S-0377.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5335**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Randall, Rolfes, Hasegawa, Nguyen, Nobles, Saldaña, Stanford, and Wilson, C.

AN ACT Relating to acquisitions of health care facilities; adding a new chapter to Title 70 RCW; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature finds and declares that:

(1) The existence of accessible affordable health care services that are responsive to the needs of the community is an important public policy goal.

(2) The coronavirus pandemic has laid bare both the crucial importance of our health care systems and the inequities that exist and exacerbate harm to marginalized communities, including in access to and delivery of affordable, quality care.

(3) Acquisitions of health care systems and facilities impact cost, quality, and access to health care, and affect working conditions and employee benefits.

(4) Health system and facility acquisitions can result in a lack of price competition, and also a lack of any meaningful choice among health care providers within a community or geographic region. These negative outcomes are exacerbated for those in rural areas with few health care providers.

(5) The legislature is committed to ensuring that Washingtonians have access to the full range of reproductive, end-of-life, and gender affirming health care services. Yet, Washingtonians continue to experience difficulty accessing gender affirming care, and hospital system acquisitions in Washington state have resulted in material reductions in reproductive and end-of-life health care services, to the detriment of communities and patients.

(6) Health system acquisitions must improve, rather than harm, access to affordable quality health care.

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

(1) "Acquisition" means an acquisition by a person of an interest in a hospital, or hospital system, by:

(a) Purchase, sale, option, merger, lease, gift, joint venture, spin-off, split-off, recapitalization, exchange, conveyance, transfer, or otherwise that results in (i) a change of ownership or control of 20 percent or more of the assets, operations, or voting securities of the hospital or hospital system; or (ii) the acquiring person holding or controlling 50 percent or more of the assets, operations, or voting securities of the hospital or hospital system; or

(b) The direct or indirect transfer of control, responsibility, or governance of 20 percent or more of the assets, operations, or voting securities of the hospital or hospital system. For purposes of this chapter, a transfer includes but is not limited to (i) the substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the hospital or hospital system; (ii) the substitution of one or more members of the governing body or any arrangement, written or oral, that would transfer voting control of the members of the governing body; or (iii) the entry into a voting agreement covering, or the deposit into a voting trust with respect to, such an interest; or the grant of a proxy with respect to such an interest.

(2) "Department" means the Washington state department of health.

(3) "Health care facility" means a facility, brick and mortar, dispatch, or virtual, that provides health care services directly to patients including, but not limited to, a hospital, clinic, health care provider's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home.

(4) "Health care services" has the same meaning as in RCW 19.390.020.

(5) "Hospital" means any entity that is: (a) Defined as a hospital in RCW 70.41.020 and is required to obtain a license under chapter 70.41 RCW; or (b) a psychiatric hospital required to obtain a license under chapter 71.12 RCW.

(6) "Hospital system" means either: (a) A parent corporation of one or more hospitals and any entity affiliated with such parent corporation through ownership or control; or (b) a hospital and any entity affiliated with such hospital through ownership.

(7) "Merger" means a consolidation of two or more organizations, including two or more organizations joining through a common parent organization or two or more organizations forming a new organization.

(8) "Person" means an individual, a trust or estate, a partnership, a corporation including associations, limited liability companies, joint stock companies, and insurance companies, and other legal entities or organizations.

(9) "Virtual care" is the mode of delivering health care services and public health while the patient is at the originating site and the health care provider is at a distant site, and includes but is not limited to telehealth, remote patient monitoring, telemedicine, and digital health information transmission.

