Pre-Merger Notification Proliferation

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Executive Summary

- **What is new:** Some U.S. states have enacted pre-merger notification regimes of general applicability, requiring parties making HSR filings to also notify state attorneys general, with similar legislation pending in other states.
- **Why it matters:** Parties to transactions outside of specific industries must now consider whether state notifications are required in addition to those required under the HSR Act and notification regimes outside the United States.
- **What to do next:** Once the need for an HSR filing is confirmed, parties should collect information regarding their revenues in adopting states to determine whether to make "mini-HSR" filings. Merging companies will also need to monitor developing legislation modeled under the Uniform Antitrust Pre-Merger Notification Act.

When the Hart-Scott-Rodino (HSR) Act was signed into law in 1976, it represented the first pre-merger notification regime in the world, requiring parties to transactions meeting certain criteria to notify the government before consummating those transactions. The success of the HSR Act and the general development of antitrust laws outside the United States have since spawned a myriad of similar reporting regimes in more than 140 countries around the globe. While this proliferation of notification requirements has surely produced some benefits to enacting jurisdictions, it has also introduced tremendous complexity and cost for transacting parties, who must analyze which of these regimes require notification for their transaction, prepare notifications for those that do and engage with regulators in those countries to secure clearance.

This burden continues to increase as many U.S. states have now begun enacting pre-merger notification regimes of their own. As we describe in further detail below, these regimes initially focused on specific industries of interest, such as the health care or grocery sectors, but in recent months, Washington and Colorado have enacted pre-merger notification regimes of general applicability, and numerous other states are considering similar statutes. As a result, parties to transactions outside of those specific industries will now need to consider whether state notifications are required in addition to those required under the HSR Act and notification regimes outside the United States.

Industry-Specific State Notification Regimes

Until the recent passage of the Washington and Colorado pre-merger notification regimes, pre-merger filing requirements outside of the HSR Act in the United States have been focused on particular industries of interest. For example, in 2023, California passed a bill that required parties to notify the California attorney general of transactions that involved the acquisition of retail grocery stores or retail pharmacies located in the state.[1]

The most common type of industry-specific pre-merger notification regime at the state level has been aimed at transactions in the health-care space. More than a dozen states have statutes requiring prenotification for certain types of health-care transactions.

[1] Cal. Corporations Code § 14700 et seq.

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Some programs, such as those in Hawaii[2] and Rhode Island,[3] require prenotification only for transactions involving hospitals. Most cover a wider range of "health care entities." For example, New York's notification statute covers physician practices or groups, management services organizations (MSOs), provider-sponsored organizations, pharmacies and dental practices, among others.[4] Oregon's notification statute arguably has the broadest scope, sweeping in transactions involving not only hospitals, physicians and insurance companies, but also any entity that has as a "primary function the provision of health care items or services, including physical, behavioral or dental health items or services."[5]

While many of these health-care notification regimes involve waiting periods, filing fees and the preparation of extensive, state-specific notification forms, their impact has been relatively constrained by virtue of their application only to transactions in the health-care industry. By contrast, the pre-merger notification statutes recently passed by Washington and Colorado signal an expansion of these state notification regimes beyond specific industries to encompass all facets of the American economy.

'Mini HSR' State Notification Regimes

In 2024, the Uniform Law Commission approved the "Uniform Antitrust Pre-Merger Notification Act" (UAPNA), which the commission described as "creating a simple, non-burdensome mechanism for AGs to receive access to HSR filings at the same time as the federal agencies, and subject to the same confidentiality obligations," with the goal of facilitating "early information sharing and coordination among AGs and the federal agencies, subject to confidentiality obligations and without imposing any significant burden on either the merging parties or the AGs."[6] In service of this goal, the UAPNA imposes an obligation on any party making an HSR filing to provide a copy of the HSR Form to a state attorney general's office if the party (a) has its principal place of business in the state; or (b) had annual net sales in the state of "the goods or services involved in the transaction" of at least 20% of the HSR filing threshold then in effect. If the filing party has its principal place of business in the state, that party must also provide all documentary attachments to the HSR Form. The UAPNA does not require observance of a waiting period or payment of a filing fee. As noted above, the act also provides confidentiality protections similar to those available under the HSR Act, but does allow receiving AGs to share materials with the federal antitrust agencies and the AG of any other state that has adopted the UAPNA.

Washington and Colorado are the first two states to adopt the UAPNA, with their statutes mirroring the UAPNA in all material respects. Washington's statute entered into force on July 27, 2025, and Colorado's statute entered into force on August 6, 2025. As a result, any party to a transaction requiring an HSR filing will now be required to notify the AGs in these states if the party has its principal place of business in that state or had annual net sales in the state of "the goods or services involved in the transaction" of $25.28 million or more.[7] Other states appear likely to adopt the UAPNA, as similar bills have been introduced in California, Hawaii, Utah, Nevada, West Virginia and the District of Columbia. In addition, the New York Senate in June 2025 passed the "Twenty-First Century Anti-Trust Act." Significantly broader than the UAPNA, the New York law would require any party making an HSR filing to also notify the New York AG if the party simply does business in New York. Notably, the New York Senate passed substantially similar versions of this bill in prior years that have not yet gained approval in the New York Assembly.

Takeaway Points

These statutes modeled on the UAPNA mark a new era of generally applicable state pre-merger notification regimes. Parties to transactions that require an HSR filing will need to account for these regimes in a number of ways:

- Once parties confirm the need for an HSR filing, they should collect information regarding their relevant revenues in these states so they can determine whether "mini HSR" filings will be required.
- If mini-HSR filings are required, parties should prepare to make these filings contemporaneously with the submission of their HSR filings.
- Parties may want to include any necessary mini-HSR filings as required notices in the definitive agreement's sections on representation and warranties, but given the lack of a waiting period under these mini-HSR regimes, additional closing conditions will likely not be necessary for these mini-HSR filings.
- Parties should monitor additional states considering legislation based on the UAPNA so transacting companies can be aware of new regimes coming into force.

Please contact us with any questions about the application of these new state notification requirements and pending state legislation to require state notification of a transaction that is notified under the HSR Act.

[2] Haw. Rev. Stat. § 323D-71 et seq.

[3] R.I. Gen. Laws § 23-17.14 et seq.

[4] N.Y. Pub. Health Law § 4550 et seq.

[5] OR Rev. Stat. §415.500 et seq.

[6] Uniform Antitrust Pre-Merger Notification Act with prefatory note and comments.

[7] The HSR filing threshold is adjusted every year based on changes in the U.S. gross national product, so this threshold will adjust proportionally every year as well.