

# *The Birth of “Baby HSR” Laws:*

## **What You Need to Know about State Premerger Notification**

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# Agenda

- **What Are Mini-HSR Laws? Background and Overview**
- **Key Elements and State-by-State Comparisons**
- **Practice Tips**

# What Are Mini-HSR Laws?

# What Are Mini-HSR Laws?

- Mini-HSR laws are state-level statutes that work side-by-side with the federal Hart-Scott-Rodino Act, and require parties to certain acquisitions to make an informational filing and potentially observe a waiting period before a transaction can close.
- Two types: (1) healthcare-specific and (2) non-healthcare specific
  1. Over the last ten years, over a dozen states implemented mini-HSR laws regarding health care transactions. These statutes generally only require filings for transactions involving “health care entities,” which is usually further defined by statute.
    - Usually not tied to federal HSR reportability
  2. In 2025, Washington and Colorado adopted the UPNA, a uniform model law which captures **HSR-reportable transactions** where one of the parties has its principal place of business located in the state or has a certain amount of annual sales in the state, *regardless of industry/business type*.

# Potential “health care entities” under healthcare-specific statutes

- The following types of businesses could be captured by mini-hsr laws as a health care entity:
  - Hospitals, Doctors, Providers
  - Long-term/specialty care facilities
  - Health insurers
  - Pharmacy Services (including virtual pharmacy, drug delivery)
  - Telehealth/telemedicine services

# Uniform Premerger Notification Act

- State filing required **for HSR-reportable transactions** if:
  - (a) A party has its principal place of business in the state, OR
  - (b) A party has annual net sales in the state of at least 20% of HSR threshold (~25M under current thresholds);
- No waiting period – clearance not required before closing
- The new federal HSR form also includes a voluntary waiver for federal enforcers to share HSR filings and information with state AGs.
- Washington and Colorado were first to adopt the UPNA Model Law language in 2025.

# Key Elements: State-By-State Comparison

# States with Mini-HSR Laws (*\*as of September 26, 2025*)

## Healthcare-specific

- **California (2 statutes)**
  - **Healthcare-specific statute for filing to state health agency (OHCA)**
- **Connecticut**
- **Hawaii**
- **Illinois**
- **Indiana**
- **Massachusetts**
- **Minnesota**
- **Nevada**
- **New Mexico**
- **New York**
- **Oregon**
- **Rhode Island**
- **Vermont**
- **Washington (2 Statutes)**
  - **Healthcare-specific statute**

## Non-healthcare specific

- **California (2 statutes)**
  - **Separate statute for transactions involving retail drug and retail grocery firms**
- **Colorado**
  - **UPNA statute**
- **Washington (2 Statutes)**
  - **UPNA statute**

## ***Notable Pending Legislation (\*as of September 26, 2025)***

- Several legislatures have introduced statutes to implement **the Uniform Premerger Notification Act**, including **California, Hawaii, Nevada, Utah, West Virginia, and District of Columbia**
- **New York** introduced a major amendment to its antitrust laws which would require that any party conducting business in New York who must submit an HSR filing with the federal government must also file their proposed transaction with New York.
- Several states have introduced mini-HSR legislation **specific to healthcare**, including a new trend of seeking to include private equity stakeholders of healthcare providers:
  - **Illinois** has a proposed law to expand its existing healthcare-focused statute to include private equity and hedge fund stakeholders of healthcare providers
  - **Pennsylvania** has a proposed new mini-HSR law regarding healthcare transactions, which includes transactions involving private equity firms
  - **California** has a proposed law to expand its existing OHCA merger review regime to require additional entities—namely private equity companies, hedge funds, and MSOs
  - **Massachusetts** has a proposed law to expand existing healthcare-focused statute to consider more factors in the review analysis and to allow for post-closing merger review.

# ***Key Elements of a Mini-HSR:***

- ***Waiting Period & Suspensory Power***
  - How long is the review window?
- ***Covered Entities***
  - Are filings triggered by type of business, monetary threshold, or both?
- ***Exceptions***
  - Are certain deals exempt from filing?
- ***Emergency/Expedited Review***
  - Is there a process to speed up review?
- ***Filing Requirements***
  - How onerous is the filing? Copy of HSR? Simple form?
- ***Confidentiality***
  - To what extent is the filing made public?
- ***Penalties***
  - What are the consequences of noncompliance with the law?