NEW SECTION. **Sec.**  (1) A person may not engage in the acquisition of a hospital or hospital system without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department and must include the information the department determines is required but at a minimum must include:

(a) The name of the hospital or hospital system being acquired, and the name of the acquiring person or other parties to the acquisition;

(b) The acquisition price;

(c) A full description of the acquisition agreement;

(d) A copy of the acquisition agreement;

(e) A statement from the hospital or hospital system's board of directors that explains the effect the acquisition will likely have on delivery and cost of health-related services to the community served by each facility involved in the acquisition, and the basis for this opinion. The statement shall also describe all dissenting viewpoints of which the board of directors is aware;

(f) If applicable, a copy of the two most recent community needs assessments or any similar evaluations or assessments prepared by or for the hospital or hospital system that is the subject of the acquisition, and the identity of all persons who assisted or contributed to any such evaluations or assessments;

(g) A description of all charity care provided in the last three years and the projected charity care for three years following the acquisition by each health facility that is the subject of the acquisition agreement. This description shall include annual total charity care spending; inpatient, outpatient, and emergency room charity care spending; a description of how the amount of charity care spending was calculated; annual charity care inpatient discharges, outpatient visits, and emergency visits; a description of the types of charity care services provided annually; and a description of the policies, procedures, and eligibility requirements for the provision of charity care;

(h) A description of the health care services currently provided at each facility that is the subject of the acquisition;

(i) A description of all services provided by each health care facility that is the subject of the acquisition in the past five years to apple health patients, qualified health plan patients, and indigent patients. This description shall include but not be limited to the type and volume of services provided, the payors for the services provided, the demographic characteristics of and zip code data for the patients served by the hospital or hospital system and the costs and revenues for the services provided;

(j) The following current policies for any hospital that is the subject of the acquisition: (i) Admission policies; (ii) nondiscrimination policies; (iii) end-of-life policies; (iv) reproductive health policies; (v) reproductive health care services forms as required under RCW 70.41.520; and (vi) other policies or information as appropriate;

(k) The following postacquisition policies for any hospital that is the subject of the acquisition: (i) Admission policies; (ii) nondiscrimination policies; (iii) end-of-life policies; (iv) reproductive health policies; (v) reproductive health care services forms as required under RCW 70.41.520; and (vi) other policies or information as appropriate;

(l) If the acquisition will have any impact on reproductive health care services provided by any health care facility that is the subject of the acquisition, or any impact on the availability or accessibility of reproductive health care services, a description of all reproductive health care services provided in the last five years by each health care facility that is the subject of the acquisition. This description shall include the types and levels of reproductive services including, but not limited to, information about contraception provision, and the number of pregnancy terminations, tubal ligations, and in-vitro fertilization procedures provided, and a description of how this information was compiled;

(m) If the acquisition will have any impact on end-of-life health care services provided by any health care facility that is the subject of the acquisition, or any impact on the availability or accessibility of end-of-life health care services, a description of all end-of-life health care services provided in the last five years by each health care facility that is the subject of the acquisition. This description shall include the types and levels of end-of-life services including, but not limited to, information about the number of occasions in which doctors served as consulting or attending physicians at the health care facilities under chapter 70.245 RCW and a description of how this information was compiled;

(n) If the acquisition will have any impact on gender affirming health care services, provided by any health care facility that is the subject of the acquisition, or any impact on the availability or accessibility of gender affirming health care services, a description of all gender affirming health care services provided in the last five years by each health care facility that is the subject of the acquisition. This description shall include the types and levels of gender affirming health care provided including, but not limited to, information about the number of gender affirming surgical procedures provided and a description of how this information was compiled;

(o) A description of any community benefit program provided by the hospital or hospital system during the past five years with an annual cost of at least $10,000 and the annual cost of each program for the past five years;

(p) For each hospital or hospital system that is the subject of the acquisition, a description of current policies and procedures on staffing for patient care areas; employee input on health quality and staffing issues; and employee wages, salaries, benefits, working conditions, and employment protections. Such description shall include a list of all existing staffing plans, policy and procedure manuals, employee handbooks, collective bargaining agreements, or similar employment-related documents;

(q) For each hospital or hospital system that is the subject of the acquisition, all existing documents setting forth any guarantees made by any entity that would be taking over operation or control of the hospital or hospital system relating to employee job security and retraining, or the continuation of current staffing levels and policies, employee wages, salaries, benefits, working conditions, and employment protections;

(r) For each hospital or hospital system that is the subject of the acquisition, a statement as to whether, postacquisition, nonstance will be maintained through all communications and usage of funds regarding nonunion employees forming a union;

