



January 20, 2021

Pat Allen, Director, Oregon Health Authority  
Jeremy Vandehey, Health Policy & Analytics Division Director  
500 Summer Street NE, E-20  
Salem, OR 97301

*Delivered electronically to: [hcmo.info@dhsaha.state.or.us](mailto:hcmo.info@dhsaha.state.or.us)*

RE: Public Comment on HCMO TAG Guidance

Dear Directors Allen and Vandehey,

We appreciate OHA's ongoing commitment to health equity and diligence in implementing HB2362. The proposed guidance documents presented at the January 14 meeting of the Technical Advisory Group were well written, clear, and helpful in understanding more about how the agency intends to implement the program. We are supportive of many aspects of the draft, though we have compiled some suggested changes below.

Before outlining our specific feedback, we wish to underscore that these sub-regulatory documents aim to provide clarification on how to measure reductions in essential services only for the purposes of *notifying* the state. Given that the protection and advancement of access to essential services is at the core of HB2362, the threshold for what requires notification should be at or near the minimum of what is acceptable.

While we'd like to argue that any negative impact to essential services should trigger review, that is likely not feasible, and so we offer the comments below.

**The overall threshold of a 50% change is too lenient.** This threshold should be set at a level that is sure to catch unacceptable reductions in care. If there is a valid reason for the significant reduction, then there is a process to share that rationale and proceed with the transaction after an initial review. We believe the threshold for notification should be 20%.

**12 months is an insufficient timeframe to guard against cuts to essential care.** It is imperative to establish a timeframe during which any reduction or elimination of services could occur after transactions close, but we believe 12 months is too short.

We believe 5 years would be a more reasonable timeline to not significantly reduce essential services in exchange for avoiding notification. It is not uncommon for attorneys general to place requirements on facilities to continue offering certain services for 7-10 years.

We offer two specific examples to illustrate why the 12-month timeframe is insufficient. First, back in 2017 when the Providence-St. Joseph merger was finalized, the California Attorney General mandated that Providence keep the birthing center open at Redwood Memorial Hospital for 5 years. As soon as 5 years passed, they closed it down, leaving that community without a labor and delivery option. Similarly, when Providence bought Petaluma Valley Hospital in 2020, they agreed to keep its birthing center open for 5 years – at which point they could consider another closure.

**The rubric should consider delays in services in addition to reductions.** The detailed guidance regarding 409-070-0010(3)(g) should include a measurement of delay of services, not just availability. We urge OHA to explore other quantifiable measures of delays in care.

**Update flow chart to reflect rules.** This guidance aims to define “significant reduction,” but any transaction eliminating an essential service would be required to provide notification. This should be clarified in the flow chart.

We believe these adjustments will ensure that transactions that stand to have a negative effect on access to essential services are subject to the review process, while allowing those that will unquestionably expand these services to move ahead.

Sincerely,

Basic Rights Oregon  
Family Forward Oregon  
Oregon AFSCME  
Oregon Health Equity Alliance  
Oregon Primary Care Association  
Planned Parenthood Advocates of Oregon  
SEIU Local 49