

Update on the Health Care Consolidation Oversight Act

Presentation to Courts, Corrections and Justice Committee October 10, 2024

PRESENTERS:

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Summary of Presentation

- Background and Context for SB 15, Healthcare Consolidation Oversight Act
- Stakeholder Process
- Stakeholder Input
- Policy Issues to be Addressed in 2025 Legislative Session
- Next Steps

Background and Context for Senate Bill 15

- 2023 Presbyterian Proposed Merger – no regulatory authority to review major transactions that could significantly impact the quality, availability, accessibility and affordability of health care in New Mexico
- Growing body of research shows consolidation, especially involving private equity, increases prices and can lower quality of care
- NM was one of only a handful of states that had no system to require reporting or oversight of healthcare transactions
- Research shows the need for a regulatory process to review transactions involving the merger, acquisition, or change in control of major healthcare providers

Senate Bill 15, Healthcare Consolidation Oversight Act

- OSI had limited time to propose a bill prior to the 2024 legislative session.
- The original draft bill was based primarily on the Oregon statute and built on OSI's expertise in reviewing similar insurance industry transactions under the Insurance Company Holding Law
- As introduced, the bill covered a large number of entities and included significant transparency provisions and opportunity for public input
- The compromise SB 15 terminates July 1, 2025, covers only hospitals, and provides complete confidentiality with no public input
- Sponsors and OSI agreed to engage in a stakeholder process and propose a more comprehensive bill in the 2025 legislative session

Senate Bill 15, Healthcare Consolidation Oversight Act

- Covers Hospitals only
- A single review process for all transactions
- Confidential
 - Public has no information about any transactions
 - No opportunity for public input
- No role for the Attorney General
- No specified enforcement or right of appeal
- Terminates July 1, 2025
 - Except for 3-year oversight of transactions

Commitment to Transparent Process and Broad Stakeholder Input

- Legislators urged OSI to implement a stakeholder and community feedback process
- OSI established a webpage on its site and built a list of nearly 600 individuals to receive notice of meetings
- OSI held community outreach and targeted stakeholder meetings
- Community outreach meetings were conducted in Albuquerque, Santa Fe, Gallup, Las Cruces, Alamogordo, Taos and Las Vegas
- Multiple targeted stakeholder meetings addressed key policy aspects of the Oversight Act with hospitals, providers, consumer advocates and insurers
 - Significant engagement of providers, consumer advocates, the hospital association and many of its members
- The community outreach meetings raised major issues regarding local past hospital transactions
- Interesting discussions occurred between hospital CEOs, community members and providers

Summary of Community Outreach Meetings

Over 250 participants including providers, hospital executives, consumer advocates, community members and insurers

- Community members are concerned with the loss of medically necessary services
 - OB/GYN and women's health services are no longer available in many areas
 - Providers are referring patients long distances for OB/GYN and other health services
 - Transportation is challenging
- Providers are concerned with the lack of transparency and quality of health care
- Challenges for hospitals
 - Operating costs
 - Staffing
 - Special needs for rural hospitals

What We Learned From Community and Stakeholder Meetings

- Importance of community input and transparency
- Need to protect access to essential medical services
- Need to protect medical providers
 - Often hospital transactions have had significant impacts on medical providers' employment, doctor-patient relationships, quality and accessibility of healthcare
 - Independent practice providers remain concerned about the bureaucratic burden and cost of being subject to the Act
 - Need for whistleblower protection for hospital employees
- Need for post transaction enforcement and monitoring
 - Disagreement over length of monitoring and oversight
 - Objection to criminal penalties by hospitals and medical providers

Proposed Tiered Approach for Notice and Review and a New Category of Reporting Only

Transactions subject to Reporting only

- Non-hospital entities of a lower gross revenue
- Enables the public and policymakers to understand who is in control of the health care system

Transactions subject to Notice and Preliminary Review

- All hospitals
- Other large healthcare entities with higher gross revenue
- Pre-Notice meeting available on request
- Certification of Accuracy and Completeness
- Public posting of Notice and opportunity for written comments

Transactions selected for Comprehensive Review

- A subset of transactions subject to Notice will be selected for Comprehensive Review
- Expectation that most transactions **will not** require Comprehensive Review
- Opportunity for public comments and hearings
- Determination - Approval, Approval with Conditions or Disapproval

Transactions Subject to Reporting Only

Reporting Only

- Reports would be filed after the transaction is completed
- Basic information required to provide insight for policymakers to identify trends and potential challenges
- May require an annual analysis report of healthcare landscape to the Legislature

Transactions Subject to Notice and Preliminary Review

Preliminary Review

- Limited information will be required in the Notice
- Certification of Accuracy and Completeness
- Notice and transaction information will be published online
- Written public comment will be invited on impact and whether to proceed to Comprehensive Review

