

Requested by Representative SALINAS

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2362**

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**  
6 **Oregon Health Authority by rule, including:**

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

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

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

13 **“(a) Services that are funded on the prioritized list described in ORS**  
14 **414.690; and**

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

16 **“(3) ‘Health benefit plan’ has the meaning given that term in ORS**  
17 **743B.005.**

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

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

21 **“(B) A hospital, as defined in ORS 442.015, or hospital system, as**

1 defined by the authority by rule;

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

4 “(D) A Medicare Advantage plan;

5 “(E) A coordinated care organization or a prepaid managed care  
6 health services organization, both as defined in ORS 414.025; and

7 “(F) Any other group or organization that has as a primary func-  
8 tion the provision of health care items or services or that is a parent  
9 organization of or an entity closely related to a group or organization  
10 that has as a primary function the provision of health care items or  
11 services.

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

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

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

15 “(5) ‘Health equity’ means that all individuals are able to reach  
16 their full health potential and well-being and are not disadvantaged  
17 by their race, ethnicity, language, disability, gender, gender identity,  
18 sexual orientation, social class, intersections among these communi-  
19 ties or identities or other socially determined circumstances.

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

21 “(A) Any of the following, occurring during a single transaction or  
22 in a series of related transactions within a consecutive 12-month pe-  
23 riod, that results in an entity having an increase in revenue of \$10  
24 million or more:

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

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

28 “(iii) A corporate affiliation involving at least one health care en-  
29 tity;

30 “(iv) New contracts, new clinical affiliations and new contracting

1 affiliations that will eliminate or significantly reduce, as defined by  
2 the authority by rule, essential services;

3 “(v) Transactions to form a new partnership, joint venture, ac-  
4 countable care organization, parent organization or management ser-  
5 vices organization, as prescribed by the authority by rule; or

6 “(vi) If a transaction involves a health care entity in this state and  
7 an out-of-state entity, a transaction that otherwise qualifies as a ma-  
8 terial change transaction under this subsection and may result in in-  
9 creases in the price of health care or limit access to health care  
10 services in this state.

11 “(B) Any of the transactions described in subparagraph (A) of this  
12 paragraph in which two or more of the entities involved in the trans-  
13 action each had average revenue of \$25 million or more in the pre-  
14 ceding three fiscal years.

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

16 “(A) A clinical affiliation of health care entities formed for the  
17 purpose of collaborating on clinical trials or graduate medical educa-  
18 tion programs.

19 “(B) A medical services contract or an extension of a medical ser-  
20 vices contract.

21 “(C) An affiliation that:

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

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

27 “(D) Contracts or affiliations other than those described in para-  
28 graph (a)(A)(iv) of this subsection.

29 “(E) Transactions in which a participant that is a health center as  
30 defined in 42 U.S.C. 254b, while meeting all of the participant’s obli-

1 gations, acquires, affiliates with, partners with or enters into any  
2 agreement with another entity unless the transaction would result in  
3 the participant no longer qualifying as a health center under 42 U.S.C.  
4 254b.

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

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

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

9 “(C) An independent practice association and an individual health  
10 professional or an organization of health care providers;

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

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

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

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

24 “(a) Value-based payments;

25 “(b) Incentive payments;

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

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

1       **“(9) ‘Revenue’ means:**

2       **“(a) Net patient revenue; or**

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

5       **“SECTION 2. (1) The purpose of this section is to promote the**  
6 **public interest and to advance the goals set forth in ORS 414.018 and**  
7 **the goals of the Oregon Integrated and Coordinated Health Care De-**  
8 **livery System described in ORS 414.570.**

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

14       **“(3)(a) A notice of a material change transaction involving the sale,**  
15 **merger or acquisition of a domestic health insurer shall be submitted**  
16 **to the Department of Consumer and Business Services as an addendum**  
17 **to filings required by ORS 732.517 to 732.546 or 732.576. The department**  
18 **shall provide to the authority the notice submitted under this sub-**  
19 **section to enable the authority to conduct a review in accordance with**  
20 **subsections (5) and (7) of this section. The authority shall notify the**  
21 **department of the outcome of the authority’s review.**

22       **“(b) The department shall make the final determination in material**  
23 **change transactions involving the sale, merger or acquisition of a do-**  
24 **mestic health insurer and shall coordinate with the authority to in-**  
25 **corporate the authority’s review into the department’s final**  
26 **determination.**

27       **“(4) An entity shall submit to the authority a notice of a material**  
28 **change transaction, other than a transaction described in subsection**  
29 **(3) of this section, in the form and manner prescribed by the authority,**  
30 **no less than 180 days before the date of the transaction and shall pay**

1 a fee prescribed in section 4 of this 2021 Act.

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

7 “(6) Following a preliminary review, the authority or the depart-  
8 ment shall approve a transaction or approve a transaction with con-  
9 ditions designed to further the goals described in subsection (1) of this  
10 section based on criteria prescribed by the authority by rule, including  
11 but not limited to:

12 “(a) If the transaction is in the interest of consumers and is ur-  
13 gently necessary to maintain the solvency of an entity involved in the  
14 transaction; or

15 “(b) If the authority determines that the transaction does not have  
16 the potential to have a negative impact on access to affordable health  
17 care in this state or the transaction is likely to meet the criteria in  
18 subsection (9) of this section.