(s) For each hospital or hospital system that is the subject of the acquisition, a statement as to whether any successor of the employer or union will be bound to any existing union certification and any existing collective bargaining agreement;

(t) For each hospital or hospital system that is the subject of the acquisition, a description of current debt collection practices and a description of any anticipated changes to debt collection practices following the acquisition;

(u) A description of any anticipated postacquisition changes in services at any health care facility that is the subject of the acquisition. If anticipated changes include a reduction, relocation, or elimination of a service, the following information should be included: (i) Need the population presently has for the service; (ii) how the need will be adequately met by the proposed change; and (iii) alternative arrangements designed to meet the identified need;

(v) A detailed statement and all documents relating to the parties' plans for assuring the continuance of existing hospital privileges postacquisition;

(w) A detailed statement and all documents relating to the parties' plans for ensuring the maintenance of appropriate health science research and health care provider education postacquisition;

(x) A detailed statement and all documents relating to the parties' plans for ensuring safeguards to avoid conflict of interest in postacquisition patient referral;

(y) A detailed statement and all documents relating to the parties' commitment and plans to provide health care to the disadvantaged, the uninsured, and the underinsured and how benefits to promote improved health in the affected community will be provided postacquisition;

(z) A description of each measure proposed by the applicant to mitigate or eliminate any potential adverse effect on the availability or accessibility of health care services to the affected community that may result from the acquisition;

(aa) A list of the primary languages spoken at the hospital or hospital system and the threshold languages for apple health beneficiaries, as determined by the department for the county in which any health care facility that is the subject of the acquisition is located; and

(bb) For each hospital or hospital system that is the subject of the acquisition or otherwise involved in the acquisition, a financial and economic analysis and report from an independent expert or consultant that includes a description of current costs and competition in the relevant geographic and product market and any anticipated changes in such costs and competition as a result of the acquisition.

(3) An application and all related documents are considered public records for purposes of chapter 42.56 RCW.

(4) The department shall charge an applicant fee sufficient to cover the costs of implementing this chapter.

(5) If a hospital or hospital system has engaged in multiple acquisitions, in a manner designed to avoid department and attorney general review under this chapter, all such agreements or transactions shall be considered and analyzed as a single acquisition for any purpose under these regulations.

NEW SECTION. **Sec.**  (1) The department shall determine if an application is complete for the purposes of review. If the department determines that an application is incomplete, it shall notify the applicant within 30 working days after the date the application was received stating the reasons for its determination of incompleteness.

(2) A completed application shall be deemed received on the date when all the information required by section 3 of this act has been submitted to the department.

(3) Within five working days after receipt of a completed application, the department shall publish notice of the application on the department's website, and in a newspaper of general circulation in the county or counties where the hospital or hospital system has health care facilities that are the subject of the acquisition and shall notify by first-class United States mail, email, or facsimile transmission, any person who has requested notice of the filing of such applications. The notice must state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date and process by which a person may submit written comments about the application to the department.

NEW SECTION. **Sec.**  (1) During the course of review under this chapter, the department shall conduct one or more public hearings, at least one of which must be in a county where the hospital or hospital system to be acquired is located. At the hearings, anyone may file written comments and exhibits or appear and make a statement. The department may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

(2) A hearing must be held not later than 45 days after receipt of a completed application, unless the department determines that under section 6 of this act a new health care impact statement is required, in which case a hearing must be held no later than 30 days after the health care impact statement is completed.

(3) At least 30 days prior to the public hearing, unless a new health impact statement is required, in which case the department shall provide at least 15 days notice, the department shall provide notice of the time and place of the hearing on its website and to any person who has requested such notice in writing. At least 30 days prior to the public hearing, unless a new health care impact statement is required in which case the parties shall provide at least 15 days notice, the parties to the acquisition agreement shall provide notice of the time and place of the hearing through publication in a newspaper of general circulation in the affected communities, at the public entrance and on the bulletin boards designated for legal or public notices of any health care facility that is affected by the acquisition, prominently on the website available to the public of any health care facility that is affected by the acquisition, and on the website available to the employees of any health care facility that is affected by the acquisition. The notice of the time and place of the meeting shall be provided in English and in the languages spoken in the county or counties in which the health care facilities reside or provide care.

