
SENATE BILL 5335

State of Washington

67th Legislature

2021 Regular Session

By Senators Randall and Rolfes

1 AN ACT Relating to acquisitions of health care facilities; adding
2 a new chapter to Title 70 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

5 (1) The existence of accessible affordable health care services
6 that are responsive to the needs of the community is an important
7 public policy goal.

8 (2) The coronavirus pandemic has laid bare both the crucial
9 importance of our health care systems and the inequities that exist
10 and exacerbate harm to marginalized communities, including in access
11 to and delivery of affordable, quality care.

12 (3) Acquisitions of health care systems and facilities impact
13 cost, quality, and access to health care, and affect working
14 conditions and employee benefits.

15 (4) Health system and facility acquisitions can result in a lack
16 of price competition, and also a lack of any meaningful choice among
17 health care providers within a community or geographic region. These
18 negative outcomes are exacerbated for those in rural areas with few
19 health care providers.

20 (5) The legislature is committed to ensuring that Washingtonians
21 have access to the full range of reproductive, end-of-life, and

1 gender affirming health care services. Yet, Washingtonians continue
2 to experience difficulty accessing gender affirming care, and
3 hospital system acquisitions in Washington state have resulted in
4 material reductions in reproductive and end-of-life health care
5 services, to the detriment of communities and patients.

6 (6) Health system acquisitions must improve, rather than harm,
7 access to affordable quality health care.

8 NEW SECTION. **Sec. 2.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires
10 otherwise.

11 (1) "Acquisition" means an acquisition by a person of an interest
12 in a hospital, or hospital system, by:

13 (a) Purchase, sale, option, merger, lease, gift, joint venture,
14 spin-off, split-off, recapitalization, exchange, conveyance,
15 transfer, or otherwise that results in (i) a change of ownership or
16 control of 20 percent or more of the assets, operations, or voting
17 securities of the hospital or hospital system; or (ii) the acquiring
18 person holding or controlling 50 percent or more of the assets,
19 operations, or voting securities of the hospital or hospital system;
20 or

21 (b) The direct or indirect transfer of control, responsibility,
22 or governance of 20 percent or more of the assets, operations, or
23 voting securities of the hospital or hospital system. For purposes of
24 this chapter, a transfer includes but is not limited to (i) the
25 substitution of a new corporate member or members that transfers the
26 control of, responsibility for, or governance of the hospital or
27 hospital system; (ii) the substitution of one or more members of the
28 governing body or any arrangement, written or oral, that would
29 transfer voting control of the members of the governing body; or
30 (iii) the entry into a voting agreement covering, or the deposit into
31 a voting trust with respect to, such an interest; or the grant of a
32 proxy with respect to such an interest.

33 (2) "Department" means the Washington state department of health.

34 (3) "Health care facility" means a facility, brick and mortar,
35 dispatch, or virtual, that provides health care services directly to
36 patients including, but not limited to, a hospital, clinic, health
37 care provider's office, health maintenance organization, diagnostic
38 or treatment center, neuropsychiatric or mental health facility,
39 hospice, or nursing home.

1 (4) "Health care services" has the same meaning as in RCW
2 19.390.020.

3 (5) "Hospital" means any entity that is: (a) Defined as a
4 hospital in RCW 70.41.020 and is required to obtain a license under
5 chapter 70.41 RCW; or (b) a psychiatric hospital required to obtain a
6 license under chapter 71.12 RCW.

7 (6) "Hospital system" means either: (a) A parent corporation of
8 one or more hospitals and any entity affiliated with such parent
9 corporation through ownership or control; or (b) a hospital and any
10 entity affiliated with such hospital through ownership.

11 (7) "Merger" means a consolidation of two or more organizations,
12 including two or more organizations joining through a common parent
13 organization or two or more organizations forming a new organization.

14 (8) "Person" means an individual, a trust or estate, a
15 partnership, a corporation including associations, limited liability
16 companies, joint stock companies, and insurance companies, and other
17 legal entities or organizations.

