**5241.E AMH APP H3433.2 - NOT FOR FLOOR USE**

**ESB 5241** - H COMM AMD

By Committee on Appropriations

Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

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

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

(1) It is the intent of the legislature to ensure that competition beneficial to consumers in health care markets across Washington remains vigorous and robust and that health care be affordable and accessible. The legislature supports ((~~that intent~~)) these intents through this chapter, which provides the attorney general with notice of all material health care transactions in this state so that the attorney general has the information necessary to determine whether an investigation under the consumer protection act is warranted for potential anticompetitive conduct and consumer harm. This chapter is intended to supplement the federal Hart-Scott-Rodino antitrust improvements act, Title 15 U.S.C. Sec. 18a, by requiring notice of transactions not reportable under Hart-Scott-Rodino reporting thresholds and by providing the attorney general with a copy of any filings made pursuant to the Hart-Scott-Rodino act. In addition to ensuring vigorous and robust competition in health care markets, this chapter is also intended to ensure material change transactions 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 chapter 70.245 RCW, and gender affirming care.

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

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

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

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

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

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

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

((~~(4)~~)) (5) "Gender affirming care" means a service or product that a health care provider, as defined in RCW 70.02.010, prescribes to an individual to treat any condition related to the individual's gender identity and is prescribed in accordance with generally accepted standards of care. 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.

(6) "Health care revenue" means 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Between the following entities:

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

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

(3) A material change transaction includes proposed changes identified in subsection (2) of this section between ((~~a Washington entity and an out-of-state entity where the out-of-state entity generates ten million dollars or more in health care services revenue from patients residing in Washington state, and the entities are of the types identified in subsection (2) of this section~~)) Washington entities. A material change transaction also includes transactions between Washington entities described in subsection (2)(a) of this section and out-of-state entities if the transaction will impact health care in Washington. Any party to a material change transaction that is licensed or operating in Washington state shall submit a notice as required under this section.

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

(5)(a) In a case of an extraordinary emergency situation that threatens access to health care services and has the potential to immediately harm consumers, the attorney general may allow parties to a transaction to submit notice less than 120 days before the effective date of any transaction.

(b) If the parties to a material change transaction seek to submit notice less than 120 days before the effective date of a transaction, the parties shall provide documentation to the attorney general's office demonstrating the existence of an extraordinary emergency situation, including a complete statement of facts, circumstances, and conditions which demonstrate the extraordinary emergency situation.

(c) No later than 45 days after receiving notice under (b) of this subsection, the attorney general's office must notify the parties whether the material change transaction is subject to emergency review or is subject to preliminary review requiring parties to provide documentation pursuant to RCW 19.390.040. If the material change transaction is accepted for emergency review, the attorney general's office must approve or deny the transaction within 90 days. If the attorney general denies emergency review, the transaction shall be subject to preliminary review.

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

(1) ((~~The~~)) For material change transactions where none of the parties have generated $25,000,000 or more in health care revenue in any of their preceding three fiscal years, or if any of the parties is a federally qualified health center or rural health clinic as those terms are defined by 42 U.S.C. Sec. 1395x(aa), the written notice provided by the parties, as required by RCW 19.390.030, must include:

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

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

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

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

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

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

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

(3)(a) For all material change transactions other than those specified under subsections (1) and (2) of this section, and except for transactions that fall under subsection (4) of this section, the written notice provided by the parties, as required by RCW 19.390.030, must include the following information, unless the attorney general agrees to narrow the scope of information needed relevant to the material change transaction:

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

(ii) Additional documentation established by rule making, including, but not limited to, information about the parties' organizational structure, finances, and the potential impact of the transaction on health care services, patient access and affordability, policies and procedures, community benefit, and staffing.

(b) When documents are readily available from a publicly available source for state or federal agencies, the parties may indicate the public availability to the attorney general with information on how to access the documents rather than providing the documents directly.

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

(b) If the parties to a material change transaction seek expedited review under (a) of this subsection, the parties shall provide documentation to the attorney general's office demonstrating the existence of an extraordinary emergency situation including a complete statement of facts, circumstances, and conditions which demonstrate the extraordinary emergency situation.

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

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

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

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

(6) The attorney general may request and the parties shall provide additional information that is necessary to implement the goals of this chapter.

