

LFC Requester:

RubyAnn Esquibel

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 2/6/2024

Bill No: SB 15

Sponsor: Senator Katy Duhigg
Short Title: HEALTH CARE
CONSOLIDATION

Agency Name and Code Number: Office of Superintendent of Insurance - 44000
Person Writing: Colin Baillio
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total					Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*Assumes all staffing costs are covered by the General Fund.

Duplicates/Conflicts with/Companion to/Relates to: Forthcoming

Duplicates/Relates to Appropriation in the General Appropriation Act: Not yet known

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 15 creates a process that allows OSI to review proposed transactions that materially change the control of a New Mexico hospital that could negatively impact the availability, accessibility, affordability, and quality of care for New Mexicans.

Section 1 – Establishes the short title of the Act as the “Health Care Consolidation Oversight Act.”

Section 2 – Establishes definitions used in the Act.

Section 3 – Applies the provisions of the Act to hospitals, other than state university teaching hospitals and state-owned special hospitals. Clarifies that insurers involved in a proposed transaction to acquire control of a hospital continue to be subject to the Insurance Holding Company Act. Establishes a rebuttable presumption of control.

Section 4 – Makes all documents, materials, and supporting information submitted to the OSI and Health Care Authority pursuant to the Act confidential.

Section 5 – Notice of a proposed transaction will be considered complete when all necessary materials have been submitted to the OSI by all parties to the transaction. If the scope of the proposed transaction is significantly modified, the time period will be reset. OSI will toll time periods in which the Office is awaiting additional materials.

Section 6 – Requires at least one party to an applicable proposed transaction to submit a notice to OSI. Allows OSI to grant immediate approval of transactions that are urgently necessary to maintain the solvency of a hospital or if there is an emergency that threatens the continued provision of immediate health care services. Requires the submitting party to pay reasonable costs and expenses incurred by OSI or the Health Care Authority pursuant to the Act. OSI must notify parties of transaction review costs in advance. Any binding agreements between parties prior to a review are not in violation of the Act. Requires the written notice to include:

- A list of the parties, the terms of the proposed transaction and all transaction agreements between any of the parties;
- A statement describing the goals of the proposed transaction and whether and how the proposed transaction affects current and future health care services in New Mexico;
- The geographic service area of any health care entity affected by the proposed transaction;

- A description of the groups or individuals likely to be affected by the transaction; and
- A summary of the health care services currently provided by any of the parties and health care services that will be added, reduced or eliminated, including an explanation of why any services will be reduced or eliminated in the service area in which they are currently provided.

Requires OSI to consult with the Health Care Authority and include the Authority's input the potential effects of the proposed transaction as part of a review in its final determination. Allows OSI to retain experts to review transactions. Requires parties to the applicable transaction to receive written approval from the Superintendent to move forward with the proposed transaction. Allows parties to a proposed transaction to request a pre-notice conference to determine if a notice is needed and the review process.

Section 7 – Establishes a review process for proposed transactions that involve a change in control of a New Mexico hospital. In conducting a review, OSI must consider whether the transaction will result in a reduction in access to essential services, reduced quality of care, increased market share or reduced competition in the market, changes in practice restrictions for health care providers, increased patient costs, the adequacy of provider networks, and the potential to impact health outcomes.

The agency must approve the transaction, approve the transaction with conditions, or disapprove the transaction. Proposed transactions will be approved if they will reduce patient cost growth, maintain or increase access to services, and there is a substantial likelihood that there will not be a significant reduction in the availability, accessibility, affordability, and quality of care or if the benefits outweigh anti-competitive effects of the transaction.

Section 8 – Requires entities acquiring control of a New Mexico hospital to submit reports to OSI and the Health Care Authority detailing compliance with any conditions placed on the transaction, changes of the services provided by the hospital, and cost trends and cost growth trends of the hospital.

Section 9 – Repeals Sections 1-7 on July 1, 2025.

Section 10 – Enacts an emergency clause.

FISCAL IMPLICATIONS

With the significant reduction in the potential scope of review and ability to recoup review costs from parties to transaction under the SHPAC committee substitute, OSI is capable of conducting such reviews without additional appropriations.

