

# FINAL BILL REPORT

## SHB 1607

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Synopsis as Enacted

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

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Caldier, Jinkins, Robinson, Macri and Cody).

**House Committee on Health Care & Wellness**  
**House Committee on Civil Rights & Judiciary**  
**Senate Committee on Law & Justice**

### **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 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 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

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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:**

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 60 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 health care services revenue from patients residing in Washington. Any party to a material change that is licensed or operating in Washington must submit the required notice.

A material change does not include a merger, acquisition, or contracting affiliation between two or more hospitals, hospital systems, or provider organizations that had common ownership or a contracting affiliation prior to the transaction.

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;
- identification of all locations where health care services are currently provided by each party;
- a brief description of the nature and objectives of the proposed material change; and
- the anticipated effective date of the proposed material change.

A party may voluntarily supply the Attorney General with additional information. 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 in the same manner and under the same protections as required by other provisions of the Consumer Protection Act (CPA) that restrict the use of documents and materials produced under civil investigative demands. The information must not be produced for inspection or copying pursuant to the Public Records Act by the person who produced the information unless otherwise ordered by a court for good cause.

Nothing in the act expands the Attorney General's authority under the CPA, state and federal antitrust law, or other law.

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. Failure to comply does not create a private cause of action.

**Votes on Final Passage:**

House	63	35
Senate	29	19

**Effective:** July 28, 2019