

TITLE 13 INSURANCE
CHAPTER 2 INSURANCE COMPANY LICENSING AND OPERATION
PART 12 HEALTH CARE CONSOLIDATION OVERSIGHT

13.2.12.1 ISSUING AGENCY: Office of Superintendent of Insurance
[13.2.12.1 NMAC – N/E, 05/15/2024]

13.2.12.2 SCOPE: This rule applies to any proposed transactions that involve a New Mexico hospital as regulated by the Health Care Consolidation Oversight Act, Chapter 59A, Article 63 NMSA 1978.
[13.2.12.2 NMAC – N/E, 05/15/2024]

13.2.12.3 STATUTORY AUTHORITY: Authority for this rule derives from the superintendent’s powers under Sections 59A-2-9 and from 59A-63-1 *et seq.*, the Health Care Consolidation Oversight Act.
[13.2.12.3 NMAC – N/E, 05/15/2024]

13.2.12.4 DURATION: This emergency rule expires 180 days from the effective date unless a permanent rule is adopted before that time.
[13.2.12.4 NMAC – N/E, 05/15/2024]

13.2.12.5 EFFECTIVE DATE: May 15, 2024 unless a later date is cited at the end of a section.
[13.2.12.5 NMAC – N, 05/15/2024]

13.2.12.6 OBJECTIVE: The purpose of this rule is to establish the standards for meeting the requirements of the health care consolidation oversight act and to provide details related to the superintendent’s oversight of proposed transactions.
[13.2.12.6 NMAC – N/E, 05/15/2024]

13.2.12.7 DEFINITIONS: For the purpose of this rule, the following terms have the following meanings:

- A.** “**acquisition**” has the same meaning as defined in Subsection A of Section 59A-63-2 NMSA 1978;
- B.** “**act**” means the health care consolidation oversight act, Chapter 59A, Article 63 NMSA 1978;
- C.** “**affiliation**” has the same meaning as defined in Subsection B of Section 59A-63-2 NMSA 1978;
- D.** “**authority**” has the same meaning as defined in Subsection C of Section 59A-63-2 NMSA 1978;
- E.** “**control**” has the same meaning as defined in Subsection D of Section 59A-63-2 NMSA 1978;
- F.** “**essential services**” has the same meaning as defined in Subsection E of Section 59A-63-2 NMSA 1978;
- G.** “**health care provider**” has the same meaning as defined in Subsection F of Section 59A-63-2 NMSA 1978;
- H.** “**health insurer**” has the same meaning as defined in Subsection G of Section 59A-63-2 NMSA 1978;
- I.** “**hospital**” has the same meaning as defined in Subsection H of Section 59A-63-2 NMSA 1978;
- J.** “**insurance holding company law**” means Chapter 59A, Article 37 NMSA 1078;
- K.** “**management services organization**” has the same meaning as defined in Subsection I of Section 59A-63-2 NMSA 1978;
- L.** “**notice**” means a notification to the superintendent of a proposed transaction on a form provided by the superintendent, and when completed provides all the information required by Subsection E of 59A-63-2 NMSA 1978;
- M.** “**office**” or “**OSI**” has the same meaning as defined in Subsection J of Section 59A-63-2 NMSA 1978;
- N.** “**office of general counsel**” means the office of general counsel of the office of superintendent of insurance;
- O.** “**party**” or “**parties**” has the same meaning as defined in Subsection K of Section 59A-63-2 NMSA 1978;

- P. “person” has the same meaning as defined in Subsection L of Section 59A-63-2 NMSA 1978;
 - Q. “proposed transaction” means a transaction as defined in Subsection N of Section 59A-63-2 NMSA 1978, that is subject to the review of the superintendent under the act;
 - R. “significantly modified” means a material change, alteration, or amendment to the scope of the proposed transaction from that outlined in the initial notice, that is significant enough to affect the outcome of the superintendent’s determination;
 - S. “superintendent” has the same meaning as defined in Subsection M of Section 59A-63-2 NMSA 1978;
 - T. “toll” or “tolled” means a suspension of the 120-day time period that begins when the notice of proposed transaction is deemed complete by the superintendent or designee; and
 - U. “transaction” has the same meaning as defined in Subsection N of Section 59A-63-2 NMSA 1978.
- [13.2.12.7 NMAC – N/E, 05/15/2024]

