

# SENATE BILL REPORT

## SB 5688

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As of January 18, 2022

**Title:** An act relating to material changes to the operations and governance structure of participants in the health care marketplace.

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

**Sponsors:** Senators Randall, Rolfes, Das, Dhingra, Frockt, Hunt, Keiser, Lovelett, Nobles, Pedersen, Robinson, Saldaña, Salomon, Stanford, Trudeau and Wilson, C..

**Brief History:**

**Committee Activity:** Law & Justice: 1/18/22.

### Brief Summary of Bill

- Modifies reporting requirements for mergers, acquisitions, or contracting affiliations between hospitals, hospital systems, or provider organizations (parties).
- Requires parties to submit additional documentation related to charity care; access to care, including reproductive, gender-affirming, emergency, and end-of-life care; all current policies and procedures; and explanations of how any of these areas would be affected by the proposed transaction.
- Requires the attorney general to determine, through a public process, if the transaction would detrimentally affect the continued existence of accessible, affordable health care in the state for at least ten years after the transaction occurs.
- Gives the attorney general authority to place conditions or modifications on the transaction, or disapprove of the transaction if the transaction will be detrimental to accessible, affordable health care.
- Requires the attorney general to monitor an approved transaction for at

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

least ten years to ensure compliance with all access and affordability requirements.

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## SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** In 2019, the Legislature passed comprehensive reform in SHB 1607 requiring hospitals, hospital systems, and provider organizations to provide prior written notice to the attorney general for certain transactions that result in a material change.

Notice of Material Change Required. Each party to a transaction that results in a material change must submit written notice to the attorney general at least 60 days before the effective date of the transaction. A material change includes a merger, acquisition, or contracting affiliation between two or more of the following types of entities:

- hospitals;
- hospital systems; or
- provider organizations.

A material change includes proposed mergers, acquisitions, or contracting affiliations between a Washington entity and an out-of-state entity where the out-of-state entity generates \$10 million or more in health care services revenue from patients residing in Washington. Any party to a material change that is licensed or operating in Washington must submit the required notice. A material change does not include a merger, acquisition, or contracting affiliation between two or more hospitals, hospitals systems, or provider organizations that had common ownership or a contracting affiliation prior to the transaction.

Notice Contents. The written notice provided by each party must include:

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

A party may voluntarily supply the attorney general with additional information. The attorney general must make any requests for additional information from the reporting parties within 30 days of the date the notice of material change is provided. This requirement does not preclude the attorney general from conducting an investigation or enforcing state or federal antitrust laws at a later date.

Notice of Filings Under the Federal Hart-Scott-Rodino Act Required. Any provider or

provider organization conducting business in Washington that files a premerger notification with the Federal Trade Commission or the United States Department of Justice in compliance with the federal Hart-Scott-Rodino Antitrust Improvements Act is required to provide written notification to the attorney general of the filing. Providing a copy of the federal filing to the attorney general satisfies the notice requirement for material changes.

Materials Submitted to the Attorney General. Information submitted to the attorney general must be maintained in the same manner and under the same protections as required by other provisions of the Consumer Protection Act (CPA) that restrict the use of documents and materials produced under civil investigative demands. The information must not be produced for inspection or copying pursuant to the Public Records Act by the person who produced the information unless otherwise ordered by a court for good cause. Nothing in the act expands the attorney general's authority under the CPA, state and federal antitrust law, or other law.

Penalty for Noncompliance. A person who fails to comply with the act is subject to a civil penalty up to \$200 for each day of noncompliance. Failure to comply does not create a private cause of action.

**Summary of Bill:** Standards and Definitions. No material change transaction may take place if it would detrimentally affect the continued existence of accessible, affordable health care in Washington State for at least ten years after the transaction occurs. The material change transaction must result in the affected communities having the same or greater access to quality, affordable care, including:

- emergency care;
- primary care;
- reproductive care;
- end-of-life care, including services provided in accordance with the Washington Death with Dignity Act; and
- gender affirming care.

