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**Reporting of Health Care Entity Mergers and Acquisitions**

During the 2024 legislative session, the Indiana General Assembly enacted a health care entity mergers and acquisitions reporting requirement which will be codified at Ind. Code § 25-1-8.5-1 *et seq*. The statute requires parties to covered health care entity transactions to provide written notice to the Office of Attorney General at least 90 days prior to the date of the merger or acquisition.

The General Assembly has repeatedly expressed concerns over healthcare competition and costs in Indiana, including in testimony on the reporting statute. Some mergers and acquisitions have the potential to lessen competition and enable cost increases, among other harms. The reporting requirement affords the Office of Attorney General advanced notice of health care sector transactions and the information necessary to identify prospective mergers and acquisitions that may substantially lessen competition as well as information concerning trends in health care sector transactions that may inform future enforcement priorities. The Indiana Attorney General, like other state attorneys general, has the power to enforce federal antitrust laws, including the Clayton Act, in order to protect the competitive process and the consuming public.

The text of Indiana's reporting statute may be found here. The statute defines "merger," "acquisition," and "health care entity." It specifies which transactions are to be reported and prescribes the minimum contents of a conforming notice for covered transactions.

This page provides a general description of the new requirements and may be supplemented as the Office of Attorney General receives future submissions and questions. The public is invited to submit questions about the submission process here.

For instructions on how to submit the information and documents required under the reporting statute, please contact the Office of Attorney General through Ann.Sims-Rousseau@atg.in.gov.

### *When do the requirements of the reporting statute come into force?*

The statute has an effective date of July 1, 2024. Therefore, no written notice under the statute is required for any merger or acquisition consummated prior to July 1, 2024. For every covered merger or acquisition where the effective date of the change in control or ownership would occur on or after July 1, 2024, written notice is required.

The statute does not make exception for proposed mergers or acquisitions that would have closed after July 1, 2024, but before September 29, 2024. Therefore, health care entities wishing to complete covered mergers or acquisitions during this period may wish to submit written notice promptly and provide any additional information that may be relevant to the Office of Attorney General's review and potential determination of early termination described below.

### Which entities are required to provide the written notice?

The statute requires that an Indiana health care entity involved in a merger or acquisition with another health care entity, with total assets, including combined entities and holdings, of at least $10 million dollars must provide written notice to the Office of Attorney General.

"Health care entity" is defined at Ind. Code § 25-1-8.5-2. At least one of the entities must be located in or provide services in Indiana to trigger the requirement of written notice. The requirement applies equally if an Indiana health care entity acquires control or ownership of another health care entity or if another health care entity acquires control or ownership of an Indiana health care entity.

Additionally, the notice requirement is triggered only by a "merger or acquisition" that involves at least one Indiana health care entity. Acquisition is defined with reference to a change in control, and merger is defined with reference to a change in ownership whether resulting from an acquisition of stock or assets. Therefore, if a merger or acquisition results in a change in control or ownership of a health care entity, and one or more parties is an Indiana health care entity (whether buyer or seller or both), then the parties are required to provide written notice.

### How are the total assets measured?

The statute references the total assets of the transacting parties and does not reference the size of the transaction. It does not contain any limitation on the location of assets inside or outside of Indiana. Therefore, if a merger or

acquisition involves an Indiana healthcare entity and the sum of the total assets held by each health care entity at the time of the acquisition meets or exceeds $10 million dollars, then the parties are required to provide written notice.

**What form must the written notice take and how can it be submitted?**

The statute provides that the written notice must be provided to the Office of Attorney General in a manner prescribed by the Office of Attorney General and must include the following information from **each** health care entity:

> (1) Business address and federal tax number.
>
> (2) Name and contact information of a representative of the health care entity concerning the merger or acquisition.
>
> (3) Description of the health care entity.
>
> (4) Description of the merger or acquisition, including the anticipated timeline.
>
> (5) A copy of any materials that have been submitted to a federal or state agency concerning the merger or acquisition.

A conforming notice must contain at least this information. Nothing prevents parties from submitting additional information that may be relevant to the Office of Attorney General's review of the merger or acquisition such as, e.g., a description of a health care provider's lines of service and service area. The written notice may indicate that any materials required to be produced under Ind. Code § 25-1-8.5-4(b)(5) will be produced separately.

Where both parties are Indiana health care entities, it is sufficient for one party to make a joint submission of a singular written notice containing the required information for each health care entity. The statute provides that the written notice must be certified before a notary public (which may be executed and separately notarized in counterparts).

The Office of Attorney General is presently developing a dedicated submission portal to receive future submissions. In the interim, for instructions on how to submit the information and documents required under the reporting statute, please contact the Office of Attorney General through Ann.Sims-Rousseau@atg.in.gov.

***What can parties expect after submission of the written notice?***

The Office of Attorney General will confirm receipt of every conforming notice submitted in the above manner and the date of submission. The statute provides that the Office of Attorney General must review the materials not later than 45 days after submission of the conforming notice. After this initial review, the Office of Attorney Genera may elect to inform the parties that it does not intend to seek additional information or continue its review in connection with the reporting statute. Or it may elect to continue its review for the full waiting period.

In cases where the Office of Attorney General identifies concerns with a merger or acquisition's potential effects on competition, the statute provides that the Office of Attorney General may elect to provide a written analysis of its concerns to the parties. Parties are encouraged, in such cases, to respond promptly to the Office of Attorney General's concerns and supply additional relevant information.

In cases where the Office of Attorney General identifies a need for additional information to inform its analysis of a proposed merger or acquisition, the Office of Attorney General may elect to issue a civil investigative demand under its existing authority under Ind. Code § 4-6-3 to obtain that information. In such cases, the civil investigative demand and accompanying documents will provide further instructions.

The statute does not provide for an extension of the waiting period beyond 90 days regardless of whether the Office of Attorney has outstanding concerns about a proposed merger or acquisition, and the requirements of the reporting statute are satisfied if a conforming notice has been submitted and 90 days have passed. However, parties are cautioned to consider the risk of an antitrust challenge under the Office of Attorney General's separate enforcement authority if electing to proceed with a merger or acquisition for which the Office of Attorney General has identified concerns.

**Are materials submitted under the reporting statute afforded confidential treatment?**

Yes. The statute provides that the Office of Attorney General shall keep confidential all nonpublic information, and the confidential information may not be released to the public. Additionally, it provides that any information received or produced by the Office of Attorney General in connection with the reporting statute is confidential.