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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 409
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS

FILED

09/20/2022 10:33 AM
ARCHIVES DIVISION
SECRETARY OF STATE

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

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/24/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Pete Edlund
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/20/2022

TIME: 2:05 PM - 3:00 PM

OFFICER: Pete Edlund

ADDRESS: REMOTE MEETING ONLY

421 SW Oak St

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Portland, OR 97204

SPECIAL INSTRUCTIONS:

Meeting is by ZoomGov only. Please use the information below to join.

A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting. Please contact pete.edlund@dhsosha.state.or.us or by phone (503) 931-8873.

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NEED FOR THE RULE(S)

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.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

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.

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. 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.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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.

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. The Rules Advisory Committee consisted of individuals who represent health care entities as well as consumer advocacy organizations.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

409-070-0005, 409-070-0010, 409-070-0015, 409-070-0022, 409-070-0030, 409-070-0035, 409-070-0045, 409-070-0055, 409-070-0060, 409-070-0062, 409-070-0065, 409-070-0080, 409-070-0085

AMEND: 409-070-0005

RULE SUMMARY: Added new definitions for "business entity," "hospital system" and "services that are essential to achieve health equity" for clarity.

CHANGES TO RULE:

409-070-0005

Definitions

When used and not otherwise defined in OAR 409-070-0000 through OAR 409-070-0085, the following terms shall have the meaning given in this section:¶

(1) "Administrative services" means support and administration services, outsourced and subcontracted services and other equivalent services and servicing arrangements relating to, supporting or facilitating the provision of patient care and services.¶

(2) "Authority" means the Oregon Health Authority.¶

(3) "AVP methodologies" means the advanced value-based payment models (3A and higher) described in the Oregon Value-Based Payment Compact (June 28, 2021). ¶

(4) "Business entity" has the meaning given in ORS 731.116.¶

(5) "Carrier" means:¶

(a) a carrier as defined in ORS 743B.005 (but excluding subsection (d) thereof); or¶

(b) any person that offers Medicare Advantage plans in this state.¶

(56) "Charitable organization" has the meaning given in ORS 128.620.¶

(67) "Comprehensive management services" means a person provides all or substantially all the personnel, or manages all or substantially all the operations, of a health care entity.¶

(78) "Control" means the direct or indirect power to manage a legal entity or set the legal entity's policies, whether by owning voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office. ¶

(89) "Coordinated care organization" has the meaning given in ORS 414.025.¶

(910) "Corporate affiliation" means a health care entity controls, is controlled by, or is under common control with another legal entity. ¶

(101) "Covered transaction" means a transaction described in OAR 409-070-0010.¶

(112) "Department" means the Department of Consumer and Business Services.¶

(123) "Domestic health insurer" means an insurer as defined in ORS 731.106 or a health care service contractor as defined in ORS 750.005 that is formed under the laws of this state and has a certificate of authority from the Department to insure personal health risks, or pay for or provide health care services, whether in the form of

indemnity insurance, managed care products or any other form or type of individual or group health insurance or health care service contract.¶

(134) In accordance with ORS 415.500(2), "essential services" means:¶

(a) Services that are funded on the prioritized list of health services described in ORS 414.690, as in effect at the time of notice submission; and¶

(b) Services that are essential to achieve health equity.¶

(145) In accordance with ORS 415.500(3), "health benefit plan" has the meaning given in ORS 743B.005.¶

(156) In accordance with ORS 415.500(4)(a), "health care entity" includes all of the following:¶

(a) An individual health professional licensed or certified in this state.¶

(b) A hospital, as defined in ORS 442.015.¶

(c) A hospital system.¶

(d) A carrier that offers a health benefit plan or Medicare Advantage plan in this state.¶

(e) A coordinated care organization or a prepaid managed care health services organization, as the term is defined in ORS 414.025.¶

(f) Any other person or business entity that has as a primary function the provision of health care items or services, including physical, behavioral or dental health items or services.¶

(g) Any other ~~entity that~~person or business entity that is a parent organization of, has control over, is controlled by, or is under common control with, an entity that has as a primary function the provision of health care items or services. ¶

(167) In accordance with ORS 415.500(4)(b), "health care entity" does not include:¶

(a) Long term care facilities, as defined in ORS 442.015.¶

(b) Facilities licensed and operated under ORS 443.400 through 443.455.¶

(178) "Health equity" means a health system having and offering infrastructure, facilities, services, geographic coverage, affordability and all other relevant features, conditions and capabilities that will provide all people with the opportunity and reasonable expectation that they can reach their full health potential and well-being and are not disadvantaged by their race, ethnicity, language, disability, age, gender, gender identity, sexual orientation, social class, intersections among these communities or identities, or their socially determined circumstances.¶

(189) "Hospital" has the meaning given in ORS 442.015.¶

(20) "Hospital system" means:¶

(a) A parent corporation of one or more hospitals and any entity affiliated with the parent through ownership, governance, control, or membership; or¶

(b) A hospital and any entity affiliated with the hospital through ownership, governance, control, or membership.¶

