
ENGROSSED SENATE BILL 5241

State of Washington

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2023 Regular Session

By Senators Randall, Rolfes, Kuderer, Trudeau, Pedersen, Shewmake, Hunt, Saldaña, Kauffman, Valdez, Lovick, Robinson, Lovelett, Lias, Frame, Nguyen, Stanford, and C. Wilson

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1 AN ACT Relating to material changes to the operations and
2 governance structure of participants in the health care marketplace;
3 amending RCW 19.390.010, 19.390.020, 19.390.030, 19.390.040,
4 19.390.050, 19.390.080, and 19.390.070; adding new sections to
5 chapter 19.390 RCW; creating a new section; providing an effective
6 date; and providing an expiration date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

19 (4) Health entity mergers, acquisitions, and contracting
20 affiliations have been shown to result in anticompetitive
21 consequences, including higher prices and a lack of any meaningful

1 choice among health care providers within a community or geographic
2 region. These negative outcomes are exacerbated for those in rural
3 areas with few health care providers.

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

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

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

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

37 (2) Notwithstanding the language in this chapter regarding the
38 attorney general's authority to determine the effect of a material
39 change transaction on access to care, nothing in this chapter is

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

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

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

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

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

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

25 ~~((3))~~ (4) "Contracting affiliation" means the formation of a
26 relationship between two or more entities that permits the entities
27 to negotiate jointly with carriers or third-party administrators over
28 rates for professional medical services, or for one entity to
29 negotiate on behalf of the other entity with carriers or third-party
30 administrators over rates for professional medical services.
31 "Contracting affiliation" does not include arrangements among
32 entities under common ownership or arrangements where at least one
33 entity in the arrangement is owned or operated by a state entity.

34 ~~((4))~~ (5) "Gender affirming care" means a service or product
35 that a health care provider, as defined in RCW 70.02.010, prescribes
36 to an individual to treat any condition related to the individual's
37 gender identity and is prescribed in accordance with generally
38 accepted standards of care. Gender affirming care must be covered in
39 a manner compliant with the federal mental health parity and

1 addiction equity act of 2008 and the federal patient protection and
2 affordable care act of 2010. Gender affirming care can be prescribed
3 to two spirit, transgender, nonbinary, intersex, and other gender
4 diverse individuals.

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

12 ~~((+5))~~ (7) "Health care services revenue" means the total
13 revenue received for health care services in the previous ~~((twelve))~~
14 12 months.

15 ~~((+6))~~ (8) "Health maintenance organization" means an
16 organization receiving a certificate of registration pursuant to
17 chapter 48.46 RCW which provides comprehensive health care services
18 to enrolled participants of such organization on a group practice per
19 capita prepayment basis or on a prepaid individual practice plan,
20 except for an enrolled participant's responsibility for copayments
21 and deductibles, either directly or through contractual or other
22 arrangements with other institutions, entities, or persons, and which
23 qualifies as a health maintenance organization pursuant to RCW
24 48.46.030 and 48.46.040.

25 ~~((+7))~~ (9) "Hospital" means a facility licensed under chapter
26 70.41 or 71.12 RCW.

27 ~~((+8))~~ (10) "Hospital system" means:

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

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

33 ~~((+9))~~ (11) "Merger" means a consolidation of two or more
34 organizations, including two or more organizations joining through a
35 common parent organization or two or more organizations forming a new
36 organization, but does not include a corporate reorganization.

37 ~~((+10))~~ (12) "Person" means, where applicable, natural persons,
38 corporations, trusts, and partnerships.

39 ~~((+11))~~ (13) "Provider" means a natural person who practices a
40 profession identified in RCW 18.130.040.

1 (~~(12)~~) (14) "Provider organization" means a corporation,
2 partnership, business trust, association, or organized group of
3 persons, whether incorporated or not, which is in the business of
4 health care delivery or management and that represents seven or more
5 health care providers in contracting with carriers or third-party
6 administrators for the payments of health care services. A "provider
7 organization" includes physician organizations, physician-hospital
8 organizations, independent practice associations, provider networks,
9 and accountable care organizations.

10 (~~(13)~~) (15) "Reproductive health care" means any medical
11 services or treatments, including pharmaceutical and preventive care
12 services or treatments, directly involved in the reproductive system
13 and its processes, functions, and organs involved in reproduction, in
14 all stages of life.

