

House Bill 4023

Sponsored by Representative MOORE-GREEN; Representatives DRAZAN, SCHARF (at the request of Andi Easton)
(Presession 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**.

Modifies criteria and processes for approval of material change transactions by Oregon Health Authority, Department of Consumer and Business Services or Department of Justice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to business transactions; creating new provisions; amending ORS 415.500, 415.501 and
3 415.512; and declaring an emergency.

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

5 **SECTION 1.** ORS 415.500 is amended to read:

6 415.500. As used in this section and ORS 415.501 and 415.505:

7 [(1) "Corporate affiliation" has the meaning prescribed by the Oregon Health Authority by rule,
8 including:]

9 [(a) Any relationship between two organizations that reflects, directly or indirectly, a partial or
10 complete controlling interest or partial or complete corporate control; and]

11 [(b) Transactions that merge tax identification numbers or corporate governance.]

12 [(2) "Essential services" means:]

13 [(a) Services that are funded on the prioritized list described in ORS 414.690; and]

14 [(b) Services that are essential to achieve health equity.]

15 [(3)] (1) "Health benefit plan" has the meaning given that term in ORS 743B.005.

16 [(4)(a)] (2)(a) "Health care entity" includes:

17 (A) An individual health professional licensed or certified in this state;

18 (B) A hospital, as defined in ORS 442.015[, or hospital system, as defined by the authority by
19 rule];

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

21 (D) A Medicare Advantage plan;

22 (E) A coordinated care organization or a prepaid managed care health services organization, as
23 both terms are defined in ORS 414.025; and

24 (F) Any other entity that has as [a] **the** primary function the provision of health care items or
25 services [or that is a parent organization of, or is an entity closely related to, an entity that has as a
26 primary function the provision of health care items or services].

27 (b) "Health care entity" does not include:

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

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

30 [(5)] (3) "Health equity" has the meaning prescribed by the Oregon Health Policy Board and

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 adopted by the authority by rule.

2 [(6)(a)] **(4)(a)** “Material change transaction” means:

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

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

6 (ii) In the case of a new entity, is projected **by that entity** to have at least ~~[\$10]~~ **\$25** million in
7 revenue in the first full year of operation at normal levels of utilization or operation as prescribed
8 by the authority by rule.

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

12 (b) “Material change transaction” does not include:

13 [(A) A clinical affiliation of health care entities formed for the purpose of collaborating on clinical
14 trials or graduate medical education programs.]

15 [(B) A medical services contract or an extension of a medical services contract.]

16 [(C) An affiliation that:]

17 [(i) Does not impact the corporate leadership, governance or control of an entity; and]

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

20 [(D) Contracts under which one health care entity, for and on behalf of a second health care entity,
21 provides patient care and services or provides administrative services relating to, supporting or facili-
22 tating the provision of patient care and services, if the second health care entity:]

23 [(i) Maintains responsibility, oversight and control over the patient care and services; and]

24 [(ii) Bills and receives reimbursement for the patient care and services.]

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

29 **(B) Reorganizations or other transactions that:**

30 **(i) Consist solely of a change in the immediate or intermediate ownership of a health care
31 entity;**

32 **(ii) Do not change the ultimate ownership or control of the health care entity; and**

33 **(ii) Do not result in the acquisition of control of the health care entity by any person not
34 previously affiliated with that entity.**

35 [(7)(a) “Medical services contract” means a contract to provide medical or mental health services
36 entered into by:]

37 [(A) A carrier and an independent practice association;]

38 [(B) A carrier, coordinated care organization, independent practice association or network of pro-
39 viders and one or more providers, as defined in ORS 743B.001;]

40 [(C) An independent practice association and an individual health professional or an organization
41 of health care providers;]

42 [(D) Medical, dental, vision or mental health clinics; or]

43 [(E) A medical, dental, vision or mental health clinic and an individual health professional to
44 provide medical, dental, vision or mental health services.]

45 [(b) “Medical services contract” does not include a contract of employment or a contract creating

1 *a legal entity and ownership of the legal entity that is authorized under ORS chapter 58, 60 or 70 or*
 2 *under any other law authorizing the creation of a professional organization similar to those authorized*
 3 *by ORS chapter 58, 60 or 70, as may be prescribed by the authority by rule.]*

4 [(8)] (5) “Net patient revenue” means the total amount of revenue, after allowance for contrac-
 5 tual amounts, charity care and bad debt, received for patient care and services, including:

6 (a) Value-based payments;

7 (b) Incentive payments;

8 (c) Capitation payments or payments under any similar contractual arrangement for the pre-
 9 payment or reimbursement of patient care and services; and

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

11 [(9)] (6) “Revenue” means:

12 (a) Net patient revenue; or

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

15 (7) “**Service line**” means a segment of patient care or services such as orthopedics, home
 16 **health care or emergency care.**

17 [(10)] (8) “Transaction” means:

18 (a) A merger of a health care entity with another entity; **or**

19 (b) An acquisition of one or more health care entities by another entity[;].

