LFC Requester:	Allegra Hernandez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: January 23, 2025

Bill Number: SB14

Check all that apply:

Original ___ Correction ___

Amendment ___ Substitute X

Sponsor: Sen. Katy Duhigg

Short Title: Health Care Consolidation & Transparency Act

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

COMMITTEE SUBSTITUTE CHANGES

Section 2 of the Committee Substitute (the "Substitute") is amended to propose modified definitions for the following terms: "'affiliate' or 'affiliated with'"; "'control', 'controlling', 'controlled by' and 'under common control with'"; "essential services"; "health care provider organization"; "health care services"; "health care staffing company"; "independent health care practice"; "management services organization"; "transaction";

Section 2 removes altogether definitions for "health care entity"; "health care facility"; "person"; "private equity fund"; "revenue"; "significant equity investor"; "superintendent"; "telemedicine provider";

Section 3, defining the applicability of the Act, is amended to change the scope of the transactions subject to review by the Office. As drafted in the Substitute, the Act applies only to 1) transactions between two or more parties that involve a change in control of a New Mexico hospital; 2) proposed acquisitions of health care provider organizations by a hospital or a person owned affiliated with a hospital; and 3) proposed acquisitions of one or more health care provider organizations located in New Mexico, or the employment of a health care provider by a health insurer or by a person owned or affiliated with a health insurer. This is a substantial change from the Original Bill (the "Original"), which provided that the Act applied to any transactions involving New Mexico hospitals, transactions involving health care entities that met certain revenue thresholds, and serial roll-ups of health care entities within a five-year period.

Section 4 of the Substitute is substantially similar to Section 6 of the Original. Section 4 of the original, outlining confidentiality provisions and processes, is removed altogether. The only reference to confidentiality in the Substitute is now found in Section 4(E)(10), providing that copies of the agreements and documents setting forth terms of a transaction are exempt from public disclosure.

Section 5 of the Substitute, substantially similar to Section 5 of the Original, now requires the Office to notify the parties within fifteen days whether the notice is complete, or if incomplete, what additional information must be submitted.

Section 6 of the Substitute is substantially similar to Section 7 of the Original.

Section 7 of the Substitute is substantially similar to Section 8 of the Original. The Original provided that "[T]he office *shall* confer with the authority and the attorney general[…]" (emphasis added). The Substitute now provides that "[T]he office shall confer with the authority and *may* consult with the attorney general[…]" (emphasis added). The Substitute removes the requirement that, when conducting a comprehensive review, the Office shall conduct a public comment forum (however, this requirement remains present in Section 8 of the Substitute—see below). The Substitute consolidates and removes some factors for consideration by the Office in performing its comprehensive review.

Section 8 of the Substitute is substantially similar to Section 9 of the Original. The Substitute amends the documents posted to the Office's website to exclude material documents relating to the transaction.

Section 9 of the Substitute is substantially similar to Section 10 of the Original.

Section 10 of the Substitute is substantially similar to Section 16 of the Original, concerning whistleblower protection provisions and fines for retaliatory actions taken by hospitals.

Section 11 of the Substitute is substantially similar to Section 11 of the Original.

Section 12 of the Substitute is substantially similar to Section 12 of the Original. However, the Substitute removes Subsection D from the Original, providing that the information submitted to the office in annual reports is public information subject to IPRA, excluding trade secrets or other IPRA-exempt information.

Sections 13, 14, and 15 of the Substitute are substantially similar to their respective sections of the Original.

Section 16, providing the effective date of the legislation, is the same as Section 17 of the Original.

ORIGINAL

Senate Bill 14 ("SB14" or "Bill") gives authority to the Office of the Superintendent of Insurance (the "Office") to regulate proposed mergers or acquisitions of health care entities prior to the ratification of any such transaction. The Act creates this forward-looking review process to ensure that proposed transactions subject to review by the Office do not result in higher prices for care, diminishing quality of care, loss of essential health care services, or detriment to workers. The Act is comparable to other state health care merger review laws (often referred to as "Mini-HSR" acts for their similarity to the general merger review statute under federal law, known as the Hart-Scott-Rodino Act).

Section 1 creates the Health Care Consolidation and Transparency Act ("Act"). The Act replaces the Health Care Consolidation Oversight Act, passed in 2024 ("2024 Act"). *See* 2024 N.M. Laws, ch. 40, §§ 1-9, codified at NMSA 1978, §§ 59A-63-1 to 8. The 2024 Act contained a self-repealing provision effective July 1, 2025, applicable to all but post-transaction oversight. *See id.*

Section 2 establishes definitions used in the Act. Throughout the act authority is granted to the "authority," which is defined as the "the health care authority," and to the "office," which is defined as "the office of superintendent of insurance."

Section 3 addresses circumstances when the Act applies and carves out exemptions. This Section begins by delineating some exemptions in Subsection A of Section 3. Under that provision the Act does not apply to "(1) the formation of a new independent health care practice," "(2) the merger, acquisition or change in control of an existing independent health care practice" that will remain "an independent health care practice" after the action, "or (3) a joint venture or an affiliation between two or more independent health care practices."

