## December Response Follow Up

1. **December Response #1:**

**a. Provide supporting analysis for the Legacy board's estimate that its health system will require $300-$750 million in additional investment (beyond standard capital outlays) over the next five years.**

In 2022, coming out of the pandemic, Legacy Health engaged Kaufman Hall and Associates to develop a high-level framework to estimate strategic investments that would be needed for Legacy Health to achieve its financial and clinical goals. Ultimately, Kaufman Hall estimated that Legacy would need to invest $317 million to $745 million over a five-to-ten-year period. The key difference between the lower-end and higher-end estimate were two variables:

- The lower end of the estimate assumed Legacy Health would recruit and employ 75-100 new primary care providers and the higher end of the estimate assumed Legacy Health would have an opportunity to acquire a large practice in the Portland metro area.
- Cost of implementing virtual care and digital patient engagement tools was estimated between 7 to 12 percent of annual net revenue.

The chart below summarizes Kauffman Hall's analysis.

| *Current LH Gaps with Potential Investment Needs* | Areas for Investment Focus | Key Assumptions & Caveats | Preliminary Investment Range[A] |
|---|---|---|---|
| **Ambulatory footprint & virtual access points** | Ambulatory footprint growth in existing core market | • Legacy adds 12-16 ORs via ASCs at cost of $4-5M / OR | • **Build:** $54 - 72M<br>• **Acquire:** $60 - 90M |
| | Ambulatory footprint expansion regionally (e.g., Washington Co) | • Geographic considerations and/or shifts from IP to ASC settings could increase ORs needed | |
| | Freestanding imaging development | • Legacy adds 32-40 imaging rooms via freestanding centers at cost of $1M / machine | • **Imaging Machines[C]:** $32 - 40M |
| | Virtual care and digital patient engagement tools | • Total solution costs ~7-12% of annual net patient revenue | • $150 - 275M |
| **Breadth and depth of provider network** | Deeper alignment with independent provider groups | • Legacy adds 75-100 PCPs<br>• Number of PCPs required and acquisition cost depends heavily on which channels Legacy pursues to grow VBC lives | • **Acquire:** $66 - 300M |
| **Capabilities to manage covered lives** | Investment in additional capabilities and tools (analytics, reporting, lives management) | • Upfront capital costs vary depending on in/outsource decisions, scale of covered lives, and capability depth<br>• Cost range provided for data / analytics / IT | • $15 - 40M |
| **Other supporting infrastructure updates** | Reconfiguration of current clinic footprint, capital improvements, additional inpatient beds, etc. | • Legacy may need or prefer to make additional investments in infrastructure or growth | • TBD |
| ***Potential partners co-investing would alter the overall range*** | | **Total Preliminary Range:** | **$317-745M + other infrastructure** |

Note (A): Based on preliminary Kaufman Hall research and insights; costs for new build vary widely based on geography, size, and services offered. (B) average annual gross revenue per PCP of $1.4M and average cost to acquire per PCP of $875K ; cost of acquisition varies widely based on size and profitability of the provider group. (C) Assumes imaging machines are placed in pre-existing space.
Sources: Sherlock Plan Navigator 2021: Health Plan Administrative Benchmark Study; UHCSolutions, McKinsey "The Math of ACOs".

**b. The December Response states that the Oregon Health and Science University ("OHSU") has agreed to invest $1 billion over 10-13 years. Provide a projection of scheduled or potential investments or identified areas of investment to the extent one has been prepared.**

Given the uncertainty of meeting all closing conditions, and without an understanding of conditions that could be imposed by regulatory agencies, potential investments or identified areas of investment have not been identified. The parties' projections include capital investment over time, but such spending has not been approved. Pursuant to the System Combination Agreement, the post-closing unified health system board will have the right to provide the OHSU Board recommendations relating to the capital commitment expenditures. The unified health system Board has not been reconstituted and will not be in place to make such recommendations until closing.

OHSU is aware that Legacy depreciation expense as a percent of revenue has fallen from nearly 5% to less than 2.5% Legacy capital additions have ranged from below 2% to nearly 4%, with an average of 3.2%.  By contrast, the Moody's median started at over 6.5% pre-pandemic and is now 5%, with an average of 5.3%.  That is to say, OHSU is aware that there is significant need for capital investment at Legacy facilities given it's 24-year average age of plant.  The timeline for setting a budget for the Permissible Capital Commitment Expenditures is a set forth below.


