June 11, 2026

Megan Brubaker
Department of Health Care Access and Information
Office of Health Care Affordability
2020 W. El Camino Ave.
Sacramento, CA 95833

Subject: **CHA Comments on Proposed Revisions to Material Change Transactions and Pre-Transaction Review Regulations to Implement Assembly Bill 1415**

Dear Ms. Brubaker:

The California Hospital Association (CHA), on behalf of nearly 400 hospital and health system members, thanks the Office of Health Care Affordability (OHCA) for the opportunity to comment on proposed changes to the Cost and Market Impact Review (CMIR) regulations, intended to implement Assembly Bill (AB) 1415 (Statutes of 2025). Hospitals appreciate OHCA's commitment to a public process by providing advance notice and consideration of stakeholder feedback. **However, hospitals have significant substantive concerns about the regulations and request various changes to align the proposed rules with the letter and intent of AB 1415, prevent standard and beneficial business practices from being upended, and protect access to care in an increasingly unstable environment.**

The proposed expansion of OHCA's market oversight authority comes as patient care in California is under threat. The One Big Beautiful Bill Act (OBBBA) enacted the deepest Medi-Cal coverage and payment cuts in the program's history. Even before these cuts are felt, nearly half of hospitals are operating at a loss — and the 40 hospitals with the worst financial performance had average operating margins of **negative 39%** in 2024. In "The Big Ugly Threat to Safety Net Hospitals," Public Citizen found that 83 California hospitals are at heightened risk of closing, cutting services, or laying off staff.

Collaboration — whether through wholesale purchases and affiliations, timely investments, or obtaining outside help with daily operations — is a critical lifeline for hospitals in financial distress. Unfortunately, the proposed regulations would substantially narrow these pathways to financial recovery and undermine access to care in communities throughout California.

To ensure the proposed regulations not only align with statutory authority, but also prevent avoidable and widespread negative impacts on California's health care providers and their patients, hospitals ask that OHCA revise its regulations to:

- Not include entities that "own, operate or control a provider, regardless of whether the provider is currently operating, providing health care services, or has a pending or suspended license" in the definition of **"health care entities"** because there is no statutory authority in AB 1415 or elsewhere to define these entities as such. Rather, the Legislature has clearly deemed such entities to be **"noticing entities"** that are subject to the noticing entity requirements.
- Categorically exclude from the definition of a "management services organization" (MSO) all entities that own, control, are controlled by, or are under common control with one or more hospitals, to align with statutory authority.
- Revise Section 97435(c)(10) to align with the existing established criteria for health care entity transactions that involve a transfer of control, responsibility, or governance of a health care entity in Section 97435(e). Section 97435(c)(10), which defines certain MSO transactions as material change transactions, is too broad and will substantially delay or stymie even ordinary course MSO arrangements that do not have any material impact on the control, operations, or governance of MSOs or health care entities.
- Revise Section 97435(c)(9) to only capture transactions involving hedge funds and private equity that could actually result in a change of control, responsibility, or governance of a health care entity or MSO by making use of the established criteria for health care entity transactions that involve a transfer of control, responsibility, or governance of a health care entity in Section 97435(e). Section 97435(c)(9), which defines certain private equity group or hedge fund transactions as material change transactions, is too broad and will likely chill or delay the ability of distressed hospitals and other health care entities to find necessary capital, regardless of whether or not the private equity group or hedge fund retains any actual authority or control over the operations or assets of the health care entity or MSO.
- Expand the "usual course" and "common control" exceptions to also apply to noticing entity transactions. OHCA has previously stated that these types of transactions are not material in nature.
- Delete Section 97435(c)(11) covering real estate leasebacks in its entirety. This provision is too broad and captures common and de minimis arrangements. The other circumstances listed in Section 97435(c) that require filing would cover any arrangements that rise to material level of concern.
- Expand confidentiality protections to: (1) include additional transaction documents containing sensitive information, (2) deem sensitive information otherwise provided to OHCA as confidential, and (3) extend non-disclosure requirements to confidential information shared with the Attorney General.
- Expressly eliminate duplicative reporting obligations in the proposed regulations as required by AB 1415.

More details about each recommendation are provided below. CHA would also welcome the opportunity to discuss these matters further with OHCA.

An Entity That Owns, Operates, or Controls a Provider May Not Be Defined as a "Health Care Entity"

AB 1415 introduced (1) a separate "noticing entity" category, as defined in Health & Safety Code § 127507(h), that includes "an entity that owns, operates, or controls a provider, regardless of whether the provider is currently operating, providing health care services, or has a pending or suspended license" and (2) separately defines the types of material transactions for which a "noticing entity" must provide notice. Importantly, AB 1415 did not revise or otherwise alter the existing statutory definition of "health care entity" found at Health & Safety Code § 127500.2(k) — which does not include an "entity that owns, operates, or controls a provider."

