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# Health Care Market Oversight (HCMO) Program

House Bill 2362 Rules Advisory Committee meetings

October 25, 2021 & November 4, 2021



# Attendance and Roll Call

# Agenda for RAC Meetings

*For technical assistance, send a direct message to Brian Toups and he will assist you*

- Introduce the rulemaking process
- HCMO Rulemaking Factsheet (linked [here](#))
- Opening remarks from Jeremy Vandehey, Director of Health Policy & Analytics
- Brief presentation from OHA introducing the program
- Discuss draft rules to solicit input (linked [here](#))
- Discuss draft forms and exhibits to solicit input (linked [here](#))
- Solicit general feedback that is not specific to any draft rule section or form
- Public Comment

# Rule Making Process

Today OHA will hear input from RAC members and the public. Afterwards staff will discuss all input and revise the draft rules accordingly. Staff will post online a second draft of the rules before the second RAC meeting on November 4th. Anything we do not cover today can be addressed at the second RAC meeting.

At the second RAC meeting OHA will hear input, discuss internally, and again revise rules accordingly. Staff will post online a third version of the rules after the second RAC meeting.

A third RAC meeting is possible but delays the publication of final rules. We will decide at the second RAC meeting if a third meeting is needed.

**RAC members and the public may also submit written comments to**  
[HCMO.info@dhsoha.state.or.us](mailto:HCMO.info@dhsoha.state.or.us)

# After Rule Making

In the coming months program staff will develop guidance documents and materials. These materials are not a part of the rules. We will solicit input on those materials as well.

Examples include:

- The Analytic Plan for any given proposed transaction review
- Easy-to-understand guidance documents explaining what entities and what transactions are subject to review
- Process flow documents that entities can use as reference

**Program staff will solicit input on guidance documents and materials via the GovDelivery listserv. Sign up for program updates on the website.**

# **Rulemaking Factsheet for this RAC**

# Opening Remarks

Jeremy Vandehey, Director of Policy & Analytics

# About the Health Care Market Oversight Program



# House Bill 2362

In 2021, the legislature directed OHA to develop a new program so local communities and the state can provide feedback when health care entities decide to:

- **Merge:** combine their businesses into one,
- **Acquire:** purchase another entity, or
- **Affiliate:** otherwise combine resources or partner together when negotiating with another organization.

# Purpose

The purpose of the program is to **increase transparency** for community members as to transactions that may affect them, and

to review transactions that have an impact on:

- **equity**
- **costs to consumers & employers, either directly or indirectly**
- **access to essential services**
- **quality of care**

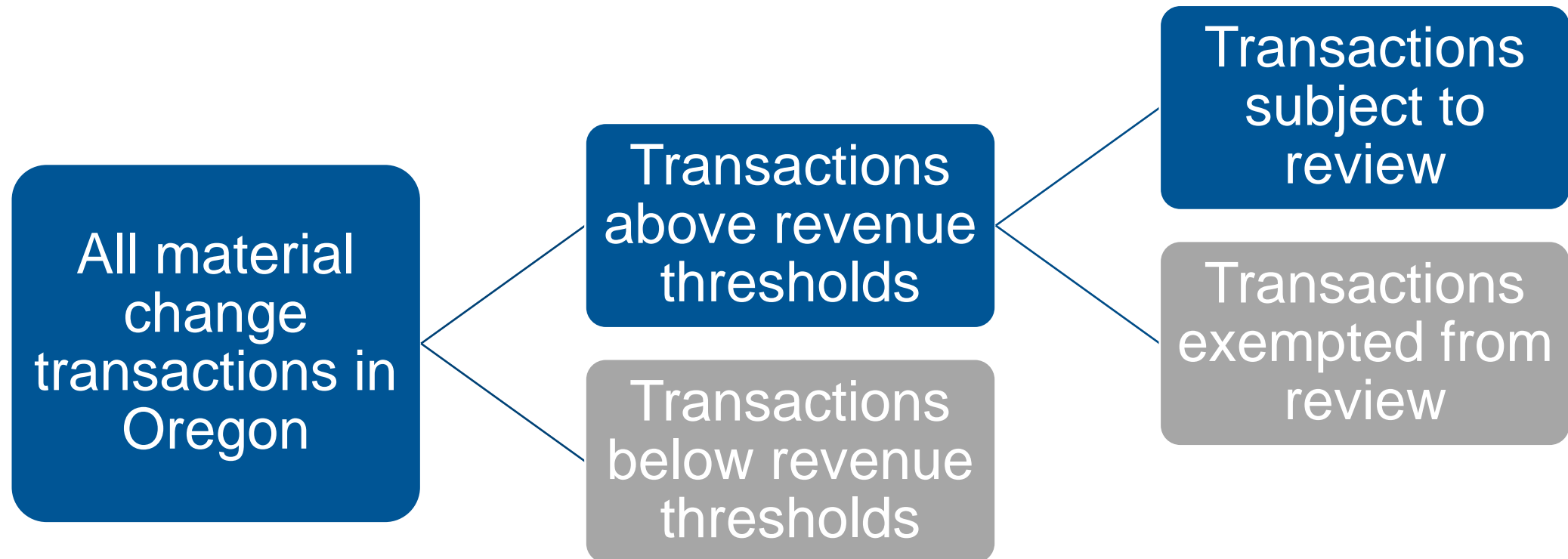
# What is a material change transaction?