2. **December Response #2:**

   a. **The December Response states that "OHSU determined that, given the capital needs of Legacy Health and the capital commitment, it would not be prudent to expend further capital to purchase Legacy Health's 50 percent member interest in PacificSource."**

      i. **Why did Legacy Health not sell its member interest in PacificSource thereby providing Legacy Health with an infusion of capital to offset the amount of capital that OHSU would need to provide to Legacy?**

In 2022, Legacy Health was in the process of evaluating strategic pathways that would allow Legacy Health to achieve its vision of becoming a value-based healthcare organization. One of the strategic options Legacy Health considered was the sale of Legacy Health's 50% member interest in PacificSource to generate capital, which was valued at approximately $350-$400 million. Legacy Health determined that $350-$400 million would be insufficient to fulfill its strategic and routine capital needs. Legacy Health recognized that its ability to successfully execute its transition to a value-based care organization would be dependent on a range of market conditions (e.g., availability of independent primary care providers and/or other care delivery assets), which could not reasonably be addressed via a sale of its interest in PacificSource.  Legacy Health determined that affiliating with a strategic partner like OHSU was the best path forward to achieve its value-based care goals and sustain its capital investments.

Undertaking the process of selling Legacy Health's interest in PacificSource to offset the amount of capital that OHSU is providing would significantly delay the System Combination and require the parties to operate under an uncertain timeline. The pressure to timely access capital and close the System Combination would have compelled Legacy to sell its interest in PacificSource to the *first* buyer, who may not have been the most *suitable* buyer.

Legacy Health and the Foundation are committed to identifying the *most* *suitable* buyer for PacificSource, which means a buyer that can preserve and enhance PacificSource's charitable mission while contributing a substantial sum to the corpus of the Foundation.

Finding the most suitable buyer for PacificSource involves establishing specific transaction goals, hiring transaction advisors, engaging with the community, conducting necessary due diligence, negotiating transaction terms, obtaining third-party consents, and securing regulatory approvals. This is a years-long process and may require actively investigating several transaction partners and structures. Because OHSU rejected acquiring PacificSource, the parties would have had to condition the closing of the OHSU-Legacy affiliation on the closing of the PacificSource transfer to a third party. This would have delayed the closing of the System Combination, perhaps for a period of years, and brought significant uncertainty to the ultimate timing of the closing, further complicating integration planning.

Under the current structure, the transfer of PacificSource to the Legacy Health Foundation maintains, to the greatest extent possible, continuity of ownership and control, while giving the Foundation ample time to find the right transaction partner for PacificSource. Moreover, as detailed in Item 5 of the Form A, Legacy Health identified the Foundation as the best possible steward of PacificSource. First, the Foundation is an existing affiliate of Legacy Health and the Foundation shares PacificSource's charitable focus on improving the health of underserved communities in Oregon. Accordingly, the Foundation is uniquely positioned to allow PacificSource to continue operating as it does now while supporting PacificSource's mission of fostering better health, better care, and better costs. Second, the Foundation will support the financial stability of PacificSource by, among other things, preserving its current operations and strategic direction. And finally, the Foundation will be in the best position to identify a strategic buyer who will help PacificSource achieve its long-term goals. The Foundation is committed to conducting a thorough and informed process to identify such a buyer and will only consider buyers who will advance PacificSource's charitable mission.

**3. December Response #4:**

**a. Explain why the Foundation would have ultimately been the beneficiary of the proceeds of a sale of PacificSource.**

Legacy Health decided that OHSU is the best strategic partner for Legacy in order to serve its mission for the next 150 years. Because OHSU had no interest in purchasing PacificSource, Legacy Health sought an alternative that would advance Legacy Health's charitable mission, cause zero immediate disruption to PacificSource, and create the time and space necessary to identify the best possible buyer for Legacy Health's 50% member interest in PacificSource.

In that context, the Foundation is the obvious choice to be the beneficiary of Legacy Health's PacificSource interest. The Foundation is, at a conceptual level, the continuation of Legacy Health as an independent, nonprofit entity dedicated to improving the health of the communities it serves. Thus, by transferring its interest in PacificSource to the Foundation, Legacy Health ensures that (a) it protects

PacificSource which is a critical health plan in Oregon, with the largest Medicaid membership, (b) there is zero disruption to services for PacificSource plan members, (c) it eventually achieves a return on its initial $247.5 million investment in PacificSource, and (d) the sale proceeds will be used to improve health equity and access in the Oregon and Southwest Washington communities Legacy Health currently serves. It achieves all these goals without disrupting or delaying the System Combination, while nonetheless ensuring that the Foundation has the time and resources necessary to identify the right strategic buyer for PacificSource. By receiving the proceeds of the Foundation sale, the Foundation can continue Legacy Health's longstanding mission to improve health equity and access in the communities that it currently serves.

