

House Bill 2362

Sponsored by Representative SALINAS (Pre-session filed.)

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 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 413.032, 413.037, 413.101,
3 413.181, 415.013, 415.019 and 415.103; and prescribing an effective date.

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

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

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

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

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

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

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

12 (e) **A coordinated care organization or a prepaid managed care health services organiza-
13 tion, as both are defined in ORS 414.025; and**

14 (f) **Any other group or organization that has as a primary function the provision of
15 health care items or services or that is a parent organization of or an entity closely related
16 to a group or organization that has as a primary function the provision of health care items
17 or services.**

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

22 (3)(a) **"Material change transaction" means:**

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

26 (i) **A merger of health care entities;**

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

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

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.

1 (iv) The formation of a partnership, joint venture, accountable care organization, parent
 2 organization or management services organization for the purpose of administering con-
 3 tracts with carriers, third party administrators, pharmacy benefit managers or providers as
 4 prescribed by the authority by rule.

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

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

10 (D) A transaction that will result in the health care entity no longer providing:

11 (i) Reproductive health services including, but not limited to, tubal ligation, abortion or
 12 contraceptive counseling; or

13 (ii) Services described in ORS 127.815.

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

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

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

24 (a) The parties to the transaction cannot demonstrate that the transaction will result in
 25 positive benefits for patients and communities by:

26 (A) Reducing patient costs;

27 (B) Increasing access to services in medically underserved areas; or

28 (C) Rectifying historical and contemporary factors contributing to a lack of health equi-
 29 ties;

30 (b) The transaction will not improve health outcomes or decrease patient costs; or

31 (c) There is a substantial likelihood of anticompetitive effects from the transaction that
 32 outweigh the benefits of the transaction in increasing or maintaining services to underserved
 33 populations.

34 (3) A health care entity may not engage in a material change transaction without ob-
 35 taining the authority’s prior approval of the transaction. To obtain the authority’s approval
 36 of a material change transaction, a health care entity shall submit a notice and supporting
 37 documentation, no less than 180 days before the date of the transaction, in the form and
 38 manner prescribed by the authority and pay a fee prescribed in section 4 of this 2021 Act.
 39 The authority is responsible for coordinating with the Department of Consumer and Business
 40 Services the review of any transaction that is subject to review and approval under this
 41 section and also subject to review by the department under ORS 732.517 to 732.546 or 732.576.

42 (4) 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 the criteria adopted by rule under subsection (2) of this section.

45 (5) Upon receipt of a notice of material change transaction under subsection (3) of this

1 section, the authority shall convene a review board consisting of members of the affected
2 community, consumer advocates and health care experts. No more than one-third of the
3 members of the review board may be representatives of institutional health care providers.

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

8 (7) A health care entity may not refuse to provide documents or other information re-
9 quested under subsection (3) or (6) of this section on the grounds that the information is
10 privileged or confidential.

11 (8) The authority may retain actuaries, accountants or other professionals independent
12 of the authority as necessary to assist the review board in conducting the analysis of a
13 proposed material change transaction. The authority shall designate the party or parties to
14 the material change transaction that shall bear the cost of retaining the professionals.

15 (9) The review board shall hold at least two public hearings in the service area or areas
16 of the health care entities that are parties to the material change transaction to seek public
17 input and otherwise engage the public before making a determination on the proposed
18 transaction. At least 10 days prior to the public hearing, the authority shall post to the
19 authority's website information about the public hearing and materials related to the mate-
20 rial change transaction including:

21 (a) A summary of the proposed transaction;

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

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

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

28 (e) The notice and other materials submitted by the health care entity under subsections
29 (3) and (6) of this section, except for materials that the authority determines would cause
30 public harm; and

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

33 (10) The authority shall post the information described in subsection (9)(a) to (c) of this
34 section to the authority's website in languages spoken in the area affected by the material
35 change transaction, in a culturally sensitive manner.

36 (11) The authority shall provide the information described in subsection (9)(a) to (c) to:

37 (a) At least one newspaper of general circulation in the area affected by the material
38 change transaction;

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

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

42 (12) The review board shall make recommendations to the authority to approve the ma-
43 terial change transaction, disapprove the material change transaction or approve the mate-
44 rial change transaction subject to conditions, based on the criteria adopted by rule under
45 subsection (2) of this section. The authority shall issue a final order adopting or modifying

1 the recommendations of the review board. If the authority disapproves the material change
 2 transaction or approves the material change transaction subject to conditions, the authority
 3 shall notify the Attorney General of the authority's findings and analysis so that the Attor-
 4 ney General may, if appropriate, conduct an investigation into whether the health care en-
 5 tities have engaged in unfair competition or anticompetitive behavior in violation of ORS
 6 646.725 or 646.730 and, if necessary, take steps to protect consumers in the health care
 7 market.

8 (13) A health care entity that is a party to an approved material change transaction shall
 9 notify the authority upon the completion of the transaction in the form and manner pre-
 10 scribed by the authority. One year, two years and five years after the material change
 11 transaction is completed, the authority shall analyze:

- 12 (a) The health care entities' compliance with conditions placed on the transaction, if any;
- 13 (b) The cost trends and cost growth trends of the parties to the transaction; and
- 14 (c) The impact of the transaction on the health care cost growth benchmark established
 15 under ORS 442.386.