18 (9) "Virtual care" is the mode of delivering health care services
19 and public health while the patient is at the originating site and
20 the health care provider is at a distant site, and includes but is
21 not limited to telehealth, remote patient monitoring, telemedicine,
22 and digital health information transmission.

23 NEW SECTION. **Sec. 3.** (1) A person may not engage in the
24 acquisition of a hospital or hospital system without first having
25 applied for and received the approval of the department under this
26 chapter.

27 (2) An application must be submitted to the department and must
28 include the information the department determines is required but at
29 a minimum must include:

30 (a) The name of the hospital or hospital system being acquired,
31 and the name of the acquiring person or other parties to the
32 acquisition;

33 (b) The acquisition price;

34 (c) A full description of the acquisition agreement;

35 (d) A copy of the acquisition agreement;

36 (e) A statement from the hospital or hospital system's board of
37 directors that explains the effect the acquisition will likely have
38 on delivery and cost of health-related services to the community
39 served by each facility involved in the acquisition, and the basis

1 for this opinion. The statement shall also describe all dissenting
2 viewpoints of which the board of directors is aware;

3 (f) If applicable, a copy of the two most recent community needs
4 assessments or any similar evaluations or assessments prepared by or
5 for the hospital or hospital system that is the subject of the
6 acquisition, and the identity of all persons who assisted or
7 contributed to any such evaluations or assessments;

8 (g) A description of all charity care provided in the last three
9 years and the projected charity care for three years following the
10 acquisition by each health facility that is the subject of the
11 acquisition agreement. This description shall include annual total
12 charity care spending; inpatient, outpatient, and emergency room
13 charity care spending; a description of how the amount of charity
14 care spending was calculated; annual charity care inpatient
15 discharges, outpatient visits, and emergency visits; a description of
16 the types of charity care services provided annually; and a
17 description of the policies, procedures, and eligibility requirements
18 for the provision of charity care;

19 (h) A description of the health care services currently provided
20 at each facility that is the subject of the acquisition;

21 (i) A description of all services provided by each health care
22 facility that is the subject of the acquisition in the past five
23 years to apple health patients, qualified health plan patients, and
24 indigent patients. This description shall include but not be limited
25 to the type and volume of services provided, the payors for the
26 services provided, the demographic characteristics of and zip code
27 data for the patients served by the hospital or hospital system and
28 the costs and revenues for the services provided;

29 (j) The following current policies for any hospital that is the
30 subject of the acquisition: (i) Admission policies; (ii)
31 nondiscrimination policies; (iii) end-of-life policies; (iv)
32 reproductive health policies; (v) reproductive health care services
33 forms as required under RCW 70.41.520; and (vi) other policies or
34 information as appropriate;

35 (k) The following postacquisition policies for any hospital that
36 is the subject of the acquisition: (i) Admission policies; (ii)
37 nondiscrimination policies; (iii) end-of-life policies; (iv)
38 reproductive health policies; (v) reproductive health care services
39 forms as required under RCW 70.41.520; and (vi) other policies or
40 information as appropriate;

1 (l) If the acquisition will have any impact on reproductive
2 health care services provided by any health care facility that is the
3 subject of the acquisition, or any impact on the availability or
4 accessibility of reproductive health care services, a description of
5 all reproductive health care services provided in the last five years
6 by each health care facility that is the subject of the acquisition.
7 This description shall include the types and levels of reproductive
8 services including, but not limited to, information about
9 contraception provision, and the number of pregnancy terminations,
10 tubal ligations, and in-vitro fertilization procedures provided, and
11 a description of how this information was compiled;

12 (m) If the acquisition will have any impact on end-of-life health
13 care services provided by any health care facility that is the
14 subject of the acquisition, or any impact on the availability or
15 accessibility of end-of-life health care services, a description of
16 all end-of-life health care services provided in the last five years
17 by each health care facility that is the subject of the acquisition.
18 This description shall include the types and levels of end-of-life
19 services including, but not limited to, information about the number
20 of occasions in which doctors served as consulting or attending
21 physicians at the health care facilities under chapter 70.245 RCW and
22 a description of how this information was compiled;