The term “material change transaction” in HB 2362 means

- a merger of a health care entity with another entity;
- an acquisition of one or more health care entities by another entity;
- a new contract, clinical affiliation, or contracting affiliation that will eliminate or significantly reduce essential services;
- a corporate affiliation involving at least one health care entity; or
- a new partnership, joint venture, accountable care organization, parent organization or management services organization.

HB 2362 also includes many exceptions to the definition of material change transaction that are not subject to review.

# Which transactions are subject to review?



# Which transactions are subject to review?



OHA will review transactions between two in-state entities if at least one entity has revenue of \$25 million or more and the other has revenue of \$10 million or more.



OHA will review transactions involving out-of-state entities *if*:

- An in-state entity is involved,
- The revenue thresholds are met, and
- The transaction may result in increases in the price of health care or limit access to health care services in Oregon

Revenue is defined as the average gross revenue in the preceding three fiscal years. If the smaller entity is new, then revenue is based on a projection for its first full year in business.

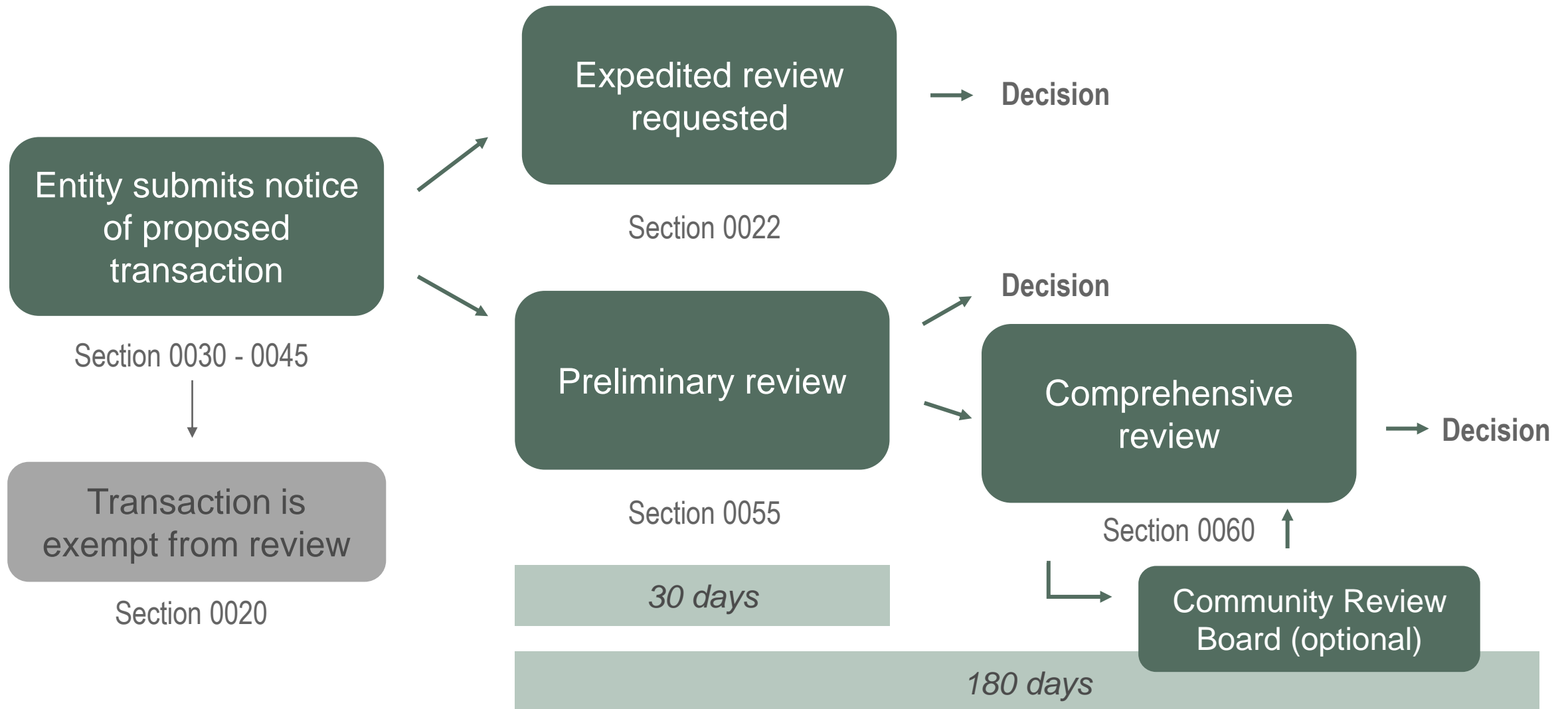
# Which transactions are subject to review?