13.2.12.8 APPLICABILITY, OVERSIGHT PROVISIONS AND PRESUMPTION OF CONTROL:

- A. The oversight power of the office pursuant to the act applies to proposed transactions that involve a New Mexico hospital.
 - B. Being subject to the act does not preclude or negate any person regulated pursuant to the insurance hold company law.
 - C. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds fifteen percent or more of the power to vote or holds proxies representing fifteen percent or more of the voting securities of any other person.
 - D. The presumption may be rebutted by a showing in the manner provided by Section 59A-37-19 NMSA 1978 that control does not in fact exist.
- [13.2.12.8 NMAC – N/E, 05/15/2024]

13.2.12.9 NOTICE OF PROPOSED TRANSACTION:

- A. Parties to a proposed transaction may submit a written request to the office of general counsel via the email provided on the office’s website, for a pre-notice conference to determine if they are required to file a notice or to discuss the potential extent of the review with the superintendent or designee.
 - B. At least one person that is a party to a proposed transaction shall submit to the office via the email provided on the office’s website, a written notice of the proposed transaction on the notice of proposed transaction form provided by the superintendent.
 - C. The notice of the proposed transaction shall include:
 - (1) a list of the parties, the terms of the proposed transaction and copies of all transaction agreements between any of the parties;
 - (2) a statement describing the goals of the proposed transaction and whether and how the proposed transaction affects health care services in New Mexico;
 - (3) the geographic service area of any hospital affected by the proposed transaction;
 - (4) a description of the groups or individuals likely to be affected by the transaction; and
 - (5) a summary of the health care services currently provided by any of the parties and any health care services that will be added, reduced or eliminated, including an explanation of why any services will be reduced or eliminated in the service area in which they are currently provided.
 - D. If a party to the proposed transaction is a health insurer, the notice shall be submitted as an addendum to any filing required by the insurance holding company law, Sections 59A-37-4 through 59A-37-10 NMSA 1978.
- [13.2.12.9 NMAC – N/E, 05/15/2024]

13.2.12.10 PAYMENT OF COSTS, REQUIREMENTS FOR CONSULTATION AND EXPERTS:

- A. The office shall consult with the authority about the potential effect of the proposed transaction and incorporate the authority’s recommendations into the office’s final determination.
- B. The office may retain actuaries, accountants, attorneys, or other professionals who are qualified and have expertise in the type of transaction under review as necessary to assist the office in conducting its review of the proposed transaction.
- C. The office shall notify parties before any costs are incurred when a transaction review requires the use of outside experts, including the estimated cost of the outside expert’s services.

D. The parties shall pay the reasonable costs and expenses incurred by the office in the performance of the office's or authority's duties pursuant to the act for costs associated with the office's contracts with experts, unless determined otherwise by the superintendent.

E. The parties shall not effectuate a transaction without the written approval of the superintendent. The submitting party shall notify the office of general counsel in writing via the email address located on the office's website, when the transaction has been effectuated.

[13.2.12.10 NMAC – N/E, 05/15/2024]

13.2.12.11 REVIEW OF NOTICE AND TOLLING:

A. Upon receipt of a complete notice of a proposed transaction:

(1) the office shall determine if the transaction is urgently necessary to maintain the solvency of a hospital or if there is an emergency that threatens the continued provision of immediate health care services;

(2) in such circumstances, the office may agree to an immediate approval of a transaction with or without conditions;

(3) the office shall inform the authority of the filing of the notice of proposed transaction.

B. Entry into a binding agreement before a transaction is effectuated is not a violation of the act if the transaction remains subject to regulatory review and approval.

C. A notice of a proposed transaction shall be deemed completed by the office on the date when all the information required by the act or requested by the office is submitted by all parties to the transaction, as applicable.

D. The superintendent or designee shall inform the parties and the authority in writing of the date when the notice of a proposed transaction is complete and the 120-day time period for review by the superintendent or designee begins.

