

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2362**

1 On page 1 of the printed A-engrossed bill, line 2, after the second semi-
2 colon insert “and”.

3 In line 3, after “415.103” insert a period and delete the rest of the line.

4 Delete lines 5 through 23 and delete page 2.

5 On page 3, delete lines 1 through 26 and insert:

6 **“SECTION 1. As used in this section and sections 2 and 3 of this**
7 **2021 Act:**

8 **“(1) ‘Corporate affiliation’ has the meaning prescribed by the**
9 **Oregon Health Authority by rule, including:**

10 **“(a) Any relationship between two organizations that reflects, di-**
11 **rectly or indirectly, a partial or complete controlling interest or partial**
12 **or complete corporate control; and**

13 **“(b) Transactions that merge tax identification numbers or corpo-**
14 **rate governance.**

15 **“(2) ‘Essential services’ means:**

16 **“(a) Services that are funded on the prioritized list described in ORS**
17 **414.690; and**

18 **“(b) Services that are essential to achieve health equity.**

19 **“(3) ‘Health benefit plan’ has the meaning given that term in ORS**
20 **743B.005.**

21 **“(4)(a) ‘Health care entity’ includes:**

1 **“(A) An individual health professional licensed or certified in this**
2 **state;**

3 **“(B) A hospital, as defined in ORS 442.015, or hospital system, as**
4 **defined by the authority by rule;**

5 **“(C) A carrier, as defined in ORS 743B.005, that offers a health**
6 **benefit plan in this state;**

7 **“(D) A Medicare Advantage plan;**

8 **“(E) A coordinated care organization or a prepaid managed care**
9 **health services organization, as both terms are defined in ORS 414.025;**
10 **and**

11 **“(F) Any other entity that has as a primary function the provision**
12 **of health care items or services or that is a parent organization of,**
13 **or is an entity closely related to, an entity that has as a primary**
14 **function the provision of health care items or services.**

15 **“(b) ‘Health care entity’ does not include:**

16 **“(A) Long term care facilities, as defined in ORS 442.015.**

17 **“(B) Facilities licensed and operated under ORS 443.400 to 443.455.**

18 **“(5) ‘Health equity’ has the meaning prescribed by the Oregon**
19 **Health Policy Board and adopted by the authority by rule.**

20 **“(6)(a) ‘Material change transaction’ means:**

21 **“(A) A transaction in which at least one party had average revenue**
22 **of \$25 million or more in the preceding three fiscal years and another**
23 **party:**

24 **“(i) Had an average revenue of at least \$10 million in the preceding**
25 **three fiscal years; or**

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

29 **“(B) If a transaction involves a health care entity in this state and**
30 **an out-of-state entity, a transaction that otherwise qualifies as a ma-**

1 **terial change transaction under this paragraph that may result in in-**
2 **creases in the price of health care or limit access to health care**
3 **services in this state.**

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

5 **“(A) A clinical affiliation of health care entities formed for the**
6 **purpose of collaborating on clinical trials or graduate medical educa-**
7 **tion programs.**

8 **“(B) A medical services contract or an extension of a medical ser-**
9 **vices contract.**

10 **“(C) An affiliation that:**

11 **“(i) Does not impact the corporate leadership, governance or con-**
12 **trol of an entity; and**

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

16 **“(D) Contracts under which one health care entity, for and on be-**
17 **half of a second health care entity, provides patient care and services**
18 **or provides administrative services relating to, supporting or facili-**
19 **tating the provision of patient care and services, if the second health**
20 **care entity:**

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

23 **“(ii) Bills and receives reimbursement for the patient care and ser-**
24 **vices.**

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

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

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

4 **“(B) A carrier, coordinated care organization, independent practice**
5 **association or network of providers and one or more providers, as de-**
6 **fin ed in ORS 743B.001;**

7 **“(C) An independent practice association and an individual health**
8 **professional or an organization of health care providers;**

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

10 **“(E) A medical, dental, vision or mental health clinic and an indi-**
11 **vidual health professional to provide medical, dental, vision or mental**
12 **health services.**

13 **“(b) ‘Medical services contract’ does not include a contract of em-**
14 **ployment or a contract creating a legal entity and ownership of the**
15 **legal entity that is authorized under ORS chapter 58, 60 or 70 or under**
16 **any other law authorizing the creation of a professional organization**
17 **similar to those authorized by ORS chapter 58, 60 or 70, as may be**
18 **prescribed by the authority by rule.**

19 **“(8) ‘Net patient revenue’ means the total amount of revenue, after**
20 **allowance for contractual amounts, charity care and bad debt, received**
21 **for patient care and services, including:**

22 **“(a) Value-based payments;**

23 **“(b) Incentive payments;**

24 **“(c) Capitation payments or payments under any similar contrac-**
25 **tual arrangement for the prepayment or reimbursement of patient**
26 **care and services; and**

27 **“(d) Any payment received by a hospital to reimburse a hospital**
28 **assessment under ORS 414.855.**

29 **“(9) ‘Revenue’ means:**

30 **“(a) Net patient revenue; or**

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

3 **“(10) ‘Transaction’ means:**

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

5 **“(b) An acquisition of one or more health care entities by another**
6 **entity;**

7 **“(c) New contracts, new clinical affiliations and new contracting**
8 **affiliations that will eliminate or significantly reduce, as defined by**
9 **the authority by rule, essential services;**

10 **“(d) A corporate affiliation involving at least one health care entity;**
11 **or**

12 **“(e) Transactions to form a new partnership, joint venture, ac-**
13 **countable care organization, parent organization or management ser-**
14 **vices organization, as prescribed by the authority by rule.”.**

15 On page 4, line 19, after the period insert “The authority shall complete
16 the comprehensive review no later than 180 days after receipt of the notice
17 unless the parties to the transaction agree to an extension of time.”.

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

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

20 In line 45, delete “or benchmarks”.

21 On page 5, line 1, delete “or benchmarks”.

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

23 In line 14, after “(11)” insert “(a)”.

24 After line 20, insert:

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

27 Delete lines 25 through 31 and insert:

28 **“(13)(a) An entity may not refuse to provide documents or other informa-**
29 **tion requested under subsection (4) or (12) of this section on the grounds that**
30 **the information is confidential.**

1 “(b) Material that is privileged or confidential may not be publicly dis-
2 closed if:

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

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

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

7 “(c) The authority shall maintain the confidentiality of all confidential
8 information and documents that are not publicly available that are obtained
9 in relation to a material change transaction and may not disclose the infor-
10 mation or documents to any person, including a member of the review board,
11 without the consent of the person who provided the information or document.
12 Information and documents described in this paragraph are exempt from
13 disclosure under ORS 192.311 to 192.478.”.

14 In line 33, delete “as necessary to assist a review board” and insert “who
15 are qualified and have expertise in the type of material change transaction
16 under review as necessary to assist the authority”.

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

18 Delete lines 37 through 39 and insert:

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

23 On page 6, line 20, after the period delete the rest of the line and delete
24 line 21 and insert “The authority shall issue a proposed order and allow the
25 parties and the public a reasonable opportunity to make written exceptions
26 to the proposed order. The authority shall consider the parties’ and the
27 public’s written exceptions and issue a final order setting forth the
28 authority’s findings and rationale for adopting or modifying the recommen-
29 dations of the review board. If the authority”.

30 In line 31, delete “or benchmark”.

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

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

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

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