**b. In the Notice of Material Change Transaction ("notice") filed with OHA's Health Care Market Oversight ("HCMO") Program, the Parties state, "the Foundation Funding will ensure that the PacificSource holding company system will remain well capitalized with liquid assets sufficient to address financial needs as they arise." Similarly, Item 13(E) of the CCO Form A Statement provides that "[t]he PacificSource holding company system will remain well capitalized with liquid assets sufficient to address financial needs as they arise." Subsequently, in the Parties December Response, the Parties state that "The parties do not anticipate the Foundation making any investments in PacificSource. The post-closing Foundation Board will make all funding decisions, and the use of the Foundation's charitable assets will be subject to all applicable grant or donor restrictions."**

**How is the capital support commitment as stated in the HCMO Notice and CCO Form A Statement impacted by restrictions on the Foundation's assets?**

The Legacy Health Foundation currently has approximately $1.6 million in unrestricted funds that it may use for any charitable purpose in line with its mission. Legacy Health Foundation will retain these unrestricted funds post-closing. The net cash to be transferred to the Foundation at closing (the "Grant") will be governed by the Grant Agreement between Legacy Health and Legacy Health Foundation. Under the Grant Agreement, the Foundation must use the Grant to support the Foundation's mission and vision in Oregon and Southwest Washington, including for (i) grants to nonprofit organizations, tribes, agencies, educational institutions, OHSU and other hospital-based systems in furtherance of the Foundation's mission, (ii) the Foundation's program costs and activities, and (iii) Foundation's operating and administration costs.

The Grant Agreement prohibits and disallows (i) grants to or for the benefit of other organizations with primary focus and operations outside of Oregon and Southwest Washington and (ii) grants to or for the benefit of any hospital-based health system that is in competition with the OHSU System (as defined in the Definitive Agreements) for purposes of engaging in activities that are competitive with the OHSU System, in whole or in part, as opposed to the purpose of addressing community health needs and otherwise furthering the mission of Legacy Health Foundation. The Foundation will also be prohibited from soliciting donations from individuals and corporations.

The post-closing Foundation Board will have discretion to select grants that align with its mission. We do not believe that the Foundation would consider capital support for PacificSource a "grant for the furtherance of the Foundation's mission."

Instead, the Foundation views PacificSource as an asset of the Foundation that will, over time, produce a return. Thus, the post-closing Foundation Board could choose to invest further capital in PacificSource as part of a diversified investment strategy intended to produce a return on investment for the Foundation's corpus.  Such an investment would not necessarily implicate grant or donor restrictions.

We emphasize, however, that the Foundation does not intend or expect to make any further investments in PacificSource.

**c. In the December Response, the parties state that "Legacy Health is confident that the structure of the Foundation Transfer will preserve PacificSource's financial condition." Explain what aspects of the Foundation Transfer structure provide the parties with confidence about preserving PacificSource's financial condition and why.**

As stated in our prior filing, the Foundation does not intend to seek any dividends or distributions from PacificSource, and would have no reason to do so given the substantial funds that will be distributed to the Foundation as part of the System Combination. In an alternative transaction where the Foundation did not receive substantial assets from Legacy Health, or Legacy Health had to rush to find a third-party buyer prior to the closing of the System Combination, the Foundation would not be able to make similar guarantees. For instance, if the Foundation was not going to receive the Grant, the Foundation would be reliant on PacificSource to fund its health equity mission. The Foundation could do so by requesting distributions from PacificSource, but this may deprive PacificSource of the capital it needs to effectuate its long-term strategic plan. Alternatively, the Foundation could seek a quick sale of PacificSource to the first viable bidder. However, this bidder may not have the capital, strategic alignment, or expertise necessary to ensure PacificSource's long-term success.

Accordingly, the proposed transaction structure, which will see the 50% member interest in PacificSource transferred to a well-capitalized, strategically aligned organization, preserves the financial stability of PacificSource far better than any available alternative.

**d. Does the Foundation have or anticipate having a contractual commitment to provide capital to PacificSource (e.g., a capital maintenance agreement or "keepwell")?**

No. PacificSource is financially stable and does not anticipate any capital needs in the foreseeable future.

