

D R A F T

SUMMARY

Requires health care entities to obtain approval from Oregon Health Authority before any mergers, acquisitions or affiliations of entities that had \$25 million or more in net patient revenue in preceding three fiscal years or before mergers, acquisitions or affiliations that will result in one entity having increase in net patient revenue of \$1 million or more. Specifies procedures.

Requires Oregon Health Policy Board to establish criteria for approval of mergers, acquisitions and affiliations based on specified factors.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to health care providers; creating new provisions; amending ORS
3 413.032, 413.037, 413.101, 413.181, 415.013, 415.019 and 415.103; and pre-
4 scribing an effective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. As used in sections 2 and 3 of this 2021 Act:**

7 **(1) "Health care entity" includes:**

8 **(a) An individual health professional licensed or certified in this**
9 **state;**

10 **(b) A hospital, as defined in ORS 442.015, or hospital system, as de-**
11 **finied by the Oregon Health Authority by rule;**

12 **(c) A carrier, as defined in ORS 743B.005;**

13 **(d) A Medicare Advantage plan;**

14 **(e) A coordinated care organization or a prepaid managed care**
15 **health services organization, as both are defined in ORS 414.025; and**

16 **(f) Any other group or organization that has as a primary function**

1 the provision of health care items or services or that is a parent or-
2 ganization of or an entity closely related to a group or organization
3 that has as a primary function the provision of health care items or
4 services.

5 (2) "Health equity" means that all individuals are able to reach
6 their full health potential and well-being and are not disadvantaged
7 by their race, ethnicity, language, disability, gender, gender identity,
8 sexual orientation, social class, intersections among these communi-
9 ties or identities or other socially determined circumstances.

10 (3)(a) "Material change transaction" means:

11 (A) Any of the following, occurring during a single transaction or
12 in a series of related transactions within a consecutive 12-month pe-
13 riod, that results in one health care entity having an increase in net
14 patient revenue of \$1 million or more:

15 (i) A merger of health care entities;

16 (ii) An acquisition of one or more health care entities by another
17 health care entity;

18 (iii) An affiliation or contract formed between two or more health
19 care entities; or

20 (iv) The formation of a partnership, joint venture, accountable care
21 organization, parent organization or management services organiza-
22 tion for the purpose of administering contracts with carriers, third
23 party administrators, pharmacy benefit managers or providers as pre-
24 scribed by the authority by rule.

25 (B) Any of the transactions described in subparagraph (A)(i) to (iv)
26 of this paragraph in which two or more of the health care entities in-
27 volved in the transaction had average net patient revenue of \$25
28 million or more in the preceding three fiscal years.

29 (C) A sale, purchase, lease, affiliation or transfer of control of a
30 board of directors that involves a hospital.

31 (D) A transaction that will result in the health care entity no longer

1 **providing:**

2 (i) **Reproductive health services including, but not limited to, tubal**
3 **ligation, abortion or contraceptive counseling; or**

4 (ii) **Services described in ORS 127.815.**

5 (b) **“Material change transaction” does not include a clinical affil-**
6 **iation of health care entities formed for the purpose of collaborating**
7 **on clinical trials or graduate medical education programs.**

8 **SECTION 2. (1) The purpose of this section is to promote the public**
9 **interest and to advance the goals set forth in ORS 414.018 and the goals**
10 **of the Oregon Integrated and Coordinated Health Care Delivery Sys-**
11 **tem described in ORS 414.570.**

12 (2) **In accordance with subsection (1) of this section, the Oregon**
13 **Health Authority shall adopt by rule criteria approved by the Oregon**
14 **Health Policy Board for the consideration of requests by health care**
15 **entities to engage in a material change transaction. The authority**
16 **shall deny approval of a material change transaction if:**

17 (a) **The parties to the transaction cannot demonstrate that the**
18 **transaction will result in positive benefits for patients and communi-**
19 **ties by:**

20 (A) **Reducing patient costs;**

21 (B) **Increasing access to services in medically underserved areas;**
22 **or**

23 (C) **Rectifying historical and contemporary factors contributing to**
24 **a lack of health equities;**

25 (b) **The transaction will not improve health outcomes or decrease**
26 **patient costs; or**