(4) Within 15 working days of the last hearing, the department shall compile a summary report of each public hearing proceeding and post the summary report on its website. The attorney general shall receive a copy of the report.

(5) If after the initial public hearing there is any change in the terms of the acquisition that materially alters any of the information that the parties to the acquisition provided under section 3(2) of this act, the department shall conduct an additional public hearing to ensure adequate public comment regarding the proposed change.

NEW SECTION. **Sec.**  (1) The department shall engage an independent contractor to prepare an independent health care impact statement for any acquisition that satisfies either of the following conditions:

(a) The acquisition directly affects a hospital licensed under chapter 70.41 RCW that has more than 50 acute care beds; or

(b) There is a reasonable basis to conclude that the acquisition may significantly reduce the availability or accessibility or cost of any existing health care service.

(2) Nothing in this section shall preclude the department from obtaining an independent health care impact statement or any other report that is not required under this section.

(3) The independent health care impact statement shall contain but not be limited to the following information:

(a) An assessment of the effect of the acquisition on emergency services, reproductive health care services, end-of-life health care services, gender affirming health care services, and any other health care services that the hospital or hospital system, is providing;

(b) An assessment of the effect of the acquisition on the level and type of charity care that the hospital or hospital system has historically provided;

(c) An assessment of the effect of the acquisition on the provision of health care services to apple health patients, county indigent patients, patients with disabilities, women, racial and ethnic minorities, lesbian, gay, bisexual, transgender, queer patients, and other underserved or marginalized populations;

(d) An assessment of the effect of the acquisition on any community benefit program that the hospital or hospital system has historically funded or operated;

(e) An assessment of the effect of the acquisition on staffing for patient care areas as it may affect availability of care, on the likely retention of employees as it may affect continuity of care, and on the rights of employees to provide input on health quality and staffing issues;

(f) An assessment of the effect of the acquisition on the cost of patient care;

(g) An assessment of the effectiveness of any mitigation measure proposed by the applicant to reduce any potential adverse effect on health care services identified in the impact statement;

(h) A discussion of alternatives to the acquisition including closure of the hospital or hospital system; and

(i) Recommendations for additional feasible mitigation measures that would reduce or eliminate any significant adverse effect on health care services identified in the impact statement.

(4) The information contained in the independent health care impact statement shall be used in considering whether the acquisition may negatively impact the availability or accessibility of health care services as set forth in section 8 of this act. Copies of the independent health care impact statement shall be made available to any person or entity that has requested a copy.

NEW SECTION. **Sec.**  (1) The department shall review the completed application, and within 45 days of the last public hearing held under section 5 of this act will determine whether the acquisition meets the requirements for approval in section 8 of this act and shall:

(a) Approve the acquisition, with or without any specific modifications or conditions; or

(b) Disapprove the acquisition.

(2) The department may impose conditions on an acquisition to ensure the requirements of section 8 of this act are met and that sufficient safeguards are in place to ensure communities have continued or improved access to affordable quality care.

(3) If the department disapproves the acquisition, the disapproval shall constitute a final decision.

(4) The department may not make its decision subject to any condition not directly and rationally related to requirements in section 8 of this act, and any condition or modification must bear a direct and rational relationship to the application under review.

(5) A person engaged in an acquisition and affected by a final decision of the department or a person residing in a community affected by a final decision of the department has the right to an adjudicative proceeding to challenge the decision of the department. The adjudicative proceeding shall be governed by chapter 34.05 RCW.

(6) The department may extend, by not more than 30 days, any deadline established under this chapter one time during consideration of any application, for good cause.