23 (n) If the acquisition will have any impact on gender affirming
24 health care services, provided by any health care facility that is
25 the subject of the acquisition, or any impact on the availability or
26 accessibility of gender affirming health care services, a description
27 of all gender affirming health care services provided in the last
28 five years by each health care facility that is the subject of the
29 acquisition. This description shall include the types and levels of
30 gender affirming health care provided including, but not limited to,
31 information about the number of gender affirming surgical procedures
32 provided and a description of how this information was compiled;

33 (o) A description of any community benefit program provided by
34 the hospital or hospital system during the past five years with an
35 annual cost of at least \$10,000 and the annual cost of each program
36 for the past five years;

37 (p) For each hospital or hospital system that is the subject of
38 the acquisition, a description of current policies and procedures on
39 staffing for patient care areas; employee input on health quality and
40 staffing issues; and employee wages, salaries, benefits, working

1 conditions, and employment protections. Such description shall
2 include a list of all existing staffing plans, policy and procedure
3 manuals, employee handbooks, collective bargaining agreements, or
4 similar employment-related documents;

5 (q) For each hospital or hospital system that is the subject of
6 the acquisition, all existing documents setting forth any guarantees
7 made by any entity that would be taking over operation or control of
8 the hospital or hospital system relating to employee job security and
9 retraining, or the continuation of current staffing levels and
10 policies, employee wages, salaries, benefits, working conditions, and
11 employment protections;

12 (r) For each hospital or hospital system that is the subject of
13 the acquisition, a statement as to whether, postacquisition,
14 nonstance will be maintained through all communications and usage of
15 funds regarding nonunion employees forming a union;

16 (s) For each hospital or hospital system that is the subject of
17 the acquisition, a statement as to whether any successor of the
18 employer or union will be bound to any existing union certification
19 and any existing collective bargaining agreement;

20 (t) For each hospital or hospital system that is the subject of
21 the acquisition, a description of current debt collection practices
22 and a description of any anticipated changes to debt collection
23 practices following the acquisition;

24 (u) A description of any anticipated postacquisition changes in
25 services at any health care facility that is the subject of the
26 acquisition. If anticipated changes include a reduction, relocation,
27 or elimination of a service, the following information should be
28 included: (i) Need the population presently has for the service; (ii)
29 how the need will be adequately met by the proposed change; and (iii)
30 alternative arrangements designed to meet the identified need;

31 (v) A detailed statement and all documents relating to the
32 parties' plans for assuring the continuance of existing hospital
33 privileges postacquisition;

34 (w) A detailed statement and all documents relating to the
35 parties' plans for ensuring the maintenance of appropriate health
36 science research and health care provider education postacquisition;

37 (x) A detailed statement and all documents relating to the
38 parties' plans for ensuring safeguards to avoid conflict of interest
39 in postacquisition patient referral;

1 (y) A detailed statement and all documents relating to the
2 parties' commitment and plans to provide health care to the
3 disadvantaged, the uninsured, and the underinsured and how benefits
4 to promote improved health in the affected community will be provided
5 postacquisition;

6 (z) A description of each measure proposed by the applicant to
7 mitigate or eliminate any potential adverse effect on the
8 availability or accessibility of health care services to the affected
9 community that may result from the acquisition;

10 (aa) A list of the primary languages spoken at the hospital or
11 hospital system and the threshold languages for apple health
12 beneficiaries, as determined by the department for the county in
13 which any health care facility that is the subject of the acquisition
14 is located; and

15 (bb) For each hospital or hospital system that is the subject of
16 the acquisition or otherwise involved in the acquisition, a financial
17 and economic analysis and report from an independent expert or
18 consultant that includes a description of current costs and
19 competition in the relevant geographic and product market and any
20 anticipated changes in such costs and competition as a result of the
21 acquisition.

22 (3) An application and all related documents are considered
23 public records for purposes of chapter 42.56 RCW.

24 (4) The department shall charge an applicant fee sufficient to
25 cover the costs of implementing this chapter.

26 (5) If a hospital or hospital system has engaged in multiple
27 acquisitions, in a manner designed to avoid department and attorney
28 general review under this chapter, all such agreements or
29 transactions shall be considered and analyzed as a single acquisition
30 for any purpose under these regulations.

