

# House Bill 2079

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Health Authority)

## 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**.

Requires health care entities to obtain approval from Oregon Health Authority before any mergers, acquisitions or affiliations of entities that had \$25 million or more in net patient revenue in prior fiscal year or before mergers, acquisitions or affiliations that will result in one entity having increase in net patient revenue of \$10 million or more. Specifies procedures.

Requires Oregon Health Policy Board to establish criteria for approval of mergers, acquisitions and affiliations based on specified factors.

## A BILL FOR AN ACT

1  
2 Relating to health care providers; creating new provisions; and amending ORS 413.032, 413.037,  
3 413.101, 413.181, 415.013, 415.019 and 415.103.

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

5 **SECTION 1. As used in sections 2 and 3 of this 2021 Act:**

6 (1) **"Health care entity" includes:**

7 (a) **An individual health professional licensed or certified in this state;**

8 (b) **A hospital, as defined in ORS 442.015, or hospital system, as defined by the Oregon  
9 Health Authority by rule;**

10 (c) **A carrier, as defined in ORS 743B.005;**

11 (d) **A Medicare Advantage plan;**

12 (e) **A coordinated care organization or a prepaid managed care health services organiza-  
13 tion, as both are defined in ORS 414.025; and**

14 (f) **Any other group or organization that has as a primary function the provision of  
15 health care items or services.**

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

20 (3)(a) **"Material change transaction" means:**

21 (A) **Any of the following, occurring during a single transaction or in a series of related  
22 transactions within a consecutive 12-month period, that results in one health care entity  
23 having an increase in net patient revenue of \$10 million or more:**

24 (i) **A merger of health care entities;**

25 (ii) **An acquisition of one or more health care entities by another health care entity;**

26 (iii) **An affiliation or contract formed between two or more health care entities; or**

27 (iv) **The formation of a partnership, joint venture, accountable care organization, parent  
28 organization or management services organization for the purpose of administering con-**

**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 tracts with carriers, third party administrators, pharmacy benefit managers or providers as  
2 prescribed by the authority by rule.

3 (B) Any of the transactions described in subparagraph (A) of this paragraph in which two  
4 or more of the health care entities involved in the transaction had net patient revenue of  
5 \$25 million or more in the preceding fiscal year.

6 (b) "Material change transaction" does not include a clinical affiliation of health care  
7 entities formed for the purpose of collaborating on clinical trials or graduate medical edu-  
8 cation programs.

9 **SECTION 2.** (1) The purpose of this section is to promote the public interest and to ad-  
10 vance the goals set forth in ORS 414.018 and the goals of the Oregon Integrated and Coordi-  
11 nated Health Care Delivery System described in ORS 414.570.

12 (2) In accordance with subsection (1) of this section, the Oregon Health Authority shall  
13 adopt by rule criteria approved by the Oregon Health Policy Board for the consideration of  
14 requests by health care entities to engage in a material change transaction. The criteria  
15 must take into account:

16 (a) The anticipated impact of the material change transaction on the health of the resi-  
17 dents of this state;

18 (b) The predicted effect of the material change transaction on meeting the health care  
19 cost growth benchmark established under ORS 442.386; and

20 (c) Health equity, access to care, health care quality and the cost of health care in this  
21 state.

22 (3) A health care entity may not engage in a material change transaction without ob-  
23 taining the authority's prior approval of the material change transaction. To obtain the  
24 authority's approval of a material change transaction, a health care entity shall submit a  
25 notice and supporting documentation, no less than 60 days before the date of the material  
26 change transaction, in the form and manner prescribed by the authority and pay a fee pre-  
27 scribed in section 4 of this 2021 Act. The authority is responsible for coordinating with the  
28 Department of Consumer and Business Services the review of any transaction that is subject  
29 to review and approval under this section and also subject to review by the department under  
30 ORS 732.517 to 732.546 or 732.576.

31 (4) The authority may suspend a proposed material change transaction if necessary to  
32 conduct an examination and complete an analysis of whether the transaction is consistent  
33 with the criteria adopted by rule under subsection (2) of this section.

34 (5) The authority may request additional information from a health care entity that is a  
35 party to the material change transaction and the entity shall promptly reply using the form  
36 of communication requested by the authority and verified by an officer of the entity, if re-  
37 quired by the authority.