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

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

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

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

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

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

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

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

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

34 (b) Between the following entities:

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

38 (ii) An entity described in (a) of this subsection and any other
39 person or entity that has as its primary function the provision of

1 health care services or that is a parent organization of, has control
2 over, or governance of, an entity that has as its primary function
3 the provision of health care services.

4 (3) A material change transaction includes proposed changes
5 identified in subsection (2) of this section between (~~(a Washington~~
6 ~~entity and an out-of-state entity where the out-of-state entity~~
7 ~~generates ten million dollars or more in health care services revenue~~
8 ~~from patients residing in Washington state, and the entities are of~~
9 ~~the types identified in subsection (2) of this section)) Washington
10 entities, as well as between Washington entities described in
11 subsection (2)(a) of this section and out-of-state entities. Any
12 party to a material change transaction that is licensed or operating
13 in Washington state shall submit a notice as required under this
14 section.~~

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

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

23 (1) (~~The~~) For material change transactions where none of the
24 parties are hospitals or hospital systems or an affiliate of a
25 hospital or hospital system and none of the parties or an affiliate
26 of a party have generated \$10,000,000 or more in health care services
27 revenue from patients residing in Washington state in any of their
28 preceding three fiscal years, the written notice provided by the
29 parties, as required by RCW 19.390.030, must include:

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

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

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

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

38 (2) For material change transactions where none of the parties
39 are hospitals or hospital systems or an affiliate of a hospital or

1 hospital system and all of the parties serve predominantly low-
2 income, medically underserved individuals, and all of the parties had
3 for each of their preceding three fiscal years at least 50 percent of
4 their total patient revenue come from medicaid or local, state, or
5 federal funding to provide care to uninsured or underinsured
6 individuals, and the material change transaction would not result in
7 materially lowering the overall level of care the successor persons'
8 provide to individuals on medicaid or who are uninsured or
9 underinsured, or cause, for the successor persons, the percentage of
10 total patient revenue that comes from medicaid or local, state, or
11 federal funding to provide care to uninsured or underinsured
12 individuals to drop below 50 percent, the written notice provided by
13 the parties, as required by RCW 19.390.030, must include:

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

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

24 (3) For all material change transactions other than those
25 specified under subsections (1) and (2) of this section, the written
26 notice provided by the parties, as required by RCW 19.390.030, must
27 include:

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

30 (b) A copy of the material change transaction agreements;

31 (c) A copy of the organizational charts of the parties to the
32 transaction and proposed organizational charts, if any, for after the
33 closing of the transaction;

34 (d) Financial statements for the prior three fiscal years;

35 (e) If applicable, a copy of the notification and report form
36 submitted to the federal trade commission and United States
37 department of justice under the Hart-Scott-Rodino Act of 1976, and
38 all rules and regulations promulgated thereunder, and any attachments
39 thereto;

1 (f) If applicable, a statement from each of the parties' board of
2 directors that explains the anticipated effect the material change
3 transaction will likely have on delivery and cost of health-related
4 services to the communities impacted by the material change
5 transaction, and the basis for this opinion;

6 (g) If applicable, a copy of the two most recent community health
7 needs assessments or any similar evaluations or assessments prepared
8 by or for any entities that are the subject of the material change
9 transaction;

10 (h) If applicable, a description of all charity care provided in
11 the last three years, as well as denials, and the projected charity
12 care for three years following the material change transaction by the
13 parties to the material change transaction, or any successor persons.
14 This description must include:

15 (i) Annual total charity care spending;

16 (ii) A description of how the amount of charity care spending was
17 calculated;

18 (iii) The number of charity care denials and reasons for denial;
19 and

20 (iv) A description of the policies, procedures, and eligibility
21 requirements for the provision of charity care;

22 (i) If applicable, a description of the health care services
23 currently provided at each hospital, hospital system, or provider
24 organization that is the subject of the material change transaction;

25 (j) If applicable, a description of all services provided in the
26 past three years by each hospital, hospital system, and provider
27 organization that is the subject of the material change transaction
28 to apple health patients, qualified health plan patients, and
29 indigent patients;

30 (k) If applicable, all policies, procedures, and other training
31 materials related to registration, admission, and collections,
32 including upfront, point-of-service, and postservice billing and
33 collections;

34 (l) If applicable, any updates to the following current policies
35 for any hospital and, to the extent they exist, the following current
36 policies for any party to the material change transaction that is the
37 subject of the material change transaction: (i) Admission policies;
38 (ii) nondiscrimination policies; (iii) end-of-life policies; (iv)
39 reproductive health policies; and (v) the reproductive health care
40 services form as required under RCW 70.41.520;

