

Health Care Market Oversight Program

Kroger-Albertsons Community Review Board Guide

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About HCMO

Under the Health Care Market Oversight (HCMO) program, the Oregon Health Authority (OHA) reviews health care business deals, such as mergers and acquisitions, to make sure they don't harm people or communities in Oregon. HCMO was created by Oregon's legislature in 2021, and the program launched on March 1, 2022.

When an entity, such as a hospital, insurance provider, or other health care company, is planning a deal, they must submit a notice to HCMO. The notice includes information about the terms, potential impacts, and other entities that are involved in the transaction. HCMO reviews this information and considers how the deal may affect health care access, affordability, quality and health equity for people in Oregon.

Following review, OHA can approve the deal, conditionally approve, or disapprove. For some reviews, OHA may opt to convene a community review board. Community review boards are temporary groups and exist solely to provide input to OHA about a particular health care business deal.

Community Review Board Charge

The community review board has two key roles:

1. Help OHA understand how a deal could affect people and communities in Oregon.
2. Make a recommendation about whether OHA should approve a deal to proceed as planned, apply conditions to the deal, or disapprove the deal.

Community review boards and their members must follow the requirements outlined in HCMO's statute (ORS 415.501(11), 415.501(15), and 415.501(18)) and rules (OAR 409-070-0062). Community review boards can hold multiple meetings and up to two (2) public hearings to receive testimony and evidence from the entities and OHA before making a recommendation.

Community Review Board Principles

The community review board's recommendations are guided by the following principles, consistent with the goals of the HCMO program:

- Promote transparency: Help to inform members of the public and communities in Oregon about planned transactions.
- Support statewide priorities: Ensure that health care consolidation in Oregon supports statewide goals related to health equity, lower costs, increased access, and better quality.

- Serve the community: Serve the interests of the general public, including patients and other consumers of health care in Oregon.
- Support inclusiveness: Consider the diversity of Oregon communities and peoples' varying experiences of the health care system across these communities.

Membership

Application

Those interested in joining a community review board must submit an application to OHA by completing three forms:

1. Application form
2. Demographic form
3. Conflict of interest form

Applicants should send completed forms to hcmo.info@oha.oregon.gov. OHA will select community review board members once the application period has ended and will consider all applications received. Applicants will be notified via email whether or not they were selected for the community review board.

Member Qualifications

To be appointed as a member of a community review board, community members must meet the following qualifications:

1. Live or work in an impacted area. For example, if you live in a city or county served by a hospital, you would qualify to participate in a community review board related to that hospital. Each community review board application notice will include information about any geographic requirements for membership.
2. Have the ability to actively participate. This includes completing orientation, attending up to five virtual meetings, reviewing materials in preparation for meetings, participating in discussions, and making recommendations.
3. Have relevant knowledge, experience, or background to contribute. You do not have to be a health care worker to participate in a community review board. In fact, no more than one third of community review board members may be people who represent institutional health care providers. Members could be a patient or consumer, live near a facility, or have specific health care needs.

Selection & Board Composition

OHA will base selection decisions on the following criteria:

- The community review board must include at least one member representing each of the following groups: patient or consumer, health care expert, and consumer advocate.
- Employees or contractors of companies involved in the transaction may not be members of a community review board.
- No more than one third of members may work for an institutional health care provider such as a hospital, health system, or surgery center.

- OHA will seek to include individuals representing communities experiencing health inequities, including communities of color, people with lower incomes, people with disabilities, and individuals who identify as lesbian, gay, bisexual, transgender or queer or who question their sexual or gender identity.
- OHA will seek to select members with relevant experiences, including experiences as a patient or consumer interacting with the health care system, experience working in the health care sector, or other specific experience related to the deal. For example, in a deal involving pharmacies, OHA may seek members who are pharmacists, pharmacy technicians, write prescriptions for patients, or get their prescriptions filled at the pharmacy involved in the deal.

Member Expectations and Requirements

Member Duties

- Attend all meetings and public hearings, as able, and participate to the best of their ability.
- Review all orientation, meeting, and transaction review materials provided by OHA.
- Consider public comments and statements by the organizations or companies involved in the deal.
- Participate in discussions.
- Contribute knowledge, expertise, or information relevant to discussions.
- Share relevant personal or professional experiences.
- Advise OHA on what to include in the review.
- Provide information.
- Participate in developing a recommendation to OHA.

Conduct

Members agree to act in good faith in all aspects of the community review board process. This includes being honest and refraining from taking any actions that will undermine or threaten the deliberative process. This applies to behavior outside of meetings.

Members are expected to:

- Refrain from discussing the transaction and review with representatives of any of the parties involved in the transaction.
- Be respectful of other review board members, staff, and audience at all times.
- Refrain from personal attacks, intentionally undermining the process, or publicly criticizing or mis-stating positions taken by other participants in the process.
- Maintain a respectful tone in all written communications, including email, blog posts, and social media.
- Honor decisions and recommendations made by the group.
- In any discussions with outside persons, refrain from representing their own views and opinions as the collective view of the community review board.

