

As Introduced

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H. B. No. 905

Representative Somani

Cosponsors: Representatives Brennan, Piccolantonio, Rader, Upchurch

To enact sections 3962.01, 3962.02, 3962.03, 1
3962.04, 3962.05, 3962.06, 3962.07, 3962.08, 2
3962.09, 3962.10, 3962.11, and 3962.12 of the 3
Revised Code to prohibit various types of health 4
care entities from being under common ownership. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3962.01, 3962.02, 3962.03, 6
3962.04, 3962.05, 3962.06, 3962.07, 3962.08, 3962.09, 3962.10, 7
3962.11, and 3962.12 of the Revised Code be enacted to read as 8
follows: 9

Sec. 3962.01. As used in this section: 10

(A) "Health plan issuer" has the same meaning as in 11
section 3922.01 of the Revised Code. 12

(B) "Health care provider" means any of the following: 13

(1) A hospital licensed under Chapter 3722. of the Revised 14
Code; 15

(2) An ambulatory surgical facility or freestanding 16
inpatient rehabilitation facility licensed under section 3702.30 17
of the Revised Code; 18

(3) A business entity consisting of physicians licensed under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery; 19
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(4) An inpatient or outpatient pharmacy licensed as a terminal distributor of dangerous drugs under Chapter 4729. of the Revised Code; 22
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(5) A home health agency licensed under Chapter 3740. of the Revised Code; 25
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(6) Any other entity that has been assigned a national provider identifier by the national provider system under 45 C.F.R. 162.408. 27
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(C) "Management services organization" means an entity that has entered into an agreement with a provider to furnish services to that provider, including services relating to payroll, human resources, employment screening, payer contracting, billing and collection, coding, information technology services, patient scheduling, property or equipment leasing, and administrative or business services that do not constitute the practice of medicine. 30
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(D) "Pharmacy benefit manager" has the same meaning as in section 3959.01 of the Revised Code. 38
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(E) "Wholesale distributor of dangerous drugs" means a person licensed as such under section 4729.52 of the Revised Code. 40
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(F) "Wholesale distributor of medical devices" means a person engaged in the sale at wholesale of devices, as defined in section 3715.01 of the Revised Code. 43
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Sec. 3962.02. Except as provided in sections 3962.03 and 46

3962.04 of the Revised Code, both of the following apply: 47

(A) A person shall not simultaneously own entities that 48
are included in both of the following categories, whether the 49
ownership occurs directly or indirectly or in whole or in part: 50

(1) A health plan issuer or pharmacy benefit manager; 51

(2) A health care provider or management services 52
organization. 53

(B) A person shall not simultaneously own entities that 54
are included in both of the following categories, whether the 55
ownership occurs directly or indirectly or in whole or in part: 56

(1) A wholesale distributor of dangerous drugs or 57
wholesale distributor of medical devices; 58

(2) A health care provider or management services 59
organization. 60

Sec. 3962.03. Section 3962.02 of the Revised Code does not 61
prohibit a person from operating in this state and owning 62
entities in a manner that constitutes a violation of either 63
division (A) or (B) of that section as long as the person and 64
the entities under the person's ownership provide services only 65
to or on behalf of persons located outside of this state. 66

Sec. 3962.04. (A) A person that is in violation of 67
division (A) or (B) of section 3962.02 of the Revised Code on 68
the effective date of this section may continue to operate in 69
this state and own entities in a manner that constitutes a 70
violation, but the person shall do either of the following: 71

(1) Not later than one year after the effective date of 72
this section, divest all entities that cause the person to be in 73
violation; 74

(2) Not later than two years after the effective date of 75
this section, cease providing all services to or on behalf of 76
persons within this state. 77

(B) If a person elects to act under division (A) (2) of 78
this section, the period before the deadline under that division 79
takes effect shall be used by the person to take actions 80
necessary to fulfill obligations under contracts in effect on 81
the effective date of this section and shall engage in other 82
activities necessary to wind up the person's business affairs 83
regarding services to or on behalf of persons within this state. 84

Sec. 3962.05. (A) Not later than thirty days after the 85
effective date of this section, the secretary of state, through 86
the business services division of the office of the secretary of 87
state, shall develop guidelines for persons to follow in 88
complying with section 3962.04 of the Revised Code. The 89
guidelines shall specify milestones for divestment and 90
milestones for cessation of services. 91

(B) In developing guidelines under division (A) of this 92
section, the secretary of state and business services division 93
shall collaborate with, and seek the advice of, all of the 94
following whenever appropriate: the attorney general, auditor of 95
state, department of insurance, department of medicaid, 96
department of health, department of taxation, and state board of 97
pharmacy. 98

Sec. 3962.06. A person described in section 3962.04 of the 99
Revised Code shall not fail to meet the milestones specified in 100
the guidelines established under section 3962.05 of the Revised 101
Code. 102

Sec. 3962.07. A person that violates section 3962.06 of 103

the Revised Code is subject to the same type of civil action 104
described in section 3962.08 of the Revised Code, except that in 105
the case of an order to disgorge profits, all of the following 106
apply: 107

(A) The amount shall be calculated monthly at a rate of 108
twenty per cent of the person's profits attained during the 109
immediately preceding month from providing services to persons 110
in this state. 111

(B) The amount collected shall be deposited to the credit 112
of the health care conglomerate separation fund created under 113
section 3962.12 of the Revised Code. 114

