

SB 5241 - S AMD **557**
By Senator Randall

ADOPTED AS AMENDED 02/08/2024

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))~~ (7) "Health care services revenue" means the total
38 revenue received for health care services in the previous ~~((twelve))~~
39 12 months.

1 ~~((6))~~ (8) "Health maintenance organization" means an
2 organization receiving a certificate of registration pursuant to
3 chapter 48.46 RCW which provides comprehensive health care services
4 to enrolled participants of such organization on a group practice per
5 capita prepayment basis or on a prepaid individual practice plan,
6 except for an enrolled participant's responsibility for copayments
7 and deductibles, either directly or through contractual or other
8 arrangements with other institutions, entities, or persons, and which
9 qualifies as a health maintenance organization pursuant to RCW
10 48.46.030 and 48.46.040.

11 ~~((7))~~ (9) "Hospital" means a facility licensed under chapter
12 70.41 or 71.12 RCW.

13 ~~((8))~~ (10) "Hospital system" means:

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

17 (b) A hospital and any entity affiliated with such hospital
18 (~~(through ownership)~~).

19 ~~((9))~~ (11) "Merger" means a consolidation of two or more
20 organizations, including two or more organizations joining through a
21 common parent organization or two or more organizations forming a new
22 organization, but does not include a corporate reorganization.

23 ~~((10))~~ (12) "Person" means, where applicable, natural persons,
24 corporations, trusts, and partnerships.

25 ~~((11))~~ (13) "Provider" means a natural person who practices a
26 profession identified in RCW 18.130.040.

27 ~~((12))~~ (14) "Provider organization" means a corporation,
28 partnership, business trust, association, or organized group of
29 persons, whether incorporated or not, which is in the business of
30 health care delivery or management and that represents seven or more
31 health care providers in contracting with carriers or third-party
32 administrators for the payments of health care services. A "provider
33 organization" includes physician organizations, physician-hospital
34 organizations, independent practice associations, provider networks,
35 and accountable care organizations.

36 ~~((13))~~ (15) "Reproductive health care" means any medical
37 services or treatments, including pharmaceutical and preventive care
38 services or treatments, directly involved in the reproductive system
39 and its processes, functions, and organs involved in reproduction, in
40 all stages of life.

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

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

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

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

12 (2) For the purposes of this (~~section~~) chapter, a material
13 change transaction includes a merger, acquisition, or contracting
14 affiliation between two or more entities of the following types:

- 15 (a) Hospitals;
- 16 (b) Hospital systems; or
- 17 (c) Provider organizations.

18 (3) A material change transaction includes proposed changes
19 identified in subsection (2) of this section between Washington
20 entities, as well as between a Washington entity and an out-of-state
21 entity where the out-of-state entity or any of its affiliates
22 generate(~~s ten million dollars~~) \$10,000,000 or more in health care
23 services revenue from patients residing in Washington state, and the
24 entities are of the types identified in subsection (2) of this
25 section. Any party to a material change transaction that is licensed
26 or operating in Washington state shall submit a notice as required
27 under this section.

28 (4) For purposes of subsection (2) of this section, a merger,
29 acquisition, or contracting affiliation between two or more
30 hospitals, hospital systems, or provider organizations only qualifies
31 as a material change transaction if the hospitals, hospital systems,
32 or provider organizations did not previously have common ownership or
33 a contracting affiliation.

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

36 (1) (~~The~~) For material change transactions where none of the
37 parties are hospitals or hospital systems or an affiliate of a
38 hospital or hospital system and none of the parties or an affiliate

1 of a party have generated \$10,000,000 or more in health care services
2 revenue from patients residing in Washington state in any of their
3 preceding three fiscal years, the written notice provided by the
4 parties, as required by RCW 19.390.030, must include:

5 (a) The names of the parties and their current business
6 addresses;

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

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

11 (d) The anticipated effective date of the proposed material
12 change transaction.

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

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

30 (b) Documentation demonstrating that all the parties to the
31 material change transaction had for each of their preceding three
32 fiscal years at least 50 percent of their total patient revenue come
33 from medicaid or local, state, or federal funding to provide care to
34 uninsured or underinsured individuals, and a statement from the
35 parties describing how the material change transaction will result in
36 the successor persons complying with the requirements under this
37 subsection.