20 [(c) *New contracts, new clinical affiliations and new contracting affiliations that will eliminate or*
 21 *significantly reduce, as defined by the authority by rule, essential services;]*

22 [(d) *A corporate affiliation involving at least one health care entity; or]*

23 [(e) *Transactions to form a new partnership, joint venture, accountable care organization, parent*
 24 *organization or management services organization, as prescribed by the authority by rule.]*

25 **SECTION 2.** ORS 415.501 is amended to read:

26 415.501. (1) The purpose of this section is to promote the public interest and to advance the
 27 goals set forth in ORS 414.018 and the goals of the Oregon Integrated and Coordinated Health Care
 28 Delivery System described in ORS 414.570.

29 (2) [*In accordance with subsection (1) of this section,*] The Oregon Health Authority shall adopt
 30 by rule [*criteria*] **a framework** approved by the Oregon Health Policy Board for the [*consideration*
 31 *of requests by health care entities to engage in a material change transaction and procedures for the*]
 32 review of material change transactions under this section.

33 (3)(a) A notice of a material change transaction involving the sale, merger or acquisition of a
 34 domestic health insurer shall be submitted to the Department of Consumer and Business Services
 35 as an addendum to filings required by ORS 732.517 to 732.546 or 732.576. The department shall
 36 provide to the authority the notice submitted under this subsection to enable the authority to con-
 37 duct a review in accordance with subsections (5) [*and*] **to** (7) of this section. The authority shall
 38 notify the department of the outcome of the authority’s review.

39 (b) The department shall make the final determination in material change transactions involving
 40 the sale, merger or acquisition of a domestic health insurer and shall coordinate with the authority
 41 to incorporate the authority’s review into the department’s final determination.

42 (4) [*An*] **A health care** entity shall submit to the authority a notice of a material change
 43 transaction, other than a transaction described in subsection (3) of this section, in the form and
 44 manner prescribed by the authority, no less than 180 days before the date of the transaction and
 45 shall pay a fee prescribed in ORS 415.512.

1 (5) No later than 30 days after receiving a notice described in [subsections] **subsection (3)**
 2 [and] **or (4) of this section, except as provided in subsection (7) of this section,** the authority
 3 shall [conduct] **complete a preliminary review and shall approve a transaction, approve a**
 4 **transaction with conditions or determine that a comprehensive review is necessary.** [to de-
 5 termine if the transaction has the potential to have a negative impact on access to affordable health care
 6 in this state and meets the criteria in subsection (9) of this section.]

7 [(6) Following a preliminary review, the authority or the department shall approve a transaction
 8 or approve a transaction with conditions designed to further the goals described in subsection (1) of
 9 this section based on criteria prescribed by the authority by rule, including but not limited to:]

10 [(a) If the transaction is in the interest of consumers and is urgently necessary to maintain the
 11 solvency of an entity involved in the transaction; or]

12 **(6) The authority shall approve a material change transaction, or approve a material**
 13 **change transaction with conditions, if:**

14 **(a) In the reasonable judgment of the health care entity there is an emergency situation**
 15 **and the transaction is needed to:**

16 **(A) Avoid the reduction of health care services;**

17 **(B) Maintain the solvency of the health care entity or a service line of the entity;**

18 **(C) Address or avoid accreditation, certification or licensure deficiencies;**

19 **(D) Avoid a projected negative operating margin for the health care entity or a service**
 20 **line of the entity;**

21 **(E) Meet regulatory, contractual, bond or other legal obligations or covenants, or to meet**
 22 **requirements for tax-exempt status;**

23 **(F) Address significant staffing shortages;**

24 **(G) Address a public health emergency declared under ORS 433.441;**

25 **(H) Ensure the safe delivery of patient care and services; or**

26 **(I) Otherwise protect the interests of consumers; or**

27 **(b) [If] The authority determines that, given the size and effects of the material change**
 28 **transaction, [does not have the potential to have a negative impact on access to affordable health care**
 29 **in this state or the transaction is likely to meet the criteria in subsection (9) of this section.] a com-**
 30 **prehensive review is not warranted or the material change transaction is:**

