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# Proposed Florida House Legislation Advances, Requiring Reporting to the State Proposed Hospital, and Group Practice Acquisitions

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A bill recently introduced in the Florida legislature (HB 1243) requires Florida hospitals and group physician practices contemplating mergers or acquisitions to provide advance notice of such transactions to the Florida Attorney General's Office. The bill has been reported favorably out of the Florida Health Market Reform Subcommittee. Currently, while the Florida Attorney General's Office is authorized to, and frequently does, investigate such transactions for potential antitrust concerns, no obligation exists under Florida law for the merging parties to provide advance notice of such transactions to the State.

HB 1243 requires that whenever a Florida hospital or group physician practice of at least 4 physicians intends to engage in a merger or acquisition, information must be provided to the State that includes, among other things, a description of the proposed transaction, the primary service area served by the parties, and a description of how that service area would be impacted by the transaction. The legislation states this proposed submission by parties to the transaction is intended to assist the state in assessing whether further investigation as to the potential competitive implications of the proposed transaction is warranted.

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The notice would be required to be submitted at least 90 days prior to consummation of the proposed transaction. This deadline is somewhat different than that under the federal Hart-Scott-Rodino Act (HSR Act), which also imposes a reporting obligation on merging parties (in healthcare and all other industries) in transactions above a certain dollar threshold (recently increased to $90 million). Under the HSR Act, merging parties can provide notice to the FTC/DOJ Antitrust Division of reportable deals at any time, but are required to await approval from federal regulators prior to consummating the transaction. Many such deals are approved within an initial 30 day "waiting period," particularly where the federal regulators conclude that the deal does not raise competitive concerns. In other cases, the review can take up to several months, or longer, depending upon the circumstances.

Notably, the proposed Florida bill does not indicate whether the reporting obligation timeline is changed in circumstances where the parties are also required to make an HSR Act filing as well, or whether approval by the state is a precondition to completing a proposed deal. Presumably, however, the 90 day notice period is sufficiently long enough in duration such that, if the Florida Attorney General's Office was inclined to challenge the deal, it could take action within that 90 day period.

The Florida legislation would also require that whenever a Florida hospital or group practice makes an HSR filing with the FTC/DOJ, they must provide notice of that filing to the Florida Attorney General. Additionally, upon receipt of a civil investigative demand from the Florida Attorney General, a person making the HSR filing to the FTC/DOJ must provide all materials previously submitted to the FTC/DOJ to the Florida Attorney General's Office. Currently, federal antitrust regulators are not permitted to share the parties' HSR filing with state enforcers absent the parties' prior approval, and a somewhat elaborate "protocol" for how such sharing can proceed exists and is explained on the FTC's website.

This legislation would presumably streamline this process which, in practice, occasionally has led to a delay in the ability of state enforcers to obtain the materials necessary to commence their review of proposed transactions.

Finally, the proposed new reporting requirements come with a significant potential penalty for noncompliance. Any person that fails to comply with the requirements of this proposed new Florida statute (assuming it is enacted into law) would be subject to a civil penalty of up to $500,000.

The Florida legislative session concludes in early May, and thus, while the proposed legislation has taken an important step towards possible enactment, much still would be required to occur (in a relatively short period of time) before the legislation might become law. Nevertheless, given the significant changes that would be imposed on merging healthcare providers in the state, continued monitoring of the legislation is warranted. Stay tuned.

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