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**SUBSTITUTE HOUSE BILL 1607**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Caldier, Jinkins, Robinson, Macri, and Cody)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to notice of material changes to the operations  
2 or governance structure of participants in the health care  
3 marketplace; adding a new chapter to Title 19 RCW; and prescribing  
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** INTENT. It is the intent of the  
7 legislature to ensure that competition beneficial to consumers in  
8 health care markets across Washington remains vigorous and robust.  
9 The legislature supports that intent through this act, which provides  
10 the attorney general with notice of all material health care  
11 transactions in this state so that the attorney general has the  
12 information necessary to determine whether an investigation under the  
13 consumer protection act is warranted for potential anticompetitive  
14 conduct and consumer harm. This act is intended to supplement the  
15 federal Hart-Scott-Rodino antitrust improvements act, Title 15 U.S.C.  
16 Sec. 18a, by requiring notice of transactions not reportable under  
17 Hart-Scott-Rodino reporting thresholds and by providing the attorney  
18 general with a copy of any filings made pursuant to the Hart-Scott-  
19 Rodino act.

1        NEW SECTION.        **Sec. 2.**        DEFINITIONS. The definitions in this  
2 section apply throughout this chapter unless the context clearly  
3 requires otherwise.

4        (1) "Acquisition" means an agreement, arrangement, or activity  
5 the consummation of which results in a person acquiring directly or  
6 indirectly the control of another person, and includes the  
7 acquisition of voting securities and noncorporate interests, such as  
8 assets, capital stock, membership interests, or equity interests.

9        (2) "Carrier" means the same as in RCW 48.43.005.

10       (3) "Contracting affiliation" means the formation of a  
11 relationship between two or more entities that permits the entities  
12 to negotiate jointly with carriers or third-party administrators over  
13 rates for professional medical services, or for one entity to  
14 negotiate on behalf of the other entity with carriers or third-party  
15 administrators over rates for professional medical services.  
16 "Contracting affiliation" does not include arrangements among  
17 entities under common ownership.

18       (4) "Health care services" means medical, surgical, chiropractic,  
19 hospital, optometric, podiatric, pharmaceutical, ambulance, mental  
20 health, substance use disorder, therapeutic, preventative,  
21 diagnostic, curative, rehabilitative, palliative, custodial, and any  
22 other services relating to the prevention, cure, or treatment of  
23 illness, injury, or disease.

24       (5) "Health care services revenue" means the total revenue  
25 received for health care services in the previous twelve months.

26       (6) "Health maintenance organization" means an organization  
27 receiving a certificate of registration pursuant to chapter 48.46 RCW  
28 which provides comprehensive health care services to enrolled  
29 participants of such organization on a group practice per capita  
30 prepayment basis or on a prepaid individual practice plan, except for  
31 an enrolled participant's responsibility for copayments and  
32 deductibles, either directly or through contractual or other  
33 arrangements with other institutions, entities, or persons, and which  
34 qualifies as a health maintenance organization pursuant to RCW  
35 48.46.030 and 48.46.040.

36       (7) "Hospital" means a facility licensed under chapter 70.41 or  
37 71.12 RCW.

38       (8) "Hospital system" means:

1 (a) A parent corporation of one or more hospitals and any entity  
2 affiliated with such parent corporation through ownership or control;  
3 or

4 (b) A hospital and any entity affiliated with such hospital  
5 through ownership.

6 (9) "Merger" means a consolidation of two or more organizations,  
7 including two or more organizations joining through a common parent  
8 organization or two or more organizations forming a new organization,  
9 but does not include a corporate reorganization.

10 (10) "Person" means, where applicable, natural persons,  
11 corporations, trusts, and partnerships.

12 (11) "Provider" means a natural person who practices a profession  
13 identified in RCW 18.130.040.

14 (12) "Provider organization" means a corporation, partnership,  
15 business trust, association, or organized group of persons, whether  
16 incorporated or not, which is in the business of health care delivery  
17 or management and that represents seven or more health care providers  
18 in contracting with carriers or third-party administrators for the  
19 payments of health care services. A "provider organization" includes  
20 physician organizations, physician-hospital organizations,  
21 independent practice associations, provider networks, and accountable  
22 care organizations.

23 (13) "Third-party administrator" means an entity that administers  
24 payments for health care services on behalf of a client in exchange  
25 for an administrative fee.

