

HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2362

By JOINT COMMITTEE ON WAYS AND MEANS

June 23

- 1 On page 1 of the printed A-engrossed bill, line 2, after the second semicolon insert “and”.
- 2 In line 3, after “415.103” insert a period and delete the rest of the line.
- 3 Delete lines 5 through 23 and delete page 2.
- 4 On page 3, delete lines 1 through 26 and insert:
- 5 **“SECTION 1. As used in this section and sections 2 and 3 of this 2021 Act:**
- 6 **“(1) ‘Corporate affiliation’ has the meaning prescribed by the Oregon Health Authority**
- 7 **by rule, including:**
- 8 **“(a) Any relationship between two organizations that reflects, directly or indirectly, a**
- 9 **partial or complete controlling interest or partial or complete corporate control; and**
- 10 **“(b) Transactions that merge tax identification numbers or corporate governance.**
- 11 **“(2) ‘Essential services’ means:**
- 12 **“(a) Services that are funded on the prioritized list described in ORS 414.690; and**
- 13 **“(b) Services that are essential to achieve health equity.**
- 14 **“(3) ‘Health benefit plan’ has the meaning given that term in ORS 743B.005.**
- 15 **“(4)(a) ‘Health care entity’ includes:**
- 16 **“(A) An individual health professional licensed or certified in this state;**
- 17 **“(B) A hospital, as defined in ORS 442.015, or hospital system, as defined by the authority**
- 18 **by rule;**
- 19 **“(C) A carrier, as defined in ORS 743B.005, that offers a health benefit plan in this state;**
- 20 **“(D) A Medicare Advantage plan;**
- 21 **“(E) A coordinated care organization or a prepaid managed care health services organ-**
- 22 **ization, as both terms are defined in ORS 414.025; and**
- 23 **“(F) Any other entity that has as a primary function the provision of health care items**
- 24 **or services or that is a parent organization of, or is an entity closely related to, an entity**
- 25 **that has as a primary function the provision of health care items or services.**
- 26 **“(b) ‘Health care entity’ does not include:**
- 27 **“(A) Long term care facilities, as defined in ORS 442.015.**
- 28 **“(B) Facilities licensed and operated under ORS 443.400 to 443.455.**
- 29 **“(5) ‘Health equity’ has the meaning prescribed by the Oregon Health Policy Board and**
- 30 **adopted by the authority by rule.**
- 31 **“(6)(a) ‘Material change transaction’ means:**
- 32 **“(A) A transaction in which at least one party had average revenue of \$25 million or more**
- 33 **in the preceding three fiscal years and another party:**
- 34 **“(i) Had an average revenue of at least \$10 million in the preceding three fiscal years;**
- 35 **or**

1 “(ii) In the case of a new entity, is projected to have at least \$10 million in revenue in
2 the first full year of operation at normal levels of utilization or operation as prescribed by
3 the authority by rule.

4 “(B) If a transaction involves a health care entity in this state and an out-of-state entity,
5 a transaction that otherwise qualifies as a material change transaction under this paragraph
6 that may result in increases in the price of health care or limit access to health care services
7 in this state.

8 “(b) ‘Material change transaction’ does not include:

9 “(A) A clinical affiliation of health care entities formed for the purpose of collaborating
10 on clinical trials or graduate medical education programs.

11 “(B) A medical services contract or an extension of a medical services contract.

12 “(C) An affiliation that:

13 “(i) Does not impact the corporate leadership, governance or control of an entity; and

14 “(ii) Is necessary, as prescribed by the authority by rule, to adopt advanced value-based
15 payment methodologies to meet the health care cost growth targets under ORS 442.386.

16 “(D) Contracts under which one health care entity, for and on behalf of a second health
17 care entity, provides patient care and services or provides administrative services relating
18 to, supporting or facilitating the provision of patient care and services, if the second health
19 care entity:

20 “(i) Maintains responsibility, oversight and control over the patient care and services;
21 and

22 “(ii) Bills and receives reimbursement for the patient care and services.

23 “(E) Transactions in which a participant that is a health center as defined in 42 U.S.C.
24 254b, while meeting all of the participant’s obligations, acquires, affiliates with, partners with
25 or enters into any agreement with another entity unless the transaction would result in the
26 participant no longer qualifying as a health center under 42 U.S.C. 254b.

27 “(7)(a) ‘Medical services contract’ means a contract to provide medical or mental health
28 services entered into by:

29 “(A) A carrier and an independent practice association;

30 “(B) A carrier, coordinated care organization, independent practice association or net-
31 work of providers and one or more providers, as defined in ORS 743B.001;

32 “(C) An independent practice association and an individual health professional or an or-
33 ganization of health care providers;

34 “(D) Medical, dental, vision or mental health clinics; or

35 “(E) A medical, dental, vision or mental health clinic and an individual health profes-
36 sional to provide medical, dental, vision or mental health services.

