
Judiciary Committee

HB 1811

Title: An act relating to notice of material changes to the operations or governance structure of a health care provider or provider organization.

Brief Description: Concerning notice of material changes to the operations or governance structure of a health care provider or provider organization.

Sponsors: Representatives Jenkins, Caldier and Cody.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Adds a new chapter requiring that a 30-day notice be given to the Attorney General before the effective date of a proposed material change, such as a merger or acquisition, involving a health care provider or other health care organization. |
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Hearing Date: 1/18/18

Staff: Edie Adams (786-7180).

Background:

Washington's Consumer Protection Act.

Under the state's Consumer Protection Act (CPA), first enacted in 1961, various anticompetitive business practices are declared unlawful. The Antitrust Division of the Office of the Attorney General investigates and prosecutes violations of the CPA, and the Attorney General may bring an action in the name of the state on behalf of persons injured by CPA violations. In addition, a private party may bring an action to enforce the CPA.

Business practices prohibited by the CPA include:

- engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce, including contracts, trusts, or conspiracies in restraint of trade;
- monopolizing or attempting to monopolize trade;

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- entering into agreements not to purchase from the competitors of a particular seller when the agreement substantially lessens competition or tends to create a monopoly; and
- acquiring corporate stock when the acquisition substantially lessens competition or tends to create a monopoly.

The Hart-Scott-Rodino Antitrust Improvements Act.

The federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires companies intending to engage in certain mergers or acquisitions to provide premerger notification to the United States Federal Trade Commission and the Department of Justice before consummating these transactions. The reporting requirement applies to proposed transactions that satisfy certain size and other criteria, and each party to a transaction that meets the criteria must file notifications and wait a specified period of time, typically 30 days, before consummating the transaction. The waiting period enables the enforcement agencies to review whether the effect of the transaction will substantially lessen competition. State attorneys general also have the ability to enforce the federal antitrust laws.

Summary of Bill:

A new chapter is established requiring health care providers and health care provider organizations to provide prior written notice to the Attorney General for any transaction that results in a material change to the operations or governance structure of the health care provider or health care provider organization.

Notice of Material Change Required.

Each party to a transaction that results in a material change to the operations or governance structure of a provider or provider organization must submit written notice to the Attorney General at least 30 days before the effective date of the transaction.

"Material change" includes, but is not limited to, the following types of proposed changes:

- a merger or acquisition involving a hospital or hospital system or carrier;
- a merger or acquisition involving another provider or provider organization that would result in either: (1) an increase in net patient service revenue of \$10 million or more; (2) a provider or provider organization of 8 or more physicians; or (3) an acquisition of an insolvent provider organization;
- a contracting affiliation with a hospital or hospital system;
- a contracting affiliation with another provider or provider organization that would result in an increase in net patient service revenue of \$10 million or more; or
- any formation of an entity created for administering contracts, or current or future contracting, on behalf of one or more providers or provider organizations with carriers or third-party administrators.

A material change includes proposed changes between a Washington provider or provider organization and an out-of-state provider or provider organization where the out-of-state provider generates \$10 million or more in net patient service revenue from patients residing in Washington.

Notice Requirements.

The written notice must include, but is not limited to, information on 10 listed items. These include:

- a copy of all agreements governing and related to the proposed material change;
- a description of the nature and objectives of the proposed material change, including whether any changes in health care services are anticipated in connection with the change;
- a roster of physicians on whose behalf the party establishes contracts;
- the names of entities that are currently or will be providing services following the transaction, the locations where services are or will be provided, and a description of the services provided at each location; and
- a description of the anticipated impact of the proposed material change, including on reimbursement rates, care referral patterns, access to services, quality of care, and market share.

Notice of Filings under the Hart-Scott-Rodino Act Required.

Any provider or provider organization conducting business in Washington that files a premerger notification with the Federal Trade Commission or the United States Department of Justice in compliance with the federal Hart-Scott-Rodino Antitrust Improvements Act is required to provide written notification to the Attorney General of the filing. Complying with the federal filing requirement does not exempt the provider from the new state notice requirement.

Materials Submitted to the Attorney General.

Information submitted to the Attorney General must be maintained by the Attorney General in the same manner as required by other provisions of the Consumer Protection Act (CPA) that restrict the use of documents and materials produced to the Attorney General under civil investigative demands for documentary materials, written interrogatories, and oral testimony during investigations of possible violations of the CPA.

Penalty for Noncompliance.

A person who fails to comply with the act is subject to a civil penalty of up to \$200 for each day of noncompliance.

Definitions.

Key terms are defined, including the following:

"Carrier" means a health maintenance organization, a health care services contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract, not including an employer purchasing coverage on behalf of its employees.

"Health care professional" means a physician or other health care practitioner permitted to practice health or health-related services consistent with state law. "Health care services" includes medical, surgical, chiropractic, hospital, pharmaceutical, ambulance, and any other services rendered by a health care professional.

"Provider" includes any person or any other entity qualified under state law to perform or provide health care services.

"Provider organization" includes any corporation, partnership, business trust, association, or organized group of persons which: (1) is in the business of health care delivery or management; and (2) represents one or more health care providers in contracting with carriers or third-party administrators for payments of health care services. A provider organization includes, but is not limited to, physician organizations, physician-hospital organizations, provider networks, and any other organization that contracts with carriers or third-party administrators for payment for health care services.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.