

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1480 - L.D. 2201

An Act to Implement Certain Recommendations Related to the Regulatory Review and Approval of Certain Health Care Transactions Involving Private Equity Companies, Hedge Funds or Management Services Organizations from the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA c. 106 is enacted to read:

CHAPTER 106

REVIEW OF MATERIAL CHANGE TRANSACTIONS INVOLVING HEALTH CARE ENTITIES AND PRIVATE EQUITY COMPANIES, HEDGE FUNDS OR MANAGEMENT SERVICES ORGANIZATIONS

§371. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Carrier. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

2. Health care entity. "Health care entity" means a health care provider, a health care facility or a provider organization. "Health care entity" does not include a nursing facility as defined by section 328, subsection 18 or a health care provider or provider organization that provides only dental services.

3. Health care facility. "Health care facility" means a licensed institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient facilities; health systems consisting of one or more health care entities that are jointly owned or managed; ambulatory surgical or treatment centers; residential treatment centers; diagnostic, laboratory and imaging centers; freestanding

emergency facilities; outpatient clinics; and rehabilitation and other therapeutic health settings.

4. Health care provider. "Health care provider" means a person, corporation, partnership, governmental unit, state institution, medical practice or other entity qualified or licensed under state law to perform or provide health care services to persons in the State.

5. Health care services. "Health care services" means services and payments for the care, prevention, diagnosis, treatment, cure or relief of a medical, dental or behavioral health condition, illness, injury or disease, including, but not limited to:

A. Inpatient, outpatient, habilitative, rehabilitative, dental, palliative, therapeutic, supportive, home health or behavioral services provided by a health care entity;

B. Pharmacy services, either retail or specialty, and any drugs, medical devices or medical supplies;

C. Performance of functions to refer, arrange or coordinate care;

D. The use of equipment such as durable medical equipment, diagnostic equipment, surgical devices or infusion equipment; or

E. Technology associated with the provision of services or equipment in paragraphs A to D, such as telehealth, electronic health records, software, claims processing or utilization systems.

6. Management services organization. "Management services organization" means any organization or entity owned or controlled by a private equity company or hedge fund that contracts with a health care provider or provider organization to perform management or administrative services relating to, supporting or facilitating the provision of health care services when the health care provider or provider organization is also owned or controlled by the same private equity company or hedge fund.

7. Material change transaction. "Material change transaction" means the acquisition of a majority interest or operational control of a health care entity within the State occurring during a single transaction or in a series of related transactions by a private equity company, hedge fund or management services organization.

8. Medical practice. "Medical practice" means a corporate entity or partnership organized for the purpose of practicing medicine and permitted to practice medicine in the State, including, but not limited to, partnerships, professional corporations, limited liability companies and limited liability partnerships.

9. Operational control. "Operational control" means the power to:

A. Influence or direct the actions or policies of any part of a health care entity; or

B. Choose, appoint or terminate a member of a board, manager, managing member, senior employee, consultant or other individual or entity that participates in the operational oversight of a health care entity.

10. Private equity company. "Private equity company" means an entity that collects capital investments from individuals or entities and purchases, as a parent entity or through another entity that the entity completely or partially owns or controls, a direct or indirect ownership share of a health care provider, provider organization or management services

organization, except that "private equity company" does not include venture capital entities exclusively funding start-ups or other early-stage businesses.

11. Provider organization. "Provider organization" means any corporation, partnership, business trust, association or organized group of persons that is in the business of health care delivery or management, whether incorporated or not, that represents one or more health care providers in contracting with carriers for the payment of health care services. "Provider organization" includes, but is not limited to, physician organizations, physician-hospital organizations, independent practice associations, health care provider networks, accountable care organizations and management services organizations and any other organization that contracts with carriers for payment for health care services.

§372. Review of proposed material change transactions

1. Notice. This subsection governs notice regarding material change transactions.

A. A health care entity shall, before completing any material change transaction, file written notice, as provided in paragraph B, with the department not fewer than 180 days before the date of the proposed material change transaction.