(C) The amount collected shall be returned to the person 115
if the person meets the deadline that applies under division (A) 116
(1) or (2) of section 3962.04 of the Revised Code. 117

Sec. 3962.08. (A) If there is reason to believe that a 118
person is in violation of section 3962.02 of the Revised Code, 119
and except in the circumstances described in division (A) of 120
section 3962.04 of the Revised Code, the attorney general may 121
bring a civil action against the alleged violator in a court of 122
competent jurisdiction. The attorney general may bring the 123
action in either of the following circumstances: 124

(1) While acting on behalf of the residents of this state; 125

(2) While acting at the request of the secretary of state, 126
auditor of state, department of insurance, department of 127
medicaid, department of health, department of taxation, or state 128
board of pharmacy. 129

(B) On a finding that a person is in violation of section 130
3962.02 of the Revised Code, the court may do any of the 131
following: 132

<u>(1) Issue an order enjoining the person from continuing</u>	133
<u>the violation;</u>	134
<u>(2) Issue an order requiring the person to disgorge</u>	135
<u>profits attained from providing services to residents of this</u>	136
<u>state;</u>	137
<u>(3) Grant any other equitable relief that the court</u>	138
<u>considers appropriate to redress and prevent recurrence of the</u>	139
<u>violation.</u>	140
<u>(C) Amounts collected through an order issued under</u>	141
<u>division (B) (2) of this section shall be deposited into the</u>	142
<u>state treasury to the credit of the health care conglomerate</u>	143
<u>separation fund created by section 3962.12 of the Revised Code.</u>	144
Sec. 3962.09. <u>(A) Except as provided in division (B) of</u>	145
<u>this section, an individual has a cause of action against a</u>	146
<u>person that violates section 3962.02 of the Revised Code for</u>	147
<u>harm to the individual resulting from the violation. If a court</u>	148
<u>finds that a violation has occurred and that harm has resulted,</u>	149
<u>the court shall award damages and grant injunctive or other</u>	150
<u>equitable relief.</u>	151
<u>(B) This section does not create a cause of action against</u>	152
<u>a person described in section 3962.04 of the Revised Code unless</u>	153
<u>the person fails to meet the deadline that applies to the action</u>	154
<u>the person elects to take under division (A) (1) or (2) of</u>	155
<u>section 3962.04 of the Revised Code.</u>	156
Sec. 3962.10. <u>If the attorney general has reason to</u>	157
<u>believe that a person is in the process of creating ownership</u>	158
<u>interests that will result in a violation of section 3962.02 of</u>	159
<u>the Revised Code, the attorney general may file a petition in a</u>	160
<u>court of competent jurisdiction for an order enjoining the</u>	161

person from continuing that process. On a finding that the 162
person's actions will result in the violation, the court shall 163
issue the requested order. 164

Sec. 3962.11. In addition to any other authority granted 165
by the Revised Code, the department of insurance, department of 166
medicaid, department of health, and state board of pharmacy may 167
oversee and investigate any person for an alleged violation of 168
section 3962.02 of the Revised Code to the extent that the 169
violation involves matters that are within the jurisdiction of 170
the particular department or the board. In so doing, the 171
departments and board may collaborate with or seek assistance 172
from the attorney general, auditor of state, secretary of state, 173
and other state officers or agencies. 174

Sec. 3962.12. (A) The health care conglomerate separation 175
fund is created, which shall be in the custody of the treasurer 176
of state but shall not be part of the state treasury. The fund 177
shall consist of all money collected from disgorgement orders 178
issued under sections 3962.07 and 3962.08 of the Revised Code. 179

(B) The treasurer of state shall use the money in the fund 180
only for the following: 181

(1) Returning amounts in accordance with division (C) of 182
section 3962.07 of the Revised Code; 183

(2) Distributing amounts, as directed by the general 184
assembly, to state officers and agencies for their use in 185
enforcing this chapter, with each amount to be allocated 186
according to the state officer or agency that has jurisdiction 187
over the activity that resulted in the disgorgement order. 188

Section 2. (A) Not later than fifteen months after the 189
effective date of this section, the Secretary of State, through 190

the Business Services Division of the Office of the Secretary of State, shall prepare a report regarding the impact of the prohibitions established under section 3962.02 of the Revised Code. In preparing the report, the Secretary of State and the Business Services Division shall collaborate with, and seek the advice of, all of the following whenever appropriate: the Attorney General, Auditor of State, Department of Insurance, Department of Medicaid, Department of Health, Department of Taxation, and State Board of Pharmacy.

(B) The report shall include all of the following information:

(1) The identities of the persons that, on the effective date of this section, are subject to the prohibitions established under section 3962.02 of the Revised Code;

(2) The identities of the entities owned by the persons described in division (B)(1) of this section;

(3) Whether the persons described in division (B)(1) of this section chose divestiture under division (A)(1) of section 3962.04 of the Revised Code or cessation of services under division (A)(2) of that section;

(4) An evaluation of the effect of the required divestitures or cessation of services on competition within the health care system, the financial viability of the persons involved, and the interests of the public;

(5) Any other information the Secretary of State considers relevant to the report.

(C) On completion of the report, the Secretary of State shall submit copies to the General Assembly in accordance with section 101.68 of the Revised Code. The Secretary of State also

shall make the report available to the public.

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