Media

Members agree to the following conduct in any communications with the media:

- Defer to OHA staff for all media communications related to the community review board's purpose, composition, processes, recommendations, and timelines.
- Refrain from speculating about the board's ultimate recommendation to OHA.
- Not negotiate through the media or use the media to undermine the work of the community review board.
- Raise all their concerns, especially those being raised for the first time, at a community review board meeting and not through the media.
- Refrain from representing their own views and opinions as the collective view of the community review board.

Time Commitment

Community review board members serve for a limited time until the board has provided a recommendation to OHA. Duration of the service and total work hours will vary depending on the number of board meetings needed for members to learn about the deal, the types of concerns raised by board members or members of the public, the amount of discussion needed to reach a recommendation, and other factors specific to the deal under review. Members should plan for duration of around six (6) months and expect to spend about 40 hours of their time attending meetings and reviewing materials in preparation for meetings.

Public Officials

Community review board members are considered public officials under Oregon law; Members are required to follow Oregon Government Ethics law, including its guidance on conflicts of interest and potential conflicts of interest. For more information, please see [A Guide for Public Officials](#).

Conflict of Interest

As public officials, community review board members are subject to the conflict-of-interest disclosure requirements in [ORS Chapter 244](#) as a public official (see [A Guide for Public Officials](#) for more information). Members must disclose any potential or actual conflicts of interest. If applicable, members must file a notice of potential conflict of interest, pursuant to ORS 415.501(11)(b) and OAR 409-070-0062(4). Members with a potential conflict of interest must announce the potential conflict during community review board meetings.

Compensation

Qualified members may receive payment for performing community review board duties, as defined in ORS 292.495(4). Per diem compensation is equal to the per diem paid to members of the Legislative Assembly for each full or partial day that an Advisory Member performs official duties. Community review members should contact hcmo.info@oha.oregon.gov to receive compensation. OHA staff will provide the appropriate forms and guide you through the process.

Removal

Members may be removed if they fail to fulfill the responsibilities outlined in this document. Grounds for removal include:

- Failure to attend meetings without adequate justification (e.g., illness, emergency)
- Failure to adhere to member expectations or group agreements
- Presence of a conflict of interest
- Providing false or misleading information in application materials

OHA may choose to replace removed members.

OHA Responsibilities

OHA supports the community review board in carrying out its charge by performing the following activities:

- Provide information about the transaction in a form that is accessible to all members.
- Share work products from OHA's analyses (provided that these do not contain confidential information).
- Advise members about community review board processes and expectations.
- Advise members on matters relating to community review board compensation, conflicts of interest, and members' responsibilities as public officials.
- Provide meeting support, including scheduling and logistics.
- Provide other meeting support as needed, including interpretation, translation, and other meeting accommodations as requested.
- Develop agendas and meeting materials.
- Facilitate meetings to create a safe and supportive environment where members can freely express their views.
- Respond to board members' requests for information to the extent the information is available to OHA and not subject to confidentiality restrictions.
- Document CRB discussions and decisions and provide written meeting summaries.
- Draft a written summary of the board's recommendation for review and approval by the board.
- Carefully consider the board's recommendation in arriving at a decision on the outcome of the review.
- Decide whether to approve the deal, approve with conditions, or disapprove the deal.

Meeting Procedures

Types of Meetings

Community review boards are expected to hold up to five (5) regular meetings to discuss the transaction and develop their recommendations. Regular meetings are held virtually and are hosted and facilitated by OHA.

Additionally, community review boards may hold up to two (2) public hearings. The purpose of community review board public hearings is to obtain oral testimony from the entities involved in the transaction and provide an opportunity for community review board members to ask questions of the entities. Public hearings are formal meetings with dedicated time for members of the public to provide comments about the transaction. Community review board public hearings are held virtually and are hosted and facilitated by OHA.

Public Meetings and Records

Community review board meetings are open to the public and will be conducted under the provisions of Oregon Public Meetings Law (ORS 192.610-690). Members of the public may submit public comment in accordance with Oregon Public Meetings Law. In the absence of a quorum, a review board may still receive public testimony.

All meetings and public hearings will be recorded, and OHA will produce a written summary. Meeting and public hearing recordings, summaries, agendas, and any reference materials will be publicly posted to HCMO's website. Community review board records, including formal documents, discussion drafts, meeting summaries and exhibits, are public records.

Communications of members are not confidential, because the meetings and records of the community review board are open to the public. "Communications" refers to all statements and votes made during the review board meetings, memoranda, work products, records, documents or materials developed to fulfill the charge, including electronic mail correspondence. The personal, private notes of individual members might be considered public to the extent they are "related to the conduct of the public's business," (ORS 192.410(4)).

Decision-making Process

The community review board is charged with making a recommendation to OHA on whether to approve, conditionally approve, or disapprove the transaction. The board will use a consensus decision-making model to develop its recommendation. Consensus decision-making means that the board's recommendation must be one that all members can accept, support, live with, or agree not to oppose.

If a consensus-based recommendation cannot be achieved despite the board's best efforts, then a recommendation will be based on a majority vote. Members who disagree with the resulting recommendation may state their disagreement and their reason(s) for disagreeing. The board's recommendation to OHA will document any such minority opinions.

Agreement on a recommendation requires that a majority of the community review board members are present ("quorum").