38 (6) A health care entity may not refuse to provide documents or other information re-  
39 quested by the authority under subsection (3) or (5) of this section on the grounds that the  
40 information is privileged or confidential. However, the authority may not further disclose any  
41 information that the authority determines to be a trade secret, as defined in ORS 192.345,  
42 or that is protected from disclosure by state or federal law.

43 (7) The authority may retain actuaries, accountants or other professionals independent  
44 of the authority as necessary to conduct the analysis of a proposed material change trans-  
45 action. The authority shall designate the party or parties to the transaction that shall bear

1 the cost of retaining the professionals.

2 (8) The authority shall hold a public hearing in the service area or areas of the health  
 3 care entities that are parties to the material change transaction, seek public input and oth-  
 4 erwise engage the public as the authority determines necessary before making a determi-  
 5 nation on the proposed material change transaction.

6 (9) The authority shall issue a final order, based on the criteria adopted by rule under  
 7 subsection (2) of this section, approving or disapproving the proposed material change  
 8 transaction or approving the proposed material change transaction subject to conditions. If  
 9 the authority disapproves the material change transaction or approves the material change  
 10 transaction subject to conditions, the authority shall notify the Attorney General of the  
 11 authority's findings and analysis so that the Attorney General may, if appropriate, conduct  
 12 an investigation into whether the health care entities have engaged in unfair competition or  
 13 anticompetitive behavior in violation of ORS 646.725 or 646.730 and, if necessary, take steps  
 14 to protect consumers in the health care market.

15 (10) The authority may require a health care entity that is a party to a material change  
 16 transaction to notify the authority upon the completion of the transaction in the form and  
 17 manner prescribed by the authority. After the transaction is completed, the authority shall  
 18 analyze:

19 (a) The cost trends and cost growth trends of the parties to the material change trans-  
 20 action; and

21 (b) The impact of the material change transaction on the health care cost growth  
 22 benchmark established under ORS 442.386.

23 (11) The authority shall publish the authority's analyses and conclusions under sub-  
 24 section (10) of this section and shall incorporate the authority's analyses and conclusions  
 25 under subsection (10) of this section in the report described in ORS 442.386 (6).

26 (12) Whenever it appears to the Director of the Oregon Health Authority that any person  
 27 has committed or is about to commit a violation of this section or any rule or order issued  
 28 by the authority under this section, the director may apply to the Circuit Court for Marion  
 29 County for an order enjoining the person, and any director, officer, employee or agent of the  
 30 person, from the violation, and for such other equitable relief as the nature of the case and  
 31 the interest of the public may require.

32 (13) The authority shall adopt rules necessary to carry out the provisions of this section.

33 **SECTION 3.** (1) An officer or employee of the Oregon Health Authority who is delegated  
 34 responsibilities in the enforcement of section 2 of this 2021 Act or rules adopted pursuant to  
 35 section 2 of this 2021 Act may not:

36 (a) Be a director, officer or employee of or be financially interested in a health care en-  
 37 tity that is a party to a proposed material change transaction except as an enrollee or pa-  
 38 tient of a health care entity or by reason of rights vested in compensation or benefits related  
 39 to services performed prior to affiliation with the authority; or

40 (b) Be engaged in any other business or occupation interfering with or inconsistent with  
 41 the duties of the authority.

42 (2) This section does not permit any conduct, affiliation or interest that is otherwise  
 43 prohibited by public policy.

44 **SECTION 4.** (1) The Oregon Health Authority shall prescribe by rule a fee to be paid  
 45 under section 2 (3) of this 2021 Act, sufficient to reimburse the costs of administering section

1 **2 of this 2021 Act.**

2 (2) Moneys received by the authority under this section shall be deposited to the Oregon  
 3 Health Authority Fund established in ORS 413.101 to be used for carrying out section 2 of  
 4 this 2021 Act.

5 **SECTION 5.** (1) In addition to any other penalty imposed by law, the Director of the  
 6 Oregon Health Authority may impose a civil penalty, as determined by the director, for a  
 7 violation of ORS 413.037 or section 2 of this 2021 Act. The amount of the civil penalty may  
 8 not exceed \$10,000 for each offense. The civil penalty imposed on an individual health pro-  
 9 fessional may not exceed \$1,000 for each offense.

