

ESB 5241 - H COMM AMD
By Committee on Appropriations

NOT CONSIDERED 03/07/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that:

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

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

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

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

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

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

1 **Sec. 2.** RCW 19.390.010 and 2019 c 267 s 1 are each amended to
2 read as follows:

3 (1) It is the intent of the legislature to ensure that
4 competition beneficial to consumers in health care markets across
5 Washington remains vigorous and robust and that health care be
6 affordable and accessible. The legislature supports ~~((that intent))~~
7 these intents through this chapter, which provides the attorney
8 general with notice of all material health care transactions in this
9 state so that the attorney general has the information necessary to
10 determine whether an investigation under the consumer protection act
11 is warranted for potential anticompetitive conduct and consumer harm.
12 This chapter is intended to supplement the federal Hart-Scott-Rodino
13 antitrust improvements act, Title 15 U.S.C. Sec. 18a, by requiring
14 notice of transactions not reportable under Hart-Scott-Rodino
15 reporting thresholds and by providing the attorney general with a
16 copy of any filings made pursuant to the Hart-Scott-Rodino act. In
17 addition to ensuring vigorous and robust competition in health care
18 markets, this chapter is also intended to ensure material change
19 transactions result in the affected communities having the same or
20 greater access to quality, affordable care, including emergency care,
21 primary care, reproductive care, end-of-life care including services
22 provided in accordance with chapter 70.245 RCW, and gender affirming
23 care.

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

32 **Sec. 3.** RCW 19.390.020 and 2019 c 267 s 2 are each amended to
33 read as follows:

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

36 (1) "Acquisition" means an agreement, arrangement, or activity
37 the consummation of which results in a person acquiring directly or
38 indirectly the control of another person, and includes the

1 acquisition of voting securities and noncorporate interests, such as
2 assets, capital stock, membership interests, or equity interests.

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

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

13 ~~((3))~~ (4) "Contracting affiliation" means the formation of a
14 relationship between two or more entities that permits the entities
15 to negotiate jointly with carriers or third-party administrators over
16 rates for professional medical services, or for one entity to
17 negotiate on behalf of the other entity with carriers or third-party
18 administrators over rates for professional medical services.
19 "Contracting affiliation" does not include arrangements among
20 entities under common ownership or arrangements where at least one
21 entity in the arrangement is owned or operated by a state entity.

22 ~~((4))~~ (5) "Gender affirming care" means a service or product
23 that a health care provider, as defined in RCW 70.02.010, prescribes
24 to an individual to treat any condition related to the individual's
25 gender identity and is prescribed in accordance with generally
26 accepted standards of care. Gender affirming care must be covered in
27 a manner compliant with the federal mental health parity and
28 addiction equity act of 2008 and the federal patient protection and
29 affordable care act of 2010. Gender affirming care can be prescribed
30 to two spirit, transgender, nonbinary, intersex, and other gender
31 diverse individuals.

32 (6) "Health care revenue" means combined Washington-derived
33 revenue from health care services or administration from a party and
34 all of its affiliates including, but not limited to, patient revenue
35 and premiums paid to carriers, as applicable.

36 (7) "Health care services" means medical, surgical, chiropractic,
37 hospital, optometric, podiatric, pharmaceutical, ambulance, mental
38 health, substance use disorder, therapeutic, preventative,
39 diagnostic, curative, rehabilitative, palliative, custodial, and any
40 other services relating to the prevention, cure, or treatment of

1 illness, injury, or disease. Health care services may be provided
2 virtually, on-demand, or in brick and mortar settings.

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

5 ~~(6))~~ (8) "Health maintenance organization" means an organization
6 receiving a certificate of registration pursuant to chapter 48.46 RCW
7 which provides comprehensive health care services to enrolled
8 participants of such organization on a group practice per capita
9 prepayment basis or on a prepaid individual practice plan, except for
10 an enrolled participant's responsibility for copayments and
11 deductibles, either directly or through contractual or other
12 arrangements with other institutions, entities, or persons, and which
13 qualifies as a health maintenance organization pursuant to RCW
14 48.46.030 and 48.46.040.

15 ~~((7))~~ (9) "Hospital" means a facility licensed under chapter
16 70.41 or 71.12 RCW.

17 ~~((8))~~ (10) "Hospital system" means:

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

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

23 ~~((9))~~ (11) "Merger" means a consolidation of two or more
24 organizations, including two or more organizations joining through a
25 common parent organization or two or more organizations forming a new
26 organization, but does not include a corporate reorganization.

27 ~~((10))~~ (12) "Person" means, where applicable, natural persons,
28 corporations, trusts, and partnerships.

29 ~~((11))~~ (13) "Provider" means a natural person who practices a
30 profession identified in RCW 18.130.040.