1 (m) If applicable, the following proposed policies that will
2 apply after the material change transaction for any hospital or
3 provider organization that is the subject of the material change
4 transaction: (i) Admission policies; (ii) nondiscrimination policies;
5 (iii) end-of-life policies; (iv) reproductive health policies; and
6 (v) for hospitals, the reproductive health care services form as
7 required under RCW 70.41.520;

8 (n) If applicable, and to the extent they exist, any policies
9 concerning the information and referrals medical providers are
10 required to provide or are restricted from providing to patients
11 regarding end-of-life care, including services provided in accordance
12 with chapter 70.245 RCW;

13 (o) If applicable, if the material change transaction will have
14 any impact on reproductive health care services provided by any
15 hospital, hospital system, or provider organization that is the
16 subject of the material change transaction, or any impact on the
17 availability or accessibility of reproductive health care services in
18 Washington state, a description of the reproductive health care
19 services provided in the last three years by each hospital, hospital
20 system, or provider organization that is the subject of the material
21 change transaction and a description of the effect the material
22 change transaction will have on available reproductive health care
23 services. This description must include the types and aggregate
24 number of reproductive services provided in the last three years and
25 those proposed to be provided after the material change transaction,
26 including, but not limited to, information about contraception
27 provision, pregnancy terminations, tubal ligations, and fertility
28 treatments provided, and a description of how this information was
29 compiled;

30 (p) If applicable, if the material change transaction will have
31 any impact on end-of-life health care services provided by any
32 hospital, hospital system, or provider organization that is the
33 subject of the material change transaction, including services
34 provided in accordance with chapter 70.245 RCW, or any impact on the
35 availability or accessibility of end-of-life health care services in
36 Washington state, including services provided in accordance with
37 chapter 70.245 RCW, a description of the end-of-life health care
38 services provided in the last three years by each hospital, hospital
39 system, or provider organization that is the subject of the material
40 change transaction and a description of the effect the material

1 change transaction will have on available end-of-life care services.
2 This description must include the types and aggregate number of end-
3 of-life services provided in the last three years and those proposed
4 to be provided after the material change transaction including, but
5 not limited to, information about the number of occasions in which
6 doctors served as consulting or attending physicians at the hospital,
7 hospital system, or provider organization under chapter 70.245 RCW, a
8 description of the end-of-life health care services expected to be
9 available at the hospitals, hospital systems, or provider
10 organizations that are the subject of the material change
11 transaction, and a description of how this information was compiled;

12 (q) If applicable, if the material change transaction will have
13 any impact on gender-affirming health care services provided by any
14 hospital, hospital system, or provider organization that is the
15 subject of the material change transaction, or any impact on the
16 availability or accessibility of gender-affirming health care
17 services in Washington state, a description of all gender-affirming
18 health care services provided in the last three years by each
19 hospital, hospital system, or provider organization that is the
20 subject of the material change transaction and a description of the
21 effect the material change transaction will have on available gender-
22 affirming care. This description must include the types and aggregate
23 numbers of gender-affirming health care provided in the last three
24 years and those proposed to be provided after the material change
25 transaction including, but not limited to, facial gender-affirming
26 care, body gender-affirming care, and primary sex characteristics
27 care, and a description of how this information was compiled;

28 (r) A description of any anticipated changes in health care
29 services provided by any party to the material change transaction
30 after the transaction is completed. If anticipated alterations
31 include a reduction, relocation, or elimination of a service, the
32 following information should be included: (i) The need the population
33 presently has for the service; and (ii) how the need will be
34 adequately met by the proposed alteration or alternative arrangements
35 designed to meet the identified need;

36 (s) A description of each measure proposed by the parties to
37 mitigate or eliminate any potential adverse effect on the
38 availability or accessibility of health care services to the affected
39 communities that may result from the material change transaction;

1 (t) A description of any changes to sexual assault nurse examiner
2 and forensic nurse examiner programs after the material change
3 transaction at any hospital, hospital system, or provider
4 organization that is the subject of the material change transaction
5 and any measures proposed by the parties to mitigate or eliminate any
6 potential adverse effects to these programs;

7 (u) A description of any community benefit program provided by
8 any of the parties to the material change transaction during the past
9 three years with an annual cost of at least \$10,000 and the annual
10 cost of each program for the past five years;

