

ESB 5241 - H COMM AMD

By Committee on Civil Rights & Judiciary

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that:

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

7 (2) The COVID-19 pandemic laid bare both the crucial importance
8 of our health care systems and the inequities that exist and
9 exacerbate harm to marginalized communities, including in access to
10 and delivery of affordable, quality care.

11 (3) Health entity mergers, acquisitions, and contracting
12 affiliations impact cost, quality, and access to health care, and
13 affect working conditions and employee benefits.

14 (4) Health entity mergers, acquisitions, and contracting
15 affiliations have been shown to result in anticompetitive
16 consequences, including higher prices and a lack of any meaningful
17 choice among health care providers within a community or geographic
18 region. These negative outcomes are exacerbated for those in rural
19 areas with few health care providers.

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

27 (6) Health entity mergers, acquisitions, and contracting
28 affiliations must improve rather than harm access to affordable
29 quality health care.

30 **Sec. 2.** RCW 19.390.010 and 2019 c 267 s 1 are each amended to
31 read as follows:

1 (1) It is the intent of the legislature to ensure that
2 competition beneficial to consumers in health care markets across
3 Washington remains vigorous and robust and that health care be
4 affordable and accessible. The legislature supports ~~((that intent))~~
5 these intents through this chapter, which provides the attorney
6 general with notice of all material health care transactions in this
7 state so that the attorney general has the information necessary to
8 determine whether an investigation under the consumer protection act
9 is warranted for potential anticompetitive conduct and consumer harm.
10 This chapter is intended to supplement the federal Hart-Scott-Rodino
11 antitrust improvements act, Title 15 U.S.C. Sec. 18a, by requiring
12 notice of transactions not reportable under Hart-Scott-Rodino
13 reporting thresholds and by providing the attorney general with a
14 copy of any filings made pursuant to the Hart-Scott-Rodino act. In
15 addition to ensuring vigorous and robust competition in health care
16 markets, this chapter is also intended to ensure material change
17 transactions result in the affected communities having the same or
18 greater access to quality, affordable care, including emergency care,
19 primary care, reproductive care, end-of-life care including services
20 provided in accordance with chapter 70.245 RCW, and gender affirming
21 care.

22 (2) Notwithstanding the language in this chapter regarding the
23 attorney general's authority to determine the effect of a material
24 change transaction on access to care, nothing in this chapter is
25 intended to derogate from or otherwise affect in any way the attorney
26 general's authority to conduct an investigation, or the process of
27 any investigation, under chapter 19.86 RCW. Nothing in this section
28 is intended to change or affect in any way any substantive law
29 regarding the antitrust analysis of a material change transaction.

30 **Sec. 3.** RCW 19.390.020 and 2019 c 267 s 2 are each amended to
31 read as follows:

32 The definitions in this section apply throughout this chapter
33 unless the context clearly requires otherwise.

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

1 (2) "Affiliate" means a person that directly, or indirectly
2 through one or more intermediaries, controls or has ownership of, is
3 controlled or owned by, or is under common control or ownership of a
4 person. A provider organization that is not otherwise affiliated with
5 a hospital or hospital system is not considered an affiliate of a
6 hospital or hospital system solely on the basis that it contracts
7 with the hospital or hospital system to provide facility-based
8 services including, but not limited to, emergency, anesthesiology,
9 pathology, radiology, or hospital services.

10 (3) "Carrier" means the same as in RCW 48.43.005.

11 ~~((3))~~ (4) "Contracting affiliation" means the formation of a
12 relationship between two or more entities that permits the entities
13 to negotiate jointly with carriers or third-party administrators over
14 rates for professional medical services, or for one entity to
15 negotiate on behalf of the other entity with carriers or third-party
16 administrators over rates for professional medical services.
17 "Contracting affiliation" does not include arrangements among
18 entities under common ownership or arrangements where at least one
19 entity in the arrangement is owned or operated by a state entity.

20 ~~((4))~~ (5) "Gender affirming care" means a service or product
21 that a health care provider, as defined in RCW 70.02.010, prescribes
22 to an individual to treat any condition related to the individual's
23 gender identity and is prescribed in accordance with generally
24 accepted standards of care. Gender affirming care must be covered in
25 a manner compliant with the federal mental health parity and
26 addiction equity act of 2008 and the federal patient protection and
27 affordable care act of 2010. Gender affirming care can be prescribed
28 to two spirit, transgender, nonbinary, intersex, and other gender
29 diverse individuals.

30 (6) "Health care services" means medical, surgical, chiropractic,
31 hospital, optometric, podiatric, pharmaceutical, ambulance, mental
32 health, substance use disorder, therapeutic, preventative,
33 diagnostic, curative, rehabilitative, palliative, custodial, and any
34 other services relating to the prevention, cure, or treatment of
35 illness, injury, or disease. Health care services may be provided
36 virtually, on-demand, or in brick and mortar settings.

37 ~~((5) "Health care services revenue" means the total revenue~~
38 ~~received for health care services in the previous twelve months.~~

39 ~~(6))~~ (7) "Health care revenue" means combined Washington-derived
40 revenue from health care services or administration from a party and

1 all of its affiliates including, but not limited to, patient revenue
2 and premiums paid to carriers, as applicable.

3 (8) "Health maintenance organization" means an organization
4 receiving a certificate of registration pursuant to chapter 48.46 RCW
5 which provides comprehensive health care services to enrolled
6 participants of such organization on a group practice per capita
7 prepayment basis or on a prepaid individual practice plan, except for
8 an enrolled participant's responsibility for copayments and
9 deductibles, either directly or through contractual or other
10 arrangements with other institutions, entities, or persons, and which
11 qualifies as a health maintenance organization pursuant to RCW
12 48.46.030 and 48.46.040.

13 ~~((7))~~ (9) "Hospital" means a facility licensed under chapter
14 70.41 or 71.12 RCW.

15 ~~((8))~~ (10) "Hospital system" means:

16 (a) A parent corporation of one or more hospitals and any entity
17 affiliated with such parent corporation (~~(through ownership or~~
18 ~~control)~~); or

19 (b) A hospital and any entity affiliated with such hospital
20 (~~(through ownership)~~).

