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TO: Oregon Health Authority, Health Policy and Analytics Division
FROM: SEIU Local 49
RE: Public Comment on Draft Analytic Framework for Healthcare Market Oversight Program
DATE: January 21, 2021

We would like to offer comments regarding the HCMO Analytic Framework drafted by OHA for use as a sub-regulatory document. In general, the draft is thoughtfully written and well done. The four domains of cost, access, equity and quality successfully ground the analyses in the intent of the statute and rules and elevate what is most important. The framework as drafted also allows for agency flexibility and discretion, which is essential for a program that applies to so many different types of transactions and is meant to consider issues that have not historically been measured or recognized.

We support many specifics of the draft, including measuring market share both in aggregate and disaggregated levels as well as the focus on commercial prices. Below, we offer comments that reinforce our support for some of the most important aspects of the draft, as well as propose some small amendments and additional considerations.

- **Table 3.** A small, but critical edit is needed in Table 3 (Domain Relevance to OAR Criteria for Approval following Comprehensive Review) to map accurately to the rules and statute. The second section of the table inappropriately separates "Reduces growth in patient costs in accordance with health care cost growth targets" from "Maintains a rate of patient cost growth that exceeds targets, but is in the public interest."

  In both the rules and statute these clauses appear together with an "or" clause (see draft rule 409-070-0060 (9)(b)(A) and Statute Section 2.(9)(a)(A)(i)). As drafted, an applicant could check the single box indicating that the transaction, "Maintains a rate of patient cost growth that exceeds targets under OAR 442.386 but is in the public interest." Yet, if the transaction is in the public interest, the applicant should be able to check one of the other boxes concerning increasing access, rectifying factors that contribute to health inequities, or improving health outcomes. Therefore, the table needs to be edited to not mislead future applicants or staff.

- **Impact Analyses.** We feel strongly that the impact analyses, whether in the equity or quality domain, should explicitly consider the entities' track records in improving or delivering high quality, accessible care to populations experiencing health inequities. Any consideration of "stated intentions" should be weighted with not only one's track record, but also the specificity with which the intentions appear in concrete plans. While the draft language leaves space for detailed plans and community voice, we think it should explicitly reference track record or past performance as well.

- **Appendices.** There are several excellent considerations contained in the draft, including recognition of cross-market consolidation, the impact of facility fees, and integration. We particularly appreciate how the claim of integration must be substantiated and applicants must identify to whom the benefits of integration will be evident.

  We suggest the following additions and considerations for the Measurement Menu:

  - **Risk Based Capital Ratio** should be added as a measure in the cost domain to assess the financial health of an insurance company.

  - **Community Benefit Analysis.** We agree that OHA should take health systems' community benefit spending into account when examining their commitment to advancing health equity. However, not all spending is dedicated to benefiting local residents with the highest need. We believe it is critical to investigate what percentage of community benefit investments are dedicated specifically to address upstream contributors to social determinants of health (e.g., affordable housing, education, and nutrition assistance) and how much is targeted to explicitly address health equity (e.g., spending to improve outcomes for BIPOC and LBGTQ+ individuals).

  - **Workforce Diversity/Representation of Community**. We applaud OHA for including metrics about how well staff reflect the racial/ethnic makeup and languages spoken in their community. However, we urge the agency to take this analysis a step further.

    Mirroring trends in the labor market more broadly, BIPOC workers are overrepresented in low-paying service jobs in Oregon hospitals. For example, in 2018, people of color made up 19 percent of Oregon's overall hospital workforce; however, they represented only 9 percent of senior leadership, compared with 34 percent of service workers.[1]

    As such, in addition to overall staff demographics, we recommend that OHA examine whether applicants are making an effort to ensure women and people of color are equally represented among job classes. OHA could measure this by analyzing EEOC-1 data on race and gender – for example, by comparing demographics by job class (e.g., managerial vs. service).

  - **Workforce Impacts.** Research has consistently demonstrated that income is one of the biggest social determinants of health. To truly make progress on health equity in our state, we need to examine whether employers are paying workers a living wage; offering adequate benefits (like paid sick leave and health insurance with affordable premiums and co-pays); and providing opportunities for advancement into higher-

[1] See the U.S. Equal Employment Opportunity Commission, 2018 Job Patterns for Minorities and Women in Private Industry (EEO-1), available here: https://www.eeoc.gov/statistics/employment/jobpatterns/eeo1/2018. We analyzed hospitals, NAICS 622 in Oregon.

skilled, better paying jobs. While examining all these metrics may not be feasible, we suggest at a minimum that OHA require applicants to provide their minimum wage; and that the agency assess if it is a livable amount, and therefore a positive contributor to health.

In addition, as the agency is likely aware, the Federal Trade Commission and Department of Justice are currently accepting public comment on how to bolster horizontal and vertical merger oversight.[2] One thing they are considering is examining the impact consolidation has on the healthcare workforce, as past research has shown that mergers can depress wages.[3] We urge agency staff to follow these developments and incorporate relevant changes into this framework as appropriate to ensure the state is capturing the full spectrum of impacts of proposed transactions.

In closing, we wish to applaud OHA's effort in drafting this framework. With the suggested edits above, we believe it will provide needed clarity and specificity while also strongly reflecting the purpose and ideals of the authorizing legislation.

[2] FTC, DOJ ask for public input in antitrust 'overhaul' | Modern Healthcare

[3] Health system consolidation may be holding down wages | Modern Healthcare