By contrast, the proposed regulations treat entities that own, operate, or control a provider as both a "noticing entity" and a "health care entity" pursuant to the revised definition of "health care entity" found at Section 97431(g) of the proposed regulations. This would subject such entities to health care entity filing requirements. Including such entities within the definition of "health care entity" clearly exceeds statutory authority, eliminates the clear statutory distinction between health care entities and noticing entities, and improperly imposes all the thresholds and filing duties of a "health care entity" on entities that own, operate, or control a provider. Accordingly, in this regard, the proposed regulations frustrate clear statutory intent to separately address the notice obligations of such entities through the "noticing entity" requirements, rather than through the "health care entity" notice obligations.

Proposed Resolution

OHCA should align the proposed regulations with AB 1415 by deleting Section 97431(g)(4) so that "an entity that owns, operates, or controls a provider, regardless of whether the provider is currently operating, providing health care services, or has a pending or suspended license" is not considered a "health care entity."

Categorically Exclude from the MSO Definition All Entities That Own One or More Hospitals

The proposed regulations define an MSO in Section 97431(k) to refer to "entities, as described in [Health & Safety Code § 127500.2(o)] that are additionally at least one of the following:

(1) Owned by a **hospital** (emphasis added) and have two or more physician organizations as clients or affiliates;
(2) Employ the physician-owner of, or otherwise have an agreement with the physician-owner that defines the services to be provided and compensation for such services with, one or more physician organizations;
(3) Share directors, officers, investors, or other natural persons with the ability to exercise control with respect to a health care entity; or
(4) Affiliated with at least two of the following:
    (A) A health plan;
    (B) Two or more physician organizations; or
    (C) A **hospital**." (emphasis added)

By contrast, Health & Safety Code § 127500.2(o) clearly states that an MSO "does not include entities that own one or more health facilities, as defined in subdivision (a) or (b) of Section 1250" (referring to entities that own one or more general acute care hospitals or psychiatric hospitals).

CHA appreciates OHCA's efforts to narrow the types of entities that may qualify as an MSO under the proposed regulations by limiting MSOs to only those entities that meet certain additional criteria. However, the proposed regulations' MSO definition exceeds statutory authority by including MSOs that are owned by a hospital, something clearly excluded under Health & Safety Code § 127500.2(o).

Additionally, in nearly all cases, an entity that owns a hospital will also share directors, officers, investors, or other natural persons that have the ability to exercise control with respect to a health care entity, since a general acute care or psychiatric hospital is itself a type of health care entity. This means that **any** entity that both (1) owns a general acute care or psychiatric hospital, and (2) provides certain management and administrative support services to the hospital or other providers — an almost universal occurrence — will be swept up in the proposed regulations' definition of an MSO. This is exactly why the Legislature revised prior drafts of AB 1415 that referenced "health systems" to remove all such references, and instead elected to expressly state in the final AB 1415 language that MSOs do not include entities that own one or more general acute care hospitals or psychiatric hospitals.

Proposed Resolution

The definition of MSO found in Section 97431(k) of the proposed regulations should be revised to clearly exclude any entity that owns, controls, is controlled by, or is under common control with one or more health facilities, as defined in subdivision (a) or (b) of Health & Safety Code § 1250, regardless of whether it meets one or more of the criteria set forth in Section 97431(k)(1) through (4).

Criteria for Transactions Involving MSOs Have No Materiality Thresholds and Will Adversely Impact the Ability of MSOs and Health Care Entities to Enter into Ordinary Arrangements

Section 97435(c)(10) in the proposed regulations defines a "material change transaction" subject to notice to include transactions involving an MSO that does one of the following:

(A) Results in an MSO providing management and administrative support services for a health care entity satisfying Section 97435(b)(1);
(B) Result in an MSO providing management and administrative support services for two or more providers that collectively generate $10 million annually from California patients; or
(C) Involves a transfer of control, responsibility or governance, in whole or in part, of the MSO, as defined in Section 97435(e), or a change in 25% or more of the MSO's ownership.