37 “(b) ‘Medical services contract’ does not include a contract of employment or a contract
38 creating a legal entity and ownership of the legal entity that is authorized under ORS chap-
39 ter 58, 60 or 70 or under any other law authorizing the creation of a professional organization
40 similar to those authorized by ORS chapter 58, 60 or 70, as may be prescribed by the au-
41 thority by rule.

42 “(8) ‘Net patient revenue’ means the total amount of revenue, after allowance for con-
43 tractual amounts, charity care and bad debt, received for patient care and services, includ-
44 ing:

45 “(a) Value-based payments;

- 1 **“(b) Incentive payments;**
2 **“(c) Capitation payments or payments under any similar contractual arrangement for the**
3 **prepayment or reimbursement of patient care and services; and**
4 **“(d) Any payment received by a hospital to reimburse a hospital assessment under ORS**
5 **414.855.**
6 **“(9) ‘Revenue’ means:**
7 **“(a) Net patient revenue; or**
8 **“(b) The gross amount of premiums received by a health care entity that are derived**
9 **from health benefit plans.**
10 **“(10) ‘Transaction’ means:**
11 **“(a) A merger of a health care entity with another entity;**
12 **“(b) An acquisition of one or more health care entities by another entity;**
13 **“(c) New contracts, new clinical affiliations and new contracting affiliations that will**
14 **eliminate or significantly reduce, as defined by the authority by rule, essential services;**
15 **“(d) A corporate affiliation involving at least one health care entity; or**
16 **“(e) Transactions to form a new partnership, joint venture, accountable care organiza-**
17 **tion, parent organization or management services organization, as prescribed by the au-**
18 **thority by rule.”.**

19 On page 4, line 19, after the period insert “The authority shall complete the comprehensive re-
20 view no later than 180 days after receipt of the notice unless the parties to the transaction agree
21 to an extension of time.”.

22 In line 21, delete “(6)(a)(A)(vi)” and insert “(6)(a)(C) of this 2021 Act”.

23 In line 34, delete “is” and insert “in”.

24 In line 45, delete “or benchmarks”.

25 On page 5, line 1, delete “or benchmark”.

26 In line 5, before the semicolon insert “or access to services”.

27 In line 14, delete “(11)” and insert “(11)(a)”.

28 After line 20, insert:

29 “(b) A member of a review board shall file a notice of conflict of interest and the notice shall
30 be made public.”.

31 Delete lines 25 through 31 and insert:

32 “(13)(a) An entity may not refuse to provide documents or other information requested under
33 subsection (4) or (12) of this section on the grounds that the information is confidential.

34 “(b) Material that is privileged or confidential may not be publicly disclosed if:

35 “(A) The authority determines that disclosure of the material would cause harm to the public;

36 “(B) The material may not be disclosed under ORS 192.311 to 192.478; or

37 “(C) The material is not subject to disclosure under ORS 705.137.

38 “(c) The authority shall maintain the confidentiality of all confidential information and docu-
39 ments that are not publicly available that are obtained in relation to a material change transaction
40 and may not disclose the information or documents to any person, including a member of the review
41 board, without the consent of the person who provided the information or document. Information
42 and documents described in this paragraph are exempt from disclosure under ORS 192.311 to
43 192.478.”.

44 In line 33, delete “as necessary to assist a review board” and insert “who are qualified and have
45 expertise in the type of material change transaction under review as necessary to assist the au-

1 thority”.

2 In line 36, before “cost” insert “reasonable and actual”.

3 Delete lines 37 through 39 and insert:

4 “(15) A review board may hold up to two public hearings to seek public input and otherwise
5 engage the public before making a determination on the proposed transaction. A public hearing must
6 be held in the service area or areas of the health care entities that are parties to the material
7 change”.

8 On page 6, line 20, after the period delete the rest of the line and delete line 21 and insert “The
9 authority shall issue a proposed order and allow the parties and the public a reasonable opportunity
10 to make written exceptions to the proposed order. The authority shall consider the parties’ and the
11 public’s written exceptions and issue a final order setting forth the authority’s findings and rationale
12 for adopting or modifying the recommendations of the review board. If the authority”.

13 In line 31, delete “or benchmark”.

14 On page 7, line 14, after the comma insert “proportionate to the size of the parties to the
15 transaction,”.

16 On page 10, delete lines 16 and 17 and insert:

17 “**SECTION 14. Section 2 of this 2021 Act becomes operative on March 1, 2022.**”.

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