21 ~~((9))~~ (11) "Merger" means a consolidation of two or more
22 organizations, including two or more organizations joining through a
23 common parent organization or two or more organizations forming a new
24 organization, but does not include a corporate reorganization.

25 ~~((10))~~ (12) "Person" means, where applicable, natural persons,
26 corporations, trusts, and partnerships.

27 ~~((11))~~ (13) "Provider" means a natural person who practices a
28 profession identified in RCW 18.130.040.

29 ~~((12))~~ (14) "Provider organization" means a corporation,
30 partnership, business trust, association, or organized group of
31 persons, whether incorporated or not, which is in the business of
32 health care delivery or management and that represents seven or more
33 health care providers in contracting with carriers or third-party
34 administrators for the payments of health care services. A "provider
35 organization" includes physician organizations, physician-hospital
36 organizations, independent practice associations, provider networks,
37 and accountable care organizations.

38 ~~((13))~~ (15) "Reproductive health care" means any medical
39 services or treatments, including pharmaceutical and preventive care
40 services or treatments, directly involved in the reproductive system

1 and its processes, functions, and organs involved in reproduction, in
2 all stages of life.

3 (16) "Successor persons" means persons formed by, resulting from,
4 or surviving any material change transaction under this chapter.

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

8 **Sec. 4.** RCW 19.390.030 and 2019 c 267 s 3 are each amended to
9 read as follows:

10 (1) Not less than ~~((sixty))~~ 120 days prior to the effective date
11 of any transaction that results in a material change, the parties to
12 the transaction shall submit written notice to the attorney general
13 of such material change transaction.

14 (2) For the purposes of this ~~((section))~~ chapter, a material
15 change transaction includes a merger, acquisition, or contracting
16 affiliation ~~((between))~~ :

17 (a) Between two or more ~~((entities))~~ of the following ~~((types))~~
18 entities:

19 ~~((a))~~ (i) Hospitals;

20 ~~((b))~~ (ii) Hospital systems; or

21 ~~((c))~~ (iii) Provider organizations; or

22 (b) Between the following entities:

23 (i) An entity described in (a) of this subsection and a carrier
24 or an insurance holding company system, as defined in RCW 48.31B.005;
25 or

26 (ii) An entity described in (a) of this subsection and any other
27 person or entity that has as its primary function the provision of
28 health care services or that is a parent organization of, has control
29 over, or governance of, an entity that has as its primary function
30 the provision of health care services.

31 (3) A material change transaction includes proposed changes
32 identified in subsection (2) of this section between ~~((a Washington~~
33 ~~entity and an out-of-state entity where the out-of-state entity~~
34 ~~generates ten million dollars or more in health care services revenue~~
35 ~~from patients residing in Washington state, and the entities are of~~
36 ~~the types identified in subsection (2) of this section)) Washington~~
37 entities. A material change transaction also includes transactions
38 between Washington entities described in subsection (2)(a) of this
39 section and out-of-state entities if the transaction will impact

1 health care in Washington. Any party to a material change transaction
2 that is licensed or operating in Washington state shall submit a
3 notice as required under this section.

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

10 **Sec. 5.** RCW 19.390.040 and 2019 c 267 s 4 are each amended to
11 read as follows:

12 (1) (~~The~~) For material change transactions where none of the
13 parties have generated \$25,000,000 or more in health care revenue in
14 any of their preceding three fiscal years, the written notice
15 provided by the parties, as required by RCW 19.390.030, must include:

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

18 (b) Identification of all locations where health care services
19 are currently provided by each party and its affiliates;

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

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

24 (2) For material change transactions where none of the parties
25 are hospitals or hospital systems or an affiliate of a hospital or
26 hospital system and all of the parties serve predominantly low-
27 income, medically underserved individuals, and all of the parties had
28 for each of their preceding three fiscal years at least 50 percent of
29 their total patient revenue come from medicaid or local, state, or
30 federal funding to provide care to uninsured or underinsured
31 individuals, and the material change transaction would not result in
32 materially lowering the overall level of care the successor persons'
33 provide to individuals on medicaid or who are uninsured or
34 underinsured, or cause, for the successor persons, the percentage of
35 total patient revenue that comes from medicaid or local, state, or
36 federal funding to provide care to uninsured or underinsured
37 individuals to drop below 50 percent, the written notice provided by
38 the parties, as required by RCW 19.390.030, must include:

1 (a) The information and documentation required under subsection
2 (1)(a) through (d) of this section; and

3 (b) Documentation demonstrating that all the parties to the
4 material change transaction had for each of their preceding three
5 fiscal years at least 50 percent of their total patient revenue come
6 from medicaid or local, state, or federal funding to provide care to
7 uninsured or underinsured individuals, and a statement from the
8 parties describing how the material change transaction will result in
9 the successor persons complying with the requirements under this
10 subsection.

11 (3) For all material change transactions other than those
12 specified under subsections (1) and (2) of this section, the written
13 notice provided by the parties, as required by RCW 19.390.030, must
14 include:

15 (a) The information and documentation required under subsection
16 (1)(a) through (d) of this section;

17 (b) A copy of the material change transaction agreements;

18 (c) A copy of the organizational charts of the parties to the
19 transaction and proposed organizational charts, if any, for after the
20 closing of the transaction;

21 (d) Financial statements for the prior three fiscal years;

22 (e) If applicable, a copy of the notification and report form
23 submitted to the federal trade commission and United States
24 department of justice under the Hart-Scott-Rodino Act of 1976, and
25 all rules and regulations promulgated thereunder, and any attachments
26 thereto;

27 (f) If applicable, a statement from each of the parties' board of
28 directors that explains the anticipated effect the material change
29 transaction will likely have on delivery and cost of health-related
30 services to the communities impacted by the material change
31 transaction, and the basis for this opinion;

32 (g) If applicable, a copy of the two most recent community health
33 needs assessments or any similar evaluations or assessments prepared
34 by or for any entities that are the subject of the material change
35 transaction;

36 (h) If applicable, a description of all charity care provided in
37 the last three years, as well as denials, and the projected charity
38 care for three years following the material change transaction by the
39 parties to the material change transaction, or any successor persons.
40 This description must include:

