
SENATE BILL 5688

State of Washington

67th Legislature

2022 Regular Session

By Senators Randall and Rolfes

Prefiled 01/05/22.

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

16 (3) "Contracting affiliation" means the formation of a
17 relationship between two or more entities that permits the entities
18 to negotiate jointly with carriers or third-party administrators over
19 rates for professional medical services, or for one entity to
20 negotiate on behalf of the other entity with carriers or third-party
21 administrators over rates for professional medical services.
22 "Contracting affiliation" does not include arrangements among
23 entities under common ownership.

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

34 (5) "Health care services" means medical, surgical, chiropractic,
35 hospital, optometric, podiatric, pharmaceutical, ambulance, mental
36 health, substance use disorder, therapeutic, preventative,
37 diagnostic, curative, rehabilitative, palliative, custodial, and any
38 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))~~ (6) "Health care services revenue" means the total
4 revenue received for health care services in the previous twelve
5 months.

6 ~~((+6))~~ (7) "Health maintenance organization" means an
7 organization receiving a certificate of registration pursuant to
8 chapter 48.46 RCW which provides comprehensive health care services
9 to enrolled participants of such organization on a group practice per
10 capita prepayment basis or on a prepaid individual practice plan,
11 except for an enrolled participant's responsibility for copayments
12 and deductibles, either directly or through contractual or other
13 arrangements with other institutions, entities, or persons, and which
14 qualifies as a health maintenance organization pursuant to RCW
15 48.46.030 and 48.46.040.

16 ~~((+7))~~ (8) "Hospital" means a facility licensed under chapter
17 70.41 or 71.12 RCW.

18 ~~((+8))~~ (9) "Hospital system" means:

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

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

24 ~~((+9))~~ (10) "Merger" means a consolidation of two or more
25 organizations, including two or more organizations joining through a
26 common parent organization or two or more organizations forming a new
27 organization, but does not include a corporate reorganization.

28 ~~((+10))~~ (11) "Person" means, where applicable, natural persons,
29 corporations, trusts, and partnerships.

30 ~~((+11))~~ (12) "Provider" means a natural person who practices a
31 profession identified in RCW 18.130.040.

32 ~~((+12))~~ (13) "Provider organization" means a corporation,
33 partnership, business trust, association, or organized group of
34 persons, whether incorporated or not, which is in the business of
35 health care delivery or management and that represents seven or more
36 health care providers in contracting with carriers or third-party
37 administrators for the payments of health care services. A "provider
38 organization" includes physician organizations, physician-hospital
39 organizations, independent practice associations, provider networks,
40 and accountable care organizations.

1 (~~(13)~~) (14) "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 (15) "Successor persons" means persons formed by, resulting from,
7 or surviving any material change transaction under this chapter.

8 (16) "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 two or more entities of the following types:

- 20 (a) Hospitals;
- 21 (b) Hospital systems; or
- 22 (c) Provider organizations.

23 (3) A material change transaction includes proposed changes
24 identified in subsection (2) of this section between a Washington
25 entity and an out-of-state entity where the out-of-state entity
26 generates (~~ten million dollars~~) \$10,000,000 or more in health care
27 services revenue from patients residing in Washington state, and the
28 entities are of the types identified in subsection (2) of this
29 section. Any party to a material change transaction that is licensed
30 or operating in Washington state shall submit a notice as required
31 under this section.

32 (4) For purposes of subsection (2) of this section, a merger,
33 acquisition, or contracting affiliation between two or more
34 hospitals, hospital systems, or provider organizations only qualifies
35 as a material change transaction if the hospitals, hospital systems,
36 or provider organizations did not previously have common ownership or
37 a contracting affiliation.

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

3 (1) ((The)) For material change transactions where none of the
4 parties are hospitals or hospital systems and none of the parties
5 have generated \$10,000,000 or more in health care services revenue
6 from patients residing in Washington state in any of their preceding
7 three fiscal years, the written notice provided by the parties, as
8 required by RCW 19.390.030, must include:

9 (a) The names of the parties and their current business
10 addresses;

11 (b) Identification of all locations where health care services
12 are currently provided by each party;

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

15 (d) The anticipated effective date of the proposed material
16 change transaction.

