

Office of Health Care Affordability Publishes Near-Final Regulations on Health Care Transaction Notice Requirements

On Tuesday, November 28, 2023, California's Office of Health Care Affordability ("OHCA") published its latest version of the proposed regulations requiring advanced notice of certain health care transactions in California for final approval by California's Office of Administrative Law ("OAL"). The publication included the [proposed regulations](#), a [notice of proposed emergency rulemaking](#), and a [finding of emergency](#) detailing the policy justifications and commentary on each part of the draft regulations. OHCA is required to make its proposed regulations available for notice and comment five working days before submitting the regulations to OAL. While OHCA may make further changes to the regulations in response to feedback during the notice and comment period, the language posted this week may be the final regulatory language that will go into effect on January 1, 2024.

SB 184 authorized OHCA to adopt the pre-transaction notice regulations through the emergency rulemaking process, but OHCA published multiple rounds of draft regulations for public input since this past summer. ¹ The regulations generally require prior notice of certain health care transactions if (1) at least one of the parties to the transaction is a "health care entity," (2) at least one party which is a "health care entity" has California assets and/or revenue that meet certain thresholds, and (3) the transaction constitutes a "material change transaction." The regulations also detail the information to be included in the notices, OHCA's standards of review, timelines for review, and procedures for protecting confidential information. Here are some important changes in the latest version of the proposed regulations:

- The regulations state that notice is required for "material change transactions," as defined in the regulations. The prior draft language stated that health care entities must provide notice of a "transaction," so the updated language clarifies that only "material change transactions" are subject to notice.
- The asset and revenue thresholds do not apply to health care entities located in a mental health or primary care health professional shortage area ("HPSA") in California. Although implied, the prior draft did not expressly specify whether the HPSA must be in California.
- One definition of "material change transaction" now includes the sale, transfer, or other disposition of 25% or more of the total California assets "of the submitter." The prior draft language concerned the sale of California assets by "any health care entity." This change narrows the scope of transactions subject to notice by excluding certain transactions where the seller entity does not meet the requirements for being considered a "submitter" of the notice to OHCA. If the seller is not a required "submitter" of a notice

to OHCA, the transaction should not constitute a “material change transaction” under this definition.

- “Material change transaction” no longer includes (1) transactions involving “a health care entity joining, merging, or affiliated with another health care entity, affiliation, partnership, joint venture, or parent corporation related to the provision of health care services where any health care entity has at least \$10 million in annual California-derived revenue” and (2) transactions that “change[] the form of ownership of a health care entity that is a party to the transaction, including but not limited to change from a physician-owned to private equity-owned and publicly held to a privately held form of ownership.”
- OHCA will treat documents showing the value of the proposed transaction as confidential.
- If OHCA determines that it will not conduct a Cost and Market Impact Review (“CMIR”) of the proposed transaction, it will notify the submitter within 45 days of receipt of the notice of transaction. If OHCA determines that it will conduct a CMIR, it will notify the submitter within 60 days of receipt of the notice of transaction. The 45- and 60-day notice periods may be tolled in certain circumstances.

OHCA may submit the proposed regulations to OAL after a five working day notice period, after which OAL will have 10 calendar days to review and approve the proposed emergency regulations. If approved, the regulations will take effect on January 1, 2024, and will remain in effect as emergency regulations for five years, during which time OHCA may adopt permanent regulations through the regular rulemaking process. Participants in the California health care sector should engage in early, careful review and assessment to determine whether they are potentially subject to the notice and review requirements and monitor any further changes to the regulations prior to January 1, 2024.

[1] Our analyses of the earlier drafts of the proposed regulations can be found here:

<https://www.polsinelli.com/publications/new-california-legislation-and-law-may-have-serious-impact-on-certain-health-care-deals>

<https://www.polsinelli.com/publications/california-regulators-publish-highly-anticipated-draft-regulations-on-mandatory-pre-transaction-notices-for-health-care-entities>

<https://www.polsinelli.com/publications/office-of-health-care-affordability-appears-to-both-limit-and-expand-scope-of-health-care-transaction-notice-requirements-in-latest-draft-regulations>