

HOUSE BILL REPORT

HB 1811

As Reported by House Committee On:
Judiciary

Title: An act relating to notice of material changes to the operations or governance structure of a health care provider or provider organization.

Brief Description: Concerning notice of material changes to the operations or governance structure of a health care provider or provider organization.

Sponsors: Representatives Jinkins, Caldier and Cody.

Brief History:

Committee Activity:

Judiciary: 2/15/17, 2/16/17, 1/18/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Adds a new chapter requiring that a 30-day notice be given to the Attorney General before the effective date of a proposed material change, such as a merger or acquisition, involving a health care provider or other health care organization.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Hansen, Kirby, Orwall and Valdez.

Minority Report: Do not pass. Signed by 4 members: Representatives Haler, Klippert, Muri and Shea.

Staff: Edie Adams (786-7180).

Background:

Washington's Consumer Protection Act.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the state's Consumer Protection Act (CPA), first enacted in 1961, various anticompetitive business practices are declared unlawful. The Antitrust Division of the Office of the Attorney General investigates and prosecutes violations of the CPA, and the Attorney General may bring an action in the name of the state on behalf of persons injured by CPA violations. In addition, a private party may bring an action to enforce the CPA.

Business practices prohibited by the CPA include:

- engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce, including contracts, trusts, or conspiracies in restraint of trade;
- monopolizing or attempting to monopolize trade;
- entering into agreements not to purchase from the competitors of a particular seller when the agreement substantially lessens competition or tends to create a monopoly; and
- acquiring corporate stock when the acquisition substantially lessens competition or tends to create a monopoly.

The Hart-Scott-Rodino Antitrust Improvements Act.

The federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires companies intending to engage in certain mergers or acquisitions to provide premerger notification to the United States Federal Trade Commission and the Department of Justice before consummating these transactions. The reporting requirement applies to proposed transactions that satisfy certain size and other criteria, and each party to a transaction that meets the criteria must file notifications and wait a specified period of time, typically 30 days, before consummating the transaction. The waiting period enables the enforcement agencies to review whether the effect of the transaction will substantially lessen competition. State attorneys general also have the ability to enforce the federal antitrust laws.

Summary of Substitute Bill:

A new chapter is established requiring health care providers and health care provider organizations to provide prior written notice to the Attorney General for any transaction that results in a material change to the operations or governance structure of the health care provider or health care provider organization.

Notice of Material Change Required.

Each party to a transaction that results in a material change to the operations or governance structure of a provider or provider organization must submit written notice to the Attorney General at least 30 days before the effective date of the transaction.

"Material change" includes the following types of proposed changes:

- a merger or acquisition involving a hospital or hospital system or carrier;
- a merger or acquisition involving another provider or provider organization that would result in either: (1) an increase in net patient service revenue of \$10 million or more; (2) a provider or provider organization of eight or more physicians; or (3) an acquisition of an insolvent provider organization;

- a contracting affiliation with a hospital or hospital system;
- a contracting affiliation with another provider or provider organization that would result in an increase in net patient service revenue of \$10 million or more; or
- any formation of an entity created for administering contracts, or current or future contracting, on behalf of one or more providers or provider organizations with carriers or third-party administrators.

A material change includes proposed changes between a Washington provider or provider organization and an out-of-state provider or provider organization where the out-of-state provider generates \$10 million or more in net patient service revenue from patients residing in Washington.

Notice Requirements.

The written notice must include information on 10 listed items. These include:

- a copy of all agreements governing and related to the proposed material change;
- a description of the nature and objectives of the proposed material change, including whether any changes in health care services are known or reasonably anticipated in connection with the change;
- a roster of physicians on whose behalf the party establishes contracts;
- the names of entities that are currently or will be providing services following the transaction, the locations where services are or will be provided, and a description of the services provided at each location; and
- a description of the known or reasonably anticipated impact of the proposed material change, including on reimbursement rates, care referral patterns, access to services, quality of care, and market share.

Notice of Filings under the Hart-Scott-Rodino Act Required.

Any provider or provider organization conducting business in Washington that files a premerger notification with the Federal Trade Commission or the United States Department of Justice in compliance with the federal Hart-Scott-Rodino Antitrust Improvements Act is required to provide written notification to the Attorney General of the filing. Complying with the federal filing requirement does not exempt the provider from the new state notice requirement.

