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Memorandum

State Premerger Notification and Review Laws: Navigating an Expanding Domestic Regulatory Frontier

April 22, 2025

Beginning July 27, companies with significant business in Washington State will need to submit all HSR filings to the Attorney General of Washington.

The State of Washington recently enacted the country's first general state antitrust law requiring premerger notification to state enforcers. The Uniform Antitrust Premerger Notification Act (the "Act") builds on a pattern of healthcare-specific "baby-HSR" laws enacted by Washington and other states in recent years, some of which have required copies of federal Hart-Scott-Rodino Antitrust Improvements Act ("HSR") filings. While healthcare providers are the only industry segment explicitly mentioned in Washington's new law, the Act applies more broadly to *all* persons that meet annual net sales requirements in Washington. Failure to provide notice under the Act may result in a civil penalty of up to $10,000 per day of noncompliance. As was the case with healthcare-specific baby-HSR laws, we expect other states will expand their own antitrust premerger notification laws and continue to devote resources to antitrust enforcement.

Washington's Uniform Antitrust Premerger Notification Act

Effective July 27, 2025, the Act requires HSR filings made on or after that date to be contemporaneously submitted to the Washington State Office of the Attorney General, so long as the person subject to the HSR filing satisfies any one of the following three conditions.

1. The person has its principal place of business in Washington;
2. The person or a person it controls directly or indirectly had annual net sales in Washington of the goods or services involved in the transaction of at least $25.28 million (*i.e.*, 20% of the current $126.4 million HSR Act threshold); or
3. The person is a healthcare provider or provider organization (as defined below and in the Washington healthcare-specific material change notification law) conducting business in Washington.

The Act does not require the attorney general to approve of the transaction prior to closing, only that a filing be submitted contemporaneously; the term "contemporaneously" is not defined in the Act. A person with its principal place of business in the state must, and others may be asked to submit, the additional documentary material filed with an HSR form. The Act does not provide for a suspensory period or give the attorney general suspensory authority. Failure to provide notice may result in a civil penalty of up to $10,000 per day of

noncompliance. In comparison, the state's current healthcare premerger notification law requires at least 60 days advance notice prior to closing and only imposes a civil penalty of up to $200 per day of noncompliance.

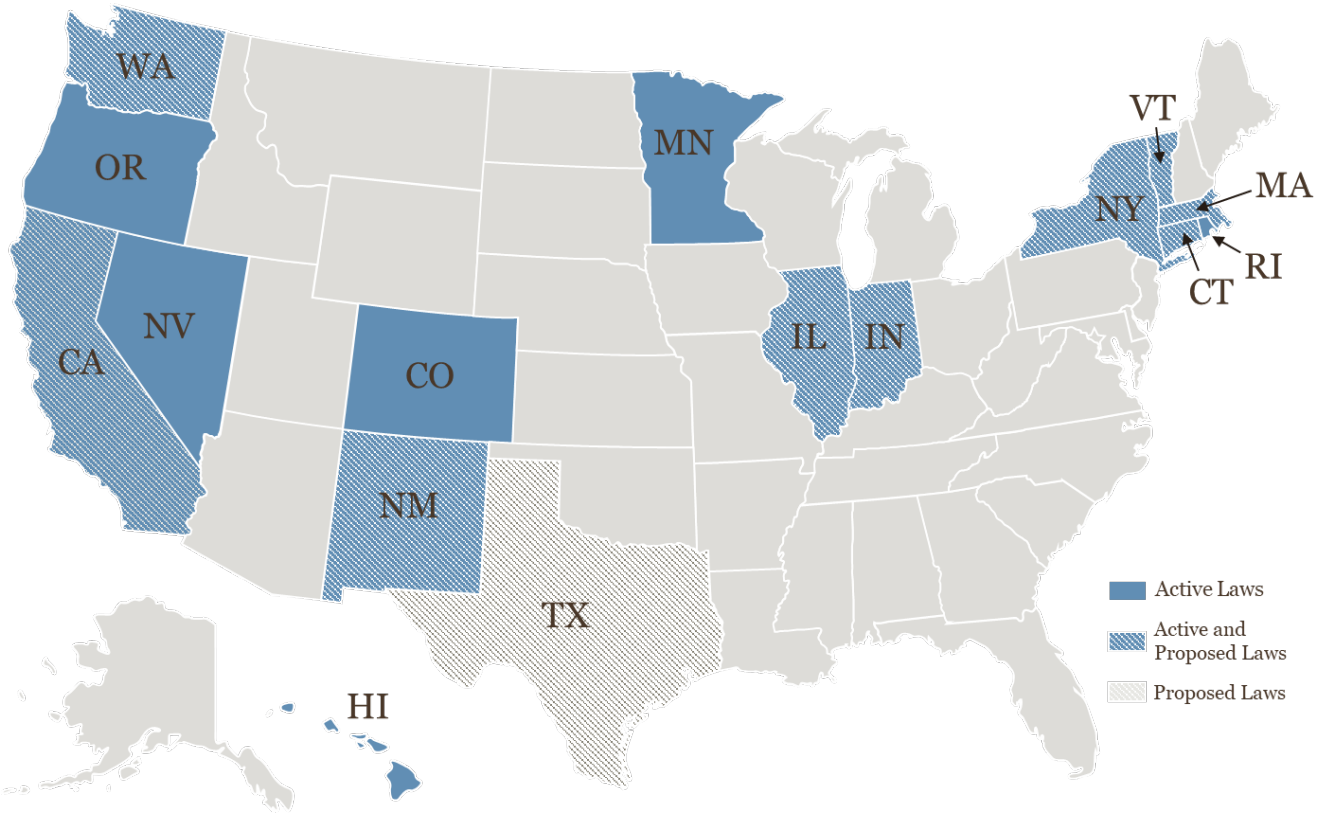
The Act facilitates information sharing and cooperation between the Washington attorney general and other state and federal antitrust enforcers, but prohibits the attorney general from making public or disclosing a submitted HSR form and accompanying materials, as well as the fact that such filing was submitted to the state. There are some exceptions, however. First, the attorney general may disclose the filing subject to a protective order in an administrative proceeding or judicial action if the proposed merger is relevant to the proceeding or action. In addition, the attorney general may share information with the attorney general of another state that has enacted a substantively equivalent act, so long as that state's act includes confidentiality provisions at least as protective as the confidentiality provisions of the Act. While no other state has yet enacted substantially similar legislation, the expansion of Washington's regulatory regime from its existing healthcare premerger notification law to the Act provides a roadmap for other states to expand their own healthcare-specific baby-HSR laws to this broad premerger notice requirement.

