
Civil Rights & Judiciary Committee

HB 1881

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

Sponsors: Representatives Taylor, Macri, Berry, Wylie, Ryu, Parshley, Simmons, Farivar, Scott, Stonier, Fitzgibbon, Ormsby, Hill and Pollet.

Brief Summary of Bill

- Requires filing of notice at least 90 days before a qualifying material change transaction among health care market participants, extends material change transactions to cover additional parties, and requires notices to include additional information.
- Requires the Attorney General to determine whether a specific transaction is a material change transaction, grant or deny applications for emergency notice and review, determine if a notice filing is complete, and publish notice information.
- Prohibits material change transactions that would detrimentally affect accessible, affordable health care in Washington for at least five years, and requires material change transactions to result in affected communities having the same or greater access to quality affordable care, including emergency care, primary care, specialty care, behavioral health care, reproductive health care, gender-affirming care, end-of-life care, and essential health benefit categories.
- Requires the Health Care Authority, for certain material change transactions, to review notice information; hold at least one public hearing; conduct an Access, Affordability, Quality, and Equity Review; and issue a report and recommendation to the Attorney General.
- Requires the Attorney General, for certain material change transactions,

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to approve, approve with conditions or modifications, or reject the transaction, subject to judicial review; monitor compliance once a transaction is complete; and investigate post-transaction violations and issue orders to bring parties or successors into compliance.

- Allows parties to designate certain documents as confidential, requires parties to provide redacted and non-redacted versions of such documents, and requires the Health Care Authority and Attorney General to maintain confidential documents as confidential.

Hearing Date: 2/11/25

Staff: John Burzynski (786-7133).

Background:

The Hart-Scott-Rodino Antitrust Improvements Act.

The federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires companies intending to engage in certain mergers or acquisitions to provide advance notification to the United States Federal Trade Commission and the Department of Justice before consummating these transactions. The reporting requirement applies to proposed transactions that satisfy certain size and other criteria, and each party to a transaction that meets the criteria must file notifications and wait a specified period of time, typically 30 days, before consummating the transaction. The waiting period enables the enforcement agencies to review whether the effect of the transaction will substantially lessen competition and, if necessary, to negotiate changes to the transaction or seek an injunction to stop the transaction.

Washington's Consumer Protection Act.

The Washington Consumer Protection Act (CPA) prohibits various anticompetitive business practices, including unfair methods of competition; unfair or deceptive acts or practices in trade or commerce; the formation of contracts, combinations, or conspiracies in restraint of trade or commerce; monopolization of any part of trade or commerce; and acquisition of stock or assets where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

The Antitrust Division of the Office of the Attorney General investigates and prosecutes violations of the CPA's antitrust provisions and federal antitrust laws. The Attorney General may bring an action in the name of the state or as *parens patriae* on behalf of persons residing in the state to restrain and prevent CPA violations. In addition, a private party may bring an action to enforce the CPA.

Washington's Health Care Material Change Notice Requirements.

Washington requires health care market participants to provide notice of certain transactions to

the Attorney General. In connection with this requirement, the Legislature has stated its intent to ensure competition is beneficial to consumers in health care markets and noted the required notice provides the Attorney General with the information necessary to determine whether an investigation under the CPA is warranted for potential anticompetitive conduct and consumer harm.

Notice of Material Change Requirements. Not less than 60 days prior to the effective date of any transaction that results in a material change, the parties to the transaction must submit written notice to the Attorney General. Qualifying material changes include any merger, acquisition, or contracting affiliation between two or more hospitals, hospital systems, or provider organizations.

Qualifying transactions with out-of-state entities are covered by the 60-day notice requirement when the out-of-state entity generates \$10 million or more in health care services revenue from patients residing in Washington, and the entities are otherwise subject to the notice requirement.

A merger, acquisition, or contracting affiliation between two or more hospitals, hospital systems, or provider organizations only qualifies as a material change if the covered entities did not previously have common ownership or a contracting affiliation.

The required notice must include: (1) the names of the parties and their current business addresses; (2) identification of all locations where health care services are currently provided by each party; (3) a brief description of the nature and purpose of the proposed material change; and (4) the anticipated effective date of the proposed material change. A party may voluntarily supply the Attorney General with additional information.

