

SENATE BILL REPORT

ESB 5241

As Passed Senate, February 8, 2024

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, Kuderer, Trudeau, Pedersen, Shewmake, Hunt, Saldaña, Kauffman, Valdez, Lovick, Robinson, Lovelett, Liias, Frame, Nguyen, Stanford and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/24/23, 1/26/23, 2/16/23 [DP-WM, DNP].
Ways & Means: 2/21/23, 2/23/23 [w/oRec, DNP, w/oRec].

Floor Activity: Passed Senate: 2/8/24, 28-21.

Brief Summary of Engrossed 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

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.

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

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L..

Staff: William Bridges (786-7312)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall, Torres and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers, Assistant Ranking Member, Capital.

Staff: Samuel Brown (786-7470)

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 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 Engrossed 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 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.

A process is created for the protection of documents designated as confidential.

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 2026 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: Available.

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

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony (Law & Justice) (January 24, 2023) (Regular Session 2023): PRO: Washington State allows large healthcare corporations to dictate whether patients have access to care. This bill will create oversight and accountability for mergers that will protect access to reproductive health care. It allows people to keep themselves healthy and plan for themselves and their futures. Rights are not rights without access. This will protect patients and providers by ensuring no one loses access to healthcare because of a merger. Communities need the ability to live without fear about access to healthcare. It is crucial that a public assessment is done to understand the impact of a merger on access to care, equity, and the community. This bill would create a public review process and empower the Attorney General's Office to thoroughly evaluate conflicts of interest and healthcare transactions and the impact of industry consolidation on access to local care.

CON: The Attorney General's Office already provides robust oversight. One size of oversight does not fit all transactions. When providers are not financially viable, they must partner or close. A viable operating margin is 3-5 percent which is hard to maintain under the state's Medicaid program where providers are paid 38 percent less than cost. When providers close, the community loses access to care and people lose jobs. Partnering preserves access to care and stabilizes employment for thousands of team members. In rural communities this bill will reduce or eliminate access to services.

Persons Testifying (Law & Justice): PRO: Senator Emily Randall, Prime Sponsor; Haylee Anderson, WA State Attorney General's Office; Lili Navarrete, Planned Parenthood of Greater Washington and Idaho; Ian Mikusko, Washington State Nurses Association; Kirk Normand, Washington State Council of Fire Fighters; Dr. Geetha Fink; Leah Rutman, ACLU of Washington.

CON: Bill Robertson, MultiCare Health System; Eric Moll, Mason Health.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Law & Justice) (January 26, 2023) (Regular Session 2023): PRO: Remote corporate ownership can be destructive in healthcare delivery. Profit centered business practices degrade the level of care. This is essential to provide good quality healthcare to people in Washington. Everyone in Washington deserves access to affordable healthcare. Half a million Washington residents didn't receive healthcare due to the high costs. This bill provides essential protection for citizens. Patients should have access to affordable care.

CON: This bill is focused on the past. Requirements will impose huge costs. Systems will be less likely to help failing hospitals and providers. It is generally left up to hospitals to choose what services they provide. This bill will change that, especially for hospitals most in need of restructuring services. The attorney general is a law enforcement officer, not a regulator. Accessible quality affordable equitable healthcare is needed but this bill will not achieve these goals. Partnerships keep hospitals independent and allow them to serve locally. This bill would make it difficult to establish partnerships to help the community. Section 9 of the bill is so broad and undefined it will be unpredictable.

Persons Testifying (Law & Justice): PRO: Michael White, King County; Dr. Kjersten Gmeiner; Sami Alloy, Pro-Choice Washington; Sam Hatzenbeler, Economic Opportunity Institute; Joelle Craft, Washington CAN; Joselito Lopez, Washington CAN.

CON: Sean Graham, Washington State Medical Association; Douglas Ross; David Hargreaves, Yakima Valley Memorial Hospital; Jon Duarte, Overlake Medical Center & Clinics; Zosia Stanley, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Ways & Means) (Regular Session 2023): PRO: All patients suffer under unrestricted hospital mergers. Health entity consolidations decrease services and quality of care while increasing prices. Health system mergers lead to restricted access to abortion care, contraception, medical aid in dying, and gender affirming care. Rural hospitals experience a significant reduction in services following health system consolidations. System mergers burden independent clinics which lack the capacity to maintain equitable healthcare. This bill does not prevent health entity consolidations but

creates an oversight process to ensure the consolidations improve rather than harm communities' access to affordable, quality care. The Office of Attorney General (AGO) currently reviews health entity mergers and acquisitions for antitrust violations. There is a need for review of these transactions on the impact to access to services.

CON: Accessible, high quality, affordable and equitably delivered healthcare is important, but this bill does not support those goals. This bill is a blunt instrument that will stifle the ability of vulnerable hospitals and providers to find partners and keep providing care critical to their communities. This bill removes the relief valve practices have when there are financial issues. As more independent providers are lost, competition will disappear, access to care will be reduced and healthcare costs will rise. Rural hospitals must be able to pursue partnerships that improve the health and wellness of the communities they serve. This bill assigns a huge amount of unspecified regulatory power to the AGO to predict the outcomes and effects of transactions. The attorney general is not a regulator.

OTHER: Five years ago, my oldest child was hospitalized and diagnosed with schizophrenia. In 2021, we found a long-term group living program with services designed to treat their condition. After Cigna stopped covering costs, we spent \$150,000 of our life savings before having to remove them from the program. They were arrested and jailed and are now living on the streets. We are living the nightmare we spent our lifetimes to avoid. Please pass this bill out of committee.

Persons Testifying (Ways & Means): PRO: Joelle Craft; Haylee Anderson, WA State Attorney General's Office; M. Lorena Gonzalez, ACLU of Washington; Nicole Kern, Planned Parenthood Alliance Advocates; Sam Hatzenbeler, Economic Opportunity Institute; Dr. Kjersten Gmeiner; Anya Fogel; Lisa Boulware; Alex Cole; John Godfrey, WashingtonCAN.

CON: Sean Graham, WA State Medical Association (WSMA); Florence Chang, MultiCare Health System; David Hargreaves, Yakima Valley Memorial Hospital; Jonathan Duarte, Overlake Hospital Medical Center; Jennifer Burkhardt, Summit Pacific Medical Center; Zosia Stanley, Washington State Hospital Association; Vicki Christophersen, Washington Independent Physician Practice Association; Brooke Davies, MEDNAX Pediatrix.

OTHER: Dorothy Roca.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.