27 (c) **There is a substantial likelihood of anticompetitive effects from**
28 **the transaction that outweigh the benefits of the transaction in in-**
29 **creasing or maintaining services to underserved populations.**

30 (3) **A health care entity may not engage in a material change**
31 **transaction without obtaining the authority’s prior approval of the**

1 **transaction. To obtain the authority's approval of a material change**
2 **transaction, a health care entity shall submit a notice and supporting**
3 **documentation, no less than 180 days before the date of the trans-**
4 **action, in the form and manner prescribed by the authority and pay**
5 **a fee prescribed in section 4 of this 2021 Act. The authority is re-**
6 **sponsible for coordinating with the Department of Consumer and**
7 **Business Services the review of any transaction that is subject to re-**
8 **view and approval under this section and also subject to review by the**
9 **department under ORS 732.517 to 732.546 or 732.576.**

10 (4) **The authority may suspend a proposed material change trans-**
11 **action if necessary to conduct an examination and complete an anal-**
12 **ysis of whether the transaction is consistent with the criteria adopted**
13 **by rule under subsection (2) of this section.**

14 (5) **Upon receipt of a notice of material change transaction under**
15 **subsection (3) of this section, the authority shall convene a review**
16 **board consisting of members of the affected community, consumer**
17 **advocates and health care experts. No more than one-third of the**
18 **members of the review board may be representatives of institutional**
19 **health care providers.**

20 (6) **The review board may request additional information from a**
21 **health care entity that is a party to the material change transaction**
22 **and the entity shall promptly reply using the form of communication**
23 **requested by the review board and verified by an officer of the entity,**
24 **if required by the review board.**

25 (7) **A health care entity may not refuse to provide documents or**
26 **other information requested under subsection (3) or (6) of this section**
27 **on the grounds that the information is privileged or confidential.**

28 (8) **The authority may retain actuaries, accountants or other pro-**
29 **fessionals independent of the authority as necessary to assist the re-**
30 **view board in conducting the analysis of a proposed material change**
31 **transaction. The authority shall designate the party or parties to the**

1 **material change transaction that shall bear the cost of retaining the**
2 **professionals.**

3 **(9) The review board shall hold at least two public hearings in the**
4 **service area or areas of the health care entities that are parties to the**
5 **material change transaction to seek public input and otherwise engage**
6 **the public before making a determination on the proposed transaction.**
7 **At least 10 days prior to the public hearing, the authority shall post**
8 **to the authority's website information about the public hearing and**
9 **materials related to the material change transaction including:**

10 **(a) A summary of the proposed transaction;**

11 **(b) An explanation of the groups or individuals likely to be impacted**
12 **by the transaction;**

13 **(c) Information about services currently provided by the health care**
14 **entity, commitments by the health care entity to continue such ser-**
15 **vices and any services that will be reduced or eliminated;**

16 **(d) Details about the hearings and how to submit comments, in a**
17 **format that is easy to find and easy to read;**

18 **(e) The notice and other materials submitted by the health care**
19 **entity under subsections (3) and (6) of this section, except for materi-**
20 **als that the authority determines would cause public harm; and**

21 **(f) Information about potential or perceived conflicts of interest**
22 **among executives and members of the board of directors of health care**
23 **entities that are parties to the transaction.**

24 **(10) The authority shall post the information described in sub-**
25 **section (9)(a) to (c) of this section to the authority's website in lan-**
26 **guages spoken in the area affected by the material change transaction,**
27 **in a culturally sensitive manner.**

28 **(11) The authority shall provide the information described in sub-**
29 **section (9)(a) to (c) to:**

30 **(a) At least one newspaper of general circulation in the area af-**
31 **ected by the material change transaction;**

1 (b) Health centers in the area affected by the material change
2 transaction for posting by the health centers; and

3 (c) Local officials in the area affected by the material change
4 transaction.

5 (12) The review board shall make recommendations to the authority
6 to approve the material change transaction, disapprove the material
7 change transaction or approve the material change transaction subject
8 to conditions, based on the criteria adopted by rule under subsection
9 (2) of this section. The authority shall issue a final order adopting or
10 modifying the recommendations of the review board. If the authority
11 disapproves the material change transaction or approves the material
12 change transaction subject to conditions, the authority shall notify the
13 Attorney General of the authority's findings and analysis so that the
14 Attorney General may, if appropriate, conduct an investigation into
15 whether the health care entities have engaged in unfair competition
16 or anticompetitive behavior in violation of ORS 646.725 or 646.730 and,
17 if necessary, take steps to protect consumers in the health care mar-
18 ket.

