

SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 15

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

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  
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"."

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

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

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

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

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

15           D. "control" means the power to direct or cause the  
16 direction of the management and policies of a hospital, whether  
17 directly or indirectly, including through the ownership of  
18 voting securities, through licensing or franchise agreements or  
19 by contract other than a commercial contract for goods or  
20 nonmanagement services, unless the power is the result of an  
21 official position with or corporate office held by an  
22 individual;

23           E. "essential services" means health care services  
24 covered by the state medicaid program, health care services  
25 that are required to be included in health plans pursuant to

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1 state or federal law and health care services that are required  
 2 to be included in qualified health plans offered through the  
 3 New Mexico health insurance exchange;

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

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

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

14 I. "management services organization" means a  
 15 person that provides all or substantially all of the  
 16 administrative or management services under contract with a  
 17 hospital, including administering contracts with health plans,  
 18 third-party administrators and pharmacy benefit managers, on  
 19 behalf of the hospital;

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

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

25 L. "person" means an individual, association,

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1 organization, partnership, firm, syndicate, trust, corporation  
2 or other legal entity;

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

5 N. "transaction" means any of the following:

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

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

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

14 (4) a formation of a new corporation,  
15 partnership, joint venture, trust, parent organization or  
16 management services organization that results in a change of  
17 control of an existing hospital in New Mexico; and

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

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

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

25 A. The oversight power of the office pursuant to

1 the Health Care Consolidation Oversight Act applies to proposed  
 2 transactions that involve a New Mexico hospital.

3 B. Being subject to the Health Care Consolidation  
 4 Oversight Act does not preclude or negate any entity regulated  
 5 pursuant to the Insurance Holding Company Law.

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

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

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

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

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

23 A. A notice of a proposed transaction shall be  
 24 deemed complete by the office on the date when all the  
 25 information required by the Health Care Consolidation Oversight

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1 Act or requested by the office is submitted by all the parties  
2 to the transaction, as applicable.

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

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

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

13 "[NEW MATERIAL] NOTICE OF PROPOSED TRANSACTION--GENERAL  
14 PROVISIONS--REQUIREMENTS--CONSULTATIONS--EXPERTS--PAYMENT OF  
15 COSTS.--

16 A. At least one person that is a party to a  
17 proposed transaction shall submit to the office a written  
18 notice of the proposed transaction in the form and manner  
19 prescribed by the office. The parties shall pay the reasonable  
20 costs and expenses incurred by the office in the performance of  
21 the office's or authority's duties pursuant to the Health Care  
22 Consolidation Oversight Act for costs associated with the  
23 office's contracts with experts, unless determined otherwise by  
24 the superintendent. The office shall notify parties before any  
25 costs are incurred when a transaction review requires the use

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1 of outside experts, including the estimated cost of their  
2 services.

3 B. Upon receipt of a complete notice of a proposed  
4 transaction, the office shall determine if the transaction is  
5 urgently necessary to maintain the solvency of a hospital or if  
6 there is an emergency that threatens the continued provision of  
7 immediate health care services. In such circumstances, the  
8 office may agree to an immediate approval of a transaction with  
9 or without conditions.

10 C. Entry into a binding agreement before a  
11 transaction is effectuated is not a violation of the Health  
12 Care Consolidation Oversight Act if the transaction remains  
13 subject to regulatory review and approval.

14 D. If a party to the proposed transaction is a  
15 health insurer, the notice shall be submitted as an addendum to  
16 any filing required by Sections 59A-37-4 through 59A-37-10 NMSA  
17 1978.

18 E. The notice of the proposed transaction shall  
19 include:

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

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

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

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

5 (5) a summary of the health care services  
6 currently provided by any of the parties and any health care  
7 services that will be added, reduced or eliminated, including  
8 an explanation of why any services will be reduced or  
9 eliminated in the service area in which they are currently  
10 provided.

11 F. The office shall consult with the authority  
12 about the potential effect of the proposed transaction and  
13 incorporate the authority's recommendations into the office's  
14 final determination.

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

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

25 I. Parties to a proposed transaction may request a

1 pre-notice conference to determine if they are required to file  
 2 a notice or to discuss the potential extent of the review."

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

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

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

9 (1) approve the proposed transaction;

10 (2) approve the proposed transaction with  
 11 conditions; or

12 (3) disapprove the proposed transaction.

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

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

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

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

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

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

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

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

9 (6) health care provider networks; and

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

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

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

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

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

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

24 (3) there is no substantial likelihood of:

25 (a) a significant reduction in the

1 availability, accessibility, affordability or quality of care  
2 for patients and consumers of health care services; or

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

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

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

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

15 B. Reports shall:

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

18 (2) describe the growth, decline and other  
19 changes in services provided by the entity; and

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

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

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

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