



**Health Care Market Oversight Program –
Summary of Edits to Rules after the First Rules Advisory Committee Meeting
November 1, 2021**

On October 25, 2021 the Oregon Health Authority (OHA) held a Rules Advisory Committee meeting to hear input on the draft rules for the Health Care Market Oversight Program, authorized by House Bill 2362 (2021). The following document outlines the key themes OHA staff heard and summarizes the most important recent edits (dated November 1) to the draft rules.

1. Input: The program should not require the review of entities' **day to day transactions** that have no potential for impacting equity, cost, quality, and access. These include the sharing of electronic health records and public health activities.

Response:

- *Added a definition in 409-070-0005 for “administrative services” that are not subject to review.*
- *Added language to 409-070-0020 such that a corporate affiliation to purchase administrative services that does not pool or increase either party’s price negotiation power (as defined in 409-070-0005) is not a material change transaction. A party to such an affiliation must file a written application with the Authority, which may exempt it from further review.*
- *Added language to 409-070-0020 allowing the Authority to exempt a transaction, even after the parties submitted a complete notice of material change transaction to the Authority.*

2. Input: Defining **control as 10%** is too low.

Response:

- *For insurers and coordinated care organizations, control is defined as 10%, thereby aligning with insurance code ORS 732.567.*
- *However, for health care entities that are not insurers or coordinated care organizations, control is now defined as 25%.*

3. Input: The Authority’s review of a given transaction must be **clear, fair, predictable, and consistent**.

Response:

- *Added language in 409-070-0045(8) specifying that the Authority’s review of a notice of material change will be based on an Analytic Framework, published on the Program website, with standards that:*
 - *are clear, fair, predictable, and consistent;*
 - *use measures of quality and access that can be meaningfully compared to performance in other states or across Oregon, as well as over time; and*
 - *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.*
- *Added “at the time of notice submission” in 409-070-0005 and 409-070-0060 to clarify that a proposed transaction will be subject to definitions and analyses published when the entities submitted the notice.*

4. Input: Requiring a complete and final **executed copy of the transaction agreement** is too burdensome and overly extends the timeline for transactions to close.

Response:

- *Added definition of “term sheet” to 409-070-0005 as 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.*
- *Added language to 409-070-0045 that allows entities to submit a notice based on a term sheet.*
- *Added parameters to 409-070-0045 outlining when the final executed copies of all definitive agreements are due.*

5. Input: Applicants should be able to **obtain the Authority’s guidance** without having to submit a notice.

Response:

- *Added to the Forms and Exhibits language that specifies the Authority may make available technical assistance to entities prior to submission. Information about how to access technical assistance will be published on the program website.*
- *Added a new section 409-070-0042 to offer declaratory rulings upon petition by an interested party.*

6. Input: Transactions requiring **emergency review**, such as entities facing insolvency, should remain **confidential** to avoid exacerbating the situation. Furthermore, time is of the essence for said transactions and the Authority must not hinder a transaction that must occur if the entity is to continue serving the community.

Response:

- *Added more details in 409-070-0022 as to when the Authority may exempt an otherwise covered transaction.*

- *Added language making the disclosure of the cover sheet and providing a period for public comment conditional on the Authority determining that the public interest in providing comments outweighs the interest in confidentiality of the applicant for exemptive relief.*

7. Input: Defining “**essential services**” as services on the prioritized list does not apply to the commercial market.

Response:

- *Added language to the definition to clarify that essential services are those “based upon the prioritized list” as opposed to “funded on the prioritized list” in order to allow for broader applicability (as currently applies to Marketplace plans). The statute references the prioritized list in the definition of essential services and the rules must also connect these terms.*

8. Input: In 409-070-0000 Scope and Purpose the reference to “reducing the cost of care for **all Oregonians**” should be limited to only those individuals affected by the transaction.

Response:

- *Removed the word “all” and edited language to read “reducing the cost of care for people living in Oregon”*

9. Input: The **filing fee** should be commensurate with the entities or the transaction and structured so that it can scale.

Response:

- *The Authority posted a draft fee schedule titled Table 1 that ranges from \$25K to \$100K (half that for emergency reviews), depending on the revenue of the smaller of the two entities.*