1 (i) Annual total charity care spending;
2 (ii) A description of how the amount of charity care spending was
3 calculated;

4 (iii) The number of charity care denials and reasons for denial;
5 and

6 (iv) A description of the policies, procedures, and eligibility
7 requirements for the provision of charity care;

8 (i) If applicable, a description of the health care services
9 currently provided at each hospital, hospital system, or provider
10 organization that is the subject of the material change transaction;

11 (j) If applicable, a description of all services provided in the
12 past three years by each hospital, hospital system, and provider
13 organization that is the subject of the material change transaction
14 to apple health patients, qualified health plan patients, and
15 indigent patients;

16 (k) If applicable, all policies, procedures, and other training
17 materials related to registration, admission, and collections,
18 including upfront, point-of-service, and postservice billing and
19 collections;

20 (l) If applicable, any updates to the following current policies
21 for any hospital and, to the extent they exist, the following current
22 policies for any party to the material change transaction that is the
23 subject of the material change transaction: (i) Admission policies;
24 (ii) nondiscrimination policies; (iii) end-of-life policies; (iv)
25 reproductive health policies; and (v) the reproductive health care
26 services form as required under RCW 70.41.520;

27 (m) If applicable, the following proposed policies that will
28 apply after the material change transaction for any hospital or
29 provider organization that is the subject of the material change
30 transaction: (i) Admission policies; (ii) nondiscrimination policies;
31 (iii) end-of-life policies; (iv) reproductive health policies; and
32 (v) for hospitals, the reproductive health care services form as
33 required under RCW 70.41.520;

34 (n) If applicable, and to the extent they exist, any policies
35 concerning the information and referrals medical providers are
36 required to provide or are restricted from providing to patients
37 regarding end-of-life care, including services provided in accordance
38 with chapter 70.245 RCW;

39 (o) If applicable, if the material change transaction will have
40 any impact on reproductive health care services provided by any

1 hospital, hospital system, or provider organization that is the
2 subject of the material change transaction, or any impact on the
3 availability or accessibility of reproductive health care services in
4 Washington state, a description of the reproductive health care
5 services provided in the last three years by each hospital, hospital
6 system, or provider organization that is the subject of the material
7 change transaction and a description of the effect the material
8 change transaction will have on available reproductive health care
9 services. This description must include the types and aggregate
10 number of reproductive services provided in the last three years and
11 those proposed to be provided after the material change transaction,
12 including, but not limited to, information about contraception
13 provision, pregnancy terminations, tubal ligations, and fertility
14 treatments provided, and a description of how this information was
15 compiled;

16 (p) If applicable, if the material change transaction will have
17 any impact on end-of-life health care services provided by any
18 hospital, hospital system, or provider organization that is the
19 subject of the material change transaction, including services
20 provided in accordance with chapter 70.245 RCW, or any impact on the
21 availability or accessibility of end-of-life health care services in
22 Washington state, including services provided in accordance with
23 chapter 70.245 RCW, a description of the end-of-life health care
24 services provided in the last three years by each hospital, hospital
25 system, or provider organization that is the subject of the material
26 change transaction and a description of the effect the material
27 change transaction will have on available end-of-life care services.
28 This description must include the types and aggregate number of end-
29 of-life services provided in the last three years and those proposed
30 to be provided after the material change transaction including, but
31 not limited to, information about the number of occasions in which
32 doctors served as consulting or attending physicians at the hospital,
33 hospital system, or provider organization under chapter 70.245 RCW, a
34 description of the end-of-life health care services expected to be
35 available at the hospitals, hospital systems, or provider
36 organizations that are the subject of the material change
37 transaction, and a description of how this information was compiled;

38 (q) If applicable, if the material change transaction will have
39 any impact on gender-affirming health care services provided by any
40 hospital, hospital system, or provider organization that is the

1 subject of the material change transaction, or any impact on the
2 availability or accessibility of gender-affirming health care
3 services in Washington state, a description of all gender-affirming
4 health care services provided in the last three years by each
5 hospital, hospital system, or provider organization that is the
6 subject of the material change transaction and a description of the
7 effect the material change transaction will have on available gender-
8 affirming care. This description must include the types and aggregate
9 numbers of gender-affirming health care provided in the last three
10 years and those proposed to be provided after the material change
11 transaction including, but not limited to, facial gender-affirming
12 care, body gender-affirming care, and primary sex characteristics
13 care, and a description of how this information was compiled;

14 (r) A description of any anticipated changes in health care
15 services provided by any party to the material change transaction
16 after the transaction is completed. If anticipated alterations
17 include a reduction, relocation, or elimination of a service, the
18 following information should be included: (i) The need the population
19 presently has for the service; and (ii) how the need will be
20 adequately met by the proposed alteration or alternative arrangements
21 designed to meet the identified need;

22 (s) A description of each measure proposed by the parties to
23 mitigate or eliminate any potential adverse effect on the
24 availability or accessibility of health care services to the affected
25 communities that may result from the material change transaction;

26 (t) A description of any changes to sexual assault nurse examiner
27 and forensic nurse examiner programs after the material change
28 transaction at any hospital, hospital system, or provider
29 organization that is the subject of the material change transaction
30 and any measures proposed by the parties to mitigate or eliminate any
31 potential adverse effects to these programs;

32 (u) A description of any community benefit program provided by
33 any of the parties to the material change transaction during the past
34 three years with an annual cost of at least \$10,000 and the annual
35 cost of each program for the past five years;

36 (v) If applicable, a description of current policies and
37 procedures on staffing for patient care areas; employee input on
38 health quality and staffing issues; and employee wages, salaries,
39 benefits, working conditions, and employment protections. This
40 description must include a list of all existing staffing plans,

1 policy and procedure manuals, employee handbooks, collective
2 bargaining agreements, or similar employment-related documents;

3 (w) If applicable, all existing documents setting forth any
4 guarantees made by any entity that would be taking over operation or
5 control of a party to the material change transaction relating to
6 employee job security and retraining, or the continuation of current
7 staffing levels and policies, employee wages, salaries, benefits,
8 working conditions, and employment protections;

