

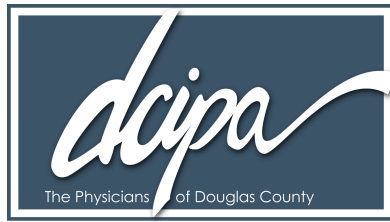


**OREGON
MEDICAL
ASSOCIATION**



**OREGON
ACADEMY OF
OPHTHALMOLOGY**
Eye Physicians & Surgeons

WVP
HEALTH AUTHORITY



**THE
OREGON
CLINIC**



**OREGON
ASSOCIATION OF
ORTHOPAEDIC SURGEONS**



Salem Clinic
Belong. For life.



oregon dental
ASSOCIATION

First in
Primary
Care **Broadway**
MEDICAL CLINIC

**The
Corvallis Clinic™**

Therapeutic Associates
PHYSICAL THERAPY



**compass
oncology**



Expert Anesthesia.
Smart Care.



**Women's
Healthcare
Associates^{LLC}**



**Northwest
PRIMARY CARE**
Care for every stage of your life

**The
Portland
Clinic**

Thank you for the opportunity to provide comments on the third draft of the HB 2362 Healthcare Market Oversight (HCMO) rules. As outlined in our first two letters, the organizations listed above are dedicated to providing access to quality healthcare across Oregon, and include many small and independent clinic owners operating outside of the larger hospital systems.

We appreciate the Authority providing updated drafts and materials, scheduling additional RAC meetings and being otherwise responsive. In particular, we greatly appreciate the many changes in the third draft of the rules—especially the change that exempted entities no longer need to apply for exemptions, and the revisions to the optional application program. We believe this now-free tool will be very helpful to our members who are trying their best to comply with the new law and rules.

Also helpful was the creation of the example chart—we hope that this chart will become part of the rule, and that our members will be able to rely on it when self-assessing the need to apply (or not) for certain transactions. We are hoping to see a few additional examples captured in the chart, if possible:

- An independent practitioner (or their estate) sells 100% of their practice because they wish to retire, or have unfortunately passed away. The buyer of the practice is another independent provider.
 - Or, that same independent provider under those same circumstances sells to a larger clinic group

For both these examples we think that selling to an existing practice or another practitioner is preferable to the community, rather than simply closing the clinic doors, but are concerned that added costs and barriers may disincentivize critically necessary transactions or partnerships.

Additionally, despite the many positive changes in the third draft of the rules, there are some remaining areas of concern:

- High filing fees and uncapped legal/outside advisor costs
- There remains a general concern about how the Authority intends to enforce the program if standards being developed through rulemaking are not clear at the outset of the program. Using language such as making referrals to the Department of Justice (see OAR 409-070-0030(2)) or building in language about filing false or misleading information (see OAR 409-070-0080(2)) sets a tone at the outset that this is potentially a civil and criminal sanctioning program rather than a health care community standard-building program
- We need clarity on the added conditions OHA may impose under 0065(1) apart from those referenced in Section 2(18) of the statute
- It appears that clinics would require state approval to join IPA-like organizations such as Legacy Health Partners and Providence High Performing Network, which if true is overly burdensome.

Additional concerns/comments by section:

OAR 409-070-0010. MATERIAL CHANGE TRANSACTIONS: Covered Transactions

In general, we appreciate that this section was narrowed. However, the scenarios outlined in Section 2 need some additional clarity regarding the threshold the Authority will use when considering these. Many of these items would be difficult or impossible for independent providers to measure.

OAR 409-070-0020. MATERIAL CHANGE TRANSACITONS: Excluded Transactions

We appreciate the changes to this section, particularly the removal of 1(c)(C), the removal of the requirement to apply for exclusions, and the addition of the language in Section 3.

OAR 409-070-0022. MATERIAL CHANGE TRANSACTIONS: Emergency Transactions

We appreciate the changes in Section 1b and Section 6. However, as outlined in previous letters, we believe that these emergency exemptions should only be used in a true emergency, and as such, we feel that the information requested by the authority is too onerous, and that the public comment period and publishing of the cover sheet is inappropriate and will dissolve public confidence unnecessarily (Section 5).

OAR 409-070-0030. MATERIAL CHANGE TRANSACTIONS: Requirement to File a Notice of Material Change Transaction

We appreciate that the proposed structure is a sliding scale—and is reduced for the first 10 months of the program, and reduced for preliminary reviews after this period— but note that the fees outlined for a comprehensive review following this period are still exorbitant and unworkable, especially for smaller providers such as those who have signed on to this letter, and especially considering that the fees do not capture additional costs for outside advisors, which are currently not capped.