**e. Provide the full analysis as to the adequacy of both capital and liquidity requirements for PacificSource over the next 5 years including the $350M to be received at closing. Provide the expertise of the individual(s) along with all assumptions considered. If there are capital improvements included in the assumptions such as general IT and operational systems improvements included, provide details**

PacificSource has produced financial projections over a three-year time horizon, which is the maximum period for which it produces such projections. See Exhibit 30 of the HCMO Filing at HCMO 00936 – 00947. PacificSource does not believe that it can produce meaningful 5-year projections. However, the financial projections provided to DCBS and OHA show that PacificSource anticipates that it will remain financially stable for the foreseeable future and will have capital and surplus in excess of statutory minimums. PacificSource continues to believe that to be the case.

PacificSource's financial projections do not include and cannot include any of the Foundation's assets. Statutory accounting rules do not allow an insurer to include the assets of a corporate member in its financial statements, nor can it rely on such assets to meet capital and surplus requirements.

As stated elsewhere, PacificSource cannot foresee requesting or relying on any Foundation assets for capital or liquidity. In the unlikely event that PacificSource does require additional capital and surplus, it would have the same options to address its financial shortfall as it does today.

The financial projections previously provided were prepared by PacificSource's CFO and include industry standard assumptions. The financial projections produced to date do not include any extraordinary capital improvement expenditures. PacificSource expects that its capital expenditures will remain steady over the next 3-5 years and consistent with past practices.

**f. Provide details regarding the statement that a portion of the cash paid at closing will be held back in part to "compensate OHSU for self-insurance liabilities…," including a description and supporting documentation regarding how the Self-Insurance Holdback Amount was determined.**

In finalizing the example calculation of the Initial Foundation Funding Amount set forth at Exhibit H to the System Combination Agreement, OHSU identified to Legacy that there was a reserve related to malpractice and other liabilities on the Legacy Health balance sheet and no corresponding cash for that reserve within Legacy or within Legacy's captive insurer entity. The parties discussed ways to address a reasonable portion of these potential unfunded losses, including a holdback from the Initial Foundation Funding Amount and coverage under the indemnification provisions of the System Combination Agreement. The parties determined to address a reasonable portion of these potential unfunded losses through a holdback and agreed that the amount of $32 million would be held back from the Initial Foundation Funding Amount, as set forth in Section 3.5.2 of the System Combination Agreement. Pursuant to Section 3.5.5 of the System Combination Agreement, OHSU will be permitted to use these holdback funds to satisfy applicable claims set forth in Section 3.5.5, and any funds remaining in this holdback will be paid to Legacy Health Foundation after the fifth anniversary of the closing. Summaries of the supporting documentation are set forth in the May 30, 2024 Legacy Health Board presentation. See Exhibit 16.

**g. Explain how using Legacy Health's net cash as a funding amount for the Foundation will preserve "the financial stability of the combined public university health system."**

Under the System Combination, OHSU will assume substantial assets from Legacy Health, the total value of which far exceeds Legacy Health's net cash to be transferred to the Foundation. Specifically, OHSU projected that it will receive (a) $875 million of net property, plant & equipment, (b) $160 million cash & investments net of debt, and (c) $175 million of working capital and other assets. Thus, upon the closing of this transaction, OHSU's projected net assets (i.e., assets minus liabilities) will increase from $4.4 billion to over $5.6 billion—a number that takes into account the net transfers to the Foundation.

OHSU is not providing Legacy Health any monetary compensation for such assets. However, OHSU and Legacy Health mutually decided that the communities of Oregon and Southwest Washington would benefit from the creation of a well-funded health equity Foundation that will continue Legacy's long history of serving this community. This contribution to the Foundation balances the goal of endowing the Foundation with assets necessary to make a meaningful improvement in health equity and access in the region, while preserving the financial stability of the combined public university health system.

**h. The December response states that "Legacy Health identified the Foundation as the best possible steward of PacificSource." Explain how Legacy Health compared the Foundation to other potential stewards if they also determined that "it would not be practical to identify an appropriate buyer…prior to the closing of the System Combination Agreement."**

When OHSU informed Legacy Health that it would not purchase PacificSource, there was limited time to identify an alternate disposition of the asset. A rushed process to find a buyer would not have served the interest of any of the parties involved. It would have been a distraction for Legacy Health staff, who were already working hard to negotiate, document, and plan for the transaction with OHSU. It also would have necessarily resulted in Legacy Health prioritizing bidders that could close quickly, most likely at the expense of finding a mission-aligned buyer that could maximize the value of PacificSource for the Foundation. And finally, given the lengthy regulatory approval processes associated with the transfer of an insurer and CCO, it was unlikely that the parties could have consummated the transaction prior to the closing of the OHSU-Legacy transaction (and there was always a risk that OHA would reject the buyer entirely). Thus, as a practical matter, it was impossible to find a buyer for PacificSource without substantially jeopardizing the Legacy-OHSU integration.

