

# Now & Next

## Healthcare Alert

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### **Massachusetts enacts major revisions to HealthCare Transaction Notification Law**

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Massachusetts House Bill 5159 has wide-reaching implications for private equity investors and healthcare entities.



#### **What's the impact?**

- The Act broadens the scope of what currently constitutes a reportable “material change” to a healthcare provider or provider organization as a result of a transaction.
- The Act does not define “change of ownership” or “change of control” or indicate how an entity can determine if such a change will result from a proposed transaction.
- Regulations are forthcoming, and much of the law’s application will hinge on regulatory definitions.

On January 8, 2025, Massachusetts Governor Maura Healey signed House Bill 5159 (H.5159), known as “An Act Enhancing the Market Review Process” (the “Act”), which significantly expands the scope of the Commonwealth’s healthcare transaction notification and review requirements.

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These changes have wide-reaching implications for private equity investors and healthcare providers alike, particularly regarding transactions that may affect the control, ownership, or operations of healthcare entities and the ability of the Massachusetts Health Policy Commission (HPC), Center for Health Information Analysis (CHIA), and Office of the Attorney General (AG) to review such transactions. The Act also expands the scope of the Massachusetts False Claims Act to create potential liability for investors or owners of healthcare entities under certain circumstances. The changes will go into effect this April, 90 days after the bill was signed.

The new legislation is widely viewed as a response to the financial collapse of for-profit health system Steward Health Care in Massachusetts, which resulted in the closure of two hospitals and raised major concerns surrounding patient care. One apparent purpose of the legislation is to place a robust check on private equity investment in the healthcare industry and “profiteering,” as exhibited in Steward’s case, in part by enhancing financial oversight and monitoring investors.

While the Act encompasses a broad range of healthcare industry changes, this alert highlights the key revisions and their specific implications for private equity investors in Massachusetts.

## Key Developments

### **EXPANDED DEFINITION OF A MATERIAL CHANGE**

The Act broadens the scope of what currently constitutes a reportable “material change” to a healthcare provider or provider organization as a result of a transaction. Under the current law, Massachusetts healthcare providers (including providers of medical, dental, behavioral health, optometric, and other services, as set forth in the law) and provider organizations with \$25 million or more in net patient service revenue must notify the HPC, CHIA, and AG at least 60 days before the effective date of certain transactions classified as a “material change.” This notification process is referred to as a “Notice of Material Change” (MCN). In the event the HPC determines that a material change will likely significantly impact healthcare costs or competition in the Commonwealth, the HPC may order a Cost of Market Impact Review (CMIR), which can present a lengthy, onerous, and costly process.

With the enactment of H.5159, the definition of material change has expanded to include transactions involving “significant equity investors” that lead to a change of ownership or control of a provider or provider organization. A “significant equity investor” includes any private equity firm with a financial interest in a provider, provider organization, or management services organizations (MSOs), as well as any individual or group of investors or entity, directly or indirectly, holding over 10% equity in a provider, provider organization, or MSO, excluding venture capital firms that exclusively fund startups. The Act does not define “change of ownership” or “change of control” or indicate how an entity can determine if such a change will result from a proposed transaction.

## **EXPANDED DISCLOSURE REQUIREMENTS FOR PRIVATE EQUITY INVESTORS**

The Act authorizes the HPC to request, as part of an MCN, additional information from significant equity investors, including audited financial statements and information regarding capital structure, financial condition, and ownership and management structure.

## **POTENTIAL TO DELAY THE CLOSING OF A TRANSACTION**

Currently, a material change cannot close until at least 30 days after HPC issues its final report; however, under the amended law, when the AG brings an action, the material change transaction will not be permitted to close while the action is pending and before a final judgment is issued by the court.

## **POST-TRANSACTION DATA SHARING FOR UP TO 5 YEARS**

The Act also permits the HPC to require a provider or provider organization to submit data and information the HPC deems necessary to assess post-transaction impacts for five years following the completion of a material change.

## **EXPANDED LIABILITY UNDER THE MASSACHUSETTS FALSE CLAIMS ACT**

The Act expands potential liability under the Massachusetts False Claims Act (MA FCA) to investors or owners of an entity that violates the law if the investors/owners had knowledge of the violation and failed to report it within 60 days of identification.

## **Next Steps**

The changes effected by the Act represent a shift in the types of transactions the Commonwealth is focusing on, particularly those involving private equity investors. Certain provisions of the Act, notably those expanding the scope of the MA FCA, also signal the Commonwealth's focus on holding healthcare investors accountable for alleged violative actions of which they are aware. At its January 16, 2025, board meeting, HPC Executive Director David Seltz noted that regulations are forthcoming and that much of the law's application will hinge on regulatory definitions. For example, as noted above, the Act does not define "change of ownership" or "change of control" in the context of transactions involving significant equity investors, and no current HPC regulations define these terms. As a result, the expanded MCN requirements would seemingly apply to any change of ownership involving a private equity investor, regardless of magnitude.

Nixon Peabody will continue to monitor updates regarding these sweeping changes affecting private equity investments in healthcare entities in Massachusetts. Nixon Peabody's attorneys' extensive healthcare and transactional experience can be leveraged to advise and guide clients through this new regulatory landscape.

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