

SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 15

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO INSURANCE; ENACTING THE HEALTH CARE CONSOLIDATION
OVERSIGHT ACT; REQUIRING REVIEW OF PROPOSED HOSPITAL
ACQUISITIONS AND OTHER CHANGES IN CONTROL OF HOSPITALS;
GRANTING THE OFFICE OF SUPERINTENDENT OF INSURANCE AND THE
HEALTH CARE AUTHORITY DEPARTMENT THE AUTHORITY TO REVIEW
PROPOSED TRANSACTIONS; AUTHORIZING THE APPROVAL, DISAPPROVAL OR
CONDITIONAL APPROVAL OF TRANSACTIONS; PROVIDING
CONFIDENTIALITY; ASSESSING COSTS; REPEALING AND ENACTING

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SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Health Care Consolidation Oversight Act"."

SECTION 2. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Health Care Consolidation Oversight Act:

A. "acquisition" means an agreement or activity the consummation of which results in a person acquiring, directly or indirectly, the control of a hospital in New Mexico and includes the acquisition of voting securities, membership interests, equity interests or assets;

B. "affiliation" means a business arrangement in which one person directly or indirectly is controlled by, is under common control with or controls another person;

C. "authority" means the health care authority department;

D. "control" means the power to direct or cause the direction of the management and policies of a hospital, whether directly or indirectly, including through the ownership of voting securities, through licensing or franchise agreements or

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by contract other than a commercial contract for goods or nonmanagement services, unless the power is the result of an official position with or corporate office held by an individual;

E. "essential services" means health care services covered by the state medicaid program, health care services that are required to be included in health plans pursuant to state or federal law and health care services that are required to be included in qualified health plans offered through the New Mexico health insurance exchange;

F. "health care provider" means a person qualified or licensed under state law to perform or provide health care services;

G. "health insurer" means a person required to be licensed or subject to the Insurance Code in connection with the business of health insurance or health care;

H. "hospital" means a hospital licensed by the department of health or its successor health facility licensing agency, but "hospital" does not include a state university teaching hospital or a state-owned special hospital;

I. "management services organization" means a person that provides all or substantially all of the administrative or management services under contract with a hospital, including administering contracts with health plans,

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third-party administrators and pharmacy benefit managers, on behalf of the hospital;

J. "office" means the office of superintendent of insurance;

K. "party" means a person taking part in a transaction subject to the Health Care Consolidation Oversight Act;

L. "person" means an individual, association, organization, partnership, firm, syndicate, trust, corporation or other legal entity;

M. "superintendent" means the superintendent of insurance; and

N. "transaction" means any of the following:

(1) a merger of a hospital in New Mexico with another hospital;

(2) an acquisition of one or more hospitals in New Mexico;

(3) any affiliation or contract or other agreement that results in a change of control of a hospital in New Mexico, including with a management services organization or health insurer;

(4) a formation of a new corporation, partnership, joint venture, trust, parent organization or management services organization that results in a change of

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control of an existing hospital in New Mexico; and

(5) a sale, purchase, lease, new affiliation or any agreement that results in control of a hospital in New Mexico."

SECTION 3. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] APPLICABILITY--PROVISIONS ADDITIONAL-- CONTROL PRESUMPTIONS.--

A. The oversight power of the office pursuant to the Health Care Consolidation Oversight Act applies to proposed transactions that involve a New Mexico hospital.

B. Being subject to the Health Care Consolidation Oversight Act does not preclude or negate any SJC→entity←SJC SJC→person←SJC regulated pursuant to the Insurance Holding Company Law.

C. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds fifteen percent or more of the power to vote or holds proxies representing fifteen percent or more of the voting securities of any other person. The presumption may be rebutted by a showing in the manner provided by Section 59A-37-19 NMSA 1978 that control does not in fact exist."

SECTION 4. A new section of the New Mexico Insurance Code is enacted to read:

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"[NEW MATERIAL] CONFIDENTIALITY.--All documents, materials or other information in the possession or control of the office that are obtained by or disclosed to the office or the authority in the course of a review under the Health Care Consolidation Oversight Act are confidential."

SECTION 5. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] TIMING OF REVIEW OF NOTICE AND TOLLING.--

A. A notice of a proposed transaction shall be deemed complete by the office on the date when all the information required by the Health Care Consolidation Oversight Act or requested by the office is submitted by all the parties to the transaction, as applicable.

B. Should the scope of the proposed transaction be significantly modified from that outlined in the initial notice, the time periods set out in the Health Care Consolidation Oversight Act shall be restarted by the office.

C. The time periods shall be tolled during any time in which the office has requested and is awaiting further information from the parties to a transaction necessary to complete its review."

