

## **Alert** | Health Care & FDA Practice



May 2023

### **New York State’s Recently Passed Budget Includes Significant New Requirements for Health Care Transactions**

The New York state budget adopted on May 3, 2023, includes a new law imposing significant notice and disclosure requirements to the Department of Health (DOH) for certain health care transactions involving physician practices and other health care entities.<sup>1</sup>

Under the new law, health care entities must notify the Department of Health of certain “material transactions” 30 days prior to closing. Consistent with the Governor’s original proposal (described in a [February 2023 GT Alert](#)), the term “material transaction” is defined broadly to include mergers, acquisitions, affiliations, and the formation of partnerships, joint ventures, accountable care organizations, and management services organizations. Importantly, however, the final version of the law establishes a “de minimis” threshold of \$25 million or more in “total gross in-state revenue” for the transaction to be considered material and subject to the notice requirement. The law includes a broad definition of “health care entity” and applies to transactions involving management services organizations and other entities that provide substantial administrative services to physician practices, provider sponsored organizations, health insurance plans, and other health care facilities.

---

<sup>1</sup> See Part M, Article 45-A on [page 119](#) of the enacted Health and Mental Hygiene bill.

In addition to pre-closing notice to DOH, the law requires DOH to provide electronic copies of the notice and supporting documentation to the Office of the Attorney General's Antitrust, Charities, and Health Bureaus. DOH must notify the public of the transaction by posting information on its website and allow for public comment during the 30-day pre-closing notice period.

Importantly, the new law provides DOH with broad latitude to adopt a process governing the notice and disclosure process. Specifically, the law:

- requires DOH to promulgate regulations governing the notice process, including the submission of supporting documentation;
- empowers DOH to impose requirements regarding information to be provided upon the closing of a material transaction; and
- authorizes DOH to promulgate additional regulations that may be necessary to clarify certain key issues, such as the definition of a "material transaction" and the calculation of "total gross in-state revenues."

Although the law does not give DOH the authority to approve material transactions, DOH could use the notice process and supporting documentation requirements to exercise greater oversight, particularly as to the transaction's impact on cost, quality, health equity, and competition.

Under the State Administrative Procedure Act, DOH must provide notice of any proposed regulation, and this will be an opportunity for interested parties to submit comments. Although the law takes effect on Aug. 1, 2023, it is unclear whether DOH will have finalized the regulations by that date.

## Authors

This GT Alert was prepared by:

- [Tricia A. Asaro](#) | +1 518.689.1416 | [Tricia.Asaro@gtlaw.com](mailto:Tricia.Asaro@gtlaw.com)
- [Harold N. Iselin](#) | +1 518.689.1415 | [iselinh@gtlaw.com](mailto:iselinh@gtlaw.com)
- [Nicola T. Coleman](#) | +1 518.689.1481 | [Nicola.Coleman@gtlaw.com](mailto:Nicola.Coleman@gtlaw.com)
- [Randi Imbriaco](#) | +1 229.596.6513 | [Randi.Imbriaco@gtlaw.com](mailto:Randi.Imbriaco@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Berlin.~ Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Las Vegas. London.\* Long Island. Los Angeles. Mexico City.+ Miami. Milan. » Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.° Shanghai. Silicon Valley. Singapore.~ Tallahassee. Tampa. Tel Aviv.^ Tokyo.° Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. °Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ~Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. °Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg*

*Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2023 Greenberg Traurig, LLP. All rights reserved.*