31 **(A) Not likely to substantially reduce access to affordable health care in this state;**

32 **(B) Likely to substantially meet the conditions described in subsection (11) of this sec-**
 33 **tion; or**

34 **(C) Not likely to substantially alter the delivery of care in this state.**

35 **(7) The authority or the department shall issue the determination no later than five days**
 36 **after the authority or the department receives a notice in which the parties assert that the**
 37 **material change transaction meets the criteria set forth in subsection (6)(a) of this section.**

38 **(8) A material change transaction is deemed approved without conditions if the authority**
 39 **or the department fails to comply with the timeline provided by subsection (5) or (7) of this**
 40 **section.**

41 [(7)(a)] **(9) Except as provided in [paragraph (b) of this subsection] subsection (11) of this sec-**
 42 **tion, if the authority determines that a material change transaction does not meet the criteria**
 43 **set forth in subsection (6)(a) of this section or the authority approves the material change**
 44 **transaction with conditions, the authority shall notify the parties to the transaction and offer**
 45 **an opportunity for the parties to engage with the authority in informal discussions. If, fol-**

1 **lowing informal discussions, the authority does not remove the conditions for approval, or**
 2 **if informal discussions are declined by the parties to the material change transaction, the**
 3 **authority shall issue a final order with a right to a contested case hearing under ORS chap-**
 4 **ter 183 to challenge the order. Unless otherwise requested by a party to the material change**
 5 **transaction, the authority shall proceed with a comprehensive review simultaneous with the**
 6 **contested case hearing and any subsequent proceedings.**

7 **(10) If the authority does not approve a material change transaction or approves a ma-**
 8 **terial change transaction with conditions, the authority shall** conduct a comprehensive
 9 review. [*and may appoint a review board of stakeholders to conduct a comprehensive review and make*
 10 *recommendations as provided in subsections (11) to (18) of this section.*] The authority shall complete
 11 the comprehensive review no later than 180 days after receipt of the notice [*unless the parties to the*
 12 *transaction agree to an extension of time*]. **A material change transaction is deemed approved**
 13 **without conditions if the authority fails to complete the comprehensive review by the 180th**
 14 **day following receipt of the notice under subsection (3) or (4) of this section.**

15 [(b)] **(11)** The authority or the department may intervene in a **material change** transaction de-
 16 scribed in ORS 415.500 [(6)(a)(C)] **(4)(a)(B)** in which the final authority rests with another state and,
 17 if the transaction is approved by the other state, may place conditions on health care entities op-
 18 erating in this state with respect to the insurance or health care industry market in this state,
 19 prices charged to patients residing in this state and the services available in health care facilities
 20 in this state, to serve the public good.

21 [(8) *The authority shall prescribe by rule:*]

22 [(a) *Criteria to exempt an entity from the requirements of subsection (4) of this section if there is*
 23 *an emergency situation that threatens immediate care services and the transaction is urgently needed*
 24 *to protect the interest of consumers;*]

25 [(b) *Provision for the authority's failure to complete a review under subsection (5) of this section*
 26 *within 30 days; and*]

27 [(c) *Criteria for when to conduct a comprehensive review and appoint a review board under sub-*
 28 *section (7) of this section that must include, but is not limited to:*]

29 [(A) *The potential loss or change in access to essential services;*]

30 [(B) *The potential to impact a large number of residents in this state; or*]

31 [(C) *A significant change in the market share of an entity involved in the transaction.*]

32 [(9)] **(12)** A health care entity may engage in a material change transaction if, following a com-
 33 prehensive review conducted by the authority, [*and recommendations by a review board appointed*
 34 *under subsection (7) of this section,*] the authority determines that: [*the transaction meets the criteria*
 35 *adopted by the department by rule under subsection (2) of this section and:*]

36 [(a)(A)] **(a)** The parties to the **material change** transaction demonstrate that the transaction
 37 will benefit the public good and communities by:

38 [(i)] **(A)** Reducing the growth in patient costs in accordance with the health care cost growth
 39 targets established under ORS 442.386, or [*maintain*] **maintaining** a rate of cost growth that exceeds
 40 the target that the entity demonstrates is the best interest of the public;

41 [(ii)] **(B)** Increasing access to services in medically underserved areas; or

42 [(iii)] **(C)** Rectifying historical and contemporary factors contributing to a lack of health equities
 43 or access to services; [*or*]

44 [(B)] **(b)** The transaction will improve health outcomes for residents of this state; [*and*] **or**