HB 2362 outlines specific transaction types that are subject to review, as well as transaction types that are exempt.

We will discuss this at length when we get to the rules about Covered Transactions, Materiality, and Excluded Transactions.

**Request for RAC Members**  
*Provide input as to the types of transactions that do and do not impact equity, costs to consumer /employers, access to essential services, and quality of care.*

# 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

Rectifies health inequities

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

Improves health outcomes

Increases access to services in medically underserved areas

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)



# What will happen in the first 6 months of the program?

In order to allow for a ramp-up period for the new program and to provide flexibility regarding entities' 180-day notice requirement, OHA has committed to creating an expedited process for entities engaging in transactions that are scheduled to close between March 1, 2022 and August 28, 2022.

OHA intends to waive or reduce the 180-day notice requirement except for transactions that raise serious concerns.

**Discuss Draft Rules**

**Discuss Draft Forms & Exhibits**

# Discussion Order of Draft Sections

0000 Scope and Purpose

0010 Covered Transactions  
0015 Materiality Standard  
0020 Excluded Transactions  
0022 Emergency & Exempt Transactions

0005 Definitions

0025 Disclaimers of Affiliation

0030 Requirement to File Notice of Material Change Transaction  
0035 Material Change Transaction Involving a Domestic Health Insurer  
0040 Material Change Transaction Involving a Charitable Organization or Hospital  
0045 Form and Contents of Notice of Material Change Transaction  
HCMO Forms & Exhibits

0050 Retention of Outside Advisors  
0055 Preliminary 30-Day Review of a Notice  
0060 Comprehensive Review of a Notice  
0065 Conditional Approval; Suspension of Proposed Material Change Transaction

0070 Confidentiality  
0075 Contested Case Hearings  
0080 Continuing Jurisdiction; Information Requests  
0085 Effective Date; Implementation

# Quick Reference – Page Numbers

**0000** Scope and Purpose – page 1

**0005** Definitions – page 2

**0010** Covered Transactions – page 5

**0015** Materiality Standard – page 8

**0020** Excluded Transactions – page 9

**0022** Emergency & Exempt Transactions – page 11

**0025** Disclaimers of Affiliation – page 13

**0030** Requirement to File a Notice of Material Change Transaction – page 14

**0035** Material Change Transaction Involving a Domestic Health Insurer – page 15

**0040** Material Change Transaction Involving a Charitable Organization or Hospital – page 16

**0045** Form and Contents of Notice of Material Change Transaction – page 17

**0050** Retention of Outside Advisors – page 18

**0055** Preliminary 30-Day Review of a Notice of Material Change Transaction – page 19

**0060** Comprehensive Review of a Notice of a Material Change Transaction – page 20

**0065** Conditional Approval; Suspension of Proposed Material Change Transaction – page 23

**0070** Confidentiality – page 24

**0075** Contested Case Hearings – page 25

**0080** Continuing Jurisdiction; Information Requests – page 26

**0085** Effective Date; Implementation – page 27

# General Input from RAC Members

**Public Comment**

# 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>

OHA will develop and publish additional guidance documents and other resources before the launch of the program on March 1, 2022

Contact us at: [HCMO.info@dhsoha.state.or.us](mailto:HCMO.info@dhsoha.state.or.us)