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October 29, 2021

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Directors Allen and Vandehey:

Legacy Health appreciates the opportunity to participate in the rules advisory committee related to HB 2362. In adopting rules that will guide the new Health Care Market Oversight Program, we urge the Oregon Health Authority (OHA) to ensure the process is objective, predictable, equitable, and does not add to the cost of health care.

In follow up to our participation in first Rule Advisory Committee (RAC) meeting on October 25<sup>th</sup>, we provide these written comments on the October 18, 2021 draft rules. First, we are concerned that the rules as proposed go beyond the scope of the 2021 legislative discussion and intent. Second, we believe the review process outlined in the proposed rule will add cost to the system, discourage innovation, and could result in less access to care. We remain concerned that the rules as drafted will yield a high volume of contracts and other arrangements that OHA will have to review, including those involving day-to-day operational matters outside the scope of the legislature's intent and the statutory language.

In what follows, we highlight our recommendations for specific revisions to rules.

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

- The definition of "control" (-0005(7)) is too broad. As several RAC members noted, the 10% threshold is not tantamount to control. As a general rule, an appropriate standard for determining control is when an entity holds at least 51% of decision-making authority.
- The definition of "control affiliate" (-0005(8)) should be removed. This concept is beyond the scope of the legislation, which is limited to "health care entity."
- The definition of "significant portion" (-0005(20)) should be removed, as should its use in -0010(2)(h), because it is beyond the scope of the legislation.

## 2. **Covered Transactions (-0010)**

- Per the above, the concept of a "control affiliate" should be removed throughout the rule as it is beyond the scope of the legislation.
- The scope of "corporate affiliation" (-0010(2)) extends beyond the scope of the legislation. We would recommend removing Section 2(a) and 2(e)-(h) as beyond the scope of the legislation and exceedingly broad in its application.

- Additionally, (4)(a)-(d) are very broad. As several RAC members indicated, the rule as written could envelop various day-to-day operational contracts, such as those for environmental services, securing care in underserved areas, provisioning an electronic medical record in a medical group or smaller hospital, hosting a continuing education event for providers from multiple organizations, etc. The current language would require the agency to review contracts not intended by the bill and would divert OHA's attention from transactions involving true mergers and acquisitions.
- We recommend amending the verbiage in Section (4); which relates to clinical and contracting affiliations, to make clear that these transactions are covered only in instances that "eliminate or significantly reduce" essential services. This also will make the rule consistent HB 2362 Section 1(10)(c).

### 3. **Materiality Standard (-0015)**

- As discussed in the first RAC, we would suggest specifying in rule that the revenue thresholds apply *at the time notice is filed* and the requirements for review will not change if there are changes to these projections later in the transaction.

### 4. **Excluded Transactions (-0020)**

- Remove Section (1)(d)(C) as this qualifier was not included in the legislation.
- Remove Section (3) and the corresponding reference in Section (1)(c). The legislation did not contemplate a separate review process for this exclusion.

### 5. **Emergency and Exempt Transactions (-0022)**

- We would encourage OHA to rethink the emergency transaction language in the draft rule. We suggest you consider language stipulating that entities requesting an exemption may do so verbally and that OHA provide a decision within 48 hours, followed by a written confirmation within 5 business days.
- We also would stress that emergency exemption requests should remain confidential. A public comment period is not appropriate because disclosure of a solvency issue or immediate care situation could undermine patient and community confidence and threaten the viability of the health care entity's survival. If public disclosure is necessary, it should be made following the close of the transaction.
- If the Authority denies the emergency exemption, there should be a right of appeal.

We look forward to seeing the next draft of the rules and continuing the discussion at the next RAC meeting on November 4, 2021. We also urge OHA to schedule additional RAC meetings to allow further in-depth discussion of the issues. It is critical to get this process right.

Sincerely,

  
Bryce R. Helgersen (Oct 29, 2021 13:39 PDT)

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Senior Vice President & Chief Integration Officer