This material change circumstance is too broad and, as drafted, would subject ordinary course management and administrative support transactions to the notice obligations, regardless of whether the transactions involve any transfer of the assets or operations of a health care entity or MSO. Notably, Section 97435(c)(10)(A) and (B) do not include any limiting threshold. That is, **any** transaction involving **any** MSO that results in the MSO providing management and administrative support services to a qualifying health care entity, or two or more qualifying health care providers, would be subject to OHCA's notice obligations, regardless of whether the transaction gives the MSO any control over the health care entity's or providers' assets, operations, or governance. As written, the proposed regulations would increase costs and substantially

delay the ability of MSOs and qualifying health care entities to enter into the most ordinary course management and administrative support service arrangements, including for minor transactions and the provision of limited administrative support activities that have no material market impacts. Providers not seeking a change in ownership but who need help with administrative and management functions would effectively lose their ability to expeditiously and reliably contract for these services, making them more likely to close outright while nullifying opportunities to improve administrative efficiencies. For these reasons, significant changes are needed.

Proposed Resolution

Section 97435(c)(10) should be revised to capture only those transactions that could actually result in a change of control, responsibility, or governance of a health care entity or MSO. Specifically, OHCA should delete Sections 97435(c)(10)(A) and (B) in their entirety, and Section 97435(c)(10)(C) should be revised to apply to transfers of control, responsibility, or governance of an MSO or health care entity, making use of OHCA's existing materiality standard.

Provisions Delineating "Material" Transactions Involving a Private Equity Group or Hedge Fund Would Chill Distressed Health Care Entities' Ability to Raise Capital

AB 1415 requires that a noticing entity notify OHCA of certain transactions that do either of the following: (1) sell, transfer, lease, exchange, option, encumber, convey, or otherwise dispose of a **material amount** of the health care entity's or MSO's assets to one or more entities; or (2) transfer control, responsibility, or governance of a **material amount** of the assets or operations of the health care entity or MSO to one or more entities [Health & Safety Code § 127507(c)(2)]. This noticing obligation is nearly identical to the existing noticing obligations of health care entities. Yet, the proposed regulations define a "material change transaction" so broadly as to sweep up ordinary course and passive investment transactions that do not involve a material amount of the assets or operations of the health care entity or MSO.

First, Section 97435(c)(9)(A) defines a "material change transaction" to include a transaction involving a private equity group or hedge fund that "results in the private equity group or hedge fund holding 5% or more of the assets, equity, debt, or liabilities of a health care entity satisfying [Section 97435(b)(1), (2), or (3)] or a management services organization[,]" including "groups of investors, private equity firms, or hedge funds investing collectively hold 5% of the assets or equity of the health care entity[.]" The 5% threshold is substantially lower than the standard applicable to health care entities in the existing regulations, where a change of control, responsibility, or governance of a health care entity is defined in reference to a transfer of 25% or more of the voting power of the members of the governing body of a health care entity. This means that under the proposed regulations, a noticed transaction would include passive investment transactions that do not impact or alter the control of a health care entity or MSO.

Second, Section 97435(c)(9)(B) is ostensibly an even broader circumstance than the 5% threshold in Section 97435(c)(9)(A), which renders Section 97435(c)(9)(A) superfluous. Notably, Section 97435(c)(9)(B) pertains to transactions involving a private equity group or hedge fund that "results in the acquisition of assets, equity, debts, or liabilities of a health care entity satisfying [Section 97435(b)(1), (2), or (3)] or a management services organization," but without any minimum materiality threshold. Section 97435(c)(9)(B) also includes a list of

eight control indicia, but notably, these indicia are introduced by the clause "including, but not limited to" suggesting the listed indicia are merely illustrative, rather than limited. A literal interpretation means that **any** transaction wherein a private equity group or hedge fund acquires **any** assets, equity, debts or liabilities of a qualifying health care entity or MSO could constitute a material change transaction.

Even if Section 97435(c)(9)(B) were limited to those transactions that meet one or more of the listed eight control indicia, certain of the listed control indicia still cast too wide of a net and would sweep in common and ordinary course arrangements that have no impact on the ownership or control of a health care entity or MSO. For example, the control indicia would capture even routine transactions resulting in the charging of a nominal fee to the health care entity or MSO, regardless of whether the private equity group or hedge fund retains any actual authority or control over the operations or assets of the health care entity or MSO.

Amid unprecedented funding cuts at the federal and state level, health care entities need flexibility to move quickly and secure financing in order to keep their doors open and ensure patients in their community continue to have access to quality care. The proposed regulations would make it much more difficult and costly for distressed hospitals and other health care entities to raise much-needed capital, and could further turn investors away from the California health care market altogether. OHCA must balance its interest in reviewing an expanded set of transactions with the imperative to sustain access, for which investment is critically needed. To do this, it must focus only on those transactions that actually change the control of health care entities or MSOs.