Requests for 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.

Federal Notice Requirements. Health care providers and provider organizations conducting business in Washington that file a premerger notification with the Federal Trade Commission or the United States Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act must provide a copy of the filing to the Attorney General. Providing a copy of the federal filing to the Attorney General satisfies the notice requirement for material changes.

Use of Information. Information provided to the Attorney General must be maintained in the same manner and under the same protections as required by the provisions of the CPA that restrict the use of information 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.

Penalty for Noncompliance. A person who fails to comply with these requirements is subject to a civil penalty of up to \$200 for each day of noncompliance.

Definitions.

"Contracting affiliation" is defined as 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.

"Health care services" is defined as 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 revenue" is defined as the total revenue received for health care services in the previous twelve months.

Summary of Bill:

Intent.

The chapter of state law governing material changes in health care markets is intended to ensure health care be affordable and accessible; and to ensure material change transactions result in affected communities having the same or greater access to quality, affordable care including, but not limited to, emergency care, primary care, reproductive care, end-of-life care, and gender-affirming care; in addition to ensuring vigorous and robust competition in health care markets across Washington.

Notwithstanding language regarding the Health Care Authority's and the Attorney General's authority to determine the effect of a material change transaction on access to care, nothing in the chapter of state law governing health care material change transactions 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 the CPA, or to change or affect in any way any substantive law regarding the antitrust review of a material change transaction.

Notice Filing Requirements.

Not less than 90 days prior to the effective date of any transaction that results in a material change transaction, the parties to the transaction must submit written notice to both the Health Care Authority and the Attorney General.

Material change transactions are extended to include any merger, acquisition, or contracting affiliation between any hospital, hospital system, or provider organization, and either: (1) a carrier or insurance holding company system; or (2) 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.

Material change transactions include all qualifying transactions between Washington entities and out-of-state entities, regardless of the share of revenue the out-of-state entity derives from patients residing in Washington.

The Attorney General determines whether a specific transaction qualifies as a material change transaction.

Emergency Review.

In 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 90 days before the effective date of the transaction. Parties seeking to file notice on an emergency basis must provide documentation to the Attorney General and the Health Care Authority demonstrating the existence of an extraordinary emergency situation. Within 45 days, the Attorney General must notify the parties and the Health Care Authority whether the transaction is subject to emergency review by the Attorney General or preliminary review by the Health Care Authority. If the transaction is accepted for emergency review, the Attorney General must approve, approve with conditions or modifications, or deny the transaction within 90 days.

Section 5 Notice Content Requirements.

Parties to a qualifying material change transaction must include the following information in their notice to the Health Care Authority and the Attorney General: (1) the names of the parties and their current business addresses; (2) identification of all locations where health care services are currently provided by each party; (3) a brief description of the nature and purpose of the proposed material change transaction; and (4) the anticipated effective date of the proposed material change transaction. For certain parties, additional information is required.

Section 5(1) Transactions.

This category applies to transactions where: (1) no parties are hospitals or hospital systems, and no parties have generated \$10 million or more in health care services revenue in any of their preceding three fiscal years; or (2) any of the parties are federally qualified health centers, rural health clinics, or safety net nonprofit family planning providers specializing in the provision of the full range of reproductive health options.

Parties in this category are not required to provide any additional information in their notice beyond the basic four notice requirements noted above (party names and addresses; service locations; nature and purpose of transaction; and anticipated effective date of transaction).

Section 5(2) Transactions.

This category applies to transactions where: (1) no parties are hospitals or hospital systems; (2) all parties serve predominantly low-income medically underserved individuals; (3) all parties had for each of their preceding three fiscal years at least half of their total patient revenue come from

Medicaid or local, state, or federal funding to provide care to uninsured or underinsured individuals; and (4) the transaction would not result in materially lowering the overall level of care the successors provide to individuals on Medicaid or who are uninsured or underinsured, or cause, for the successors, 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.

