CLIENT ALERTS & INSIGHTS

Indiana New Law Requires Written Notice of Mergers or Acquisitions of Healthcare Entities

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On March 13, 2024, Indiana Governor Eric Holcomb enacted Senate Enrolled Act No. 9 ("Indiana Law") into law, mandating that Indiana healthcare entities and private equity firms notify the Office of the Indiana Attorney General of qualifying transactions at least 90 days before closing. This legislation will become effective on **July 1, 2024**.This statute is part of a growing trend seen across various states, requiring advance notice and review of specific transactions to address potential antitrust and healthcare access, quality, cost, and equity concerns.

The scope of the Indiana Law surpasses many of its counterparts in other states. It applies to any merger or acquisition involving healthcare entities, including stock purchases, asset transfers, or changes in control, provided at least one entity is based in Indiana and at least one entity has total assets of $10 million or more.

Several aspects of the Indiana Law distinguish it from laws in other states. First, its $10 million asset threshold is notably lower than that of other states, such as California, New York or Oregon , among others, and it mandates inclusion of all combined entities and holdings in the asset calculation. Next, the definition of "healthcare entity" encompasses private equity partnerships engaging in transactions with healthcare entities regardless of geographic location. Finally, the 90-day preclosing notice period exceeds the duration of many similar laws in other states and the 60-day requirement in the National Academy for State Health Policy's Model Act for State Oversight of Proposed Health Care Mergers.

Upon triggering the notice requirements, an Indiana healthcare entity must submit written and certified notice to the Office of the Indiana Attorney General, including various documents related to the transaction, such as those filed with federal or state agencies like the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR). The required notice must be certified by a notary public and include the following:

- The business address and federal tax number;
- The name and contact information of a representative of the health care entity concerning the merger or acquisition;
- A description of the health care entity;
- A description of the merger or acquisition, including the anticipated timeline; and
- A copy of any materials that have been submitted to a federal or state agency concerning the merger or acquisition.

The Indiana Law requires the Office of the Indiana Attorney General to keep confidential all nonpublic information, and clarifies that that this confidential information may not be released to the public.

Within 45 days of notice submission, the Office of the Indiana Attorney General must review the information and, if necessary, provide a written analysis of any antitrust concerns. Indiana Law also gives the Office of the Indiana Attorney General authority to issue civil investigative demands for further information related to the transaction, enhancing oversight capabilities over healthcare provider consolidation in the state.

Stakeholders in Indiana's healthcare landscape should closely monitor developments related to this law, especially since implementing rules or agency guidance are required to address several ambiguities, including asset valuation criteria, penalties for noncompliance, and procedures in the absence of communicated antitrust concerns.

As covered by Benesch Healthcare+ team, the trend of New State Healthcare Antitrust Laws that Require Pre-Closing Notice for Healthcare Transactions continues, and Indiana joins states with previously passed notice laws, including Washington, Oregon, Massachusetts, Nevada, Connecticut, New York, Minnesota, Illinois, and California (eff. April 1, 2024), each contributing to a growing landscape of transaction oversight measures in healthcare industry.

The Benesch Healthcare+ team monitors developments in this area of the law and may provide additional updates as they become available. Please contact the authors of this article for additional information or if you have any questions.

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