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State by State, Pre-Merger Notifications Expand

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In the wake of the recent major revisions to the federal merger review form, states are also getting into the act, creating broad new transaction notification requirements. Such notification requirements are not completely new, as 15 states have had merger notification laws for healthcare transactions for many years. Going forward, however, several states are expanding their notification requirements beyond the healthcare arena to apply to any transaction that is reportable under the federal Hart-Scott-Rodino (HSR) Act.

In expanding state notification requirements, state enforcers are seeking to facilitate earlier information sharing and coordination between state and federal enforcers. Currently, state Attorneys General are required to obtain a waiver from the parties to get access to HSR filings, which may delay their review. In addition, separate notification of transactions may give state enforcers more opportunity to identify perceived potential anticompetitive effects within the state and bring independent enforcement actions in federal or state courts, not just sign onto actions brought by the federal antitrust agencies. Foreshadowing this dynamic, it is notable that the first two states to introduce a Uniform Antitrust Pre-Merger Notification Act (UAPNA) — Washington and Colorado — both brought standalone suits to enjoin the Kroger/Albertsons grocery merger in their state courts independent of the FTC's action in federal court.

Washington Leads the Charge with New Pre-Merger Notification Law

The Uniform Law Commission issued the UAPNA, a model industry-agnostic pre-merger state law, on September 16, 2024. Washington was the first state to implement UAPNA, which it adopted in April of this year. Beginning July 27, the law will require parties to notify the Washington Attorney General of transactions that are HSR reportable and involve:

1. At least one party with a principal place of business in Washington;

2. At least one party that generates annual net sales in Washington of at least 20% of the current HSR size-of-transaction threshold (currently $25.3 million and subject to annual inflation adjustments) for goods or services relevant to the transaction; or

3. A healthcare provider or organization conducting business in Washington.

Importantly, unlike the HSR Act, the notification is non-suspensory — it neither requires regulatory approval nor imposes a waiting period to close the transaction — and does not require a filing fee to the state. It also demands no information beyond what is already required for the federal HSR filing and, for healthcare transactions, simultaneously satisfies the existing notice requirement under Washington's healthcare notification law.

Other States (and DC) Join the Party

On June 4, Colorado became the second state to adopt UAPNA, with a statutory scheme very similar to Washington's. Colorado already required licensed hospitals in Colorado to provide pre-closing notice to the state Attorney General, which it considered expanding earlier this year to include other healthcare, long-term care, and veterinary entities, but ultimately did not implement. However, HSR-reportable transactions related to these entities, as well as deals in any other industry that meet the Colorado nexus thresholds, will now be captured under UAPNA. Colorado's UAPNA is set to take effect on August 6, 2025.

Several other jurisdictions have introduced bills to implement UAPNA. California's State Senate passed its version of UAPNA on June 2, 2025, which is primarily the same as the model UAPNA law, but requires filing fees of $1,000 for parties with their principal place of business in California and $500 for parties that meet the net sales threshold in California. Hawaii, Washington, DC, and West Virginia have introduced UAPNA-like bills that have not yet been adopted. Nevada and Utah have also seen UAPNA bills get introduced, but both bills failed to pass.

New York has taken a different course with its 21st Century Antitrust Act (21CAA). The 21CAA aims to go beyond the model UAPNA and New York's existing Donnelly Act. Specifically in regards to pre-merger notification, the proposed bill requires notification of HSR filings from "any person conducting business in the state," which is significantly broader than UAPNA's nexus requirements. The state Senate passed 21CAA on June 4, 2025, but approval from the assembly and governor are necessary for it to be enacted. Given that earlier bills to expand merger notification requirements in New York failed to pass,[1] it is possible that this one will fall by the wayside as well.

