

PUBLICATION

Maryland Proposes New Public Interest Review for Health Care Transactions and CON Law Changes

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Maryland Senate Bill 494 and House Bill 944, proposed companion bills introduced in February 2026, would establish a new public interest review framework for health care transactions and implement changes to Maryland's certificate of need law. If enacted, the bills would require health care entities to provide 90-day advance notice to the Maryland Health Care Commission before completing mergers, acquisitions, and other material transactions. The Commission's executive director would have authority to approve, approve with conditions, or deny transactions following a public interest review. The bills would also remove the existing exemption from certificate of need requirements for certain health care facility mergers, meaning that mergers may now require a certificate of need or Commission approval under Section 19-120. The bills would take effect on October 1, 2026.

Key Aspects of the Proposed Legislation

Who Must Comply. The bills apply to "health care entities" that meet the following criteria:

- **Entity Type.** "Health care entity" means a "provider organization," a "health care facility," and an ambulatory surgical facility (defined as a facility that operates exclusively to provide outpatient surgical services, where patients receive post-operative observation but are not hospitalized, and where services do not exceed 24 hours following admission).
 - "Health care facility" means: (1) a hospital; (2) a limited service hospital (defined as a hospital that has eliminated its capability to admit patients for overnight hospitalization but retains an emergency or urgent care center); (3) a related institution (defined as a facility providing domiciliary, personal, or nursing care with overnight admission for two or more unrelated individuals); (4) an ambulatory surgical facility; (5) an inpatient facility that is organized primarily to help in the rehabilitation of disabled individuals, through an integrated program of medical and other services provided under competent professional supervision; (6) a home health agency; (7) a hospice; (8) a freestanding medical facility; and (9) any other health institution, service, or program for which Part II of the subtitle requires a certificate of need.
 - "Health care facility" does not include: (1) an acute general hospital; (2) a hospital or related institution that is operated, or is listed and certified, by the First Church of Christ Scientist; (3) certain facilities that provide kidney transplant services or kidney disease treatment services; and (4) dentist offices.
 - A "provider organization" includes: (1) a physician organization; (2) a medical group practice; (3) an independent practice association; (4) a provider network; (5) a management services organization; and (6) any other organization that contracts with payors for payment for health care services.
- **Size Threshold.** The health care entity has total assets, annual revenues, or anticipated annual revenues if the result of the transaction is a new health care entity, of at least \$10,000,000, including both in-state and out-of-state assets and revenues.

Transactions Subject to Review

Health care entities would be required to notify the Commission at least 90 days before completing any of the following "material change transactions" (whether occurring in a single transaction or in related transactions over a consecutive five-year period):

1. Mergers involving one or more health care entities;
2. Acquisitions of a health care entity (including transfers of more than 25 percent of stock or ownership interest);
3. Any affiliation, arrangement, or contract resulting in a change of control of a health care entity;
4. Formation of partnerships, joint ventures, parent organizations, or management services organizations for the purpose of administering contracts with carriers, third-party administrators, pharmacy benefits managers, or providers;
5. A sale, purchase, lease, affiliation, or transfer of control of a board of directors or governing body of a health care entity; or
6. A real estate sale or lease agreement involving a material amount of assets of a health care entity.

Exemptions. The following transactions are excluded: acquisitions of nursing homes; clinical affiliations of health care entities formed solely for the purpose of collaborating on clinical trials; graduate medical education programs; the mere offer of employment to, or hiring of, a single physician; or instances in which the health care entity directly, or indirectly through one or more intermediaries, already controls, is controlled by, or is under common control with, all other parties to the transaction, such as a corporate restructuring.

Transactions that already require a certificate of need or other Commission approval would also be exempt. Additionally, the bills provide that they do not limit the authority of the attorney general to protect the health care market or consumers under any other law.

Changes to Certificate of Need Requirements. In addition to establishing the new material change transaction framework, the bills would amend Section 19-120 to remove "merger" from several exemptions relating to bed capacity changes, health care service changes, and capital expenditures. The practical effect is that "mergers" involving health care facilities will now generally require a certificate of need or other Commission approval, whereas before they could qualify for an exemption.

Required Information. At least 90 days before completing a material change transaction, the health care entity shall provide a notice of the material change transaction to the Commission and the public. The notices required are considered complete when the executive director determines that all required information has been disclosed by the health care entity.

