

New York State Releases Much Anticipated Guidance on Reporting Requirements for Material Healthcare Transactions as Budget Negotiations Near Conclusion, Potentially Expanding Law to Include Pre-Closing Review

Article By:

Leonard Lipsky

Carly Eisenberg Hoinacki

Daniel Shemano

On August 1, 2023, the New York State’s Department of Health (the “DOH”) [began implementation](#) of Public Health Law Article 45-A, the State’s new statutory requirement for advance notice and public disclosure of certain material health care transactions (the “Material Transactions law”). Now, in response to questions from the healthcare community regarding the reporting requirements and statutory interpretation, the DOH has released a set of [Frequently Asked Questions](#) (FAQs) to clarify the scope and application of the Material Transactions law.

As discussed in our [prior post](#), the Material Transactions law applies to statutorily defined “health care entities” entering into “material transactions” and requires those entities to notify the DOH at least thirty (30) days prior to closing of the transaction. A “material transaction” includes mergers, acquisitions, affiliations, or the formation of certain partnerships that, individually or in the aggregate over a rolling twelve-month period, result in an increase of \$25 million or more in gross in-state revenue. The FAQs provide important guidance regarding the types of transactions and entities that are covered under the law, how to evaluate the financial thresholds for reportability, and the expected content of the notice.

This update highlights key takeaways from the new guidance.

Expanded Interpretation of “Health Care Entity”

The FAQs clarify that the definition of a “health care entity” is to be interpreted broadly. While the statutory language already included a physician practice group, management services organization (MSO), provider-sponsored organization, health insurance plan, and any other kind of health care facility, organization, or plan that provides health care services in New York, the FAQs specify that “health care entity” includes dental practices, clinical laboratories, pharmacies, wholesale

pharmacies (including secondary wholesalers), independent practice associations (IPAs), and accountable care organizations (ACOs). The DOH notes that the above list is not exhaustive, but illustrative of the types of entities covered under the Material Transactions law.

Clarification on the \$25 Million Threshold and “De Minimis” Transactions

The FAQs provide greater detail on how the \$25 million materiality threshold is to be calculated under the Material Transactions law. The DOH confirmed that this figure should be measured on an annual basis, based on a rolling twelve-month “lookback” period preceding the anticipated transaction closing date. Entities must evaluate both single transactions and any series of related transactions that occur, or will occur, within this period. The FAQs also emphasize that gross in-state revenue must be assessed for each transaction within the applicable lookback period, based on the actual or anticipated closing date of each individual transaction.

The DOH’s examples clarify that the \$25 million threshold is not tied to revenue growth caused by the transaction, but rather to the combined gross in-state revenue of the parties to the transaction. For example, if Company A and Company B are planning to merge or if one is acquiring the other, and Company A generated \$20 million and Company B generated \$10 million in New York-sourced revenue during the lookback period, the combined in-state revenue of \$30 million would exceed the threshold, rendering the transaction reportable. This is true even if the transaction does not independently increase the surviving entity’s in-state revenue by \$25 million or more.

Similarly, if a health care entity completes multiple related transactions during a rolling twelve-month period—each involving different counterparties—the added in-state revenue attributable to each transaction must be aggregated for purposes of determining whether the threshold is met. The FAQs include illustrative scenarios where three separate deals, closed at different times within the lookback period, together exceed the \$25 million mark and trigger a reporting obligation.

The DOH has also confirmed that a transaction may be reportable even if none of the parties are domiciled or licensed in New York, so long as the transaction would result in \$25 million or more in gross in-state revenue attributable to New York operations.

Treatment of Transactions with Multiple Regulatory Components

The FAQs provide important clarification for transactions that include multiple components, where some portions are subject to existing regulatory review processes or approvals under other provisions of the Public Health Law (e.g., Articles 28, 30, 36, 40, 44, 46, 46-A, or 46-B), such as the Certificate of Need (CON) approval process.

According to the DOH, parties must separately evaluate those components of the transaction that are not subject to these existing review frameworks. If the gross in-state revenue attributable to the portions of the transaction that are not subject to another regulatory review process or approval equals or exceeds \$25 million, then the transaction is still reportable under the Material Transactions law, even if other parts of the transaction are already being reviewed through another regulatory process.

The DOH places responsibility on the parties to perform a good faith estimation of the in-state revenue associated with each portion of the transaction and to determine whether the elements not otherwise subject to review independently trigger the reporting threshold.

Expectations for Transaction Impact Assessment

Until the DOH issues its electronic Material Transactions Notice Form, parties are expected to provide a good faith assessment of how the transaction may impact cost, quality, access, health equity, and competition. The FAQs outline illustrative factors for consideration, such as changes to services, insurance network participation, locations, staffing levels, and services to historically underserved populations as well as rate increases and any increase in market consolidation.

While the guidance does not mandate a particular methodology for evaluating impact, the inclusion of specific considerations provides stakeholders with a useful framework for preparing responsive disclosures.

Public Comment Process

The DOH also outlines the public comment process with respect to reported transactions. A summary of each reported transaction is posted on the DOH website, and interested parties may submit comments by email. Notably, there is no subscription list or automatic update service; stakeholders must check the DOH website regularly to stay informed.

Looking Ahead

The release of the FAQs coincides with proposed legislation included in Governor Hochul's FY 2025-26 executive [budget](#) that would expand the Material Transactions law and the DOH's authority under it. If enacted, the proposal would shift the law from a notice-only regime to one that includes a pre-closing preliminary review, at the discretion of the DOH, a cost and market impact review, and a required annual five-year post-closing reporting obligation of the parties to a transaction of the impact of the transaction on cost, quality, access, health equity, and competition. It would also require that notice be provided at least 60 days, rather than 30 days (as currently required), prior to the closing date of a material transaction.

The deadline for passing the New York State budget, which was due on April 1, 2025, has already been extended once to April 3, 2025, and is poised to be extended again today until April 9, 2025, as the Legislature and Governor Hochul continue budget negotiations. It remains to be seen if the proposed expansion of the Material Transactions law will be agreed upon in its current form, if at all.

While the FAQs provide an important first step in offering interpretive guidance, additional detail, particularly regarding the forthcoming electronic Material Transactions Notice Form, potential future rulemaking (if any), and the outcome of the proposed legislative changes, will be critical in shaping transaction strategies and reporting practices and obligations going forward.

[Listen to this post](#)

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volume XV, Number 97

Source URL: <https://natlawreview.com/article/new-york-state-releases-much-anticipated-guidance-reporting-requirements-material>