S-0215.2

SENATE BILL 5241

State of Washington 68th Legislature 2023 Regular Session

By Senators Randall, Rolfes, Kuderer, Trudeau, Pedersen, Shewmake, Hunt, Saldaña, Kauffman, Valdez, Lovick, Robinson, Lovelett, and Liias

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((~~(5)~~)) (6) "Health care services revenue" means the total revenue received for health care services in the previous twelve months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) For the purposes of this ((~~section~~)) chapter, a material change transaction includes a merger, acquisition, or contracting affiliation between two or more entities of the following types:

(a) Hospitals;

(b) Hospital systems; or

(c) Provider organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Annual total charity care spending;

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

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

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

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

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

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

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

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

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

(i) The following current policies for any hospital and, to the extent they exist, the following current policies for any provider organization that is the subject of the material change transaction: (i) Admission policies; (ii) nondiscrimination policies; (iii) end-of-life policies; (iv) reproductive health policies; and (v) the reproductive health care services form as required under RCW 70.41.520;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Reducing the growth in patient and health plan sponsor costs;

(b) Increasing access to services in medically underserved areas;

(c) Rectifying historical and contemporary factors contributing to a lack of health equities or access to services; or

(d) Improving health outcomes for residents of this state.

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 11.** During the course of review of notices of material change transactions under RCW 19.390.040(3), the attorney general shall conduct one or more public hearings, at least one of which must be in a county where one of the communities impacted by the material change transaction is located. At the hearings, anyone may file written comments and exhibits or appear and make a statement. The attorney general may subpoena additional information or witnesses, require and administer oaths, require sworn statements,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Demographics of the parties' service areas;

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 13.** (1) The attorney general may at its discretion appoint a review board of stakeholders to conduct a comprehensive review and make recommendations as to whether a material change transaction under RCW 19.390.040(3) fulfills the requirements under section 9 of this act.

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

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

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

NEW SECTION. **Sec. 14.** (1) The secretary of state may not accept any forms or documents in connection with any material change transaction if the attorney general, in accordance with section 10 of this act, disapproved the material change transaction or the parties to the material change transaction have not agreed to any conditions or modifications imposed by the attorney general in accordance with section 10 of this act.

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

NEW SECTION. **Sec. 15.** For any material change transaction included under RCW 19.390.040(3), the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Improvement or reductions in morbidity;

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

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

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

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

NEW SECTION. **Sec. 23.** (1) By January, 2025, the attorney general shall complete a study on the impact of health care mergers and acquisitions in Washington state between health carriers as defined in RCW 48.43.005 and hospitals, hospital systems, or provider organizations. The study shall include:

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

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

(i) Improvement or reductions in morbidity;

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

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

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

(2) This section expires July 1, 2025.

NEW SECTION. **Sec. 24.** This act may be known and cited as the keep our care act.

NEW SECTION. **Sec. 25.** Sections 7, 9 through 17, and 19 through 24 of this act are each added to chapter 19.390 RCW.

NEW SECTION. **Sec. 26.** This act takes effect January 1, 2024.

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