The Foundation is the best possible destination for Legacy Health's 50% member interest in PacificSource because it ensures that (a) PacificSource will, to the greatest extent practicable, enjoy continuity of ownership during this period of transition, (b) it protects PacificSource which is a critical health plan in Oregon, with the largest Medicaid membership, (c) there is zero disruption to services for PacificSource plan members, and (d) the asset will continue to be deployed to fulfil Legacy Health's longstanding mission. Legacy Health's Board has a fiduciary duty to further the mission of Legacy Health. Transferring PacificSource to an unaffiliated third party, or executing a rushed sale of PacificSource for an amount below its actual value, would not have advanced Legacy Health's charitable mission.

**4. December Response #7:**

[redacted] [redacted]

[redacted] [redacted]

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[redacted]

[redacted] [redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted]

5. **December Response #8:**

   a. **Does the Foundation anticipate being able to sell its interest in PacificSource for the amount identified in the VMG Valuation?**

      The VMG valuation provides a baseline for preliminary discussions. However, it is a snapshot in time. Circumstances have changed since the date of the VMG valuation and will continue to change while the Foundation seeks to identify a buyer and negotiate a sales price. The Foundation Board will evaluate how changed circumstance may affect valuation and may choose to obtain another valuation before soliciting bids.

   b. **Does the Foundation intend to obtain a new valuation? If so, has it engaged any consultants to assist in that project? If not, what value does the Foundation intend to ascribe to its interest in PacificSource immediately following closing?**

      The post-closing Foundation Board will control the sales process. No decisions have been made regarding the necessity of another valuation. The post-closing Foundation Board will seek to maximize the value of the PacificSource asset, consistent with its commitment to find a buyer that is aligned with PacificSource's long-standing mission.

   c. **Have any other valuations of PacificSource been performed since 2014 other than the VMG valuation? If so, describe what prompted the valuation and provide any reports or analyses that resulted from the valuation.**

      In September 2022, Cain Brothers prepared a valuation for PacificSource, attached hereto as Exhibit 19. This was an unofficial valuation that was not finalized by Legacy or PacificSource.

      VMG provided a draft valuation of PacificSource in June of 2023 in connection with the delivery of VMG's valuation of Legacy Health. See Exhibit 22 to HCMO Notice at HCMO – 00000567 to HCMO – 00000615. In May of 2024, VMG provided a valuation of Legacy Health's PacificSource membership interest in contemplation of the potential redemption offer from PacificSource. See Exhibit 22 to HCMO Notice at HCMO – 00000617 - HCMO - 00000675

   d. **Has the Foundation identified any tax consequences (including any potential impact on its tax status) if it were to sell its interest in PacificSource for more or less than its carrying value?**

      The Foundation is exempt from tax under Section 501(c)(3) of the Internal Revenue Code and is a public charity described in Section 509(a)(1). Assuming the Foundation ultimately sells its member interest in PacificSource through an arm's length transaction that is fair and reasonable to the Foundation, there should not be any tax consequences to the Foundation if the sale amount is more or less than its basis. Moreover, there should not be negative tax consequences to the Foundation if it grants its member interest to another 501(c)(3) public charity. The Foundation will report the sale or grant of its member interest on its IRS Form 990. The Foundation plans to transfer its member interest through sale or gift prior to such time as the Foundation would be subject to excise taxes imposed on private foundations for excess business holdings, or to the net investment income tax on private foundation investments, as further discussed in response to Inquiry 35.

**e. Has Legacy or the Foundation performed any analysis of the OHSU/Legacy affiliation's consequences to PacificSource customers' access to care or any impact on PacificSource's provider networks, including any impact from the loss of access to Legacy providers/vertically integrated provider system. What provisions will be made for PacificSource clients that currently receive care from Legacy providers?**

As part of discussions with OHSU regarding the affiliation, Legacy Health negotiated assurances from OHSU that PacificSource would remain an important partner going forward. Specifically, the Definitive Agreement states that:

> The Parties currently intend that PacificSource will be an important component of this value-based strategy. Legacy Health Foundation will be supportive of such endeavors to the extent it is able to do so (on both a legal basis and otherwise) in its position as a non-controlling member of PacificSource after the Closing, subject to any approvals of Legacy Health Foundation's joint venture partner in PacificSource. The Parties acknowledge that achieving their goals in this area will require leveraging PacificSource's expertise in value-based contracting. The Parties will work together in good faith to consider how such expertise can be leveraged.