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

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

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

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

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

7 (b) A copy of the material change transaction agreement;

8 (c) If applicable, a statement from each of the parties' board of
9 directors that explains the effect the material change transaction
10 will likely have on delivery and cost of health-related services to
11 the communities impacted by the material change transaction, and the
12 basis for this opinion. The statement must also describe all
13 dissenting viewpoints of which the boards of directors are aware;

14 (d) If applicable, a copy of the two most recent community needs
15 assessments or any similar evaluations or assessments prepared by or
16 for any of the hospitals, hospital systems, or provider organizations
17 that are the subject of the material change transaction, and the
18 identity of all persons who assisted or contributed to any of the
19 evaluations or assessments;

20 (e) A description of all charity care provided in the last three
21 years, as well as denials, and the projected charity care for three
22 years following the material change transaction by the parties to the
23 material change transaction, or any successor persons. This
24 description must include:

25 (i) Annual total charity care spending;

26 (ii) Inpatient, outpatient, and emergency room charity care
27 spending;

28 (iii) A description of how the amount of charity care spending
29 was calculated;

30 (iv) Annual charity care inpatient discharges, outpatient visits,
31 and emergency visits;

32 (v) A description of the types of charity care services provided
33 annually;

34 (vi) The number of charity care denials and reasons for denial;
35 and

36 (vii) A description of the policies, procedures, and eligibility
37 requirements for the provision of charity care;

38 (f) A description of the health care services currently provided
39 at each hospital, hospital system, or provider organization that is
40 the subject of the material change transaction;

1 (g) A description of all services provided in the past five years
2 by each hospital, hospital system, and provider organization that is
3 the subject of the material change transaction to apple health
4 patients, qualified health plan patients, and indigent patients. This
5 description must include, but is not limited to, the type and volume
6 of services provided, the payors for the services provided, the
7 demographic characteristics of and zip code data for the patients
8 served by the hospital, hospital system, or provider organization,
9 and the costs and revenues for the services provided;

10 (h) All policies, procedures, and other training materials
11 related to registration, admission, and collections, including
12 upfront, point-of-service, and postservice billing and collections;

13 (i) The following current policies for any hospital and, to the
14 extent they exist, the following current policies for any provider
15 organization that is the subject of the material change transaction:

16 (i) Admission policies; (ii) nondiscrimination policies; (iii) end-
17 of-life policies; (iv) reproductive health policies; and (v) the
18 reproductive health care services form as required under RCW
19 70.41.520;

20 (j) The following proposed policies that will apply after the
21 material change transaction for any hospital or provider organization
22 that is the subject of the material change transaction: (i) Admission
23 policies; (ii) nondiscrimination policies; (iii) end-of-life
24 policies; (iv) reproductive health policies; and (v) for hospitals,
25 the reproductive health care services form as required under RCW
26 70.41.520;

27 (k) To the extent they exist, any policies concerning the
28 information and referrals medical providers are required to provide
29 or are restricted from providing to patients regarding end-of-life
30 care, including services provided in accordance with chapter 70.245
31 RCW;

32 (l) If the material change transaction will have any impact on
33 reproductive health care services provided by any hospital, hospital
34 system, or provider organization that is the subject of the material
35 change transaction, or any impact on the availability or
36 accessibility of reproductive health care services in Washington
37 state, a description of the reproductive health care services
38 provided in the last five years by each hospital, hospital system, or
39 provider organization that is the subject of the material change
40 transaction and a description of the effect the material change

1 transaction will have on available reproductive health care services.
2 This description must include the types and levels of reproductive
3 services provided in the last five years and those proposed to be
4 provided after the material change transaction, including, but not
5 limited to, information about contraception provision, pregnancy
6 terminations, tubal ligations, and fertility treatments provided, and
7 a description of how this information was compiled;