38 (3) For all material change transactions other than those
39 specified under subsections (1) and (2) of this section, the written

1 notice provided by the parties, as required by RCW 19.390.030, must
2 include:

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

5 (b) A copy of the material change transaction agreement;

6 (c) If applicable, a statement from each of the parties' board of
7 directors that explains the effect the material change transaction
8 will likely have on delivery and cost of health-related services to
9 the communities impacted by the material change transaction, and the
10 basis for this opinion;

11 (d) If applicable, a copy of the two most recent community needs
12 assessments or any similar evaluations or assessments prepared by or
13 for any of the hospitals, hospital systems, or provider organizations
14 that are the subject of the material change transaction;

15 (e) A description of all charity care provided in the last three
16 years, as well as denials, and the projected charity care for three
17 years following the material change transaction by the parties to the
18 material change transaction, or any successor persons. This
19 description must include:

20 (i) Annual total charity care spending;

21 (ii) Inpatient, outpatient, and emergency room charity care
22 spending;

23 (iii) A description of how the amount of charity care spending
24 was calculated;

25 (iv) Annual charity care inpatient discharges, outpatient visits,
26 and emergency visits;

27 (v) A description of the types of charity care services provided
28 annually;

29 (vi) The number of charity care denials and reasons for denial;
30 and

31 (vii) A description of the policies, procedures, and eligibility
32 requirements for the provision of charity care;

33 (f) A description of the health care services currently provided
34 at each hospital, hospital system, or provider organization that is
35 the subject of the material change transaction;

36 (g) A description of all services provided in the past five years
37 by each hospital, hospital system, and provider organization that is
38 the subject of the material change transaction to apple health
39 patients, qualified health plan patients, and indigent patients. This
40 description must include, but is not limited to, the type and volume

1 of services provided, the payors for the services provided, the
2 demographic characteristics of and zip code data for the patients
3 served by the hospital, hospital system, or provider organization,
4 and the costs and revenues for the services provided;

5 (h) All policies, procedures, and other training materials
6 related to registration, admission, and collections, including
7 upfront, point-of-service, and postservice billing and collections;

8 (i) The following current policies for any hospital and, to the
9 extent they exist, the following current policies for any provider
10 organization that is the subject of the material change transaction:

11 (i) Admission policies; (ii) nondiscrimination policies; (iii) end-
12 of-life policies; (iv) reproductive health policies; and (v) the
13 reproductive health care services form as required under RCW
14 70.41.520;

15 (j) The following proposed policies that will apply after the
16 material change transaction for any hospital or provider organization
17 that is the subject of the material change transaction: (i) Admission
18 policies; (ii) nondiscrimination policies; (iii) end-of-life
19 policies; (iv) reproductive health policies; and (v) for hospitals,
20 the reproductive health care services form as required under RCW
21 70.41.520;

22 (k) To the extent they exist, any policies concerning the
23 information and referrals medical providers are required to provide
24 or are restricted from providing to patients regarding end-of-life
25 care, including services provided in accordance with chapter 70.245
26 RCW;

27 (l) If the material change transaction will have any impact on
28 reproductive health care services provided by any hospital, hospital
29 system, or provider organization that is the subject of the material
30 change transaction, or any impact on the availability or
31 accessibility of reproductive health care services in Washington
32 state, a description of the reproductive health care services
33 provided in the last five years by each hospital, hospital system, or
34 provider organization that is the subject of the material change
35 transaction and a description of the effect the material change
36 transaction will have on available reproductive health care services.
37 This description must include the types and levels of reproductive
38 services provided in the last five years and those proposed to be
39 provided after the material change transaction, including, but not
40 limited to, information about contraception provision, pregnancy

1 terminations, tubal ligations, and fertility treatments provided, and
2 a description of how this information was compiled;