The sliding scale should apply not just to the size of the entity, but also to the size of the transaction. As others mentioned during the RAC meeting, we too would greatly appreciate the opportunity to see the fee study.

OAR 409-070-0042. MATERIAL CHANGE TRANSACTIONS: Optional Application for Determination of Covered Transaction

We greatly appreciate the addition and edits to this section of the rule.

OAR 409-070-0050. MATERIAL CHANGE TRANSACTIONS: Retention of Outside Advisors

We appreciate the addition of a detailed invoice. However, the addition the Department of Justice to the requirements remains concerning. As well, expenses of legal counsel, accountants and other consultants should be capped. And, entities should be made aware of the potential costs upfront, with an option to dispute excessive costs following the transaction, with an opportunity for an “off ramp” should those costs be unworkable.

OAR 409-070-0055. MATERIAL CHANGE TRANSACTIONS: Preliminary 30-Day Review of a Notice of Material Change Transaction

As outlined in our first letter, we maintain that the findings of the preliminary 30-day review should be disputable. We appreciate the addition of Section 4, and request that the sunset is removed. If the Authority is unable to meet the 30-day deadline outlined in statute and this rule, the transaction should be automatically approved. This is especially concerning to smaller clinics and practices who have less of an ability to pay for extensive consultant fees that may come with a comprehensive review. This requested change is consistent with existing Oregon statute in other areas, including ORS 723.022 (3).

OAR 409-070-0060. MATERIAL CHANGE TRANSACTIONS: Comprehensive Review of a Notice of Material Change Transaction

If a transaction is going to be subject to the comprehensive review, there needs to be clear, fair and transparent standards included in the rule as to when the review boards will be engaged, and the membership makeup of the boards. Stating that the authority “may” include the appointment of a community review board does not give confidence for a such a process. As well, meetings of the review board should be subject to public meetings laws, and should be held virtually to encourage participation.

Much of Section 8 remains concerning, as many of the standards are arbitrary. We maintain our request the proposed OAR 409-070-0060 Paragraph 8(d) be stricken and replaced with: “(d) The transaction would eliminate or significantly reduce essential services.” This is keeping with the language of the bill, and “essential services” is defined elsewhere in the rulemaking; the elements enumerated in Section 8(d) add vague new components that are subjective and inject inappropriate political considerations into the process, i.e., “Satisfy the policy priorities of the Oregon Health Policy Board.” Further, we ask that “significantly reduce” be defined as eliminating access to 50% or more of essential services (as defined in the proposed OAR 409-070-0005).

We believe Section 8(g) does not allow for the situation where a retiring physician might liquidate their assets as part of a sale process, and if true, that remains a concern. Allowing a clinic to acquire a retiring doctor’s clinic, rather than outright closing it, is preferable to maintain community access. Section 8(h) is an arbitrary standard and should not be included in these rules, as the rules should be focused on creating a fair, transparent, and efficient process.

OAR 409-070-0065. MATERIAL CHANGE TRANSACTIONS: Conditional Approval; Suspension of Proposed Material Change Transaction

Further clarity is needed on the added conditions the Authority may impose under 0065(1) apart from those referenced in Section 2(18) of the statute.

OAR 409-070-0070. MATERIAL CHANGE TRANSACTIONS: Confidentiality

We appreciate the removal of Section 3 of this section.

OAR 409-070-0080. MATERIAL CHANGE TRANSACTIONS: Continuing Jurisdiction; Information Requests

There remains a general concern about how the Authority intends to enforce the program if standards being developed through rulemaking are not clear at the outset of the program. Using language such as making referrals to the Department of Justice (see OAR 409-070-0030(2)) or building in language about filing false or misleading information (see OAR 409-070-0080(2)) sets a tone at the outset that this is potentially a civil and criminal sanctioning program rather than a health care community standard-building program.

Thank you for consideration of the above comments. The groups signatory to this letter look forward to reviewing future drafts of this rule, and to participating in the additional RAC meeting(s).

Sabrina Riggs
Courtnei Dresser
Jen Lewis-Goff
Kristine Phillips Evertz
Dan Cushing
Doug Riggs

sabrina@daltonadvocacy.com
courtnei@theoma.org
jlewis-goff@oregondental.org
kristinepe@summitstrategies.us
cushing@pwlobby.com
doug@ngrc.com