House Bill 2079

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of Governor Kate Brown for Oregon Health Authority)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

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 prior fiscal year or before mergers, acquisitions or affiliations that will result in one entity having increase in net patient revenue of $10 million or more. Specifies procedures.

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

A BILL FOR AN ACT

Relating to health care providers; creating new provisions; and amending ORS 413.032, 413.037, 413.101, 413.181, 415.013, 415.019 and 415.103.

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

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

(1) “Health care entity” includes:

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

(b) A hospital, as defined in ORS 442.015, or hospital system, as defined by the Oregon Health Authority by rule;

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

(d) A Medicare Advantage plan;

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

(f) Any other group or organization that has as a primary function the provision of health care items or services.

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

(3)(a) “Material change transaction” means:

(A) Any of the following, occurring during a single transaction or in a series of related transactions within a consecutive 12-month period, that results in one health care entity having an increase in net patient revenue of $10 million or more:

(i) A merger of health care entities;

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

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

(iv) The formation of a partnership, joint venture, accountable care organization, parent organization or management services organization for the purpose of administering con-

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.

LC 407
tracts with carriers, third party administrators, pharmacy benefit managers or providers as prescribed by the authority by rule.

(B) Any of the transactions described in subparagraph (A) of this paragraph in which two or more of the health care entities involved in the transaction had net patient revenue of $25 million or more in the preceding fiscal year.

(b) “Material change transaction” does not include a clinical affiliation of health care entities formed for the purpose of collaborating on clinical trials or graduate medical education programs.

SECTION 2. (1) The purpose of this section is to promote the public interest and to advance the goals set forth in ORS 414.018 and the goals of the Oregon Integrated and Coordinated Health Care Delivery System described in ORS 414.570.

(2) In accordance with subsection (1) of this section, the Oregon Health Authority shall adopt by rule criteria approved by the Oregon Health Policy Board for the consideration of requests by health care entities to engage in a material change transaction. The criteria must take into account:

(a) The anticipated impact of the material change transaction on the health of the residents of this state;

(b) The predicted effect of the material change transaction on meeting the health care cost growth benchmark established under ORS 442.386; and

(c) Health equity, access to care, health care quality and the cost of health care in this state.

(3) A health care entity may not engage in a material change transaction without obtaining the authority's prior approval of the material change transaction. To obtain the authority's approval of a material change transaction, a health care entity shall submit a notice and supporting documentation, no less than 60 days before the date of the material change transaction, in the form and manner prescribed by the authority and pay a fee prescribed in section 4 of this 2021 Act. The authority is responsible for coordinating with the Department of Consumer and Business Services the review of any transaction that is subject to review and approval under this section and also subject to review by the department under ORS 732.517 to 732.546 or 732.576.

(4) The authority may suspend a proposed material change transaction if necessary to conduct an examination and complete an analysis of whether the transaction is consistent with the criteria adopted by rule under subsection (2) of this section.

(5) The authority may request additional information from a health care entity that is a party to the material change transaction and the entity shall promptly reply using the form of communication requested by the authority and verified by an officer of the entity, if required by the authority.

(6) A health care entity may not refuse to provide documents or other information requested by the authority under subsection (3) or (5) of this section on the grounds that the information is privileged or confidential. However, the authority may not further disclose any information that the authority determines to be a trade secret, as defined in ORS 192.345, or that is protected from disclosure by state or federal law.

(7) The authority may retain actuaries, accountants or other professionals independent of the authority as necessary to conduct the analysis of a proposed material change transaction. The authority shall designate the party or parties to the transaction that shall bear
(8) The authority shall hold a public hearing in the service area or areas of the health care entities that are parties to the material change transaction, seek public input and otherwise engage the public as the authority determines necessary before making a determination on the proposed material change transaction.

(9) The authority shall issue a final order, based on the criteria adopted by rule under subsection (2) of this section, approving or disapproving the proposed material change transaction or approving the proposed material change transaction subject to conditions. If the authority disapproves the material change transaction or approves the material change transaction subject to conditions, the authority shall notify the Attorney General of the authority's findings and analysis so that the Attorney General may, if appropriate, conduct an investigation into whether the health care entities have engaged in unfair competition or anticompetitive behavior in violation of ORS 646.725 or 646.730 and, if necessary, take steps to protect consumers in the health care market.

(10) The authority may require a health care entity that is a party to a material change transaction to notify the authority upon the completion of the transaction in the form and manner prescribed by the authority. After the transaction is completed, the authority shall analyze:

(a) The cost trends and cost growth trends of the parties to the material change transaction; and

(b) The impact of the material change transaction on the health care cost growth benchmark established under ORS 442.386.