3 (m) If the material change transaction will have any impact on
4 end-of-life health care services provided by any hospital, hospital
5 system, or provider organization that is the subject of the material
6 change transaction, including services provided in accordance with
7 chapter 70.245 RCW, or any impact on the availability or
8 accessibility of end-of-life health care services in Washington
9 state, including services provided in accordance with chapter 70.245
10 RCW, a description of the end-of-life health care services provided
11 in the last five years by each hospital, hospital system, or provider
12 organization that is the subject of the material change transaction
13 and a description of the effect the material change transaction will
14 have on available end-of-life care services. This description must
15 include the types and levels of end-of-life services provided in the
16 last five years and those proposed to be provided after the material
17 change transaction including, but not limited to, information about
18 the number of occasions in which doctors served as consulting or
19 attending physicians at the hospital, hospital system, or provider
20 organization under chapter 70.245 RCW, a description of the end-of-
21 life health care services expected to be available at the hospitals,
22 hospital systems, or provider organizations that are the subject of
23 the material change transaction, and a description of how this
24 information was compiled;

25 (n) If the material change transaction will have any impact on
26 gender affirming health care services provided by any hospital,
27 hospital system, or provider organization that is the subject of the
28 material change transaction, or any impact on the availability or
29 accessibility of gender affirming health care services in Washington
30 state, a description of all gender affirming health care services
31 provided in the last five years by each hospital, hospital system, or
32 provider organization that is the subject of the material change
33 transaction and a description of the effect the material change
34 transaction will have on available gender affirming care. This
35 description must include the types and levels of gender affirming
36 health care provided in the last five years and those proposed to be
37 provided after the material change transaction including, but not
38 limited to, facial gender affirming care, body gender affirming care,
39 and primary sex characteristics care, and a description of how this
40 information was compiled;

1 (o) A description of any anticipated changes in health care
2 services provided after the material change transaction by any
3 hospital, hospital system, or provider organization that is the
4 subject of the material change transaction. If anticipated
5 alterations include a reduction, relocation, or elimination of a
6 service, the following information should be included: (i) The need
7 the population presently has for the service; (ii) how the need will
8 be adequately met by the proposed alteration; and (iii) alternative
9 arrangements designed to meet the identified need;

10 (p) A description of each measure proposed by the parties to
11 mitigate or eliminate any potential adverse effect on the
12 availability or accessibility of health care services to the affected
13 communities that may result from the material change transaction;

14 (q) A description of any changes to sexual assault nurse examiner
15 and forensic nurse examiner programs after the material change
16 transaction at any hospital, hospital system, or provider
17 organization that is the subject of the material change transaction
18 and any measures proposed by the parties to mitigate or eliminate any
19 potential adverse effects to these programs;

20 (r) A description of any community benefit program provided by
21 any of the parties to the material change transaction during the past
22 five years with an annual cost of at least \$10,000 and the annual
23 cost of each program for the past five years;

24 (s) For each hospital, hospital system, or provider organization
25 that is the subject of the material change transaction, a description
26 of current policies and procedures on staffing for patient care
27 areas; employee input on health quality and staffing issues; and
28 employee wages, salaries, benefits, working conditions, and
29 employment protections. This description must include a list of all
30 existing staffing plans, policy and procedure manuals, employee
31 handbooks, collective bargaining agreements, or similar employment-
32 related documents;

33 (t) For each hospital, hospital system, or provider organization
34 that is the subject of the material change transaction, all existing
35 documents setting forth any guarantees made by any entity that would
36 be taking over operation or control of each hospital, hospital
37 system, or provider organization relating to employee job security
38 and retraining, or the continuation of current staffing levels and
39 policies, employee wages, salaries, benefits, working conditions, and
40 employment protections;

1 (u) For each hospital, hospital system, or provider organization
2 that is the subject of the material change transaction, a statement
3 as to whether, after the material change transaction, neutrality will
4 be maintained through all communications and usage of funds regarding
5 nonunion employees forming a union;

6 (v) For each hospital, hospital system, or provider organization
7 that is the subject of the material change transaction, a statement
8 as to whether any successor of the employer or union will be bound to
9 any existing union certification and any existing collective
10 bargaining agreement;

11 (w) For each hospital, hospital system, or provider organization
12 that is the subject of the material change transaction, a description
13 of current debt collection practices and a description of any
14 anticipated changes to debt collection practices following the
15 material change transaction;

16 (x) If applicable, a detailed statement and documents relating to
17 the parties' plans for assuring the continuance of existing hospital
18 privileges after the material change transaction;

19 (y) If applicable, a detailed statement and documents relating to
20 the parties' plans for ensuring the maintenance of appropriate health
21 science research and health care provider education after the
22 material change transaction;

23 (z) 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 (aa) 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 (bb) A list of the primary languages spoken by patients at each
32 hospital, hospital system, or provider organization that is the
33 subject of the material change transaction.