31 ~~((12))~~ (14) "Provider organization" means a corporation,
32 partnership, business trust, association, or organized group of
33 persons, whether incorporated or not, which is in the business of
34 health care delivery or management and that represents seven or more
35 health care providers in contracting with carriers or third-party
36 administrators for the payments of health care services. A "provider
37 organization" includes physician organizations, physician-hospital
38 organizations, independent practice associations, provider networks,
39 and accountable care organizations.

1 ~~((13))~~ (15) "Reproductive health care" means any medical
2 services or treatments, including pharmaceutical and preventive care
3 services or treatments, directly involved in the reproductive system
4 and its processes, functions, and organs involved in reproduction, in
5 all stages of life.

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

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

11 **Sec. 4.** RCW 19.390.030 and 2019 c 267 s 3 are each amended to
12 read as follows:

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

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

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

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

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

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

25 (b) Between the following entities:

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

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

34 (3) A material change transaction includes proposed changes
35 identified in subsection (2) of this section between ~~((a Washington~~
36 ~~entity and an out-of-state entity where the out-of-state entity~~
37 ~~generates ten million dollars or more in health care services revenue~~
38 ~~from patients residing in Washington state, and the entities are of~~
39 ~~the types identified in subsection (2) of this section)) Washington~~

1 entities. A material change transaction also includes transactions
2 between Washington entities described in subsection (2)(a) of this
3 section and out-of-state entities if the transaction will impact
4 health care in Washington. Any party to a material change transaction
5 that is licensed or operating in Washington state shall submit a
6 notice as required under this section.

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

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

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

25 (c) No later than 45 days after receiving notice under (b) of
26 this subsection, the attorney general's office must notify the
27 parties whether the material change transaction is subject to
28 emergency review or is subject to preliminary review requiring
29 parties to provide documentation pursuant to RCW 19.390.040. If the
30 material change transaction is accepted for emergency review, the
31 attorney general's office must approve or deny the transaction within
32 90 days. If the attorney general denies emergency review, the
33 transaction shall be subject to preliminary review.

34 **Sec. 5.** RCW 19.390.040 and 2019 c 267 s 4 are each amended to
35 read as follows:

36 (1) (~~The~~) For material change transactions where none of the
37 parties have generated \$25,000,000 or more in health care revenue in
38 any of their preceding three fiscal years, or if any of the parties
39 is a federally qualified health center or rural health clinic as

1 those terms are defined by 42 U.S.C. Sec. 1395x(aa), the written
2 notice provided by the parties, as required by RCW 19.390.030, must
3 include:

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

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

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

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

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

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

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

37 (3)(a) For all material change transactions other than those
38 specified under subsections (1) and (2) of this section, and except
39 for transactions that fall under subsection (4) of this section, the
40 written notice provided by the parties, as required by RCW

1 19.390.030, must include the following information, unless the
2 attorney general agrees to narrow the scope of information needed
3 relevant to the material change transaction:

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

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

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

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

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

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

31 (d) Nothing in this subsection alters the preliminary or
32 comprehensive review and oversight required under RCW 19.390.050,
33 19.390.070, and 19.390.080 and sections 7, 9 through 17, and 19
34 through 21 of this act.

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

38 (5) The attorney general shall charge an applicant fee sufficient
39 to cover the costs of implementing this chapter. Fees for a specific

1 material change transaction review must be set relative to whether
2 the review is preliminary or comprehensive.

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

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

9 **Sec. 6.** RCW 19.390.050 and 2019 c 267 s 5 are each amended to
10 read as follows:

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

20 NEW SECTION. **Sec. 7.** (1) The attorney general shall determine
21 if the notice required under RCW 19.390.030 and 19.390.040 is
22 complete for the purposes of review. If the attorney general
23 determines that a notice is incomplete, it shall notify the parties
24 within 15 working days after the date the notice was received stating
25 the reasons for its determination of incompleteness.

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

29 (3) For all material change transactions included under RCW
30 19.390.040(3), the attorney general shall, within five working days
31 after receipt of a completed notice, include information about the
32 notice on the attorney general's website and in a newspaper of
33 general circulation in the county or counties where communities
34 impacted by the material change transaction are located. In addition,
35 the attorney general shall notify by first-class United States mail,
36 email, or facsimile transmission, any person who has requested notice
37 of the filing of such notices. The information must state that a
38 notice has been received, state the names of the parties to the

1 material change transaction, describe the contents of the written
2 notice in clear and simple terms, and state the date and process by
3 which a person may submit written comments about the notice to the
4 attorney general's office.

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

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

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

17 NEW SECTION. **Sec. 9.** (1) No material change transaction under
18 this chapter may take place if it would detrimentally affect the
19 continued existence of accessible, affordable health care in
20 Washington state. To this end the material change transaction must
21 result in the affected communities having the same or greater access
22 to quality, affordable care, including but not limited to emergency
23 care, primary care, reproductive health care, gender affirming care,
24 and end-of-life care including services provided in accordance with
25 chapter 70.245 RCW, and essential health benefit categories as that
26 term is defined in RCW 48.43.005.

