

Date: November 11, 2021

To: Pat Allen, Director, Oregon Health Authority  
Jeremy Vandehey, Health Policy & Analytics Division Director, Oregon Health Authority  
Zachary Goldman, Health Care Economist, Oregon Health Authority

RE: House Bill 2362: Rules Advisory Committee

Thank you for the opportunity to provide comments on the draft regulations to implement the Health Care Market Oversight Program, as created by HB 2362. Willamette Dental Group (WDG) appreciates the Oregon Health Authority's effort, on a tight timeline, to develop rules to implement HB 2362. However, the rough-draft rules as they stand are not anywhere near ready to be finalized.

Those to be regulated under HB 2362 should be able to determine from the rule language whether a transaction is or is not subject to review. As has been stated by many members of the RAC during the first two meetings, the rough-draft rules are replete with vague provisions and in some cases quite clearly are beyond the scope of the bill. There also is great risk that the rough draft rules, as they stand, would hinder efforts of health care entities to collaborate in day-to-day business to drive down costs and advance outcomes.

Proponents of HB 2362 explicitly stated during the Nov. 4 RAC meeting that a key objective of rules should be to slow down transactions to a point where fewer transactions occur as a result of regulatory friction. That should not be the objective of any fair or equitable rule. The rules should provide clear process and objective standards by which subject transactions are evaluated and approved/disapproved, so that similar transactions by and large have similar review results.

To productively move forward, we urge the Oregon Health Authority (OHA) to take the following steps:

1. Most important, take a step back and engage in dialogue with stakeholders, rather than receive one-way input, to come to some conceptual consensus of what types and levels of transactions should be in the first wave of rulemaking, and develop rule language from there. This would require using temporary rulemaking authority due to timelines.
2. Through consultation and dialogue with stakeholders, begin to create an explicit exclusions list. While not exhaustive by any means, we would suggest such a list include as a starting point:
  - a. Participation in group purchasing organizations, buying groups and the like.

- b. Participation in cooperative EMR, health information exchanges, community information exchanges and other cooperative IT and data-sharing programs.
- c. Transactions triggered by the retirement of principal owners of clinics.
- d. Sub-capitation arrangements with CCOs and commercial insurers.
- e. Cooperative mass vaccination and health screening programs.
- f. Cooperative professional continuing education.
- g. Cooperative public health education.
- h. Cooperative demonstrations, pilots, etc. (e.g., we are a participant in SB 738 workforce pilot)

While a rule cannot document every possible permutation, such a list would provide helpful guidance to stakeholders.

- 3. Align all process steps of notice and appeal with the Oregon Administrative Procedures Act.
- 4. Add an optional, expedited process at a nominal fee for entities to make a summary notification and attestation filing that their transaction is not subject to review, and OHA need only accept the filing. It is foreseeable that smaller entities, for compliance reasons, will want to document that they are not subject to review
- 5. The rules should be revised to follow the confidentiality and conflict-of-interest provisions of HB2362 and provide that persons (other than Oregon Health Authority, Oregon Department of Justice, and Department of Consumer and Business Services employees) granted access to confidential applicant information be required to sign a non-disclosure agreement, with substantial penalties for violation of an NDA.

Please bear in mind that the above is not an exhaustive list of changes, but instead examples of areas where these rules need more substantial work than just one more round of RAC discussion will allow.

We stand ready to work further with OHA in development of the proposed rules and Market Oversight program.

Sincerely,

Matthew Sinnott  
Senior Director of Government Affairs and Contracts  
Willamette Dental Group

*Additional/Alternate contact:*

Tom Holt  
The Holt Company