8 (m) If the material change transaction will have any impact on
9 end-of-life health care services provided by any hospital, hospital
10 system, or provider organization that is the subject of the material
11 change transaction, including services provided in accordance with
12 chapter 70.245 RCW, or any impact on the availability or
13 accessibility of end-of-life health care services in Washington
14 state, including services provided in accordance with chapter 70.245
15 RCW, a description of the end-of-life health care services provided
16 in the last five years by each hospital, hospital system, or provider
17 organization that is the subject of the material change transaction
18 and a description of the effect the material change transaction will
19 have on available end-of-life care services. This description must
20 include the types and levels of end-of-life services provided in the
21 last five years and those proposed to be provided after the material
22 change transaction including, but not limited to, information about
23 the number of occasions in which doctors served as consulting or
24 attending physicians at the hospital, hospital system, or provider
25 organization under chapter 70.245 RCW, a description of the end-of-
26 life health care services expected to be available at the hospitals,
27 hospital systems, or provider organizations that are the subject of
28 the material change transaction, and a description of how this
29 information was compiled;

30 (n) If the material change transaction will have any impact on
31 gender affirming health care services provided by any hospital,
32 hospital system, or provider organization that is the subject of the
33 material change transaction, or any impact on the availability or
34 accessibility of gender affirming health care services in Washington
35 state, a description of all gender affirming health care services
36 provided in the last five years by each hospital, hospital system, or
37 provider organization that is the subject of the material change
38 transaction and a description of the effect the material change
39 transaction will have on available gender affirming care. This
40 description must include the types and levels of gender affirming

1 health care provided in the last five years and those proposed to be
2 provided after the material change transaction including, but not
3 limited to, facial gender affirming care, body gender affirming care,
4 and primary sex characteristics care, and a description of how this
5 information was compiled;

6 (o) A description of any anticipated changes in health care
7 services provided after the material change transaction by any
8 hospital, hospital system, or provider organization that is the
9 subject of the material change transaction. If anticipated
10 alterations include a reduction, relocation, or elimination of a
11 service, the following information should be included: (i) The need
12 the population presently has for the service; (ii) how the need will
13 be adequately met by the proposed alteration; and (iii) alternative
14 arrangements designed to meet the identified need;

15 (p) A description of each measure proposed by the parties to
16 mitigate or eliminate any potential adverse effect on the
17 availability or accessibility of health care services to the affected
18 communities that may result from the material change transaction;

19 (q) A description of any changes to sexual assault nurse examiner
20 and forensic nurse examiner programs after the material change
21 transaction at any hospital, hospital system, or provider
22 organization that is the subject of the material change transaction
23 and any measures proposed by the parties to mitigate or eliminate any
24 potential adverse effects to these programs;

25 (r) A description of any community benefit program provided by
26 any of the parties to the material change transaction during the past
27 five years with an annual cost of at least \$10,000 and the annual
28 cost of each program for the past five years;

29 (s) For each hospital, hospital system, or provider organization
30 that is the subject of the material change transaction, a description
31 of current policies and procedures on staffing for patient care
32 areas; employee input on health quality and staffing issues; and
33 employee wages, salaries, benefits, working conditions, and
34 employment protections. This description must include a list of all
35 existing staffing plans, policy and procedure manuals, employee
36 handbooks, collective bargaining agreements, or similar employment-
37 related documents;

38 (t) For each hospital, hospital system, or provider organization
39 that is the subject of the material change transaction, all existing
40 documents setting forth any guarantees made by any entity that would

1 be taking over operation or control of each hospital, hospital
2 system, or provider organization relating to employee job security
3 and retraining, or the continuation of current staffing levels and
4 policies, employee wages, salaries, benefits, working conditions, and
5 employment protections;

6 (u) For each hospital, hospital system, or provider organization
7 that is the subject of the material change transaction, a statement
8 as to whether, after the material change transaction, neutrality will
9 be maintained through all communications and usage of funds regarding
10 nonunion employees forming a union;

11 (v) For each hospital, hospital system, or provider organization
12 that is the subject of the material change transaction, a statement
13 as to whether any successor of the employer or union will be bound to
14 any existing union certification and any existing collective
15 bargaining agreement;