The transaction does not obligate OHSU to contract with PacificSource, or vice versa. Under Oregon law, any obligation on the part of OHSU and PacificSource to agree to future contracts would be an unenforceable "agreement to agree." *See Slayter v. Pasley*, 199 Or. 616, 627 (1953). However, as stated many times on the record, OHSU, Legacy Health, the Foundation, and PacificSource are committed to maintaining a participating provider relationship.

**f. Has Legacy or the Foundation performed any analysis of the potential consequences to PacificSource's valuation due to the loss of access to Legacy providers after the affiliation with OHSU?**

Given the mutual assurances described above, neither party believes such an analysis is necessary.

**g. Will Legacy's affiliation with OHSU have any other effect on PacificSource's business, such as the loss of Legacy employee customers or PacificSource's exclusion from Legacy's "vertically integrated provider system," that could negatively impact PacificSource's value?**

The parties do not anticipate that the closing of the system combination will have a direct and material negative effect on PacificSource's value. Legacy Health and PacificSource negotiate all contracts between the parties on an arm's length basis and the costs represent fair market value for services provided. The parties expect the same to be the case following the Foundation Transfer and closing of the Proposed Affiliation between OHSU and Legacy Health.

6. **December Response #13:**

   a. **Provide the draft amendment to the member agreement.**

      A proposed amended PacificSource member agreement is attached as Exhibit 27. It remains under review and discussion by Legacy Health, Legacy Health Foundation, PacificSource, and PHA, and is therefore subject to change.

7. **December Response #18:**

   a. **Provide all analyses concerning the impact or potential impact of the proposed transaction on PacificSource's business, including potential impacts on provider contracts, provider network, enrollment, financial condition, and negotiated rates.**

      As discussed in our December Response #28, PacificSource is not aware of any anticipated changes due to the System Combination or the Foundation Transfer. Any such analysis, if conducted, would be pure speculation and would not align with the mutual intent of the parties to maintain existing relationships on an arm's length basis in the period immediately following closing.

8. **December Response #20:**

   a. **The December Response states that "OHSU and PacificSource hope to finalize renewal terms in the coming months." Provide all documentation reflecting any discussions or analyses of negotiations between PacificSource and OHSU regarding renewal of the contracts between PacificSource and OHSU, termination of any existing contract, or entering into any new contract.**

      The materials attached as Exhibit 33(1) detail all communications and meetings between OHSU and PacificSource related to renewal of the contracts between OHSU and PacificSource. Attached as Exhibit 33(2) is a detailed summary of OHSU's justification for the 2025 rate adjustment.

   b. **Outside the D-SNP Letter of Agreement and agreements between PacificSource and OHSU related to Novel Interventions for Childhood Health, does OSHU currently hold any other contracts with PacificSource that provide coverage to Medicaid members? If so, please provide.**

      OHSU and PacificSource are parties to a Participating Provider Services Agreement which is attached as Exhibit 33(3).

9. **December Response #21:**

   a. **The December Response states that the transaction "may cause Health Share to request changes to the [PacificSource] IDS Contract."**

      i. **Provide any analyses discussing the impact, or potential impact, of the transaction on the managed care functions delegated to PacificSource under the IDS Contract.**

      No such analysis exists, as the parties are not aware of any proposed or anticipated changes to the managed care functions delegated to PacificSource under the IDS Contract. As discussed previously, OHSU and Legacy Health are committed to avoiding disruption in care or coverage and will work with Health Share to help achieve that goal. Both OHSU and Legacy Health have a longstanding commitment to serving the Medicaid population in the Portland metro region and beyond. Both Legacy Health and OHSU acknowledge the critical role that PacificSource plays in ensuring that Medicaid enrollees have access to providers and services in Washington, Multnomah, Clackamas, Hood River, Wasco, Jefferson, Crook, Deschutes, Lane, Polk and Marion counties. OHSU, as a founding member of Health Share, has long supported Health Share's relationship with PacificSource, and is advocating for the preservation of the IDS Contract with Health Share following closing, and is not recommending any changes to such contract as a result of closing.

      ii. **Can Health Share terminate the IDS Contract as a result of a change in control of 50% ownership of PacificSource from Legacy to the Foundation?**

      Under Exhibit D Section (9)(e)(1)(e) of the IDS Contract, Health Share may terminate the IDS Contract if PacificSource ceases to be a corporate member in good standing of Health Share. PacificSource is not a corporate member of Health Share, but we presume this prevision is intended to refer to Legacy Health's status as a member of Health Share and a 50% member of PacificSource.