Parties in this category are required to provide the Health Care Authority and the Attorney General with: (1) the basic four notice requirements noted above (party names and addresses; service locations; nature and purpose of transaction; and anticipated effective date of transaction); (2) documentation demonstrating all parties to the transaction, for each of their preceding three fiscal years, had at least half of their total patient revenue come from Medicaid or local, state, or federal funding to provide care to uninsured or underinsured individuals; and (3) a statement describing how the transaction will result in the successors complying with the requirements for this category.

Section 5(3) Transactions.

This category applies to all material change transactions that involve parties outside the scope of subsection (1) and (2) transactions, as described above.

Parties in this category are required to provide the Health Care Authority and the Attorney General with: (1) the basic four notice requirements noted above (party names and addresses; service locations; nature and purpose of transaction; and anticipated effective date of transaction); and (2) additional documentation established by rule making by the Health Care Authority 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.

When documents are readily available from a publicly available source for state or federal agencies, the parties may indicate the public availability to the Health Care Authority and the Attorney General with information on how to access the documents rather than providing the documents directly.

In cases of extraordinary emergencies that threaten access to health care services and have the potential to immediately harm consumers, the Attorney General may limit the notice information required for a Section 5(3) transaction for the sole purpose of expediting the review process. Parties seeking expedited review must provide documentation to the Attorney General and the Health Care Authority demonstrating the existence of the emergency situation. The Attorney General must respond within 10 days to advise the parties and the Health Care Authority whether any information normally required may be waived.

Notice Completion and Requests for Additional Information.

The Attorney General must determine if a required material change transaction notice is complete for the purpose of review. If incomplete, the Attorney General must notify the

parties within 30 days of receiving the notice and state the reasons the notice was determined to be incomplete.

The Attorney General and Health Care Authority may request additional information. For the purpose of conducting an investigation under the CPA or federal antitrust laws, the Attorney General must make any requests for additional information from the reporting parties within 30 days of notice being received.

Notice Disclosure.

For Section 5(3) transactions, the Attorney General must, within seven days of receipt of completed notice, include information about the notice on the Attorney General's website; and state that notice has been received, the names of the transaction parties, the contents of the notice; and the date and process by which a person may submit written comments to the Attorney General.

Application Fee.

The Attorney General and Health Care Authority must charge an applicant fee to assist in covering implementation costs, and may adopt rules to set applicable fees.

Notice Penalty.

Any person who fails to comply with material change transaction notice requirements is liable to the state for a civil penalty of up to 10 percent of the value of the material change transaction, in the discretion of the Attorney General.

Section 9 Transaction Requirements.

No material change transaction may take place if it would detrimentally affect the continued existence of accessible, affordable health care in Washington for at least five years after the transaction occurs.

The 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, specialty care, behavioral health care, reproductive health care, gender-affirming care, and end-of-life care and essential health benefit categories.

The transaction must also result in at least one of the following: (1) maintaining or reducing the rate of growth in patient and health plan sponsor costs; (2) maintaining or increasing access to services in medically underserved areas; (3) rectifying historical and contemporary factors contributing to a lack of health equities or access to services; or (4) maintaining or improving health outcomes for residents of this state.

The transaction must not result in the revocation of hospital privileges and must establish sufficient safeguards to maintain appropriate capacity for health provider education.

The transaction must not 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.

Health Care Authority Notice Review, Report, and Recommendation.

For Section 5(3) transactions, the Health Care Authority must conduct a preliminary review of the completed notice to determine if the transaction will fulfill all Section 9 transaction requirements. The review must include an analysis of all notice information and documents, as well as a public hearing.

If the Health Care Authority completes its preliminary review and determines the transaction is likely to meet the Section 9 transaction requirements, it may not conduct a comprehensive review. The Health Care Authority must inform the transaction parties whether a comprehensive review is required within 60 days of receiving completed notice. If a comprehensive review is not required, the Health Care Authority must prepare a report and recommendation and provide it to the Attorney General within 10 days of making its determination. The report and recommendation must include a recommendation as to whether the transaction should be approved, approved with conditions or modifications, or rejected, and provide the basis for the recommendation.

For Section 5(3) transactions not limited to preliminary review, the Health Care Authority must review the complete notice; conduct a comprehensive review in collaboration with the Washington Office of the Insurance Commissioner, Washington Health Benefit Exchange, and Washington Department of Health; and prepare a report and recommendation and provide it to the Attorney General within 30 days of making its determination. The report and recommendation must include a recommendation as to whether the transaction should be approved, approved with conditions or modifications, or rejected, and provide the basis for the recommendation.

