

SB 5241 -- Redline

Bill to Engrossed -- Concerning material changes to the operations and governance structure of participants in the health care marketplace.

Deletions ~~struck~~ · Insertions underlined

~~S-0215-2~~ ENGROSSED SENATE BILL 5241 State of Washington 68th Legislature 2023 Regular Session By Senators Randall, Rolfes, Kuderer, Trudeau, Pedersen, Shewmake, Hunt, Saldana, Kauffman, Valdez, Lovick, Robinson, Lovelett, Liias, Frame, Nguyen, Stanford, and C.

1 ~~SB~~ESB 5241 choice among health care providers within a community or geographic region.

2 ~~SB~~ESB 5241 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.

(2) ~~"Carrier"~~"Affiliate" means ~~thea same person as that indirectly, RCW or 48.43.005, indirectly through one or more intermediaries, controls or has ownership of, is controlled or owned by, or is under common control or ownership of a person.~~

~~(3) A "Contracting provider affiliation" organization means that the is formation not of otherwise a affiliated relationship with between a two hospital or more hospital entities system that is permits not the considered entities an to affiliate negotiate of jointly a with hospital carriers or third-party hospital administrators system over solely rates on for the professional basis medical that services, it or contracts for with one the entity hospital to or negotiate hospital on system behalf to of provide the facility-based other services entity including, without carriers not or limited third-party to, administrator or emergency, over anesthesiology, rates pathology, for radiology, professional or medical hospital services.~~

~~"Contracting (3) affiliation" "Carrier" does means not the includes same arrangements as among in entities RCW under 48.43.005. common ownership.~~

~~((3)) (4) "Gender "Contracting affirming affiliation" care" means the formation of a service relationship between two or product more entities that a permits health the care entities provider, to a negotiate defined jointly in with RCW carriers 70.02.010, or prescribes third-party to administrators a over individual rates to for treat professional any medical condition services, related or to for the one individual's entity gender to identity negotiate and on is behalf prescribed of in the accordance other entity with generally carriers accepted or standards third-party of administrators care over rates for professional medical services.~~

~~Gender "Contracting affirming affiliation" care does must not be include covered arrangements in among a entities manner under compliant common with ownership the or federal arrangements mental where health that parity least and one addition entity equity in act of 2008 and the federal arrangement patient is protection owned and or affordable operated care by act a of state 2010. entity.~~

~~((4)) (5) "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 p. 3 ESB 5241 addiction equity act of 2008 and the federal patient protection and affordable care act of 2010.~~

~~(5) (6) "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 p. illness, injury, or disease.~~

~~3 SB 5241 illness, injury, or disease.~~

~~((5)) (6) (7) "Health care services revenue" means the total revenue received for health care services in the previous twelve ((twelve)) 12 months.~~

~~((6)) (7) (8) "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) (9) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW.~~

~~((8)) (9) (10) "Hospital system" means:~~

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

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

~~((9)) (10) (11) "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)~~ (12) "Person" means, where applicable, natural persons, corporations, trusts, and partnerships.

((11)) ~~(12)~~ (13) "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.~~

4 SB 5241 ~~((13)) ((12))~~ (14) "Reproductive health care" means any medical corporation, services partnership, or business trust, including association, pharmaceutical or organized preventive group care of services persons, whether incorporated or treatments, not, directly which involved is in the reproductive business system of and health its care processes, delivery functions, or management and organs that involved represents in seven reproduction, or more health care providers in all contracting stages with carriers or third-party administrators for the payments of life health care services.

~~(15) A "Successor provider persons" organization means includes persons physician formed organizations, by, physician-hospital resulting organizations, from, independent or practice surviving associations, any provider material networks, change and transaction accountable under care this organizations. chapter.~~

~~((13)) "Third-party (15) administrator" "Reproductive health care" means any entity medical that services administrator or payment treatments, for including health pharmaceutical and preventive care services on or behalf treatments, of directly a involved client in the reproductive system and its processes, functions, and organs involved in exchange reproduction, for in an all administrative stages fee of life.~~

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

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

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

(a) ~~Hospitals;~~ Between two or more ((entities)) of the following ((types)) entities:

~~(b) ((a)) Hospital (i) systems; Hospitals;~~

~~or ((b)) (c) (ii) Provider Hospital organizations, systems;~~

~~(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 ((c)) in (iii) health Provider care organizations; services revenue from patients residing in Washington state, and the entities are of the types identified in subsection (2) of this section.~~

or (b) Between the following entities:

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

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

5 SB 5241 health care services or that is a parent organization of, has control over, or governance of, an entity that has as its primary function the provision of health care services.