19 (13) A health care entity that is a party to an approved material
20 change transaction shall notify the authority upon the completion of
21 the transaction in the form and manner prescribed by the authority.
22 One year, two years and five years after the material change trans-
23 action is completed, the authority shall analyze:

24 (a) The health care entities' compliance with conditions placed on
25 the transaction, if any;

26 (b) The cost trends and cost growth trends of the parties to the
27 transaction; and

28 (c) The impact of the transaction on the health care cost growth
29 benchmark established under ORS 442.386.

30 (14) The authority shall publish the authority's analyses and con-
31 clusions under subsection (13) of this section and shall incorporate the

1 authority's analyses and conclusions under subsection (13) of this
2 section in the report described in ORS 442.386 (6).

3 (15) Whenever it appears to the Director of the Oregon Health Au-
4 thority that any person has committed or is about to commit a vio-
5 lation of this section or any rule or order issued by the authority
6 under this section, the director may apply to the Circuit Court for
7 Marion County for an order enjoining the person, and any director,
8 officer, employee or agent of the person, from the violation, and for
9 such other equitable relief as the nature of the case and the interest
10 of the public may require.

11 (16) The authority shall adopt rules necessary to carry out the
12 provisions of this section.

13 **SECTION 3.** (1) An officer or employee of the Oregon Health Au-
14 thority who is delegated responsibilities in the enforcement of section
15 2 of this 2021 Act or rules adopted pursuant to section 2 of this 2021
16 Act may not:

17 (a) Be a director, officer or employee of or be financially interested
18 in a health care entity that is a party to a proposed material change
19 transaction except as an enrollee or patient of a health care entity or
20 by reason of rights vested in compensation or benefits related to ser-
21 vices performed prior to affiliation with the authority; or

22 (b) Be engaged in any other business or occupation interfering with
23 or inconsistent with the duties of the authority.

24 (2) This section does not permit any conduct, affiliation or interest
25 that is otherwise prohibited by public policy.

26 **SECTION 4.** (1) The Oregon Health Authority shall prescribe by rule
27 a fee to be paid under section 2 (3) of this 2021 Act, sufficient to re-
28 imburse the costs of administering section 2 of this 2021 Act.

29 (2) Moneys received by the authority under this section shall be
30 deposited to the Oregon Health Authority Fund established in ORS
31 413.101 to be used for carrying out section 2 of this 2021 Act.

1 **SECTION 5.** (1) In addition to any other penalty imposed by law, the
2 Director of the Oregon Health Authority may impose a civil penalty,
3 as determined by the director, for a violation of ORS 413.037 or section
4 2 of this 2021 Act. The amount of the civil penalty may not exceed
5 \$10,000 for each offense. The civil penalty imposed on an individual
6 health professional may not exceed \$1,000 for each offense.

7 (2) Civil penalties shall be imposed and enforced in accordance with
8 ORS 183.745.

9 (3) Moneys received by the Oregon Health Authority under this
10 section shall be paid to the State Treasury and credited to the General
11 Fund.

12 **SECTION 6.** Every four years, the Oregon Health Authority shall
13 commission a study of the impact of health care consolidation in this
14 state. The study must review consolidation occurring during the pre-
15 vious four-year period and include an analysis of:

16 (1) The impact on costs to consumers for health care either to the
17 benefit or the detriment of consumers; and

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

19 (a) Improvement or reductions in morbidity;

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

22 (c) Changes to health and patient outcomes, particularly for
23 underserved and uninsured individuals, recipients of medical assist-
24 ance and other low-income individuals and individuals living in rural
25 areas, as measured by nationally recognized measures of the quality
26 of health care, such as measures used or endorsed by the National
27 Committee for Quality Assurance, the National Quality Forum, the
28 Physician Consortium for Performance Improvement or the Agency
29 for Healthcare Research and Quality.