31 NEW SECTION. **Sec. 4.** (1) The department shall determine if an
32 application is complete for the purposes of review. If the department
33 determines that an application is incomplete, it shall notify the
34 applicant within 30 working days after the date the application was
35 received stating the reasons for its determination of incompleteness.

36 (2) A completed application shall be deemed received on the date
37 when all the information required by section 3 of this act has been
38 submitted to the department.

1 (3) Within five working days after receipt of a completed
2 application, the department shall publish notice of the application
3 on the department's website, and in a newspaper of general
4 circulation in the county or counties where the hospital or hospital
5 system has health care facilities that are the subject of the
6 acquisition and shall notify by first-class United States mail,
7 email, or facsimile transmission, any person who has requested notice
8 of the filing of such applications. The notice must state that an
9 application has been received, state the names of the parties to the
10 agreement, describe the contents of the application, and state the
11 date and process by which a person may submit written comments about
12 the application to the department.

13 NEW SECTION. **Sec. 5.** (1) During the course of review under this
14 chapter, the department shall conduct one or more public hearings, at
15 least one of which must be in a county where the hospital or hospital
16 system to be acquired is located. At the hearings, anyone may file
17 written comments and exhibits or appear and make a statement. The
18 department may subpoena additional information or witnesses, require
19 and administer oaths, require sworn statements, take depositions, and
20 use related discovery procedures for purposes of the hearing and at
21 any time prior to making a decision on the application.

22 (2) A hearing must be held not later than 45 days after receipt
23 of a completed application, unless the department determines that
24 under section 6 of this act a new health care impact statement is
25 required, in which case a hearing must be held no later than 30 days
26 after the health care impact statement is completed.

27 (3) At least 30 days prior to the public hearing, unless a new
28 health impact statement is required, in which case the department
29 shall provide at least 15 days notice, the department shall provide
30 notice of the time and place of the hearing on its website and to any
31 person who has requested such notice in writing. At least 30 days
32 prior to the public hearing, unless a new health care impact
33 statement is required in which case the parties shall provide at
34 least 15 days notice, the parties to the acquisition agreement shall
35 provide notice of the time and place of the hearing through
36 publication in a newspaper of general circulation in the affected
37 communities, at the public entrance and on the bulletin boards
38 designated for legal or public notices of any health care facility
39 that is affected by the acquisition, prominently on the website

1 available to the public of any health care facility that is affected
2 by the acquisition, and on the website available to the employees of
3 any health care facility that is affected by the acquisition. The
4 notice of the time and place of the meeting shall be provided in
5 English and in the languages spoken in the county or counties in
6 which the health care facilities reside or provide care.

7 (4) Within 15 working days of the last hearing, the department
8 shall compile a summary report of each public hearing proceeding and
9 post the summary report on its website. The attorney general shall
10 receive a copy of the report.

11 (5) If after the initial public hearing there is any change in
12 the terms of the acquisition that materially alters any of the
13 information that the parties to the acquisition provided under
14 section 3(2) of this act, the department shall conduct an additional
15 public hearing to ensure adequate public comment regarding the
16 proposed change.

17 NEW SECTION.

Sec. 6.

(1) The department shall engage an
18 independent contractor to prepare an independent health care impact
19 statement for any acquisition that satisfies either of the following
20 conditions:

21 (a) The acquisition directly affects a hospital licensed under
22 chapter 70.41 RCW that has more than 50 acute care beds; or

23 (b) There is a reasonable basis to conclude that the acquisition
24 may significantly reduce the availability or accessibility or cost of
25 any existing health care service.

26 (2) Nothing in this section shall preclude the department from
27 obtaining an independent health care impact statement or any other
28 report that is not required under this section.

