

1 SENATE BILL 15

2 56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO INSURANCE; ENACTING THE HEALTH CARE CONSOLIDATION
12 OVERSIGHT ACT; REQUIRING REVIEW OF PROPOSED HEALTH CARE
13 MERGERS, ACQUISITIONS AND OTHER MATERIAL CHANGES IN CONTROL OF
14 HEALTH CARE ENTITIES, INCLUDING HEALTH INSURANCE ENTITIES;
15 PROVIDING EXCEPTIONS; GRANTING THE OFFICE OF SUPERINTENDENT OF
16 INSURANCE AND THE HEALTH CARE AUTHORITY DEPARTMENT THE
17 AUTHORITY TO REVIEW PROPOSED TRANSACTIONS; PROVIDING FOR PUBLIC
18 COMMENT AND STAKEHOLDER ADVISORY COMMITTEES; AUTHORIZING THE
19 APPROVAL, DISAPPROVAL OR CONDITIONAL APPROVAL OF TRANSACTIONS;
20 PROTECTING CONFIDENTIALITY OF TRADE SECRETS; ASSESSING COSTS;
21 PROVIDING POST-TRANSACTION OVERSIGHT; PRESCRIBING A PENALTY;
22 DECLARING AN EMERGENCY.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. A new section of the New Mexico Insurance Code

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1 is enacted to read:

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

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

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

8 A. "acquisition" means any agreement or activity
9 the consummation of which results in a person acquiring
10 directly or indirectly the control of a health care entity in
11 New Mexico and includes the acquisition of voting securities or
12 assets, bulk reinsurance and mergers;

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

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

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

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1 E. "essential services" means any health care
2 services covered by the state medicaid program; any health care
3 services that are required to be included in health plans
4 pursuant to state or federal law, including health care
5 services that are required to be included in qualified health
6 plans offered through the New Mexico health insurance exchange;
7 and any additional services identified by rule of the office;

8 F. "health care entity" means a person that
9 provides or supports the provision of health care services,
10 including a health insurance entity, health care provider,
11 health care provider organization, health care facility,
12 management service organization or organization of health care
13 providers or facilities;

14 G. "health care facility" means a hospital or other
15 facility licensed by the department of health or its successor
16 agency to provide health care services or a health care
17 setting, including inpatient facilities, ambulatory surgical or
18 treatment centers, diagnostic, laboratory and imaging centers,
19 free-standing emergency facilities, freestanding birth centers,
20 outpatient clinics, and rehabilitation and other therapeutic
21 health settings; provided that "health care facility" does not
22 include long-term care facilities, adult daycare facilities,
23 intermediate care facilities, boarding homes, child care
24 facilities or shelter care homes;

25 H. "health care provider" means a person qualified

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1 or licensed under state law to perform or provide health care
2 services;

3 I. "health care provider organization" means a
4 person that is in the business of delivering or managing the
5 delivery of health care services, whether incorporated or not,
6 and that represents one or more health care providers in
7 contracting with health insurance entities for the payment of
8 health care services;

9 J. "health care services" means:

10 (1) the provision and payment or
11 reimbursements for services, drugs, devices and other medical
12 goods for the diagnosis, prevention, treatment, cure or relief
13 of a physical, dental, vision, behavioral or mental health
14 condition, substance use disorder, illness, injury or disease;

15 (2) performance of and payments or
16 reimbursement for the referral, arrangement or coordination of
17 the delivery of health care;

18 (3) medical or behavioral health ground
19 transportation; and

20 (4) technology associated with the provision
21 of services or equipment related to Paragraphs (1) and (2) of
22 this subsection such as telehealth, electronic health records,
23 claims processing and utilization systems;

24 K. "health insurance entity" means a person
25 required to be licensed or subject to the Insurance Code in

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1 connection with the business of health insurance or health
2 care, excluding insurance producers;

3 L. "hospital" means a facility providing emergency
4 or urgent care, inpatient medical care and nursing care for
5 acute illness, injury, surgery or obstetrics. "Hospital"
6 includes a facility licensed by the department of health or its
7 successor agency as a critical access hospital, general
8 hospital, long-term acute care hospital, psychiatric hospital,
9 rehabilitation hospital, limited services hospital and special
10 hospital;

11 M. "management services organization" means a
12 person that provides all or substantially all the personnel for
13 or manages all or substantially all the operations of a health
14 care entity;

15 N. "office" means the office of superintendent of
16 insurance;

17 O. "party" means a person taking part in a
18 transaction subject to the Health Care Consolidation Oversight
19 Act;

20 P. "person" means an individual, association,
21 organization, partnership, firm, syndicate, trust, corporation
22 or other legal entity;