Health Care Authority Public Hearings.

For Section 5(3) transactions, during the course of review, the Health Care Authority must conduct at least one public hearing. Procedural rules and notice requirements for public hearings are established. Within 15 business days of the last public hearing, the Health Care Authority must compile a summary report of each hearing and post the summary on its website. If, after the initial public hearing, there is any change in the terms of the transaction that materially alters any information the parties provided, the Health Care Authority must conduct an additional public hearing.

Health Care Authority Access, Affordability, Quality, and Equity Review.

For Section 5(3) transactions, during the course of review, the Health Care Authority must conduct an Access, Affordability, Quality, and Equity (AAQE) Review, and prepare a written assessment, which must be included as part of its report and recommendation to the Attorney General. In creating its written AAQE assessment, the Health Care Authority must engage with and provide input in the assessment from public health experts, organizations representing employees of the applicant, health care advocates, and community members who reside in the service areas of the transaction parties.

The AAQE assessment must inform the Health Care Authority and Attorney General whether the parties meet the Section 9 transaction requirements, and must include information covering the transaction's effect on a number of subjects, including access to health services, health disparities, affordability, charity care, community benefit programs, staffing, cost, architectural barriers, quality, competition, workforce patterns, and other subjects detailed in the bill. The assessment must also include a discussion of alternatives to the transaction.

Information contained in the AAQE review must be used by the Attorney General in deciding whether to approve, approve with conditions or modifications, or disapprove the transaction. The AAQE written assessment must be posted on the Health Care Authority's website.

Attorney General Investigatory Powers, Review, and Decision.

The Attorney General is authorized to subpoena additional information and witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for the purpose of a transaction public hearing and any time prior to making a decision regarding a material change transaction.

After reviewing a report and recommendation prepared by the Health Care Authority, the Attorney General must, within 30 days of receiving the report and recommendation: (1) approve the transaction in writing if the Attorney General determines the transaction does not violate Section 9 transaction requirements; (2) impose written conditions or modifications on the transaction to ensure Section 9 transaction requirements are met and that sufficient safeguards are in place to ensure communities have continued or improved access to affordable quality care; or (3) disapprove the transaction in writing with a written justification.

The Attorney General may not disapprove the transaction subject to any condition not directly and rationally related to Section 9 transaction requirements, and any condition or modification must bear a direct and rational relationship to both the notice under review and the Section 9 transaction requirements.

Whenever the Attorney General approves, approves with conditions or modifications, or disapproves a transaction, it must promptly inform the parties and the Health Care Authority of its decision.

Judicial Review.

Within 30 days of the Attorney General making a final decision, either denying or approving a transaction with modifications, any transaction party may appeal the decision to the Superior Court of Thurston County or another county in which the transaction is to have occurred. Procedural rules are established. The court must review the Attorney General's final decision subject to the statutory requirements of the act and the Administrative Procedure Act.

Enforcement and Compliance.

The Secretary of State may not accept any forms or documents in connection with a material

change transaction if the Attorney General has disapproved the transaction or the parties to the transaction have not agreed to conditions or modifications imposed by the Attorney General.

The Attorney General may seek an injunction to prevent a material change transaction that has been disapproved by the Attorney General or that does not incorporate conditions or modifications imposed by the Attorney General.

Once a material change transaction is finalized, the transaction parties must inform the Attorney General. For at least five years, the Attorney General must monitor the parties and their successors for ongoing compliance. The Attorney General may request information and documents and conduct on-site compliance audits at the parties' or successors' expense. The Attorney General may continue monitoring for a period of time beyond five years for good cause.

The Attorney General must require, for five years, annual reports from the transaction parties or successors to ensure compliance.

The Attorney General must regularly provide the opportunity for the public to submit written comments and may engage with the Health Care Authority and contract with experts and consultants.