(219) "Independent practice association" has the meaning given in ORS 743B.001.¶

(202) "Material change transaction" means a covered transaction that is material under the materiality standards set forth in OAR 409-070-0015.¶

(213) In accordance with ORS 415.500(8), "net patient revenue" means the total amount of income, after allowance for contractual amounts, charity care and bad debt, received for patient care and services, including: ¶

(a) Value-based payments, incentive payments, capitation payments, payments under any similar contractual arrangement for the prepayment or reimbursement of patient care and services; and¶

(b) Any payment received by a hospital to reimburse a hospital assessment under ORS 414.855.¶

(224) "Person" has the meaning given in ORS 731.116. ¶

(235) "Program website" means the Authority's website for the Health Care Market Oversight Program, currently at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>. ¶

(246) "Provider" means a person licensed, certified or otherwise authorized or permitted by laws of Oregon to administer or provide medical or mental health services in the ordinary course of business or practice of a profession. ¶

(257) In accordance with ORS 415.500(9), "revenue" ~~means~~ not of a party to the transaction means: ¶

(a) ~~Net patient revenue~~ and; or ¶

(b) The gross amount of premiums received by a health care entity that are derived from health benefit plans.¶

(268) "Services that are essential to achieve health equity" means:¶

(a) Any service directly related to the treatment of a chronic condition; ¶

(b) Pregnancy-related services;¶

(c) Prevention services including non-clinical services; or ¶

(d) Health care system navigation and care coordination services.¶

(29) "Term sheet" means a memorandum of understanding or letter of intent setting forth the negotiated terms and conditions of the proposed transaction in reasonable detail, signed by the parties to a proposed transaction, or any other equivalent document that sets forth an agreement in principle for a proposed transaction.¶

(2730) "These rules" means the rules set forth in OAR 409-070-0000 through OAR 406-070-0085.¶

(2831) "Voting security" means a security that entitles the owner or holder of the security to vote at a meeting of

shareholders, a membership interest having voting rights in a limited liability company or nonprofit corporation, a partnership interest having voting rights in a limited or general partnership or any other type of instrument that confers on the holder of the instrument voting rights in the governance of a legal entity. A "voting security" also includes a security that is convertible into a voting security or that is evidence of a right to acquire a voting security.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0010

RULE SUMMARY: Added new language that was previously specified in sub-regulatory guidance documents and removed language about OHA developing such sub-regulatory guidance.

CHANGES TO RULE:

409-070-0010

Covered Transactions

(1) Pursuant to ORS 415.500(6) and (10) and subject to the materiality standards under OAR 409-070-0015, transactions that are subject to review under these rules are the following:¶

(a) A merger or consolidation of a health care entity with another entity;¶

(b) An acquisition of a health care entity by another entity; ¶

(c) A transaction to form a new contract, new clinical affiliation or new contracting affiliation between or among health care entities that will eliminate or significantly reduce essential services; ¶

(d) Formation of a corporate affiliation involving at least one health care entity; or¶

(e) A transaction to form a new partnership, joint venture, accountable care organization, parent organization or management services organization between or among health care entities that will:¶

(A) Eliminate or significantly reduce essential services;¶

(B) Consolidate or combine providers of essential services when contracting payment rates with payers, insurers, or coordinated care organizations; or¶

(C) Consolidate or combine insurers when establishing health benefit premiums.¶

(2) An acquisition of a health care entity occurs when: ¶

(a) Another person acquires control of the health care entity including acquiring a controlling interest as described in OAR 409-070-0025;¶

(b) Another person acquires, directly or indirectly, voting control of more than fifty percent (50%) of any class of voting securities of the health care entity other than a domestic insurer as described in OAR 409-070-0025(1)(c);¶

(c) Another person acquires all or substantially all of the health care entity's assets and operations; ¶

(d) Another person undertakes to provide the health care entity with comprehensive management services; or¶

(e) The health care entity merges tax identification numbers or corporate governance with another entity.¶

(3) ~~The Authority shall develop and issue a guidance document to assist health care entities in determining whether a transaction will significantly reduce essential services for purposes of being a covered transaction under this rule. In developing the guidance, the Authority shall include consideration of whether any significant impacts arise from~~ tion of services occurs when the transaction will result in a change of one-third or more of any of the following:¶

(a) An increase in time or distance for community members to access essential services, particularly for historically or currently underserved populations or community members using public transportation;¶

(b) A reduction in the number of providers, including the number of culturally competent providers, health care interpreters, or traditional healthcare workers, or a reduction in the number of clinical experiences or training opportunities for individuals enrolled in a professional clinical education program;¶

(c) A reduction in the number of providers serving new patients, providers serving individuals who are uninsured, or providers serving individuals who are underinsured;¶

(d) Any restrictions on providers regarding rendering, discussing, or referring for any essential services;¶

(e) A decrease in the availability of essential services or the range of available essential services;¶

(f) An increase in appointment wait times for essential services;¶

(g) An increase in any barriers for community members seeking care, such as new prior authorization processes or required consultations before receiving essential services; or¶

(h) A reduction in the availability of any specific type of care such as primary care, behavioral health care, oral health care, specialty care, pregnancy care, inpatient care, outpatient care, or emergent care as relates to the provision of essential services.¶

(4) Any change in the sub-regulatory guidance document under pertaining to paragraph (3) of this rule ~~that the Authority publishes after the effective date of these rules~~ shall be effective no less than 180 calendar days after publication.¶

(5) The foregoing standards in paragraph (3) of this rule do not alter any regulatory standards that may otherwise apply to a health care entity.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0015

RULE SUMMARY: Added new language about transactions involving new organized entities and providing greater details.

