

# FINN DIXON & HERLING

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## Washington and Colorado State Premerger Notification (“Mini- HSR”) Statutes Become Effective This Summer

*Applicable to All Industries (not just healthcare)*

This month, effective as of July 27, 2025, the State of Washington will be the first state to have adopted the Uniform Law Commission’s Antitrust Premerger Notification Act (“APNA”). Colorado is following close behind, with an APNA statute that becomes effective on August 6, 2025.

Each state’s version of APNA will apply to any transaction – regardless of industry – with the following key characteristics:

- **Federal HSR Filing** - The transaction and the parties need to be large enough to require a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR”);  
*plus*
- **Minimum Contacts with the State** – At least one of the parties must have certain minimum contacts in the applicable state.

The upshot – if a transaction is subject to either state’s version of APNA, then:

- **File a copy of the HSR form with the state Attorney General** - One or both parties will now be required to contemporaneously submit a copy of their federal HSR filing to the applicable state Attorney General (each, a “State AG”).
- **No waiting period or consent** - The purpose of these statutes is to alert State AGs of potentially anti-competitive transactions and provide basic information to each State AG. Although the statutes do not expand any State AG’s enforcement powers, or grant consent or approval rights, the statutes do provide early access to basic information about a transaction before the transaction closes.

A helpful summary table is set forth below.

<b><u>Colorado and Washington State Versions of APNA in a Nutshell</u></b>	
<b>Industries affected</b>	<p>All industries.</p> <p>Like some other states, each of Washington and Colorado already has an existing premerger notification requirement for certain healthcare-related transactions.</p>
<b>State Filing Threshold/Minimum Contacts</b>	<p>Parties who are required to file an HSR premerger notification form for a transaction now will also need to contemporaneously submit an electronic copy of the HSR form to the State AG if any one of the following “minimum contacts” tests is satisfied:</p> <p>(a) A party has its <i>principal place of business</i> in the state; or</p> <p>(b) A party or any party that it controls directly or indirectly had <i>annual net sales</i> in the state of the goods or services involved in the transaction of at least <b>20 percent</b> of the HSR size-of-transaction filing threshold (based on the current 2025 HSR size of transaction threshold (\$126.4 million), 20% translates to \$25.28 million in state sales); or</p> <p>(c) Washington only – the transaction involves certain healthcare providers/provider organizations conducting business in Washington.</p>
<b>Contents of Filing</b>	Electronic filing - full HSR form (plus, in many cases, additional HSR documentary material).
<b>Filing Fee</b>	None.
<b>Waiting Period</b>	<p>None - no separate state waiting period and no new, separate approval rights granted to either State AG.</p> <p>Healthcare note: Healthcare transactions that do not meet the APNA threshold but are subject to the pre-existing healthcare “mini-HSR” statute in Colorado or Washington must still comply with that statute’s 60-day waiting period.</p>
<b>Confidentiality</b>	<p>Confidential.</p> <p>However, the State AG may share the materials with the FTC, DOJ Antitrust Division and/or attorneys general in other states that have also enacted the APNA or a substantively equivalent act.</p> <p>Each state’s version of APNA exempts an APNA filing from the state’s open records/FOIA laws.</p>
<b>Penalty for non-filing</b>	Civil penalty of up to \$10,000 per day.

## Implications/Takeaways

### What the Statutes Mean for State AGs and deals

The two new statutes provide expedited access to information, but no additional new enforcement authority to the State AGs. However, the State AGs retain the pre-existing power to challenge potential mergers under state antitrust laws. As a result, the State AGs will arguably now be better informed of HSR reportable transactions that may impact businesses and/or consumers in the state and can act accordingly.

### Other States May Follow Suit

Clients and their advisors should be aware of the chance that other states will also adopt similar statutes, resulting in the need to assess multiple state-level notification laws in the future. For example, legislatures in California, Hawaii, Nevada, Utah, West Virginia and Washington, D.C. are considering variants of the Uniform APNA.

### Practical Issues

As a practical matter, deal teams will also need to manage the following:

- Electronic filing - Consult with applicable State AGs or local counsel regarding electronic filing mechanics (especially for large electronic filings with complex attachments).
- Net sales test – Parent company buyers and sellers with multiple lines of business (especially in carveouts and spinoffs) may want to consult with local counsel as to how to assess the 20% of annual net sales test.

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Please contact Jared Dinkes (jdinkes@fdh.com; 203-325-5024) or Charles J. Downey III (cdowney@fdh.com; 203-325-5023), or any of your usual contacts at Finn Dixon & Herling, with any questions about these new statutes.

Thanks to summer associate Lily Lee for her invaluable assistance with this client alert.

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