Transactions Selected for Comprehensive Review

- After initial notice, OSI will send limited number of transactions for Comprehensive Review based on certain criteria.
- SB15 requires OSI to consider whether the transaction:
 - Is in the interest of patients and consumers of health care services
 - Is urgently necessary to maintain the solvency of a health care entity
 - May have negative effects on the availability, accessibility, affordability and quality of health care for patients and other consumers of health care services
- Comprehensive Review triggers
 - Need to provide additional materials and information
 - Public hearing in impacted communities
 - Determination to Approve, Approve with Conditions or Disapprove

Which Entities Should be Subject to Notice and Review



Hospitals will continue to be covered (all types)

Change in control will not be triggered if publicly-elected or publicly-appointed board changes the board's composition



In discussion with Medical Society and Greater Albuquerque Medical Association about Physician Practices

Their concerns have led us to support a tiered approach

The new Bill will clarify that no change in control occurs where practicing clinician owners are added to, or removed from, a governing board of an independent practice

OSI and Sponsors are committed to sustaining and supporting independent physician practices



Other categories where changes are occurring nationally

Health Insurance Companies

Pharmacy Benefit Managers

Long-Term Care Facilities

Dental and Vision Practices

Dialysis Clinics

Laboratories & Imaging Practices

Home Health and Hospice Care

Pharmacies

Size of Transactions Subject to Notice and Preliminary Review

- SB 15 as introduced applied to many types of healthcare entities where:
 - At least one party had gross revenue of at least \$20 million in the preceding 3 years, OR
 - For a newly created entity, it is projected to have at least \$10 million in gross revenue over the first 3 years of operation
- Final version of SB 15:
 - all hospital transactions involving a merger, acquisition or change in control were subject to notice and review regardless of gross revenue
- Stakeholder recommendations ranged from no dollar threshold to \$500 million gross revenue to trigger notice requirement
- Hospital Association proposal:
 - \$50 million gross revenue of at least one party
 - \$30 million for a new entity
- With hospitals, if sole provider of a service in a community or geographic area, even if lower revenues, impact on community could be significant. Therefore, our current thinking is that the notice requirement should apply to all hospital transactions

Which Types of Transactions Should be Covered

- Mergers, acquisitions and change in control are covered
 - Change in control definition modeled after Insurance Company Holding Law
- Definitions will be important
- Private Equity: this afternoon's hearing will provide insights into whether specific provisions addressing PE are needed - but legislation is not limited to PE
- We are looking at other state and federal legislation in an attempt to capture the creative structures used to change ultimate ownership and or control

Confidentiality of Transaction Documentation

- OSI has an established system and forms for regulated entities to request that information be kept confidential, or to redact certain information
 - Potential bases for confidentiality: trade secrets, proprietary information or data privacy/security concerns
- Oregon Health Authority (OHA) has a process for redacting certain information but otherwise publishes the notices and attachments
 - We have asked stakeholders to review OHA's disclosures and express and explain any disagreements with what is being disclosed there
- Hospital Association and Presbyterian want to maintain complete confidentiality of disclosed documents and information
- The new Bill will attempt to create a middle ground to protect commercially sensitive material from disclosure. We welcome Committee Members input on this issue

Public Review and Comment

- Notices will be posted on OSI's website
- The public will be invited to submit written comments and request that OSI conduct a Comprehensive Review
- For transactions subject to Comprehensive Review, a public hearing will be held in at least one community impacted by the transaction

Role of the Attorney General

- In discussions with the AG and his staff on their role
- The current approach includes:
 - Providing Notice and all submitted materials to the AG
 - AG will have enforcement authority
 - Focus will include market share and market consolidation over time
 - No action required by the AG for the OSI to approve a transaction

Enforcement and Right to a Hearing and Appeal

- Considering certain administrative penalties for violations
- For example, administrative penalties under the Insurance Code, NMSA 1978, §59A-1-18(B)(2)
 - Each violation up to 5K
 - Each willful and intentional violation: up to 10K
 - Administrative penalties go into general fund
- Right to a hearing and appeal pursuant to NMSA 1978, §59A-4-15, and §59A-4-20

Ongoing Oversight of Transactions that Receive Comprehensive Review

- Range of public and stakeholder comments requesting no more than 3 years to no limit
- Draft will be more than 3 years but have a time limit
- To address concerns about changing circumstances, will provide for process to amend any conditional approvals

Next Steps

- Post and circulate draft legislation - tentatively by the end of October
- November-early December – obtain stakeholder input
- Mid-December /early January – circulate revised draft
- **Written comments and policy positions may be submitted at any time – we have received them from individuals, organizations and from at least one legislator already.**

Conclusion

- Further resources are available on the OSI Healthcare Consolidation resource page at <https://www.osi.state.nm.us/pages/misc/health-care-consolidation> of Superintendent of Insurance (state.nm.us)
- Please email OSI.Consolidation@state.nm.us with considerations or to request additional information