23 Q. "revenue" means gross revenue;

24 R. "superintendent" means the superintendent of
25 insurance; and

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S. "transaction" means any of the following:

(1) a merger of a health care entity in New Mexico with another health care entity or any other person within or without the state;

(2) an acquisition of one or more health care entities, one of which is in New Mexico or the acquisition of which may affect a health care entity in New Mexico;

(3) any affiliation or contract that results in a change of control of a health care entity in New Mexico;

(4) new contracts, new clinical affiliations or new contracting affiliations that may eliminate or significantly reduce essential services in New Mexico;

(5) formation of a new corporation, partnership, joint venture, accountable care organization, parent organization or management services organization to provide health care services or to administer contracts with insurance carriers, third party administrators, pharmacy benefit managers or health care providers that affect New Mexico health care entities or health care service to New Mexico residents; and

(6) a sale, purchase, lease, new affiliation or transfer of control of a hospital located in New Mexico."

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

"[NEW MATERIAL] APPLICABILITY--EXEMPTIONS--PROVISIONS

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1 ADDITIONAL--CONTROL PRESUMPTIONS.--

2 A. The oversight power of the office and authority
3 pursuant to the Health Care Consolidation Oversight Act applies
4 to proposed transactions that involve a New Mexico health care
5 entity or the creation of a health care entity that will be
6 doing business in New Mexico and at least one party to the
7 transaction had an average annual revenue of twenty million
8 dollars (\$20,000,000) or more in the immediately preceding
9 three years or, in the case of a new entity, is projected to
10 have at least ten million dollars (\$10,000,000) in average
11 annual revenue over the first three years of operation at
12 normal levels of operation or utilization.

13 B. The Health Care Consolidation Oversight Act does
14 not apply to:

15 (1) collaboration on clinical trials, graduate
16 medical education programs, other health professions' training
17 programs, health sciences training programs or other education
18 or research programs;

19 (2) federally qualified health centers or
20 health care providers that meet the requirements of the federal
21 health resources and services administration's health center
22 program but do not receive program funding;

23 (3) an agreement or contract with an
24 individual who is a health care provider;

25 (4) an employer that is not a health care

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1 entity that provides payment for health care services provided
2 to its employees; and

3 (5) long-term care facilities, adult daycare
4 facilities, intermediate care facilities, boarding homes, child
5 care facilities or shelter care homes.

6 C. Being subject to the Health Care Consolidation
7 Oversight Act does not preclude or negate a health insurance
8 entity's regulation pursuant to the Insurance Holding Company
9 Law.

10 D. Control is presumed to exist if a person,
11 directly or indirectly, owns, controls, holds ten percent or
12 more of the power to vote or holds proxies representing ten
13 percent or more of the voting securities of any other person.
14 This presumption may be rebutted by a showing, in the manner
15 provided by Section 59A-37-19 NMSA 1978, that control does not
16 in fact exist."

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

19 "[NEW MATERIAL] CONFIDENTIALITY.--

20 A. All documents, materials and supporting
21 information submitted to the office as part of a proposed
22 material change transaction are public records and subject to
23 the provisions of the Inspection of Public Records Act except
24 as provided in this section.

25 B. If a party believes that information contained

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1 in the notice of proposed material change transaction contains
2 a trade secret, the party shall:

3 (1) at the time the information is submitted
4 to the office, submit a written request for designation of the
5 information as a trade secret in the manner prescribed by the
6 office;

7 (2) identify with particularity the
8 information to be designated as a trade secret; and

9 (3) submit the information at issue in a
10 separate filing from information submitted that does not
11 contain trade secrets and clearly mark each page that contains
12 a trade secret with the term "trade secret"; provided that if a
13 document contains both trade secret information and
14 non-trade-secret information, the submitting party shall redact
15 the trade secret information from the document and identify it
16 in the separate filing.

17 C. If the office determines that the information
18 meets the standard for a trade secret, the office shall
19 maintain the confidentiality of the information. If the office
20 shares confidential information with another state agency or an
21 outside expert, that agency or the outside expert is also bound
22 by the confidentiality provided in this section and any other
23 applicable confidentiality provisions of state law."

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

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1 "[NEW MATERIAL] INTERVENTION WHEN FINAL AUTHORITY RESTS
2 WITH ANOTHER STATE.--When final authority to approve a proposed
3 transaction rests with another state, the office may place
4 conditions on health care entities operating in New Mexico if
5 the transaction may have negative effects on the availability,
6 accessibility, affordability and quality of health care
7 services."

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

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

11 A. A notice of a proposed transaction shall be
12 deemed complete by the office on the date when all the
13 information required by the Health Care Consolidation Oversight
14 Act and rules promulgated in accordance with that act or
15 requested by the office is submitted by all parties to the
16 transaction, as applicable.

