



## New York State Requires Health Care Entities to Disclose Certain Material Transactions

Effective August 1, 2023, certain types of health care transactions involving health care entities in New York State are now subject to a newly created notification process. While certain health care entities licensed by the State already have to go through approval or notice processes when pursuing certain transactions, this new law expands the notice requirement to additional health care entities. Now, additional “Health Care Entities” are required to provide to the State notice for certain “Material Transactions”.

Under the new Public Health Law Section 4550 et. seq., a Health Care Entity must submit to the New York State Department of Health, written notice of a Material Transaction at least 30 days prior to the anticipated closing. The written notice must include:

- the names and addresses of the parties;
- copies of definitive agreements;
- the subject locations and revenue generated in the state from each location;
- plans to reduce or eliminate services or participation in plan networks;
- the closing date;
- a description of the nature and purpose of the transaction including:
  - a statement of the anticipated impact of the transaction on cost, quality, access, health equity and competition in the market area, and
  - any commitments by the parties to address the anticipated impacts.

The law defines the term Health Care Entity as a physician practice, group, or management services organization or similar entity (but not including an insurer or pharmacy benefit manager registered or licensed in the State). Material Transactions include entering into a merger, acquisition, affiliation, or formation of a partnership, joint venture, ACO, or management services organization. The new law contains an exception to the notice requirement for de minimis transactions. De minimis transactions are a single transaction or a series of related transactions which result in a health care entity increasing its total in State gross revenues by less than \$25,000,000. The de minimis threshold will result in fewer health care entities reporting transactions to the State.

While the new law provides that the definitive agreements are not subject to the State’s FOIL laws during the 30 day period from the date the notice is submitted and until the anticipated closing date of the transaction, the Department of Health will provide the entire package of information to the New York State Attorney General’s Office and will post a summary of the proposed transaction on its website. The Department of Health will include, on its website, an explanation of the impacted groups and/or individuals, information about services provided by the parties and their commitments relating to continuing, reducing or eliminating same and providing the public with instructions for submitting comments. The law does not appear to provide the parties to the transaction with any input on the statement or to challenge any such statement. The new law also ignores confidentiality and non-disclosure agreements between the parties.

Currently, the Department of Health has no authority to approve or withhold approval of the transaction or to prevent the closing of the transaction from occurring. A Health Care Entity that fails to notify the Department of Health of a Material Transaction could be subject to a civil penalty of not more than \$2,000 per day per violation. Under certain specific circumstances the penalties can be increased to up to \$10,000 per day per violation. After April 1, 2026, these penalties may also include the commissioner of the Department of Health requesting the Attorney General to bring an action for an injunction against any person who violates any provision of the New York State Public Health Law.

The new law appears to be consistent with the current administration's desire to increase scrutiny of certain health care transactions. Although the law went into effect on August 1, 2023, the Department of Health has provided limited instructions on its website. We will continue to monitor and report on any developments.

**For more information, please contact:**

**David F. Durso, Esq.**  
**516.663.6667**  
**[ddurso@rmfpc.com](mailto:ddurso@rmfpc.com)**

**Leora F. Ardizzone, Esq.**  
**516.663.6538**  
**[lardizzone@rmfpc.com](mailto:lardizzone@rmfpc.com)**