Takeaways

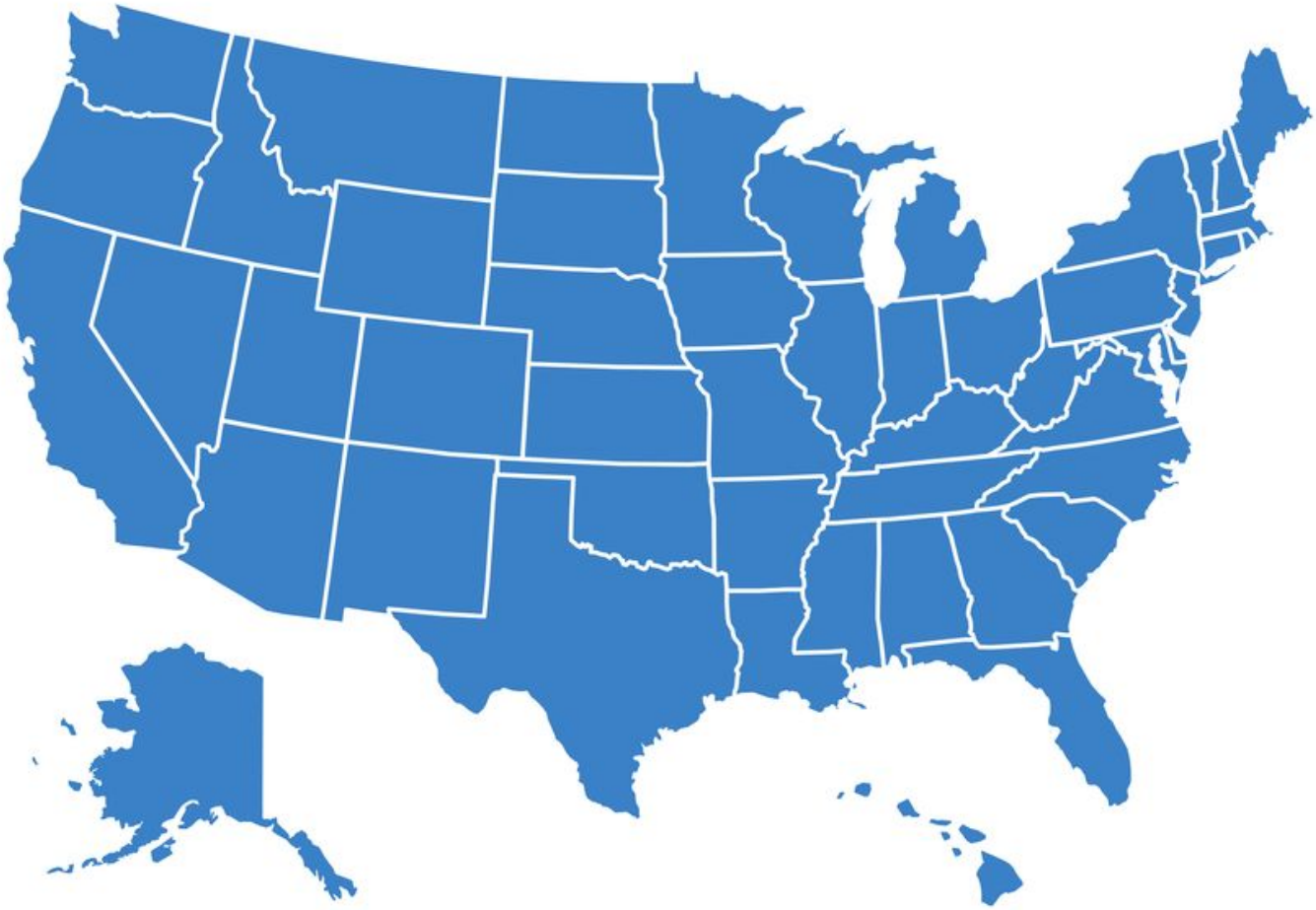
The recent proliferation of requirements that parties submit their HSR filings to a state requires ongoing monitoring and potentially raises compliance costs for dealmakers. Whereas previously states would have become engaged in a transaction review only where specific state issues became apparent, the requirements to submit HSR filings will impact a much broader range of deals. As a result of Washington, Colorado's, and likely other states' expanded pre-merger notification laws, parties should consider the following regarding their deals:

- **New need to assess state-level filings requirements** at the same time as HSR and foreign filings at the pre-filing/contract negotiation stage and the filing stage. As state notification regimes proliferate, a filing assessment along the lines of ex-U.S. analyses will need to be developed, and will apply in even more cases than ex-U.S. analyses do today. All notification requirements — including ex-U.S. and state — will now need to be factored into contract negotiations and pre-closing conditions.

- **Higher risk of state Attorneys General investigation** earlier in the regulatory review process, especially if Democratic state Attorneys General perceive an enforcement gap under the Trump administration. As noted above, the first states to implement UAPNA have been blue states taking independent action in relation to a merger that was also challenged by the FTC. The recent expansion of HSR filing requirements, increasing the information and documentary materials submitted with the filing, will give state antitrust enforcers plenty to chew on.

- **Need for earlier proactive outreach on customer relations and government relations** in deals likely to be of interest to customers or political stakeholders due to the greater risk of state Attorneys General investigation.

[1] E.g., New York Senate Bill 933A and New York Assembly Bill 1812A, both introduced in the 2021-2022 legislative session.



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