E. If the scope of the proposed transaction is determined by the superintendent or designee to be significantly modified from that outlined in the initial notice, the 120-day time period set out in the act shall be restarted by the office.

F. The parties must notify the superintendent in writing via the email provided on the office's website, if the scope of the proposed transaction is significantly modified.

G. The time periods shall be tolled during any time in which the office has requested and is awaiting further information necessary to complete a review, from the parties to a transaction.

[13.2.12.11 NMAC – N/E, 05/15/2024]

13.2.12.12 REVIEW OF PROPOSED TRANSACTION BY THE OFFICE:

A. Within 120-days of receiving a completed notice of a proposed transaction, the office shall complete a review, confer with the authority and either:

(1) approve the proposed transaction;

(2) approve the proposed transaction with conditions; or

(3) disapprove the proposed transaction.

B. In conducting a review of a proposed transaction, the office may consider the likely effect in New Mexico of the proposed transaction on:

(1) the potential reduction or elimination in access to essential services;

(2) the availability, accessibility and quality of health care services to any community affected by the transaction;

(3) the health care market share of a party and whether the transaction may foreclose competitors of a party from a segment of the market or otherwise increase barriers to entry in a health care market;

(4) changes in practice restrictions for licensed health care providers who work at the hospital;

(5) patient costs, including premiums and out-of-pocket costs;

(6) health care provider networks; and

(7) the potential for the proposed transaction to affect health outcomes for New Mexico residents.

C. The review period may be extended if the parties agree to an extension.

[13.2.12.12 NMAC – N/E, 05/15/2024]

12.2.13.13 NOTIFICATION OF DETERMINATION:

A. The superintendent shall notify the submitting party in writing of the office’s determination and the reasons for the determination.

B. The office shall approve the proposed transaction after the comprehensive review if the office determines:

the public by:

- (1) the parties to the proposed transaction have demonstrated that the transaction will benefit

- (a) reducing the growth in patient costs, including premiums and out-of-pocket costs; or

- (b) maintaining or increasing access to services, especially in medically underserved areas;

- (2) the proposed transaction will improve health outcomes for New Mexico residents; and
- (3) there is no substantial likelihood of:

- (a) a significant reduction in the availability, accessibility, affordability or quality of care for patients and consumers of the health care services; or

- (b) anti-competitive effects from the proposed transaction that outweigh the benefits of the transaction.

[13.2.12.13 NMAC – N/E, 05/15/2024]

13.2.12.14 CONFIDENTIALITY:

A. All documents, materials or other information in the possession or control of the office that are obtained by or disclosed to the office or the authority in the course of a review under the act, are confidential.

B. Pursuant to Subsection B of Section 59A-2-12 NMSA 1978:

- (1) upon receipt of a written request for a pre-notice conference or a notice of a proposed transaction, the superintendent shall open a confidential case in the office’s docketing system to file any and all documents, materials, or other information pertaining to the notice of proposed transaction received by the office;

- (2) the superintendent shall open a case in a file hosting service for the parties to produce and share documents in a secure trusted platform for the duration of the review of the proposed transaction, through the post-transaction reporting period;

- (3) any written communication related to a proposed transaction shall be deemed confidential by the superintendent; and

- (4) a case opened as confidential pursuant to the act, will be closed as confidential by the superintendent after the reporting period has concluded.

[13.2.12.14 NMAC – N/E, 05/15/2024]

13.2.12.15 POST-TRANSACTION REPORTING AND OVERSIGHT:

A. The person that acquired control over the hospital through an approved or conditionally approved transaction shall submit annual reports for three years from the date the transaction is approved, to the office and to the authority on a form provided by the office and via the email provided on the office’s website.

B. The report shall:

- (1) describe compliance with conditions placed on the transaction, if any;

- (2) describe any growth, any decline, and other changes in services provided by the person;

and

- (3) provide analyses of cost trends and cost growth trends of the hospital.

C. The requirements of this section are not affected by the delayed repeal in Section 59A-63-9 NMSA 1978.

[13.2.12.15 NMAC – N/E, 05/15/2024]

History of 13.2.12 NMAC: [RESERVED]