NEW YORK’S MATERIAL TRANSACTION LAW:
AN OVERVIEW

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This presentation is for educational purposes only and is not a substitute for legal advice on any particular matter.

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OUTLINE

- Legislative History
- What is a “Material Transaction”?
- Elements of Required Notice
- Governor’s Proposed Amendments
- Brief Overview of Other State Laws

LEGISLATIVE HISTORY AND PENDING ACTIONS

The Governor’s 2023 bill introducing the proposed version of the law declared:

- Many new health care entities are not subject to licensure and oversight regulations, yet “increasingly take on the characteristics associated” with regulated entities.
- There has been a “proliferation of large physician practices” that are subject to “far less regulation” than licensed providers while being managed by private equity-backed entities.
- Transactions involving change of control and ownership of these entities are not subject to State review, and the State is “not able to track or monitor the impact of these transactions on cost, quality, access, equity, and competition.”

LEGISLATIVE HISTORY AND PENDING ACTIONS

Governor's proposed legislative intent declarations (continued):

- "This phenomenon may have a negative impact on patient care, health care costs, and ultimately access to services."
- A shift in services from State licensed providers to private-equity backed physician practices "undermin[es] the[] financial stability" of licensed providers.
- "[T]he concentration of these investor-backed physician practices is a significant contributor to health care cost inflation," which has been the impetus of the State's "no surprise" billing law.

Note: These are the Executive Branch's assertions and are not presented here as facts.

LEGISLATIVE HISTORY AND PENDING ACTIONS

The previous slides provide insight in the Executive Branch's concerns and arguments, at least as of 2023.

Opponents to the 2023 proposal cited benefits of private equity's involvement in health care, including:

- Savings to providers through economies of scale
- Management experience
- Access to capital that, among other things, can enable improvements to infrastructure and physical plants

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LEGISLATIVE HISTORY AND PENDING ACTIONS

- The Governor's 2023 proposal would have granted NYSDOH authority to review and approve "material transactions", in addition to requiring that parties provide notice of transactions.
- Parties that did not obtain required approval would have been subject to penalties of up to $10,000. The NYS Attorney General would have been granted authority to seek a court order enjoining or restraining acts in violation of the law.
- However, the legislation that was ultimately enacted:
  - Did not include Governor's proposed language regarding legislative intent.
  - Omitted provisions that would have given NYSDOH authority to <u>review</u> and <u>approve</u> material transactions. Only <u>notice</u> to NYSDOH is now required.

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LEGISLATIVE HISTORY AND PENDING ACTIONS

- Governor Hochul introduced legislation in 2025 that would have expanded NYSDOH's authority and State oversight. The Assembly rejected that proposal and no changes were enacted.

- This year, Governor Hochul's budget bill includes similar legislation. The Assembly's legislation omits it, but negotiations are ongoing.

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WHAT IS A "MATERIAL TRANSACTION"?

Under current New York law, it includes:

- **merger with a health care entity**
- **acquisition of one or more health care entities, including the transfer of assets, voting securities, membership or partnership interests, or the transfer of control**
- **affiliation agreement or contract formed between a health care entity and another person**
- **formation of a partnership, joint venture, accountable care organization, parent organization, or MSO for the purpose of administering contracts with health plans, third-party administrators, pharmacy benefit managers, or health care providers**

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WHAT IS A "MATERIAL TRANSACTION"?

Excludes:

- Transaction or a "series of related transactions" that does not result in an increase in one parties' "total gross in-state revenues" by at least $25 million (on a rolling 12-month basis)
- Any transaction already subject to NYSDOH review under the existing certificate of need (CON) process

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ELEMENTS OF REQUIRED NOTICE

- Copies of definitive agreements
- Identification of all locations where healthcare services are provided and associated revenue generated in New York
- Description of any plans to reduce or eliminate services and/or participation in plan networks
- Brief description of nature and purpose of proposed transaction, including:
  - Anticipated impact on cost, quality, access, health equity, and competition in the impacted markets
  - Commitments by the health care entity to address anticipated impacts

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GOVERNOR'S PROPOSED AMENDMENTS

The Governor's proposed legislation would:

- Require additional pre-closing information, including information regarding real estate-related contracts and whether a party has been involved with a health care entity's recent closing
- Require annual post-closing reports to NYSDOH for 5 years
- Authorize NYSDOH to perform a cost and market impact review ("CMIR") of a material transaction, which may delay the transaction for up to 180 days
- Authorize NYSDOH to charge parties for the cost of its review
- Authorize use of information submitted to NYSDOH in subsequent investigations or actions by NYSDOH or the AG

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BRIEF OVERVIEW OF OTHER STATE LAWS

- **California and Massachusetts have enacted laws that authorize regulators to perform CMIR, similar to the New York Governor's proposed amendments**

- **Oregon and New Mexico go further and require state <u>approval</u> of certain material transactions**

- **Connecticut, Minnesota and Rhode Island require notice of certain transactions, somewhat analogous to New York's current law**

<u>Note that laws vary significantly between states!</u>

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QUESTIONS?

If you have questions after this presentation, please contact me:

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