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

39 (b) If the parties to a material change transaction seek
40 expedited review under (a) of this subsection, the parties shall

1 provide documentation to the attorney general's office demonstrating
2 the existence of an extraordinary emergency situation including a
3 complete statement of facts, circumstances, and conditions which
4 demonstrate the extraordinary emergency situation.

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

8 (d) Nothing in this subsection alters the preliminary or
9 comprehensive review and oversight required under RCW 19.390.050,
10 19.390.070, and 19.390.080 and sections 7, 9 through 18, and 20
11 through 22 of this act.

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

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

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

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

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

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

35 NEW SECTION. **Sec. 7.** (1) The attorney general shall determine
36 if the notice required under RCW 19.390.030 and 19.390.040 is
37 complete for the purposes of review. If the attorney general
38 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. An appeal to the superior court
8 shall be to the superior court of a county in which the material
9 change transaction is to have occurred or to the superior court for
10 Thurston county. Such appeal shall be perfected by filing with the
11 clerk of the court a notice of appeal and by serving a copy thereof
12 by mail, or personally, on the attorney general or their appointed
13 designee. The attorney general shall, in all cases within 15 days
14 after the receipt of such notice of appeal, serve and file its notice
15 of appearance and such appeal shall thereupon be deemed at issue. The
16 attorney general shall serve upon the appealing party and file with
17 the clerk of the court within 30 days of the filing of the appeal, a
18 certified copy of the attorney general's official record which shall
19 include the final decision, and all accompanying documents, subject
20 to the same confidentiality protections provided to such documents in
21 the underlying act. These shall become the record in the case subject
22 to leave of the court. The superior court shall review the final
23 decision of the attorney general, subject to the statutory
24 requirements of the underlying act and chapter 34.05 RCW.

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

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

37 NEW SECTION. **Sec. 12.** During the course of the preliminary
38 review of notices of material change transactions under RCW
39 19.390.040(3), as provided under section 10 of this act, the attorney

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

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

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

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

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

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

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

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

37 The notice of the time and place of the meeting must be provided in
38 English and in the languages spoken in the county or counties in
39 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 18 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, in consultation
13 with provider organizations, will develop a simple form that parties
14 or successor persons subject to RCW 19.390.040(2) will submit yearly
15 for 10 years to demonstrate that the successor persons' overall level
16 of care to individuals on medicaid or who are uninsured or
17 underinsured has not materially lowered and that the successor
18 persons' percentage of total patient revenue that comes from medicaid
19 or local, state, or federal funding to provide care to uninsured or
20 underinsured individuals has not dropped below 50 percent.

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

32 **Sec. 19.** RCW 19.390.070 and 2019 c 267 s 7 are each amended to
33 read as follows:

34 (1) Information submitted to the attorney general (~~pursuant to~~
35 ~~this chapter~~) under RCW 19.390.050 shall be maintained and used by
36 the attorney general in the same manner and under the same
37 protections as provided in RCW 19.86.110. The information, including

1 documentary material, answers to written interrogatories, or
2 transcripts of oral testimony produced pursuant to a demand or
3 copies, must not, unless otherwise ordered by a superior court for
4 good cause shown, be produced for inspection or copying pursuant to
5 chapter 42.56 RCW by the person who produced the material, answered
6 written interrogatories or gave oral testimony.