19 “(7)(a) Except as provided in paragraph (b) of this subsection, if a  
20 transaction does not meet the criteria in subsection (6) of this section,  
21 the authority shall conduct a comprehensive review and may appoint  
22 a review board of stakeholders to conduct a comprehensive review and  
23 make recommendations as provided in subsections (11) to (18) of this  
24 section.

25 “(b) The authority or the department may intervene in a trans-  
26 action described in section 1 (6)(a)(A)(vi) in which the final authority  
27 rests with another state and, if the transaction is approved by the  
28 other state, may place conditions on health care entities operating in  
29 this state with respect to the insurance or health care industry market  
30 in this state, prices charged to patients residing in this state and the

1 services available in health care facilities in this state, to serve the  
2 public good.

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

4 “(a) Criteria to exempt an entity from the requirements of sub-  
5 section (4) of this section if there is an emergency situation that  
6 threatens immediate care services and the transaction is urgently  
7 needed to protect the interest of consumers;

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

10 “(c) Criteria for when to conduct a comprehensive review and ap-  
11 point a review board under subsection (7) of this section that must  
12 include, but is not limited to:

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

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

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

18 “(9) A health care entity may engage in a material change trans-  
19 action if, following a comprehensive review conducted by the authority  
20 and recommendations by a review board appointed under subsection  
21 (7) of this section, the authority determines that the transaction meets  
22 the criteria adopted by the department by rule under subsection (2)  
23 of this section and:

24 “(a)(A) The parties to the transaction demonstrate that the trans-  
25 action will benefit the public good and communities by:

26 “(i) Reducing the growth in patient costs in accordance with the  
27 health care cost growth targets or benchmarks established under ORS  
28 442.386 or maintain a rate of cost growth that exceeds the target or  
29 benchmark that the entity demonstrates is the best interest of the  
30 public;

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

3       “(iii) Rectifying historical and contemporary factors contributing  
4 to a lack of health equities; or

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

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

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

15       “(11) A review board convened by the authority under subsection  
16 (7) of this section must consist of members of the affected community,  
17 consumer advocates and health care experts. No more than one-third  
18 of the members of the review board may be representatives of insti-  
19 tutional health care providers. The authority may not appoint to a  
20 review board an individual who is employed by an entity that is a party  
21 to the transaction that is under review or is employed by a competitor  
22 that is of a similar size to an entity that is a party to the transaction.

23       “(12) The authority may request additional information from an  
24 entity that is a party to the material change transaction, and the en-  
25 tity shall promptly reply using the form of communication requested  
26 by the authority and verified by an officer of the entity if required by  
27 the authority.

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



1 that is privileged or confidential may not be publicly disclosed if:

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

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

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

7 “(14) The authority or the Department of Justice may retain  
8 actuaries, accountants or other professionals independent of the au-  
9 thority as necessary to assist a review board in conducting the analy-  
10 sis of a proposed material change transaction. The authority or the  
11 Department of Justice shall designate the party or parties to the ma-  
12 terial change transaction that shall bear the cost of retaining the  
13 professionals.

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

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

22 “(b) An explanation of the groups or individuals likely to be im-  
23 pacted by the transaction;

24 “(c) Information about services currently provided by the health  
25 care entity, commitments by the health care entity to continue such  
26 services and any services that will be reduced or eliminated;

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

29 “(e) Information about potential or perceived conflicts of interest  
30 among executives and members of the board of directors of health care

1 entities that are parties to the transaction.

2 “(16) The authority shall post the information described in sub-  
3 section (15)(a) to (d) of this section to the authority’s website in the  
4 languages spoken in the area affected by the material change trans-  
5 action and in a culturally sensitive manner.

6 “(17) The authority shall provide the information described in sub-  
7 section (15)(a) to (d) of this section to:

8 “(a) At least one newspaper of general circulation in the area af-  
9 fected by the material change transaction;

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

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

14 “(18) A review board shall make recommendations to the authority  
15 to approve the material change transaction, disapprove the material  
16 change transaction or approve the material change transaction subject  
17 to conditions, based on subsection (9) of this section and the criteria  
18 adopted by rule under subsection (2) of this section. The authority  
19 shall issue a final order adopting or modifying the recommendations  
20 of the review board. If the authority modifies the recommendations  
21 of the review board, the authority shall explain the modifications in  
22 the final order and the reasons for the modifications. A party to the  
23 material change transaction may contest the final order as provided  
24 in ORS chapter 183.

25 “(19) A health care entity that is a party to an approved material  
26 change transaction shall notify the authority upon the completion of  
27 the transaction in the form and manner prescribed by the authority.  
28 One year, two years and five years after the material change trans-  
29 action is completed, the authority shall analyze:

30 “(a) The health care entities’ compliance with conditions placed on

1 the transaction, if any;

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

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

6 “(20) The authority shall publish the authority’s analyses and con-  
7 clusions under subsection (19) of this section and shall incorporate the  
8 authority’s analyses and conclusions under subsection (19) of this  
9 section in the report described in ORS 442.386 (6).

10 “(21) This section does not impair, modify, limit or supersede the  
11 applicability of ORS 65.800 to 65.815, 646.605 to 646.652 or 646.705 to  
12 646.805.

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

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

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

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

27