

## HOUSE AMENDMENTS TO HOUSE BILL 2362

By COMMITTEE ON HEALTH CARE

April 15

- 1 On page 1 of the printed bill, delete lines 5 through 28.  
2 Delete pages 2 and 3.  
3 On page 4, delete lines 1 through 25 and insert:  
4 **“SECTION 1. As used in sections 2 and 3 of this 2021 Act:**  
5 **“(1) ‘Corporate affiliation’ has the meaning prescribed by the Oregon Health Authority**  
6 **by rule, including:**  
7 **“(a) Any relationship between two organizations that reflects, directly or indirectly, a**  
8 **partial or complete controlling interest or partial or complete corporate control; and**  
9 **“(b) Transactions that merge tax identification numbers or corporate governance.**  
10 **“(2) ‘Essential services’ means:**  
11 **“(a) Services that are funded on the prioritized list described in ORS 414.690; and**  
12 **“(b) Services that are essential to achieve health equity.**  
13 **“(3) ‘Health benefit plan’ has the meaning given that term in ORS 743B.005.**  
14 **“(4)(a) ‘Health care entity’ includes:**  
15 **“(A) An individual health professional licensed or certified in this state;**  
16 **“(B) A hospital, as defined in ORS 442.015, or hospital system, as defined by the authority**  
17 **by rule;**  
18 **“(C) A carrier, as defined in ORS 743B.005, that offers a health benefit plan in this state;**  
19 **“(D) A Medicare Advantage plan;**  
20 **“(E) A coordinated care organization or a prepaid managed care health services organ-**  
21 **ization, both as defined in ORS 414.025; and**  
22 **“(F) Any other group or organization that has as a primary function the provision of**  
23 **health care items or services or that is a parent organization of or an entity closely related**  
24 **to a group or organization that has as a primary function the provision of health care items**  
25 **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’ means that all individuals are able to reach their full health potential**  
30 **and well-being and are not disadvantaged by their race, ethnicity, language, disability,**  
31 **gender, gender identity, sexual orientation, social class, intersections among these commu-**  
32 **nities or identities or other socially determined circumstances.**  
33 **“(6)(a) ‘Material change transaction’ means:**  
34 **“(A) Any of the following, occurring during a single transaction or in a series of related**  
35 **transactions within a consecutive 12-month period, that results in an entity having an in-**

1 **crease in revenue of \$10 million or more:**

2 **“(i) A merger of a health care entity with another entity;**

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

4 **“(iii) A corporate affiliation involving at least one health care entity;**

5 **“(iv) New contracts, new clinical affiliations and new contracting affiliations that will**  
6 **eliminate or significantly reduce, as defined by the authority by rule, essential services;**

7 **“(v) Transactions to form a new partnership, joint venture, accountable care organiza-**  
8 **tion, parent organization or management services organization, as prescribed by the au-**  
9 **thority by rule; or**

10 **“(vi) If a transaction involves a health care entity in this state and an out-of-state entity,**  
11 **a transaction that otherwise qualifies as a material change transaction under this subsection**  
12 **and may result in increases in the price of health care or limit access to health care services**  
13 **in this state.**

14 **“(B) Any of the transactions described in subparagraph (A) of this paragraph in which**  
15 **two or more of the entities involved in the transaction each had average revenue of \$25**  
16 **million or more in the preceding three fiscal years.**

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

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

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

21 **“(C) An affiliation that:**

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

23 **“(ii) Is necessary, as prescribed by the authority by rule, to adopt advanced value-based**  
24 **payment methodologies to meet the health care cost growth targets or benchmarks under**  
25 **ORS 442.386.**

26 **“(D) Contracts or affiliations other than those described in paragraph (a)(A)(iv) of this**  
27 **subsection.**

28 **“(E) Transactions in which a participant that is a health center as defined in 42 U.S.C.**  
29 **254b, while meeting all of the participant’s obligations, acquires, affiliates with, partners with**  
30 **or enters into any agreement with another entity unless the transaction would result in the**  
31 **participant no longer qualifying as a health center under 42 U.S.C. 254b.**

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

34 **“(A) A carrier and an independent practice association;**

35 **“(B) A carrier and an individual health professional;**

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

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

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

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

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

4       “(a) Value-based payments;

5       “(b) Incentive payments;

6       “(c) Capitation payments or payments under any similar contractual arrangement for the  
7       prepayment or reimbursement of patient care and services; and

8       “(d) Any payment received by a hospital to reimburse a hospital assessment under ORS  
9       414.855.

10       “(9) ‘Revenue’ means:

11       “(a) Net patient revenue; or

12       “(b) The gross amount of premiums received by a health care entity that are derived  
13       from health benefit plans.