11 (v) If applicable, a description of current policies and
12 procedures on staffing for patient care areas; employee input on
13 health quality and staffing issues; and employee wages, salaries,
14 benefits, working conditions, and employment protections. This
15 description must include a list of all existing staffing plans,
16 policy and procedure manuals, employee handbooks, collective
17 bargaining agreements, or similar employment-related documents;

18 (w) If applicable, all existing documents setting forth any
19 guarantees made by any entity that would be taking over operation or
20 control of a party to the material change transaction relating to
21 employee job security and retraining, or the continuation of current
22 staffing levels and policies, employee wages, salaries, benefits,
23 working conditions, and employment protections;

24 (x) A statement as to whether, after the material change
25 transaction, neutrality will be maintained through all communications
26 and usage of funds regarding nonunion employees forming a union;

27 (y) For each hospital, hospital system, or provider organization
28 that is the subject of the material change transaction, a statement
29 as to whether any successor of the employer or union will be bound to
30 any existing union certification and any existing collective
31 bargaining agreement;

32 (z) A description of current debt collection practices and a
33 description of any anticipated changes to debt collection practices
34 following the material change transaction;

35 (aa) If applicable, a detailed statement and documents relating
36 to the parties' plans for existing provider privileges after the
37 material change transaction;

38 (bb) A detailed statement and documents relating to the parties'
39 plans for ensuring safeguards to avoid conflict of interest in
40 patient referral after the material change transaction;

1 (cc) A detailed statement and documents relating to the parties'
2 commitment and plans to provide health care to the disadvantaged, the
3 uninsured, and the underinsured, and how benefits to promote improved
4 health in the affected community will be provided after the material
5 change transaction; and

6 (dd) A list of the primary languages spoken by patients in the
7 service area that is the subject of the material change transaction.

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

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

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

22 (d) Nothing in this subsection alters the preliminary or
23 comprehensive review and oversight required under RCW 19.390.050,
24 19.390.070, and 19.390.080 and sections 7, 9 through 18, and 20
25 through 22 of this act.

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

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

33 (6) The attorney general may request additional information that
34 is necessary to implement the goals of this chapter.

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

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

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

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

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

19 (3) For all material change transactions included under RCW
20 19.390.040(3), the attorney general shall, within five working days
21 after receipt of a completed notice, include information about the
22 notice on the attorney general's website and in a newspaper of
23 general circulation in the county or counties where communities
24 impacted by the material change transaction are located. In addition,
25 the attorney general shall notify by first-class United States mail,
26 email, or facsimile transmission, any person who has requested notice
27 of the filing of such notices. The information must state that a
28 notice has been received, state the names of the parties to the
29 material change transaction, describe the contents of the written
30 notice in clear and simple terms, and state the date and process by
31 which a person may submit written comments about the notice to the
32 attorney general's office.

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

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

1 Any person who fails to comply with (~~any provision of this~~
2 ~~chapter~~) RCW 19.390.030 or 19.390.040 is liable to the state for a
3 civil penalty of (~~not more than two hundred dollars per day for each~~
4 ~~day during which such person is in violation of this chapter~~) up to
5 15 percent of the value of the material change transaction, in the
6 discretion of the attorney general.

7 NEW SECTION. Sec. 9. (1) No material change transaction under
8 this chapter may take place if it would detrimentally affect the
9 continued existence of accessible, affordable health care in
10 Washington state for at least 10 years after the transaction occurs.
11 To this end the material change transaction must result in the
12 affected communities having the same or greater access to quality,
13 affordable care, including but not limited to emergency care, primary
14 care, reproductive health care, gender affirming care, and end-of-
15 life care including services provided in accordance with chapter
16 70.245 RCW.

17 (2) The material change transaction must also result in:

- 18 (a) Reducing the growth in patient and health plan sponsor costs;
19 (b) Increasing access to services in medically underserved areas;
20 (c) Rectifying historical and contemporary factors contributing
21 to a lack of health equities or access to services; or
22 (d) Improving health outcomes for residents of this state.

23 (3) The material change transaction must not result in the
24 revocation of hospital privileges and must establish sufficient
25 safeguards to maintain appropriate capacity for health provider
26 education.

27 (4) The material change transaction must not result in a
28 reduction in staffing capacity for the provision of medically
29 necessary services to the extent such reductions would diminish
30 patients' access to quality care.

