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# Health Care Market Oversight (HCMO) Program

House Bill 2362 (2021 regular session)

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# Today

- Overview of HB 2362 - How the Program Works & What Transactions are Subject to Review
- Timeline of Rules Process and Implementation
- Next Steps
- Discussion

## HB 2362 (2021)

Oregon Health Authority (OHA) has new responsibility to review proposed mergers, acquisitions, affiliations, and contracts involving health care entities

Allows for a community voice

The Health Care Market Oversight Program (HCMO) will sit within the Health Policy & Analytics Division of OHA

Program begins March 2022

Merger - businesses combine into one entity

Acquisition - one business buys another business

Affiliation - businesses otherwise partner or combine resources

Contracts that significantly reduce or eliminate essential services

FYI: the bill calls these “material change transactions”

# How the Program Will Work

# What transactions will be subject to review

Only transactions involving entities of a certain size:

Entity #1 has revenue  $\geq$  \$25 million and

Entity #2 has revenue  $\geq$  \$10 million



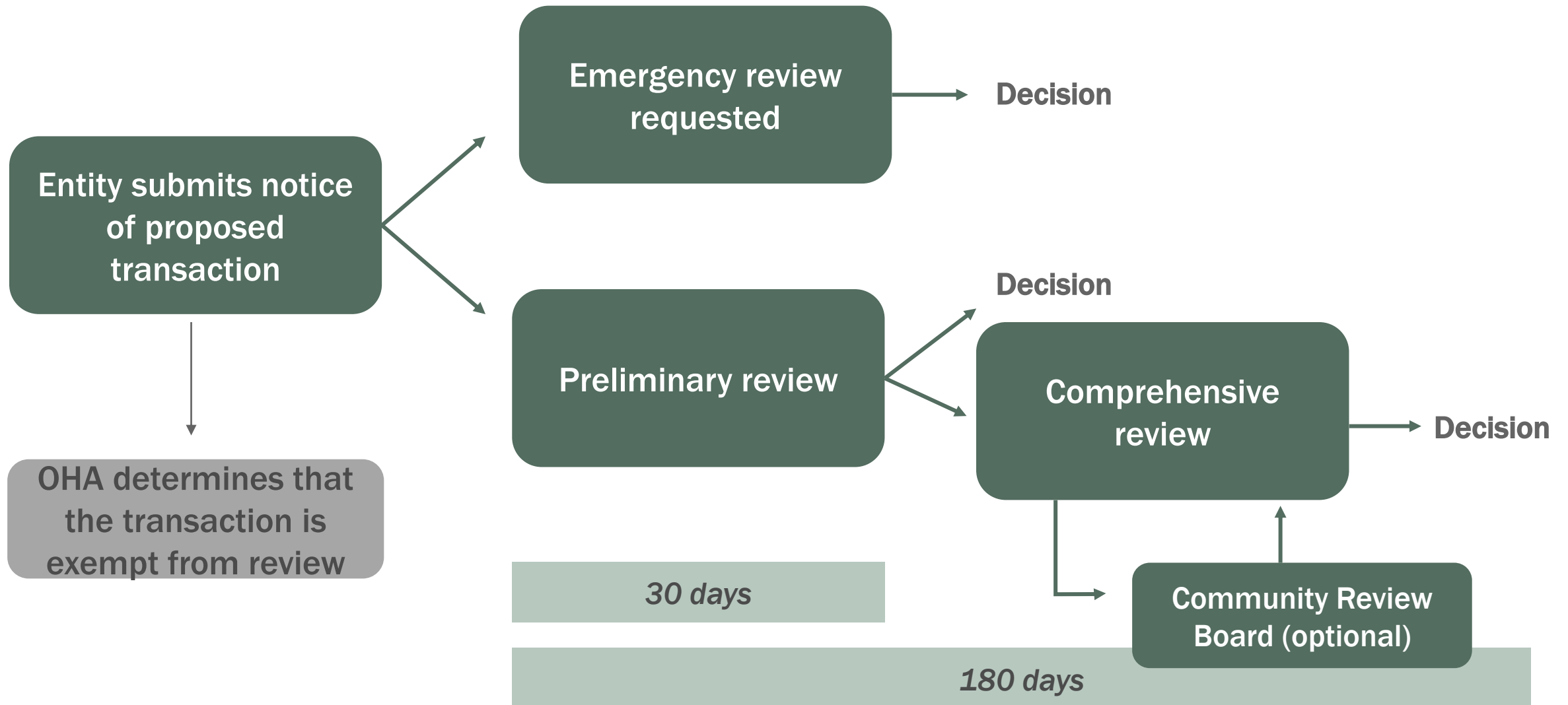
Only certain types of transactions or transactions with specific impacts

