



Feb. 9, 2026

**Testimony of Community Voices for Health System Accountability
on the
Proposed Executive FY 2027 Health and Mental Hygiene Budget**

Executive Summary

At a time when public policymakers are appropriately focused on improving affordability of the goods and services that New York families need, the Hochul administration is taking a step in the right direction by proposing that certain major (“material”) transactions in the health industry be subjected to scrutiny of how the cost and accessibility of health care would be affected. We support the stronger requirements spelled out in the 2027 Executive Budget HMM Article VII, Part H, but suggest that the Part’s requirements, including the new cost and market impact assessments, should also be required for major health facility transactions being reviewed through the Certificate of Need (CON) process. These transactions -- such as hospital, health system and nursing home system mergers and acquisitions-- would otherwise be exempted from the new requirements because of the narrowly-focused definition of “material transactions” in the underlying Public Health Law language.¹ We also urge greater transparency and community engagement in the proposed cost and market impact assessment process., including public disclosure of cost and market impact assessment reports and an opportunity for the public to comment.

Why do we care?

CVHSA is a statewide network of individuals and organizations advocating for equitable access to quality, affordable health care. Our member organizations advocate on behalf of medically-underserved New Yorkers, such as people with disabilities, older adults, rural

¹ See Public Health Law Article 45-A, Material Transactions Frequently Asked Questions on the NYS Department of Health website at https://www.health.ny.gov/facilities/material_transactions/faq.htm This FAQ states, in part, that among the transactions exempted from the “material transaction” reporting and review requirements are: “Any portion(s) of a transaction subject to the Department's Certificate of Need (CON) process or an insurance-entity approval process under PHL Articles 28, 30, 36, 40, 44, 46, 46-A, or 46-B;”

residents, pregnant women, immigrants and publicly-insured/uninsured people. We have become increasingly concerned about the impact of consolidation in the health industry on the cost and availability of health care services. Large health systems are taking over community hospitals, ambulatory care centers, physician practices and urgent care centers, leaving consumers with fewer choices and higher prices. Sometimes, despite their promises of greater financial stability and quality improvements for facilities being acquired, systems later downsize or shut these community hospitals. In the nursing home and home health care sectors, private equity is taking an increasingly larger role, often reducing services and staff to achieve bottom line priorities. Complicated real estate transactions, such as selling facilities and then leasing them back, add to operating costs, further burdening already weak facilities.

Our comments on the proposed Executive Budget language

To better protect New York health consumers, employers and taxpayers from negative consequences of all this health industry consolidation, greater state oversight is sorely needed. The Executive Budget's proposed amendments to the "material transactions" section of the Public Health Law would help in the following ways:

- **The New York State Department of Health would have the power to require a full cost and market impact review for transactions of more than \$100 million in value or for any transaction of lesser value that the Department "reasonably believes would have a negative impact on cost, quality, access, health equity or competition in the impact markets."**² The Department also would have the power to delay the proposed transaction closing for 180 days while the cost and market impact assessment is carried out³ and assess on the transaction parties the costs of conducting the assessment.⁴ Further, the Department can require the transaction parties to submit additional information and documents within seven days.⁵ These new powers would better enable the Department to determine the true likely impact of a proposed transaction. We especially appreciate the fact that the Department – and not the transaction parties – would be conducting or commissioning the review, at the cost of the parties, instead of allowing those parties to themselves conduct an assessment and submit it to the Department. Department-led or commissioned assessments are less likely to be biased in favor of the transaction in question.