SECTION 6. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] NOTICE OF PROPOSED TRANSACTION--GENERAL

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PROVISIONS--REQUIREMENTS--CONSULTATIONS--EXPERTS--PAYMENT OF COSTS.--

A. At least one person that is a party to a proposed transaction shall submit to the office a written notice of the proposed transaction in the form and manner prescribed by the office. The parties shall pay the reasonable costs and expenses incurred by the office in the performance of the office's or authority's duties pursuant to the Health Care Consolidation Oversight Act for costs associated with the office's contracts with experts, unless determined otherwise by the superintendent. The office shall notify parties before any costs are incurred when a transaction review requires the use of outside experts, including the estimated cost of their services.

B. Upon receipt of a complete notice of a proposed transaction, the office shall determine if the transaction is 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. In such circumstances, the office may agree to an immediate approval of a transaction with or without conditions.

C. Entry into a binding agreement before a transaction is effectuated is not a violation of the Health Care Consolidation Oversight Act if the transaction remains

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subject to regulatory review and approval.

D. If a party to the proposed transaction is a health insurer, the notice shall be submitted as an addendum to any filing required by Sections 59A-37-4 through 59A-37-10 NMSA 1978.

E. The notice of the proposed transaction shall include:

(1) a list of the parties, the terms of the proposed transaction and copies of all transaction agreements between any of the parties;

(2) a statement describing the goals of the proposed transaction and whether and how the proposed transaction affects health care services in New Mexico;

(3) the geographic service area of any hospital affected by the proposed transaction;

(4) a description of the groups or individuals likely to be affected by the transaction; and

(5) a summary of the health care services currently provided by any of the parties and any 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.

F. The office shall consult with the authority

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about the potential effect of the proposed transaction and incorporate the authority's recommendations into the office's final determination.

G. The office may retain actuaries, accountants, attorneys or other professionals who are qualified and have expertise in the type of transaction under review as necessary to assist the office in conducting its review of the proposed transaction.

H. The parties shall not effectuate a transaction without the written approval of the superintendent. The submitting party shall notify the office in a form and manner prescribed by the office when the transaction has been effectuated.

I. Parties to a proposed transaction may request a pre-notice conference to determine if they are required to file a notice or to discuss the potential extent of the review."

SECTION 7. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] REVIEW OF PROPOSED TRANSACTION.--

A. Within one hundred twenty days of receiving a complete notice of a proposed transaction, the office shall complete a review, confer with the authority and either:

- (1) approve the proposed transaction;
- (2) approve the proposed transaction with

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conditions; or

(3) disapprove the proposed transaction.

B. The superintendent shall notify the submitting party in writing of the office's determination and the reasons for the determination.

C. The review period may be extended if the parties agree to an extension.

D. In conducting a review of a proposed transaction, the office may consider the likely effect in New Mexico of the proposed transaction on:

(1) the potential reduction or elimination in access to essential services;

(2) the availability, accessibility and quality of health care services to any community affected by the transaction;

(3) the health care market share of a party and whether the transaction may foreclose competitors of a party from a segment of the market or otherwise increase barriers to entry in a health care market;

(4) changes in practice restrictions for licensed health care providers who work at the hospital;

(5) patient costs, including premiums and out-of-pocket costs;

(6) health care provider networks; and

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(7) the potential for the proposed transaction to affect health outcomes for New Mexico residents.

E. The office shall approve the proposed transaction after the comprehensive review if the office determines that:

(1) the parties to the proposed transaction have demonstrated that the transaction will benefit the public by:

(a) reducing the growth in patient costs, including premiums and out-of-pocket costs; or

(b) maintaining or increasing access to services, especially in medically underserved areas;

(2) the proposed transaction will improve health outcomes for New Mexico residents; and

(3) there is no substantial likelihood of:

(a) a significant reduction in the availability, accessibility, affordability or quality of care for patients and consumers of health care services; or

(b) anti-competitive effects from the proposed transaction that outweigh the benefits of the transaction."

SECTION 8. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] POST-TRANSACTION OVERSIGHT.--

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A. The SJC→entity or other←SJC person that acquired control over the hospital through an approved or conditionally approved transaction shall submit reports to the office and the authority in the form and manner prescribed by the office annually for three years after approval or conditional approval.

B. Reports shall:

(1) describe compliance with conditions placed on the transaction, if any;

(2) describe the growth, decline and other changes in services provided by the Sfl1→entity←Sfl1 Sfl1→person←Sfl1 ; and

(3) provide analyses of cost trends and cost growth trends of the hospital."

SECTION 9. DELAYED REPEAL.--Sections 1 through 7 of this act are repealed effective July 1, 2025.

SECTION 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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