Proposed Resolution

Section 97435(c)(9) should be revised to capture only those transactions that could actually result in a change of control, responsibility, or governance of a health care entity or MSO. OHCA has already established criteria for health care entity transactions that involve a transfer of control, responsibility, or governance of a health care entity in Section 97435(e).

As OHCA previously noted in its Findings of Emergency and Notice of Proposed Emergency Regulations, dated November 2023 (the "**Emergency Findings**"), it previously drafted Section 97435(e) to establish the "tipping point" for materiality as to when a transfer of control could affect affordability, access, and equity. Notably, OHCA comments in the Emergency Findings that it originally contemplated establishing a 10% threshold for transfer of voting power that constitutes a material transfer of control pursuant to Section 97435(e)(1), but decided on the existing 25% threshold as the appropriate tipping point for materiality. OHCA noted that it further adopted Section 97435(e)(2), categorizing transfers of supermajority rights, veto rights, and similar provisions based on the Attorney General regulations found in 11 Cal. Code Regs. § 999.5. Accordingly, OHCA has already determined that Section 97435(e) appropriately identifies the threshold in which a transaction becomes sufficiently material to constitute a transfer of control that could affect affordability, access, and equity and which warrants further scrutiny. OHCA should, therefore, revise Section 97435(c)(9) to align with the same criteria set forth in Section 97435(e).

Extend to Noticing Entities the Exception for Transactions in the Usual and Regular Course of Business and Common Control

In OHCA's Emergency Findings for its initial regulations, it stated that exceptions are "necessary to define those transactions that require the filing of a notice," in reference to the statutory requirement for OHCA to focus on only those transactions that involve a **material amount** of the assets or operations of a health care entity. OHCA stated:

"The Office also enumerates transactions that are ***not material****, such as those in the day-to-day, usual and regular course of business, and situations that amount to internal adjustments or restructurings . . . [t]his is necessary to minimize the Office's burden from receiving notices of transactions that would not typically trigger health care consolidation concerns."* (emphasis added)

However, OHCA did not revise the "ordinary course" and "common control" exceptions to the definition of a material change transaction found in its existing regulations to also apply to noticing entities. Specifically, Section 97431(l) of the proposed regulations state that a "material change transaction" does not include: "(1) transactions in the usual and regular course of business of the **health care entity**, meaning those that are typical in the day-to-day operations of the health care entity; and (2) situations in which the **health care entity** directly, or indirectly through one or more intermediaries, already controls, is controlled by, or is under common control with, all parties to the transaction, such as a corporate restructuring" (emphasis added).

Although AB 1415 includes the same operative language — for OHCA to receive notice of noticing entity transactions that involve a **material amount** of the assets or operations of a health care entity or MSO — the proposed regulations fail to extend these same exceptions to MSO transactions that are either in the usual and regular course of business or that pertain only to internal adjustments or restructurings. The same logic enumerated in OHCA's prior Emergency Findings should be applied to ordinary course transactions and internal restructurings of MSOs.

Moreover, as noted previously, given the broad MSO definition and the extent to which Section 97435(c)(10) would seemingly capture any management and administrative support arrangement between the MSO and a qualifying health care entity, extending these exceptions to MSO transactions is necessary to focus resources and attention on transactions that are most likely to have a material impact, and to reduce the burden on health care entities and MSOs to notify OHCA of transactions that are not material.

Proposed Resolution

OHCA should revise Section 97431(l) of the proposed regulations to exempt from the notice obligations transactions that are in the MSO's usual and regular course of business, as well as transactions where the MSO directly or indirectly through one or more intermediaries, already controls, is controlled by, or is under common control with, all parties to the transaction.

Provisions Covering Real Estate Sale-Leaseback Arrangements Are Too Broad

The proposed regulations include a "material change transaction" circumstance targeted at real estate transactions for the first time. Section 97435(c)(11) proposes to define a "material change transaction" to

include transactions that result in the sale or transfer of real estate where a health care entity provides health care services: (A) to an entity other than the entity acquiring the health care entity or its direct parent; and (B) the surviving health care entity will be required to lease or pay rent for the real estate.

While hospitals appreciate that OHCA acknowledges that transactions where the health care entity or its direct parent acquires the real estate do not warrant scrutiny, Section 97435(c)(11) as proposed by OHCA still captures usual, customary, inappreciable transactions that should not raise concerns. This shortcoming stems from the lack of a materiality threshold for transactions that include leasebacks. As a consequence, under the proposed regulations, notice would have to be provided and OHCA would have to review all such transactions that have a qualified submitter, no matter how small the agreement is or whether it would impact the market. For example, health care entities routinely sign professional services agreements with small physician groups — often with only a couple of physicians — and offer to take over the group's lease. Often, this occurs as the physicians near retirement, and allows the health care entity to maintain services at the same location when otherwise the office would close. Going forward, such agreements, which protect access to care, would cease to exist if subject to CMIR requirements.