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

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

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

NEW SECTION. **Sec.**  (1) The attorney general shall determine if the notice required under RCW 19.390.030 and 19.390.040 is complete for the purposes of review. If the attorney general determines that a notice is incomplete, it shall notify the parties within 15 working days after the date the notice was received stating the reasons for its determination of incompleteness.

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

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

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

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

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

NEW SECTION. **Sec.**  (1) No material change transaction under this chapter may take place if it would detrimentally affect the continued existence of accessible, affordable health care in Washington state. To this end the material change transaction must result in the affected communities having the same or greater access to quality, affordable care, including but not limited to emergency care, primary care, reproductive health care, gender affirming care, and end-of-life care including services provided in accordance with chapter 70.245 RCW, and essential health benefit categories as that term is defined in RCW 48.43.005.

(2) In determining whether a material change transaction fulfills the requirements of subsection (1) of this section, the attorney general shall take into consideration whether the material change transaction:

(a) Will reduce or maintain the growth in patient and health plan sponsor costs;

(b) Will increase or maintain access to services, especially in medically underserved areas;

(c) Will rectify historical and contemporary factors contributing to a lack of health equities or access to services;

(d) Will improve or maintain health outcomes for residents of this state;

(e) Will lower wages, reduce jobs, slow wage growth, or worsen benefits or other working conditions. However, nothing in this section prevents a health entity from revoking privileges due to quality of care or patient safety concerns;

(f) Will result in a reduction in staffing capacity for the provision of medically necessary services to the extent such reductions would diminish patients' access to quality care;

(g) Is necessary to maintain the solvency of an entity involved in the transaction. However, the attorney general may not determine that a material change transaction is necessary to maintain the solvency of an entity without first having an independent contractor prepare a financial assessment of the entity. Such assessment must include possible alternatives to the material change transaction and the likely impact of those alternatives, if implemented, on the entity's solvency.

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

NEW SECTION. **Sec.**  (1) For all material change transactions included under RCW 19.390.040(3), the attorney general shall conduct a preliminary review of the completed notice to determine if the material change transaction will fulfill the requirements under section 9 of this act. The review must include, but is not limited to, an analysis of the information and documentation provided under RCW 19.390.040 and one public hearing.

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

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

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

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

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

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

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

(2) Within 30 days after a final decision of the attorney general either denying or approving with modifications a material change transaction, any party to the material change transaction may appeal the decision to the superior court for review. The court may grant relief from the attorney general's final decision, but only upon a basis for relief recognized in RCW 34.05.570(3). An appeal to the superior court shall be to the superior court of a county in which the material change transaction is to have occurred or to the superior court for Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the attorney general or their appointed designee. The attorney general shall, in all cases within 15 days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. The attorney general shall serve upon the appealing party and file with the clerk of the court within 30 days of the filing of the appeal, a certified copy of the attorney general's official record which shall include the final decision, and all accompanying documents, subject to the same confidentiality protections provided to such documents in the underlying act. These shall become the record in the case subject to leave of the court. The superior court shall review the final decision of the attorney general, subject to the statutory requirements of the underlying act and chapter 34.05 RCW.

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

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

NEW SECTION. **Sec.**  During the course of the preliminary review of notices of material change transactions under RCW 19.390.040(3), as provided under section 10 of this act, the attorney general shall conduct one or more in person or remote public hearings. If a public hearing is conducted in person, it must be in a county where one of the communities impacted by the material change transaction is located and the attorney general must allow individuals to participate remotely in the hearing. If a material change transaction undergoes the comprehensive review process as provided for under sections 11, 13, and 14 of this act, the attorney general may conduct additional public hearings. At the hearings, anyone may file written comments and exhibits or appear and make a statement.

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

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

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

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

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

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

(iv) On the website available to the employees of any hospital, hospital system, provider organization, and other health care facility that is the subject of the material change transaction. The notice of the time and place of the meeting must be provided in English and in the languages spoken by more than 10 percent of the population in the county or counties in which the hospitals, hospital systems, provider organizations, or other health care facilities that are the subject of the material change transaction are located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Demographics of the parties' service areas;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) If the parties or successor persons do not enter into compliance with the attorney general's order, the attorney general may impose civil fines of no less than $10,000 per day until the parties or successor persons comply with the order, and may take legal action under section 17 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Improvement or reductions in morbidity;

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

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

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

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

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

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

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

(i) Improvement or reductions in morbidity;

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

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

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

(2) This section expires July 1, 2026.

NEW SECTION. **Sec.**  This act does not apply to any pending material change transaction with a letter of intent signed in 2023.

