

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1399

H.P. 894

House of Representatives, March 28, 2023

An Act to Improve State Oversight of Proposed Health Care Entity Transactions

Reference to the Committee on Health and Human Services suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative MORRIS of Turner.
Cosponsored by Representative: GATTINE of Westbrook.

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

2 **Sec. 1. 5 MRSA §194-L** is enacted to read:

3 **§194-L. Oversight of health care entity transactions**

4 This section governs material change transactions entered into by health care entities.

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Acquisition" means the direct or indirect purchase of a material amount of the
8 assets or operations of a health care entity, including, but not limited to, a lease,
9 transfer, exchange, receipt of conveyance, creation of a joint venture or other manner
10 of purchase by another health care entity, a private equity group or a hedge fund.

11 B. "Health care entity" means a health care provider, health care facility or provider
12 organization.

13 C. "Health care facility" means a licensed institution providing health care services or
14 a health care setting, including, but not limited to, a hospital or other inpatient facility,
15 an ambulatory surgery facility, a treatment center, a skilled nursing facility, a
16 diagnostic facility, a residential treatment center, a medical laboratory and imaging
17 center, a freestanding emergency facility, an outpatient clinic, a rehabilitation center
18 and any other therapeutic health care setting.

19 D. "Health care provider" means any person, corporation, partnership, governmental
20 unit, state institution or any other entity qualified or licensed under state law to perform
21 or provide health care services.

22 E. "Health care services" means services, care or supplies used to treat issues related
23 to medical health, behavioral health, mental health and substance use disorder and
24 includes services that are surgical, optometric, dental, podiatric, chiropractic,
25 psychiatric, therapeutic, diagnostic, preventative, rehabilitative, supportive or geriatric.

26 F. "Material change transaction" means any combination of the following, occurring
27 during a single transaction or in a series of related transactions involving the same
28 health care entity within a 12-month period:

29 (1) A corporate merger including one or more health care entities;

30 (2) An acquisition of one or more health care entities;

31 (3) Any affiliation, arrangement or contract that results in a change of control over
32 a health care entity. As used in this subparagraph, "change of control" means an
33 arrangement in which any person, corporation, partnership or other entity acquires
34 direct or indirect control over the operations of a health care facility or health care
35 entity in whole or in substantial part, and "arrangement" includes any agreement,
36 association, partnership or joint venture that results in a change of governance or
37 control over a health care facility or health care entity;

38 (4) The formation of a partnership, joint venture, accountable care organization,
39 parent organization or management services organization for the purpose of
40 administering contracts with carriers, 3rd-party administrators, pharmacy benefits
41 managers or providers; or

1 (5) A sale, purchase, lease or affiliation that results in a transfer of control over a
2 board of directors for a hospital;

3 "Material change transaction" does not include a clinical affiliation of health care
4 entities formed for the purpose of collaborating on clinical trials, graduate or medical
5 education programs or the hiring of, or offer of employment to, a physician.

6 G. "Proprietary information" means information that is a trade secret or production,
7 commercial or financial information the disclosure of which would impair the
8 competitive position of the health care entity or person submitting the information and
9 would make available information not otherwise publicly available.

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

18 I. "Significant power over the health care market" means that a single entity possesses
19 30% or more of the market share for any health care service in the geographic region
20 where it is located. The Attorney General may adopt rules establishing additional
21 criteria that the Attorney General may use to evaluate whether a health care entity has
22 significant power over the health care market.

23 **2. Prohibition.** A health care entity may not enter into a material change transaction
24 unless the transaction is approved by the Attorney General through the process established
25 under this section.

26 **3. Notice required.** A health care entity shall provide written notice to the Attorney
27 General of its intent to enter into a material change transaction at least 60 days prior to
28 making any commitment to enter into the material change transaction. Written notice under
29 this subsection must include, at a minimum, any information related to the material change
30 transaction required by the Attorney General by rule. Within 10 days of receiving written
31 notice of a material change transaction, the Attorney General shall post on the Office of the
32 Attorney General's publicly accessible website the following information:

33 A. A summary of the proposed material change transaction;

34 B. An explanation of the groups or individuals likely to be affected by the transaction;

35 C. Information about health care services currently provided by the health care entity,
36 any commitments by the health care entity to continue providing those services after
37 the material change transaction and any services that will be reduced or eliminated as
38 a result of the material change transaction;

39 D. A copy of the written notice and accompanying materials that were submitted to
40 the Attorney General under this subsection, except for materials that are confidential
41 under subsection 10 and any materials that the Attorney General determines may cause
42 harm to the public by being posted; and

1 E. The time and location of any public hearing under subsection 5, paragraph A or
2 other opportunity for the public to provide comments regarding the material change
3 transaction, and instructions for how the public may participate.

