

Oregon Administrative Rules NOTICE OF PROPOSED RULEMAKING WORKSHEET

All categories on this form are required by the Secretary of State and the Attorney General's Administrative Law Manual per ORS 183.335. The grey notes are advice to assist you filling out this form. This form includes the Statement of Need and Fiscal Impact, and space for rule text and summaries.

Last Date and Time for Public Comment:

Date: September 21, 2022

Time: 5pm

Filing Caption:

New program fees and definitions provide clarity and new details that were previously sub-regulatory.

Hearing:

Date: September 15

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s) Changes:

OHA is modifying the rules to provide greater clarity and adding details to the rules that were previously outlined in sub-regulatory guidance documents.

Documents Relied Upon, and where they are available:

The program website is <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>. This website hosts all publicly shared documents including the proposed draft rules (with redline edits), a summary of the rule changes, and a slide deck that will be used during the Rules Advisory Committee meeting.

Fiscal and Economic Impact:

The addition of program fees, as required by statute, creates a fiscal and economic impact. The size of the fee is based on the size of the entities involved in the transaction, the level of review required, and if outside experts are needed. Depending on the details of a proposed transaction, a given entity could face a significant fiscal impact.

Other than the proposed fees, there is no fiscal or economic impact to the other rule changes, as these rule changes provide greater details about the program and do not alter the program. Additionally, many of the additions to the rules are currently published as sub-regulatory guidance. Therefore, moving the information from sub-regulatory guidance to administrative rule, although important, does not have a material impact on the program.

Statement of Cost of Compliance:

- 1) State agencies will not be affected by the rule changes. There may be an impact to local governments for those hospitals or health care entities that are a part of a Health District, if those entities engage in a proposed material change transaction. The program is designed to have a positive impact on the public. For emergency situations in which there is an immediate threat to health care services, the program will exempt an entity from the 180-day notice requirement.

- 2) The statute limits the number of entities subject to the new requirements. Only transactions that involve one entity with an average revenue of \$10 million or more and another entity with an average revenue of \$25 million or more are subject to the requirements of the program. It is possible that a small business with 50 or fewer staff could be subject to the requirements in this program, depending on the average revenue of the business. Only transactions involving a health care entity are subject to review under this program. A rule change that could potentially affect small businesses is the new program fees, as required by statute.
- a. Historical data regarding industry, average revenue, and involvement in a material change transaction are not available. It is not possible to estimate the number and type of small businesses that will propose a material change transaction and be subject to the new fee structure. Between March 1 and July 21, 2022 the program has received two notices of material change transaction and neither involved a small business.
 - b. The expected reporting, recordkeeping and administrative activities are unchanged as a result of these proposed rules. There may be costs associated with complying with the rules, but only for those small businesses that are engaging in a proposed material change transaction that is reviewable under the program.
 - c. Estimating the cost is not possible. For those small businesses that are engaging in a proposed material change transaction that is reviewable under the program, the cost for a preliminary review is \$2,000 and the cost for a comprehensive review, which may not be necessary, depends on the sizes of the entities involved in the transaction, as the statute requires.

Describe how small businesses were involved in the development of these rule(s)?

An invitation was sent to all subscribers of the program's GovDelivery list-serve soliciting participants for the Rules Advisory Committee. Some of those individuals are lobbyists who represent smaller health care entities.

Racial Equity Statement

The proposed rule changes for the program (OAR 409-070-0000 through 0085) may affect all communities in the state who access health care services. The Health Care Market Oversight program is designed to improve health equity in Oregon. One of the central functions of the program is to assess the impacts of a proposed transaction on health equity. The draft rule changes include specifying the types of health care services that are essential to achieving health equity. By including this language in rule, as opposed to program guidance documents, the program is even more focused on health equity. If negative impacts to racial equity are identified by program staff or community members, we will document those issues and draft future rule changes that aim to mitigate negative impacts.

Was an Administrative Rule Advisory Committee (RAC) consulted? Select Yes or No?

If not, why not?

Yes

Rule Text and Summary: Include the following for each rule in this filing:

Rulemaking Action: Amend

Rule number: 409-070-0005

Rule title: Definitions

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Added new definitions for "business entity", "hospital system" and "services that are essential to achieve health equity" for clarity.

Rulemaking Action: Amend

Rule number: 409-070-0010

Rule title: Covered Transactions

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Added new language that was previously specified in sub-regulatory guidance documents and removed language about OHA developing such sub-regulatory guidance.

Rulemaking Action: Amend

Rule number: 409-070-0015

Rule title: Materiality Standard

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Added new language about transactions involving new organized entities and providing greater details.

Rulemaking Action: Amend

Rule number: 409-070-0022

Rule title: Emergency and Exempt Transactions

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Changed rule title and added a rule specifying that the Authority will publish emergency transactions that were exempt from review no sooner than 24 months after the transaction has closed.

Rulemaking Action: Amend

Rule number: 409-070-0030

Rule title: Requirement to File a Notice of Material Change Transaction

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: New language that specifies program fees.

Rulemaking Action: Amend

Rule number: 409-070-0035

Rule title: Material Change Transactions Involving a Domestic Health Insurer

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Update one reference to an Oregon Administrative Rule.

Rulemaking Action: Amend

Rule number: 409-070-0045

Rule title: Forms and Contents of Notice of Material Change Transaction

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Update one reference to an Oregon Administrative Rule.

Rulemaking Action: Amend

Rule number: 409-070-0055

Rule title: Preliminary 30-Day Review of a Notice of Material Change Transaction

Version: 5/15/2022

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Added new language specifying that the Authority shall publish the notice of material change transaction and accept public input. New language specifying the 30-day timeline and the removal of language that only pertains to calendar year 2022.

Rulemaking Action: Amend

Rule number: 409-070-0060

Rule title: Comprehensive Review of a Notice of Material Change Transaction

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Remove all language pertaining to the Community Review Board and related processes. Specifies new language about requests for information from OHA and that OHA will notify the entity of the associated fee.

Rulemaking Action: New

Rule number: 409-070-0062

Rule title: Community Review Board

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: New rule that includes language taken from other rules. This new rule outlines the responsibilities of a Community Review Board and outlines the process for OHA to initiate one.

Rulemaking Action: Amend

Rule number: 409-070-0065

Rule title: Conditional Approval; Suspension of Proposed Material Change Transaction

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Update one reference to an Oregon Administrative Rule.

Rulemaking Action: Amend

Rule number: 409-070-0080

Rule title: Compliance with Conditions; Information Requests

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Update one reference to an Oregon Administrative Rule.

Rulemaking Action: Amend

Rule number: 409-070-0085

Rule title: Effective Date; Implementation

Full rule text in tracked changes: see other document

Statutes or Other Authority:

Statutes or Other Implemented:

Brief Summary of rule changes: Updated language to reflect rule effect date of January 1, 2023 and removed all language that was only applicable to calendar year 2022.

DRAFT