Subsection B of Section 3 describes the transactions that are covered by the Act. Specifically, the Act applies to transactions of one or more parties involving a New Mexico hospital, or health care entities that are not hospital where specified revenue criteria are met.

Subsection C of Section 3 adds seven more exemptions, such as collaborations on clinical trials or federally qualified health centers.

Section 4 makes materials related to transactions under the Act subject to the Inspection of Public Records Act, but exempts trades secrets. Subsection B through D of Section 4 establishes the procedures for determining materials to be trade secrets.

Section 5 provides the timing of review under the Act. Subsection A provides that the time periods do not begin to run until obligations of the parties are deemed complete by the office. Subsection D provides that if comprehensive review is necessary, it shall be completed within ninety days or, if an administrative hearing is deemed necessary, within 180 days. Subsection E requires the Office to make its final determination within thirty days of the conclusion of an administrative hearing. Subsection F provides that time periods in this section shall be tolled while the Office awaits information requested from the parties.

Section 6 outlines the requirements of the parties to provide notice to the Office of a proposed transaction. Parties must provide notice at least sixty days prior to the anticipated effective date. Subsection B requires parties to a transaction to bear the costs and expenses the Office incurs in assessing the transaction. Subsection C permits entities to enter binding agreements before a transaction is effectuated. Subsection D outlines the information that must be provided to the Office. Subsections E, F, and G require the Office to consult with the Health Care Authority and the Attorney General and permit the Office to consult with other state agencies as necessary. Subsection I of Section 6 prohibits parties from effectuating a transaction without written determination from the Superintendent.

Section 7 provides the process for preliminary review of proposed transactions. Preliminary review must be conducted within sixty days. Section 7 states that the purpose of preliminary review is to determine whether a comprehensive review is necessary. Subsection C provides the criteria for the office in making its decision.

Section 8 provides the process for comprehensive review of proposed transactions. When the Office determines comprehensive review is necessary, the Office shall confer with the authority and the Attorney General and complete review within ninety days. Subsections B through E outline the procedure the Office must follow for comprehensive review. Subsection F identifies the criteria for decision-making on a comprehensive review.

Section 9 provides for public comment on a proposed transaction. The Office must post certain information about the transaction on its website along with details about how to submit comments. Subsections B through H provide various requirements of the Office for how it is required to provide notice on public comment opportunities and how those public comments may

be made.

Section 10 outlines post-approval transaction oversight. For transactions subject to post-approval oversight: Subsection A permits the office to audit books, documents, records and data. Subsection B permits the office to contract with experts for monitoring and compliance at the reasonable cost to the parties. Subsection C permits parties to petition the Office to remove or modify ongoing oversight obligations. Subsection D requires parties whose transactions were approved or conditionally approved to provide one-, two-, and five-year reports to the Office.

Section 11 provides for enforcement of the Act and administrative fines. Subsection B states that covered transactions shall not be effective absent superintendent determination that no review is needed or the Superintendent's determination, with or without conditions, following comprehensive review. Subsection C provides for a $5,000 fine for each violation of the Act, or a $10,000 per violation if the violation is willful and intentional. The Superintendent is empowered to determine what constitutes an instance of violation based on explicated factors. Subsection D outlines remedies for the Superintendent in the event that a parties to a covered transaction fail to provide the required notice. The Superintendent is empowered to require parties to provide notice and allow the Office to perform a review; issue a $15,000-per-day fine for willful and intentional failures to provide notice; and deem the transaction void and require it to be unwound. Subsection E provides that fines shall be deposited into the current school fund.

Section 12 creates a requirement that health care entities subject to the Act must annually report certain information to the Office, including business organization and operation information, tax information, persons with ownership interests, and organizational chart of the entity including ownership interests and subsidiaries. Subsection D provides that, other than trade secrets, information provided under this Section is subject to the Inspection of Public Records Act.

Section 13 provides that the Act does not diminish the authority of the Attorney General. The section states that the Attorney General maintains full authority to enforce state and federal consumer protection and antitrust laws.

Section 14 provides that New Mexico courts shall have personal jurisdiction over parties subject to the Act.

Section 15 provides that transactions subject to the predecessor legislation—the Health Care Consolidation Oversight Act—shall continue to be overseen by the Office as provided by that statute. Section 59A-63-8 is the only section of the predecessor legislation not subject to delayed repeal.