SIGNIFICANT ISSUES

Health care mergers and acquisitions are growing in New Mexico and across the nation, while evidence mounts that such transactions lead to higher prices without clear quality improvements, and in some circumstances lead to a reduction in services. [According](#) to KFF, an independent source for health policy research, “Christus Health’s acquisition of Gerald Champion Regional Medical Center in July 2023” is an example of a “cross-market merger.” According to the KFF’s

policy brief “Christus Health is a large health system based in Texas that includes 28 hospitals, while Gerald Champion Regional Medical Center is an independent hospital in Alamogordo, New Mexico that is over 200 miles away from the nearest Christus Health facility. Cross-market mergers can involve hospitals and health systems that are in neighboring markets as well as entities that are hundreds or even thousands of miles apart...An example of the latter is the recently proposed merger of UnityPoint Health—which operates in the Midwest (Iowa, Illinois, and Wisconsin)—and Presbyterian Healthcare Services, which operates in New Mexico.” In the same policy brief, KFF notes that prices have increased between 6-17% due to these types of mergers.

According to a [study](#) recently published in Health Affairs, “the share of community hospitals in the US that were part of hospital systems increased from 10 percent in 1970 to 67 percent in 2019, resulting in 3,436 hospitals within 368 systems in 2019.” A 2022 [study](#) found that acquisitions of non-profit hospitals were associated with a decrease in population health spending. Another [study](#) in found that “merged hospitals were more likely than independent hospitals to eliminate maternal/neonatal and surgical care” in rural areas. A 2019 [study](#) found that “following health system affiliation, rural hospitals experienced a significant reduction in on-site diagnostic imaging technologies, the availability of obstetric and primary care services, and outpatient nonemergency visits, as well as a significant increase in operating margins... While joining health systems may improve rural hospitals’ financial performance, affiliation may reduce access to services for patients in rural areas.”

Quality of care could also be impacted by these types of transactions. While overall evidence is mixed on this point, a [study](#) that was published in the prestigious Journal of American Medicine in December of 2023 looked at impacts on Medicare patients before and after hospitals were bought by private equity firms. According to the study, “after a hospital was acquired by private equity, admitted Medicare patients had a 25 percent increase in hospital-acquired complications, compared with patients admitted before acquisition. Patients also had 27 percent more falls and 38 percent more bloodstream infections caused by central lines.”

In some instances, health care mergers and acquisitions can help stabilize finances for smaller health care entities or expand services in a local area. Administrative efficiencies can also potentially be realized when a smaller entity is acquired by a larger entity. Sometimes a merger or acquisition is the only way for a health care entity to stay afloat.

New Mexico currently does not have a review process in place to determine whether a proposed transaction involving a change of control in a New Mexico hospital could negatively impact the availability, accessibility, affordability, or quality of care for New Mexico residents. SB 15 would create a process for OSI, in consultation with the Health Care Authority, to review such transactions to ensure they are in the public interest. Several other states have developed similar processes in recent years in response to the trends described in this section.

PERFORMANCE IMPLICATIONS

Insurance regulators have played a significant role in the oversight of health insurance mergers and acquisitions for decades, having developed a set of tools to determine whether insurance-related transactions that contribute to consolidation and anticompetitive markets that do not work in the consumers’ best interest. OSI is well positioned to oversee proposed transactions involving a change in control of a state health care entity. The agency has implemented a number of complex health care and company-related initiatives that demonstrate the agency’s capacity for such oversight, including the Insurance Company Holding Act, Surprise Billing Protection Act, oversight of Pharmacy Benefit Managers, a number of laws limiting cost sharing for consumers,

the Affordable Care Act in New Mexico, the development consumer-focused Standardized Health Plans, and programs under the Health Care Affordability Fund. Many hospitals are also subject to value-based care initiatives that involve the direct bearing of financial risk.

ADMINISTRATIVE IMPLICATIONS

OSI has a team of dedicated professionals who are qualified to oversee contractors who can provide expertise during the review process.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

OSI has committed to working with stakeholders over the coming year to develop comprehensive legislation for consideration during the 2025 legislative session. SB 15 provides review authority through July 2025.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will have no review process for proposed transactions that could lead to negative impacts on the availability, accessibility, affordability, and quality of hospital care for New Mexicans. The public interest will not be considered in such transactions.

AMENDMENTS

N/A