



Legacy Health  
1919 N.W. Lovejoy St.  
Portland, OR 97209  
503.415.5600 *phone*  
50.415.5777 *fax*

January 24, 2022

Patrick Allen, Director  
Jeremy Vandehey, Health Policy & Analytics Division Director  
Oregon Health Authority  
500 Summer Street NE, E-20  
Salem, OR 97301

Directors Allen and Vandehey:

Legacy Health (Legacy) submits the following comments in response to the Notice of Proposed Rulemaking filed December 20, 2021 concerning the final rules implementing House Bill 2362 (2021).

Legacy appreciated the opportunity to participate in the Rule Advisory Committee (RAC) to provide input on the Oregon Health Authority's (OHA) development of the Health Care Market Oversight (HCMO) Program.

Much the same as our industry colleagues, during the RAC process Legacy advocated for rules that provide hospitals with a clear, objective and predictable process that avoids undue cost burdens and maintain a culture of care delivery innovation without creating undue delay in a proposed transaction.

While we greatly appreciated all the excellent OHA staff work to refine, clarify and improve the draft rule, what follows are additional recommended revisions we would suggest for your consideration.

### **1. Definitions (-0005)**

Consistent with our comments during the RAC, we believe the definition of "control" remains too broad and, to date, remains unchanged. Our view is that control arises when an entity commands the governing body's decision making, not simply when they are one participant among others to the decision. We recommend clarifying the final rules so that they stipulate control exclusively applies to transactions that truly change the managing control of a health care entity.

## 2. Covered Transactions (-0010)

- Section (1)(a) includes a “consolidation” of a health care entity with another entity. HB 2362, Section 1 (10), refers only to a “merger.” The statute does not apply to consolidations and therefore should be redacted from the rule.
- The draft rule’s definition of an “acquisition” should not apply to the provision of comprehensive management services ((2)(d)) because such services are not an exercise of control.
- Section (2)(e) should be eliminated. It describes a merger rather than an acquisition and is redundant to (1)(a).

## 3. Emergency Transactions (-0022)

We note that Section (1) was changed to require that “...the transaction is urgently needed to protect the interest of consumers **and** to preserve the solvency of an entity other than a domestic health insurer.” We request that the Agency revert back to “or.” The statute does not require that the transaction involve a lack of solvency (see HB 2362, Section 2 (8)(a)), and a public health emergency transaction, for example, may not involve solvency.

## 4. Disclaimers of Control (-0025)

- As discussed above, what constitutes control of a health care entity is a complex, situation-dependent determination. As such, we recommend that *all* presumptions of control be rebuttable.
- Notice of OHA’s findings, as expressed in Section (2), should not be provided to parties outside the transaction. The findings are confidential, legal decisions and parties outside the transaction are not positioned to comment on what the law considers to be “control” with respect to a particular entity.

## 5. Retention of Outside Advisors (-0050)

- We request removal of the reference to privileged information in Section (1). Privileged information should not be requested by or disclosed to OHA or outside advisors during the review.
- There should be a mechanism for parties to halt the review process if expenses escalate to the point that the transaction is no longer feasible.

## 6. Comprehensive Review (-0060)

- We appreciate that review board members will be required to file conflict of interest statements as required by HB 2362, Section 2 (11)(b). We recommend, however, that this take place before members are appointed to the review board in case exclusion due to an actual conflict is necessary.
- We request that Section (7) be modified to allow the parties to the transaction to review and comment on the proposed findings of fact and conclusions of law, along with the Authority's proposed order, before it is released for public review. This will prevent confusion should the findings or order require any corrections or clarification to findings of fact.
- The comprehensive review process should not exceed 180 days. If the Agency fails to issue a decision within that time, the transaction should be deemed approved without conditions.

## 7. Confidentiality (-0070)

We encourage OHA to publish a summary, created by the filing party, of the information in the Notice of Material Change Transaction form rather than publicly posting the form itself. Given the likelihood that the notice will be heavily redacted due to the inclusion of confidential information, a summary will better serve the public.

## 8. Compliance with Conditions; Information Requests (-0080)

Any additional orders, whether related or unrelated to original orders, should only be issued after a notice and an opportunity for a hearing. We request that the final rule make that clear.

Thank you for the opportunity to submit these comments.

Sincerely,

  
Bryce R Helgerson (Jan 24, 2022 14:08 PST)

Bryce R. Helgerson  
Senior Vice President & Chief Integration Officer