## Example Approaches: Waiting Period

| State    | Law/Code   | Waiting Period   |
|----------|--|--|
| New York | Public Health Chapter 45, Article 45-A Sec. 4552 | Waiting Period: parties must provide notice <b>30 days</b> before closing.   |
| Oregon   | ORS 415.501                                      | Notice must be submitted “no less than <b>180 days</b> before the date of the transaction.” The state shall complete a preliminary assessment within the first 30 days and, if needed, a comprehensive review within 180 days. |

## Example Approaches: Covered Entities

| State   | Law/Code  | Covered Entities  |
|---|---|---|
| Connecticut   | Connecticut General Statute Section 19a-17b             | Acquisition involving a <b>“hospital, hospital system, or other health care provider,”</b> which is further defined as a “person, corporation, limited liability company, facility or institution operated, owned or licensed by [Connecticut] to provide health care or professional services, or an officer, employee or agent thereof acting in the course and scope of his employment.” <b>No monetary threshold.</b> |
| California AG   | California Corporate Code § 14700 et seq                | Acquisition involving a <b>“retail grocery firm or retail drug firm,”</b> defined by reference to NAICS codes. <b>No monetary threshold.</b>  |
| California Office of Health Care Affordability (OHCA) | 22 CCR 97431 et seq                                     | Acquisition that <b>meets monetary thresholds and involves health care “providers,”</b> which are statutorily defined and include physician clinics, hospitals, clinical labs, and other health care facilities.  |
| Colorado  | SB25-126 (Uniform Antitrust Premerger Notification Act) | Filing required for <b>HSR-reporting parties</b> which meet EITHER of the conditions: <ul style="list-style-type: none"> <li>• has <b>annual net sales in Colorado</b> of 20% or more of the HSR threshold (<b>\$25.3 million</b> for 2025).</li> </ul> OR <ul style="list-style-type: none"> <li>• Has its <b>principal place of business in Colorado.</b></li> </ul>  |

## Example Approaches: Exceptions

| State    | Law/Code                     | Exceptions  |
|----------|------------------------------|---|
| New York | Sec. 4550(b)                 | “Material transaction’ shall not include a <b>de minimis transaction</b> , which shall mean for purposes of this article a transaction or a series of related transactions which <b>result in a health care entity increasing its total gross in-state revenues by less than twenty-five million dollars.</b> ” |
| Indiana  | IC 25-1-8.5                  | “health care entity” is defined with statutory exceptions excluding certain types of <b>insurance providers</b> (IC 25-1-8.5-2(a)(2)(A-H)) and <b>Medicaid and Medicare programs</b> (IC 25-1-8.5-2(b))   |
| Illinois | Illinois Public Act 103-0526 | Transactions involving an <b>out-of-state health care entity</b> must provide notice <b>only if</b> the out-of-state entity generates \$10,000,000 or more in annual revenue from patients residing in IL.  |

# Example Approaches: Emergency/Expedited Review

| State           | Law/Code            | Expedited Review  |
|-----------------|---------------------|---|
| Oregon          | ORS 415.501         | Statute provides a process to expedite the review for an exogenous “emergency situation,” or where the “transaction is urgently needed to protect the interest of consumers,” and there is evidence of <b>imminent insolvency</b> .   |
| California OHCA | 22 CCR 97431 et seq | <p>Submitters may request expedited review of the notice if they demonstrate one of the following circumstances exists:</p> <ul style="list-style-type: none"> <li>• Grave <b>risk of immediate business failure</b> such as a substantial likelihood that a party to the transaction will have to file for bankruptcy absent the expedited review and that the transaction is necessary to ensure continued health care access;</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>• Substantial likelihood of a significant <b>reduction in the provision of critical health care services</b> in a geographic region.</li> </ul> |