Mergers

Acquisitions

Certain Affiliations and Contracts

# What does the review process entail?



# The program will review each proposed transaction for the following potential impacts:

Does not have negative impacts on equitable access to care

Does not result in anti-competitive effects that outweigh the benefits of the transaction

Increases access to services in medically underserved areas

Rectifies health inequities

Improves health outcomes

Reduces patient cost growth

Reviews will be guided by the framework adopted by the Oregon Health Policy Board:  
[https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/Final\\_OHPB\\_Framework\\_for\\_HCMO\\_10.7.21.pdf](https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/Final_OHPB_Framework_for_HCMO_10.7.21.pdf)

# Flow Chart: transactions subject to review

OHA offers technical assistance to entities and entities may apply for a letter of determination about if their transaction is reviewable

Is revenue of one entity  $\geq$ \$10m and the other entity  $\geq$ \$25m?

Yes

Is the transaction a merger? Or an acquisition? Or an affiliation or contract that:

- will eliminate or significantly reduce essential services;
- will result in a change of control of an entity;
- will result in an increase of market concentration among health care providers when contracting with payers, insurers, or coordinated care organizations; or
- will result in an increase of market concentration among insurers when establishing health benefit premiums?

Yes

**Review**

No

No to all

**No Review**

Also, no review if:

- applicant rebuts the notion of a change of control and OHA agrees
- OHA exempts the transaction from review after receiving the notice



# Examples of Reviewable Transactions

OHA posted a [list of examples](#) and will continue to update this list with additional examples

Example	Reviewable?	Rationale
<ul style="list-style-type: none"><li>Two hospitals merge</li></ul>	Yes	This merger entails a change of control
<ul style="list-style-type: none"><li>Medical groups affiliate with an Independent Practice Association (IPA) to contract with a commercial payer. No change of control.</li></ul>	Yes	This affiliation results in an increase of market concentration among providers when contracting with payers
<ul style="list-style-type: none"><li>Health systems affiliate to buy supplies in bulk</li><li>Clinics contract together to share electronic health record system</li><li>Hospital contracts with medical group to provide coverage to Emergency Dept</li></ul>	No	These affiliations/contracts do not change control, do not result in significant reduction of essential services, and do not result in market concentration when contracting with payers

# Program Ramp-Up Period for 2022

OHA proposes a ramp-up period of 10 months

From Mar 1, 2022 - Dec 31, 2022, transactions will be deemed approved unless OHA notifies an entity of the Authority's serious concerns, and subsequently requires a review of the transaction.

# Draft Fee Schedule ([link](#))

*HB 2362 SECTION 4. (1) The Oregon Health Authority shall prescribe by rule a fee to be paid ...proportionate to the size of the parties to the transaction, sufficient to reimburse the costs of administering [the program]”*

## Mar – Dec 2022 (Ramp-up Period)

- All transactions will have an expedited review with a flat fee of \$200
- If OHA finds serious concerns, flat fee of \$2,000 for preliminary or \$5,000 for comprehensive review

## Jan – Jun 2023

- Emergency or Preliminary review: flat fee of \$2,000
- Comprehensive review: sliding scale fee based on size of the smaller entity  
Ranges from \$25,000 to \$100,000