(11) The authority shall publish the authority's analyses and conclusions under subsection (10) of this section and shall incorporate the authority's analyses and conclusions under subsection (10) of this section in the report described in ORS 442.386 (6).

(12) Whenever it appears to the Director of the Oregon Health Authority that any person has committed or is about to commit a violation of this section or any rule or order issued by the authority under this section, the director may apply to the Circuit Court for Marion County for an order enjoining the person, and any director, officer, employee or agent of the person, from the violation, and for such other equitable relief as the nature of the case and the interest of the public may require.

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

SECTION 3. (1) An officer or employee of the Oregon Health Authority who is delegated responsibilities in the enforcement of section 2 of this 2021 Act or rules adopted pursuant to section 2 of this 2021 Act may not:

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

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

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

SECTION 4. (1) The Oregon Health Authority shall prescribe by rule a fee to be paid under section 2 (3) of this 2021 Act, sufficient to reimburse the costs of administering section
(2) Moneys received by the authority under this section shall be deposited to the Oregon Health Authority Fund established in ORS 413.101 to be used for carrying out section 2 of this 2021 Act.

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

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

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

SECTION 6. ORS 413.101 is amended to read:

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

SECTION 7. ORS 413.032 is amended to read:

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

(a) Carry out policies adopted by the Oregon Health Policy Board;

(b) Administer the Oregon Integrated and Coordinated Health Care Delivery System established in ORS 414.570;

(c) Administer the Oregon Prescription Drug Program;

(d) Develop the policies for and the provision of publicly funded medical care and medical assistance in this state;

(e) Develop the policies for and the provision of mental health treatment and treatment of addictions;

(f) Assess, promote and protect the health of the public as specified by state and federal law;

(g) Provide regular reports to the board with respect to the performance of health services contractors serving recipients of medical assistance, including reports of trends in health services and enrollee satisfaction;

(h) Guide and support, with the authorization of the board, community-centered health initiatives designed to address critical risk factors, especially those that contribute to chronic disease;

(i) Be the state Medicaid agency for the administration of funds from Titles XIX and XXI of the Social Security Act and administer medical assistance under ORS chapter 414;

(j) In consultation with the Director of the Department of Consumer and Business Services, periodically review and recommend standards and methodologies to the Legislative Assembly for:

(A) Review of administrative expenses of health insurers;

(B) Approval of rates; and

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

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

(L) Guide and support community three-share agreements in which an employer, state or local government and an individual all contribute a portion of a premium for a community-centered health initiative or for insurance coverage;

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

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

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

(2) The Oregon Health Authority is authorized to:

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

(b) Develop uniform contracting standards for the purchase of health care, including the following:

(A) Uniform quality standards and performance measures;

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

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

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

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

(3) The enumeration of duties, functions and powers in this section is not intended to be exclusive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Authority by ORS 413.006 to 413.042, 415.012 to 415.430 and section 2 of this 2021 Act or by other statutes.

SECTION 8. ORS 413.037 is amended to read:

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

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

SECTION 9. ORS 413.181 is amended to read:

413.181. (1) The Department of Consumer and Business Services and the Oregon Health Authority may enter into agreements governing the disclosure of information reported to the department by insurers with certificates of authority to transact insurance in this state and the disclosure of information reported to the Oregon Health Authority by coordinated care organizations.

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

SECTION 10. ORS 415.013 is amended to read:

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

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

(3) The authority may conduct examinations and investigations of matters concerning the regulation of coordinated care organizations as the authority considers proper to determine whether any person has violated any provision of ORS 415.012 to 415.430 or rules adopted pursuant to ORS 415.011 or to secure information useful in the lawful administration of any of ORS 415.011 the provisions and require the production of books, records, accounts, papers, documents and computer and other recordings the authority considers necessary to administer and enforce ORS 415.012 to 415.430 or section 2 of this 2021 Act and any rules adopted pursuant to ORS 415.011 or 415.012 to 415.430 or section 2 of this 2021 Act.

SECTION 11. ORS 415.019 is amended to read:

415.019. (1) The Oregon Health Authority shall hold a contested case hearing upon written request for a hearing by a person aggrieved by any act, threatened act or failure of the authority to act under ORS 415.012 to 415.430 or section 2 of this 2021 Act or rules adopted pursuant to ORS 415.011 or 415.012 to 415.430 or section 2 of this 2021 Act.

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

SECTION 12. ORS 415.103 is amended to read:

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