

# U.S. State Healthcare Transaction Reviews: Minnesota

## Healthcare Transaction Reviews Generally<sup>1</sup>

Private investment in U.S. healthcare companies has grown significantly in recent years. U.S. state regulators have taken notice and have recently adopted a number of state healthcare transaction review laws focused on antitrust, quality, access and cost. These laws are intentionally broad and are clearly meant to target healthcare transactions owned by private equity-backed companies, including physician management services organizations.

While the laws vary from state to state, they generally require parties to submit filings to state regulators, including attorneys general, of “material transactions,” which may include, but are not limited to, majority and minority changes of ownership, joint venture agreements, restructurings, and certain debt transactions. Additionally, many of the laws specifically target physician practice management organizations.

### Key takeaways from the filing and review processes:

- There are currently healthcare transaction review laws requiring notice submissions, and in some cases regulatory approval, in 15 states, with pending legislation in several other states.
- Preparation of the initial filings and subsequent responses to regulators will increase transaction costs, lengthen post-signing to closing periods and, in some states, will be as long as six months and may be made public.
- The laws are intended to capture transactions that fall below the current threshold set by federal antitrust enforcers and, in many cases, are aimed specifically at private equity investments in healthcare assets. The reporting/filing thresholds vary from state to state and use several metrics, including transaction financial value, revenue of implicated healthcare entities, and the number of healthcare providers implicated in the transaction.
- The laws require pre-closing filings and, in some cases, approval. The filings require detailed information, including transaction financing, anticipated impacts on the company’s operations, commitment to quality of care, and impacts on overall market competition, to name a few.
- Transaction approval may come with post-closing conditions, monitoring, or reporting obligations.

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<sup>1</sup> The information contained in this document should not be construed as legal advice. Many of the state laws impacting healthcare transactions are new, and regulators are still finalizing the corresponding regulations. Once the regulations are finalized, state regulators will likely interpret the regulations in unanticipated ways, which could lead to unpredictable outcomes.

## Minnesota: Certain Healthcare Entity Transactions Notification Requirement

Status	<p>Applies to transactions of a Healthcare Entity with average annual revenue of \$80 million or more, or a transaction that will result in a Healthcare Entity projected to have average revenue of \$80 million or more ("Large Transactions") closing on or after May 27, 2023.</p> <p>Applies to transactions involving an entity with annual revenue between \$10 million and \$80 million ("Small Transactions") closing on or after January 1, 2024.</p> <p>Minn. Stat. Ann. §§ 145D.01-145D.02</p>
Purpose	<p>Requires <b>parties submit a pre-close notice</b> to the Minnesota Attorney General ("AG") and Commissioner of Health ("Commissioner") of certain healthcare transactions for purposes of analyzing the impact of such transactions on healthcare costs, market consolidation, and quality.</p>
Impacted Healthcare Entities	<ul style="list-style-type: none"> <li>Hospitals</li> <li>Hospital systems</li> <li>Captive professional entities</li> <li>Medical foundations</li> <li>Healthcare provider group practices</li> <li>Entities organized or controlled by a listed entity</li> <li>Entities that own or control a listed entity</li> </ul>
Who Must File	<p>Beginning January 1, 2024, healthcare entities involved in the covered transactions that:</p> <ul style="list-style-type: none"> <li>have annual revenue between \$10 million and \$80 million; or</li> <li>engage in a transaction that will result in an entity projected to have an annual revenue between \$10 million and \$80 million.</li> </ul>
Transactions That Require a Filing:	<p>Applies to transactions that involve a single action or a series of actions that occur within a five-year period in Minnesota or involve a healthcare entity formed or licensed in Minnesota and that constitute:</p> <ul style="list-style-type: none"> <li>a merger or acquisition of a healthcare entity with another entity;</li> <li>the sale, lease, security interest, or transfer of 40% or more of the assets or ownership of a healthcare entity to another entity;</li> <li>a modification of one or more members of the healthcare entity's governing body that transfers control, responsibility for, or governance of the healthcare entity to another entity;</li> <li>a modification of the members of the healthcare entity formed under the Minnesota Nonprofit Corporation Act that results in a change of 40% or more of the membership of the entity;</li> <li>the creation of a new healthcare entity; and</li> <li>a revenue sharing agreement involving 40% or more of the healthcare entity's or its affiliates' revenues.</li> </ul>
Excluded Transactions	<p>A notice is not required for transactions involving:</p> <ul style="list-style-type: none"> <li>entities directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with all other entities involved in the transaction;</li> <li>clinical affiliations that collaborate on clinical trials or provide graduate medical education;</li> <li>contracts with healthcare providers for clinical services; and</li> <li>corporate reorganizations.</li> </ul>
Notice Timing	<p>For Large Transactions, minimum of <b>60 days prior</b> to the proposed completion date of the transaction:</p> <ul style="list-style-type: none"> <li>transacting parties must disclose the required content to the AG and Commissioner; and</li> <li>the AG may extend the notice and waiting period <b>for an additional 90 days</b> or waive all or any part of the notice period or disclosure requirements.</li> <li>The AG may bring action against the parties to unwind or enjoin the transaction, or seek other equitable relief if necessary.</li> </ul> <p>For Small Transactions, minimum of <b>30 days prior</b> to the proposed completion date of the transaction:</p> <ul style="list-style-type: none"> <li>transacting parties must disclose the required content to the Commissioner, who may share it with the AG; or</li> <li>if the parties first anticipate entering into the transaction within less than 30 days, notice should be given within 10 business days.</li> </ul>
Content of Notice	<p>The notice provided by the entities must include, without limitation:</p> <ul style="list-style-type: none"> <li>the leadership of the entities involved in the transaction, including all board members, managing partners, member managers, and officers;</li> <li>the services provided by each entity and the attributed revenue for each entity by location;</li> <li>the primary and proposed service areas for each location;</li> <li>the current and proposed relationships between the entities and the affected healthcare providers and practices;</li> <li>market information, including markets in which the entities expect post-merger synergies, potential areas of expansion in existing or new markets;</li> <li>the current governing documents of all entities involved in the transaction;</li> <li>the transaction agreement and all other related agreements, including any collateral agreements (e.g., leases, management contracts, and service contracts); and</li> </ul>

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- a financial and economic analysis and report or impact analysis report prepared by an independent expert (as applicable under §145D.01(1)(j)(1), (2), (4), (7), or (9)).

Nonprofit corporations that enter into a transaction requiring a filing under this law may be subject to additional requirements pursuant to §145D.01(4).

The Commissioner may use the data collected from the notice to conduct analyses of the aggregate impact of transactions on the equitable access, the cost, and the quality of healthcare services for purposes of public report.

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**Penalty for Noncompliance**      The AG may bring action to enjoin or unwind a transaction.

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