

HB 2362 -8 STAFF MEASURE SUMMARY

House Committee On Health Care

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Meeting Dates: 2/9, 4/6

WHAT THE MEASURE DOES:

Defines key terms, including "health care entity" and "material change transaction." Allows Oregon Health Authority (OHA) to approve, approve with conditions, or deny a material change transaction of entities that had \$25 million or more in net patient revenue in preceding three fiscal years or before transaction that will result in one entity having increase in net patient revenue of \$1 million or more. Specifies evaluation criteria, including impacts on costs, access, health equity, health outcomes, and competition. Creates and specifies a review process for entities to submit a request for material change transaction from OHA. Authorizes review board to request information from an entity seeking material change transaction; prohibits requesting entity from providing requested information if deemed privileged or confidential. Permits OHA to conduct examinations and investigations to enforce provisions of the measure. Requires OHA to submit findings and analysis of denied material change transaction requests to Attorney General. Requires entities approved for material change transaction request to notify OHA one, two, and five-years after completion of transaction. Directs OHA to analyze and publish results of approved material change transactions. Prohibits OHA officers or employees involved with enforcement of provisions from having financial interest in a party subject to a proposed material change transaction. Allows OHA to determine fees to administer program by rule. Grants OHA authority to impose civil penalties not to exceed \$10,000 per entity or \$1,000 per individual professional. Requires OHA to conduct an analysis of the impact of health care consolidation in Oregon every four years. Specifies criteria for analysis.

ISSUES DISCUSSED:

- Health care access, affordability, and health equity
- Market consolidation, transparency, and health care prices
- Innovation and care coordination among health care providers
- Access to care among vulnerable populations, provider networks, and rural hospitals and clinics
- Duplicate efforts within the Oregon Health Authority and agency's capacity to implement measure
- Financial threshold of proposed material change transaction
- Reproductive health services and equal access to care provisions
- Hospital community benefits and charity care program

EFFECT OF AMENDMENT:

-8 Defines key terms, including "corporate affiliation," "essential services," "health care entity," "net patient revenue" and "revenue." Modifies the definition of "material change transaction" by increasing revenue threshold from \$1 million to \$10 million. Changes \$25 million threshold from average net patient revenue to average revenue. Expands scope of "material change transaction" to include new partnerships, joint ventures, accountable care organizations, parent organizations or management services organizations, and transactions involving out-of-state entities. Exempts from material change transaction long term care facilities and residential care facilities, and entities that collaborate on clinical trials or graduate medical education programs, medical service contracts, affiliations among entities that do not affect corporate leadership, governance, or control, or are required to advance value-based payments. Removes reference to reproductive health services as part of a material transaction. Modifies criteria for reviewing material change transactions, including establishing a preliminary and comprehensive review process by OHA. Specifies a material change transaction involving health insurers is to be submitted first to Department of Consumer and Business Services (DCBS), which is required to

HB 2362 -8 STAFF MEASURE SUMMARY

then notify OHA to conduct the review. Clarifies privileged or confidential information may not be disclosed if disclosure causes harm to public, violates existing public records law, or is not currently subject to disclosure (ORS 705.137). Removes requirement that OHA notify Attorney General upon disapproving a material change transaction. Allows an entity party to a disapproved transaction to seek legal remedy under current law (ORS 183).

REVENUE: statement issued - no revenue impact.

FISCAL: statement issued - see analysis.

BACKGROUND:

Research indicates market concentration in the United States among hospitals, physician organizations, and health insurers increased between 2010 to 2019 ([Fulton, 2017](#); [Furukawa, 2020](#)). This trend is partially attributable to mergers among hospitals and health systems (horizontal integration), along with independent and small physician groups joining larger groups or being directly employed by hospitals or acquired by hospitals (vertical integration). In 2018, more than half of all physicians and 72 percent of hospitals were affiliated with one of the 637 health systems, with nonprofits accounting for 440 hospital systems ([Furukawa, 2020](#)).

Hospital mergers may create efficiency gains from eliminating excess capacity, relief from financial difficulties for hospitals seeking to be acquired, the pursuit of bargaining leverage with suppliers of drugs and devices, and increase care integration (MACPAC, 2020). Consistent with these incentives, hospitals have been consolidating into larger systems over several decades. Research suggests hospitals with larger market shares can negotiate higher prices from commercial insurers, with price increases exceeding 20 percent when mergers occur in such markets. Of interest are the effect of hospital and provider consolidation on access, quality, costs, and market competition. Related are the implications of health insurer concentration in a geographic market and an insurers' ability to negotiate rates (prices) with hospitals and providers, and the overall effects on premiums.

States have put forward a range of policies to address consolidation, including enforcing antitrust law, restricting anticompetitive barriers, and regulating provider and health insurers rates. Massachusetts' Health Policy Commission analyzes proposed health care mergers for the state's attorney general and the public. Oregon's Insurance Commissioner reviews and approves insurers' rates for plans regulated in the commercial market.

House Bill 2362 gives the Oregon Health Authority the authority to examine and monitor the competitiveness of the health care market, and the ability to approve or deny mergers, acquisitions, and affiliations among hospitals, insurers, and provider organizations.