(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 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)) Washington entities, as well as between Washington entities described in subsection (2)(a) of this section and out-of-state entities.

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

~~p Sec.~~

~~5 SB 5241 Sec.~~

(1) ((The)) For material change transactions where none of the parties are hospitals or hospital systems

or an affiliate of a hospital or hospital system and none of the parties or an affiliate of a party 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:

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

~~(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, an state, affiliate 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 hospital 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:~~

6 ESB 5241 hospital system 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:

~~p-(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:~~

~~6 SB 5241 (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:~~

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

~~(c) If applicable, copy a statement from each of the parties' organizational board charts of directorsthe that parties explainsto the effect the material change transaction will likely have on delivery and cost proposed of organizational health-related charts, servicesif to any, thefor communitiesafter impacted by the material closing changeof transaction, and the basis transaction; for this opinion.~~

~~The (d) statement Financial must statements alsofor describe all dissenting viewpoints of which the boards prior of three directors fiscal are years; aware;~~

~~(d)(e) If applicable, a copy of the two notification most and recent report community form needs submitted assessments to or the any federal similar trade evaluations commission or and assessments United prepared States by department or for any of the justice hospitals, under hospital systems, or provider organizations that are the subject Hart-Scott-Rodino Act of the 1976, material change transaction, and the identity of all persons rules who and assisted regulations or promulgated contributed thereunder, to and any of attachments thereto; evaluations or assessments;~~

~~(e)p. 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.~~

7 ESB 5241 (f) If applicable, a statement from each of the parties' board of directors that explains the anticipated 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;

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

(h) If applicable, 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.

(ii) Inpatient, A outpatient, description and of emergency how room the amount of charity care spending; spending was calculated;

(iii) A The description number of how the amount of charity care spending denials was and calculated; reasons for denial;

and (iv) Annual A charity description care of inpatient the discharges, policies, outpatient procedures, visits, and emergency eligibility visits; requirements for the provision of charity care;

~~(v)(i)~~ If applicable, a description of the types health of charity care services currently provided annually, at each hospital, hospital system, or provider organization that is the subject of the material change transaction;

~~(vi)(j)~~ TheIf number applicable, a description of charityall care services denials provided in the past three years by each hospital, hospital system, and reasons provider for organization denial; that is the subject of the material change transaction to apple health patients, qualified health plan patients, and indigent patients;

~~(k)~~ If applicable, all policies, procedures, and (vii) other A training description materials of related the to policies, registration, procedures, admission, and eligibility collections, requirements including for upfront, the point-of-service, provision and of postservice charity billing care; and collections;

~~(f)(l)~~ AIf description applicable, of any updates to the health following care current services policies currently for provided any at hospital each and, hospital, to hospital the system, extent or they provider exist, organization the following current policies for any party to the material change transaction that is the subject of the material change transaction;

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~~7 SB 5241 (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:~~

~~(iii) end-end-of-life-of-life policies;~~

~~(j)p. 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:~~

~~8 ESB 5241 (m) If applicable, 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:~~

~~(k)(n) ToIf applicable, and 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)(o) If applicable, 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 three 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.~~

~~8 This SB description 5241 must transaction include will the have types on and available aggregate number of reproductive health services care provided services, in the last three 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;~~

~~This (p) description If must applicable, include if the types material and change levels 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 reproductive the material change transaction, including services provided in accordance with chapter 70.245 RCW, or any impact on the last availability five or years accessibility and of those end-of-life proposed health to care be services in Washington state, including services provided after in accordance with chapter 70.245 RCW, a description of the material end-of-life change health transaction, care including, services but provided not in limited the to, last information three about years contraception by provision, each pregnancy hospital, terminations, hospital tubal system, ligations, or and provider fertility organization treatments that provided, is the subject of the material change transaction and a description of how the this effect information the was material compiled;p.~~

~~(m) 9 If ESB the 5241 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~~aggregate number of end-of-life end-of-life services provided in the last ~~five~~three 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-end-of-life-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)(q)~~ If applicable, if the material change transaction will have any impact on ~~gender~~gender-affirming ~~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~~gender-affirming ~~affirming~~ health care services in Washington state, a description of all ~~gender~~gender-affirming ~~affirming~~ health care services provided in the last ~~five~~three 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~~gender- affirming care.