B. The notice of the proposed material change transaction must include:

(1) A list of the parties, the terms of the proposed transaction and copies of all transaction agreements between any of the parties;

(2) A statement describing the goals of the proposed transaction and whether and how the proposed transaction affects health care services in the State;

(3) The geographic service area of any hospital affected by the proposed transaction;

(4) A description of the groups or individuals likely to be affected by the transaction; and

(5) A summary of the health care services currently provided by any of the parties and any health care services that will be added, reduced or eliminated, including an explanation of why any services will be reduced or eliminated in the service area in which they are currently provided.

C. All the information provided by the submitter as part of the notice under this subsection is public unless the submitter requests that the information be designated as confidential and the department determines that it contains proprietary information, in which case it is confidential. The department may not disclose confidential information that is obtained under this chapter in relation to a material change transaction, except that the department may exchange confidential information with the Office of Affordable Health Care, established under Title 5, section 3122, subsection 1, necessary for the office to exercise its authority under this chapter and may disclose information in accordance with subsection 3, paragraph D. For purposes of this section, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the health care entity and would make available information that is not otherwise public.

D. Within 10 days of receiving written notice of a material change transaction, the department shall post on its publicly accessible website information about the material change transaction, including:

(1) A summary of the proposed transaction, including the identities of the parties to the transaction;

(2) An explanation of the groups or individuals likely to be affected by the transaction;

(3) Information about services currently provided by the health care entity, commitments made by the health care entity to continue such services and any services to be reduced or eliminated;

(4) Details about any public hearings and how to submit comments; and

(5) Any other information from the notice and other materials submitted by the health care entity that the department determines would be in the public interest, except for materials designated confidential under paragraph C.

E. For purposes of calculating time periods pursuant to this subsection, notice is considered received on the first business day after the department determines that notice is complete.

2. Preliminary review. This subsection governs preliminary reviews of material change transactions.

A. Within 60 days after receiving a notice described in subsection 1, the department, in consultation with the Office of Affordable Health Care, shall:

(1) Approve the material change transaction and notify the health care entity in writing that a comprehensive review is not required for the material change transaction;

(2) Approve the material change transaction subject to conditions set by the department and notify the health care entity in writing of the conditions under which the material change transaction may be completed; or

(3) Notify the health care entity in writing that the transaction is subject to a comprehensive review. The department may request additional information necessary to perform a comprehensive review under subsection 3.

B. A comprehensive review under subsection 3 is required when any of the following applies to the material change transaction:

(1) The material change transaction will result in the transfer of assets valued over \$100,000,000;

(2) The material change transaction will lessen competition, including through the effects of vertical or cross-market transactions among different product or geographic markets; and

(3) The department, at its sole discretion, determines that the material change transaction is likely to have a material impact on the cost, quality or equity of or access to health care services in any region in the State.

C. This section does not limit or infringe upon the existing authority of any state agency, including the department, the Department of Professional and Financial Regulation and the Department of the Attorney General, to review any transactions.

D. The department shall review a proposed material change transaction under this chapter concurrently with any review required pursuant to chapter 103-A.

3. Comprehensive review process. This subsection governs the comprehensive review process for material change transactions.

A. No later than 90 days after determining a material change transaction is subject to a comprehensive review pursuant to subsection 2, paragraph B, the department shall conduct one or more public hearings or public meetings, one of which must be in the county in which the health care entity is located, to hear comments from interested parties.

B. At the department's request, the Office of Affordable Health Care shall review the material change transaction's cost and market impact. The review may examine factors relating to the proposed transaction and the transacting parties and their relative market positions, including, but not limited to:

(1) The quality of the services provided by any health care provider party to the transaction, including patient experience;

(2) Consumer concerns, including, but not limited to, complaints or other allegations that the health care provider or provider organization has engaged in any unfair method of competition or any unfair or deceptive act or practice;

(3) The role of the transacting parties in serving at-risk, underserved and government payer patient populations;

(4) The prices charged by either of the transacting parties for health care services, including their relative prices compared to others' prices for the same health care services in the same geographic area;

(5) The cost and cost trends of the health care entity in comparison to total health care expenditures statewide;

