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Healthcare Alert

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Illinois Attorney General requires notice of healthcare transactions

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Illinois continues a nationwide trend of states imposing scrutiny on healthcare transactions—and the impact remains to be seen.



What's the impact?

- Health care facilities and provider organizations must notify the Illinois Attorney General's office of any proposed covered transaction within the state or with any out-of-state entity that generates at least \$10 million in annual revenue from Illinois residents.
- There is a potential for delays in closing covered transactions if the attorney general requests additional information.
- Failure to comply with notification requirements may result in penalties of up to \$500 per day.

Effective January 1, 2024, Illinois Public Act 103-0526 (the Act) requires healthcare facilities and provider organizations to provide 30 days' notice to the Illinois Attorney General (AG) of certain transactions, using the [Illinois AG Healthcare Transaction Notice Form](#) (Notice Form).

As previously discussed, when HB 2222 passed the Illinois House of Representatives in March, Public Act 103-0526 [requires 30 days' notice](#) to the Illinois AG of covered transactions, including any merger, acquisition, or contracting affiliation for any entity not previously under common ownership or contracting affiliation. Notice is also required for any covered transaction with any out-of-state entity that generates at least \$10 million in annual revenue from Illinois residents. Any transaction submitted to the Illinois Health Facilities and Services Review Board, as required by the Illinois Health Facilities Planning Act, is automatically submitted to the AG for review. Additionally, any health care facility or provider organization that files a premerger notification with the Federal Trade Commission (FTC) or the Department of Justice (DOJ), in compliance with the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act), must provide a copy of the HSR filing to the AG at the same time. Parties that do so satisfy the notice requirement and are not separately required to submit the Notice Form.

For any covered transaction not described above as requiring a filing under the Illinois Health Facilities and Services Review Board or the HSR Act, the health care facility or provider organization party to the transaction must provide written notice to the Illinois AG via the [Notice Form](#).

Within 30 days of receiving notice of the covered transaction, the AG can request additional information. The covered transaction cannot proceed until 30 days after the parties have “substantially complied” with such a request. Parties to covered transactions are subject to civil penalties of not more than \$500 per day for each day the party fails to comply with the notice requirements or the AG’s requests for additional information. The health care facility or provider organization has ten days from the date of the noncompliance notification to come into compliance with the notice requirements before penalties are assessed.

Who is affected?

The Act defines “health care facilities” to include:

- / Ambulatory surgical treatment centers licensed under the Ambulatory Surgical Treatment Center Act
- / Facilities licensed under the Hospital Licensing Act
- / Hospitals, ambulatory surgical treatment centers, or kidney disease treatment centers maintained by the state
- / Kidney disease treatment centers
- / Facilities used for the performance of outpatient surgical procedures leased, owned, or operated by or on behalf of an out-of-state facility
- / Facilities used for the provision of a healthcare category of service, as defined under the Illinois Health Facilities Planning Act, including, but not limited to, cardiac catheterization and

open-heart surgery.

The Act defines “provider organizations” as any entity in the business of healthcare delivery or management representing 20 or more healthcare providers contracting with health carriers or third-party administrators for the payment of healthcare services, including physician practices, physician-hospital organizations, independent practice associations, provider networks, and accountable care organizations. This does not apply to facilities operated as part of a physician’s practice or other licensed healthcare professional practices, whether such individuals practice individually or as part of any legal structure such as professional corporations or partnerships.

Illinois Notice Form

The Notice Form asks two pre-submission questions to determine whether a party is required to submit one. First, if the transaction requires filing a premerger notification with the FTC or DOJ to comply with the HSR Act, the party is not required to fill out the Notice Form but should email the party’s HSR filing to HealthTransactions@ilag.gov. Second, if the party has filed a health care facility change-of-ownership application with the Illinois Health Facilities and Services Review Board, no submission to the AG is required. The Illinois Health Facilities and Services Review Board is required to notify the AG.

The Notice Form requires entities to include the following information:

- / Names and business addresses of parties to the transaction
- / Anticipated effective date of the proposed transaction
- / Brief description of the nature and purpose of the transaction
- / Locations where healthcare services are currently provided by the filing party
- / Contact information for the filing party, including attorney information
- / Any additional information parties would like to provide

Nationwide trend

As part of a nationwide concern regarding prices and quality of healthcare services, states are enacting legislation allowing state-level scrutiny. Illinois is now one of twelve states that have enacted some sort of notice requirement. However, the type of transaction that triggers such notice requirement, the timing of such notice, and the information required all vary such that each contemplated covered transaction will need careful analysis.

Looking ahead

The Act’s impact will become clearer in the coming months as the law takes effect. Healthcare facilities and provider organizations should prepare for potential delays and additional requests

for information by the AG. Parties to smaller transactions not currently subject to federal oversight should be mindful of the impact state AG oversight will have on these transactions. Parties to covered transactions should also be aware of the AG's ability to block deals from closing. All healthcare facilities and provider organizations entering into covered transactions must be attentive to the new notification requirements in order to avoid penalties associated with noncompliance. Nixon Peabody will continue to monitor this law and its impact on healthcare entities operating in Illinois.

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