"Gender affirming care" is defined to be a service or product prescribed by a health care provider to treat any condition related to an individual's gender identity. Gender affirming care must be covered in a manner compliant with the federal Mental Health Parity and Addiction Equity Act of 2008, and the Federal Patient Protection and Affordable Care Act of 2010. Gender affirming care can be prescribed to two- spirit, transgender, nonbinary, intersex, and other gender diverse individuals.

Health care services may be provided virtually, on-demand, or in brick and mortar settings.

Notice Requirements. The period of time for required notice to the attorney general prior to the effective date of a material change transaction is changed from 60 to 120 days. There are additional reporting requirements related to material change for:

- transactions involving parties that serve low-income or underserved populations, to

- demonstrate that at least 50 percent of their revenue comes from Medicaid or other governmental funding for servicing those populations; and
- transactions involving hospitals, to submit documentation related to charity care, access to care, including reproductive, gender-affirming, emergency, and end-of-life care, all current policies and procedures, and explanations of how any of these areas would be affected by the proposed transaction.

Attorney General Authority and Responsibilities. For transactions involving hospitals, the attorney general is required to determine, through a public process, if the transaction would detrimentally affect the continued existence of accessible, affordable health care in the state for at least ten years after the transaction occurs. If so, the attorney general may place conditions or modifications on the transaction, or disapprove of the transaction. The attorney general is required to monitor an approved transaction for at least ten years to ensure compliance with all access and affordability requirements.

The attorney general is not required to make public any information submitted pursuant to its investigative authority under the CPA, or any information or analysis associated with an investigation under the CPA.

The attorney general may adopt rules necessary to implement this law and may contract with qualified persons to assist with determining whether parties or successor persons are in compliance with the requirements of this law.

By January 2024, the attorney general shall complete a study on the impact of health care mergers and acquisitions in Washington State to include:

- the impact on costs to consumers and health sponsors for health care; and
- any increases or decreases in the quality of care.

Civil Penalties. Penalties for violating the notice requirements to the attorney general are changed to up to 15 percent of the value of the material change transaction at the discretion of the attorney general, from the established civil penalty of no more than \$200 per day.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2022.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2023.

**Staff Summary of Public Testimony:** PRO: Washington has long been a leader in health care access including reproductive health care. There are still gaps for health care access. We need to take a look at health care mergers. In Washington, 45 percent of our hospitals are led by religiously affiliated systems. In some counties that means that secular health

care is not available. This bill will expand health care.

Consolidations do not improve health care. There is minimal government oversight. Health systems receive millions of tax dollars and must be held accountable. Reproductive health is basic care that most people need at some point in their life. Washington health care systems merge and prevent their new employees from providing abortion and other care. The impact is worse for people in rural areas, communities of color, LGTBQ people, and young people.

CON: Rural hospitals are financially vulnerable. Primary care is a critical care for our community. This bill is too rigid and we need to be nimble. Its inflexibility makes it too difficult to find a partner to provide health care. Our healthcare transactions stabilize and expand access to health care. We provide a full range of reproductive health care. There are few mid-sized independent hospitals in the state. The sustainability of health care access depends on being able to maintain operating margins. This bill makes health care systems more expensive to maintain.

**Persons Testifying:** PRO: Senator Emily Randall, Prime Sponsor; Lannette Sargent; Leah Rutman, ACLU of Washington; Yvette Maganya, Planned Parenthood Alliance Advocates-Serving Washington; Katharine Weiss, WA State Nurses Association; Berit Madsen, MD; Pattie Pritchard; Sam Hatzenbeler; Susan Young, Self.

CON: William Robertson, MultiCare Health System; Jennifer Burkhardt, Olympic Medical Center; Peter Rutherford, Confluence Health; Douglas Ross; Zosia Stanley, Washington State Hospital Association; Lisa Thatcher, Washington State Hospital Association; Brad Payne, Family Policy Institute of Washington; Rodney Anderson, MD; Roman Daniels-Brown, WA State Medical Association; Rebecca Faust.

**Persons Signed In To Testify But Not Testifying:** No one.