CHANGES TO RULE:

409-070-0015

Materiality Standard

(1) Pursuant to ORS 415.500(6) and (9) and ORS 415.501(4), a covered transaction under OAR 409-070-0010 is a material change transaction and shall be subject to review under these rules if:¶

(a) At least one party to the transaction had average annual revenue of \$25 million or more in the party's three most recent fiscal years; and ¶

(b) Another party to the transaction:¶

(A) had average annual revenue of \$10 million or more in that party's three most recent three fiscal years; or¶

(B) if such party is a newly organized legal entity, is projected to have at least \$10 million in revenue over its first full year of operation at normal levels of utilization or operation. A party is a newly organized legal entity if:¶

(i) the entity is newly formed or capitalized in connection with the transaction or in connection to a health care entity for the purposes of a transaction including but not limited to a special purpose entity; or¶

(ii) the entity is an existing entity whose form of ownership is changed in connection with the transaction. Changes in the form of ownership include but are not limited to a change from physician-owned to private equity-owned and publicly-held to a privately-held form of ownership. ¶

(2) A covered transaction under OAR 409-070-0010 that qualifies as material under paragraph (1) of this rule shall be subject to review under these rules notwithstanding that the transaction involves a health care entity located in this state and an out-of-state entity if the transaction may increase the price of health care services or limit access to health care services in this state.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0022

RULE SUMMARY: Changed rule title and added a rule specifying that the Authority will publish emergency transactions that were exempt from review no less than 6 months after the transaction has closed.

CHANGES TO RULE:

409-070-0022

Emergency and Exempt Transactions

(1) Pursuant to ORS 415.501(8)(a), the Authority, for good cause shown, may exempt an otherwise covered transaction from review if the Authority finds that:¶

(a) There is an emergency situation, including but not limited to a public health emergency, which immediately threatens health care services; and¶

(b) The transaction is urgently needed to protect the interest of consumers and to preserve the solvency of an entity other than a domestic health insurer. ¶

(2) If a proposed transaction would otherwise be subject to review because it involves a change in control of a domestic health insurer, the Department, in consultation with the Authority, for good cause shown, may exempt the transaction from review if the Department finds that:¶

(a) There is an emergency situation, including but not limited to a public health emergency, which immediately threatens health care services; and¶

(b) The transaction is urgently needed to protect the interest of consumers and to preserve the solvency of the domestic health insurer. ¶

(3) An applicant for emergency exemption under paragraph (1) of this rule shall provide the Authority, and an applicant for emergency exemption under paragraph (2) of this rule shall provide the Department, with the following: ¶

(a) A detailed explanation of the grounds for the application, including a complete statement of the facts, circumstances and conditions which justify emergency exemption and the conditions necessitating immediate relief;¶

(b) A detailed explanation of all the terms, conditions and agreements that comprise the transaction and the manner in which such terms, conditions and agreements will respond to the conditions necessitating expedited consideration of the exemption application;¶

(c) A detailed explanation of the reasons why the transaction is in the public interest and in the interest of those consumers and markets that are or will be served by the parties following closing of the transaction; ¶

(d) If the application for emergency exemption requires or otherwise is based upon, in whole or in part, a disclaimer of a rebuttable presumption of control, the application shall include a disclaimer of control meeting the requirements of OAR 409-070-0025;¶

(e) Such additional information, documents and analysis as the Authority or the Department, as applicable, may require in order to evaluate the application and the asserted grounds for emergency exemption;¶

(f) An undertaking by the parties to make such further filings with, and submit such further information to, the Authority or the Department, as applicable and to cooperate with and assist the Authority or the Department, as applicable, in conducting such further investigations, hearings and examinations, as may be required following the allowance of emergency exemption for the transaction;¶

(g) Payment of a fee in accordance with OAR 409-070-0030; and¶

(h) An undertaking by the parties to reimburse the Authority for expenses described in OAR 409-070-0050.¶

(4) The Authority with respect to an application filed under paragraph (1) of this rule, and the Department with respect to an application filed under paragraph (2) of the rule, shall:¶

(a) Provide a period for the filing of comments in respect of the application unless the Authority or the Department, as applicable, determines that:¶

(A) The public interest in providing comments is outweighed by the interest in confidentiality of the applicant for emergency exemption; or ¶