14       “SECTION 2. (1) The purpose of this section is to promote the public interest and to ad-  
15       vance the goals set forth in ORS 414.018 and the goals of the Oregon Integrated and Coordi-  
16       nated Health Care Delivery System described in ORS 414.570.

17       “(2) In accordance with subsection (1) of this section, the Oregon Health Authority shall  
18       adopt by rule criteria approved by the Oregon Health Policy Board for the consideration of  
19       requests by health care entities to engage in a material change transaction and procedures  
20       for the review of material change transactions under this section.

21       “(3)(a) A notice of a material change transaction involving the sale, merger or acquisition  
22       of a domestic health insurer shall be submitted to the Department of Consumer and Business  
23       Services as an addendum to filings required by ORS 732.517 to 732.546 or 732.576. The de-  
24       partment shall provide to the authority the notice submitted under this subsection to enable  
25       the authority to conduct a review in accordance with subsections (5) and (7) of this section.  
26       The authority shall notify the department of the outcome of the authority’s review.

27       “(b) The department shall make the final determination in material change transactions  
28       involving the sale, merger or acquisition of a domestic health insurer and shall coordinate  
29       with the authority to incorporate the authority’s review into the department’s final deter-  
30       mination.

31       “(4) An entity shall submit to the authority a notice of a material change transaction,  
32       other than a transaction described in subsection (3) of this section, in the form and manner  
33       prescribed by the authority, no less than 180 days before the date of the transaction and shall  
34       pay a fee prescribed in section 4 of this 2021 Act.

35       “(5) No later than 30 days after receiving a notice described in subsections (3) and (4) of  
36       this section, the authority shall conduct a preliminary review to determine if the transaction  
37       has the potential to have a negative impact on access to affordable health care in this state  
38       and meets the criteria in subsection (9) of this section.

39       “(6) Following a preliminary review, the authority or the department shall approve a  
40       transaction or approve a transaction with conditions designed to further the goals described  
41       in subsection (1) of this section based on criteria prescribed by the authority by rule, in-  
42       cluding but not limited to:

43       “(a) If the transaction is in the interest of consumers and is urgently necessary to  
44       maintain the solvency of an entity involved in the transaction; or

45       “(b) If the authority determines that the transaction does not have the potential to have

1 a negative impact on access to affordable health care in this state or the transaction is likely  
2 to meet the criteria in subsection (9) of this section.

3 “(7)(a) Except as provided in paragraph (b) of this subsection, if a transaction does not  
4 meet the criteria in subsection (6) of this section, the authority shall conduct a comprehen-  
5 sive review and may appoint a review board of stakeholders to conduct a comprehensive re-  
6 view and make recommendations as provided in subsections (11) to (18) of this section.

7 “(b) The authority or the department may intervene in a transaction described in section  
8 1 (6)(a)(A)(vi) in which the final authority rests with another state and, if the transaction is  
9 approved by the other state, may place conditions on health care entities operating in this  
10 state with respect to the insurance or health care industry market in this state, prices  
11 charged to patients residing in this state and the services available in health care facilities  
12 in this state, to serve the public good.

13 “(8) The authority shall prescribe by rule:

14 “(a) Criteria to exempt an entity from the requirements of subsection (4) of this section  
15 if there is an emergency situation that threatens immediate care services and the trans-  
16 action is urgently needed to protect the interest of consumers;

17 “(b) Provision for the authority’s failure to complete a review under subsection (5) of this  
18 section within 30 days; and

19 “(c) Criteria for when to conduct a comprehensive review and appoint a review board  
20 under subsection (7) of this section that must include, but is not limited to:

21 “(A) The potential loss or change is access to essential services;

22 “(B) The potential to impact a large number of residents in this state; or

23 “(C) A significant change in the market share of an entity involved in the transaction.

24 “(9) A health care entity may engage in a material change transaction if, following a  
25 comprehensive review conducted by the authority and recommendations by a review board  
26 appointed under subsection (7) of this section, the authority determines that the transaction  
27 meets the criteria adopted by the department by rule under subsection (2) of this section  
28 and:

29 “(a)(A) The parties to the transaction demonstrate that the transaction will benefit the  
30 public good and communities by:

31 “(i) Reducing the growth in patient costs in accordance with the health care cost growth  
32 targets or benchmarks established under ORS 442.386 or maintain a rate of cost growth that  
33 exceeds the target or benchmark that the entity demonstrates is the best interest of the  
34 public;

35 “(ii) Increasing access to services in medically underserved areas; or

36 “(iii) Rectifying historical and contemporary factors contributing to a lack of health eq-  
37 uities; or

38 “(B) The transaction will improve health outcomes for residents of this state; and

39 “(b) There is no substantial likelihood of anticompetitive effects from the transaction  
40 that outweigh the benefits of the transaction in increasing or maintaining services to  
41 underserved populations.