Materials Submitted to the Attorney General.

Information submitted to the Attorney General must be maintained by the Attorney General in the same manner as required by other provisions of the Consumer Protection Act (CPA) that restrict the use of documents and materials produced to the Attorney General under civil investigative demands.

Penalty for Noncompliance.

A person who fails to comply with the act is subject to a civil penalty of up to \$200 for each day of noncompliance.

Definitions.

Key terms are defined, including the following:

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

"Acquisition" does not include the sole activity of employing natural persons to provide health care services if their former practice continues to operate.

"Contracting affiliation" includes any relationship between two or more organizations for the purposes of negotiating, representing, or otherwise acting to establish contracts for the payment of health care services with a carrier or third-party administrator.

"Carrier" means a health maintenance organization, a health care services contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract, not including an employer purchasing coverage on behalf of its employees.

"Provider" includes any person or any other entity qualified under state law to perform or provide health care services.

"Provider organization" includes any corporation, partnership, business trust, association, or organized group of persons which: (1) is in the business of health care delivery or management; and (2) represents one or more health care providers in contracting with carriers or third-party administrators for payments of health care services. A provider organization includes, but is not limited to, physician organizations, physician-hospital organizations, provider networks, and any other organization that contracts with carriers or third-party administrators for payment for health care services.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- removes a definition of and references to "health care professional;"
- removes from various definitions and requirements in the bill the language "but not be limited to" in describing the meaning of the terms or the scope of the requirements; and
- requires disclosure of known or reasonably anticipated changes or impacts, rather than "anticipated changes or impacts."

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There is concern about the horizontal and vertical mergers that are happening in the health care industry and whether they may drive up costs and drive down choice for consumers. The bill will allow the Attorney General (AG) to take an earlier look at transactions that may have an effect on the availability of health care services before those transactions take place.

The bill provides a tool for the AG to ensure that competition remains vigorous and robust. Currently the AG only learns about these transactions from the news, consumer complaints, or if the parties voluntarily report. Federal reporting requirements apply to transactions of a certain size, which leaves out a number of transactions, including affiliations. This gap in required reporting has led to a number of transactions that have flown below the radar. The bill allows the AG to review these transactions before they occur. It does not provide any additional enforcement authority.

The bill is the first step to achieving government oversight to make sure adequate health care is available to the public. Consolidation of health care providers impacts costs, quality, and access to care for patients, particularly in rural and low-income communities. In the recent Providence and St. Joseph's affiliation, Oregon and California both required these entities to submit information, and public hearings were held on the transaction. Washington should do the same.

(Opposed) Health care providers have major concerns with the bill. The AG already has robust authority to investigate anticompetitive behavior. There is no evidence of a systemic problem in the market that would support this sweeping legislation. Health care providers affiliate in order to preserve access to care in communities and increase efficiencies in operations. Recent government policy has been to increase value-based purchasing, but that explicitly encourages affiliation and consolidation. Although the bill does not create any new legal authority, it does increase regulatory and administrative burdens on providers. After going through the burden of complying with notice requirements, it is not clear how long they will have to wait before they can move ahead with their planned transaction. Currently providers can voluntarily discuss these transactions with the AG and that is a much better and less heavy-handed approach.

Almost all of the hospitals in public hospital districts are rural hospitals, and they should be encouraged to engage in relationships and affiliations to avoid closures. Having to hire a lawyer and compile all the material required by the bill will be a real burden on rural hospitals. This is unnecessary because public hospital districts are already public and transparent. Small primary care practitioners are struggling to make ends meet. Their business model no longer works so the ability to affiliate with other providers is very important and should not be taken away. Losing primary care practitioners has negative consequences that will increase costs and negatively impact the public's access to health care.

Persons Testifying: (In support) Elisabeth Smith, American Civil Liberties Union Washington; and Erica Koscher, Office of the Attorney General.

(Opposed) Chris Bandoli, Washington State Hospital Association; Ben Lindekugel, Association of Public Hospital Districts; Roman Daniels-Brown, Washington State Medical Association; and Sharon Crowell, The Vancouver Clinic.

Persons Signed In To Testify But Not Testifying: None.