

July 13, 2023

California OHCA Clarifies Upcoming Rulemaking Process for California's New Health Care Transaction Oversight Law

On June 20, 2023, the California Office of Health Care Affordability (“OHCA”) held its monthly meeting and discussed the state’s plan for promulgating regulations and implementing California’s new health care transaction oversight law.¹ Meeting presentation materials can be found [here](#).

California’s law requires health care entities to notify OHCA of material transactions at least ninety (90) days before the transaction is expected to occur (*see* our previous [Alert](#)).² OHCA will begin to accept notices on January 1, 2024, for transactions occurring on or after April 1, 2024.³ Once a notice is received, OHCA has sixty (60) days to either i) provide a written waiver from a cost and market impact review (“CMIR”) or ii) initiate a CMIR.⁴ However, the statute as written leaves a number of open questions to be clarified in future OHCA regulations, including the threshold for determining that a transaction qualifies as material and the process and timeline for CMIRs.⁵

During its June meeting, OHCA proposed a timeline for its rulemaking process and provided additional guidance on its priorities for implementing the law:

Rulemaking Process Timeline

- **Draft Regulations:** OHCA will publish draft regulations by **July 31, 2023** that will be posted publicly on OHCA’s [website](#).
- **Public Comment and Workshop:**
 - OHCA will invite the public to submit comments during the month of August (with the comment period closing on **August 31, 2023**).
 - OHCA will hold a public workshop in mid-August to discuss the proposed regulations and comments.
- **Emergency Submission:** OHCA will submit an emergency rulemaking package with the finalized rules to the Office of Administrative Law in **October 2023**.

Additional Guidance

During the meeting, OHCA discussed current gaps in California’s oversight of health care transactions, specifically calling out transactions involving management services organizations and private equity. Notably, OHCA also engaged in significant discussions regarding private equity investment in health care organizations, which included OHCA’s perspectives concerning the impact of such investments on cost and quality measures.

¹ See [Cal. Health & Saf. Code § 127500 et seq.](#)

² [Cal. Health & Saf. Code § 127507\(c\)\(2\).](#)

³ [Cal. Health & Saf. Code § 127507\(c\)\(1\).](#)

⁴ [Cal. Health & Saf. Code § 127507.2\(a\)\(3\)\(A\).](#)

⁵ [Cal. Health & Saf. Code § 127507\(c\)\(3\); 127507.2\(a\)\(3\)\(B\); 127507.2\(b\).](#)

OHCA also indicated that it is looking to the health care transaction review processes in Massachusetts⁶ and Oregon⁷ as models for its future implementation of the law. While Massachusetts has generally taken a restrained approach to its enforcement and review, Oregon has more broadly enforced its review framework to capture national platform transactions. It remains unclear at this point, however, which model California will choose to follow more closely. What is clear is that California may become the new epicenter for CMIR reviews as OHCA estimates that it will receive a greater volume of transaction notices (i.e., around one hundred (100) notices per year) than either Oregon or Massachusetts due to the state's larger size and population.⁸

We are closely monitoring OHCA's rulemaking process and will provide further updates later in the summer.

⁶ Health care service providers and provider organizations with more than \$25 million in annual patient revenue in Massachusetts must provide 60 days pre-closing [notice](#) of any material change transaction to the state [attorney general](#), the [Center for Health Information and Analysis](#), and the [Health Policy Commission](#) ("HPC"). [Mass. Gen. Laws Ch. 6D § 13](#); [958 CMR 7.03\(1\)](#). HPC has 30 days to either approve the transaction or initiate a more in depth [cost and market impact review](#), which may delay closing up to 215 days from the initial notice date. [958 CMR 7.05](#).

⁷ The [Health Care Market Oversight Program](#) administered by the [Oregon Health Authority](#) ("OHA") requires 30-day pre-closing notice and approval of material health care transactions. If OHA determines a comprehensive review is needed, it then has up to 180 days to review transactions in detail for their impacts on cost, equity, access, and quality of care. [ORS 415.501](#). OHA has broadly enforced its review authority and captured several national platform transactions to date. OHA has also imposed conditions on certain transactions and plans to maintain oversight of the impacts of transactions for up to five years after closing.

⁸ See *Health Care Affordability Meeting - June 2023*, YouTube (June 29, 2023), <https://www.youtube.com/watch?v=RSZgwCvcH9w>, at 1:46:50–1:47:00.