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Title 22@ Social Security

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Division 7@ Health Planning and Facility Construction

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Chapter 11.5@ Promotion of Competitive Health Care Markets; Health Care Affordability

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Article 1@ Material Change Transactions and Pre-Transaction Review

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Section 97435@ Material Change Transactions

97435 Material Change Transactions

(a)

A health care entity that meets the criteria of subsection (b) shall provide the Office with notice of a material change transaction as described in subsection (c) at least 90 days before the closing date of the transaction. For purposes of section 127507(c)(2) of the Code, the phrase "entering into the agreement or transaction" refers to the closing date.

(b)

Who must file. A health care entity who is a party to, or a subject of, a material change transaction, shall file a written notice of the material change transaction with the Office if the health care entity (hereinafter referred to as a "submitter") meets any of the thresholds in subsections (b)(1) through (b)(3) under any of the circumstances set forth in subsection (c), unless exempted by subdivisions (d)(1) through (4) of section 127507 of the Code. Being a subject of a transaction means the transaction will result in the transfer, as used in section 97431(p), of a health care entity's assets, control, responsibility, governance, or operations, in whole or in part to one or more entities. (1) A health care entity with annual revenue, as defined in subsection (d), of at least \$25 million or that owns or controls California assets of at least \$25 million. (2) A health care entity with annual revenue, as defined in subsection (d), of at least \$10 million or that owns or controls California assets of at least \$10 million and is a party to, or a subject of, a transaction

with:(A) any health care entity satisfying subsection (b)(1); or (B) any entity that owns or controls a health care entity satisfying subsection (b)(1). (3) A provider or fully integrated delivery system that is a party to, or a subject of, the transaction and provides health care services in a designated primary care health professional shortage area in California, as defined in Part 5 of Subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations (commencing with section 5.1), available at <https://data.hrsa.gov>.

(1)

A health care entity with annual revenue, as defined in subsection (d), of at least \$25 million or that owns or controls California assets of at least \$25 million.

(2)

A health care entity with annual revenue, as defined in subsection (d), of at least \$10 million or that owns or controls California assets of at least \$10 million and is a party to, or a subject of, a transaction with:(A) any health care entity satisfying subsection (b)(1); or (B) any entity that owns or controls a health care entity satisfying subsection (b)(1).

(A)

any health care entity satisfying subsection (b)(1); or

(B)

any entity that owns or controls a health care entity satisfying subsection (b)(1).

(3)

A provider or fully integrated delivery system that is a party to, or a subject of, the transaction and provides health care services in a designated primary care health professional shortage area in California, as defined in Part 5 of Subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations (commencing with section 5.1), available at <https://data.hrsa.gov>.

(c)

Circumstances requiring filing. A transaction is a material change transaction pursuant to section 127507(c)(1) of the Code if any of the circumstances in paragraphs (1) through (8) below exist. For purposes of this subsection only, "annual California-derived revenue" means revenue from the provision of health care services in California.

(1) The proposed fair market value of the transaction is \$25 million or more and the transaction concerns the provision of health care services.

(2) The transaction is more likely than not to increase annual California-derived revenue of any health care entity that is a party to, or a subject of, the transaction, by either \$10 million or more or 20% or more of annual California-derived revenue at normal or stabilized levels of utilization or operation.

(3) The transaction involves the sale, transfer, lease, exchange, option, encumbrance, or other disposition of 25% or more of the total California assets of the submitter(s).

(4) The transaction involves a transfer of control, responsibility, or governance, in whole or in part, of the submitter, as defined in subsection (e).

(5) The transaction will result in an entity contracting with payers on behalf of consolidated or combined providers and is more likely than not to increase the annual California-derived revenue of any provider that is a party to, or a subject of, the transaction by either \$10 million or more or 20% or more of annual California-derived revenue at normal or stabilized levels of utilization or operation.

(6) The transaction involves the formation of a new health care entity, affiliation, partnership, joint venture, or parent corporation for the provision of health care services in California that is projected to have at least \$25 million in annual California-derived revenue at normal or stabilized levels of utilization or operation, or transfer of control of California assets related to the provision of health care services valued at \$25 million or more.

(7) The transaction is part of a series of

related transactions for the same or related health care services occurring over the past ten years involving the same health care entities or entities affiliated with the same entities. The proposed transaction and its related transactions will constitute a single transaction for purposes of determining the revenue thresholds in subsection (b) and asset and control circumstances in subsections (c)(3), (c)(4), and (c)(6). (8) The transaction involves the acquisition of a health care entity by another entity and the acquiring entity has consummated a similar transaction(s), in the past ten years, with a health care entity that provides the same or related health care services. The proposed transaction and its related transactions will constitute a single transaction for purposes of determining the revenue thresholds in subsection (b) and asset and control circumstances in subsections (c)(3), (c)(4), and (c)(6).

(1)

The proposed fair market value of the transaction is \$25 million or more and the transaction concerns the provision of health care services.

(2)

The transaction is more likely than not to increase annual California-derived revenue of any health care entity that is a party to, or a subject of, the transaction, by either \$10 million or more or 20% or more of annual California-derived revenue at normal or stabilized levels of utilization or operation.

(3)

The transaction involves the sale, transfer, lease, exchange, option, encumbrance, or other disposition of 25% or more of the total California assets of the submitter(s).

(4)

The transaction involves a transfer of control, responsibility, or governance, in whole or in part, of the submitter, as defined in subsection (e).

