

Massachusetts Significantly Expands Its Oversight in Health Care Deals

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On January 8, 2025, Massachusetts Governor Maura Healey signed a new law, [House Bill 5159](#), expanding the state's existing health care transaction notification requirement and creating new health care reporting requirements for private equity funds, health care real estate investment trusts, management services organizations, and pharmaceutical companies.

Massachusetts joins a growing number of states that have enacted or expanded their own merger notification requirements—many of which are specifically aimed at health care transactions—known as “[Baby HSR laws](#).” These Baby HSRs are designed to promote increased state antitrust scrutiny of transactions and often cover transactions valued below the [thresholds](#) requiring notice to the federal government under the Hart-Scott Rodino (HSR) Act. Winston maintains a [survey](#) of these Baby HSR laws' requirements.

This law—like those of several other states with Baby HSRs, including California, Connecticut, Hawaii, Nevada, New Hampshire, Oregon, Rhode Island, and Washington—specifically targets health care transactions. [According to House Speaker Ronald J. Mariano \(D-Quincy\)](#), the new law responds to concerns arising from the bankruptcy of Steward Health Care, which led to the closure of two Massachusetts hospitals: “Before Steward Health Care ultimately collapsed, executives spent years hiding their financial information from state regulators, putting patients and our health care system at risk. That’s why ensuring that our institutions are equipped to monitor the health care landscape, and to guard against trends and transactions that drive up costs without improving patient outcomes, is so important.” Steward Health Care’s bankruptcy has been attributed in part to its [sale and lease back of the real estate](#) underlying its hospitals to an entity owned in part by management and equity investors.

EXPANSION OF THE STATE’S MATERIAL CHANGE NOTIFICATION

The State of Massachusetts already had a notification regulation in place requiring parties to a health care transaction that causes a “material change,” such as a change in ownership, to notify the Massachusetts Health Policy Commission (HPC) at least 60 days in advance of their planned closing date. As part of this process, the HPC is charged with evaluating the proposed change to determine whether it is likely to impact on the state’s health care cost growth benchmark or the competitive market.

House Bill 5159, titled “An Act enhancing the market review process,” expands the definition of “material change” to now include, among others: (1) significant expansions in a provider or provider organization’s capacity; (2)

transactions involving a significant equity investor which result in a change of ownership or control of a provider, provider organization or a carrier; (3) significant transfers of assets including, but not limited to, real estate sale lease-back arrangements; and (4) conversions of a provider or provider organization from a non-profit entity to a for-profit entity. The new law also expands HPC's right to seek documents and information regarding the material change beyond parties to the transaction to now include significant equity investors and other associated parties. As part of this right, HPC may request information about "the significant equity investor's capital structure, general financial condition, ownership and management structure, and audited financial statements." Finally, the new law provides for ongoing reporting requirements, allowing HPC to require data submissions from providers for 5 years post-transaction to "assess the post-transaction impacts of a material change," and expands the attorney general's authority to review and investigate proposed changes. In particular, material change transactions cannot be completed if the Massachusetts attorney general brings a lawsuit to block the transaction until a court renders a final judgment resolving the lawsuit.

KEY TAKEAWAYS

Health care providers or potential investors in health care providers should consult counsel to determine whether a proposed transaction would trigger a material change notification requirement in Massachusetts or notifications to other federal and state agencies. Winston & Strawn attorneys regularly advise clients on transaction notification requirements and help clients navigate state and federal antitrust and health care notification processes. Reach out to the authors or your regular Winston contacts with any questions.

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