9 (x) A statement as to whether, after the material change
10 transaction, neutrality will be maintained through all communications
11 and usage of funds regarding nonunion employees forming a union;

12 (y) For each hospital, hospital system, or provider organization
13 that is the subject of the material change transaction, a statement
14 as to whether any successor of the employer or union will be bound to
15 any existing union certification and any existing collective
16 bargaining agreement;

17 (z) A description of current debt collection practices and a
18 description of any anticipated changes to debt collection practices
19 following the material change transaction;

20 (aa) If applicable, a detailed statement and documents relating
21 to the parties' plans for existing provider privileges after the
22 material change transaction;

23 (bb) A detailed statement and documents relating to the parties'
24 plans for ensuring safeguards to avoid conflict of interest in
25 patient referral after the material change transaction;

26 (cc) A detailed statement and documents relating to the parties'
27 commitment and plans to provide health care to the disadvantaged, the
28 uninsured, and the underinsured, and how benefits to promote improved
29 health in the affected community will be provided after the material
30 change transaction; and

31 (dd) A list of the primary languages spoken by patients in the
32 service area that is the subject of the material change transaction.

33 (4) (a) In cases of an extraordinary emergency situation that
34 threatens access to health care services and has the potential to
35 immediately harm consumers, the attorney general may limit the
36 information otherwise required by subsection (3) of this section for
37 the sole purpose of expediting the review process.

38 (b) If the parties to a material change transaction seek
39 expedited review under (a) of this subsection, the parties shall
40 provide documentation to the attorney general's office demonstrating

1 the existence of an extraordinary emergency situation including a
2 complete statement of facts, circumstances, and conditions which
3 demonstrate the extraordinary emergency situation.

4 (c) The attorney general shall respond within 10 days to advise
5 the parties as to whether any information otherwise required by
6 subsection (3) of this section may be waived.

7 (d) Nothing in this subsection alters the preliminary or
8 comprehensive review and oversight required under RCW 19.390.050,
9 19.390.070, and 19.390.080 and sections 7, 9 through 17, and 19
10 through 21 of this act.

11 (e) Nothing in this subsection alters the information collection
12 requirements in other sections of this chapter including the
13 requirement of a public hearing under section 12 of this act.

14 (5) The attorney general shall charge an applicant fee sufficient
15 to cover the costs of implementing this chapter. Fees for a specific
16 material change transaction review must be set relative to whether
17 the review is preliminary or comprehensive.

18 (6) The attorney general may request additional information that
19 is necessary to implement the goals of this chapter.

20 (7) Nothing in this section prohibits the parties to a material
21 change transaction from voluntarily providing additional information
22 to the attorney general.

23 **Sec. 6.** RCW 19.390.050 and 2019 c 267 s 5 are each amended to
24 read as follows:

25 ((The)) For the purpose of conducting an investigation under
26 chapter 19.86 RCW or federal antitrust laws, the attorney general
27 shall make any requests for additional information from the parties
28 under RCW 19.86.110 within ((thirty)) 30 days of the date notice is
29 received under RCW 19.390.030 and 19.390.040. ((Nothing)) Regardless
30 of whether the attorney general requests additional information from
31 the parties, nothing in this section precludes the attorney general
32 from conducting an investigation or enforcing any state or federal
33 ((antitrust)) laws at a later date.

34 NEW SECTION. **Sec. 7.** (1) The attorney general shall determine
35 if the notice required under RCW 19.390.030 and 19.390.040 is
36 complete for the purposes of review. If the attorney general
37 determines that a notice is incomplete, it shall notify the parties

1 within 15 working days after the date the notice was received stating
2 the reasons for its determination of incompleteness.

3 (2) A completed notice shall be deemed received on the date when
4 all the information required by RCW 19.390.040 has been submitted to
5 the attorney general's office.

6 (3) For all material change transactions included under RCW
7 19.390.040(3), the attorney general shall, within five working days
8 after receipt of a completed notice, include information about the
9 notice on the attorney general's website and in a newspaper of
10 general circulation in the county or counties where communities
11 impacted by the material change transaction are located. In addition,
12 the attorney general shall notify by first-class United States mail,
13 email, or facsimile transmission, any person who has requested notice
14 of the filing of such notices. The information must state that a
15 notice has been received, state the names of the parties to the
16 material change transaction, describe the contents of the written
17 notice in clear and simple terms, and state the date and process by
18 which a person may submit written comments about the notice to the
19 attorney general's office.

20 (4) The attorney general is not required to make public any
21 information submitted pursuant to its investigative authority under
22 chapter 19.86 RCW, or any information or analysis associated with an
23 investigation under chapter 19.86 RCW.

24 **Sec. 8.** RCW 19.390.080 and 2019 c 267 s 8 are each amended to
25 read as follows:

26 Any person who fails to comply with (~~(any provision of this~~
27 ~~chapter)) RCW 19.390.030 or 19.390.040 is liable to the state for a
28 civil penalty of (~~(not more than two hundred dollars per day for each~~
29 ~~day during which such person is in violation of this chapter)) up to
30 15 percent of the value of the material change transaction, in the
31 discretion of the attorney general.~~~~

32 NEW SECTION. **Sec. 9.** (1) No material change transaction under
33 this chapter may take place if it would detrimentally affect the
34 continued existence of accessible, affordable health care in
35 Washington state for at least 10 years after the transaction occurs.
36 To this end the material change transaction must result in the
37 affected communities having the same or greater access to quality,
38 affordable care, including but not limited to emergency care, primary

1 care, reproductive health care, gender affirming care, and end-of-
2 life care including services provided in accordance with chapter
3 70.245 RCW.

4 (2) The material change transaction must also result in:

5 (a) Reducing the growth in patient and health plan sponsor costs;

6 (b) Increasing access to services in medically underserved areas;

7 (c) Rectifying historical and contemporary factors contributing
8 to a lack of health equities or access to services; or

9 (d) Improving health outcomes for residents of this state.

10 (3) The material change transaction must not result in the
11 revocation of hospital privileges and must establish sufficient
12 safeguards to maintain appropriate capacity for health provider
13 education.