31 (5) In determining whether a material change transaction fulfills
32 the requirements of subsections (1) through (4) of this section, the
33 attorney general shall take into consideration whether the material
34 change transaction is necessary to maintain the solvency of an entity
35 involved in the transaction. However, the attorney general may not
36 determine that a material change transaction is necessary to maintain
37 the solvency of an entity without first having an independent
38 contractor prepare a financial assessment of the entity. Such
39 assessment must include possible alternatives to the material change

1 transaction, and the likely impact of those alternatives, if
2 implemented, on the entity's solvency.

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

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

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

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

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

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

37 (a) Approve the material change transaction in writing. The
38 approval of a material change transaction pursuant to this chapter

1 does not constitute approval for the purpose of RCW 19.86.170, or any
2 other provision of state or federal consumer protection or antitrust
3 law. Such approval pursuant to this chapter does not preclude the
4 attorney general from taking any action to enforce state or federal
5 consumer protection or antitrust law;

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

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

16 (2) Within 30 days after a final decision of the attorney general
17 either denying or approving with modifications a material change
18 transaction, any party to the material change transaction may appeal
19 the decision to the superior court. An appeal to the superior court
20 shall be to the superior court of a county in which the material
21 change transaction is to have occurred or to the superior court for
22 Thurston county. Such appeal shall be perfected by filing with the
23 clerk of the court a notice of appeal and by serving a copy thereof
24 by mail, or personally, on the attorney general or their appointed
25 designee. The attorney general shall, in all cases within 15 days
26 after the receipt of such notice of appeal, serve and file its notice
27 of appearance and such appeal shall thereupon be deemed at issue. The
28 attorney general shall serve upon the appealing party and file with
29 the clerk of the court within 30 days of the filing of the appeal, a
30 certified copy of the attorney general's official record which shall
31 include the final decision, and all accompanying documents, subject
32 to the same confidentiality protections provided to such documents in
33 the underlying act. These shall become the record in the case subject
34 to leave of the court. The superior court shall review the final
35 decision of the attorney general, subject to the statutory
36 requirements of the underlying act and chapter 34.05 RCW.

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

1 relationship to the notice under review and the requirements under
2 section 9 of this act.

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

9 NEW SECTION. **Sec. 12.** During the course of the preliminary
10 review of notices of material change transactions under RCW
11 19.390.040(3), as provided under section 10 of this act, the attorney
12 general shall conduct one or more public hearings, at least one of
13 which must be in a county where one of the communities impacted by
14 the material change transaction is located and must also allow
15 individuals to participate remotely in the hearing. If a material
16 change transaction undergoes the comprehensive review process as
17 provided for under sections 11, 13, and 14 of this act, the attorney
18 general may conduct additional public hearings. At the hearings,
19 anyone may file written comments and exhibits or appear and make a
20 statement. The attorney general may subpoena additional information
21 or witnesses, require and administer oaths, require sworn statements,
22 take depositions, and use related discovery procedures for purposes
23 of the hearing and at any time prior to making a decision on the
24 material change transaction.

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

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

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

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

37 (ii) At the public entrance and on the bulletin board designated
38 for legal or public notices of any hospital, hospital system,

1 provider organization, and other health care facility that is the
2 subject of the material change transaction;

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

7 (iv) On the website available to the employees of any hospital,
8 hospital system, provider organization, and other health care
9 facility that is the subject of the material change transaction.

10 The notice of the time and place of the meeting must be provided in
11 English and in the languages spoken in the county or counties in
12 which the hospitals, hospital systems, provider organizations, or
13 other health care facilities that are the subject of the material
14 change transaction are located.

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

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

21 (5) If during the course of the preliminary or comprehensive
22 review, there is any change in the terms of the material change
23 transaction that materially alters any of the information that the
24 parties to the material change transaction provided under RCW
25 19.390.040(3), the attorney general shall conduct an additional
26 public hearing to ensure adequate public comment regarding the
27 proposed change.

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

34 NEW SECTION. **Sec. 13.** (1) For any material change transactions
35 included under RCW 19.390.040(3), which are not limited to the
36 preliminary review under section 10 of this act, the attorney general
37 must hire an independent contractor to prepare a health equity
38 assessment. The independent contractor shall be screened for any
39 conflicts of interest in advance, agree to maintain confidentiality

1 of information pursuant to this chapter, agree to charge a reasonable
2 market-rate fee, and have necessary experience and expertise. In
3 creating a health equity assessment, the independent contractor must
4 engage with and provide input in the assessment from the department
5 of health, local public health jurisdictions, emergency health care
6 coalitions, health care entities, public health experts,
7 organizations representing employees of the applicant, health care
8 advocates, community members who reside in the service areas of the
9 parties to the material change transaction, the parties to the
10 material change transaction, and other individuals or organizations
11 the attorney general, secretary of health, or independent contractor
12 determine should be consulted. Any assessment conducted under this
13 section must be completed 30 days prior to the attorney general's
14 deadline to complete a review under section 10 of this act.