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

21 C. The time periods shall be tolled during any time
22 in which the office has requested and is awaiting further
23 information from the parties to a transaction necessary to
24 complete either its preliminary or comprehensive review."

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

2 "[NEW MATERIAL] NOTICE OF PROPOSED TRANSACTION--GENERAL
3 PROVISIONS--REQUIREMENTS--POSTING PUBLIC INFORMATION--
4 CONSULTATIONS--EXPERTS--PAYMENT OF COSTS.--

5 A. At least one person that is a party to a
6 proposed transaction shall submit to the office a written
7 notice of the proposed transaction in the form and manner
8 prescribed by the office. The submitting party shall pay the
9 reasonable costs and expenses incurred by the office in the
10 performance of the office's or authority's duties pursuant to
11 the Health Care Consolidation Oversight Act, including costs
12 associated with the office's contracts with experts, unless
13 determined otherwise by the superintendent.

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

18 C. The written notice of the proposed transaction
19 shall include information required by the office, including:

20 (1) a list of the parties, the terms of the
21 proposed transaction and all transaction-related documents;

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

.227307.2

1 (3) the geographic service area of any health
2 care entity 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; commitments by the
7 health care entity to continue those services; and any health
8 care services that will be added, reduced or eliminated,
9 including an explanation of why any services will be reduced or
10 eliminated in the service area in which they are currently
11 provided.

12 D. Within fifteen days of receipt of a complete
13 notice of a proposed transaction, the office shall post on its
14 website:

15 (1) the summaries, descriptions and statements
16 provided in the written notice;

17 (2) details about how to submit written
18 comments regarding the transaction; and

19 (3) information about any public comment
20 forums that will be conducted regarding the transaction.

21 E. The office shall consult with the authority
22 about the potential effect of the proposed transaction as part
23 of a preliminary review and incorporate the authority's review
24 into the office's final determination.

25 F. The office may consult with any other state

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1 agency to the extent the agency has expertise related to the
2 proposed transaction or the communities or populations that may
3 be affected by the transaction.

4 G. The office may retain actuaries, accountants,
5 attorneys or other professionals who are qualified and have
6 expertise in the type of transaction under review as necessary
7 to assist the office in conducting the analysis of the proposed
8 transaction as part of its preliminary review and, if
9 applicable, its comprehensive review of the proposed
10 transaction.

11 H. The parties shall not close a transaction
12 without the written permission or approval of the
13 superintendent. If the permission or approval contains
14 conditions, those conditions shall be met as provided by the
15 office. The submitting party shall notify the office in a form
16 and manner prescribed by the office when the transaction has
17 closed.

18 I. The office may exempt a health care entity from
19 requirements of the Health Care Consolidation Oversight Act if
20 there is an emergency situation that threatens immediate health
21 care services and the transaction is urgently needed to protect
22 the interest of consumers."

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

25 "[NEW MATERIAL] PRELIMINARY REVIEW OF PROPOSED

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1 TRANSACTIONS.--

2 A. No later than forty-five days after receiving a
3 complete notice of a proposed transaction, the office shall
4 conduct a preliminary review.

5 B. As part of its preliminary review, the office
6 shall consider whether the transaction:

7 (1) is in the interest of patients and
8 consumers of health care services;

9 (2) is urgently necessary to maintain the
10 solvency of a health care entity; and

11 (3) may have negative effects on the
12 availability, accessability, affordability and quality of
13 health care for patients and other consumers of health care
14 services.

15 C. Following the conclusion of the preliminary
16 review, the office shall:

17 (1) notify the parties in writing that a
18 comprehensive review is not required and they have the
19 superintendent's permission to proceed with the transaction; or

20 (2) notify the parties in writing that the
21 transaction is subject to a comprehensive review and include
22 the reasons for that determination."

23 SECTION 9. A new section of the New Mexico Insurance Code
24 is enacted to read:

25 "[NEW MATERIAL] COMPREHENSIVE REVIEW OF PROPOSED

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1 TRANSACTION.--

2 A. In conducting a comprehensive review of a
3 proposed transaction, the office shall consider the likely
4 effect of the proposed transaction on:

5 (1) the potential loss or change in access to
6 essential services;

7 (2) the accessibility of current and future
8 health care services to any community affected by the
9 transaction, including the accessibility of culturally
10 responsive care;

11 (3) the quality of current and future health
12 care services provided to any of the communities affected by
13 the transaction;

14 (4) health care market share of a party and
15 whether the transaction may foreclose competitors of a party
16 from a segment of the market or otherwise increase barriers to
17 entry in a health care market in New Mexico;

18 (5) the labor market and competition for
19 health care workers;

20 (6) wages, salaries, benefits and working
21 conditions of employees of health care entities;

