

Alert | Health Care & FDA Practice



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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.¹

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.

¹ 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.

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