14 (4) The material change transaction must not result in a
15 reduction in staffing capacity for the provision of medically
16 necessary services to the extent such reductions would diminish
17 patients' access to quality care.

18 (5) In determining whether a material change transaction fulfills
19 the requirements of subsections (1) through (4) of this section, the
20 attorney general shall take into consideration whether the material
21 change transaction is necessary to maintain the solvency of an entity
22 involved in the transaction. However, the attorney general may not
23 determine that a material change transaction is necessary to maintain
24 the solvency of an entity without first having an independent
25 contractor prepare a financial assessment of the entity. Such
26 assessment must include possible alternatives to the material change
27 transaction, and the likely impact of those alternatives, if
28 implemented, on the entity's solvency.

29 (6) Nothing in this chapter is intended to derogate from or
30 otherwise affect in any way the attorney general's authority to
31 conduct an investigation, or the process of any investigation, under
32 chapter 19.86 RCW. Nothing in this section is intended to change or
33 affect in any way any substantive law regarding the antitrust
34 analysis of a material change transaction.

35 NEW SECTION. **Sec. 10.** (1) For all material change transactions
36 included under RCW 19.390.040(3), the attorney general shall conduct
37 a preliminary review of the completed notice to determine if the
38 material change transaction will fulfill the requirements under
39 section 9 of this act. The review must include, but is not limited

1 to, an analysis of the information and documentation provided under
2 RCW 19.390.040 and one public hearing.

3 (2) After conducting the preliminary review, if the attorney
4 general determines that the material change transaction is likely to
5 fulfill the requirements under section 9 of this act, the attorney
6 general may not conduct a comprehensive review of the material change
7 transaction as provided under sections 11, 13, and 14 of this act.

8 (3) The attorney general shall, within 60 days of receiving a
9 completed notice, inform parties to a material change transaction as
10 to whether a comprehensive review of the material change transaction
11 is required as provided under sections 11, 13, and 14 of this act.

12 (4) Nothing in this chapter is intended to derogate from or
13 otherwise affect in any way the attorney general's authority to
14 conduct an investigation, or the process of any investigation, under
15 chapter 19.86 RCW. Nothing in this section is intended to change or
16 affect in any way any substantive law regarding the antitrust
17 analysis of a material change transaction.

18 NEW SECTION. **Sec. 11.** (1) For all material change transactions
19 included under RCW 19.390.040(3) that are not limited to the
20 preliminary review under section 10 of this act, the attorney general
21 shall review the completed notice and conduct a comprehensive review.
22 After conducting a comprehensive review, the attorney general shall
23 within 120 days of receiving the completed notice:

24 (a) Approve the material change transaction in writing. The
25 approval of a material change transaction pursuant to this chapter
26 does not constitute approval for the purpose of RCW 19.86.170, or any
27 other provision of state or federal consumer protection or antitrust
28 law. Such approval pursuant to this chapter does not preclude the
29 attorney general from taking any action to enforce state or federal
30 consumer protection or antitrust law;

31 (b) Impose conditions or modifications on the material change
32 transaction to ensure the requirements of section 9 of this act are
33 met and that sufficient safeguards are in place to ensure communities
34 have continued or improved access to affordable quality care. The
35 imposition of such conditions or modifications shall be in writing
36 and constitute a final decision subject to all appellate rights
37 contained within this chapter; or

1 (c) Disapprove the material change transaction in writing with
2 written justification, which shall constitute a final decision
3 subject to all appellate rights contained within this act.

4 (2) Within 30 days after a final decision of the attorney general
5 either denying or approving with modifications a material change
6 transaction, any party to the material change transaction may appeal
7 the decision to the superior court for review in accordance with RCW
8 34.05.570(4). An appeal to the superior court shall be to the
9 superior court of a county in which the material change transaction
10 is to have occurred or to the superior court for Thurston county.
11 Such appeal shall be perfected by filing with the clerk of the court
12 a notice of appeal and by serving a copy thereof by mail, or
13 personally, on the attorney general or their appointed designee. The
14 attorney general shall, in all cases within 15 days after the receipt
15 of such notice of appeal, serve and file its notice of appearance and
16 such appeal shall thereupon be deemed at issue. The attorney general
17 shall serve upon the appealing party and file with the clerk of the
18 court within 30 days of the filing of the appeal, a certified copy of
19 the attorney general's official record which shall include the final
20 decision, and all accompanying documents, subject to the same
21 confidentiality protections provided to such documents in the
22 underlying act. These shall become the record in the case subject to
23 leave of the court. The superior court shall review the final
24 decision of the attorney general, subject to the statutory
25 requirements of the underlying act and chapter 34.05 RCW.

26 (3) The attorney general may not make its decision to disapprove
27 the material change transaction subject to any condition not directly
28 and rationally related to the requirements under section 9 of this
29 act and any condition or modification must bear a direct and rational
30 relationship to the notice under review and the requirements under
31 section 9 of this act.

32 (4) Nothing in this chapter is intended to derogate from or
33 otherwise affect in any way the attorney general's authority to
34 conduct an investigation, or the process of any investigation, under
35 chapter 19.86 RCW. Nothing in this section is intended to change or
36 affect in any way any substantive law regarding the antitrust
37 analysis of a material change transaction.

38 NEW SECTION. **Sec. 12.** During the course of the preliminary
39 review of notices of material change transactions under RCW

1 19.390.040(3), as provided under section 10 of this act, the attorney
2 general shall conduct one or more public hearings, at least one of
3 which must be in a county where one of the communities impacted by
4 the material change transaction is located and must also allow
5 individuals to participate remotely in the hearing. If a material
6 change transaction undergoes the comprehensive review process as
7 provided for under sections 11, 13, and 14 of this act, the attorney
8 general may conduct additional public hearings. At the hearings,
9 anyone may file written comments and exhibits or appear and make a
10 statement. The attorney general may subpoena additional information
11 or witnesses, require and administer oaths, require sworn statements,
12 take depositions, and use related discovery procedures for purposes
13 of the hearing and at any time prior to making a decision on the
14 material change transaction.

15 (1) The first public hearing must be held no later than 30 days
16 after the attorney general receives a completed notice.