(B) the nature of the emergency situation presented and the urgency of the need for emergency exemption will not allow time for the filing and consideration of comments. ¶

(b) Provide the applicant with ten calendar days' advance notice prior to posting the application for public comment.¶

(5) The Department shall promptly provide an application filed under paragraph (2) of this rule to the Authority, and such an application shall be deemed to include an express consent to the sharing between the Authority and the Department of such application and all material in connection therewith.¶

(6) The Authority will publish from time to time a list of other categories or types of transactions that shall be exempt from review under these rules. ¶

(7) An applicant for emergency exemption may contest the Authority's determination as provided in OAR 409-

070-0075. Unless otherwise ordered in the course of such proceedings, the time periods for preliminary and comprehensive review of the transaction under OAR 409-070-0055 or OAR 409-070-0060 shall remain applicable, without abatement or reduction, in the event a preliminary or comprehensive review of the transaction is thereafter required.¶

(8) For emergency transactions that the Authority exempts from review, the Authority will publish the entity names and type of the covered transaction no less than 6 months after the transaction has consummated or closed.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0030

RULE SUMMARY: New language that specifies program fees.

CHANGES TO RULE:

409-070-0030

Requirement to File a Notice of Material Change Transaction

(1) Any health care entity shall:¶

(a) Submit to the Authority a notice of material change transaction not involving an activity described in ORS 732.521 with respect to a domestic health insurer. The notice shall contain the information required under OAR 409-070-0045.¶

(b) Submit to the Department a notice of material change transaction for an activity described in ORS 732.521 with respect to a domestic health insurer. The notice shall be submitted as an addendum to filings required by ORS 732.517 to ORS 732.546 or ORS 732.576. The Department shall promptly provide to the Authority the notice submitted under this subsection to enable to the Authority to conduct its review in accordance with OAR 409-070-0035. ¶

(2) The notice of material change transaction required under paragraph (1) of this rule shall be filed not fewer than 180 calendar days prior to the proposed effective date of the material change transaction. For purposes of OAR 409-070-0000 to OAR 409-070-0085, the effective date of a material change transaction is the date when the proposed transaction will be consummated or closed. If the Authority determines that a health care entity has failed to timely file a notice of material change transaction pursuant to this subsection, the Authority may refer the health care entity to the Oregon Department of Justice. ¶

(3) Effective January 1, 2023, a fee shall be paid to the Authority in connection with a notice of material change transaction filed under this rule: on or after January 1, 2023.¶

(a) The fee amount shall be \$2,000 for an emergency transaction in accordance with OAR 409-070-0022 or a preliminary review in accordance with OAR 409-070-0055. ¶

(b) The fee amount for a comprehensive review shall be based on the average annual revenue or projected revenue, as applicable, in accordance with OAR 409-070-0015(1), of the following entity (the "smaller entity"):¶

(A) For transactions between two entities, the entity with smaller revenue; or¶

(B) For transactions involving more than two entities, the entity with the second largest average annual revenue.¶

(c) Comprehensive review fees shall be determined as follows:¶

(A) For transactions in which the revenue of the smaller entity is greater than or equal to \$10 million and less than \$50 million, the fee shall be \$25,000.¶

(B) For transactions in which the revenue of the smaller entity is greater than or equal to \$50 million and less than \$200 million, the fee shall be \$80,000. ¶

(C) For transactions in which the revenue of the smaller entity is greater than or equal to \$200 million and less than \$500 million, the fee shall be \$90,000. ¶

(D) For transactions in which the revenue of the smaller entity is greater than or equal to \$500 million, the fee shall be \$100,000.¶

(d) The fee amount for a comprehensive review includes the fee associated with the preliminary review.¶

(e) For purposes of this rule, "revenue" includes projected revenue, if applicable in accordance with OAR 409-070-0015(1)(b)(B)

Statutory/Other Authority: ORS 415.501, 415.512

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0035

RULE SUMMARY: Update one reference to an Oregon Administrative Rule.

CHANGES TO RULE:

409-070-0035

Material Change Transaction Involving a Domestic Health Insurer

(1) The Authority shall review a proposed material change transaction for an activity described in ORS 732.521 with respect to a domestic health insurer pursuant to the procedures set forth in OAR 409-070-0055 (preliminary review) and, if applicable, OAR 409-070-0060 (comprehensive review). ¶

(a) At the conclusion of the preliminary review period provided in OAR 409-070-0055, the Authority shall report to the Department:¶

(A) the results of the Authority's review under OAR 409-070-0055; or¶

(B) that the Authority intends to review the proposed material change transaction under OAR 409-070-0060, including whether the Authority intends to appoint a community review board pursuant to ~~these rules~~OAR 409-070-0062. ¶

(b) If the Authority reviews the proposed material change transaction under OAR 409-070-0060, it shall promptly provide to the Department the results of its review not later than the period specified in OAR 409-070-0060. ¶

(c) The periods for review under OAR 409-070-0055 and OAR 409-070-0060 shall begin running upon the Authority's receipt from the Department of a complete notice of material change transaction as required under OAR 409-070-0030(1)(b) and subject to OAR 409-070-0045(5). ¶