29 (3) The independent health care impact statement shall contain
30 but not be limited to the following information:

31 (a) An assessment of the effect of the acquisition on emergency
32 services, reproductive health care services, end-of-life health care
33 services, gender affirming health care services, and any other health
34 care services that the hospital or hospital system, is providing;

35 (b) An assessment of the effect of the acquisition on the level
36 and type of charity care that the hospital or hospital system has
37 historically provided;

38 (c) An assessment of the effect of the acquisition on the
39 provision of health care services to apple health patients, county

1 indigent patients, patients with disabilities, women, racial and
2 ethnic minorities, lesbian, gay, bisexual, transgender, queer
3 patients, and other underserved or marginalized populations;

4 (d) An assessment of the effect of the acquisition on any
5 community benefit program that the hospital or hospital system has
6 historically funded or operated;

7 (e) An assessment of the effect of the acquisition on staffing
8 for patient care areas as it may affect availability of care, on the
9 likely retention of employees as it may affect continuity of care,
10 and on the rights of employees to provide input on health quality and
11 staffing issues;

12 (f) An assessment of the effect of the acquisition on the cost of
13 patient care;

14 (g) An assessment of the effectiveness of any mitigation measure
15 proposed by the applicant to reduce any potential adverse effect on
16 health care services identified in the impact statement;

17 (h) A discussion of alternatives to the acquisition including
18 closure of the hospital or hospital system; and

19 (i) Recommendations for additional feasible mitigation measures
20 that would reduce or eliminate any significant adverse effect on
21 health care services identified in the impact statement.

22 (4) The information contained in the independent health care
23 impact statement shall be used in considering whether the acquisition
24 may negatively impact the availability or accessibility of health
25 care services as set forth in section 8 of this act. Copies of the
26 independent health care impact statement shall be made available to
27 any person or entity that has requested a copy.

28 NEW SECTION. **Sec. 7.** (1) The department shall review the
29 completed application, and within 45 days of the last public hearing
30 held under section 5 of this act will determine whether the
31 acquisition meets the requirements for approval in section 8 of this
32 act and shall:

33 (a) Approve the acquisition, with or without any specific
34 modifications or conditions; or

35 (b) Disapprove the acquisition.

36 (2) The department may impose conditions on an acquisition to
37 ensure the requirements of section 8 of this act are met and that
38 sufficient safeguards are in place to ensure communities have
39 continued or improved access to affordable quality care.

1 (3) If the department disapproves the acquisition, the
2 disapproval shall constitute a final decision.

3 (4) The department may not make its decision subject to any
4 condition not directly and rationally related to requirements in
5 section 8 of this act, and any condition or modification must bear a
6 direct and rational relationship to the application under review.

7 (5) A person engaged in an acquisition and affected by a final
8 decision of the department or a person residing in a community
9 affected by a final decision of the department has the right to an
10 adjudicative proceeding to challenge the decision of the department.
11 The adjudicative proceeding shall be governed by chapter 34.05 RCW.

12 (6) The department may extend, by not more than 30 days, any
13 deadline established under this chapter one time during consideration
14 of any application, for good cause.

15 NEW SECTION. **Sec. 8.** The department shall only approve an
16 application if the acquisition in question will not detrimentally
17 affect the continued existence of accessible, affordable health care
18 that is responsive to the needs of the communities in which the
19 hospital or hospital system health facilities are located. To this
20 end, the department shall not approve an application unless, at a
21 minimum, it determines that:

22 (1) After the acquisition, the affected community will have the
23 same or greater access to quality, affordable care, including
24 reproductive, end-of-life, and gender affirming health care services,
25 and that, if the health care facilities that are the subject of this
26 acquisition will not provide these services, there are alternative
27 sources of quality affordable care in the community that will ensure
28 the community has the same or greater access to these services;

29 (2) The acquisition will not result in the revocation of hospital
30 privileges;

31 (3) Sufficient safeguards are included to maintain appropriate
32 capacity for health science research and health care provider
33 education;

34 (4) The acquiring person and parties to the acquisition are
35 committed to providing health care to the disadvantaged, the
36 uninsured, and the underinsured and to providing benefits to promote
37 improved health in the affected community; and

38 (5) Sufficient safeguards are included to avoid conflict of
39 interest in patient referral.

1 NEW SECTION. **Sec. 9.** (1) The secretary of state may not accept
2 any forms or documents in connection with any acquisition of a
3 hospital or hospital system until the acquisition has been approved
4 by the department under this chapter.