42 “(10) The authority may suspend a proposed material change transaction if necessary to  
43 conduct an examination and complete an analysis of whether the transaction is consistent  
44 with subsection (9) of this section and the criteria adopted by rule under subsection (2) of  
45 this section.

1           “(11) A review board convened by the authority under subsection (7) of this section must  
2 consist of members of the affected community, consumer advocates and health care experts.  
3 No more than one-third of the members of the review board may be representatives of in-  
4 stitutional health care providers. The authority may not appoint to a review board an indi-  
5 vidual who is employed by an entity that is a party to the transaction that is under review  
6 or is employed by a competitor that is of a similar size to an entity that is a party to the  
7 transaction.

8           “(12) The authority may request additional information from an entity that is a party to  
9 the material change transaction, and the entity shall promptly reply using the form of com-  
10 munication requested by the authority and verified by an officer of the entity if required by  
11 the authority.

12           “(13) An entity may not refuse to provide documents or other information requested  
13 under subsection (4) or (12) of this section on the grounds that the information is privileged  
14 or confidential. Material that is privileged or confidential may not be publicly disclosed if:

15           “(a) The authority determines that disclosure of the material would cause harm to the  
16 public;

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

18           “(c) The material is not subject to disclosure under ORS 705.137.

19           “(14) The authority or the Department of Justice may retain actuaries, accountants or  
20 other professionals independent of the authority as necessary to assist a review board in  
21 conducting the analysis of a proposed material change transaction. The authority or the  
22 Department of Justice shall designate the party or parties to the material change trans-  
23 action that shall bear the cost of retaining the professionals.

24           “(15) A review board shall hold at least two public hearings in the service area or areas  
25 of the health care entities that are parties to the material change transaction to seek public  
26 input and otherwise engage the public before making a determination on the proposed  
27 transaction. At least 10 days prior to the public hearing, the authority shall post to the  
28 authority’s website information about the public hearing and materials related to the mate-  
29 rial change transaction, including:

30           “(a) A summary of the proposed transaction;

31           “(b) An explanation of the groups or individuals likely to be impacted by the transaction;

32           “(c) Information about services currently provided by the health care entity, commit-  
33 ments by the health care entity to continue such services and any services that will be re-  
34 duced or eliminated;

35           “(d) Details about the hearings and how to submit comments, in a format that is easy  
36 to find and easy to read; and

37           “(e) Information about potential or perceived conflicts of interest among executives and  
38 members of the board of directors of health care entities that are parties to the transaction.

39           “(16) The authority shall post the information described in subsection (15)(a) to (d) of this  
40 section to the authority’s website in the languages spoken in the area affected by the mate-  
41 rial change transaction and in a culturally sensitive manner.

42           “(17) The authority shall provide the information described in subsection (15)(a) to (d) of  
43 this section to:

44           “(a) At least one newspaper of general circulation in the area affected by the material  
45 change transaction;

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

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

4       “(18) A review board shall make recommendations to the authority to approve the ma-  
5 terial change transaction, disapprove the material change transaction or approve the mate-  
6 rial change transaction subject to conditions, based on subsection (9) of this section and the  
7 criteria adopted by rule under subsection (2) of this section. The authority shall issue a final  
8 order adopting or modifying the recommendations of the review board. If the authority  
9 modifies the recommendations of the review board, the authority shall explain the modifica-  
10 tions in the final order and the reasons for the modifications. A party to the material change  
11 transaction may contest the final order as provided in ORS chapter 183.

12       “(19) A health care entity that is a party to an approved material change transaction  
13 shall notify the authority upon the completion of the transaction in the form and manner  
14 prescribed by the authority. One year, two years and five years after the material change  
15 transaction is completed, the authority shall analyze:

16       “(a) The health care entities’ compliance with conditions placed on the transaction, if  
17 any;

18       “(b) The cost trends and cost growth trends of the parties to the transaction; and

19       “(c) The impact of the transaction on the health care cost growth target or benchmark  
20 established under ORS 442.386.

21       “(20) The authority shall publish the authority’s analyses and conclusions under sub-  
22 section (19) of this section and shall incorporate the authority’s analyses and conclusions  
23 under subsection (19) of this section in the report described in ORS 442.386 (6).

24       “(21) This section does not impair, modify, limit or supersede the applicability of ORS  
25 65.800 to 65.815, 646.605 to 646.652 or 646.705 to 646.805.

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

32       “(23) The remedies provided under this section are in addition to any other remedy, civil  
33 or criminal, that may be available under any other provision of law.

34       “(24) The authority may adopt rules necessary to carry out the provisions of this  
35 section.”.

36       In line 29, delete “a health care” and insert “an”.  
37