(2) The Department shall receive and consider the results of the Authority's review prior to entering its decision on the proposed material change transaction. The Department shall coordinate with the Authority to incorporate the results of the Authority's review into the final determination issued by the Department pursuant to ORS 732.528 or ORS 732.542, as applicable. ¶

(3) The filing of a notice of material change transaction that is subject to review by each of the Authority and the Department under this rule shall be deemed to include an express consent to the sharing between the Authority and the Department of confidential material submitted in connection with such proposed material change transaction. Confidential material provided by any party in connection with such proposed material change transaction shall be maintained as confidential material in accordance with ORS 705.137 and ORS 415.103, and OAR 409-070-0070, and may be shared between the Authority and the Department pursuant to ORS 705.137(3)(b)& (c) and (4), and ORS 192.355(1), (9), (10) and (31), as applicable. Such sharing shall not constitute a waiver of the confidential status of such materials.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

RULE SUMMARY: Update one reference to an Oregon Administrative Rule.

CHANGES TO RULE:

409-070-0045

Form and Contents of Notice of Material Change Transaction

- (1) A notice of material change transaction required to be filed under OAR 409-070-0030(1)(a) shall be made using the form available at the Program website. Unless expressly provided otherwise, if any item is inapplicable or the answer to any item is in the negative, a statement to that effect shall be made.¶
- (2) A party or the parties to a material change transaction for which a filing will be made under this rule are encouraged to contact the Authority and arrange for a pre-filing conference. If the Authority decides to conduct a comprehensive review under OAR 409-070-0060, the Authority shall offer the parties or parties a comprehensive review conference. The pre-filing conference or comprehensive review conference shall preview the transaction and filing and the Authority's expectations for the review of the transaction including timing, the use of outside experts, the potential involvement of a community review board in accordance with OAR 409-070-0062, and other relevant issues. As applicable, the Department will participate along with the Authority in any such conference.¶
- (3) One complete copy of the notice, including exhibits and all other papers and documents filed as part of the notice, shall be filed with the Authority by electronic delivery. The notice shall be signed electronically or otherwise in the manner prescribed in the form notice.¶
- (4) All copies of any financial statements or exhibits shall be clear, easily readable and suitable for printing. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such.¶ The notice and statements therein must be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the notice is in a foreign language, it shall be accompanied by a translation into the English language. Any monetary value shown in a foreign currency shall be converted into United States currency.¶
- (5) A notice of material change transaction shall include either complete and final executed copies of all the definitive agreements pursuant to which the transaction will be documented and closed or a term sheet. If a notice is filed on the basis of a term sheet, then:¶
 - (a) The parties must furnish the Authority with complete and final executed copies of all the definitive agreements pursuant to which the transaction will be documented and closed, together with a detailed description of any respect in which the definitive agreements depart from the term sheet, no later than: ¶
 - (A) Fifteen days before closing the transaction, if the Authority approved the transaction without comprehensive review; or¶
 - (B) Fifteen days after the commencement of the comprehensive review period, if the transaction was not approved following preliminary review. If the parties are unable to furnish complete and final executed copies of all the definitive agreements within that fifteen-day period, then the running of the period for review of the notice shall be tolled upon such notification and shall not resume until the parties have furnished such executed copies.¶
 - (b) To the extent that the definitive agreements materially deviate from the term sheet, the Authority may extend the review period and may withdraw or modify an order based on the term sheet. ¶
- (6) If the Authority considers a notice of material change transaction to be incomplete, or if the Authority requires additional information or clarification of any information to proceed with its review, the Authority shall notify the parties of the information or clarification that is required. The running of the period for review of the notice shall be tolled upon such notification and shall resume when the Authority deems the notice complete. ¶
- (7) Any party that has filed a notice of material change transaction shall promptly advise the Authority of any changes in the information so furnished on the notice arising subsequent to the date upon which the information was furnished but prior to disposition of the material change transaction by the Authority. ¶
- (8) The Authority may require that statements of revenue and revenue projections be presented in accordance with generally accepted accounting principles or statutory accounting principles, as applicable, and be prepared by a duly qualified and credentialed accounting expert.¶
- (9) The Authority's review of the information provided in a notice of material change will be analyzed using the Analytic Framework, published on the Program website, with standards that:¶
 - (a) Are clear, fair, predictable, and consistent;¶
 - (b) Use measures of quality and access that can be meaningfully compared to current and past performance across Oregon and, if available, in other states; and¶
 - (c) Include equity analyses that stratify cost, quality, and access data by the characteristics specified in the definition of health equity to the greatest extent allowable by data availability. ¶
- (10) After submission, any party to a notice of material change transaction may rescind the notice at any time and

for any reason. If the Authority has not commenced a preliminary review under OAR 409-070-0055, the fee paid in connection with the notice shall be refunded. If the Authority has commenced a preliminary review under OAR 409-070-0055, the fee paid in connection with the notice shall not be refunded, and the parties shall remain obligated to reimburse the Authority for costs and expenses incurred prior to withdrawal in accordance with OAR 409-070-0050.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0055

RULE SUMMARY: 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.