(6) The impact of the transaction on the clinical workforce, including wages, working conditions, staffing levels, supply, patient access and continuity of patient-care relationships;

(7) The impact of a real estate sale or lease agreement on the financial condition of the health care entity and its ability to maintain patient care operations, including the impact of a sale and leaseback arrangement if the main campus of the health care entity is leased from a real estate investment trust;

(8) The market share of any transacting party and the likely effects of the transaction on competition;

(9) Any previous transaction involving either transacting party, including, but not limited to, acquisitions or mergers of similar health care providers, whether or not in the same state;

(10) The debt-to-equity ratio of the health care entity following the transaction;

(11) The availability and accessibility of health care services similar to those provided, or proposed to be provided, through the health care provider or provider organization within its primary service areas and dispersed service areas;

(12) The impact of the material change transaction on competing options for the delivery of health care services within the health care provider's or provider organization's primary service areas and dispersed service areas;

(13) The role of the transacting parties in providing low-margin or negative-margin services within their respective primary service areas and dispersed service areas;

(14) The parties' compliance with prior conditions and legal requirements related to competitive conduct, including without limitation compliance with reporting requirements regarding health care entity ownership and control under section 8710-A and compliance with the laws and regulations of other states in which the parties operate; and

(15) Any other factors that the Office of Affordable Health Care determines to be in the public interest.

C. The department and the Office of Affordable Health Care may request additional information or documents from the transacting parties necessary to conduct the review of the material change transaction's cost and market impact. Failure to respond or insufficient responses to requests for information by transacting parties may result in the extension of the deadline for the office to complete the review or the imposition of conditions for approval or the disapproval of the material change transaction under subsection 4.

D. Proprietary information and documents obtained by the department and the Office of Affordable Health Care under this chapter and the work product of the office is confidential, except that the department and the office may disclose confidential information or documents:

(1) With the consent of the party that produced the information or documents; or

(2) To an expert or consultant under contract with the State to review the proposed material change transaction, as long as the expert or consultant maintains the confidentiality of the information or documents in accordance with this paragraph.

E. The department or the Office of Affordable Health Care may, in its sole discretion:

(1) Contract with, consult and receive advice from any state agency, including other offices of the department, the Department of Professional and Financial Regulation, the Maine Health Data Organization established in section 8703, the Maine Quality Forum established in Title 24-A, section 6951 or any other state agency, on those terms and conditions that the department or the office considers appropriate; and

(2) Contract with experts or consultants to assist in reviewing the proposed material change transaction.

Notwithstanding Title 5, chapter 155 or any other provision of law to the contrary, agreements and contracts entered into pursuant to this chapter are not subject to the competitive bid requirements of the Chief Procurement Officer.

F. Not more than 150 days after receiving the request under paragraph B, the Office of Affordable Health Care shall produce a report on its review of the material change transaction's cost and market impact report containing the findings and conclusions of the review as long as the health care entity has complied with the requests for information or documents pursuant to this section within 21 days of the request or by a later date set by mutual agreement of the health care entity and the office. The report must be posted publicly and may not disclose confidential information.

G. The department may charge costs to the transacting parties for all actual, reasonable and direct costs incurred in reviewing, evaluating and making the determination referred to in this section, including, without limitation, administrative costs, costs incurred by the Office of Affordable Health Care and costs of contracted experts or consultants.

4. Approval authority. This subsection governs the department's approval authority.

A. The department may approve, conditionally approve or disapprove of any material change transaction for which the department receives notice under subsection 1. Any conditions imposed pursuant to this section must specify a time period for compliance, an expiration date or that the condition applies indefinitely.

B. The department shall inform the health care entity of the determination under paragraph A within 60 days of notice under subsection 1 or, in the case of comprehensive review, within 60 days of the department's receiving the report of the completed review of the material change transaction's cost and market impact from the Office of Affordable Health Care. A proposed material change transaction may not be completed before the department has informed the health care entity of the determination.

