content requirements of the required notice to DOH. First, the written pre-closing notice would need to be submitted to DOH at least 60 days prior to the closing of the proposed transaction, as opposed to 30 days under the current law. Second, the written pre-closing notice would require:

- A statement as to whether any party to the transaction, or a controlling person or parent company of such party, owns any other health care entity which, in the past three years has closed operations, is in the process of closing operations, or has experienced a substantial reduction in services; and if so,
- A statement as to whether a sale-leaseback agreement, mortgage, lease payments, or other payments associated with real estate are a component of the proposed transaction. If so, the parties shall provide the proposed sale-leaseback agreement or mortgage, lease, or real estate documents with the notice.

DOH Preliminary Review

When the Disclosure of Material Transactions Law was initially proposed in the [Fiscal Year 2024 Executive Budget](#) (FY 24 Executive Budget), it included not only the notification requirement but also a DOH approval process. Under the FY 24 Executive Budget proposal, each material transaction would be subject to DOH review and approval, including DOH’s consideration of several factors (Review Factors), such as:

- If the potential positive impacts of the transaction outweigh any potential negative impacts;
- Potential anticompetitive effects of the transaction;
- The parties’ financial conditions;

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- The character and competence of the parties, their officers, and their directors;
 - The source of funds or assets involved in the transaction; and
 - The fairness of the exchange.

The amendment to the Disclosure of Material Transactions Law proposed in the FY 26 Executive Budget does not revive the Review Factors. However, it does provide that DOH shall conduct a preliminary review of all proposed transactions and, at its discretion, conduct a full cost and market impact review of the transaction. DOH shall notify the parties of the date the preliminary review is completed, and if DOH requires a full cost and market impact review, it shall notify the parties that such a review is required. The law does not specify a timeframe by which DOH must complete its preliminary review. However, if a full cost and market impact review is required, DOH has the power to delay the transaction until the review's completion, however, closing cannot be delayed more than 180 days from the completion of the preliminary review. As part of a review, DOH may require the parties to the transaction (including parent and subsidiary companies of the parties) to submit additional documentation and information as necessary. Additionally, DOH may require that the parties to a transaction pay to DOH all actual, reasonable, and direct costs incurred by DOH in reviewing and evaluating the notice. Any information obtained by DOH pursuant to the cost and market impact review may be used by DOH in assessing certificate of need applications submitted by the parties. The proposed amendment to the Disclosure of Material Transactions Law in the FY 2026 Executive Budget does not propose a DOH approval process for material transactions, as initially sought in the FY 24 Executive Budget. However, it does give DOH the power to delay transaction closings until it receives all requested information from the parties.

Five-Year Transaction Reporting Requirement

The proposed amendment would add an annual reporting requirement for five years following the transaction's closing. Each year on the anniversary of the transaction's closing, the parties to the material transaction would need to provide a report to DOH so that DOH can assess the impact of the transaction on cost, quality, access, health equity, and competition. In addition, DOH may require any parents or subsidiaries of the parties to the material transaction to submit to DOH within 21 days upon request information needed for DOH to assess the impact of the transaction on cost, quality, access, health equity, and competition.

Implications

The proposed amendment indicates the DOH's desire to heavily regulate and increase its oversight over health care transactions in New York. Including a cost and market impact review signals that DOH may be trying to move toward a more comprehensive review and approval process similar to the [framework](#) implemented in Massachusetts in 2012. For providers and other entities who are currently party to a transaction, or contemplating entering into such a transaction, that would be subject to the Disclosure of Material Transactions Law, it is important to note that these proposed amendments may significantly lengthen the timeline of your transaction. In this case, it may behoove such providers and others to proceed with such transactions sooner rather than later.

We will continue to monitor and report on this proposal and other state legislative efforts to broaden the scope of government review of health care transactions.

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