45 [(b)] **(c)(A)** There is no substantial likelihood [*of anticompetitive effects from the transaction that*

1 *outweigh the benefits of the transaction in] that the material change transaction would have*
 2 **material anticompetitive effects in the state that outweigh the benefits of** increasing or
 3 maintaining services to **an underserved [populations.] population; and**

4 **(B) The material change transaction is not contrary to law.**

5 [(10) *The authority may suspend a proposed material change transaction if necessary to conduct*
 6 *an examination and complete an analysis of whether the transaction is consistent with subsection (9)*
 7 *of this section and the criteria adopted by rule under subsection (2) of this section.]*

8 [(11)(a) *A review board convened by the authority under subsection (7) of this section must consist*
 9 *of members of the affected community, consumer advocates and health care experts. No more than*
 10 *one-third of the members of the review board may be representatives of institutional health care pro-*
 11 *viders. The authority may not appoint to a review board an individual who is employed by an entity*
 12 *that is a party to the transaction that is under review or is employed by a competitor that is of a*
 13 *similar size to an entity that is a party to the transaction.]*

14 [(b) *A member of a review board shall file a notice of conflict of interest and the notice shall be*
 15 *made public.]*

16 [(12)] **(13)** The authority may request additional information from an entity that is a party to the
 17 material change transaction, and the entity shall promptly reply using the form of communication
 18 requested by the authority and verified by an officer of the entity if required by the authority.

19 [(13)(a)] **(14)(a)** An entity may not refuse to provide documents or other information requested
 20 under subsection (4) or [(12)] **(13)** of this section on the grounds that the information is confidential.

21 (b) Material that is [*privileged or*] confidential may not be publicly disclosed if:

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

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

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

25 (c) The authority shall maintain the confidentiality of all confidential information and documents
 26 that are not publicly available that are obtained in relation to a material change transaction and
 27 may not disclose the information or documents to any person[, *including a member of the review*
 28 *board,]* without the consent of the person who provided the information or document. Information
 29 and documents described in this paragraph are exempt from disclosure under ORS 192.311 to 192.478.

30 [(14)] **(15)** The authority or the Department of Justice may retain actuaries, accountants or
 31 other professionals independent of the authority who are qualified and have expertise in the type
 32 of material change transaction under review [*as necessary to assist the authority in conducting the*
 33 *analysis of]* **if the authority or the Department of Justice determines that it lacks the staff**
 34 **with the expertise necessary to evaluate the criteria set forth in subsection (6)(a) of this**
 35 **section under** a proposed material change transaction. The authority or the Department of Justice
 36 shall designate the party or parties to the material change transaction that shall bear the reason-
 37 able and actual cost of retaining the professionals, **not to exceed \$5,000 in total per transaction.**
 38 **Prior retaining any outside professional under this subsection, the authority of the Depart-**
 39 **ment of Justice shall provide the parties to the material change transaction with an estimate**
 40 **of the costs of retaining the professional.**

41 [(15)] **(16)** [A review board] **The authority** may hold up to two public hearings to seek public
 42 input and otherwise engage the public before making a determination on the proposed **material**
 43 **change** transaction. A public hearing must be held in the service area or areas of the health care
 44 entities that are parties to the material change transaction. At least 10 days prior to the public
 45 hearing, the authority shall post to the authority's website information about the public hearing and

1 materials related to the material change transaction, including:

2 (a) A summary of the proposed transaction;

3 (b) An explanation of the groups or individuals likely to be impacted by the **proposed material**
4 **change** transaction;

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

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

9 (e) Information about potential or perceived conflicts of interest among executives and members
10 of the board of directors of health care entities that are parties to the **proposed material change**
11 transaction.

12 [(16)] (17) The authority shall post the information described in subsection [(15)(a)] (16)(a) to (d)
13 of this section to the authority's website in the languages spoken in the area affected by the mate-
14 rial change transaction and in a culturally sensitive manner.

15 [(17)] (18) The authority shall provide the information described in subsection [(15)(a)] (16)(a)
16 to (d) of this section to:

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

19 (b) Health facilities in the area affected by the material change transaction for posting by the
20 health facilities; and

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

22 [(18)] (19) [A review board shall make recommendations to the authority to approve the material
23 change transaction, disapprove the material change transaction or approve the material change trans-
24 action subject to conditions, based on subsection (9) of this section and the criteria adopted by rule
25 under subsection (2) of this section.] The authority shall issue a proposed order and allow the parties
26 and the public a reasonable opportunity to make written exceptions to the proposed order. **After**
27 **additional consultation with the parties to the material change transaction**, the authority shall
28 consider the parties' and the public's written exceptions and issue a final order setting forth the
29 authority's findings and rationale. [for adopting or modifying the recommendations of the review
30 board. If the authority modifies the recommendations of the review board, the authority shall explain
31 the modifications in the final order and the reasons for the modifications.] A party to the material
32 change transaction may contest the final order as provided in ORS chapter 183.