C. In making the determination pursuant to paragraph A, the department may consider any factors that the department considers relevant, including, but not limited to, the likely impact, as described in the cost and market impact review report when applicable, of the material change transaction on:

- (1) Health care costs, prices and affordability;
- (2) The availability or accessibility of health care services to the affected individuals and groups;
- (3) The potential effects of the transaction on health outcomes, quality, access, equity or workforce for residents of this State or the potential loss or change in access to essential health care services;
- (4) Health care provider cost trends and containment of total state health care spending;
- (5) Access to health care services in medically underserved areas;
- (6) Rectifying historical problems and contemporary factors contributing to a lack of health equity or access to health care services;
- (7) The functioning and competitiveness of the markets for health care and health insurance;

(8) Whether the transaction is contrary to or violates any applicable law, including, without limitation, state antitrust laws, laws restricting the corporate practice of medicine and consumer protection laws;

(9) Whether the benefits of the transaction are likely to outweigh the anticompetitive effects from the transaction; and

(10) Whether the transaction is in the public interest.

D. This subsection does not limit or alter any authority of the Attorney General or any state agency to enforce any other law, including state or federal antitrust law, or to review nonprofit transactions.

5. Post-transaction oversight. This subsection governs post-transaction oversight.

A. This paragraph governs enforcement by the Attorney General.

(1) The Attorney General may subpoena any records necessary to enforce any provision of this chapter or to investigate suspected violations of any provision of this chapter or any condition imposed by conditional approval pursuant to subsection 4.

(2) The Attorney General may enforce any requirement of this chapter and any conditions imposed by a conditional approval pursuant to subsection 4 to the fullest extent provided by law, including damages. In addition to any legal remedies the Attorney General may have, the Attorney General is entitled to specific performance, injunctive relief and other equitable remedies a court considers appropriate for any violation or imminent violation of any requirement of this chapter or breach of any of the conditions and is entitled to recover attorney's fees and costs incurred in remedying each violation.

(3) This subsection does not narrow, abrogate or otherwise alter the authority of the Attorney General to prosecute violations of antitrust or consumer protection requirements.

B. This paragraph governs enforcement by the department.

(1) The department may audit the books, documents, records and data of any entity that is subject to a conditional approval under subsection 4 to monitor compliance with the conditions.

(2) Any entity that violates any provision of this chapter, any rules adopted pursuant to this chapter or any condition imposed pursuant to a conditional approval under subsection 4 is subject to an administrative penalty of \$10,000 per day in violation of this chapter. The department may hold these funds in a special revenue account that may be used only to support material change transaction reviews, such as for hiring expert analysts on a short-term consulting basis.

(3) The department may refer any entity to the Attorney General to review for enforcement of any noncompliance with this chapter and any conditions imposed by conditional approval pursuant to subsection 4.

(4) In order to effectively monitor ongoing compliance with the terms and conditions of any material change transaction subject to prior notice, approval or conditional approval under this chapter, the department may, in its sole discretion,

conduct a review or audit and may contract with experts and consultants to assist in this regard.

(5) One year, 2 years and 5 years following the completion of the material change transaction approved or conditionally approved by the department after a comprehensive review under subsection 3, and at future intervals determined at the discretion of the department, the health care entity or the person, corporation or partnership or any other entity that acquired direct or indirect control over the health care entity shall submit reports to the department that:

(a) Demonstrate compliance with conditions placed on the transaction, if any;

(b) Analyze cost trends and cost growth trends of the parties to the transactions; and

(c) Analyze any changes or effects of the transaction on patient access, availability of services, workforce, quality or equity.

C. The department may charge costs to the transacting parties for all actual, reasonable and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the material change transaction, including contractor and administrative costs.

6. Assessment. The department shall adopt rules setting minimum and maximum filing fees under this chapter. Initial fees may not be less than \$2,000 nor more than \$10,000. In addition to rules regarding filing fees, the department shall adopt rules to establish reasonable and necessary fees to carry out the provisions of this chapter. When filing written notice pursuant to subsection 1, paragraph A, the health care entity shall pay a nonrefundable filing fee pursuant to this subsection. All fees received by the department under this subsection must be placed in a separate, nonlapsing account to be used in accordance with this chapter. The department shall hold these funds in a special revenue account that may be used only to support staff positions and other expenses necessary to administer this section.