7 (2) (a) The parties to a material change transaction may designate
8 portions of documents submitted pursuant RCW 19.390.040(3) and any
9 documents thereafter submitted by the parties as confidential if the
10 information is sensitive financial, commercial, or proprietary
11 information or is protected from disclosure by state or federal law.
12 The applicant shall provide two versions of any document designated
13 as confidential. One shall be marked as "CONFIDENTIAL" and shall
14 contain the full unredacted version of the document and shall be
15 maintained as such by the attorney general. The second shall be
16 marked as "PUBLIC" and shall contain a redacted version of the
17 materials from which the confidential portions have been removed or
18 obscured and shall be made available by the attorney general to the
19 public, the entity providing the health care equity assessment
20 pursuant to section 13 of this act, the entity providing the
21 financial assessment pursuant to section 9 of this act, and the
22 review board of stakeholders pursuant to section 14 of this act. An
23 applicant claiming confidentiality in respect to documents shall
24 include a redaction log that provides a reasonably detailed statement
25 of the grounds on which confidentiality is claimed, citing the
26 applicable basis for confidentiality of each portion.

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

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

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

1 NEW SECTION. **Sec. 20.** No provision of chapter 19.390 RCW
2 derogates from the common law or statutory authority of the attorney
3 general.

4 NEW SECTION. **Sec. 21.** The attorney general may adopt rules
5 necessary to implement chapter 19.390 RCW and may contract with and
6 provide reasonable reimbursement to qualified persons to assist in
7 determining whether parties or successor persons are in compliance
8 with the requirements under this chapter.

9 NEW SECTION. **Sec. 22.** If a material change transaction is also
10 subject to review under chapter 70.38 or 70.45 RCW, the review under
11 those chapters shall be concurrent with the review under this
12 chapter, to the extent practicable.

13 NEW SECTION. **Sec. 23.** Every four years, the attorney general
14 shall commission a study of the impact of material change
15 transactions in Washington state. The study must review material
16 change transactions occurring during the previous four-year period
17 and include an analysis of:

18 (1) The impact on costs to consumers and health sponsors for
19 health care; and

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

21 (a) Improvement or reductions in morbidity;

22 (b) Improvement or reductions in the management of population
23 health;

24 (c) Improvement or reductions in access to emergency care
25 services, primary care services, reproductive health care services,
26 gender affirming care services, and end-of-life care services
27 including services provided in accordance with chapter 70.245 RCW;
28 and

29 (d) Changes to health and patient outcomes, particularly for
30 underserved and uninsured individuals, recipients of medical
31 assistance and other low-income individuals, and individuals living
32 in rural areas, as measured by nationally recognized measures of the
33 quality of health care, such as measures used or endorsed by the
34 national committee for quality assurance, the national quality forum,
35 the physician consortium for performance improvement, or the agency
36 for health care research and quality.

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

3 NEW SECTION. **Sec. 24.** (1) By January, 2026, the attorney
4 general shall complete a study on the impact of health care mergers
5 and acquisitions in Washington state between health carriers as
6 defined in RCW 48.43.005 and hospitals, hospital systems, or provider
7 organizations. The study shall include:

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

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

11 (i) Improvement or reductions in morbidity;

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

14 (iii) 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 (iv) 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 (2) This section expires July 1, 2026.

28 NEW SECTION. **Sec. 25.** This act may be known and cited as the
29 keep our care act.

30 NEW SECTION. **Sec. 26.** Sections 7, 9 through 18, and 20 through
31 25 of this act are each added to chapter 19.390 RCW.

32 NEW SECTION. **Sec. 27.** This act takes effect January 1, 2025.

33 NEW SECTION. **Sec. 28.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected."

SB 5241 - S AMD 557
By Senator Randall

ADOPTED AS AMENDED 02/08/2024

3 On page 1, line 2 of the title, after "marketplace;" strike the
4 remainder of the title and insert "amending RCW 19.390.010,
5 19.390.020, 19.390.030, 19.390.040, 19.390.050, 19.390.080, and
6 19.390.070; adding new sections to chapter 19.390 RCW; creating a new
7 section; providing an effective date; and providing an expiration
8 date."

EFFECT: Adds a definition of "affiliate."

Clarifies that "material change transactions" apply to certain affiliates and in-state entities.

Requires regulatory fees to be adjusted based on preliminary or comprehensive reviews.

Modifies the process and analysis for reviewing material change transactions.

Allows remote participation in specified hearings.

Authorizes fines for unpaid bills.

Grants rule-making authority to the Attorney General.

Changes effective dates.

Adds a severability clause.

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