The Attorney General is entitled to reimbursement from the transaction parties or successors for all actual and direct costs incurred in monitoring ongoing compliance for five years, including contract and administrative costs. The Attorney General may bill the transaction parties or successors, who must promptly pay, and if they fail to pay within 30 days the Attorney General may assess a civil fine of five percent of the billed amount for each day of nonpayment.

If the Attorney General has reason to believe the transaction parties or successors no longer satisfy the Section 9 transaction requirements or are not complying with conditions or modifications imposed on the transaction, the Attorney General must notify the Health Care Authority and conduct an investigation. The Attorney General must provide public notice of the investigation, obtain input from community members impacted by the transaction, and publish a report of its findings.

If the Attorney General completes an investigation and determines the transaction parties or successors no longer satisfy the Section 9 transaction requirements, or are not complying with any conditions or modifications imposed on the transaction, the Attorney General must notify the Health Care Authority and issue an order directing the parties or successors to come into compliance and provide a timeline for doing so. If the parties or successors do not enter into compliance, the Attorney General must notify the Health Care Authority and may assess a civil fine of up to one percent of the total value of the transaction for each day of noncompliance, and may take legal action. The cost of the investigation and any on-site reviews will be borne by the transaction parties or successors.

For Section 5(2) transactions, the Attorney General, in consultation with provider organizations, must develop a simple form that the transaction parties or successors will submit yearly for five years to demonstrate compliance with level-of-care and percentage-of-revenue requirements.

The Attorney General is authorized to ensure compliance with commitments that inure to the public interest and may take legal action to enforce the chapter of state law governing material change transactions, any conditions or modifications imposed on a transaction, and orders issued by the Attorney General. The Attorney General may obtain restitution, injunctive relief, civil penalties, disgorgement of profits, attorneys' fees, and such other relief a court deems necessary to ensure compliance.

Confidentiality and Public Records.

Information submitted to the Attorney General for the purpose of conducting an antitrust investigation under state or federal law must be maintained and used in the same manner and under the same protections as provided in the section of state law governing civil investigation demands.

Materials provided in response to notice requirements for Section 5(3) transactions, and all materials provided during public hearings, are considered public records for the purpose of the Public Records Act.

Transaction parties may designate portions of documents provided in response to notice requirements for Section 5(3) transactions and other documents submitted as confidential if the information is sensitive financial, commercial, or proprietary information, or is protected from disclosure under state or federal law. For such documents, the applicant must provide both an unredacted confidential version and a redacted public version to the Health Care Authority and the Attorney General. The Attorney General must make the public versions of the documents available to the public. An applicant claiming confidentiality in respect to documents must also provide the Health Care Authority and the Attorney General with a redaction log. Confidential materials must be maintained as confidential and are not subject to disclosure under the Public Records Act.

Defined Terms.

The definition of "contracting affiliation" is modified to exclude arrangements where at least one entity in the arrangement is owned or operated by a state entity.

"Gender-affirming care" is defined as a service or product that a health care provider 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 state law and the federal Mental Health Parity and Addiction Equity Act of 2008 and the federal Patient Protection and Affordable Care Act of 2010 and implementing regulations in effect as of January 1, 2025. "Gender-affirming care" can be prescribed to two spirit, transgender, nonbinary, intersex, and other gender-diverse individuals.

The definition of "health care services" is modified to only cover services relating to the prevention, cure, or treatment of illness, injury, or disease in humans. "Health care services" may be provided virtually, on-demand, or in brick and mortar settings.

The definition of "health care services revenue" is modified to mean 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.

"Reproductive health care" is defined as any medical services or treatments, including but not limited to 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.

"Successor persons" is defined as persons formed by, resulting from, or surviving any material change transaction under the chapter of state law governing material change transactions.

Miscellaneous Provisions.

No provision derogates from the common law or statutory authority of the Attorney General.

The Attorney General and Health Care Authority may adopt rules necessary to implement the chapter of state law governing material change transactions, including creation of an applicant fee structure, and may contract with and provide reasonable reimbursement to qualified persons to assist in determining the compliance of transaction parties or successors.

This act does not apply to any pending material change transaction with a letter of intent signed before the effective date of the act.

Appropriation: None.

Fiscal Note: Requested on February 7, 2025.

Effective Date: The bill takes effect on January 1, 2026.