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# Health Care Market Oversight (HCMO) Program

House Bill 2362 – Fourth Meeting

December 7, 2021



Oregon  
Health  
Authority

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# Agenda

1. Housekeeping and announcements
2. Opening remarks from Jeremy Vandehey, Director of Health Policy & Analytics
3. Presentation & discussion
  - Covered transactions
  - Excluded transactions
  - Program forms
  - OHA's transaction review and associated fees
  - Appeals and ensuring compliance with conditions

# Housekeeping & Announcements

- This meeting is being *recorded* and will be posted on the program website
- For technical assistance, send a direct message to Brian Toups
- When providing input, please state your name and the organization you represent

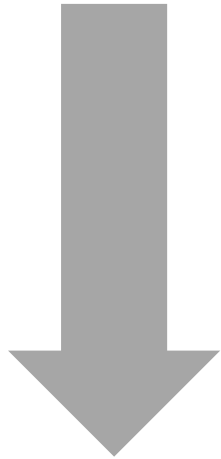
**Submit written comments to [HCMO.info@dhsosha.state.or.us](mailto:HCMO.info@dhsosha.state.or.us)**

# Structure of Meeting

- Today staff from OHA will describe the program and the rules updates in a more user-friendly way
- Instead of going section by section in the rules, we'll present and discuss the content with a focus on the mechanics of the program

# Updated Rules Timeline

*OHA continues  
to accept &  
consider input*



Dec 17, 2021	Notify Legislators & file notice with Secretary of State
Jan 3, 2022	Publish in Secretary of State bulletin
Jan 17, 2022	Rules Hearing
Jan 24, 2022 (earliest)	Last day for public comment
Feb 5, 2022 (earliest)	File final rule with Secretary of State

# What Comes Next?

- **How to provide additional feedback:**  
Send written input to [HCMO.info@dhsosha.state.or.us](mailto:HCMO.info@dhsosha.state.or.us)
- OHA commits to posting sub-regulatory guidance documents, accepting and considering input, and re-posting versions before March 1, 2022
- In January we will initiate a Technical Advisory Group (TAG) to discuss and inform guidance for entities about “essential services” and what constitutes a “significant reduction”
  - We’ll notify all RAC members when the TAG meeting is scheduled.  
Anyone can join the TAG.
- Redesign the website for program implementation: resources for entities, section for filed notices, etc.

# Opening Remarks

Jeremy Vandehey, Director of Policy & Analytics

**Covered Transactions**





# Covered transactions track to the statute

- ★ Merger
- ★ Acquisition
- ★ New contract, clinical affiliation, or contracting affiliation ***that will eliminate or significantly reduce essential services***
- ★ **Corporate affiliation** (defined as a health care entity that controls, is controlled by, or is under common control with a corporate system)
- ★ New partnership, joint venture, accountable care organization, parent organization or management services organization that will:
  - Eliminate or significantly reduce essential services,
  - ***Consolidate providers of essential services when contracting payment rates with payers, or***
  - ***Consolidate insurers when establishing health benefit premiums***

## Goal

Design a program that is clearer to entities whether a transaction is subject to review or not

- Removed the “significantly increases market concentration” test and replaced with a more objective “combine providers of essential services when contracting payment rates”

## Goal

Support entities and the public with guidance documents to describe the program.

List of [upcoming sub-regulatory documents](#):

- Analytic Framework
- Safe Harbor list of excluded transactions
- Criteria for when OHA will use outside advisors, require a comprehensive review or initiate a Community Review Board
- Additional guidance about the concept of control
- Flow charts of the program, including when final executed copies of the agreement is required

# Partial and Complete Control

Statute defines corporate affiliation as “any relationship between two organizations that reflects, directly or indirectly, **a partial** or **complete** controlling interest or partial or complete corporate control”

## The draft rules specify:

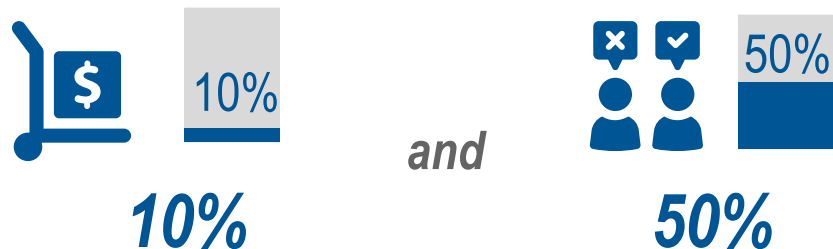
- acquiring control, which is presumed at 10% for insurers and 25% for other entities, and
- acquiring voting control of more than 50%