16 (14) The authority shall publish the authority's analyses and conclusions under sub-
 17 section (13) of this section and shall incorporate the authority's analyses and conclusions
 18 under subsection (13) of this section in the report described in ORS 442.386 (6).

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

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

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

- 29 (a) Be a director, officer or employee of or be financially interested in a health care en-
 30 tity that is a party to a proposed material change transaction except as an enrollee or pa-
 31 tient of a health care entity or by reason of rights vested in compensation or benefits related
 32 to services performed prior to affiliation with the authority; or
- 33 (b) Be engaged in any other business or occupation interfering with or inconsistent with
 34 the duties of the authority.

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

37 **SECTION 4.** (1) The Oregon Health Authority shall prescribe by rule a fee to be paid
 38 under section 2 (3) of this 2021 Act, sufficient to reimburse the costs of administering section
 39 2 of this 2021 Act.

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

43 **SECTION 5.** (1) In addition to any other penalty imposed by law, the Director of the
 44 Oregon Health Authority may impose a civil penalty, as determined by the director, for a
 45 violation of ORS 413.037 or section 2 of this 2021 Act. The amount of the civil penalty may

1 not exceed \$10,000 for each offense. The civil penalty imposed on an individual health pro-
 2 fessional may not exceed \$1,000 for each offense.

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

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

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

9 (1) The impact on costs to consumers for health care either to the benefit or the detri-
 10 ment of consumers; and

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

12 (a) Improvement or reductions in morbidity;

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

14 (c) Changes to health and patient outcomes, particularly for underserved and uninsured
 15 individuals, recipients of medical assistance and other low-income individuals and individuals
 16 living in rural areas, as measured by nationally recognized measures of the quality of health
 17 care, such as measures used or endorsed by the National Committee for Quality Assurance,
 18 the National Quality Forum, the Physician Consortium for Performance Improvement or the
 19 Agency for Healthcare Research and Quality.

20 **SECTION 6a.** The Oregon Health Authority shall commission the first study under sec-
 21 tion 6 of this 2021 Act no later than September 15, 2026.

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

23 413.101. The Oregon Health Authority Fund is established in the State Treasury, separate and
 24 distinct from the General Fund. Interest earned by the Oregon Health Authority Fund shall be
 25 credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Au-
 26 thority for carrying out the duties, functions and powers of the authority under ORS 413.032 and
 27 431A.183 and section 2 of this 2021 Act.

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

29 413.032. (1) The Oregon Health Authority is established. The authority shall:

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

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

33 (c) Administer the Oregon Prescription Drug Program;

34 (d) Develop the policies for and the provision of publicly funded medical care and medical as-
 35 sistance in this state;

36 (e) Develop the policies for and the provision of mental health treatment and treatment of ad-
 37 dictions;

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

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

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

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

1 (j) In consultation with the Director of the Department of Consumer and Business Services, pe-
 2 riodically review and recommend standards and methodologies 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 and Business Services;

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

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

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

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

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

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

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

26 (b) Develop uniform contracting standards for the purchase of health care, including the fol-
 27 lowing:

28 (A) Uniform quality standards and performance measures;

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

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

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

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

36 (3) The enumeration of duties, functions and powers in this section is not intended to be exclu-
 37 sive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Au-
 38 thority by ORS 413.006 to 413.042, 415.012 to 415.430 and 741.340 **and section 2 of this 2021 Act**
 39 or by other statutes.

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

41 413.037. (1) The Director of the Oregon Health Authority, each deputy director and authorized
 42 representatives of the director may administer oaths, take depositions and issue subpoenas to compel
 43 the attendance of witnesses and the production of documents or other written information necessary
 44 to carry out the provisions of ORS 413.006 to 413.042, 415.012 to 415.430 and 741.340 **and section**
 45 **2 of this 2021 Act.**

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

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

5 413.181. (1) The Department of Consumer and Business Services and the Oregon Health Au-
 6 thority may enter into agreements governing the disclosure of information reported to the depart-
 7 ment by insurers with certificates of authority to transact insurance in this state and the disclosure
 8 of information reported to the Oregon Health Authority by coordinated care organizations.

9 (2) The authority may use information disclosed under subsection (1) of this section for the
 10 purpose of carrying out ORS 413.032, 414.572, 414.591, 414.605, 414.609, 414.638 and 415.012 to
 11 415.430 **and section 2 of this 2021 Act.**

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

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

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

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

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

28 415.019. (1) The Oregon Health Authority shall hold a contested case hearing upon written re-
 29 quest for a hearing by a person aggrieved by any act, threatened act or failure of the authority to
 30 act under ORS 415.012 to 415.430 **or section 2 of this 2021 Act** or rules adopted pursuant to ORS
 31 415.011 **or 415.012 to 415.430 or section 2 of this 2021 Act.**

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

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

35 415.103. A person may not file or cause to be filed with the Oregon Health Authority any article,
 36 certificate, report, statement, application or other information required or permitted to be filed un-
 37 der ORS 415.012 to 415.430 **or section 2 of this 2021 Act** or rules adopted pursuant to ORS 415.011
 38 **or 415.012 to 415.430 or section 2 of this 2021 Act** that is known by the person to be false or
 39 misleading in any material respect.

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