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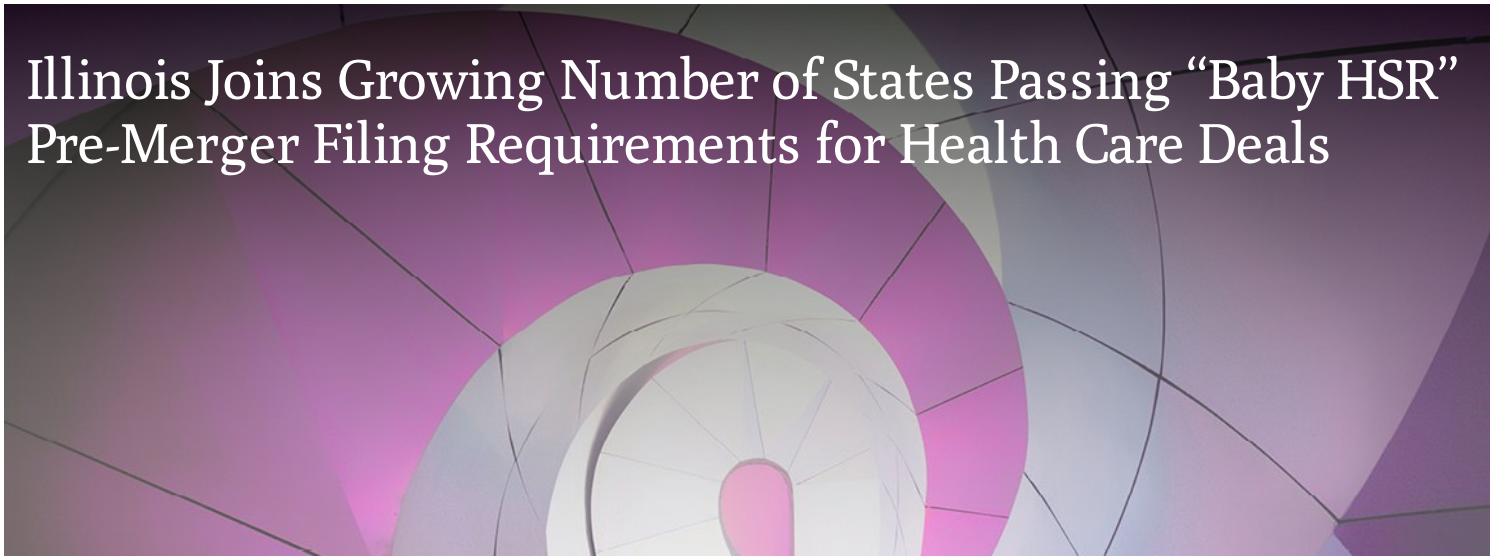

Illinois Joins Growing Number of States Passing "Baby HSR" Pre-Merger Filing Requirements for Health Care Deals

AUGUST 18, 2023

Illinois has adopted a new antitrust law, effective January 1, 2024, requiring pre-merger notification of certain transactions between health care entities, including hospitals and provider groups. With the new law, Public Act 103-0526, Illinois joins a growing number of states that have enacted their own merger notification requirements—many of which are specifically aimed at health care transactions—known as "Baby HSRs." These Baby HSRs are designed to promote increased state antitrust scrutiny of transactions and tend to cover transactions valued below the thresholds requiring notice to the federal government under the Hart-Scott Rodino ("HSR") Act, currently US$111.4 million for most types of transactions.

Under Illinois' new law, mergers, acquisitions, or contracting affiliations between two or more health care facilities or provider organizations must be reported to the Illinois Attorney General's office, with differences in the requirements depending on whether the transaction involves in-state or out-of-state entities:

- If all parties to the transaction are Illinois-based, the Illinois Attorney General's office must be notified regardless of transaction value.
- If a transaction involves one or more out-of-state entities that generate (or will generate post-merger) US$10 million or more in annual revenue from patients in Illinois, the Illinois Attorney General's office must be notified.

The parties to qualifying transactions must notify the Attorney General's office of the proposed transaction at least 30 days in advance of the closing date or effective date of the transaction. Notification is accomplished by submitting either (a) a federal HSR filing; (b) an Application for Change of Ownership filed with the Illinois Health Facilities and Services Review Board; or (c) a letter with required information about the proposed transaction. Tracking the federal model, the Attorney General's office will have 30 days to review and issue the state analog of a "Second Request" for additional documents and information, and the parties cannot close until 30 days after substantial compliance with the Second Request. Failure to comply with these requirements will result in a civil penalty of $500 per day and the state regulators may seek to block a transaction that was not properly notified and cleared.

Illinois' law—like those of several other states with Baby HSRs, including California, Connecticut, Hawaii, Massachusetts, Nevada, New Hampshire, Oregon, Rhode Island, and Washington—specifically targets healthcare transactions for notification and review in an effort to curb consolidation of health care providers that may harm

competition and consumers within a community or region. For example, in a rural area with a limited number of providers to start, a transaction may have a significant competitive impact but fly under the federal government's radar because its low dollar-value does not require notification to the federal government.

Businesses and dealmakers in the healthcare sector need to stay abreast of these ongoing developments, which may increase the time and cost of accomplishing strategic growth plans. For example, compliance with federal Second Requests requires significant time and money; it is not yet clear how much time and cost will be required to substantially comply with Illinois Second Requests and whether such burdens will effectively kill smaller deals.

What's more, the implications of this growing trend of state notification requirements reach far beyond the healthcare space—states may adopt Baby HSR schemes that are applicable to other key sectors of their state's economy. For example, in Maine, the Attorney General must be notified of proposed acquisition of retail gasoline or heating oil assets.

Winston & Strawn's antitrust attorneys continually monitor developments at the U.S. federal and state levels, as well as in jurisdictions around the world, to help clients navigate antitrust regulatory requirements impacting their businesses and their deals.

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