10 (2) Civil penalties shall be imposed and enforced in accordance with ORS 183.745.

11 (3) Moneys received by the Oregon Health Authority under this section shall be paid to  
 12 the State Treasury and credited to the General Fund.

13 **SECTION 6.** ORS 413.101 is amended to read:

14 413.101. The Oregon Health Authority Fund is established in the State Treasury, separate and  
 15 distinct from the General Fund. Interest earned by the Oregon Health Authority Fund shall be  
 16 credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Au-  
 17 thority for carrying out the duties, functions and powers of the authority under ORS 413.032 and  
 18 431A.183 and section 2 of this 2021 Act.

19 **SECTION 7.** ORS 413.032 is amended to read:

20 413.032. (1) The Oregon Health Authority is established. The authority shall:

21 (a) Carry out policies adopted by the Oregon Health Policy Board;

22 (b) Administer the Oregon Integrated and Coordinated Health Care Delivery System established  
 23 in ORS 414.570;

24 (c) Administer the Oregon Prescription Drug Program;

25 (d) Develop the policies for and the provision of publicly funded medical care and medical as-  
 26 sistance in this state;

27 (e) Develop the policies for and the provision of mental health treatment and treatment of ad-  
 28 dictions;

29 (f) Assess, promote and protect the health of the public as specified by state and federal law;

30 (g) Provide regular reports to the board with respect to the performance of health services  
 31 contractors serving recipients of medical assistance, including reports of trends in health services  
 32 and enrollee satisfaction;

33 (h) Guide and support, with the authorization of the board, community-centered health initiatives  
 34 designed to address critical risk factors, especially those that contribute to chronic disease;

35 (i) Be the state Medicaid agency for the administration of funds from Titles XIX and XXI of the  
 36 Social Security Act and administer medical assistance under ORS chapter 414;

37 (j) In consultation with the Director of the Department of Consumer and Business Services, pe-  
 38 riodically review and recommend standards and methodologies to the Legislative Assembly for:

39 (A) Review of administrative expenses of health insurers;

40 (B) Approval of rates; and

41 (C) Enforcement of rating rules adopted by the Department of Consumer and Business Services;

42 (k) Structure reimbursement rates for providers that serve recipients of medical assistance to  
 43 reward comprehensive management of diseases, quality outcomes and the efficient use of resources  
 44 and to promote cost-effective procedures, services and programs including, without limitation, pre-  
 45 ventive health, dental and primary care services, web-based office visits, telephone consultations and

1 telemedicine consultations;

2 (L) Guide and support community three-share agreements in which an employer, state or local  
3 government and an individual all contribute a portion of a premium for a community-centered health  
4 initiative or for insurance coverage;

5 (m) Develop, in consultation with the Department of Consumer and Business Services, one or  
6 more products designed to provide more affordable options for the small group market;

7 (n) Implement policies and programs to expand the skilled, diverse workforce as described in  
8 ORS 414.018 (4); and

9 (o) Implement a process for collecting the health outcome and quality measure data identified  
10 by the Health Plan Quality Metrics Committee and report the data to the Oregon Health Policy  
11 Board.

12 (2) The Oregon Health Authority is authorized to:

13 (a) Create an all-claims, all-payer database to collect health care data and monitor and evaluate  
14 health care reform in Oregon and to provide comparative cost and quality information to consumers,  
15 providers and purchasers of health care about Oregon's health care systems and health plan net-  
16 works in order to provide comparative information to consumers.

17 (b) Develop uniform contracting standards for the purchase of health care, including the fol-  
18 lowing:

19 (A) Uniform quality standards and performance measures;

20 (B) Evidence-based guidelines for major chronic disease management and health care services  
21 with unexplained variations in frequency or cost;

22 (C) Evidence-based effectiveness guidelines for select new technologies and medical equipment;

23 (D) A statewide drug formulary that may be used by publicly funded health benefit plans; and

24 (E) Standards that accept and consider tribal-based practices for mental health and substance  
25 abuse prevention, counseling and treatment for persons who are Native American or Alaska Native  
26 as equivalent to evidence-based practices.