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

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

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

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

31 (c) An assessment of the effect of the material change
32 transaction on the affordability and provision of health care
33 services to individuals eligible for medical assistance under chapter
34 74.09 RCW or medicare, indigent individuals, individuals with
35 disabilities, women, racial and ethnic minorities, lesbian, gay,
36 bisexual, transgender, gender diverse, or queer individuals,
37 terminally ill individuals, and other underserved or marginalized
38 populations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 NEW SECTION. **Sec. 14.** (1) The attorney general may at its
22 discretion appoint a review board of stakeholders to conduct a
23 comprehensive review and make recommendations as to whether a
24 material change transaction under RCW 19.390.040(3), other than
25 material change transactions limited to the preliminary review under
26 section 10 of this act, fulfills the requirements under section 9 of
27 this act.

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

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

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

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

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

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

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

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

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

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

33 (5) If the attorney general has reason to believe that the
34 parties or successor persons' of a material change transaction no
35 longer satisfy the requirements of section 9 of this act, or are not
36 complying with any conditions or modifications imposed by the
37 attorney general under section 11 of this act, the attorney general
38 shall conduct an investigation. As part of the investigation the
39 attorney general will provide public notice of the investigation and

1 obtain input from community members impacted by the material change
2 transaction. Following the investigation, the attorney general shall
3 publish a report of its findings.

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

11 (7) If the parties or successor persons do not enter into
12 compliance with the attorney general's order, the attorney general
13 may impose civil fines of no less than \$10,000 per day until the
14 parties or successor persons comply with the order, and may take
15 legal action under section 18 of this act.

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

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

25 NEW SECTION. **Sec. 17.** The attorney general, in consultation
26 with provider organizations, will develop a simple form that parties
27 or successor persons subject to RCW 19.390.040(2) will submit yearly
28 for 10 years to demonstrate that the successor persons' overall level
29 of care to individuals on medicaid or who are uninsured or
30 underinsured has not materially lowered and that the successor
31 persons' percentage of total patient revenue that comes from medicaid
32 or local, state, or federal funding to provide care to uninsured or
33 underinsured individuals has not dropped below 50 percent.

34 NEW SECTION. **Sec. 18.** The attorney general has the authority to
35 ensure compliance with commitments that inure to the public interest.
36 The attorney general may take legal action to enforce this chapter,
37 any conditions or modifications the attorney general imposes on a
38 material change transaction, or any order the attorney general issues

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

7 **Sec. 19.** RCW 19.390.070 and 2019 c 267 s 7 are each amended to
8 read as follows:

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

19 (2) (a) The parties to a material change transaction may designate
20 portions of documents submitted pursuant RCW 19.390.040(3) and any
21 documents thereafter submitted by the parties as confidential if the
22 information is sensitive financial, commercial, or proprietary
23 information or is protected from disclosure by state or federal law.
24 The applicant shall provide two versions of any document designated
25 as confidential. One shall be marked as "CONFIDENTIAL" and shall
26 contain the full unredacted version of the document and shall be
27 maintained as such by the attorney general. The second shall be
28 marked as "PUBLIC" and shall contain a redacted version of the
29 materials from which the confidential portions have been removed or
30 obscured and shall be made available by the attorney general to the
31 public, the entity providing the health care equity assessment
32 pursuant to section 13 of this act, the entity providing the
33 financial assessment pursuant to section 9 of this act, and the
34 review board of stakeholders pursuant to section 14 of this act. An
35 applicant claiming confidentiality in respect to documents shall
36 include a redaction log that provides a reasonably detailed statement
37 of the grounds on which confidentiality is claimed, citing the
38 applicable 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. 20. 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. 21. 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. 22. 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. 23. 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. 24.** (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. 25.** This act may be known and cited as the
2 keep our care act.

3 NEW SECTION. **Sec. 26.** Sections 7, 9 through 18, and 20 through
4 25 of this act are each added to chapter 19.390 RCW.

5 NEW SECTION. **Sec. 27.** This act takes effect January 1, 2025.

6 NEW SECTION. **Sec. 28.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

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