CHANGES TO RULE:

409-070-0055

Preliminary 30-Day Review of a Notice of Material Change Transaction

(1) Pursuant to ORS 415.501(5) and after receipt of a complete notice of material change transaction in accordance with OAR 409-070-0030(1)(a) and OAR 409-070-0045(5), the Authority shall complete a preliminary review to determine whether the proposed material change transaction meets one or more of the criteria set forth in paragraph (2) of this rule. The Authority shall, subject to OAR 409-070-0070, publish the notice of material change transaction. For the duration of the preliminary review period, the Authority shall accept and publish public comment pertaining to the material change transaction.

(2) At the conclusion of the preliminary review described in paragraph (1) of this rule, the Authority shall approve, or approve with conditions as provided in OAR 409-070-0065, a material change transaction, or, in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved, if the Authority determines that the transaction meets one or more of the following criteria: ¶

(a) The material change transaction is in the interest of consumers and is urgently necessary to maintain the solvency of an entity involved in the transaction; ¶

(b) The material change transaction is unlikely to substantially reduce access to affordable health care in Oregon; ¶

(c) The material change transaction is likely to meet the criteria set forth in OAR 409-070-0060; ¶

(d) The material change transaction is not likely to substantially alter the delivery of health care in Oregon; or ¶

(e) Comprehensive review of the material change transaction is not warranted given the size and effects of the transaction. ¶

(3) If after a preliminary review, the Authority does not approve or recommend for approval, as applicable, a material change transaction in accordance with this paragraph (2), the Authority shall notify the parties and shall thereafter conduct a comprehensive review pursuant to OAR 409-070-0060. ¶

(4) Unless extended by agreement among the Authority and the parties to a proposed material change transaction, the Authority shall complete the preliminary review described in paragraph (1) within 30 calendar days of the Authority's written confirmation of receipt of a complete notice of material change transaction. ~~The Authority shall notify the parties at the conclusion of the preliminary review period or on the first business day the results of the preliminary review. If the Authority fails to complete such preliminary review within 30 calendar days of the Authority's receipt of a complete notice of material change transaction, the proposed material change transaction shall be subject to the comprehensive review procedure provided in OAR 409-070-0060. ¶~~

(5) Notwithstanding after if the 30th day is a weekend or state-recognized holiday, unless the parties agree to an extension of time. The Authority shall notify the parties at the conclusion of the preliminary review period the preceding paragraphs of this rule, for notices filed before December 31, 2022, the notice shall be deemed approved, or, in the case of a material change transaction involving a domestic health insurer, recommended to the Department that the transaction be approved, unless, suits of the preliminary review. If the Authority fails to complete such preliminary review within 30 calendar days of the Authority's receipt of a complete notice of material change transaction, the Authority has notified the parties to the notice that the proposed material change transaction shall be subject to the comprehensive review procedure provided in OAR 409-070-0060.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0060

RULE SUMMARY: 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.

CHANGES TO RULE:

409-070-0060

Comprehensive Review of a Notice of a Material Change Transaction

(1) Pursuant to ORS 415.501(7), the Authority shall conduct a comprehensive review of a proposed transaction if the Authority determines not to approve the transaction at the conclusion of its preliminary review. ¶

(2) Pursuant to ORS 415.501(11), a comprehensive review may include the appointment by the Authority of a community review board to participate in the conduct of the comprehensive review and the making of recommendations to the Authority on the approval or disapproval of the transaction, or the approval of the transaction as modified or subject to conditions. The Authority, at its discretion, may convene a community review board to advise the Authority on the impact of the transaction to the community. In determining whether to convene a community review board, ~~the Authority shall notify the entity that submitted the notice of material change transaction if a comprehensive review will occur. The Authority shall consider~~ notify the potential impacts of the proposed transaction, including, but not lity that submitted to: ¶

(a) The potential loss or change in access to essential services. ¶

(b) The potential to impact a large number of residents in this state. ¶

(c) A significant change in the market share of an entity involved in the transaction. ¶

(3) A community review board convened by the Authority under paragraph (2) of this rule shall consist of members of the affected community with emphasis on persons who are representative of populations that experience health dishe notice of material change transaction if the Authority requires additional information from any of the parities, consumer advocates and health care experts. Not more than one-third of the members of the community review board may be representatives of corporate providers. The Authority may not appoint to a community review board an individual who is employed by an entity that is a party to the transaction that is under review or is employed by a competitor that is of a similar size to an entity that is a party to the transaction. As part of the community review board appointment ~~proc~~ to the transaction. The entity is required to respond to the Authority's request for additional information within 15 calendar days from the date the Authority sent such request unless; the Authority will notify coordinated care organization community advisory councils, and entity mutually agree on as defined in ORS 414.575, representing the affected community, ~~ifferent timeline.~~ ¶