4 **4. Preliminary review.** Within 30 days of receiving written notice under subsection
5 3, the Attorney General shall provide written notice to the health care entity that the
6 Attorney General has:

7 A. Approved the material change transaction and determined that a comprehensive
8 review of the transaction is not required;

9 B. Approved the material change transaction subject to compliance with specific
10 conditions established by the Attorney General, under which the transaction may be
11 completed without a comprehensive review of the transaction; or

12 C. Determined that the material change transaction is subject to comprehensive review
13 under subsection 5 because:

14 (1) It will result in the transfer of assets valued at more than \$2,000,000;

15 (2) It will occur in a market that is highly consolidated with regard to any of the
16 health care services offered by a party to the material change transaction;

17 (3) It will result in a significant change in the market share for health care services,
18 such that any resulting health care entity will possess significant power over the
19 health care market in its region;

20 (4) A party to the material change transaction already possesses significant power
21 over the health care market in its region; or

22 (5) The Attorney General determines that the material change transaction is likely
23 to have a material impact on the cost, quality or access to health care services in
24 any region of the State.

25 **5. Comprehensive review.** Within 30 days of providing notice under subsection 4,
26 paragraph C, that a material change transaction is subject to comprehensive review, the
27 Attorney General shall:

28 A. Hold at least one public hearing to solicit public comment on the material change
29 transaction in the county where the health care entity that provided written notice is
30 located;

31 B. Have the projected costs and market impact of the material change transaction
32 reviewed by an expert with experience in material change transactions. A review
33 required under this subsection may include an examination of factors relating to the
34 proposed transaction, the parties to the transaction and the relative market position of
35 the health care entities involved in the transaction, including, but not limited to, the
36 following:

37 (1) The market share for health care services held by any of the health care entities
38 involved in the transaction;

39 (2) Any previous material change transaction involving the parties, including, but
40 not limited to, mergers or acquisitions of similar health care entities;

- 1 (3) The cost of health care services provided by health care entities involved in the
2 material change transaction, including the relative price for similar services
3 provided by other health care entities in the same geographic region;
- 4 (4) The quality of health care services provided by health care entities involved in
5 the material change transaction, including the quality of patient experiences;
- 6 (5) The cost and cost trends for health care services provided by the health care
7 entities involved in the material change transaction, provided in comparison to total
8 health care expenditures statewide;
- 9 (6) The availability and accessibility of health care services similar to those
10 provided, or proposed to be provided, in the geographic region that will be served
11 by a health care entity formed as a result of the material change transaction;
- 12 (7) The impact of the material change transaction on consumer options for the
13 delivery of health care services within the geographic region that will be served by
14 a health care entity formed as a result of the material change transaction;
- 15 (8) The degree to which a health care entity involved in the material change
16 transaction serves at-risk, underserved and government payer patient populations;
- 17 (9) The degree to which a health care entity involved in the material change
18 transaction provides low-margin or negative-margin services within the
19 geographic region that will be served by a health care entity formed as a result of
20 the material change transaction;
- 21 (10) Consumer concerns including, but not limited to, complaints or other
22 allegations that a party involved in the material change transaction has engaged in
23 unfair methods of competition or committed unfair or deceptive acts or practices;
24 and
- 25 (11) Any other factors that the Attorney General determines to be in the public
26 interest.

27 Within 185 days of providing written notice to the parties that the material change
28 transaction is subject to a comprehensive review, the expert shall submit the report required
29 under this subsection to the Attorney General for review, unless the Attorney General
30 determines that more time is necessary to complete the report. The Attorney General may
31 request additional information from the parties involved in the material change transaction
32 that the Attorney General determines is necessary to conduct the report required under this
33 subsection. If the parties involved in the material change transaction fail to respond to the
34 Attorney General's request for additional information within 21 days of the request, the
35 Attorney General may extend the report deadline as necessary to complete the report, set a
36 date by which the parties must respond to the request, impose additional conditions for
37 approval of the material change transaction or deny approval of the material change
38 transaction under subsection 6.