NEW SECTION. **Sec.**  The department shall only approve an application if the acquisition in question will not detrimentally affect the continued existence of accessible, affordable health care that is responsive to the needs of the communities in which the hospital or hospital system health facilities are located. To this end, the department shall not approve an application unless, at a minimum, it determines that:

(1) After the acquisition, the affected community will have the same or greater access to quality, affordable care, including reproductive, end-of-life, and gender affirming health care services, and that, if the health care facilities that are the subject of this acquisition will not provide these services, there are alternative sources of quality affordable care in the community that will ensure the community has the same or greater access to these services;

(2) The acquisition will not result in the revocation of hospital privileges;

(3) Sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(4) The acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits to promote improved health in the affected community; and

(5) Sufficient safeguards are included to avoid conflict of interest in patient referral.

NEW SECTION. **Sec.**  (1) The secretary of state may not accept any forms or documents in connection with any acquisition of a hospital or hospital system until the acquisition has been approved by the department under this chapter.

(2) The attorney general may seek an injunction to prevent any acquisition not approved by the department under this chapter.

NEW SECTION. **Sec.**  (1) The department shall monitor ongoing compliance with the terms and conditions of the acquisition for at least 10 years from when the acquisition agreement is finalized. The department shall require periodic reports from the parties to the acquisition or any successor persons to ensure compliance with commitments made. The frequency of the periodic reports shall be within the department's discretion but will not be less frequent than annually. The department may subpoena information and documents and may conduct on-site compliance audits at the acquiring person's expense.

(2) To effectively monitor ongoing compliance with the terms and conditions of the acquisition, the department may, in its discretion, contract with experts and consultants.

(3) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation.

(4) The department shall be entitled to reimbursement from the acquiring person for all actual and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the acquisition, including contract and administrative costs.

(5) The department may bill the acquiring person or any successor and the acquiring person or successor billed by the department shall promptly pay. If the acquiring person or successor fails to pay within 30 days, the department may assess a civil fine in accordance with RCW 43.70.095.

(6) If the department has reason to believe or receives information indicating that the acquiring person or successor is not fulfilling commitments to the affected community under section 8 of this act, including but not limited to the acquiring person or successor not complying with any conditions imposed by the department under section 7 of this act, the department shall hold a hearing upon 10 days notice to the affected parties. The cost of the hearing and any on-site reviews related to determining the validity of the information will be borne by the acquiring person or successor. If after the hearing the department determines that the acquiring person or successor is not fulfilling its commitments to the affected community under section 8 of this act, it may revoke or suspend the hospital license issued to the acquiring person or successor, or impose civil fines in accordance with RCW 43.70.095 until the acquiring person or successor submits or begins to follow a corrective plan of action. The department may also refer the matter to the attorney general for appropriate action. The attorney general may seek a court order compelling the acquiring person to fulfill its commitments under section 8 of this act.

NEW SECTION. **Sec.**  The attorney general has the authority to ensure compliance with commitments that inure to the public interest. The attorney general may take legal action to enforce this chapter and any conditions the department imposes on the approval of the acquisition. The attorney general may obtain damages, injunctive relief, attorneys' fees, and such other relief as the court deems necessary to ensure compliance.

NEW SECTION. **Sec.**  The department shall conduct a study on the impact provider organization acquisitions have on Washington communities' access to affordable quality health care services. The study shall address health care services generally and specifically address access to reproductive, end-of-life, and gender affirming health care services. For purposes of the study, the department will consult with health care providers, health care advocates, and community members to determine both the scope of the study and what constitutes a "provider organization," but a provider organization shall not include a hospital or hospital system as defined under this chapter.

NEW SECTION. **Sec.**  No provision of this chapter derogates from the common law or statutory authority of the attorney general.

NEW SECTION. **Sec.**  The department may adopt rules necessary to implement this chapter and may contract with and provide reasonable reimbursement to qualified persons to assist in determining whether the requirements of section 8 of this act have been met.

NEW SECTION. **Sec.**  If a hospital or hospital system is subject to review under chapter 70.38 or 70.45 RCW, the review under those chapters shall be concurrent with the review under this chapter, to the extent practicable.

NEW SECTION. **Sec.**  This act takes effect January 1, 2022.

NEW SECTION. **Sec.**  Sections 1 through 16 of this act constitute a new chapter in Title 70 RCW.

**--- END ---**