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NY DOH Publishes Electronic Material Health Care Transaction Reporting Form, Increasing Disclosure Requirements to Include Potentially Sensitive Business Information

Health Care Law Brief on **May 22, 2025**

On May 15, 2025, the New York State Department of Health ("DOH") announced the launch of the electronic Material Transaction Reporting Form for health care transactions ("Electronic Form"). To assist reporting entities in preparing their submissions, the DOH has also released a list of all questions included in the Electronic Form.

Collectively, the reporting requirements set forth in the Electronic Form appear significantly more extensive than those imposed by other states, including California's health care transaction reporting framework. Notably, the Electronic Form includes obligations to disclose potentially sensitive business information, such as investor materials.

Existing Statutory Authority

Proskauer has tracked the evolving reporting obligations in a series of posts, including one published last month that discussed the latest DOH guidance concerning the reporting obligations.

Pursuant to PHL § 4552, a health care entity shall submit to the DOH "written notice, with supporting documentation as described below and further defined in regulation developed" by the DOH. Such written notice "shall include, but not be limited to:"

- The names of the parties to the material transaction and their current addresses;
- Copies of any definitive agreements governing the terms of the material transaction, including pre- and post-closing conditions;
- Identification of all locations where health care services are currently provided by each party and the revenue generated in the state from such locations;

- Any plans to reduce or eliminate services and/or participation in specific plan networks;
- The closing date of the proposed material transaction; and
- A brief description of the nature and purpose of the proposed material transaction.

As of the publication date of this post, the DOH has not promulgated regulations concerning the law. Nevertheless, the Electronic Form outlines a range of documents and information that reporting entities must submit to the state as part of a material transaction report.

Reporting Obligations to Consider

Below are certain categories of information requested in the Electronic Form that may raise particular concerns for investors and sponsors. Some of the requested categories are sensitive in nature, and careful attention should be paid to ensuring that the DOH treats the submitted information as confidential. Other categories of requested information may require significant effort to analyze and prepare a response, particularly for larger enterprises.

Reporting Obligation Contained in Electronic Form	Impact and Considerations

Part 2, Section A.10 -Provide the identities of and interrelationships among the Party and all persons known to control or to be controlled by or under common control with the Party, in a chart that clearly presents the relationships. -Additionally, the organizational chart must identify (1) voting percentage: the percentage of voting securities for each person identified in the organizational chart and (2) other control: if control of any person is maintained other than by the ownership or control of voting securities, then indicate the basis of such control for each relevant party identified in the organizational chart; as to each person, indicate the type of organization (e.g., corporation, trust, partnership) and the State or other jurisdiction of domicile.	*The form appears to require broad disclosure of ownership and control rights of each Party. Of note, the form asks for the disclosure of "all persons known to control or to be controlled by or under common control with the Party," which may require analysis and review in highly complex, sponsor-backed deal structures to disclose affiliates of the Party.*	

Part 3, Section B-C -Projected annual revenue (in $ millions) of the Surviving Entity over the next three years. -Provide information **on all transaction activity in the past 3 years** by each Party to this Material Transaction.	*Any "Party" to the "Material Transaction" must report historic "transaction activity." The Electronic Form does not clarify whether the disclosure obligation concerns all other historic Material Transactions, or if the DOH expects a party to disclose all historic transactions involving health care entities in the state, regardless of size over the prior 3 years. The historic transaction reporting obligation may require careful review and consideration by entities who consistently engage in transactions in the ordinary course of business.*

Part 3, Section D, Subparagraphs (c)-(d)

-How many transactions has the Surviving Entity from this Material Transaction engaged in within the prior 12 months (from the anticipated close of this Material Transaction) that have increased gross in-state revenues?

-Considering the most recent of these transactions: Submit the Surviving Entity's standalone gross in-state revenue before the transaction's close date. Submit the combined gross in-state revenue of the Parties to this transaction as of the transaction's close date.

Notice: Any series of transactions designed to evade the threshold provisions of this article shall be deemed a Material Transaction and subject to the notice requirements of Article 45-A of the Public Health Law.

In posing this question, it appears that the DOH is requiring parties to submit information as to prior transactions in a 12-month period in order to potentially determine whether the Parties have complied with the reporting obligations.

Part 3, Section E		
For all Parties, submit Financial Statements in conformity with U.S. Generally Accepted Accounting Principles (“GAAP”) or other accounting principles prescribed or permitted under law (audited with an independent CPA’s opinion thereof, preferred but not required) of the Parties to this Material Transaction as of the end of the last two fiscal years. These financial statements shall include the following components: Balance Sheet; Income Statement; Statement of Cash Flows; Notes to Financial Statement (Narrative); and For the Surviving Entity, also submit projected financial statements dated one day after closing.	*The Electronic Form requires all Parties to the Material Transaction to submit financial information.*	

Part 4, Section A, Subparagraph (a)-(c) -Describe the health care services provided by each Party to the Material Transaction at all locations of operation within New York. -Does any party to this transaction directly or indirectly employ physicians? If so, each party that directly or indirectly employs physicians should fill out the "Physician Locations Spreadsheet" and upload it in question A(d).	*The question asks an entity to report **all** locations in which it operates in New York. For **each** location, the Electronic Form asks for gross in-state commercial, Medicare, Medicaid, and other revenue. In addition, if any Party to the Material Transaction employs physicians, the entity is to upload an additional worksheet, titled "Physician Location Spreadsheet". The spreadsheet requires detailed reporting of physician relationships, including whether the physician is employed or otherwise affiliated with the Party, including their NPI, and hours worked at each location.*

Part 4, Section B
Which best describes this transaction?

An acquisition resulting in a Surviving Entity
-For each acquired entity, in the 12-month period preceding the proposed transaction, what is the **average contracted commercial payor rate for each service line** identified in Question A (a) (v) (“Services Offered at Location”)? Your response should be expressed in a dollar ($) amount.
-For the surviving entity, what is the **anticipated overall contracted commercial payor rate by service line** in the year immediately following the Material Transaction close date for the Surviving Entity as a result of this transaction?

A merger or other transaction resulting in the formation of a New Entity (“NewCo”)
-For each entity involved in the formation of

The question requires the reporting entity to submit confidential and detailed information concerning health plan reimbursements for each “service line.” The Electronic Form does not define what a “service line” is, a term

Part 5 -Required Documents: Definitive Transaction Document(s) (e.g., Asset Purchase Agreement); Charter and Bylaws; Operating Agreements or Partnership Agreement(s); and Financing Agreements or documents. -As Applicable Documents: Fairness Opinions, Offering Memoranda, Private Placement Memoranda, Investor Disclosure Statements, and Other Investor Solicitation Materials.	*The broad document request covers a host of documents that are treated as highly confidential in the ordinary course of business.*

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