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

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 10.** (1) For all material change transactions
23 included under RCW 19.390.040(3), the attorney general shall conduct
24 a preliminary review of the completed notice to determine if the
25 material change transaction will fulfill the requirements under
26 section 9 of this act. The review must include, but is not limited
27 to, an analysis of the information and documentation provided under
28 RCW 19.390.040 and one public hearing.

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

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

38 (4) Nothing in this chapter is intended to derogate from or
39 otherwise affect in any way the attorney general's authority to

1 conduct an investigation, or the process of any investigation, under
2 chapter 19.86 RCW. Nothing in this section is intended to change or
3 affect in any way any substantive law regarding the antitrust
4 analysis of a material change transaction.

5 NEW SECTION. **Sec. 11.** (1) For all material change transactions
6 included under RCW 19.390.040(3) that are not limited to the
7 preliminary review under section 10 of this act, the attorney general
8 shall review the completed notice and conduct a comprehensive review.
9 After conducting a comprehensive review, the attorney general shall
10 within 120 days of receiving the completed notice:

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

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

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

28 (2) Within 30 days after a final decision of the attorney general
29 either denying or approving with modifications a material change
30 transaction, any party to the material change transaction may appeal
31 the decision to the superior court for review. The court may grant
32 relief from the attorney general's final decision, but only upon a
33 basis for relief recognized in RCW 34.05.570(3). An appeal to the
34 superior court shall be to the superior court of a county in which
35 the material change transaction is to have occurred or to the
36 superior court for Thurston county. Such appeal shall be perfected by
37 filing with the clerk of the court a notice of appeal and by serving
38 a copy thereof by mail, or personally, on the attorney general or
39 their appointed designee. The attorney general shall, in all cases

1 within 15 days after the receipt of such notice of appeal, serve and
2 file its notice of appearance and such appeal shall thereupon be
3 deemed at issue. The attorney general shall serve upon the appealing
4 party and file with the clerk of the court within 30 days of the
5 filing of the appeal, a certified copy of the attorney general's
6 official record which shall include the final decision, and all
7 accompanying documents, subject to the same confidentiality
8 protections provided to such documents in the underlying act. These
9 shall become the record in the case subject to leave of the court.
10 The superior court shall review the final decision of the attorney
11 general, subject to the statutory requirements of the underlying act
12 and chapter 34.05 RCW.

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

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

25 NEW SECTION. **Sec. 12.** During the course of the preliminary
26 review of notices of material change transactions under RCW
27 19.390.040(3), as provided under section 10 of this act, the attorney
28 general shall conduct one or more in person or remote public
29 hearings. If a public hearing is conducted in person, it must be in a
30 county where one of the communities impacted by the material change
31 transaction is located and the attorney general must allow
32 individuals to participate remotely in the hearing. If a material
33 change transaction undergoes the comprehensive review process as
34 provided for under sections 11, 13, and 14 of this act, the attorney
35 general may conduct additional public hearings. At the hearings,
36 anyone may file written comments and exhibits or appear and make a
37 statement.

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

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

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

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

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

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

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

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

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

33 (5) If during the course of the preliminary or comprehensive
34 review, there is any change in the terms of the material change
35 transaction that materially alters any of the information that the
36 parties to the material change transaction provided under RCW
37 19.390.040(3), the attorney general shall conduct an additional
38 public hearing to ensure adequate public comment regarding the
39 proposed change.

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

7 NEW SECTION. **Sec. 13.** (1) For any material change transactions
8 included under RCW 19.390.040(3), which are not limited to the
9 preliminary review under section 10 of this act, the attorney general
10 must hire an independent contractor to prepare a health equity
11 assessment. The independent contractor shall be screened for any
12 conflicts of interest in advance, agree to maintain confidentiality
13 of information pursuant to this chapter, agree to charge a reasonable
14 market-rate fee, and have necessary experience and expertise. In
15 creating a health equity assessment, the independent contractor must
16 engage with and provide input in the assessment from the department
17 of health, local public health jurisdictions, emergency health care
18 coalitions, health care entities, public health experts,
19 organizations representing employees of the applicant, health care
20 advocates, community members who reside in the service areas of the
21 parties to the material change transaction, the parties to the
22 material change transaction, and other individuals or organizations
23 the attorney general, secretary of health, or independent contractor
24 determine should be consulted. Any assessment conducted under this
25 section must be completed 30 days prior to the attorney general's
26 deadline to complete a review under section 10 of this act.

