

# NOW & NEXT

## Healthcare Alert

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### Increased AG oversight proposed for Illinois healthcare transactions

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Concerns regarding prices and quality drive Illinois Attorney General to propose new legislation that would provide more oversight of Illinois hospital transactions.



#### What's the Impact?

- / If passed, healthcare facilities and provider organizations would be required to notify the AG's office of any proposed covered transaction within the state.
- / Smaller transactions that are currently not subject to federal oversight are most likely to feel the impact.
- / Failure to comply could result in monetary penalties and/or restraining orders.

The Illinois House of Representatives has passed legislation seeking to [increase state oversight of mergers and acquisitions](#) of healthcare facilities and large provider organizations in Illinois. The bill, identified as House Bill 2222, amends the Illinois Antitrust Act, the Illinois Health Facilities Act, and the State Finance Act, and would require healthcare facilities and provider organizations to

notify the Attorney General's Office of any proposed merger,<sup>1</sup> acquisition,<sup>2</sup> or contracting affiliation<sup>3</sup> within the state (a "covered transaction"). This legislation could have material implications for the timing of covered transactions as the bill permits the attorney general to make "any requests for additional information ... that is relevant to its investigation" and prevents the consummation of the covered transaction until thirty days after the parties have complied with the requests.

Illinois Attorney General Kwame Raoul proposed the legislation, stating that such transactions lessen competition and result in higher prices for healthcare services and worsening or stagnant quality of care. Raoul posited that the bill would "[b]etter equip the Attorney General's [O]ffice with information to determine whether a proposed transaction warrants an investigation and, when necessary, a challenge for anti-competitive conduct that could substantially lessen competition or harm the public or employees." If passed in the Senate and signed into law by the governor, the law would take effect on January 1, 2024.

## What's changing?

Under current Illinois law, there is no requirement for healthcare facilities to provide notice of an upcoming covered transaction to the state attorney general. Currently, notice may be mandatory under federal law (e.g., the Hart-Scott-Rodino Act) and, in certain instances, the Illinois Health Facilities and Services Review Board rules. Additionally, current state law does not require the Illinois Health Facilities and Services Review Board to inform the attorney general of any upcoming transactions that fall within the board's authority, leading some transactions to progress under the attorney general's radar. The proposed law is designed to capture both the larger transactions that are subject to federal review criteria as well as smaller transactions that would not necessitate federal review, and would require that either the parties to the transaction or the Illinois Health Facilities and Services Review Board, as applicable, provide notice to the attorney general.

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<sup>1</sup> HB222 defines "merger" as "the consolidation of 2 or more organizations, including 2 or more organizations joining through a common parent organization or 2 or more organizations forming a new organization, but does not include a corporate reorganization."

<sup>2</sup> HB2222 defines "acquisition" as "an agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person. "Acquisition" includes the acquisition of voting securities and noncorporate interests, such as assets, capital stock, membership interests, or equity interests."

<sup>3</sup> HB222 defines "contracting affiliation" as "the formation of a relationship between 2 or more entities that permits the entities to negotiate jointly with health carriers or third-party administrators over rates for professional medical services, or for one entity to negotiate on behalf of the other entity with health carriers or third-party administrators over rates for professional medical services. "Contracting affiliation" does not include arrangements among entities under common ownership."

## Who is affected?

The Bill affects “health care facilities” and “provider organizations.” “Health care facilities” include:

- / Ambulatory surgical treatment centers required to be licensed under the Ambulatory Surgical Treatment Center Act
- / Facilities required to be 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 that are leased, owned, or operated by or on behalf of an out-of-state facility
- / Facilities used for 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.

“Provider organizations” are entities in the business of healthcare delivery or management and that represents 20 or more healthcare providers in contracting with health carriers or third-party administrators for the payment of healthcare services, and include physician organizations, physician-hospital organizations, independent practice associations, provider networks, and accountable care organizations.

The proposed law does not impact facilities that operate as part of physician or other licensed healthcare professional practices, whether such individuals practice individually or as part of any legal structure such as professional corporations or partnerships.

## What this means

If passed, the law will require healthcare facilities and provider organizations to notify the attorney general of any proposed covered transaction within thirty days of the transaction. The type of notice required will vary depending on the nature of the transaction:

- / For transactions that require a healthcare facility or provider organization to file a premerger notification under the Hart-Scott-Rodino Act, the healthcare facility or provider organization must provide a copy of such filing to the attorney general at the same time as it is filed with the federal government.
- / For transactions that do not require a Hart-Scott-Rodino filing, but do require an application for a change of ownership to be submitted to the Health Facilities and Services Review Board, the notice requirement will be satisfied when such application is submitted to the Health Facilities and Services Review Board given that the board would be required to provide a copy of the application to the attorney general.
- / For any other covered transactions, the healthcare facilities or provider organizations who are

party to such a transaction must provide a written notice to the attorney general that includes a brief description of the nature and purpose of the proposed transaction and the anticipated effective date of the proposed transaction.

The attorney general may request additional information from the parties within thirty days of the date of notice. If the attorney general requests additional information, the transaction may not proceed until thirty days after the parties have complied with the attorney general's request.

The impact the law will have on timing of covered transactions will largely depend on how aggressively the attorney general implements the law, with the largest impact likely to be on smaller transactions that are currently not subject to federal oversight.

## Enforcement

Healthcare facilities and provider organizations that fail to comply with the notice requirement are subject to a civil penalty of not more than \$500 per day for each day the facility or organization is in violation. The attorney general may also apply for and obtain a temporary restraining order or injunction, or both, if there is reason for the attorney general to believe that a healthcare facility or provider organization is engaging in a transaction without complying with the notice requirement. Before initiating such action, the healthcare facility or provider organization shall have a ten-day period to cure its alleged noncompliance.

## Outlook

This bill, if passed by the Senate and signed by the governor, would take effect on January 1, 2024. Nixon Peabody's [Healthcare team](#) will be monitoring developments related to House Bill 2222 and how it will impact healthcare entities operating in Illinois.

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