17 (2) At least 15 days prior to the public hearing, the attorney
18 general shall provide notice of the time and place of the hearing on
19 its website and to any person who has requested notice of the hearing
20 in writing.

21 (3)(a) At least 15 days prior to the public hearing, the parties
22 to the material change transaction shall provide notice of the time
23 and place of the hearing. The notice must be provided:

24 (i) Through publication in a newspaper of general circulation in
25 the communities that will be impacted by the material change
26 transaction;

27 (ii) At the public entrance and on the bulletin board designated
28 for legal or public notices of any hospital, hospital system,
29 provider organization, and other health care facility that is the
30 subject of the material change transaction;

31 (iii) Prominently on the website available to the public of any
32 hospital, hospital system, provider organization, and other health
33 care facility that is the subject of the material change transaction;
34 and

35 (iv) On the website available to the employees of any hospital,
36 hospital system, provider organization, and other health care
37 facility that is the subject of the material change transaction.

38 The notice of the time and place of the meeting must be provided in
39 English and in the languages spoken in the county or counties in
40 which the hospitals, hospital systems, provider organizations, or

1 other health care facilities that are the subject of the material
2 change transaction are located.

3 (b) For purposes of this section, "health care facility" means a
4 hospital, clinic, nursing home, laboratory, office, or similar place
5 where a health care provider provides health care to patients.

6 (4) Within 15 business days of the last hearing, the attorney
7 general shall compile a summary report of each public hearing
8 proceeding and post the summary report on its website.

9 (5) If during the course of the preliminary or comprehensive
10 review, there is any change in the terms of the material change
11 transaction that materially alters any of the information that the
12 parties to the material change transaction provided under RCW
13 19.390.040(3), the attorney general shall conduct an additional
14 public hearing to ensure adequate public comment regarding the
15 proposed change.

16 (6) Nothing in this chapter is intended to derogate from or
17 otherwise affect in any way the attorney general's authority to
18 conduct an investigation, or the process of any investigation, under
19 chapter 19.86 RCW. Nothing in this section is intended to change or
20 affect in any way any substantive law regarding the antitrust
21 analysis of a material change transaction.

22 NEW SECTION. **Sec. 13.** (1) For any material change transactions
23 included under RCW 19.390.040(3), which are not limited to the
24 preliminary review under section 10 of this act, the attorney general
25 must hire an independent contractor to prepare a health equity
26 assessment. The independent contractor shall be screened for any
27 conflicts of interest in advance, agree to maintain confidentiality
28 of information pursuant to this chapter, agree to charge a reasonable
29 market-rate fee, and have necessary experience and expertise. In
30 creating a health equity assessment, the independent contractor must
31 engage with and provide input in the assessment from the department
32 of health, local public health jurisdictions, emergency health care
33 coalitions, health care entities, public health experts,
34 organizations representing employees of the applicant, health care
35 advocates, community members who reside in the service areas of the
36 parties to the material change transaction, the parties to the
37 material change transaction, and other individuals or organizations
38 the attorney general, secretary of health, or independent contractor
39 determine should be consulted. Any assessment conducted under this

1 section must be completed 30 days prior to the attorney general's
2 deadline to complete a review under section 10 of this act.

3 (2) The health equity assessment must contain information and
4 data, including health services data, to better inform the attorney
5 general as to whether the parties meet the requirements for a
6 material change transaction under section 9 of this act.

7 (3) The health equity assessment must include, but is not limited
8 to, the following information:

9 (a) An assessment of whether the material change transaction will
10 improve or reduce access to health services in the communities
11 impacted by the material change transaction including, but not
12 limited to, emergency care services, primary care services, specialty
13 services, reproductive health care services, gender affirming health
14 care, and end-of-life services including services provided in
15 accordance with chapter 70.245 RCW;

16 (b) An assessment of whether the material change transaction will
17 reduce health disparities with particular reference to members of
18 medically underserved groups in the parties' service areas;

19 (c) An assessment of the effect of the material change
20 transaction on the affordability and provision of health care
21 services to individuals eligible for medical assistance under chapter
22 74.09 RCW or medicare, indigent individuals, individuals with
23 disabilities, women, racial and ethnic minorities, lesbian, gay,
24 bisexual, transgender, gender diverse, or queer individuals,
25 terminally ill individuals, and other underserved or marginalized
26 populations;

27 (d) An assessment of the effect of the material change
28 transaction on the level and type of charity care the parties to the
29 material change transaction will provide;

30 (e) An assessment of the effect of the material change
31 transaction on any community benefit program that the parties to the
32 material change transaction have historically funded or operated;

33 (f) An assessment of the effect of the material change
34 transaction on staffing for patient care and areas of patient care
35 within facilities as it may affect availability of care, on the
36 likely retention of employees as it may affect continuity of care,
37 and on the rights of employees to provide input on health quality and
38 staffing issues;

39 (g) An assessment of the effect of the material change
40 transaction on the cost of patient care;

1 (h) An assessment of the prior performance of the parties to the
2 material change transaction in meeting state and federal requirements
3 to provide uncompensated care, community services, and access by
4 minorities and people with disabilities to programs receiving federal
5 financial assistance, including the existence of any civil rights
6 access complaints against any of the parties, and how the material
7 change transaction will impact the fulfillment of these requirements;

8 (i) An assessment of whether the material change transaction will
9 have a positive or negative impact on effective communication between
10 the hospitals, hospital systems, or provider organizations and people
11 with limited English-speaking ability and those with speech, hearing,
12 or visual impairments;

13 (j) An assessment of whether the material change transaction will
14 reduce architectural barriers for people with mobility impairments
15 with specific input from the department of health;

16 (k) A review of how the parties to the material change
17 transaction will maintain or improve the quality of health services
18 including a review of:

19 (i) Demographics of the parties' service areas;

20 (ii) Economic status of the population of the parties' services
21 area;

22 (iii) Physician and professional staffing issues related to the
23 material change transaction;

24 (iv) Availability of similar services at other institutions in or
25 near the parties' services area; and

26 (v) Historical and projected market shares of hospitals, hospital
27 systems, and provider organizations in the parties' service area;

28 (l) A financial and economic assessment that includes a
29 description of current costs and competition in the relevant
30 geographic and product market and any anticipated changes in such
31 costs and competition as a result of the material change transaction;
32 and

33 (m) A discussion of alternatives, and anticipated impacts of
34 alternatives, to the material change transaction, including: (i)
35 Closure of any of the health facilities that are the subject of the
36 material change transaction; and (ii) recommendations for additional
37 feasible mitigation measures that would reduce or eliminate any
38 significant adverse effect on health care services and affordability
39 identified in the health equity assessment.