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

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

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

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

4 (c) An assessment of the effect of the material change
5 transaction on the affordability and provision of health care
6 services to individuals eligible for medical assistance under chapter
7 74.09 RCW or medicare, indigent individuals, individuals with
8 disabilities, women, racial and ethnic minorities, lesbian, gay,
9 bisexual, transgender, gender diverse, or queer individuals,
10 terminally ill individuals, and other underserved or marginalized
11 populations;

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

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

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

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

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

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

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

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

4 (i) Demographics of the parties' service areas;

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

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 14.** (1) The attorney general may at its
32 discretion appoint a review board of stakeholders to conduct a
33 comprehensive review and make recommendations as to whether a
34 material change transaction under RCW 19.390.040(3), other than
35 material change transactions limited to the preliminary review under
36 section 10 of this act, fulfills the requirements under section 9 of
37 this act.

38 (2) A review board convened by the attorney general under this
39 section must consist of members of the communities affected by the

1 material change transaction, consumer advocates, and health care
2 experts.

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

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

11 NEW SECTION. **Sec. 15.** (1) The secretary of state may not accept
12 any forms or documents in connection with any material change
13 transaction if the attorney general, in accordance with section 11 of
14 this act, disapproved the material change transaction or the parties
15 to the material change transaction have not agreed to any conditions
16 or modifications imposed by the attorney general in accordance with
17 section 11 of this act.

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

23 NEW SECTION. **Sec. 16.** For any material change transaction
24 included under RCW 19.390.040(3), the following apply:

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

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

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

37 (4) To effectively monitor ongoing compliance, the attorney
38 general shall regularly provide the opportunity for the public to

1 submit written comments, and may, in its discretion, contract with
2 experts and consultants. Contract costs must not exceed an amount
3 that is reasonable and necessary to conduct the review and
4 evaluation.

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

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

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

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

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

36 NEW SECTION. **Sec. 17.** The attorney general has the authority to
37 ensure compliance with commitments that inure to the public interest.
38 The attorney general may take legal action to enforce this chapter,
39 any conditions or modifications the attorney general imposes on a

1 material change transaction, or any order the attorney general issues
2 under section 16 of this act. The attorney general may obtain
3 restitution, injunctive relief, civil penalties, disgorgement of
4 profits, attorneys' fees, and such other relief as the court deems
5 necessary to ensure compliance. The remedies provided under this
6 chapter are in addition to any other remedy that may be available
7 under any other provision of law.

8 **Sec. 18.** RCW 19.390.070 and 2019 c 267 s 7 are each amended to
9 read as follows:

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

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

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

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

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

12 NEW SECTION. Sec. 19. No provision of chapter 19.390 RCW
13 derogates from the common law or statutory authority of the attorney
14 general.

15 NEW SECTION. Sec. 20. The attorney general may adopt rules
16 necessary to implement chapter 19.390 RCW and may contract with and
17 provide reasonable reimbursement to qualified persons to assist in
18 determining whether parties or successor persons are in compliance
19 with the requirements under this chapter.

20 NEW SECTION. Sec. 21. If a material change transaction is also
21 subject to review under chapter 70.38 or 70.45 RCW, the review under
22 those chapters shall be concurrent with the review under this
23 chapter, to the extent practicable.

24 NEW SECTION. Sec. 22. Every four years, the attorney general
25 shall commission a study of the impact of material change
26 transactions in Washington state. The study must review material
27 change transactions occurring during the previous four-year period
28 and include an analysis of:

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

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

32 (a) Improvement or reductions in morbidity;

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

35 (c) Improvement or reductions in access to emergency care
36 services, primary care services, reproductive health care services,

1 gender affirming care services, and end-of-life care services
2 including services provided in accordance with chapter 70.245 RCW;
3 and

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

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

14 NEW SECTION. **Sec. 23.** (1) By January, 2026, the attorney
15 general shall complete a study on the impact of health care mergers
16 and acquisitions in Washington state between health carriers as
17 defined in RCW 48.43.005 and hospitals, hospital systems, or provider
18 organizations. The study shall include:

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

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

22 (i) Improvement or reductions in morbidity;

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

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

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

38 (2) This section expires July 1, 2026.

1 NEW SECTION. **Sec. 24.** This act does not apply to any pending
2 material change transaction with a letter of intent signed in 2023.

3 NEW SECTION. **Sec. 25.** This act may be known and cited as the
4 keep our care act.

5 NEW SECTION. **Sec. 26.** The attorney general may take the
6 necessary steps to ensure that this act is implemented on July 1,
7 2025.

8 NEW SECTION. **Sec. 27.** Sections 7, 9 through 17, and 19 through
9 25 of this act are each added to chapter 19.390 RCW.

10 NEW SECTION. **Sec. 28.** This act takes effect July 1, 2025.

11 NEW SECTION. **Sec. 29.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected."

15 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.

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