



July 29, 2022

Zachary Goldman  
Oregon Health Authority  
421 SW Oak St, Ste 850  
Portland, Oregon 97204

Via email: [hcmo.info@odhsoha.oregon.gov](mailto:hcmo.info@odhsoha.oregon.gov)

RE: Rules Advisory Committee: Health Care Market Oversight Program

Dear Mr. Goldman:

Providence is guided by a Mission of caring and commitment to the communities we serve. We are always evaluating opportunities to create the systematic changes needed to increase access, improve quality and lower costs. As part of this commitment, Providence has consistently engaged in stakeholder conversations related to the passage and implementation of House Bill 2362. We appreciate the opportunity to comment on the proposed rule changes to the Health Care Market Oversight Program distributed July 7, 2022.

Providence respectfully requests that the Oregon Health Authority consider the following before refiling the Health Care Market Oversight Program rules.

**OAR 409-070-0005. Definitions**

- Subsection (20) includes a new definition of “Hospital system” that would result in questions of whether a transaction is reportable and may require a health system to submit notices for a transaction involving an entity it did not control. To limit confusion, we recommend deleting “governance, or membership” from (a) and inserting “or control” in that same subsection. In (b), we recommend deleting “governance, or membership”.
- Subsection (27) includes a new definition of “Services that are essential to achieve health equity” – Language in this section is broad and would benefit from further clarification. For example, “(A) Any service directly related to the treatment of chronic conditions” would encompass nearly every clinical service we provide and in (C) it is unclear what is meant by “non-clinical services.” If services are non-clinical, it seems these regulations would not apply to health care entities. Specific to (B) and (C) we would note that, as a Catholic health care system, our conscience objections are protected by the First Amendment, affirmed in law, and nothing in the regulations should require us to file notice based on these objections nor should we or any other provider be prevented from practicing in a way that is consistent with our sincerely held religious beliefs, which are constitutionally protected.

### **OAR 409-070-0010. Covered Transactions**

- Section (3) – Providence has concerns defining “significant reduction” as a change of one-third or more and would suggest the 50% reduction established in sub-regulatory guidance is more appropriate. In addition, we would recommend carrying over important clarification that exists in sub-regulatory guidance including:
  - To clarify filing requirements and hold entities appropriately accountable for significant reductions, significant reductions should be limited to those intended or anticipated by the entities as part of the planned transaction.
  - The OHA should provide for some flexibility, as a set threshold is not a perfect measure. We would appreciate consideration for the fact that in some circumstances, particularly in small and rural communities, minor changes with no significant impact on the community might trigger this threshold.
- Section (3)(b) – Providence continues to object to the language in this subsection. Clinical experiences and training opportunities are outside of the scope of the authorizing statute and were never discussed as being within scope, we respectfully request that the following be removed: “or a reduction in the number of clinical experiences of training opportunities for individuals enrolled in a professional clinical education program.”
- Section (3)(c) - Providence agrees that addressing the needs of the underinsured is an important area of focus but there is no common definition of “underinsured” and it is highly dependent on the circumstances of the individual and the type of plan they have. If the OHA decides to leave the term “underinsured” in the regulations it will be necessary to define it.
- Section (3)(d) - Providence continues to object to this provision as being outside the scope of the authorizing statute. It would also prevent us from practicing in a way that is consistent with our sincerely held religious beliefs, which is constitutionally protected as noted above.

### **OAR 409-070-0030. Requirement to File a Notice of Material Change Transaction**

- Section (3) – We would ask that the OHA lower the fees to more closely align with the cost of completing a comprehensive review and to be consistent our shared values around limiting health care cost growth. While we respect the need for the OHA to cover costs of the program, partnerships will be essential to maintain services in the community and should be viewed in that manner, not discouraged through the fees process.
- Section (4) – Providence recommends deleting this subsection because a 10% increase in the fees every two years is not based on an actual increase in costs to manage the program and contradicts the state’s own goals around managing the total cost of care.

### **OAR 409-070-0060. Comprehensive Review of a Notice of a Material Change Transaction**

Understanding these are complex transactions, it’s important that the OHA engage with health care entities to ensure there is clarity about the goals and structure of the transactions under review. The rules need to outline two separate processes for engagement – one for parties engaged in the transaction and one for the public. Specifically, we request:

- If the OHA engages an expert, any findings will be made available to the parties at least 30-days prior to a public meeting or decision-making meetings by a review board. Parties to a transaction shall have the opportunity to submit their own report in response to one from the OHA expert in advance of a public meeting or meeting of a review board.

- Any complaints regarding a potential transaction received by the OHA and used to render a decision should be made available to the parties in advance of a public meeting or meeting of the review board.
- Any potential conditions imposed in connection with approval of a transaction must be made available to the parties at least 45-days in advance of the OHA issuing a decision, and the parties must be given a meaningful opportunity to respond to the proposed conditions, including proposing alternative conditions. The OHA will provide a reasoned decision if rejecting proposed alternative conditions from parties to a transaction.

Thank you for the opportunity to provide feedback. We look forward to continuing to partner to ensure that quality health care is available to all in Oregon.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Downey', with a stylized flourish at the end.

Kristen Downey  
Director, Government Affairs  
Providence - Oregon