# Rules Advisory Committee Process

- Transparency: All redline documents, meeting recordings, presentations, drafts, and all input received to date are published on the program website ([link](#))
- OHA hosted three RAC meetings thus far
- Thirty-five RAC members representing a wide array of interested parties
- OHA has received hundreds of comments verbally during RAC meetings and from written input. All comments and input are published and updated in a tracker ([link](#))
- Strong attendance at RAC meetings, which are open to the public. Approximately 90 attendees

# As a Result of the RAC input...

- OHA has refined the scope of the program to focus on the most important and impactful transactions
- RAC members requested a process by which OHA could assist entities in understanding if their planned transaction is subject to review. OHA agreed to offer **technical assistance** to entities and included in the rules an optional process for entities to ask if the transaction is subject to review
- The latest version of the rules include a list of considerations as entities determine if the transaction will result in a significant reduction of essential services
- The **program fees are now lower and tiered**, depending on whether the review is the shorter 30-day review, or the comprehensive review
- And other edits to the rules and notice forms

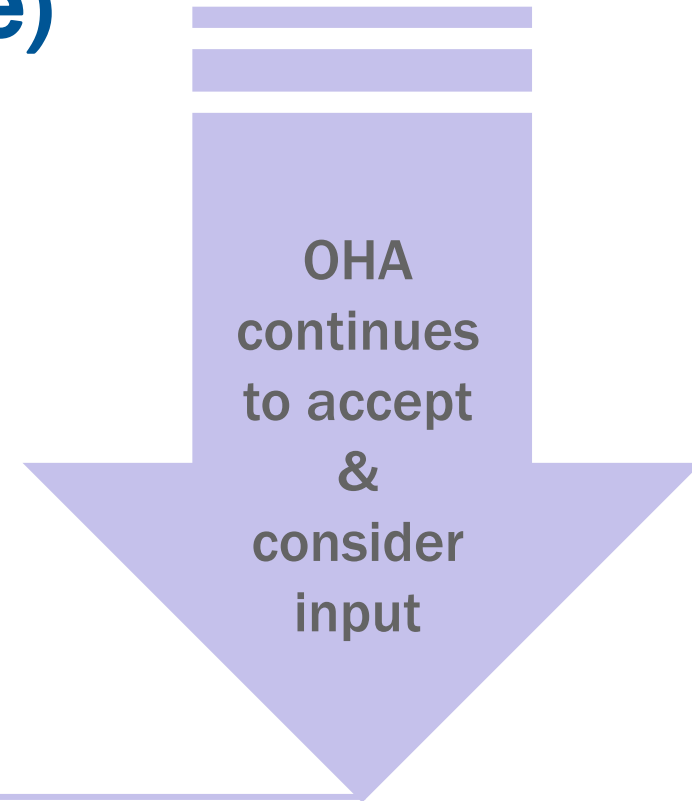
# Sample of Remaining Issues in the Rules

- RAC members requested to shorten and streamline the notice forms and to further reduce the fees
- Some RAC members continue to advise that the percentages for the rebuttable presumption of control should be higher than 10% for insurers and CCOs, and 25% for other health care entities
- Some RAC members want more detail in rule about the statutory reference to essential services as “services that are essential to achieve health equity”
- Some RAC members requested more criteria in rule for when a OHA will require a comprehensive review and when OHA will initiate a community review board

**Next Steps**

# Current Rules Timeline (subject to change)

- ❑ Notify Legislators & file notice with Secretary of State – Dec 6, 2021
- ❑ Publish in Secretary of State bulletin – Jan 4, 2022
- ❑ Rules Hearing – Jan 17, 2022 (at the earliest)
- ❑ Last day for public comment – Jan 24, 2022
- ❑ File final rule with Secretary of State – Jan 25, 2022 (at the earliest)





# Next Steps in the Rules Process

OHA continues to refine and solicit input on the rules, notice forms, fees and additional guidance

OHA will continue to accept and consider input on the rules until the Rules Hearing at the end of January 2022

OHA will post a list of sub-regulatory guidance documents that will be published in the coming months before the launch of the program

# For More Information

The program website contains all RAC materials and other information, including a link to subscribe to program updates

<https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>

Contact us for any questions: [HCMO.info@dhsoha.state.or.us](mailto:HCMO.info@dhsoha.state.or.us)