This aligns with the concept of partial and complete control in statute

# Partial and Complete Control



For **insurers**, partial and complete control are defined at:



For **any other entities**, partial and complete control are defined at:



**Questions or Comments?**

**Excluded Transactions**



# What transactions are excluded?

## Corporate restructures

Example: A health system is restructuring without any change in the ultimate ownership or control of the entity and the restructure does not result in any person or entity newly acquiring control of the entity

## Safe Harbor exclusions

OHA has posted a Safe Harbor list with an exclusion for transactions involving solo practices that occur as a result of retirement or death. OHA will update this list as additional exclusions are approved



**Questions or Comments?**

**Streamlined & Simplified Forms**

# OHA's goal in updating the draft forms was to minimize administrative burden while collecting needed information

The Notice of Material Change Transaction Form is now two pages of questions with no certification or wet signature required.

Rebutting the Presumption of Control Form consists of three questions.

Other forms are now shorter as well.

# HCMO Forms



*Emergency Exemption*



Approved



Denied



*Rebutting Presumption of Control*



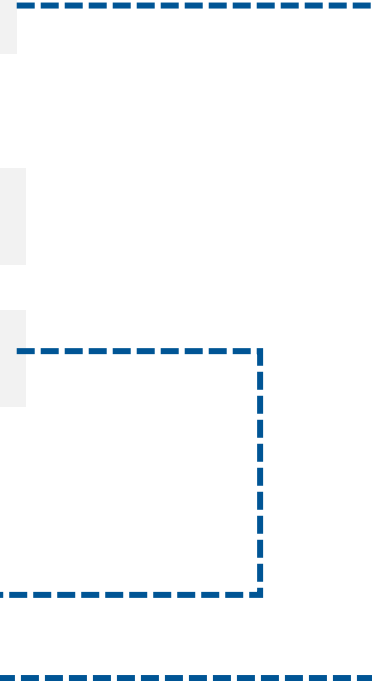
Approved



Denied



*Notice of Material Change*  
*(plus NPI Form, if applicable)*



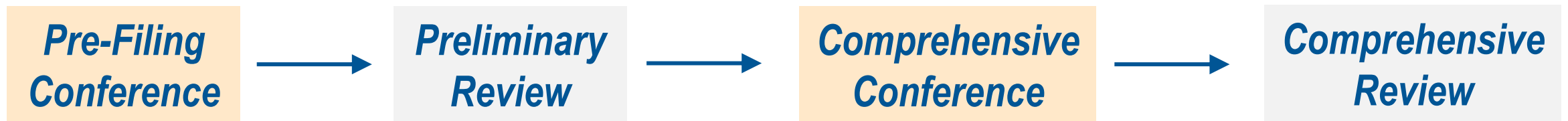
# Questions or Comments?

# Reviewing Transactions & Associated Fees

# Transaction Reviews

OHA commits in rule to making available:

- pre-filing conference with entities
- conference before starting a comprehensive review, if necessary
- Discussion topics: timing, the use of outside experts, the potential involvement of a community review board, and other relevant issues



# Additional changes in draft rules

- New language about Community Review Board member's and outside advisor's conflicts of interest
- Entities may rescind a notice of material change transaction at any time
- OHA will notify entities if outside advisors will be required for a comprehensive review



# Proposed Fees

The proposed fee schedule remains the same as the version posted for the previous meeting

A Fee Development memo is posted and explains the estimated program costs

**Questions or Comments?**

# Appeals & Compliance with Conditions

# Appeals & Compliance with Conditions

Rules now allow entities to appeal emergency exemption determinations

Continuing Jurisdiction section of the rule has been retitled and edited to specify the intention of ensuring compliance with conditions from a given review, not imposing any new conditions after a review has concluded

**Questions or Comments?**

# Reminders & Next Steps

Continue sending input to [HCMO.info@dhsoha.or.state.us](mailto:HCMO.info@dhsoha.or.state.us)

The program website  
(<https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>) lists all letters received

OHA staff will notify all RAC members and interested parties when the Rules Hearing date has been confirmed and when the Technical Advisory Group will first meet

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**Thank You**

The logo for the Oregon Health Authority. It features the word "Oregon" in a smaller, orange, serif font positioned above the word "Health", which is in a larger, blue, serif font. Below "Health" is the word "Authority" in a smaller, orange, serif font. A thin blue horizontal line is positioned between "Health" and "Authority".

Oregon  
Health  
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