26 NEW SECTION. **Sec. 3.** NOTICE OF MATERIAL CHANGE. (1) Not less  
27 than sixty days prior to the effective date of any transaction that  
28 results in a material change, the parties to the transaction shall  
29 submit written notice to the attorney general of such material  
30 change.

31 (2) For the purposes of this section, a material change includes  
32 a merger, acquisition, or contracting affiliation between two or more  
33 entities of the following types:

- 34 (a) Hospitals;
- 35 (b) Hospital systems; or
- 36 (c) Provider organizations.

37 (3) A material change includes proposed changes identified in  
38 subsection (2) of this section between a Washington entity and an  
39 out-of-state entity where the out-of-state entity generates ten

1 million dollars or more in health care services revenue from patients  
2 residing in Washington state, and the entities are of the types  
3 identified in subsection (2) of this section. Any party to a material  
4 change that is licensed or operating in Washington state shall submit  
5 a notice as required under this section.

6 (4) For purposes of subsection (2) of this section, a merger,  
7 acquisition, or contracting affiliation between two or more  
8 hospitals, hospital systems, or provider organizations only qualifies  
9 as a material change if the hospitals, hospital systems, or provider  
10 organizations did not previously have common ownership or a  
11 contracting affiliation.

12 NEW SECTION. **Sec. 4.** NOTICE REQUIREMENTS. (1) The written  
13 notice provided by the parties, as required by section 3 of this act,  
14 must include:

15 (a) The names of the parties and their current business  
16 addresses;

17 (b) Identification of all locations where health care services  
18 are currently provided by each party;

19 (c) A brief description of the nature and purpose of the proposed  
20 material change; and

21 (d) The anticipated effective date of the proposed material  
22 change.

23 (2) Nothing in this section prohibits the parties to a material  
24 change from voluntarily providing additional information to the  
25 attorney general.

26 NEW SECTION. **Sec. 5.** REQUESTS FOR ADDITIONAL INFORMATION. The  
27 attorney general shall make any requests for additional information  
28 from the parties under RCW 19.86.110 within thirty days of the date  
29 notice is received under sections 3 and 4 of this act. Nothing in  
30 this section precludes the attorney general from conducting an  
31 investigation or enforcing state or federal antitrust laws at a later  
32 date.

33 NEW SECTION. **Sec. 6.** HART-SCOTT-RODINO ACT. Any provider or  
34 provider organization conducting business in this state that files a  
35 premerger notification with the federal trade commission or the  
36 United States department of justice, in compliance with the Hart-  
37 Scott-Rodino antitrust improvements act, Title 15 U.S.C. Sec. 18a,

1 shall provide a copy of such filing to the attorney general.  
2 Providing a copy of the Hart-Scott-Rodino filing to the attorney  
3 general satisfies the notice requirement under section 4 of this act.

4 NEW SECTION. **Sec. 7.** MATERIALS SUBMITTED TO THE ATTORNEY  
5 GENERAL. Information submitted to the attorney general pursuant to  
6 this chapter shall be maintained and used by the attorney general in  
7 the same manner and under the same protections as provided in RCW  
8 19.86.110. The information, including documentary material, answers  
9 to written interrogatories, or transcripts of oral testimony produced  
10 pursuant to a demand or copies, must not, unless otherwise ordered by  
11 a superior court for good cause shown, be produced for inspection or  
12 copying pursuant to chapter 42.56 RCW by the person who produced the  
13 material, answered written interrogatories or gave oral testimony.  
14 Nothing in this chapter limits the attorney general's authority under  
15 RCW 19.86.110 or 19.86.115. Nothing in this chapter expands the  
16 attorney general's authority under chapter 19.86 RCW, federal or  
17 state antitrust law, or any other law. Failure to comply with this  
18 chapter does not provide a private cause of action.

19 NEW SECTION. **Sec. 8.** PENALTY FOR NONCOMPLIANCE. Any person who  
20 fails to comply with any provision of this chapter is liable to the  
21 state for a civil penalty of not more than two hundred dollars per  
22 day for each day during which such person is in violation of this  
23 chapter.

24 NEW SECTION. **Sec. 9.** The notice requirement in section 3 of  
25 this act applies to transactions with an anticipated effective date  
26 on or after January 1, 2020.

27 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act  
28 constitute a new chapter in Title 19 RCW.

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