Section 16 creates protections against retaliation for whistleblowers relating to the Act. Subsection A defines terms relevant to Section 16, including "good faith," "retaliatory action," "unlawful or improper act," and "whistleblower." Subsection B defines the conduct that is protected from retaliatory actions. Health care entities may not retaliate against whistleblowers who disclose information relating to improper or unlawful acts to government entities; providing information or testifying as part of an investigation, hearing or inquiry; or objecting or refusing to participate in an unlawful act. Subsection C requires health care entities to promulgate policies designed to comply with Section 16 and prevent retaliation against whistleblowers. Subsections D, E provide that the Superintendent may assess a $10,000 fine per violation or per day of a retaliatory action and the hearing procedure for assessing such fines. The Office has the authority at the hearing to set a time during which an entity may correct a retaliatory action. Subsection F provides that if a retaliatory action is not corrected during the time period for correction, the

Office may assess a separate $15,000 fine per day. Subsection G states that fines contribute to the current school fund. Subsection H prohibits waiver of whistleblower rights by agreement, policy, or condition of employment. Subsection I states that rights pursuant to federal or state law or collective bargaining agreement are not diminished.

Section 17 provides that the effective date of the legislation will be July 1, 2025.

FISCAL IMPLICATIONS
None noted.

SIGNIFICANT ISSUES
Significant Issues Relating To Committee Substitute
Section 3(A)(2) and (3) provides two instances in which the regulatory authority of the Act applies. These two instances use the phrasing "a person that is owned or affiliated with" hospitals and health insurers. Section 12(A), concerning annual reports of ownership and business structure, additionally references "person" with respect to substantive requirements. Section 2 of the Substitute removes the definition of "person" altogether. Consider re-adding a definition for "person."

Section 4(F) of the Bill requires the Office to provide the documents provided by the parties to the Health Care Authority and Attorney General. Section 7(B) similarly requires the Office to confer with the Health Care Authority and permits the Office to confer with the Attorney General when a comprehensive review is needed. Neither provision sets out a timeline for when the Office must engage with these agencies. For the Health Care Authority and Attorney General to provide meaningful review and consultation to the Office, consider requiring the Office to provide the documents or confer with these agencies within a set number of days.

When the Office determines that a comprehensive review is necessary, Section 7(D) of the Act permits the Office to request "additional information" from any of the parties. Presumably the intent is for the superintendent to have as much information as needed to make a final decision. Consider incorporating discovery tools prior to the hearing—such as written interrogatories or depositions under oath—to facilitate the exchange of necessary information between the Office and the parties. Often pre-hearing discovery can be admitted into the record to ensure the hearing officer, in this case the superintendent, has the benefit of a substantial record to support their decision.

The Act vests the authority for review of proposed health care mergers with the Office of the Superintendent of Insurance. Created under the New Mexico Constitution, the Superintendent of Insurance is charged with "regulat[ing] insurance companies and others engaged in risk assumption in such manner as provided by law." N.M. Const. Art. XI, § 20. Whether the authority imparted to the Office under the Act falls within its constitutional scope has not been tested in the courts. Litigation to test the Bill's constitutional validity is possible.

PERFORMANCE IMPLICATIONS
Review of proposed transactions and input to the Office may require additional labor hours for NMDOJ.

ADMINISTRATIVE IMPLICATIONS
None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP
Senate Bill 62 amends portions of the Pharmacy Benefits Manager Regulation Act to limit the types of fees that pharmacy benefits managers (PBMs) may collect. It also declares certain actions by PBMs as unlawful under the Unfair Practices Act. Under SB14, PBMs may be treated as regulated entities. *See, e.g.*, Section 12(A)(4)(g) of the Act.

HB377 relates to this Bill in that HB377 also creates a health care-specific whistleblower statute. The Bill protects similar conduct concerning whistleblower activity and similarly prevents retaliatory actions. Despite having nearly identical substantive provisions, the two bills are not inherently in conflict in that SB14 provides for administrative fines against entities that take retaliatory actions, while HB377 creates a private right of action for whistleblowers harmed by retaliatory conduct.

TECHNICAL ISSUES
Section 5(F) of the Act is vague as to when the ninety-day or one hundred eighty-day time period begins to run. It is unclear if the time period begins to run after the Office receives a complete notice of proposed transaction or at the completion of the preliminary review. Section 5(E) of the bill specifies that the sixty-day time period for the preliminary review begins after the Office receives a complete notice of a proposed transaction. Legislators may consider adding similar language to Section 5(F) for clarity.

OTHER SUBSTANTIVE ISSUES
None noted.

ALTERNATIVES
If litigation to challenge the validity of the Act succeeds, legislators may consider vesting authority for health care merger review with the Health Care Authority, Attorney General, or both. Of the states with "mini-HSR" laws for health care mergers all but California vest review authority with their respective state health department, attorney general, or both. *See* Goodwin Law, *State Healthcare Transaction Notification Laws* (current through Jan. 14, 2025), https://www.goodwinlaw.com/en/resource/state-healthcare-transaction-notification-laws.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
Status quo. The attorney general may enjoin mergers violative of Section 7 of the Clayton Antitrust Act. *See* 15 U.S.C. § 18 (prohibiting mergers and acquisitions where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."). However, parties to such mergers are not required to provide notice to any state officer or agency prior to ratification.

AMENDMENTS
See the discussion under Significant Issues.