

# Washington State and Colorado Premerger Notification Requirements

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Washington State and Colorado have premerger notification requirements. If you make about \$25 million or more in either of those States, which will inch up each year, assuming no deflation, or have a principal place of business in those States, you may have to make a premerger notification filing with them. Their waiting period is 60 days. The waiting period under HSR is 30 days unless the agencies grant early termination, which is back now. Fines by the States for consummating upon receiving early termination from the United States would be around \$2.7 million.

The thresholds are much less, and the States you have to be concerned about, are many more, if you are a health care provider. Those States include California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. Pharmaceuticals do not appear to be included in the term health care providers which seems to track entities covered by Certificate of Need statutes.

The new HSR form asks if parties consent to sharing the federal filing with State authorities. These new laws seem entirely pro forma then as very few States would sue to block an HSR-reportable merger that the federal government does not think is anticompetitive, and States with an interest would likely be contacted anyway by the federal authorities even if the federal authorities cannot disclose confidential information. No State has sued parties for consummating an HSR-/State-reportable transaction before the 60 days is over so far, but that does not mean they would not. I would anticipate at least a few of those suits much like the federal agencies periodically challenge consummated, non-reportable transactions.

My HSR information requests will now include questions about revenues (headquarters are rather obvious) in Washington State and Colorado, and will expand as more States adopt these statutes.