22 (7) employment protections, restrictions and
23 other terms and conditions of employment for employees of
24 health care entities;

25 (8) patient costs;

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- 1 (9) payer costs;
- 2 (10) health care provider networks;
- 3 (11) health plan premiums and out-of-pocket
- 4 costs;
- 5 (12) cost trends and containment of total
- 6 state health care spending;
- 7 (13) access to services in medically
- 8 underserved areas;
- 9 (14) the functioning of the New Mexico markets
- 10 for health care and health insurance;
- 11 (15) the potential for the material change
- 12 transaction to affect health outcomes for New Mexico residents;
- 13 (16) consumer concerns, including complaints
- 14 or other allegations against a health care entity that is a
- 15 party to the transaction related to availability,
- 16 accessibility, affordability and quality of care or coverage;
- 17 and
- 18 (17) any other factors the office determines
- 19 to be in the public interest.

20 B. Following completion of the comprehensive review
21 and the receipt of recommendations from the authority and other
22 state agencies consulted and any advisory committee created by
23 the office for the comprehensive review process, the office
24 shall approve the proposed transaction, approve the proposed
25 transaction with conditions or disapprove the proposed

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1 transaction.

2 C. The office shall approve the proposed
3 transaction after the comprehensive review if the office
4 determines that:

5 (1) the parties to the proposed transaction
6 demonstrate that the transaction will benefit the public by:

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

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

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

13 (3) there is no substantial likelihood of:

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

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

20 SECTION 10. A new section of the New Mexico Insurance
21 Code is enacted to read:

22 "[NEW MATERIAL] STAKEHOLDER ADVISORY COMMITTEE FOR
23 REVIEWS--PUBLIC COMMENT FORUMS.--

24 A. The office may establish a stakeholder advisory
25 committee to review and make recommendations regarding a

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1 proposed transaction that is subject to a review. The
2 superintendent shall appoint members of the affected community,
3 consumer advocates and health care experts subject to the
4 following:

5 (1) no more than one-third of the members of
6 the stakeholder advisory committee may be representatives of,
7 contract with or be employed by a health care entity;

8 (2) a member cannot be a representative of, a
9 contractor of or an employee of a health care entity that is a
10 party to or an affiliate of a party to the transaction under
11 review, or an individual who is within three degrees of
12 consanguinity to an individual who is a representative of, a
13 contractor of or employed by an entity that is a party to or an
14 affiliate of a party to the transaction under review; and

15 (3) a member cannot be a representative of, a
16 contractor of or employed by a competitor that is of a similar
17 size to the New Mexico health care entity that is a party to
18 the transaction.

19 B. If the office conducts a comprehensive review,
20 at least one public comment forum shall be held in the New
21 Mexico service area or areas of the health care entities that
22 are parties to the proposed transaction. Members of the
23 stakeholder advisory committee, if one has been appointed,
24 shall be invited to attend public comment forums.

25 C. At least ten calendar days prior to a public

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1 comment forum, the office shall post to the office's website
2 information about the public comment forum and a link in the
3 website to materials relevant to the proposed transaction. The
4 forum notice and the materials shall be in a format that is
5 easy to find and easy to read and include information on how to
6 submit comments.

7 D. The office shall publish the notice of a public
8 comment forum in at least one newspaper of general circulation
9 in the area affected by the material change transaction."

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

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

13 A. If the superintendent enforces conditions
14 imposed by a conditional permission or approval, the office is
15 entitled to attorney fees and costs.

16 B. The superintendent may contract with experts to
17 assist with monitoring ongoing compliance with the terms and
18 conditions of a transaction. The office shall designate the
19 party or parties to the transaction that shall bear the
20 reasonable and actual cost of retaining experts for
21 post-transaction oversight.

22 C. The health care entity or other person that
23 acquired direct or indirect control over the health care entity
24 through a permitted or approved or a conditionally permitted or
25 approved transaction shall submit one-, two- and five-year

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1 reports to the office and the authority in the form and manner
2 prescribed by the office. Reports shall:

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

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

7 (3) provide analyses of cost trends and cost
8 growth trends of the parties; and

9 (4) provide any other information required by
10 the office."

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

13 "[NEW MATERIAL] CRIMINAL PENALTY FOR FALSE INFORMATION.--A
14 person who omits or fails to disclose material information
15 required by the Health Care Consolidation Oversight Act or
16 submits or causes to be submitted to the office any statement,
17 application, report or other information related to a proposed
18 or closed transaction that is false or misleading in any
19 material respect is guilty of a misdemeanor and shall be
20 sentenced as provided in Section 31-19-1 or 31-20-1 NMSA 1978,
21 as applicable."

22 SECTION 13. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect immediately.