

FISCAL IMPACT OF PROPOSED LEGISLATION

81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office

Measure: HB 2362 - B

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Haylee Morse-Miller
Reviewed by: John Borden, Tom MacDonald, Ben Ruef
Date: June 21, 2021

Measure Description:

Requires health care entities to obtain approval from Oregon Health Authority before any mergers, acquisitions or affiliations in which at least one entity had average revenue of \$25 million or more in preceding three fiscal years.

Government Unit(s) Affected:

Department of Justice (DOJ), Oregon Judicial Department (OJD), Department of Consumer and Business Services (DCBS), Oregon Health Authority (OHA)

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Analysis:

HB 2362 - B requires the Oregon Health Authority (OHA) to adopt by rule criteria approved by the Oregon Health Policy Board for consideration of requests by health care entities to engage in material change transactions. The measure defines “material change transaction” as a transaction in which at least one party had average revenue of \$25 million or more in the preceding three fiscal years, and another party had an average revenue of at least \$10 million in the preceding three fiscal years- or in the case of a new entity, is projected to have at least \$10 million in revenue in the first full year of operation.

Notices of material change transactions involving the sale, merger, or acquisition of a domestic health insurer must be filed with the Department of Consumer and Business Services (DCBS), which must then be shared with OHA in order for the agency to conduct a review according to certain timeliness and other provisions defined in the bill. Upon completion of OHA’s review, DCBS is required make the final determination in these cases. For other types of material change transactions, health care entities must submit notices to OHA for review and approval. If a transaction does not meet the criteria outlined in the measure and prescribed in rule, OHA may appoint a review board of stakeholders to conduct a comprehensive review and make recommendations. OHA or the Department of Justice may also retain independent actuaries, accountants, or other independent professionals to assist with analyzing a material change transaction; entities involved in the transaction will be responsible for paying these costs.

OHA must analyze the outcomes of approved material change transactions after one, two, and five years. OHA is also directed to commission a study of health care consolidation in the state every four years, with the first study occurring no later than September 15, 2026.

The measure requires OHA to prescribe a fee by rule that is sufficient to reimburse the costs of administering this measure. The fee revenue will be deposited in the existing Oregon Health Authority Fund. OHA may also assess civil penalties under this measure, which are credited to the General Fund.

This measure has no effective date so is assumed to take effect on January 1, 2022, with section 2 of the act (regarding material change transaction review procedures) operative on March 1, 2022.

Oregon Health Authority

The Oregon Health Authority (OHA) anticipates costs of \$780,457 General Fund in 2021-23 and \$1,083,012 total funds in 2023-25. Costs are largely related to four new permanent, full-time positions (2.84 FTE in 2021-23, and 4.00 FTE in 2023-25), as well as minimal costs to support review board meetings. New positions include:

- One Operations and Policy Analyst 4 to oversee program policies, processes, and vendor contracts;
- One Operations and Policy Analyst 3 to assist with program startup and rulemaking, and the study of health care consolidation;
- One Research Analyst 4 to analyze data and assist with analysis of transactions; and,
- One Economist 3 to conduct market and cost analysis.

For the 2021-23 biennium, it is assumed that all costs will need to be paid for using General Fund monies. Once OHA has established and begins collecting a fee as directed by this measure, Other Funds will be used to pay for the ongoing costs related to this bill. However, it is not clear when fee revenue will be sufficient to support program costs, so this fiscal reflects a “total funds” impact for the 2023-25 biennium.

Other state agencies

There is minimal impact anticipated for the Department of Consumer and Business Services and the Oregon Judicial Department.

The Department of Justice (DOJ) anticipates a minimal fiscal impact, but this is predicated on the agency using a Special Assistant Attorney General to write rules, handle transactions, provide oversight of contracts, prepare administrative orders, and defend appeals of denials; with assistance from General Counsel Assistant Attorney Generals. The agency anticipates a minimal fiscal given that the party or parties to a material change transaction must pay for the costs of the Special Assistant Attorney General. However, DOJ notes that there is no way to estimate the volume and frequency of proposed transactions, and a large number of transactions could increase workload.