This description must include the types and ~~levels~~aggregate numbers of gender ~~gender-affirming~~ ~~affirming~~ health ~~p-~~care provided in the last three 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;

~~9(r) SBA 5241~~description healthof careany providedanticipated changes in thehealth lastcare five ~~services yearsprovided andby thoseany proposedparty to be provided after~~ the material change transaction including, ~~after~~ butthe not ~~transaction limitedis to, completed.~~ 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.~~

and (ii) how the need will be adequately met by the proposed alteration; ~~alteration or alternative arrangements designed to meet the identified need;~~

and (s) (iii) A alternative description arrangements of designed each measure proposed by the parties to meetmitigate or eliminate any potential adverse effect on the identifiedavailability need;or accessibility of health care services to the affected communities that may result from the material change transaction;

~~(p)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)~~10 ESB 5241 (t) 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)~~(u) A description of any community benefit program provided by any of the parties to the material change transaction during the past ~~five~~three years with an annual cost of at least \$10,000 and the annual cost of each program for the past five years;

~~(s)~~(v) ~~ForIf eachapplicable, 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;

This description must include a list of all existing staffing plans, policy and procedure manuals, employee handbooks, collective bargaining agreements, or similar ~~employment-employment-related-related~~ documents;

~~(t)(w) ForIf eachapplicable, hospital,all hospitalexisting system,documents orsetting providerforth organizationany guarantees made by any entity that iswould thebe subjecttaking over operation or control of a party to the material change transaction,transaction allrelating existingto documentsemployee settingjob forthsecurity anyand guaranteesretraining, madeor bythe anycontinuation entityof thatcurrent wouldstaffing p-~~ levels and policies, employee wages, salaries, benefits, working conditions, and employment protections;

~~10(x) SBA 5241statement beas takingto overwhether, operationafter orthe controlmaterial ofchange eachtransaction, hospital,neutrality hospitalwill system,be ormaintained providerthrough organizationall relatingcommunications to employee job security and retraining,usage or the continuation of currentfunds~~

~~staffing regarding levels, nonunion and employees policies, forming employee wages, union, salaries, benefits, working conditions, and employment protections;~~

~~(u)(v) For each hospital, hospital system, or provider organization that is the subject of the material change transaction, a statement as to whether, whether after any the successor material of change the transaction, employer neutrality or union will be maintained bound through to all any communication existing and union usage certification of and funds any regarding existing nonunion collective employees bargaining forming agreement; a union;~~

~~(v)(z) For a each description hospital, of hospital current system, debt or collection provider practices organization and that a is description the subject of the any material anticipated change changes transaction, a statement as to whether debt any collection successor practices of following the employer material or change union transaction; will be bound to any existing union certification and any existing collective bargaining agreement;~~

~~(w)(aa) For If each applicable, hospital, hospital system, or provider organization that is the subject of the material change transaction, a description detailed of statement current debt collection practices and a documents description relating of to any the anticipated parties' changes plans to for debt existing collection provider practices privileges following after the material change transaction;~~

~~(x)(bb) If A applicable, a detailed statement and documents relating to the parties' plans for assuring ensuring the safeguards continuance to avoid conflict of existing interest hospital in privileges patient referral 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.~~

11 SBESB 5241 ~~(5)(cc) The A attorney detailed general statement may and request documents additional relating information to that the is parties' necessary commitment and plans to implement provide health care to the goals disadvantaged, of the this uninsured, chapter, and the underinsured, and how benefits to promote improved health in the affected community will be provided after the material change transaction;~~

~~(6) and Nothing (dd) in A this list section of prohibits the parties primary to languages a spoken material by change patients transaction in from the voluntarily service providing area additional that information is to the subject of the attorney material general change transaction.~~

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

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

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

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

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

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

Fees for a specific material change transaction review must be set relative to whether the review is preliminary or comprehensive.