39 **6. Approval authority.** The Attorney General may approve, approve subject to
40 specific conditions or deny approval of any material change transaction for which notice is
41 provided under subsection 3. In making this determination, the Attorney General may
42 consider any factors that the Attorney General determines to be relevant, including, but not
43 limited to:

1 A. The likely impact, based on the findings in the report required under subsection 5,
2 if any, that the material change transaction will have on the:

3 (1) Cost of health care services for patients;

4 (2) Availability or accessibility of health care services in the geographic region
5 served by a health care entity formed as a result of the material change transaction;

6 (3) Cost trends of health care services provided by the parties involved in the
7 material change transaction, as evaluated against statewide costs for comparable
8 health care services;

9 (4) Access to health care services in underserved areas;

10 (5) Markets for health care services and health care insurance;

11 (6) Health care outcomes or health care equity for residents of the State; and

12 (7) Access to essential health care services for residents of the State;

13 B. Whether the material change transaction violates the provisions of Title 10, chapter
14 201;

15 C. Whether the benefits of the material change transaction to the public are likely to
16 outweigh the potential negative market impacts of the material change transaction; and

17 D. Whether the material change transaction is in the public interest.

18 For a material change transaction subject to comprehensive review under subsection 5, the
19 Attorney General shall provide written notice to the health care entity within 30 days of
20 receiving the report required under subsection 5, that the Attorney General has approved,
21 approved subject to specific conditions or denied the material change transaction.

22 **7. Enforcement of conditions.** The Attorney General may monitor ongoing
23 compliance with any conditions imposed by the Attorney General on the material change
24 transaction. In addition to any other legal remedies that may be available, the Attorney
25 General may petition the Superior Court for specific performance, injunctive relief or other
26 equitable remedies that the Attorney General deems appropriate. The Attorney General is
27 entitled to recover reasonable costs and reasonable attorney's fees incurred in remedying a
28 violation of this section.

29 **8. Reporting requirements.** One year, 2 years and 5 years following the completion
30 of a material change transaction subject to comprehensive review under subsection 5, a
31 health care entity formed as a result of the material change transaction, or any other entity
32 that acquired direct or indirect control over the health care entity, must submit reports to
33 the Attorney General that:

34 A. Demonstrate compliance with any conditions imposed by the Attorney General in
35 the course of approving the material change transaction; and

36 B. Summarize the cost trends and cost growth trends related to health care services
37 provided by the parties involved in the material change transaction.

38 **9. Costs incurred for review and compliance.** The parties involved in the material
39 change transaction are liable for all reasonable costs incurred by the Attorney General in
40 making a determination to approve or deny a material change transaction under this section.
41 The parties to the material change transaction are also liable for all reasonable costs

1 incurred by the Attorney General in monitoring ongoing compliance with the terms and
2 conditions of the material change transaction, including, but not limited to, administrative
3 costs and the costs of contracting with an expert for assistance in monitoring ongoing
4 compliance.

5 **10. Proprietary information confidential.** All records obtained by the Attorney
6 General under this section that contain private proprietary information are confidential and
7 may not be disclosed without the consent of the party that provided the information to the
8 Attorney General, except that the Attorney General may disclose such information to the
9 expert conducting review under subsection 5. The expert may not disclose any of the
10 information provided by the Attorney General under this subsection without the approval
11 of the Attorney General and the consent of the party that provided the information.

12 **11. Authority not limited.** This section may not be construed to limit the authority
13 of the Attorney General, the State or any political subdivision of the State to review or
14 regulate under any other law a transaction defined as a material change transaction under
15 this section or to pursue any other administrative or legal action authorized by law.

16 **12. Rulemaking.** The Attorney General shall adopt rules necessary to implement this
17 section, including, but not limited to, rules that establish the process and requirements for
18 a health care entity to follow when providing written notice under subsection 3. Rules
19 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
20 375, subchapter 2-A.

21 SUMMARY

22 This bill defines a material change transaction involving a health care entity, creates a
23 process for review of a material change transaction and requires the Attorney General to
24 review and approve or deny any material change transaction.