
Civil Rights & Judiciary Committee

HB 1607

Brief Description: Concerning notice of material changes to the operations or governance structure of participants in the health care marketplace.

Sponsors: Representatives Caldier, Jinkins, Robinson, Macri and Cody.

Brief Summary of Bill

- Establishes a new chapter requiring that prior notice be given to the Attorney General before the effective date of a proposed material change, such as a merger or acquisition, involving hospitals, hospital systems, and provider organizations.

Hearing Date: 2/13/19

Staff: Edie Adams (786-7180).

Background:

Washington's Consumer Protection Act.

Under the state's Consumer Protection Act (CPA), various anticompetitive business practices are declared unlawful. 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;
- 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 Antitrust Division of the Office of the Attorney General investigates and prosecutes violations of the CPA and also has authority to investigate and prosecute federal antitrust law violations. The Attorney General may bring an action in the name of the state on behalf of

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persons injured by CPA violations. In addition, a private party may bring an action to enforce the CPA.

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.

Summary of Bill:

A new chapter is established requiring hospitals, hospital systems, and provider organizations to provide prior written notice to the Attorney General for certain transactions that result in a material change.

Notice of Material Change Required.

Each party to a transaction that results in a material change must submit written notice to the Attorney General at least 30 days before the effective date of the transaction. A material change includes a merger, acquisition, or contracting affiliation between two or more of the following types of entities: hospitals; hospital systems; or provider organizations.

A material change includes proposed mergers, acquisitions, or contracting affiliations between a Washington entity and an out-of-state entity where the out-of-state entity generates \$10 million or more in net patient service revenue from patients residing in Washington. Any party to a material change that is licensed or operating in Washington must submit the required notice.

The notice requirement applies to transactions with an anticipated effective date on or after January 1, 2020.

Notice Contents.

The written notice provided by each party must include:

- the names of the parties and their current business addresses;
- a copy of all agreements governing and related to the proposed material change;
- a brief description of the nature and objectives of the proposed material change; and
- the anticipated effective date of the proposed material change.

The Attorney General must make any requests for additional information from the reporting parties within 30 days of the date the notice of material change is provided; however this requirement does not preclude the Attorney General from conducting an investigation or enforcing state or federal antitrust laws at a later date.

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. Providing a copy of the federal filing to the Attorney General satisfies the notice requirement for material changes.

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.

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:

"Acquisition" means an agreement, arrangement, or activity that results in a person acquiring directly or indirectly the control of another person, including the acquisition of voting securities and noncorporate interests, such as assets, capital stock, membership interests, or equity interests.

"Contracting affiliation" includes any relationship between two or more entities that permits the entities to negotiate jointly with carriers or third-party administrators over rates for professional medical services, or for one entity to negotiate on behalf of the other entity with carriers or third-party administrators over rates for professional medical services.

"Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

"Provider" includes any natural person who practices a profession identified in RCW 18.130.040.

"Provider organization" includes any corporation, partnership, business trust, association, or organized group of persons, whether incorporated or not, which is in the business of health care delivery or management and that represents seven or more health care providers in contracting with carriers or third-party administrators for the payments of health care services. A "provider organization" includes physician organizations, physician-hospital organizations, independent practice associations, provider networks, accountable care organizations, and any other organization that contracts with carriers or third-party administrators for payment for health care services.

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

Appropriation: None.

Fiscal Note: Available.

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