16 (w) For each hospital, hospital system, or provider organization
17 that is the subject of the material change transaction, a description
18 of current debt collection practices and a description of any
19 anticipated changes to debt collection practices following the
20 material change transaction;

21 (x) If applicable, a detailed statement and documents relating to
22 the parties' plans for assuring the continuance of existing hospital
23 privileges after the material change transaction;

24 (y) If applicable, a detailed statement and documents relating to
25 the parties' plans for ensuring the maintenance of appropriate health
26 science research and health care provider education after the
27 material change transaction;

28 (z) A detailed statement and documents relating to the parties'
29 plans for ensuring safeguards to avoid conflict of interest in
30 patient referral after the material change transaction;

31 (aa) A detailed statement and documents relating to the parties'
32 commitment and plans to provide health care to the disadvantaged, the
33 uninsured, and the underinsured, and how benefits to promote improved
34 health in the affected community will be provided after the material
35 change transaction; and

36 (bb) A list of the primary languages spoken by patients at each
37 hospital, hospital system, or provider organization that is the
38 subject of the material change transaction.

39 (4) The attorney general shall charge an applicant fee sufficient
40 to cover the costs of implementing this chapter.

1 (5) The attorney general may request additional information that
2 is necessary to implement the goals of this chapter.

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

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

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

17 NEW SECTION. **Sec. 7.** (1) The attorney general shall determine
18 if the notice required under RCW 19.390.030 and 19.390.040 is
19 complete for the purposes of review. If the attorney general
20 determines that a notice is incomplete, it shall notify the parties
21 within 30 working days after the date the notice was received stating
22 the reasons for its determination of incompleteness.

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

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

1 which a person may submit written comments about the notice to the
2 attorney general's office.

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

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

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

15 NEW SECTION. **Sec. 9.** (1) No material change transaction under
16 this chapter may take place if it would detrimentally affect the
17 continued existence of accessible, affordable health care in
18 Washington state for at least 10 years after the transaction occurs.
19 To this end the material change transaction must result in the
20 affected communities having the same or greater access to quality,
21 affordable care, including but not limited to emergency care, primary
22 care, reproductive health care, gender affirming care, and end-of-
23 life care including services provided in accordance with chapter
24 70.245 RCW.

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

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

31 (3) The material change transaction must not result in the
32 revocation of hospital privileges and must establish sufficient
33 safeguards to maintain appropriate capacity for health provider
34 education.

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

1 (5) 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. 10.** (1) For all material change transactions
8 included under RCW 19.390.040(3), the attorney general shall review
9 the completed notice and, if the attorney general determines the
10 material change transaction will not fulfill the requirements under
11 section 9 of this act, the attorney general shall within 120 days of
12 receiving the completed notice:

13 (a) Impose conditions or modifications on the material change
14 transaction to ensure the requirements of section 9 of this act are
15 met and that sufficient safeguards are in place to ensure communities
16 have continued or improved access to affordable quality care; or

17 (b) Disapprove the material change transaction, which shall
18 constitute a final decision.

19 (2) The attorney general may not make its decision to disapprove
20 the material change transaction subject to any condition not directly
21 and rationally related to the requirements under section 9 of this
22 act and any condition or modification must bear a direct and rational
23 relationship to the notice under review and the requirements under
24 section 9 of this act.

25 (3) 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.** During the course of review of notices of
32 material change transactions under RCW 19.390.040(3), the attorney
33 general shall conduct one or more public hearings, at least one of
34 which must be in a county where one of the communities impacted by
35 the material change transaction is located. At the hearings, anyone
36 may file written comments and exhibits or appear and make a
37 statement. The attorney general may subpoena additional information
38 or witnesses, require and administer oaths, require sworn statements,

1 take depositions, and use related discovery procedures for purposes
2 of the hearing and at any time prior to making a decision on the
3 material change transaction.

4 (1) A public hearing must be held no later than 30 days after the
5 health equity assessment required under section 12 of this act is
6 completed.