1 (4) The information contained in the independent health equity
2 assessment must be used by the attorney general's office in
3 determining under section 11 of this act whether to impose conditions
4 or modifications or disapprove the material change transaction.

5 (5) The health equity assessment must be posted on the attorney
6 general's website.

7 NEW SECTION. **Sec. 14.** (1) The attorney general may at its
8 discretion appoint a review board of stakeholders to conduct a
9 comprehensive review and make recommendations as to whether a
10 material change transaction under RCW 19.390.040(3), other than
11 material change transactions limited to the preliminary review under
12 section 10 of this act, fulfills the requirements under section 9 of
13 this act.

14 (2) A review board convened by the attorney general under this
15 section must consist of members of the communities affected by the
16 material change transaction, consumer advocates, and health care
17 experts.

18 (3) No more than one-third of the members of the review board may
19 be representatives of institutional health care providers. The
20 attorney general may not appoint to a review board an individual who
21 is employed by or has a contract with a party to the material change
22 transaction or is employed by a competitor that is of a similar size
23 to a party to the material change transaction.

24 (4) A member of a review board shall file a notice of conflict of
25 interest and the notice shall be made public.

26 NEW SECTION. **Sec. 15.** (1) The secretary of state may not accept
27 any forms or documents in connection with any material change
28 transaction if the attorney general, in accordance with section 11 of
29 this act, disapproved the material change transaction or the parties
30 to the material change transaction have not agreed to any conditions
31 or modifications imposed by the attorney general in accordance with
32 section 11 of this act.

33 (2) The attorney general may seek an injunction to prevent any
34 material change transaction that has been disapproved by the attorney
35 general in accordance with section 11 of this act or that does not
36 incorporate any conditions or modifications imposed by the attorney
37 general in accordance with section 11 of this act.

1 NEW SECTION. **Sec. 16.** For any material change transaction
2 included under RCW 19.390.040(3), the following apply:

3 (1) Once a material change transaction is finalized the parties
4 shall inform the attorney general in the form and manner prescribed
5 by the attorney general.

6 (2) For at least 10 years, the attorney general shall monitor the
7 parties' and any successor persons' ongoing compliance with this
8 chapter.

9 (3) The attorney general shall, for 10 years, require annual
10 reports from the parties to the material change transaction or any
11 successor persons to ensure compliance with section 9 of this act and
12 any conditions or modifications the attorney general imposed on the
13 material change transaction. The attorney general may request
14 information and documents and conduct on-site compliance audits.

15 (4) To effectively monitor ongoing compliance, the attorney
16 general shall regularly provide the opportunity for the public to
17 submit written comments, and may, in its discretion, contract with
18 experts and consultants. Contract costs must not exceed an amount
19 that is reasonable and necessary to conduct the review and
20 evaluation.

21 (5) If the attorney general has reason to believe that the
22 parties or successor persons' of a material change transaction no
23 longer satisfy the requirements of section 9 of this act, or are not
24 complying with any conditions or modifications imposed by the
25 attorney general under section 11 of this act, the attorney general
26 shall conduct an investigation. As part of the investigation the
27 attorney general will provide public notice of the investigation and
28 obtain input from community members impacted by the material change
29 transaction. Following the investigation, the attorney general shall
30 publish a report of its findings.

31 (6) If after the investigation, the attorney general determines
32 that the parties or successor persons no longer satisfy the
33 requirements of section 9 of this act, or are not complying with
34 conditions or modifications imposed under section 11 of this act, the
35 attorney general shall issue an order directing the parties or
36 successor persons to come into compliance with this chapter and a
37 timeline by which the parties must enter into compliance.

38 (7) If the parties or successor persons do not enter into
39 compliance with the attorney general's order, the attorney general
40 may impose civil fines of no less than \$10,000 per day until the

1 parties or successor persons comply with the order, and may take
2 legal action under section 17 of this act.

3 (8) The cost of the investigation and any on-site reviews related
4 to determining the validity of the information will be borne by the
5 parties to the material change transaction or successor persons.

6 (9) The attorney general may bill the parties or successor
7 persons and the parties or successor persons billed by the attorney
8 general shall promptly pay. If the parties or successor persons fail
9 to pay within 30 days, the attorney general may assess a civil fine
10 of five percent of the billed amount for each day the party does not
11 pay.

12 NEW SECTION. **Sec. 17.** The attorney general has the authority to
13 ensure compliance with commitments that inure to the public interest.
14 The attorney general may take legal action to enforce this chapter,
15 any conditions or modifications the attorney general imposes on a
16 material change transaction, or any order the attorney general issues
17 under section 16 of this act. The attorney general may obtain
18 restitution, injunctive relief, civil penalties, disgorgement of
19 profits, attorneys' fees, and such other relief as the court deems
20 necessary to ensure compliance. The remedies provided under this
21 chapter are in addition to any other remedy that may be available
22 under any other provision of law.

23 **Sec. 18.** RCW 19.390.070 and 2019 c 267 s 7 are each amended to
24 read as follows:

25 (1) Information submitted to the attorney general (~~pursuant to~~
26 ~~this chapter~~) under RCW 19.390.050 shall be maintained and used by
27 the attorney general in the same manner and under the same
28 protections as provided in RCW 19.86.110. The information, including
29 documentary material, answers to written interrogatories, or
30 transcripts of oral testimony produced pursuant to a demand or
31 copies, must not, unless otherwise ordered by a superior court for
32 good cause shown, be produced for inspection or copying pursuant to
33 chapter 42.56 RCW by the person who produced the material, answered
34 written interrogatories or gave oral testimony.