      As described below, OHSU and Legacy Health are working actively to ensure that Health Share will not exercise such right, and we have gotten no indication that they will do so.

      iii. **What steps are being taken to avoid Health Share requesting changes to the IDS Contract?**

      Any decision regarding changes to the IDS Contract would be made by the Health Share Board. OHSU and Legacy Health each have representatives on the board of Health Share, and the entities are collaborating, to ensure that Health Share does not make changes to the PacificSource agreement.

      Additionally, on March 19, 2025, Dr. George Brown (CEO of Legacy Health and former board chair of Health Share), Tim Goldfarb (president of OHSU Health) and Steve Stadum (Interim President, OHSU), made a presentation to the Health Share board about the System Combination, with the goal of demonstrating that this transaction will maintain stability for Health Share and its members. They emphasized that, consistent with its statutory purpose, the combined public university health system will remain committed to serving the Medicaid population throughout the state, including in PacificSource's service area. PacificSource provides critical infrastructure that neither OHSU, Legacy Health, or Health Share could quickly or easily replicate. As such, the combined public university health system will be a strong advocate for maintaining Health Share's contract with PacificSource, and will use its role as a member to ensure that such relationship is preserved, notwithstanding any termination right that may exist.

**10. December Response #22:**

**a. Provide all documentation reflecting any discussions that have occurred between Health Share and PacificSource regarding any changes or impacts to the IDS contract.**

On January 30, 2025, representatives of Health Share, Legacy Health, OSHU and PacificSource participated in a conference call to discuss the Health Share change of control process set forth in the Health Share bylaws. The conversation focused on the procedures that the Health Share board would follow to gather information about the System Combination. PacificSource is not aware of any other discussion or documentation.

**b. Provide all documentation in the possession of Pacific Health Associates, PacificSource, or PSCS concerning the impact of the proposed OHSU – Legacy transaction on PCSC's Participating Provider Agreement with Legacy or the IDS contract with Health Share, as well as any documents concerning potential changes to these contracts.**

PacificSource does not have any knowledge of any proposal to terminate or amend these contracts, so does not have any documents responsive to this request. Pacific Health Associates does not believe it has any such documentation.

**11. December Response #28:**

**a. The December Response states "[t]he parties do not anticipate any impact on PacificSource's risk-based capital reserve level resulting from the Foundation Transfer or Proposed Affiliation between OHSU and Legacy."**

**i. Provide any analyses that support this conclusion.**

As stated in our prior filing, the parties are not aware of any operational or contractual changes associated with the Foundation Transfer or System Combination. As such, the financial projections provided to OHA and DCBS, including the RBC projections enclosed as Exhibit 30 to the Foundation HCMO filing, reflect PacificSource's analysis of the effect of this transaction on PacificSource's risk based capital.

**12. December Response #30:**

**a. Do the membership projections and assumptions depicted in Exhibit 15 in response to Form A RFI #30 account for potential loss of PCS's contract with Health Share?**

No. Any such loss is speculative. Health Share has given no indication that it intends to terminate its contract with PacificSource, so PacificSource has no basis on which to make such a projection.

**b. On Exhibit 30, the PacificSource financial projections, it is indicated that "If or when the OHSU/Legacy transaction closes, PCS's membership goes to zero under current HSO requirements and the Legacy IDS projections would need to be updated accordingly, as well as the impact to PS overall." (HCMO – 00000947)**

**i. Provide updated projections that reflect this scenario.**

PacificSource expects PCS's membership will be in line with the projections set forth in Exhibit 30 to the Foundation HCMO filing, including with respect to PCS enrollment for 2025. Otherwise, there is substantial uncertainty regarding PCS enrollment that is unrelated to the System Combination, including with respect to the CCO 3.0 timeline, the continuation of the Healthier Oregon Program, and changes to Medicaid funding at the Federal level. PacificSource does not believe that the Health Share membership is particularly material in light of various other factors. As such, PacificSource does not plan to prepare projections for internal use until we understand more of the changing environment and, as such, do not have new projections to share.

**ii. Explain why current HSO requirements would mean PCS's membership would go to zero.**

We do not believe this to be accurate. As noted above, Health Share may have the authority to terminate its IDS Contract upon the closing of the System Combination, but we have no reason to believe that Health Share intends to do so. The maintenance of the IDS Contract is a stated assumption of the financial projections, but this is not indicative of an expectation that the IDS contract will be terminated.

**iii. Who will take over coverage of PCS's covered members under the HSO contract?**

Legacy Health and PacificSource cannot speak for Health Share, but we are aware of no mechanism by which Health Share could replicate the services that PacificSource provides, nor are we aware of any legal, contractual, economic or operational imperative to do so. As stated elsewhere, Legacy Health, PacificSource and OHSU are committed to preserving the PacificSource – Health Share relationship.