(5)

The transaction will result in an entity contracting with payers on behalf of consolidated or combined providers and is more likely than not to increase the annual California-derived revenue of any provider that is a party to, or a subject of, the transaction by either \$10 million or more or 20% or more of annual California-derived revenue at normal or stabilized levels of utilization or operation.

(6)

The transaction involves the formation of a new health care entity, affiliation, partnership, joint venture, or parent corporation for the provision of health care services in California that is projected to have at least \$25 million in annual California-derived revenue at normal or stabilized levels of utilization or operation, or transfer of control of California assets related to the provision of health care services valued at \$25 million or more.

(7)

The transaction is part of a series of related transactions for the same or related health care services occurring over the past ten years involving the same health care entities or entities affiliated with the same entities. The proposed transaction and its related transactions will constitute a single transaction for purposes of determining the revenue thresholds in subsection (b) and asset and control circumstances in subsections (c)(3), (c)(4), and (c)(6).

(8)

The transaction involves the acquisition of a health care entity by another entity and the acquiring entity has consummated a similar transaction(s), in the past ten years, with a health care entity that provides the same or related health care services. The proposed transaction and its related transactions will constitute a single transaction for purposes of determining the revenue thresholds in subsection (b) and asset and control

circumstances in subsections (c)(3), (c)(4), and (c)(6).

(d)

Revenue. For purposes of subsection (b) of this regulation only, "revenue" means the total average annual California-derived revenue received for all health care services by the submitter and all affiliates over the three most recent fiscal years, as follows: (1) For health care service plans, revenue as reported to the Department of Managed Health Care (DMHC) pursuant to 28 CCR § 1300.84.1(b). (2) For health insurers, revenue as reported to the Department of Insurance pursuant to Insurance Code section 931. (3) For hospitals, net patient revenue, as reported to the Department in accordance with the "Accounting and Reporting Manual for California Hospitals," incorporated by reference in 22 CCR § 97018. (4) For long-term care facilities, net patient revenue, as reported to the Department in accordance with the "Accounting and Reporting Manual for California Long-Term Care Facilities," incorporated by reference in 22 CCR § 97019. (5) For risk-bearing organizations required to register and report to the DMHC, revenue as reported to the DMHC pursuant to 28 CCR § 1300.75.4.2. (6) For other providers or provider organizations, net patient revenue, which includes the total revenue received for patient care, as it was generated or occurred in California rather than when revenue is booked, accrued, or taxed, including: (A) Prior-year third-party settlements; (B) Revenue received (inclusive of withholds, refunds, insurance services, capitation, and co-payments) from a health care entity or other payer to provide health care services, for all providers represented by the provider or provider organization in contracting with payers; (C) Fee-for-service revenue; and (D) Revenue from shared risk and all incentive programs. (7) For pharmacy benefit managers, all payments and revenue received from health care entities to provide pharmacy benefit management

services as it was generated or occurred in California rather than when revenue is booked, accrued, or taxed.

(1)

For health care service plans, revenue as reported to the Department of Managed Health Care (DMHC) pursuant to 28 CCR § 1300.84.1(b).

(2)

For health insurers, revenue as reported to the Department of Insurance pursuant to Insurance Code section 931.

(3)

For hospitals, net patient revenue, as reported to the Department in accordance with the "Accounting and Reporting Manual for California Hospitals," incorporated by reference in 22 CCR § 97018.

(4)

For long-term care facilities, net patient revenue, as reported to the Department in accordance with the "Accounting and Reporting Manual for California Long-Term Care Facilities," incorporated by reference in 22 CCR § 97019.

(5)

For risk-bearing organizations required to register and report to the DMHC, revenue as reported to the DMHC pursuant to 28 CCR § 1300.75.4.2.

(6)

For other providers or provider organizations, net patient revenue, which includes the total revenue received for patient care, as it was generated or occurred in California rather than when revenue is booked, accrued, or taxed, including: (A) Prior-year third-party settlements; (B) Revenue received (inclusive of withholds, refunds, insurance services, capitation, and co-payments) from a health care entity or other payer to provide health care services, for all providers represented by the provider or

provider organization in contracting with payers; (C) Fee-for-service revenue; and (D) Revenue from shared risk and all incentive programs.

(A)

Prior-year third-party settlements;

(B)

Revenue received (inclusive of withholds, refunds, insurance services, capitation, and co-payments) from a health care entity or other payer to provide health care services, for all providers represented by the provider or provider organization in contracting with payers;

(C)

Fee-for-service revenue; and

(D)

Revenue from shared risk and all incentive programs.

(7)

For pharmacy benefit managers, all payments and revenue received from health care entities to provide pharmacy benefit management services as it was generated or occurred in California rather than when revenue is booked, accrued, or taxed.

(e)

Control, responsibility, or governance. For purposes of this section, a transaction will directly or indirectly transfer control, responsibility, or governance, in whole or in part, of a material amount of the assets or operations of a health care entity to one or more entities if: (1) The transaction would result in the transfer of 25% or more of the voting power of the members of the governing body of a health care entity, such as by adding one or more members, substituting one or more members, or through any other type of arrangement, written or oral; or (2) The transaction would vest voting rights significant enough to constitute a change in control such as supermajority rights, veto rights, and similar provisions even if

ownership shares or representation on a governing body are less than 25%.

(1)

The transaction would result in the transfer of 25% or more of the voting power of the members of the governing body of a health care entity, such as by adding one or more members, substituting one or more members, or through any other type of arrangement, written or oral; or

(2)

The transaction would vest voting rights significant enough to constitute a change in control such as supermajority rights, veto rights, and similar provisions even if ownership shares or representation on a governing body are less than 25%.