7. Exemption. Notwithstanding any other provision of this chapter to the contrary, this section does not apply to an independent provider organization, without any ownership or control entities, consisting of 6 or fewer individual providers that experience a material change transaction.

§373. Rulemaking

The department may, after notice and hearing pursuant to Title 5, chapter 375, subchapter 2, adopt rules to carry out this chapter. Rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22 MRSA §8710-A is enacted to read:

§8710-A. Ownership and control of health care entities

1. Definitions. For the purposes of this section, unless the context otherwise indicates, all terms have the same meanings as in section 371 and "affiliate" means:

A. A person, entity or organization that directly, indirectly or through one or more intermediaries controls, is controlled by or is under common control or ownership with another person, entity or organization;

B. A person whose business is operated under a lease, management or operating agreement by another entity or a person substantially all of whose property is operated under a management or operating agreement with that other entity;

C. An entity that operates the business or substantially all the property of another entity under a lease, management or operating agreement; or

D. Any out-of-state operations and corporate affiliates of an affiliate as defined in paragraph A, B or C, including significant equity investors, real estate investment trusts and management services organizations.

2. Reporting of ownership and control of health care entities. A health care entity shall report to the organization once no later than July 1, 2027 and subsequently upon the completion of a material change transaction involving the health care entity in a form and manner required by the organization the following information:

A. The legal name of the health care entity;

B. The business address of the health care entity;

C. Locations of operations of the health care entity;

D. The business identification numbers of the health care entity, as applicable, including:

(1) Taxpayer identification number;

(2) National provider identifier;

(3) Employer identification number; and

(4) United States Department of Health and Human Services, Centers for Medicare and Medicaid Services certification number;

E. The name and contact information of a representative of the health care entity;

F. A current organizational chart showing the business structure of the health care entity, including affiliates and subsidiaries; and

G. For a health care entity that is a hospital:

(1) The affiliated health care providers identified by name, license type, specialty, national provider identifier and any other applicable identification number described in paragraph D; the address of the principal practice location; and whether the affiliated health care provider is employed or contracted by the health care entity; and

(2) The name and address of affiliated health care facilities by license number, license type and capacity in each major service area.

3. Exceptions. The following health care entities are exempt from the reporting requirements under subsection 2:

A. A health care entity that is an independent provider organization, without any ownership or control entities, consisting of 6 or fewer individual providers; and

B. A health care provider or provider organization that is owned or controlled by another health care entity, if the health care provider or provider organization is shown in the organizational chart submitted under subsection 2, paragraph F and the

controlling health care entity reports all the information required under subsection 2 on behalf of the controlled or owned entity, except that health care facilities are not subject to this exception.

4. Sharing of ownership information to improve transparency. This subsection governs the sharing of ownership information to improve transparency.

A. Information provided under this subsection is public information and may not be considered confidential, proprietary or a trade secret, except that any individual health care provider's taxpayer identification number that is also their social security number and any business identification number of a health care entity listed in subsection 2, paragraph D is confidential.

B. No later than January 1, 2029 and annually thereafter, the organization shall post on a publicly accessible website a report with respect to the previous one-year period, including:

(1) The number of health care entities reporting for that previous one-year period, disaggregated by the business structure of each specified health care entity;

(2) The name, address and business structure of any health care entity;

(3) Any change in ownership or control for each health care entity;

(4) In accordance with paragraph A, any change in the tax identification number of a health care entity; and

(5) As applicable in accordance with subsection 2, paragraph G, the name, address, tax identification number and business structure of affiliates and subsidiaries of a health care entity that is a hospital, including the business type and the tax identification number of each.

C. The organization may share information reported under this section with the Office of Affordable Health Care, the Attorney General, other state agencies and other state officials to reduce or avoid duplication in reporting requirements or to facilitate oversight or enforcement pursuant to the laws of the State, except that any tax identification numbers that are individual social security numbers may be shared only with other state agencies or other state officials that agree to maintain the confidentiality of such information.

Sec. 3. Effective date. This Act takes effect January 1, 2027.