5 (2) The attorney general may seek an injunction to prevent any
6 acquisition not approved by the department under this chapter.

7 NEW SECTION. **Sec. 10.** (1) The department shall monitor ongoing
8 compliance with the terms and conditions of the acquisition for at
9 least 10 years from when the acquisition agreement is finalized. The
10 department shall require periodic reports from the parties to the
11 acquisition or any successor persons to ensure compliance with
12 commitments made. The frequency of the periodic reports shall be
13 within the department's discretion but will not be less frequent than
14 annually. The department may subpoena information and documents and
15 may conduct on-site compliance audits at the acquiring person's
16 expense.

17 (2) To effectively monitor ongoing compliance with the terms and
18 conditions of the acquisition, the department may, in its discretion,
19 contract with experts and consultants.

20 (3) Contract costs shall not exceed an amount that is reasonable
21 and necessary to conduct the review and evaluation.

22 (4) The department shall be entitled to reimbursement from the
23 acquiring person for all actual and direct costs incurred in
24 monitoring ongoing compliance with the terms and conditions of the
25 acquisition, including contract and administrative costs.

26 (5) The department may bill the acquiring person or any successor
27 and the acquiring person or successor billed by the department shall
28 promptly pay. If the acquiring person or successor fails to pay
29 within 30 days, the department may assess a civil fine in accordance
30 with RCW 43.70.095.

31 (6) If the department has reason to believe or receives
32 information indicating that the acquiring person or successor is not
33 fulfilling commitments to the affected community under section 8 of
34 this act, including but not limited to the acquiring person or
35 successor not complying with any conditions imposed by the department
36 under section 7 of this act, the department shall hold a hearing upon
37 10 days notice to the affected parties. The cost of the hearing and
38 any on-site reviews related to determining the validity of the
39 information will be borne by the acquiring person or successor. If

1 after the hearing the department determines that the acquiring person
2 or successor is not fulfilling its commitments to the affected
3 community under section 8 of this act, it may revoke or suspend the
4 hospital license issued to the acquiring person or successor, or
5 impose civil fines in accordance with RCW 43.70.095 until the
6 acquiring person or successor submits or begins to follow a
7 corrective plan of action. The department may also refer the matter
8 to the attorney general for appropriate action. The attorney general
9 may seek a court order compelling the acquiring person to fulfill its
10 commitments under section 8 of this act.

11 NEW SECTION. **Sec. 11.** The attorney general has the authority to
12 ensure compliance with commitments that inure to the public interest.
13 The attorney general may take legal action to enforce this chapter
14 and any conditions the department imposes on the approval of the
15 acquisition. The attorney general may obtain damages, injunctive
16 relief, attorneys' fees, and such other relief as the court deems
17 necessary to ensure compliance.

18 NEW SECTION. **Sec. 12.** The department shall conduct a study on
19 the impact provider organization acquisitions have on Washington
20 communities' access to affordable quality health care services. The
21 study shall address health care services generally and specifically
22 address access to reproductive, end-of-life, and gender affirming
23 health care services. For purposes of the study, the department will
24 consult with health care providers, health care advocates, and
25 community members to determine both the scope of the study and what
26 constitutes a "provider organization," but a provider organization
27 shall not include a hospital or hospital system as defined under this
28 chapter.

29 NEW SECTION. **Sec. 13.** No provision of this chapter derogates
30 from the common law or statutory authority of the attorney general.

31 NEW SECTION. **Sec. 14.** The department may adopt rules necessary
32 to implement this chapter and may contract with and provide
33 reasonable reimbursement to qualified persons to assist in
34 determining whether the requirements of section 8 of this act have
35 been met.

1 NEW SECTION. **Sec. 15.** If a hospital or hospital system is
2 subject to review under chapter 70.38 or 70.45 RCW, the review under
3 those chapters shall be concurrent with the review under this
4 chapter, to the extent practicable.

5 NEW SECTION. **Sec. 16.** This act takes effect January 1, 2022.

6 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act
7 constitute a new chapter in Title 70 RCW.

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