Proposed Resolution

Delete Section 97435(c)(11) in its entirety. The other circumstances requiring filing specified in Section 97435(c) would adequately cover leaseback arrangements that would have an appreciable impact on the health care market.

Certain Confidentiality Provisions Reflect an Improvement, but Changes to Protect Sensitive Information Are Needed

Confidentiality protections are essential to protect competitively sensitive information from being released into the public domain, which could not only sink a proposed transaction, but also increase health care costs to the extent third parties find that they are being paid comparatively less. The proposed regulations make various changes to the rules and process governing the confidentiality of information provided to OHCA. For example, the updated rules deem certain documents confidential, including stock purchase agreements, compensation documents, contract rates, transaction valuation documentation, and unredacted résumés. This change is appropriate given the competitively sensitive nature of the information contained in these documents, but does not extend to all the documents containing sensitive information required to be submitted under Section 97438(c).

While the documents listed above would be deemed confidential, the related information otherwise provided to OHCA would have to be determined confidential on a case-by-case basis — adding unnecessary uncertainty and workload to the review process.

Finally, the regulations permit disclosure of confidential information to the Attorney General. However, there are no protections ensuring that the Attorney General keep this same information confidential.

Proposed Resolution

To comprehensively protect documents that by nature contain confidential information, OHCA should deem confidential all the documents submitted pursuant to Section 97438(c). OHCA should further specify that competitively sensitive information otherwise submitted, including but not limited to the price of the transaction, stock valuations, compensation amounts, contracted rates, and detailed resume information, shall be deemed confidential. OHCA should also add a provision to limit disclosure by the Attorney General of any confidential information shared, whether through an interagency agreement or other means.

Tolling Based on Third-Party Information Requests Would Create Unwarranted Uncertainty and Delays

OHCA proposes changes to Section 97440 to allow OHCA's review timelines to be tolled while awaiting information from third parties that are not participants in the transaction under review. Third parties are entirely outside the control of the submitter. Submitters cannot compel a third party to respond to OHCA's requests, cannot accelerate the pace of a third party's production of information, and cannot anticipate how long a third-party review may take. Allowing open-ended tolling based on third-party information requests would expose compliant submitters to indefinite extensions of the review period through no fault of their own, creating profound uncertainty regarding transaction timing, operational planning, financing, and regulatory approvals from other agencies.

For hospitals and health systems already operating in financial distress — the very entities most likely to be engaged in time-sensitive transactions necessary to preserve access to care — this uncertainty is not merely an inconvenience. An indeterminate review timeline would cause financing to fall through, require renegotiation of transaction terms, or cause a potential partner to walk away entirely. The practical effect could be to make beneficial transactions impossible to complete, threatening patient access to care in vulnerable communities.

Proposed Resolution

OHCA should revise Section 97440 to eliminate tolling of the 45-day and 60-day review periods based on information requests directed to third parties. Tolling should be limited to periods during which OHCA is awaiting information or documents from the submitter itself, or during periods of parallel review by another state or federal agency whose findings may directly affect OHCA's determination.

Proposed Regulations Fail to Eliminate Duplicative Reporting Obligations, as Required by AB 1415

AB 1415 requires OHCA to adopt regulations to eliminate duplicative reporting if a noticing entity or health care entity is required to submit notice under more than one subdivision *[see* Health & Safety Code § 127507(c)(2)(C)]. However, the proposed regulations fail to include any such regulation and, as currently drafted, an entity that is both a noticing entity and a health care entity would need to file two separate notices pertaining to their involvement in the same transaction.

The information and documentation required to be included as part of the notices to OHCA are extensive, particularly under the proposed regulations. There is no question that the process of an entity completing the analysis as to whether it needs to file a notice or submission, and then compiling all required information and documentation for such notice, is time-consuming, costly, and burdensome.

Proposed Resolution

OHCA should expressly include a provision in the proposed regulations that eliminates duplicative reporting obligations in cases where a noticing entity or health care entity is required to submit notice to OHCA under more than one subdivision, as required by AB 1415.

Conclusion

CHA has significant concerns with the proposed regulations as currently drafted, and urges OHCA to incorporate these requested revisions in final regulations. Hospitals appreciate the opportunity to comment on these important regulations and would welcome further discussion.

Sincerely,

Lois J Richardson

Lois Richardson
Vice President, Legal Counsel

cc: Members of the Health Care Affordability Board:
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