**5241 AMS MULL S4898.1 - NOT FOR FLOOR USE**

**SB 5241** - S AMD **578**

By Senator Mullet

**OUT OF ORDER 02/08/2024**

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

(3) "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.

(4) "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.

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

((~~(6)~~)) (7) "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)~~)) (8) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW.

((~~(8)~~)) (9) "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)~~)) (10) "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)~~)) (11) "Person" means, where applicable, natural persons, corporations, trusts, and partnerships.

((~~(11)~~)) (12) "Provider" means a natural person who practices a profession identified in RCW 18.130.040.

((~~(12)~~)) (13) "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)~~)) (14) "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.

(15) "Services that are the subject of a voter-approved initiative" means reproductive services that are the subject of the reproductive privacy act established pursuant to Initiative Measure No. 120, approved November 5, 1991, or death with dignity services that are the subject of the Washington death with dignity act established pursuant to Initiative Measure No. 1000, approved November 4, 2008.

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

(17) "Transaction that may limit service" means a business transaction between two or more parties, whether by acquisition, contracting affiliation, or merger that will, foreseeably as of the time of the transaction, directly cause a meaningful reduction to access in Washington state to the provision of gender-affirming care or to the provision of services that are the subject of a voter-approved initiative.

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

(1) Not less than ((~~sixty~~)) 60 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 two or more entities of the following types~~)) involving at least one of the following entities:

(a) Hospitals;

(b) Hospital systems; or

(c) Provider organizations.

(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~~)) $10,000,000 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. 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 only qualifies as a material change transaction if the hospitals, hospital systems, or provider organizations did not previously have common ownership or a contracting affiliation.

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

(1) 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;

(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; and

(e) If applicable, a statement that explains the effect the material change transaction will foreseeably, as of the time of the transaction, have on access in Washington state to the provision of gender-affirming care or access to the provision of services that are the subject of a voter-approved initiative, and the basis for this explanation.

(2) 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 10 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, 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.

NEW SECTION. **Sec.**  (1) The attorney general shall review the statement provided under RCW 19.390.040(1)(e) to determine whether the material change transaction meets the definition of a transaction that may limit service.

(2) A health care entity may not engage in a transaction that may limit service without first receiving the approval of the attorney general under this section.

(3)(a) If the attorney general determines the material change transaction meets the definition of a transaction that may limit service, the attorney general shall notify the parties within 10 working days after the date of receiving a completed notice and require a health care entity that is a party to the transaction that may limit service complete an application on a form developed by the attorney general that includes the following information:

(i) The names of the parties;

(ii) A brief description of the transaction that may limit service, including the geographic areas impacted; and

(iii) The health care entity's proposed plan to address the reduction to access to the provision of gender-affirming health care or services that are the subject of a voter-approved initiative.

(b) The materials submitted pursuant to this subsection are considered public records for purposes of chapter 42.56 RCW.

(4)(a) The attorney general, in consultation with the department of health, shall determine if the application required under subsection (3) of this section is complete for the purposes of review. If the attorney general determines that an application is incomplete, it shall notify the parties within five working days after the date the application was received stating the reasons for its determination of incompleteness.

(b) Completed applications shall be deemed received on the date when all the information required under subsection (3) of this section has been submitted to the attorney general's office.

(c) For all transactions that may limit service, the attorney general shall, within five working days after receipt of an application, include information about the statement required under RCW 19.390.040(1)(e) and the application submitted under subsection (3) of this section 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 fax any person who has requested notice of the filing of such notices. The information must state that a notice of a material change transaction has been received, state the names of the parties to the transaction that may limit service, describe the contents of the written notice and application under subsection (3) of this section in clear and simple terms, and state the date and process by which a person may submit written comments to the attorney general's office.

(5) During the course of review under this chapter, the attorney general may conduct up to two public hearings, at least one of which must be in the geographic service area impacted by the transaction that may limit service. At a hearing, anyone may file written comments and exhibits or appear and make a statement. The attorney general may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the transaction. A hearing must be held not later than 30 days after receipt of the completed materials submitted pursuant to this subsection. All hearings must be completed within 60 days. At least 10 days' public notice must be given before the holding of a hearing.

(6) The attorney general shall provide the department of health with a copy of materials received pursuant to subsection (3) of this section upon receiving it. The department of health shall review the materials, and within 30 days of the first public hearing held under subsection (5) of this section shall provide a written opinion to the attorney general as to whether or not the materials submitted meets the requirements for approval under subsection (7) of this section.