27 (3) The enumeration of duties, functions and powers in this section is not intended to be exclu-  
28 sive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Au-  
29 thority by ORS 413.006 to 413.042, 415.012 to 415.430 and 741.340 **and section 2 of this 2021 Act**  
30 or by other statutes.

31 **SECTION 8.** ORS 413.037 is amended to read:

32 413.037. (1) The Director of the Oregon Health Authority, each deputy director and authorized  
33 representatives of the director may administer oaths, take depositions and issue subpoenas to compel  
34 the attendance of witnesses and the production of documents or other written information necessary  
35 to carry out the provisions of ORS 413.006 to 413.042, 415.012 to 415.430 and 741.340 **and section**  
36 **2 of this 2021 Act.**

37 (2) If any person fails to comply with a subpoena issued under this section or refuses to testify  
38 on matters on which the person lawfully may be interrogated, the director, deputy director or au-  
39 thorized representative may follow the procedure set out in ORS 183.440 to compel obedience.

40 **SECTION 9.** ORS 413.181 is amended to read:

41 413.181. (1) The Department of Consumer and Business Services and the Oregon Health Au-  
42 thority may enter into agreements governing the disclosure of information reported to the depart-  
43 ment by insurers with certificates of authority to transact insurance in this state and the disclosure  
44 of information reported to the Oregon Health Authority by coordinated care organizations.

45 (2) The authority may use information disclosed under subsection (1) of this section for the

1 purpose of carrying out ORS 413.032, 414.572, 414.591, 414.605, 414.609, 414.638 and 415.012 to  
2 415.430 **and section 2 of this 2021 Act.**

3 **SECTION 10.** ORS 415.013 is amended to read:

4 415.013. (1) The Oregon Health Authority shall enforce the provisions of ORS 415.012 to 415.430  
5 **and section 2 of this 2021 Act** and rules adopted pursuant to ORS 415.011 **and 415.012 to 415.430**  
6 **and section 2 of this 2021 Act** for the public good.

7 (2) The authority has the powers and authority expressly conferred by or reasonably implied  
8 from the provisions of ORS 415.012 to 415.430 **and section 2 of this 2021 Act** and rules adopted  
9 pursuant to ORS 415.011 **and 415.012 to 415.430 and section 2 of this 2021 Act.**

10 (3) The authority may conduct examinations and investigations [*of matters concerning the regu-*  
11 *lation of coordinated care organizations as the authority considers proper to determine whether any*  
12 *person has violated any provision of ORS 415.012 to 415.430 or rules adopted pursuant to ORS 415.011*  
13 *or to secure information useful in the lawful administration of any of ORS 415.011 the provisions]* **and**  
14 **require the production of books, records, accounts, papers, documents and computer and**  
15 **other recordings the authority considers necessary to administer and enforce ORS 415.012**  
16 **to 415.430 or section 2 of this 2021 Act and any rules adopted pursuant to ORS 415.011 or**  
17 **415.012 to 415.430 or section 2 of this 2021 Act.**

18 **SECTION 11.** ORS 415.019 is amended to read:

19 415.019. (1) The Oregon Health Authority shall hold a contested case hearing upon written re-  
20 quest for a hearing by a person aggrieved by any act, threatened act or failure of the authority to  
21 act under ORS 415.012 to 415.430 **or section 2 of this 2021 Act** or rules adopted pursuant to ORS  
22 415.011 **or 415.012 to 415.430 or section 2 of this 2021 Act.**

23 (2) The provisions of ORS chapter 183 govern the hearing procedures and any judicial review  
24 of a final order issued in a contested case hearing.

25 **SECTION 12.** ORS 415.103 is amended to read:

26 415.103. A person may not file or cause to be filed with the Oregon Health Authority any article,  
27 certificate, report, statement, application or other information required or permitted to be filed un-  
28 der ORS 415.012 to 415.430 **or section 2 of this 2021 Act** or rules adopted pursuant to ORS 415.011  
29 **or 415.012 to 415.430 or section 2 of this 2021 Act** that is known by the person to be false or  
30 misleading in any material respect.

31