

New Illinois Legislation Would Require Pre-Closing Attorney General Notice for Certain Healthcare Transactions

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On May 18, 2023 the Illinois legislature passed legislation implementing advance notice requirements for healthcare facilities and healthcare provider entities engaging in “covered transactions.” The legislation, House Bill 2222 (the “Legislation”), becomes effective January 1, 2024, once signed by Governor J.B. Pritzker. While the requirements are not unduly onerous, the scope of applicability for the new law would be vast and is likely to impact a large portion of healthcare related transactions within Illinois going forward.

The Legislation amends the Illinois Antitrust Act. Similar notice laws have recently been passed in other states. California, for example, requires change of ownership filings in any transaction where there is a change of control and that entity owns or leases property. New York also recently passed a bill that would require physician practices and management services organizations to submit a notice filing to the New York Department of Health at least 30 days prior to most mergers, acquisitions, and affiliation transactions. These laws are being passed across the country in response to growing consolidation in the healthcare industry to allow states’ to gain notice of smaller transactions that would not trigger the need for federal Hart Scott Rodino (“HSR”) antitrust filings. Attorney General Kwame Raoul has stated that the goal of the Legislation is to increase oversight of health care transactions “. . . to better assess whether action is needed to protect the public from health care facility mergers that lessen competition.”

The Legislation does not feature a minimum transaction value to trigger the notice requirement. Instead, whether notice will be required will be determined solely based upon whether an entity and transaction fall within the broadly drafted scope of the law. The Legislation will regulate any merger, acquisition, or contracting affiliation between two or more “healthcare facilities” or “provider organizations.” A “provider organization” is organized group of persons, whether incorporated or not, in the business of health care delivery or management and that represents twenty or more health care providers in contracting with health care carriers or administrators in the payment of health care services. Provider organizations include physician organizations, physician-hospital organizations, independent practice associations, provider networks, and accountable care organizations. “Healthcare facilities” are defined as hospitals, ambulatory surgery centers, kidney disease treatment centers, and outpatient surgery used to provide healthcare services, as defined under the Illinois Health Facilities Planning Act.

In addition, transactions between an Illinois healthcare entity and an out-of-state healthcare entity, where the out-of-state entity will generate over \$10 million in annual revenue from patients residing

in Illinois, will also be subject to the new notice requirement. If notice is not given, the Illinois Attorney General will have authority to pursue criminal and civil charges under the Illinois Antitrust Act.

Written notice to the Illinois Attorney General must be provided at least 30 thirty days in advance of the effective date of a covered transaction. The notice must identify, among other things, the parties, the impacted facility locations, the effective date of the transaction, and a description of the nature and purpose of the transaction. Like an HSR filing, once written notice is given, the Illinois Attorney General will have 30 days to request additional information. If the state asks for additional information, the transaction cannot close until 30 days after this additional information is provided. It is possible that this new process may cause substantial delays for transactions. Further, if the Illinois Attorney General deems the transaction to be anticompetitive, it is possible that the parties may be prevented from completing a covered transaction. Thus transactions must be carefully planned for by the parties and legal counsel.

The Benesch Healthcare+ Practice Group monitors developments in this area of the law and may provide additional updates as they become available. For additional questions, please contact the authors of this article.

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