(7)(a) Within 30 days after receiving the written opinion of the department of health under subsection (6) of this section, the attorney general shall:

(i) Approve the transaction, with or without any specific modifications or conditions; or

(ii) Disapprove the transaction.

(b) The attorney general shall only approve a transaction that may limit service if it is determined the transaction will not meaningfully negatively affect access to gender-affirming care or services that are the subject of a voter-approved initiative, or the health care entity has taken the proper steps to address such reduction in access to these services such that the transaction that may limit service will not meaningfully affect the continued existence of accessible service. To this end, the department of health may not issue an opinion that recommends approval by the attorney general of the transaction unless, at a minimum, it determines that:

(i) Access to gender-affirming care or services that are the subject of a voter-approved initiative will not be meaningfully affected; or

(ii) Sufficient safeguards are included to assure continued access to services within the health care entity's service area and that alternative sources of care are available in the community.

(c) The attorney general may not make its decision subject to any condition not directly related to the requirements in this subsection, and any condition or modification, including the cost associated with such condition or modification, must be reasonable and bear a direct and rational relationship to the application under review. The decision must also take into account whether disapproval of a plan may lead to health care service disruption.

(8) A health care entity engaged in a transaction subject to this section and affected by a final decision of the attorney general has the right to an adjudicative proceeding under chapter 34.05 RCW. The opinion of the department of health provided under subsection (6) of this section may not constitute a final decision for purposes of review.

(9) The attorney general or the department of health may extend, by not more than 30 days, any deadline established under this chapter one time during consideration of any application, for good cause.

(10) The attorney general may require periodic reports from the parties identified in the approved application where specific modifications or conditions were imposed to ensure compliance with the approved application made for a period of not more than three years.

(11) The attorney general shall charge fees sufficient to cover the costs of implementing this section. The fees must include the cost of the department of health's review and opinion under subsection (6) of this section. The attorney general shall transfer this portion of the fee, upon receipt, to the department of health.

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

((~~Information~~)) (1) Except as provided in subsection (2) of this section, information submitted to the attorney general pursuant to this chapter 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) All materials provided pursuant to section 8 of this act and all materials provided during public hearings held pursuant to section 8 of this act are considered public records for purposes of chapter 42.56 RCW.

(3) 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.**  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 involving health carriers as defined in RCW 48.43.005, private entities, 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 may be known and cited as the keep our care act.

NEW SECTION. **Sec.**  Sections 7, 8, 10, 11, and 13 of this act are each added to chapter 19.390 RCW.

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

**SB 5241** - S AMD **578**

By Senator Mullet

**OUT OF ORDER 02/08/2024**

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

EFFECT: (1) Adds definitions of "transaction that may limit service" and "services that are the subject of a voter-approved initiative."

(2) Broadens material change transactions to include transactions in which one party is a hospital, health system, or provider group.

(3) Requires pretransaction notice of a material change transaction to be provided to the attorney general 60 days prior to the effective date of the transaction.

(4) Requires written notice of a material change transaction to include, if applicable, a statement that explains the effect the material change transaction will foreseeably, as of the time of the transaction, have on access in Washington State to the provision of gender-affirming care or access to the provision of services that are the subject of a voter-approved initiative, and the basis for this explanation.

(5) Establishes a requirement and process for attorney general approval of transactions that may limit service.

(6) The attorney general must review material change transactions notices to determine if the material change transaction is also a transaction that may limit service.

(7) A party to a transaction that may limit service must submit an application to the attorney general, including a plan to address reduction in access to the provision of gender-affirming care or services that are the subject of a voter-approved initiative (the Reproductive Privacy Act and the Death with Dignity Act). The party must receive approval from the attorney general before engaging in a transaction that may limit service.

(8) The attorney general must provide public notice, an opportunity for public comment, and hold up to two public hearings, at least one of which must be in the geographic service area impacted by the transaction that may limit service.

(9) The department of health must provide a written opinion regarding the transaction that may limit service.

(10) The attorney general must approve (with or without modifications or conditions) or deny a party's application based on whether the transaction that may limit service will or will not meaningfully affect access or the party to the transaction will provide sufficient safeguards to assure continued access.

(11) Information submitted in the application related to a transaction that may limit service and materials provided during public hearings are subject to the public records act.

(12) Requires three years of periodic reports to the attorney general from parties to an approved application for a transaction that may limit service.

(13) Removes new requirements relating to hospitals and health systems, including requirements to submit additional documentation and explanations relating to all material change transactions, elements of attorney general process and review, and 10 years of monitoring.