State Healthcare Premerger Notification and Review Laws

The Act builds upon Washington's healthcare premerger notification law, effective in 2020, which requires that parties to a transaction resulting in a "material change" involving hospitals, hospital systems, or provider organizations provide notice of that transaction to the attorney general at least 60 days in advance of the transaction's effective date. The healthcare premerger notification law defines a "provider organization" to include corporations, partnerships, and organized groups of persons in the business of healthcare delivery or management that represent seven or more healthcare providers in contracting with carriers or third-party administrators for payments of healthcare services (*e.g.*, physician organizations, independent practice associations, provider networks, and accountable care organizations). That law also defines a "provider" as a natural person who practices a listed healthcare profession, including a medical assistant, genetic counselor, home care aide, mental health counselor, dietician, substance use disorder professional, and dispensing optician. The new Act uses these same definitions. The Act also updates Washington's existing healthcare premerger notification law to provide that that law's HSR filing requirement is satisfied when an HSR filing copy is submitted to the attorney general under the new Act.

At least 14 other states have enacted premerger notification and review laws covering various types of healthcare transactions. Prior to this Act, state material change transaction notification regimes affected only certain transactions in the healthcare sector, though the state laws took an expansive view of what constituted a healthcare entity that was required to submit notice and implicated transactions with revenue or asset thresholds well below the HSR Act threshold. Advance notification requirements also ranged significantly, from 30-days advance notice in some states, up to 180-days advance notice in Oregon, for example. Finally, some states included broad criteria with respect to the parties required to submit material change notices. Indiana, for example, defines a healthcare entity to include a private equity partnership, regardless of where it is located,

seeking to enter into a merger or acquisition with another healthcare entity. Massachusetts has since followed suit, and other states may do the same. A map of state healthcare premerger or material change transaction notification and review laws is shown below. As reflected by those states labeled as having Active and Proposed Laws, the majority of states that have enacted healthcare premerger or material change transaction notification and review laws have proposed new legislation to expand those laws.



Conclusion

The Act is the first of its kind in a major expansion of state antitrust enforcement to cover large transactions outside of the healthcare sector, but is unlikely to be the last. Other states, including those above with existing healthcare premerger notification and review laws, may follow Washington's lead and seek to enact their own industry-nonspecific antitrust review legislation. It is possible that such legislation could mirror the Act or impose more onerous requirements.

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