Within ten days of receiving complete notice, the Commission must publicly post information about the transaction, including the identity of the parties, a summary of the proposed transaction, groups likely to be impacted, and information about services that will be continued, reduced, or eliminated, among other details.

Public Interest Review. Within 30 days after receiving complete notice, the executive director must notify the health care entity whether the transaction is subject to a public interest review. In making this determination, the executive director considers whether: (1) the material change transaction will result in the transfer of assets that exceeds the threshold established by the Commission; (2) the material change transaction will occur in a consolidated market for a line of services offered by a party to the material change transaction; (3) the material change transaction will cause a change in market share, such that any resulting health care entity will possess market power (defined as 30 percent or more market share in any service line) on completion of the material change transaction; (4) the material change transaction will otherwise lessen competition, including through the effects of vertical or cross-market transactions among different product or geographic markets; (5) a party to the material change transaction possesses market power prior to the material change transaction; and (6) the

material change transaction is likely to have a negative impact on the cost, quality, equity, or access to health care services in any region in the state.

If a public interest review is required, the executive director must assess and approve, approve with conditions, or deny the transaction within 60 days. During the review, the executive director may consult with governmental entities, solicit comments from employees and the public, and contract with independent experts (with costs paid by the transaction parties). The bills also require the Commission to adopt regulations providing for expedited review if there is an emergency and the transaction is needed to ensure continuity of care.

Consequences for Noncompliance. Parties that fail to comply with the notice requirements or other provisions face civil penalties of up to one percent of the transaction's value. The Commission may also issue administrative orders requiring compliance or seek relief from the Maryland Circuit Court in the jurisdiction in which the health care entity is located (or in the case that the health care entity is out-of-state, the jurisdiction in which the Commission is located). Following approval, the Commission will monitor compliance with any conditions imposed on the transaction.

Appeals. If a transaction is denied or approved with conditions, parties may submit a written request for the full Commission to review the executive director's decision. The specific procedures for requesting Commission review will be set forth in regulations adopted by the Commission. A Commission decision constitutes a final decision for judicial review purposes, and parties may seek review in a Maryland Circuit Court where a party to the material change transaction resides or has a principal place of business within 30 days.

Confidential Treatment of Submitted Information. Certain information is presumed to be public, including the identity of the parties to the material change transaction; persons with five percent or more ownership interest in a party to the material change transaction; annual revenue and asset values of the material change transaction; the monetary value of the material change transaction; whether the material change transaction is subject to public interest review; whether the executive director approved, approved with conditions, or denied the material change transaction; and any conditions imposed on a material change transaction and the party's compliance with the conditions. However, the Commission may not disclose confidential commercial or financial information or trade secrets without the consent of the party that produced the information.

Practical Implications

Planning for Compliance. Parties contemplating applicable transactions involving Maryland health care entities must account for a potential six-month timeline (including the 90-day notice period, 30-day determination period, and 60-day review period) in their deal planning. Health care entities and investors should work with counsel to evaluate whether their transactions trigger filing obligations.

Market Power Analysis. Transactions resulting in 30 percent or more market share in any service line are likely to receive enhanced scrutiny. Parties should conduct careful market share analyses across all service lines and relevant geographic areas before proceeding with a transaction. Engaging economic consultants early in the process may be advisable.

MSO and Private Equity Transactions Under Scrutiny. The bills expressly cover management services organizations (MSOs) and other provider organizations that contract with payors. Transactions involving MSOs, private equity investors, and other significant investors that result in changes of control or the formation of new contracting entities would require notice.

Aggregation of Transactions. The bills define "material change transaction" to include transactions occurring "in a series of related transactions within a consecutive 5-year period." Health care entities should therefore

track prior transactions carefully, as incremental deals may be aggregated and cumulatively trigger review requirements.

Public Disclosure. Unlike some state frameworks that keep filings confidential, Maryland would publicly post transaction details within ten days of receiving complete notice. Parties should prepare stakeholder communication strategies and anticipate potential opposition from employees and community members.

Legislative Status. Senate Bill 494 and House Bill 944 are pending legislation currently under consideration by the Maryland General Assembly. These bills have not been enacted into law.

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