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

NEW SECTION. **Sec.**  The attorney general may take the necessary steps to ensure that this act is implemented on July 1, 2025.

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

NEW SECTION. **Sec.**  This act takes effect July 1, 2025.

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

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 include transactions between qualifying Washington entities and out-of-state entities if such transaction will impact health care in Washington.

• Authorizes the Attorney General to allow parties to submit transaction notices less than 120 days prior to the effective date of a transaction in the event of an extraordinary emergency situation that threatens access to health care services and has the potential to immediately harm consumers, subject to the requirement that the parties provide documentation demonstrating the existence of the extraordinary emergency situation. Requires that, no later than 45 days after receiving notice of an extraordinary emergency situation, the Attorney General must notify the parties whether the transaction is subject to emergency review or preliminary review. If the transaction is accepted for emergency review, the Attorney General must approve or deny the transaction within 90 days. If emergency review is denied, the transaction must be subject to preliminary review.

• Increases party revenue threshold from $10,000,000 to $25,000,000 for basic notice requirements and removes the basic notice qualification that parties may not be hospitals, hospital systems, or affiliates of such entities. Adds an alternative ground for basic notice requirements if any party is a federally qualified health center or rural health clinic.

• Modifies enhanced notice requirements by authorizing the Attorney General to narrow the scope of required information, providing that additional document requirements will be established by rule making, striking all listed additional documents required for enhanced notice, and providing parties may direct the Attorney General to publicly available documents instead of providing such documents to the Attorney General.

• Provides parties must provide additional information in response to Attorney General requests.

• Maintains restriction that a material change transaction may not take place if it would detrimentally affect the continued existence of accessible, affordable health care in Washington state, while striking the requirement that such an effect may not occur for at least 10 years after the transaction occurs.

• Adds a requirement that material change transactions must result in the affected communities having the same or greater access to essential health benefit categories as that term is defined in RCW 48.43.005.

• Modifies the process for the Attorney General to determine if a transaction meets all requirements by directing the Attorney General to consider whether the transaction: (1) Will reduce or maintain the growth in patient and health plan sponsor costs; (2) will increase or maintain access to services; (3) will rectify historical and contemporary factors contributing to a lack of health equities or access to services; (4) will improve or maintain health outcomes for residents of this state; (5) will lower wages, reduce jobs, slow wage growth, or worsen benefits or other working conditions; (6) will result in a reduction in staffing capacity for the provision of medically necessary services to the extent such reductions would diminish patients' access to quality care; and (7) is necessary to maintain the solvency of an entity involved in the transaction.

• Provides health entities are not restricted from revoking privileges due to quality of care or patient safety concerns, and that the Attorney General may not determine a transaction is necessary to maintain solvency without first having an independent contractor prepare a financial assessment of the entity, including alternatives to the transaction.

• Strikes sections listing the above factors for Attorney General consideration as independent requirements for, or restrictions on, material change transactions.

• Strikes the provision that material change transactions must not result in the revocation of hospital privileges and must establish sufficient safeguards to maintain appropriate capacity for health provider education.

• Provides that in any appeal to the superior court of a final decision by the Attorney General to deny a transaction or approve it with modifications, the court may grant relief from the attorney general's final decision, but only upon a basis for relief recognized in the section of the Administrative Procedures Act that governs review of agency orders in adjudicative proceedings.

• Provides public hearings may be conducted in person or remote and specifies that only in person public hearings must be held in a county where one of the communities impacted by the material change transaction is located. Modifies the requirement for posting notice of public hearings by requiring notice be provided in English and in the languages spoken by more than 10 percent of the population in the county or counties in which the entities that are the subject of the transaction are located.

• Strikes the provision authorizing the Attorney General to subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of a public hearing and at any time prior to making a decision on the material change transaction.

• Modifies posttransaction reporting requirements by requiring biennial reports from parties in place of annual reports, while maintaining the 10-year reporting period.

• 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.

• Requires confidential documents be maintained as such by entities providing financial assessments and health equity assessments, while striking the requirement that public redacted versions of documents be provided to entities providing financial assessments and health equity assessments.

• Adds an exception to the Act's requirements for pending material change transactions with a letter of intent signed in 2023.

• Authorizes the Attorney General to take necessary steps to ensure the act is implemented on its effective date.

• Delays the Act's effective date from January 1, 2025, to July 1, 2025.