(4) Members of a community review board shall be considered public officials subject to the conflict of interest requirements in ORS chapter 244. If a member of the community review board possesses a potential conflict of interest, as defined in ORS 244.020, the member shall file a notice of conflict of interest, which shall be made public, and the Authority shall determine whether the member has an actual conflict of interest, as defined in ORS 244.020. If the Authority determines that a member of the community review board has an actual conflict of interest, as defined in ORS 244.020, it shall appoint a replacement member to the community review board. ¶

(5) Hearings and proceedings before a community review board shall be conducted pursuant to ORS 415.501(15) through (17). ¶

(6) A community review board shall make written recommendations to the Authority on a proposed transaction based on the criteria listed in paragraphs (2) and (8) of this rule. The Authority shall notify the entity that submitted the notice of material change transaction the fee amount associated with the comprehensive review. A party to the transaction shall pay the fee amount in full no later than 30 calendar days after the date the Authority sent such notification. ¶

(7) The Authority shall issue proposed findings of fact and conclusion of law, along with the Authority's proposed order at the conclusion of its comprehensive review and shall allow the parties and the public a reasonable opportunity to make written comments to the proposed findings and conclusions and the proposed order. If the comprehensive review includes a community review board, recommendations of the community review board shall be in writing and appended to the proposed order. Unless otherwise directed by the Authority, written comments to the proposed findings and conclusions and the proposed order shall be filed with the Authority within thirty calendar days following publication. The Authority shall make any filed comments available to the public promptly following receipt. ¶

(8) The Authority shall consider the parties' and the public's written exceptions and issue a final order setting forth the Authority's findings and conclusions in respect of the proposed transaction. If the comprehensive review included a community review board, the Authority's findings and conclusions shall include an explanation of the reasons why the Authority accepted, rejected or modified the recommendations of the community review board. ¶

¶
The final order shall include any commitments by the health care entity to continue services currently provided by

the health care entity. A party to the proposed transaction may contest the final order as provided in OAR 409-070-0075.¶¶

(96) Subject to any conditions prescribed under OAR 409-070-0065, the Authority shall approve a material change transaction that does not involve a domestic insurer, or in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved, if pursuant to ORS 415.501(9), the Authority determines that the transaction satisfies (a) below and also satisfies either (b) or (c) below: ¶¶

(a) There is no substantial likelihood that the transaction would: ¶¶

(A) Have material anticompetitive effects in the region (such as significantly increased market concentration among providers when contracting with payers, carriers, or coordinated care organizations, or among carriers when establishing health benefit premiums that is likely to increase costs for consumers) not outweighed by benefits in increasing or maintaining services to underserved populations;¶¶

(B) Be contrary to law; ¶¶

(C) Jeopardize the financial stability of a health care entity involved in the transaction; or ¶¶

(D) Otherwise be hazardous or prejudicial to consumers or the public.¶¶

(b) The transaction will benefit the public good and communities by: ¶¶

(A) Reducing the growth in patient costs in accordance with the health care cost growth targets established under ORS 442.386 or maintain a rate of cost growth that exceeds the target that the entity demonstrates is in the best interest of the public; ¶¶

(B) Increasing access to services in medically underserved areas; or¶¶

(C) Rectifying historical and contemporary factors contributing to a lack of health equity or access to services. ¶¶

(c) The transaction will improve health outcomes for residents of this state.¶¶

(107) Unless extended by agreement among the Authority, the Department, as applicable, and the parties to the proposed transaction, the Authority shall issue a proposed order following its comprehensive review within 180 calendar days of the filing of a complete notice of material change transaction, subject to tolling or extension as provided in these rules. A transaction may be disapproved if the parties do not agree to an extension of time necessary to accomplish a tribal consultation.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

RULE SUMMARY: 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.

CHANGES TO RULE:

409-070-0062

Community Review Board

(1) The Authority may appoint and convene a community review board to participate in the comprehensive review of a material change transaction, pursuant to ORS 425.501(11). A community review board shall:

(a) Advise the Authority on the impact of the transaction to the community; and

(b) Make recommendations to the Authority on the approval or disapproval of a transaction, or the approval of a transaction subject to certain conditions.

(2) In determining whether to convene a community review board, the Authority shall consider the potential impacts of the proposed transaction, including, but not limited to:

(a) The potential loss or change in access to essential services.

(b) The potential to impact a large number of residents in this state.

(c) A significant change in the market share of an entity involved in the transaction.

(3) A community review board shall consist of members of the affected community, including persons who represent populations that experience health disparities, consumer advocates and health care experts. Not more than one-third of the members of the community review board may be representatives of corporate providers. The Authority may not appoint to a community review board an individual who is employed by an entity that is a party to the transaction that is under review or is employed by a competitor that is of a similar size to an entity that is a party to the transaction. As part of the community review board appointment process, the Authority will notify coordinated care organization community advisory councils, as defined in ORS 414.575, representing the affected community.

