

Update on the Health Care Consolidation Oversight Act

Legislative Health and Human Services Committee

November 22, 2024

PRESENTERS:

- ❖ **SENATOR KATY M. DUHIGG**
- ❖ **REPRESENTATIVE REENA SZCZEPANSKI**
- ❖ **ALICE T. KANE, SUPERINTENDENT, OSI**
- ❖ **JANE WISHNER, HEALTH POLICY CONSULTANT**

Summary of Presentation

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



SB 15

Healthcare Consolidation Oversight Act Background

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
- New Mexico 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 an 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 compromised bill (SB 15) terminates July 1, 2025, covers only hospitals and provides complete confidentiality with no opportunity for 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

Stakeholder Process and Input



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
- Following significant transactions, individual providers expressed concerns 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 duration of monitoring and oversight
 - Objection to criminal penalties by hospitals and medical providers
- 2025 Draft Bill will address many of these concerns

**2025
Proposed
Legislation**



Proposed Bill for 2025 Legislative Session

- Covered Transactions
- Hospitals and Independent Practices
- Size of Transactions
- Tiered Approach:
 - Preliminary Review
 - Comprehensive Review
 - Administrative Hearing before Any Disapproval
- Confidentiality
- Public Review and Comment
- Enforcement and Penalties
- Role of the Attorney General
- Ongoing Oversight
- Ownership Disclosure Only

Covered Transactions

- Mergers, acquisitions and change in control are covered
 - Change in control definition modeled after Insurance Company Holding Law
- Definitions are key to understanding the scope of covered transactions
- Legislation is not limited to Private Equity
- Language is designed to capture the creative structures used to change ownership and or control

Hospitals Continue to be Covered

- Deeply appreciate significant engagement and input by the Hospital Association and many hospital CEOs
 - Several provisions reflect their input but we disagree with some of their positions
- All types of hospitals licensed by the Health Care Authority will be covered
- Change of control will not be triggered if publicly-elected or publicly-appointed board changes the board's composition
- Do not agree with Hospital Association that all information should remain confidential but have tried to find middle ground
- Concerns about duration of oversight has led to creation of a process for modifying or terminating a conditional approval

Independent Health Care Practices

- Discussions with Medical Society and Greater Albuquerque Medical Association about Physician Practices
 - OSI and Sponsors are committed to sustaining and supporting independent physician practices
- Independent providers' concerns have led us to support a tiered approach to limit the number of transactions subject to approval
- The new bill will clarify that no change of control occurs where practicing clinician owners are added to, or removed from, a governing board of an independent health care practice
- Larger transactions will be covered because of significant evidence that independent practices are a major acquisition target of private equity and large health systems

Size of Transactions Subject to Notice and Preliminary Review

- SB 15 as introduced applied to 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
- New legislation will continue to cover all hospital transactions, and the SB 15 monetary thresholds will apply for other health care entities

Tiered Approach for Preliminary and Comprehensive Reviews

- Transactions subject to Notice and Preliminary Review
 - All hospitals
 - Large transactions involving most healthcare entities
 - evidence shows consolidation has impacts well beyond hospitals
 - 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 in writing and at in-person forums in communities impacted by the transaction
 - OSI Formal Determination with input from the Health Care Authority - Approval, Approval with Conditions or Disapproval

Notice and Preliminary Review

- Specific 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 preliminary review, OSI may select certain transactions for Comprehensive Review based on specified criteria
- **Before identifying a transaction requiring** comprehensive review, OSI will consider at a minimum whether the transaction:
 - May have negative effects on the availability, accessibility, affordability and quality of health care for patients and other consumers of health care services
 - Is in the interest of patients and consumers of health care services
 - Is urgently necessary to maintain the solvency of a health care entity
- Comprehensive Review triggers
 - Need to provide additional materials and information
 - Public hearing in impacted communities
 - OSI Formal Determination with input from Health Care Authority to Approve, Approve with Conditions or Disapprove

Administrative Hearing Required Before a Transaction Can be Disapproved

- Parties receive notice of an intent to disapprove
- OSI required to conduct an administrative hearing prior to an order disapproving the transaction
- Following the hearing, OSI may approve, approve with conditions or disapprove the transaction
- Administrative Hearing pursuant to N.M. Administrative Code §13.1.5.1, et seq., which includes the right to appeal and judicial review

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 and data security concerns
- Oregon Health Authority (OHA) has a process for redacting certain information but otherwise publishes the notices and attachments
 - We 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
- 2025 legislation will create a middle ground between transparency and the need to protect commercially sensitive material from disclosure

Public Review and Comment

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

Enforcement and Penalties

- No criminal penalties
- Still considering the nature of civil penalties for violations of the Act
- Significant monetary penalty for knowing failure to provide notice before finalizing a transaction

Ongoing Oversight of Transactions that Receive Comprehensive Review

- Range of public and stakeholder comments requesting no more than 3 years of oversight to no time limit
- Post transaction reporting
- To address concerns raised about changing circumstances for conditional approvals, will provide a process for parties to request modification or termination of conditions

New Section- Ownership Disclosure Only

- Unrelated to Notice and Review of Transactions – applies to broad set of health care providers in New Mexico
- Disclose basic ownership information and locations of the healthcare service sites
- Disclosed information will provide insight for policymakers to identify healthcare system trends and potential challenges
- An annual analysis and report to the Legislature regarding the healthcare landscape and emerging trends in who controls health care delivery systems

Next Steps

- Post and circulate draft legislation
- December --obtain stakeholder input
- 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**

Conclusion

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