30 **SECTION 6a.** The Oregon Health Authority shall commission the
31 first study under section 6 of this 2021 Act no later than September

1 **15, 2026.**

2 **SECTION 7.** ORS 413.101 is amended to read:

3 413.101. The Oregon Health Authority Fund is established in the State
4 Treasury, separate and distinct from the General Fund. Interest earned by
5 the Oregon Health Authority Fund shall be credited to the fund. Moneys in
6 the fund are continuously appropriated to the Oregon Health Authority for
7 carrying out the duties, functions and powers of the authority under ORS
8 413.032 and 431A.183 **and section 2 of this 2021 Act.**

9 **SECTION 8.** ORS 413.032 is amended to read:

10 413.032. (1) The Oregon Health Authority is established. The authority
11 shall:

- 12 (a) Carry out policies adopted by the Oregon Health Policy Board;
- 13 (b) Administer the Oregon Integrated and Coordinated Health Care De-
14 livery System established in ORS 414.570;
- 15 (c) Administer the Oregon Prescription Drug Program;
- 16 (d) Develop the policies for and the provision of publicly funded medical
17 care and medical assistance in this state;
- 18 (e) Develop the policies for and the provision of mental health treatment
19 and treatment of addictions;
- 20 (f) Assess, promote and protect the health of the public as specified by
21 state and federal law;
- 22 (g) Provide regular reports to the board with respect to the performance
23 of health services contractors serving recipients of medical assistance, in-
24 cluding reports of trends in health services and enrollee satisfaction;
- 25 (h) Guide and support, with the authorization of the board, community-
26 centered health initiatives designed to address critical risk factors, especially
27 those that contribute to chronic disease;
- 28 (i) Be the state Medicaid agency for the administration of funds from
29 Titles XIX and XXI of the Social Security Act and administer medical as-
30 sistance under ORS chapter 414;
- 31 (j) In consultation with the Director of the Department of Consumer and

1 Business Services, periodically review and recommend standards and meth-
2 odologies to the Legislative Assembly for:

3 (A) Review of administrative expenses of health insurers;

4 (B) Approval of rates; and

5 (C) Enforcement of rating rules adopted by the Department of Consumer
6 and Business Services;

7 (k) Structure reimbursement rates for providers that serve recipients of
8 medical assistance to reward comprehensive management of diseases, quality
9 outcomes and the efficient use of resources and to promote cost-effective
10 procedures, services and programs including, without limitation, preventive
11 health, dental and primary care services, web-based office visits, telephone
12 consultations and telemedicine consultations;

13 (L) Guide and support community three-share agreements in which an
14 employer, state or local government and an individual all contribute a por-
15 tion of a premium for a community-centered health initiative or for insur-
16 ance coverage;

17 (m) Develop, in consultation with the Department of Consumer and
18 Business Services, one or more products designed to provide more affordable
19 options for the small group market;

20 (n) Implement policies and programs to expand the skilled, diverse
21 workforce as described in ORS 414.018 (4); and

22 (o) Implement a process for collecting the health outcome and quality
23 measure data identified by the Health Plan Quality Metrics Committee and
24 report the data to the Oregon Health Policy Board.

25 (2) The Oregon Health Authority is authorized to:

26 (a) Create an all-claims, all-payer database to collect health care data and
27 monitor and evaluate health care reform in Oregon and to provide compar-
28 ative cost and quality information to consumers, providers and purchasers
29 of health care about Oregon's health care systems and health plan networks
30 in order to provide comparative information to consumers.

31 (b) Develop uniform contracting standards for the purchase of health care,

1 including the following:

2 (A) Uniform quality standards and performance measures;

3 (B) Evidence-based guidelines for major chronic disease management and
4 health care services with unexplained variations in frequency or cost;

5 (C) Evidence-based effectiveness guidelines for select new technologies
6 and medical equipment;

7 (D) A statewide drug formulary that may be used by publicly funded
8 health benefit plans; and

9 (E) Standards that accept and consider tribal-based practices for mental
10 health and substance abuse prevention, counseling and treatment for persons
11 who are Native American or Alaska Native as equivalent to evidence-based
12 practices.