(4) Community review board members shall declare any potential or actual conflict of interest by filing a notice, pursuant to ORS 415.501(11)(b). A notice of conflict of interest for an appointed community review board member will be made public. If the Authority determines that a member of the community review board has an actual conflict of interest, the member shall abstain from participating in community review board actions related to the conflict of interest. A conflict of interest exists when a community review board member:

(a) is employed by an entity that is a party to the transaction under review;

(b) is employed by a similar sized competitor to an entity that is a party to the transaction under review;

(c) has a financial stake in an entity that is a party to the transaction under review; or

(d) has governance or decision-making authority for an entity that is a party to the transaction under review.

(5) As defined by ORS 292.495(4), qualified community review board members shall receive per diem compensation and reimbursement of travel or other expenses related to the performance of community review board member's official duties as determined by the Authority.

(a) Per diem compensation shall be equal to the per diem paid to members of the Legislative Assembly under ORS 171.072, for each full or partial day during which the qualified member is engaged in the performance of official duties.

(b) Reimbursement of actual and necessary travel or other expenses incurred in the performance of a qualified member's official duties shall be in the manner and amount provided in ORS 292.495.

(c) A qualified member of a community review board may decline to accept compensation or reimbursement of expenses related to the qualified member's service on a community review board.

(d) To be considered a qualified member, a member of a community review board must attest by signature that they meet the conditions and income limits specified in ORS 292.495(4).

(e) Non-qualified members of a community review board shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of their official duties in the manner and amount provided in ORS 292.495.

(6) A community review board shall make written recommendations to the Authority on a proposed transaction based on the criteria listed in paragraph (1) of this rule.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0065

RULE SUMMARY: Update one reference to an Oregon Administrative Rule.

CHANGES TO RULE:

409-070-0065

Conditional Approval; Suspension of Proposed Material Change Transaction

(1) Following completion of a preliminary review pursuant to OAR 409-070-0055 or a comprehensive review pursuant to OAR 409-070-0060, which may include the appointment of a community review board pursuant to OAR 409-070-0062, the Authority may approve, or recommend for approval in the case of transaction involving a domestic insurer, a material change transaction with conditions designed to further the purposes and goals described in OAR 409-070-0000.¶

(2) If the Authority approves a material change transaction with conditions as set forth in paragraph (1) of this rule, the Authority may suspend, or in the case of transaction involving a domestic insurer recommend that the Department suspend, the effective date of the transaction for such reasonable time as necessary to conduct an examination and complete an analysis of whether the conditions have been satisfied.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0080

RULE SUMMARY: Update one reference to an Oregon Administrative Rule.

CHANGES TO RULE:

409-070-0080

Compliance with Conditions; Information Requests

(1) Following approval of a material change transaction, the Authority may verify compliance with any conditions that the Authority included in its approval of the transaction and issue such additional orders, following notice and opportunity for hearing, as may be necessary to enforce compliance with the terms and conditions of the approval of the transaction; provided however, that the Authority may not impose new conditions that are unrelated to, or not reasonably required to enforce compliance with, those conditions, if any, that were included in the Authority's approval of the transaction. Such verification of compliance shall occur, at minimum, at the intervals required by ORS 415.501(19).¶

(2) The Authority may require that the parties provide such information, reports, analyses and documentation as the Authority may require in order to monitor and assess the impacts and effects of the material change transaction as required in ORS 415.501(19), including specifically, but without limitation, the effects and status of the material change transaction under OAR 409-070-0060(22(1) and ~~(8)~~OAR 409-070-0060(5).¶

(3) No person shall file or cause to be filed with the Authority or the Department any notice, article, certificate, report, statement, application or any other information required or permitted to be so filed and known to such person to be false or misleading in any material respect.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 413.037, 415.013, 415.103, 415.500 to 415.900

AMEND: 409-070-0085

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

CHANGES TO RULE:

409-070-0085

Effective Date; Implementation

(1) The effective date of these rules is ~~March~~January 1, 2023. These rules shall apply to ~~transactions closed or scheduled to close on or after March 1, 2022.~~ ¶

(2) ~~Material change transactions that are documented by one or more definitive agreements entered into on or after March 1, 2022, shall be processed in accordance with these rules' standard provisions and timelines for preliminary and comprehensive review.~~ ¶

(3) ~~If a material change transaction:¶~~

(a) ~~Has been documented by one or more definitive agreements entered into before March 1, 2022;¶~~

(b) ~~Is expected to close after March 1, 2022, but before August 28, 2022; and¶~~

(c) ~~Requires comprehensive review, the 180-day period for comprehensive review provided in OAR 409-070-0060(9) may be waived or reduced in the Authority's discretion, with due consideration being given to the date on which the notice was received, the public importance and complexity of the transaction, and the Authority's current workloads, staffing and resources. The notice for a material change transaction that is eligible for a waiver or reduction in the comprehensive review period under this rule shall include a statement of the reasons why expedited review is required and the date by which a decision on the transaction is requested. In no event shall the Authority waive the preliminary review required by OAR 409-070-0055~~notices of material change transactions received on or after January 1, 2023.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900