

Date: November 2, 2021

To: Health Care Market Oversight Program, *submitted electronically to:* hcmo.info@dhsosha.state.or.us

From: Dr. Micah Thorp, VP, Northwest Permanente
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RE: House Bill 2362 Rules Advisory Committee

Kaiser Permanente (KP) appreciate the opportunity to provide additional feedback regarding the draft rules intended to implement HB 2362 following the rules advisory committee meeting that took place on Monday, October 25, 2021. KP exists to provide high-quality, affordable health care services and to improve the health of our members and the communities we serve. As payers, providers and the State work together to contain growth in the total cost of care we respectfully ask the Authority to ensure that everyday transactions necessary to provide health care and coverage are not subjected to additional administrative costs or burden and that innovative or charitable relationships designed to reduce costs and expand access are not impeded or discouraged. We appreciated your consideration and look forward to continued conversation in the upcoming rules advisory committee meetings. Our detailed feedback is outlined below.

OAR 409-070-0005 Definitions

Eliminate or significantly reduce

We recommend that this section define what it means to “eliminate or significantly reduce” essential services to clarify the scope of the Program. We recommend the following definition: eliminate or significantly reduce essential services means that access to a service within the service area of the entities, taken as a whole and among all service providers in the service area, would be reduced, as a direct result of the material change transaction, by more than 50% and the remaining service providers will not have the capacity to increase service provision sufficient to meet the current need for the service within the service area”. This definition takes into account both the specific change and the net impact to the community. Reduction of services, especially those that may be duplicative and/or unnecessary to maintain, may in fact benefit the community by redirecting resources and/or reducing the total cost of care.

Control

We recommend that the definition of “control” in OAR 409-070-0005(7) be amended to increase the voting control threshold from 10 percent to 51 percent. We are concerned that a ten percent threshold is too low and does not accurately indicate control of healthcare entities in Oregon, the majority of which are nonprofit or privately held organizations.

Significant portion

We recommend that the definition of “significant portion” in OAR 409-070-0005 (20) be amended to increase the threshold from 10 percent to 51 percent. This term is used to identify corporate affiliations, specifically, OAR 409-010-0010 (2)(h) states that “any other arrangement that brings together under common ownership or control all or **a significant portion** of the assets, liabilities, products or health care services or facilities of two or more legal entities, at least one of which is a health care entity or control

affiliate”. We are concerned that this threshold is too low and does not accurately indicate ownership or control of healthcare entities in Oregon, the majority of which are nonprofit or privately held organizations.

OAR 409-070-0010 Material Change Transactions: Covered Transactions

New entities

We recommend that OAR 409-070-0010 clarify that a covered transaction between and among two or more health care entities or affiliates only qualifies as a material change if the health care entities or affiliates did not previously have common ownership or a contracting affiliation. This will make it clear that reorganization, inter-company agreements and changes in ownership distribution under the same controlling entity would not be subject to review. This aligns with the approach Washington State has adopted to provide clarity and ensure efficiency.

Community-based organizations (CBOs)

We recommend that OAR 409-070-0010 (3) specify that transactions involving a health care entity or affiliate and a community-based organization that will not eliminate or significantly reduce access to essential services are not covered transactions. This will ensure that partnerships with or investments to benefit community-based organizations are not discouraged or unduly delayed. We recommend referencing the definition of community-based organizations found in [OAR 813-047-0005](#).

New clinical affiliations and new contracting affiliations

We recommend that OAR 409-070-0010 (4) specify that new clinical affiliations and new contracting affiliations are only covered transactions if they directly result in the elimination or a significant reduction in essential services. This will ensure that everyday transactions are not unnecessarily pulled into this review process and aligns with statutory language and intent.

OAR 409-010-0020 Excluded Transactions

We recommend that the rule clarify that excluded transactions do not require any sort of filing or application with the Authority. This is critical due to high volume of these types of transactions and aligns with statutory intent to exclude everyday transactions that will not impact equity, cost, quality or access.

OAR 409-010-0045 Form and Contents of Notice of Material Change Transaction

Notice content and timelines

We recommend that OAR 409-010-0045 (4) be amended to permit entities to file applications prior to completion and execution of all definitive agreements to the transaction. The requirement to file executed agreements at least 180 days prior to the effective date is unduly burdensome and will likely delay important transactions and waste resources, particularly if changes are required to any of the agreements pursuant to the review process. We recommend that the rule permit parties to file a description of the agreement and key terms relevant for review with the application filing and include executed agreements as an addendum to the filing no later than 180 days after disposition of the material change transaction by the Authority.