

New Notification Requirements for New York Health Care Entity-Related Transactions

By Kerry Serritella, CPA, Partner

It's no secret that health care mergers and acquisitions are on the rise nationwide. The monetary value of health care transactions has grown exponentially and New York is not short on its share of these dealings. In response to this increased activity, Governor Kathy Hochul recently issued an amendment to the New York State Public Health Law (Article 45-A) that will require written notice of any potential health care related "material transaction" which will then be forwarded to the New York Attorney General and posted on the state website for public comment during a 30-day period of review.

Material Transactions Defined

According to NY Law §4550, a material transaction includes any of the following, occurring during a single transaction or in a series of related transactions that take place within a rolling 12-month time period:

- A merger with a health care entity
- An acquisition of one or more health care entities, including but not limited to the assignment, sale, or other conveyance of assets, voting securities, membership, or partnership interest or the transfer of control
- An affiliation agreement or contract formed between a health care entity and another person; or
- The formation of a partnership, joint venture, accountable care organization, parent organization, or management services organization for the purpose of administering contracts with health plans, third-party administrators, pharmacy benefit managers, or health care providers as prescribed by the commissioner by regulation.

It's important to note that New York is including management services organizations as health care entities – one of the few states to do so.

Additionally, the State must also be notified upon the closing of any material transaction, with hefty penalties imposed for non-compliance.

Excluded as Material Transactions

The amendment goes on to **exclude** the following:

- A clinical affiliation of health care entities formed for the purpose of collaborating on clinical trials;
- Graduate medical education programs;
- Any transaction that is already subject to review under the Certificate of Need process;
- "De minimis" transactions which result in a health care entity increasing its total gross in-state revenues by less than \$25 million.

Awaiting Clarification

As of now, there are still a number of ambiguous elements of the Bill that need to be clarified prior to the August 1, 2023 effective date, including a defined process for disclosure and notice.

Despite the regulations becoming increasingly arduous, mergers and acquisitions in the health care sector have never been more popular among practices and investors alike.

Contact Us

PKF O'Connor Davies has a dedicated professional accounting, auditing, tax and advisory team for medical practices big and small. We walk alongside our clients as they determine the best avenue for success, help them navigate the negotiations and lead them through the finish line. Let us help you with the next steps for your practice.

David Marks, CPA

Partner

845.670.7103 | dmarks@pkfod.com

Kerry Serritella, CPA

Partner

845.670.7129 | kserritella@pkfod.com

Our Firm provides the information in this e-newsletter for general guidance only and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.