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

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

~~((The))~~ ~~p. 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.~~
12 ESB 5241 ((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.

If the attorney general determines that a notice is incomplete, it shall notify the parties within ~~30~~¹⁵ working days after the date the notice was received stating the reasons for its determination of incompleteness.

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

~~12 SB 5241 which a person may submit written comments about the notice to the attorney general's office. Any p. 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.~~

13 ESB 5241 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.

~~p. (5) In determining whether a material change transaction fulfills the requirements of subsections (1) through (4) of this section, the attorney general shall take into consideration whether the material change transaction is necessary to maintain the solvency of an entity involved in the transaction.~~

~~13 However, SB the 5241 attorney (5) general Nothing may in not this determine chapter that is a intended material to change derogate transaction from is or necessary otherwise to affect maintain in the any solvency way of the an attorney entity general's without authority first to having conduct an investigation, independent or contractor the prepare process a offinancial any assessment investigation, of under the chapter entity.. 19.86 RCW.~~

Such assessment must include possible alternatives to the material change p.

14 ESB 5241 transaction, and the likely impact of those alternatives, if implemented, on the entity's solvency.

(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.

(1) For all material change transactions included under RCW 19.390.040(3), the attorney general shall conduct a preliminary review of the completed notice and to determine if the ~~attorney general determines the material change transaction will not fulfill the requirements under section 9 of this act, act. the attorney general shall within 120 days of receiving the completed notice.~~

~~(a) The Impose review conditions must or include, modifications but on is the not material limited change to, transaction an to analysis ensure of the requirements information of and section documentation 9 provided of under this RCW act 19.390.040 are met and that one sufficient public safeguards hearing. are in place to ensure communities have continued or improved access to affordable quality care;~~

~~or (2) (b) After Disapprove conducting the preliminary review, if the attorney general determines that the material change transaction, transaction which is shall likely constitute to fulfill the requirements under section 9 of this act, the attorney general may not conduct a final comprehensive decision review of the material change transaction as provided under sections 11, 13, and 14 of this act.~~

~~(2) (3) The attorney general may shall, not within make 60 its days decision of to receiving disapprove a the completed material notice, change inform transaction parties subject to any a condition material not change directly transaction and as rationally related to the whether requirements a under comprehensive section review 9 of this the act material and change any transaction condition is or required modification as must provided bear under a sections direct 11, and 13, rational relationship to the notice under review and the 14 requirements under section 9 of this act.~~

~~(3) (4) 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.~~

During (1) the For course all of review of notices of material change transactions included under RCW 19.390.040(3), 19.390.040(3) the that attorney are general not shall limited conduct to one the or preliminary more review public under hearings, section at 10 least one of which this must act, be the in attorney a general county shall where review one of the communities completed impacted notice by and the conduct material a

~~change comprehensive transaction review. is located.~~

After conducting a comprehensive review, the attorney general shall within 120 days of receiving the completed notice:

(a) Approve the material change transaction in writing.

The approval of a material change transaction pursuant to this chapter p.

15 ESB 5241 does not constitute approval for the purpose of RCW 19.86.170, or any other provision of state or federal consumer protection or antitrust law.

Such approval pursuant to this chapter does not preclude the attorney general from taking any action to enforce state or federal consumer protection or antitrust law;

(b) 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.

The imposition of such conditions or modifications shall be in writing and constitute a final decision subject to all appellate rights contained within this chapter;

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

(2) Within 30 days after a final decision of the attorney general either denying or approving with modifications a material change transaction, any party to the material change transaction may appeal the decision to the superior court.

An appeal to the superior court shall be to the superior court of a county in which the material change transaction is to have occurred or to the superior court for Thurston county.

Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the attorney general or their appointed designee.

The attorney general shall, in all cases within 15 days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue.

The attorney general shall serve upon the appealing party and file with the clerk of the court within 30 days of the filing of the appeal, a certified copy of the attorney general's official record which shall include the final decision, and all accompanying documents, subject to the same confidentiality protections provided to such documents in the underlying act.