33 [(19)] (20) A health care entity that is a party to an approved material change transaction shall
34 notify the authority upon the completion of the transaction in the form and manner prescribed by
35 the authority. [One year, two years and five years after the material change transaction is completed,
36 the authority shall analyze:]

37 [(a) The health care entities' compliance with conditions placed on the transaction, if any;]

38 [(b) The cost trends and cost growth trends of the parties to the transaction; and]

39 [(c) The impact of the transaction on the health care cost growth target established under ORS
40 442.386.]

41 [(20)] (21) The authority shall publish the authority's analyses and conclusions under subsection
42 (19) of this section and shall incorporate the authority's analyses and conclusions under subsection
43 (19) of this section in the report described in ORS 442.386 (6).

44 [(21)] (22) This section does not impair, modify, limit or supersede the applicability of ORS 65.800
45 to 65.815, 646.605 to 646.652 or 646.705 to 646.805.

1 [(22)] **(23)** Whenever it appears to the Director of the Oregon Health Authority that any person
 2 has committed or is about to commit a violation of this section or any rule or order issued by the
 3 authority under this section, the director may apply to the Circuit Court for Marion County for an
 4 order enjoining the person, and any director, officer, employee or agent of the person, from the vi-
 5 olation, and for such other equitable relief as the nature of the case and the interest of the public
 6 may require.

7 [(23)] **(24)** The remedies provided under this section are in addition to any other remedy, civil
 8 or criminal, that may be available under any other provision of law.

9 [(24)] **(25)** The authority may adopt rules necessary to carry out the provisions of this section.

10 **SECTION 3.** ORS 415.512 is amended to read:

11 415.512. (1) The Oregon Health Authority shall prescribe by rule a fee to be paid under ORS
 12 415.501 [(3)] **(4)**, [*proportionate to the size of the parties to the transaction, sufficient to reimburse the*
 13 *costs of administering ORS 415.501*] **not to exceed \$1,000 per material change transaction.**

14 (2) Moneys received by the authority under this section shall be deposited to the Oregon Health
 15 Authority Fund established in ORS 413.101 to be used for carrying out ORS 415.501.

16 **SECTION 4. Not later than September 15, 2023, the Oregon Health Authority shall report**
 17 **to the interim committees of the Legislative Assembly related to health, in the manner**
 18 **provided in ORS 192.245, the following information:**

19 (1) **The number of material change transactions in which a determination was issued**
 20 **under ORS 415.501 (5) and a summary of the types of transactions, the length of the reviews**
 21 **and the determinations on the reviews, reporting separately for each type of transaction**
 22 **described in ORS 415.500 (8).**

23 (2) **The number of transactions in which a final order was issued under ORS 415.501 (19)**
 24 **and a summary of the types of transactions, the length of the reviews and the determi-**
 25 **nations on the reviews, reporting separately for each type of transaction described in ORS**
 26 **415.500 (8).**

27 (3) **The fees and costs of retaining outside professionals imposed on parties to a trans-**
 28 **action under ORS 415.501 (15) and 415.512.**

29 (4) **The number of transactions in which outside professionals were retained under ORS**
 30 **415.501 (15), the types of professionals and the average costs of retaining the professionals.**

31 (5) **A cost-benefit analysis of the implementation of ORS 415.501.**

32 (6) **A fiscal impact statement, prepared in accordance with standards used by the Legis-**
 33 **lative Fiscal Officer in preparing fiscal impact statements under ORS 173.025, of the costs**
 34 **of the first six months of implementation of ORS 415.501.**

35 (7) **Recommendations for legislative changes to ORS 415.500, 415.501, 415.505 or 415.512.**

36 **SECTION 5.** (1) **The amendments to ORS 415.501 by section 2 of this 2022 Act become**
 37 **operative on October 1, 2022.**

38 (2) **The Oregon Health Authority shall adopt rules necessary to implement the amend-**
 39 **ments to ORS 415.501 by section 2 of this 2022 Act on and after October 1, 2022.**

40 **SECTION 6.** **This 2022 Act being necessary for the immediate preservation of the public**
 41 **peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect**
 42 **on its passage.**