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

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

14 (i) Through publication in a newspaper of general circulation in
15 the communities that will be impacted by the material change
16 transaction;

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

21 (iii) Prominently on the website available to the public of any
22 hospital, hospital system, provider organization, and other health
23 care facility that is the subject of the material change transaction;
24 and

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

28 The notice of the time and place of the meeting must be provided in
29 English and in the languages spoken in the county or counties in
30 which the hospitals, hospital systems, provider organizations, or
31 other health care facilities that are the subject of the material
32 change transaction are located.

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

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

39 (5) If after the initial public hearing there is any change in
40 the terms of the material change transaction that materially alters

1 any of the information that the parties to the material change
2 transaction provided under RCW 19.390.040(3), the attorney general
3 shall conduct an additional public hearing to ensure adequate public
4 comment regarding the proposed change.

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

11 NEW SECTION. **Sec. 12.** (1) For any material change transaction
12 included under RCW 19.390.040(3), the attorney general must hire an
13 independent contractor to prepare a health equity assessment. In
14 creating a health equity assessment, the independent contractor must
15 engage with and provide input in the assessment from public health
16 experts, organizations representing employees of the applicant,
17 health care advocates, and community members who reside in the
18 service areas of the parties to the material change transaction.

19 (2) The health equity assessment must contain information to
20 better inform the attorney general as to whether the parties meet the
21 requirements for a material change transaction under section 9 of
22 this act.

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

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

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

35 (c) An assessment of the effect of the material change
36 transaction on the affordability and provision of health care
37 services to individuals eligible for medical assistance under chapter
38 74.09 RCW or medicare, indigent individuals, individuals with
39 disabilities, women, racial and ethnic minorities, lesbian, gay,

1 bisexual, transgender, gender diverse, or queer individuals,
2 terminally ill individuals, and other underserved or marginalized
3 populations;

4 (d) An assessment of the effect of the material change
5 transaction on the level and type of charity care the parties to the
6 material change transaction will provide;

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

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

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

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

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

30 (j) An assessment of whether the material change transaction will
31 reduce architectural barriers for people with mobility impairments;

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

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

36 (ii) Economic status of the population of the parties' services
37 area;

38 (iii) Physician and professional staffing issues related to the
39 material change transaction;

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

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

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

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

17 (4) The information contained in the independent health equity
18 assessment must be used by the attorney general's office in
19 determining under section 10 of this act whether to impose conditions
20 or modifications or disapprove the material change transaction.

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

23 NEW SECTION. **Sec. 13.** (1) The attorney general may at its
24 discretion appoint a review board of stakeholders to conduct a
25 comprehensive review and make recommendations as to whether a
26 material change transaction under RCW 19.390.040(3) fulfills the
27 requirements under section 9 of 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. 14.** (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 10 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 10 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 10 of this act or that does not
11 incorporate any conditions or modifications imposed by the attorney
12 general in accordance with section 10 of this act.

13 NEW SECTION. **Sec. 15.** 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 at
27 the parties' or successor persons' expense.

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

34 (5) The attorney general is entitled to reimbursement from the
35 parties or any successor persons for all actual and direct costs
36 incurred in monitoring ongoing compliance for 10 years, including
37 contract and administrative costs.

38 (6) The attorney general may bill the parties or successor
39 persons and the parties or successor billed by the attorney general

1 shall promptly pay. If the parties or successor fail to pay within 30
2 days, the attorney general may assess a civil fine of five percent of
3 the billed amount for each day the party does not pay.

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

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

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

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

30 NEW SECTION. **Sec. 16.** The attorney general, in consultation
31 with provider organizations, will develop a simple form that parties
32 or successor persons subject to RCW 19.390.040(2) will submit yearly
33 for 10 years to demonstrate that the successor persons' overall level
34 of care to individuals on medicaid or who are uninsured or
35 underinsured has not materially lowered and that the successor
36 persons' percentage of total patient revenue that comes from medicaid
37 or local, state, or federal funding to provide care to uninsured or
38 underinsured individuals has not dropped below 50 percent.