These shall become the record in the case subject to leave of the court.

The superior court shall review the final decision of the attorney general, subject to the statutory requirements of the underlying act and chapter 34.05 RCW.

(3) 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 p.

16 ESB 5241 relationship to the notice under review and the requirements under section 9 of this act.

(4) 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.

During the course of the preliminary review of notices of material change transactions under RCW 19.390.040(3), as provided under section 10 of this act, 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 and must also allow individuals to participate remotely in the hearing.

If a material change transaction undergoes the comprehensive review process as provided for under sections 11, 13, and 14 of this act, the attorney general may conduct additional public hearings.

The attorney general may subpoena additional information or witnesses, require and administer oaths, require sworn statements, ~~p-~~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.

~~14(1) SBThe 5241first takepublic depositions,hearing andmust usebe relatedheld discoveryno procedureslater forthan purposes30 ofdays after the hearingattorney andgeneral atreceives any time prior to making a decisioncompleted onnotice. 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.~~

(ii) At the public entrance and on the bulletin board designated for legal or public notices of any

hospital, hospital system, ~~provider~~p. organization, and other health care facility that is the subject of the material change transaction;

17 ESB 5241 provider organization, and other health care facility that is the subject of the material change transaction;

(5) If ~~after~~during the ~~initial~~course ~~public of hearing~~the preliminary or comprehensive review, there is any change in the terms of the material change transaction that materially alters ~~p. 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.

~~15 SB 5241 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.~~

~~12-13.~~

(1) For any material change ~~transaction~~transactions included under RCW 19.390.040(3), which are not limited to the preliminary review under section 10 of this act, the attorney general must hire an independent contractor to prepare a health equity assessment.

~~In~~The creating a health equity assessment, the independent contractor must~~shall engage~~be with~~screened and for provide~~any input~~conflicts in the assessment from public health experts, organizations representing employees of the~~interest applicant, health care advocates, and community members who reside in the ~~advance,~~service ~~agree~~areas of the parties to the ~~maintain material confidentiality change~~p. transaction.

~~(2) 18 The ESB health 5241 equity of assessment must contain information pursuant to better this inform chapter, the agree attorney general as to whether charge the parties meet the requirements for a material reasonable change market-rate transaction fee, under and section have 9 necessary of experience this and act expertise.~~

In creating a health equity assessment, the independent contractor must engage with and provide input in the assessment from the department of health, local public health jurisdictions, emergency health care coalitions, health care entities, public health experts, organizations representing employees of the applicant, health care advocates, community members who reside in the service areas of the parties to the material change transaction, the parties to the material change transaction, and other individuals or organizations the attorney general, secretary of health, or independent contractor determine should be consulted.

Any assessment conducted under this section must be completed 30 days prior to the attorney general's deadline to complete a review under section 10 of this act.

(2) The health equity assessment must contain information and data, including health services data, 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.

(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, transaction including~~including, but not limited ~~to to,~~ emergency care services, primary care services, specialty services, reproductive health care services, gender affirming health care, and end-of-life services including services provided in accordance with chapter 70.245 RCW;

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

~~16 p. SB 5241 bisexual, transgender, gender diverse, or queer individuals, terminally ill individuals, and other underserved or marginalized populations;~~

19 ESB 5241 (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;

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

~~p. (iv) Availability of similar services at other institutions in or near the parties' services area; 17 and SB p. 5241 (iv) Availability of similar services at other institutions in or near the parties' services area;~~

and 20 ESB 5241 (v) Historical and projected market shares of hospitals, hospital systems, and provider organizations in the parties' service area;

and (m) A discussion of ~~alternatives~~alternatives, and anticipated impacts of alternatives, to the material change transaction, including:

(4) The information contained in the independent health equity assessment must be used by the attorney general's office in determining under section ~~10~~11 of this act whether to impose conditions or

modifications or disapprove the material change transaction.

~~13-14.~~

(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)~~ 19.390.040(3), other than material change transactions limited to the preliminary review under section 10 of this act, fulfills the requirements under section 9 of this act.

~~1821 SB~~ ESB 5241 NEW SECTION.