13 (3) The enumeration of duties, functions and powers in this section is not
14 intended to be exclusive nor to limit the duties, functions and powers im-
15 posed on or vested in the Oregon Health Authority by ORS 413.006 to 413.042,
16 415.012 to 415.430 and 741.340 **and section 2 of this 2021 Act** or by other
17 statutes.

18 **SECTION 9.** ORS 413.037 is amended to read:

19 413.037. (1) The Director of the Oregon Health Authority, each deputy
20 director and authorized representatives of the director may administer oaths,
21 take depositions and issue subpoenas to compel the attendance of witnesses
22 and the production of documents or other written information necessary to
23 carry out the provisions of ORS 413.006 to 413.042, 415.012 to 415.430 and
24 741.340 **and section 2 of this 2021 Act.**

25 (2) If any person fails to comply with a subpoena issued under this section
26 or refuses to testify on matters on which the person lawfully may be inter-
27 rogated, the director, deputy director or authorized representative may follow
28 the procedure set out in ORS 183.440 to compel obedience.

29 **SECTION 10.** ORS 413.181 is amended to read:

30 413.181. (1) The Department of Consumer and Business Services and the
31 Oregon Health Authority may enter into agreements governing the disclo-

1 sure of information reported to the department by insurers with certificates
2 of authority to transact insurance in this state and the disclosure of infor-
3 mation reported to the Oregon Health Authority by coordinated care organ-
4 izations.

5 (2) The authority may use information disclosed under subsection (1) of
6 this section for the purpose of carrying out ORS 413.032, 414.572, 414.591,
7 414.605, 414.609, 414.638 and 415.012 to 415.430 **and section 2 of this 2021**
8 **Act.**

9 **SECTION 11.** ORS 415.013 is amended to read:

10 415.013. (1) The Oregon Health Authority shall enforce the provisions of
11 ORS 415.012 to 415.430 **and section 2 of this 2021 Act** and rules adopted
12 pursuant to ORS 415.011 **and 415.012 to 415.430 and section 2 of this 2021**
13 **Act** for the public good.

14 (2) The authority has the powers and authority expressly conferred by or
15 reasonably implied from the provisions of ORS 415.012 to 415.430 **and section**
16 **2 of this 2021 Act** and rules adopted pursuant to ORS 415.011 **and 415.012**
17 **to 415.430 and section 2 of this 2021 Act.**

18 (3) The authority may conduct examinations and investigations [*of matters*
19 *concerning the regulation of coordinated care organizations as the authority*
20 *considers proper to determine whether any person has violated any provision*
21 *of ORS 415.012 to 415.430 or rules adopted pursuant to ORS 415.011 or to se-*
22 *cure information useful in the lawful administration of any of ORS 415.011 the*
23 *provisions]* **and require the production of books, records, accounts, pa-**
24 **pers, documents and computer and other recordings the authority**
25 **considers necessary to administer and enforce ORS 415.012 to 415.430**
26 **or section 2 of this 2021 Act and any rules adopted pursuant to ORS**
27 **415.011 or 415.012 to 415.430 or section 2 of this 2021 Act.**

28 **SECTION 12.** ORS 415.019 is amended to read:

29 415.019. (1) The Oregon Health Authority shall hold a contested case
30 hearing upon written request for a hearing by a person aggrieved by any act,
31 threatened act or failure of the authority to act under ORS 415.012 to 415.430

1 **or section 2 of this 2021 Act** or rules adopted pursuant to ORS 415.011 **or**
2 **415.012 to 415.430 or section 2 of this 2021 Act.**

3 (2) The provisions of ORS chapter 183 govern the hearing procedures and
4 any judicial review of a final order issued in a contested case hearing.

5 **SECTION 13.** ORS 415.103 is amended to read:

6 415.103. A person may not file or cause to be filed with the Oregon Health
7 Authority any article, certificate, report, statement, application or other in-
8 formation required or permitted to be filed under ORS 415.012 to 415.430 **or**
9 **section 2 of this 2021 Act** or rules adopted pursuant to ORS 415.011 **or**
10 **415.012 to 415.430 or section 2 of this 2021 Act** that is known by the person
11 to be false or misleading in any material respect.

12 **SECTION 14.** **This 2021 Act takes effect on the 91st day after the**
13 **date on which the 2021 regular session of the Eighty-first Legislative**
14 **Assembly adjourns sine die.**

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