² Executive Budget HMM, VII, Part H, Section 4 (a)

³ Executive Budget HMM, VII, Part H, Section 4 (b)

⁴ Executive Budget HMM, VII, Part H, Section 4 (c)

⁵ Executive Budget HMM, VII, Part H, Section 5 (a)

Unfortunately, though, the budget language does not guarantee that the findings of such a review would be made public or be subject to public comment. Instead, the language takes great pains to ensure health industry parties that documents and information they submit to the Department of Health would be kept confidential.⁶

- **The Department would be able to utilize information obtained in one of these cost and market impact assessments “in assessing certificate of need applications submitted by the same health care entities involved in the reported transactions or unrelated parties which are located in the same market area.”⁷**

Unfortunately, though, the budget language stops short of actually requiring similar cost and market impact reviews for major transactions being evaluated through the CON process. This omission represents a major missed opportunity to examine whether a proposed CON application would increase the cost of health care that consumers, employers and taxpayers will pay – such as through co-pays, deductibles and higher premiums or through the cost of providing public insurance. It’s especially disappointing given that one of the original reasons for creating a CON review system was to “control rising health care costs.”⁸

- **The budget language also would require the parties to a material transaction to submit a statement as to whether they (or an entity that controls them) have over the previous three years closed operations at (or are in the process of closing operations at) or carried out substantial reductions in services at any other health care entity they own.⁹** We strongly support this requirement, as the information received could help state health reviewers learn whether the parties to a transaction have a track record of acquiring health care entities and then shutting them down or reducing services after extracting profits from them.

Again, we note that this requirement would be extremely useful if applied to CON applications, which would cover major transactions involving hospitals, nursing homes and ambulatory surgery centers.

- **Parties to material transactions would be required to disclose to the Department of Health whether any sale-leaseback or mortgage or lease**

⁶ Executive Budget HMM, VII, Part H, Section 5 (b)

⁷ Executive Budget HMM, VII, Part H, Section 5 (c)

⁸ Certificate of Need History, NYS Department of Health website, accessed at <https://www.health.ny.gov/facilities/cons/history.htm>

⁹ Executive Budget HMM, VII, Part H, Section 1 (g)

payments are part of the transaction.¹⁰ Such disclosure is important, as bad actors in the private equity sector have become notorious for selling the buildings and property of the health facilities they acquire, in order to extract a quick profit for owners, and then using leaseback arrangements that add to facility operating costs large payments to rent the building formerly owned by the facility.

Again, we note that this requirement would be extremely useful if applied to CON applications, which would cover major transactions involving private equity ownership of nursing homes.

- **For a five-year period following the closing of the transaction, parties would have to submit annual notice to the Department of “factors and metrics to assess the impacts of the transaction on cost, quality, access, health equity and competition.”**¹¹ This requirement is essential to finally establishing post-transaction monitoring of the outcome of approved health industry transactions.

While the Department would be allowed to assess civil penalties if such annual reports are not submitted, unfortunately, there does not appear to be any recourse for the state -- and health care consumers who are negatively affected -- if a transaction does not live up to the promises made at the time of approval. Moreover, as noted repeatedly above, the annual reporting requirement does not apply to major CON applications. Currently, post-transaction follow up reports are only required for establishments of ambulatory surgery centers through CON approvals that are given for a limited life (often three years) and require state Public Health and Health Planning Council approval for granting of permanent approval. We have long argued that such “limited life” CON procedures should be used for major health facility transactions, such as health system mergers and acquisitions.

Our recommendations for improving the proposed language

While we generally support the proposed budget language concerning state oversight of material transactions, we have the following recommendations for strengthening and expanding the applicability of the proposed provisions:

1. **Expand the applicability of the requirements for cost and market impact assessments – as well as disclosure of recent health facility closures by the parties, planned sale/leaseback arrangements and post-transaction monitoring**

¹⁰ Executive Budget HMM, VII, Part H, Section 1 (h)

¹¹ Executive Budget HMM, VII, Part H, Section 3 (b)

-- to include major transactions being reviewed through the state Certificate of Need process.

2. **Require that all cost and market impact assessments be promptly posted on the Department of Health website and sent to public officials representing the geographic regions that would be impacted by the transaction. Solicit comments on the sufficiency of the report from the public and public officials in the affected regions and take such comments into consideration when making decisions about the proposed transactions.**

3. **Issue conditional approvals of material transactions, including our recommendation to apply this to CON applications, subject to review and potential revocation after consideration of post-transaction annual reports.**

We appreciate your consideration of our comments and recommendations, and would be happy to answer any questions you may have.

Sincerely,

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