~~14-15.~~

(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 ~~1011~~ 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 ~~1011~~ 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 ~~1011~~ of this act or that does not incorporate any conditions or modifications imposed by the attorney general in accordance with section ~~1011~~ of this act.

~~15-16.~~

The attorney general may request information and documents and conduct on-site compliance ~~audits~~ audits.
~~at the parties' or successor persons' expense.~~

(5) ~~The~~ If the attorney general is ~~has~~ entitled ~~reason~~ to reimbursement ~~believe from 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 ~~successor conditions persons or for~~ modifications all imposed actual by and the direct attorney costs general incurred under in ~~section monitoring~~ 11 ongoing of compliance this for act, 10 the years, attorney including general contract shall and conduct administrative an costs investigation.

~~(6) As The part attorney of general the may investigation bill the parties attorney or general successor will persons provide and public the notice parties of or successor billed by the attorney investigation general and p.~~

~~1022 SB~~ ESB 5241 ~~shall obtain promptly input pay from community members impacted by the material change transaction.~~

~~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.~~

~~(8)~~ (6) 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 ~~1011~~ 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)~~ (7) 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 ~~1718~~ of this act.

~~(10)~~ (8) 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.

(9) The attorney general may bill the parties or successor persons and the parties or successor persons billed by the attorney general shall promptly pay.

If the parties or successor persons 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.

~~16-17.~~

~~p-~~ NEW SECTION.

~~20 SB 5241~~ NEW SECTION.

~~17-18.~~

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 p. section 15 of this act.~~

23 ESB 5241 under section 16 of this act.

~~18, 19.~~

~~(2)(a) All~~ The materials parties provided to in a response material to change transaction may designate portions of documents submitted pursuant RCW 19.390.040(3) ~~(a) and through any (bb) documents and thereafter all submitted materials by provided the during parties public as hearings confidential are if considered the public information records is for sensitive purposes financial, of commercial, chapter or 42.56 proprietary RCW, information or is protected from disclosure by state or federal law.~~

~~(3) The Nothing applicant in shall this provide chapter two limits versions the of attorney any general's document authority designated under as RCW confidential. 19.86.110 or 19.86.115.~~

One shall be marked as "CONFIDENTIAL" and shall contain the full unredacted version of the document and shall be maintained as such by the attorney general.

The second shall be marked as "PUBLIC" and shall contain a redacted version of the materials from which the confidential portions have been removed or obscured and shall be made available by the attorney general to the public, the entity providing the health care equity assessment pursuant to section 13 of this act, the entity providing the financial assessment pursuant to section 9 of this act, and the review board of stakeholders pursuant to section 14 of this act.

An applicant claiming confidentiality in respect to documents shall include a redaction log that provides a reasonably detailed statement of the grounds on which confidentiality is claimed, citing the applicable basis for confidentiality of each portion.

~~D.~~

24 ESB 5241 (b) Confidential materials provided by a party to a material change transaction that is subject to review by the attorney general shall be maintained as confidential materials and not subject to disclosure under chapter 42.56 RCW.

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

(4) Nothing in this chapter limits the attorney general's authority under RCW 19.86.110 or 19.86.115.

~~19, 20.~~

~~20, 21.~~

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

~~21 SB 5241 determining whether parties or successor persons are in compliance with the requirements under this chapter.~~

~~21, 22.~~

~~22, 23.~~

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

25 ESB 5241 gender affirming care services, and end-of-life care services including services provided in accordance with chapter 70.245 RCW;

~~23, 24.~~

(1) By January, ~~2025, 2026,~~ 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.

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

~~22 SB 5241 (a) The impact on costs to consumers and health sponsors for health care;~~

(2) This section expires July 1, ~~2025, 2026.~~

~~NEW D. SECTION.~~

26 ESB 5241 NEW SECTION.

~~24, 25.~~

~~25, 26.~~

Sections 7, 9 through ~~17, 18,~~ and ~~19, 20~~ through ~~24, 25~~ of this act are each added to chapter 19.390 RCW.

~~26, 27.~~

This act takes effect January 1, ~~2024, 2025.~~

NEW SECTION.

Sec.

~~28.~~

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

~~23~~27 ~~SB~~ESB 5241

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