# Example Approaches: Filing Requirements

| State      | Law/Code               | Filing Requirements  |
|------------|------------------------|--|
| Oregon     | ORS 415.501            | State-specific form to be filled out, which includes: <ul style="list-style-type: none"><li>• Description of business, including lines or segments</li><li>• Governance and operational structure</li><li>• Org chart and relationships between business entities</li><li>• List of all entities currently licensed to operated in Oregon, including name, assumed business name, business structure, date of incorporation, jurisdiction, principal place of business, and FEIN</li><li>• Financial statements for most recent 3 fiscal years (nationally and specific to Oregon)</li><li>• Description of healthcare business, including provider type, service lines, products and services, number of staff and FTE, geographic areas served, addresses of facilities owned or operated, annual number of people served in Oregon for all business, annual number of services provided in Oregon</li></ul> |
| Washington | SB 5122 (UPNA statute) | Copy of HSR filing   |

## Example Approaches: Confidentiality

| State         | Law/Code   | Confidentiality   |
|---------------|--|---|
| Indiana       | IC 25-1-8.5                                      | Party materials <b>kept confidential</b> . “Any information received or produced by the office of the attorney general under this section is confidential.”   |
| New York      | Public Health Chapter 45, Article 45-A Sec. 4552 | <b>Summaries of transactions</b> are listed publicly on a webpage, but not party filing submissions   |
| Massachusetts | 958 CMR 7  | The fact of the transaction is posted in a public transaction list and the <b>final competition evaluations</b> are published on a webpage. Party submission material is generally kept confidential, except for <b>info where the Commission believes that such disclosure should be made in the public interest</b> . |

## Example Approaches: Penalties

| State         | Law/Code                                 | Penalty  |
|---------------|--|--|
| Indiana       | IC 25-1-8.5                              | No provision for fees regarding failure to comply.   |
| Illinois      | 740 ILCS Sec. 7.2a(e).                   | “subject to a civil penalty of <b>not more than \$500 per day</b> for each day during which the health care facility or provider organization is in violation of this Section.”  |
| California AG | California Corporate Code § 14700 et seq | “the Attorney General shall be entitled to injunctive relief and other equitable remedies a court deems appropriate for a violation of this part, shall be entitled to recover its attorney’s fees and costs incurred in remedying each violation, and shall be entitled to civil penalties of <b>up to twenty thousand dollars (\$20,000) for each day of noncompliance</b> ” |

# Practice Tips

# Example: Sell-Side Representation for a Virtual Pharmacy

- HSR filing required, but no Second Request. States are the long pole in the tent. Total time from signing to closing: two months.
- Mini-HSR analysis: does a virtual pharmacy count as a “health care entity” under a state’s mini-HSR law?
- Consider:
  - State published guidance
  - State informal guidance
  - Other state statutes defining terms
  - Buy-side interpretation and buy-side risk shifting

# State-Specific Quirks

- **California AG filing**
  - “Retail drug firm” statute, not OHCA filing
  - Sync up with board of pharmacy
  - Amenable to syncing up to overall deal timing and financial hardship
- **Oregon filing**
  - Who must file?
    - Healthcare operations in Oregon
    - Revenue thresholds (\$25 million/yr and \$10 million/yr) are not limited to in-state revenue
  - 180 day waiting period in theory, but occurs in stages and planned close date can be sooner
    - Beneficial to stay in contact about deal timing
  - Recommend a pre-filing conference ASAP in order to avoid long delay to determine whether filing is “complete”
    - Not unusual to take a month to resolve a “complete” filing
    - Redactions can be a significant source of delay
  - State retains outside counsel to assist review and bills parties for cost

# Transaction Drafting/Negotiation Considerations

- Mini-HSR statutes have ambiguities. Filing analyses may require judgment calls and the Merger Agreement should have a provision addressing what happens if the parties are at odds.
- Example: Buyer determines that filing in Illinois is necessary because both parties meet the statutory criteria for an IL “health care entity.” Seller interprets the statute differently and determines that, because Seller is not a health care entity, a filing in IL is not required.
  - Should Buyer’s interpretation control, since they are the Buyer?
  - Should Seller’s interpretation control, since it is a determination of their own business?
  - If the parties are fined/penalized for a decision not to file, who is responsible for footing the bill?
  - How to interpret state authority’s informal, emailed interpretation?
  - How to interpret published guidance? (e.g. [Oregon guidance documents](#))