35 (2) (a) The parties to a material change transaction may designate
36 portions of documents submitted pursuant RCW 19.390.040(3) and any
37 documents thereafter submitted by the parties as confidential if the
38 information is sensitive financial, commercial, or proprietary

1 information or is protected from disclosure by state or federal law.
2 The applicant shall provide two versions of any document designated
3 as confidential. One shall be marked as "CONFIDENTIAL" and shall
4 contain the full unredacted version of the document and shall be
5 maintained as such by the attorney general. The second shall be
6 marked as "PUBLIC" and shall contain a redacted version of the
7 materials from which the confidential portions have been removed or
8 obscured and shall be made available by the attorney general to the
9 public, the entity providing the health care equity assessment
10 pursuant to section 13 of this act, the entity providing the
11 financial assessment pursuant to section 9 of this act, and the
12 review board of stakeholders pursuant to section 14 of this act. An
13 applicant claiming confidentiality in respect to documents shall
14 include a redaction log that provides a reasonably detailed statement
15 of the grounds on which confidentiality is claimed, citing the
16 applicable basis for confidentiality of each portion.

17 (b) Confidential materials provided by a party to a material
18 change transaction that is subject to review by the attorney general
19 shall be maintained as confidential materials and not subject to
20 disclosure under chapter 42.56 RCW.

21 (3) All materials provided during public hearings are considered
22 public records for purposes of chapter 42.56 RCW.

23 (4) Nothing in this chapter limits the attorney general's
24 authority under RCW 19.86.110 or 19.86.115. Nothing in this chapter
25 expands the attorney general's authority under chapter 19.86 RCW,
26 federal or state antitrust law, or any other law. Failure to comply
27 with this chapter does not provide a private cause of action.

28 NEW SECTION. Sec. 19. No provision of chapter 19.390 RCW
29 derogates from the common law or statutory authority of the attorney
30 general.

31 NEW SECTION. Sec. 20. The attorney general may adopt rules
32 necessary to implement chapter 19.390 RCW and may contract with and
33 provide reasonable reimbursement to qualified persons to assist in
34 determining whether parties or successor persons are in compliance
35 with the requirements under this chapter.

36 NEW SECTION. Sec. 21. If a material change transaction is also
37 subject to review under chapter 70.38 or 70.45 RCW, the review under

1 those chapters shall be concurrent with the review under this
2 chapter, to the extent practicable.

3 NEW SECTION. **Sec. 22.** Every four years, the attorney general
4 shall commission a study of the impact of material change
5 transactions in Washington state. The study must review material
6 change transactions occurring during the previous four-year period
7 and include an analysis of:

8 (1) The impact on costs to consumers and health sponsors for
9 health care; and

10 (2) Any increases or decreases in the quality of care, including:

11 (a) Improvement or reductions in morbidity;

12 (b) Improvement or reductions in the management of population
13 health;

14 (c) Improvement or reductions in access to emergency care
15 services, primary care services, reproductive health care services,
16 gender affirming care services, and end-of-life care services
17 including services provided in accordance with chapter 70.245 RCW;
18 and

19 (d) Changes to health and patient outcomes, particularly for
20 underserved and uninsured individuals, recipients of medical
21 assistance and other low-income individuals, and individuals living
22 in rural areas, as measured by nationally recognized measures of the
23 quality of health care, such as measures used or endorsed by the
24 national committee for quality assurance, the national quality forum,
25 the physician consortium for performance improvement, or the agency
26 for health care research and quality.

27 (3) The attorney general shall commission the first study under
28 this section no later than January 1, 2028.

29 NEW SECTION. **Sec. 23.** (1) By January, 2026, the attorney
30 general shall complete a study on the impact of health care mergers
31 and acquisitions in Washington state between health carriers as
32 defined in RCW 48.43.005 and hospitals, hospital systems, or provider
33 organizations. The study shall include:

34 (a) The impact on costs to consumers and health sponsors for
35 health care; and

36 (b) Any increases or decreases in the quality of care, including:

37 (i) Improvement or reductions in morbidity;

1 (ii) Improvement or reductions in the management of population
2 health;

3 (iii) Improvement or reductions in access to emergency care
4 services, primary care services, reproductive health care services,
5 gender affirming care services, and end-of-life care services
6 including services provided in accordance with chapter 70.245 RCW;
7 and

8 (iv) Changes to health and patient outcomes, particularly for
9 underserved and uninsured individuals, recipients of medical
10 assistance and other low-income individuals, and individuals living
11 in rural areas, as measured by nationally recognized measures of the
12 quality of health care, such as measures used or endorsed by the
13 national committee for quality assurance, the national quality forum,
14 the physician consortium for performance improvement, or the agency
15 for health care research and quality.

16 (2) This section expires July 1, 2026.

17 NEW SECTION. **Sec. 24.** This act may be known and cited as the
18 keep our care act.

19 NEW SECTION. **Sec. 25.** Sections 7, 9 through 17, and 19 through
20 24 of this act are each added to chapter 19.390 RCW.

21 NEW SECTION. **Sec. 26.** This act takes effect January 1, 2025.

22 NEW SECTION. **Sec. 27.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected."

26 Correct the title.

EFFECT: Strikes the existing term and definition of "health care services revenue" and replaces it with the term "health care revenue," which is defined as "combined Washington-derived revenue from health care services or administration from a party and all of its affiliates including, but not limited to, patient revenue and premiums paid to carriers, as applicable."

Modifies the scope of "material change transactions" to only include transactions between qualifying Washington entities and out-of-state entities if such transaction will impact health care in Washington.

Modifies the basic notice requirement for parties with revenue below a minimum threshold by increasing the threshold from

\$10,000,000 to \$25,000,000 and by removing the requirement that the parties be hospitals, hospital systems, or affiliates of such entities.

Provides that Attorney General decisions that deny or approve with modifications a material change transaction are subject to appeal to Superior Court and review in accordance with the Administrative Procedure Act standards codified at RCW 34.05.570(4).

Removes a provision requiring specified parties and successors to submit forms for 10 years to demonstrate their overall level of care to individuals on medicaid or who are uninsured or underinsured has not materially lowered and that their percentage of total patient revenue that comes from Medicaid or local, state, or federal funding to provide care to uninsured or underinsured individuals has not dropped below 50 percent.

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