1 NEW SECTION. **Sec. 17.** The attorney general has the authority to
2 ensure compliance with commitments that inure to the public interest.
3 The attorney general may take legal action to enforce this chapter,
4 any conditions or modifications the attorney general imposes on a
5 material change transaction, or any order the attorney general issues
6 under section 15 of this act. The attorney general may obtain
7 restitution, injunctive relief, civil penalties, disgorgement of
8 profits, attorneys' fees, and such other relief as the court deems
9 necessary to ensure compliance. The remedies provided under this
10 chapter are in addition to any other remedy that may be available
11 under any other provision of law.

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

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

24 (2) All materials provided in response to RCW 19.390.040(3) (a)
25 through (bb) and all materials provided during public hearings are
26 considered public records for purposes of chapter 42.56 RCW.

27 (3) Nothing in this chapter limits the attorney general's
28 authority under RCW 19.86.110 or 19.86.115. Nothing in this chapter
29 expands the attorney general's authority under chapter 19.86 RCW,
30 federal or state antitrust law, or any other law. Failure to comply
31 with this chapter does not provide a private cause of action.

32 NEW SECTION. **Sec. 19.** No provision of chapter 19.390 RCW
33 derogates from the common law or statutory authority of the attorney
34 general.

35 NEW SECTION. **Sec. 20.** The attorney general may adopt rules
36 necessary to implement chapter 19.390 RCW and may contract with and
37 provide reasonable reimbursement to qualified persons to assist in

1 determining whether parties or successor persons are in compliance
2 with the requirements under this chapter.

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

7 NEW SECTION. **Sec. 22.** Every four years, the attorney general
8 shall commission a study of the impact of material change
9 transactions in Washington state. The study must review material
10 change transactions occurring during the previous four-year period
11 and include an analysis of:

12 (1) The impact on costs to consumers and health sponsors for
13 health care; and

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

15 (a) Improvement or reductions in morbidity;

16 (b) Improvement or reductions in the management of population
17 health;

18 (c) Improvement or reductions in access to emergency care
19 services, primary care services, reproductive health care services,
20 gender affirming care services, and end-of-life care services
21 including services provided in accordance with chapter 70.245 RCW;
22 and

23 (d) Changes to health and patient outcomes, particularly for
24 underserved and uninsured individuals, recipients of medical
25 assistance and other low-income individuals, and individuals living
26 in rural areas, as measured by nationally recognized measures of the
27 quality of health care, such as measures used or endorsed by the
28 national committee for quality assurance, the national quality forum,
29 the physician consortium for performance improvement, or the agency
30 for health care research and quality.

31 (3) The attorney general shall commission the first study under
32 this section no later than January 1, 2027.

33 NEW SECTION. **Sec. 23.** (1) By January, 2024, the attorney
34 general shall complete a study on the impact of health care mergers
35 and acquisitions in Washington state between health carriers as
36 defined in RCW 48.43.005 and hospitals, hospital systems, or provider
37 organizations. The study shall include:

1 (a) The impact on costs to consumers and health sponsors for
2 health care; and

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

4 (i) Improvement or reductions in morbidity;

5 (ii) Improvement or reductions in the management of population
6 health;

7 (iii) Improvement or reductions in access to emergency care
8 services, primary care services, reproductive health care services,
9 gender affirming care services, and end-of-life care services
10 including services provided in accordance with chapter 70.245 RCW;
11 and

12 (iv) Changes to health and patient outcomes, particularly for
13 underserved and uninsured individuals, recipients of medical
14 assistance and other low-income individuals, and individuals living
15 in rural areas, as measured by nationally recognized measures of the
16 quality of health care, such as measures used or endorsed by the
17 national committee for quality assurance, the national quality forum,
18 the physician consortium for performance improvement, or the agency
19 for health care research and quality.

20 (2) This section expires July 1, 2024.

21 NEW SECTION. **Sec. 24.** Sections 7, 9 through 17, and 19 through
22 23 of this act are each added to chapter 19.390 RCW.

23 NEW SECTION. **Sec. 25.** This act takes effect January 1, 2023.

--- END ---