**13. December Response #32:**

**a. The parties state that they "do not expect any flow of funds between PacificSource and the Foundation," and indicated that any process for determining a flow of funds from the Foundation to PacificSource was not applicable.**

**i. If PacificSource needs funds in order to meet its obligations due to unforeseen circumstances, is it expected that the Foundation will not provide those funds? Explain the role the Foundation would play in this instance.**

As a 50% member in PacificSource, the Foundation will play an identical role in fundamental decisions regarding PacificSource as Legacy Health does now. In other words, it will provide ongoing oversight of PacificSource's operations to ensure that PacificSource is fulfilling its charitable mission while adhering to a sustainable financial model. To the extent that PacificSource experiences unforeseen circumstances that require a capital infusion, the Foundation will have the same tools at its disposal as Legacy Health does now. It could seek outside investment to shore up the balance sheet, it could consider a strategic re-alignment to reduce capital needs, or it could increase its investment in PacificSource as part of a diversified investment strategy.

**ii. The parties also state that "the use of the Foundation's charitable assets will be subject to all applicable grant or donor restrictions." If PacificSource requires funds from the Foundation, how will the grant or donor restrictions affect the Foundation's ability to provide those funds?**

The value of all of the assets to be granted to the Foundation as part of the transaction – i.e. both the illiquid asset of PacificSource and the cash – is donor-restricted by Legacy Health in place and purpose for health equity and access in Oregon and Southwest Washington. The Foundation's member interest in PacificSource is a mission-related investment. The Foundation's post-closing transition fiduciary board will adopt an investment policy that will guide the Foundation's investments, including mission-related investments like PacificSource. The policy may allow for additional capital to be invested in PacificSource to secure its investment and support PacificSource and the Foundation's shared mission.

The Foundation's post-closing transition fiduciary board will also continue to steward the institutional funds it currently holds and will ensure those dollars are applied in accordance with their legal restrictions to benefit Unity Center for Behavioral Health, Meridian Park Hospital, Emanuel Medical Center, and Mount Hood Medical Center. These institutional funds will remain with the Foundation through the transaction. As part of its transition duties, the Foundation's transition fiduciary board will transfer those institutional funds to OHSU Foundation, a named hospital, or a joint venture partner of Unity Center for Behavioral Health, according to donor restrictions and in compliance with Oregon's Uniform Prudent Management of Institutional Funds Act after closing.

**14. December Response #38:**

**a. The December Response states that "post-closing, Legacy will continue to support PacificSource's activities to address social determinants of health. The Foundation will be uniquely situated…." explain how Legacy intends to support PacificSource post-closing.**

Legacy Health and the Foundation believe that PacificSource will benefit from the Foundation's focus on health equity. Currently, PacificSource's member interest is held by Legacy Health, a multi-billion-dollar health system with complex operational and financial needs. Although PacificSource's partnership with Legacy Health has been mutually beneficial, it is undoubtedly true that Legacy Health's primary mission is to improve the health and wellbeing of its communities through the direct provision of health care services at its acute care and outpatient facilities. This has led to synergistic initiatives between Legacy Health and PacificSource, but also means that Legacy Health sought to fit PacificSource into its broader institutional strategy.

The Foundation, on the other hand, will be independent of any health care provider or system. This will give the Foundation the freedom to pursue innovative initiatives that do the most to improve population health—even if they have nothing to do with the traditional health care delivery system or any particular health care provider. The Foundation will bring this independent, wholistic approach to population health to its role as a member of PacificSource.

Moreover, the wholistic approach to health improvement championed by the Foundation aligns perfectly with PacificSource's mandate to pursue innovative strategies to improve social determinants of health. PacificSource's mission as a CCO is to improve the health of its members, which includes investing in health-improvement initiatives that are upstream of the traditional health care system. These investments provide value both to PacificSource's members (who receive additional supports) and to the Oregon Health Plan (which is able to achieve better health outcomes at a lower cost).

For instance, addressing upstream factors that affect health and health outcomes will help control costs. As such, PacificSource, PacificSource's members, and the Oregon Health Plan will benefit from the Foundation's initiatives to improve social determinants of health. The Foundation will be uniquely positioned to bring grantees, partners, and community members together to ensure that the Foundation's activities have a quantifiable impact on outcomes and utilization, which will in turn help reduce overall cost growth. The Foundation intends to engage with PacificSource to solicit its input on strategic initiatives and identify areas where the Foundation can use its status as a member of PacificSource to further shared objectives, including those related to controlling the growth in health care costs.

In carrying out the Foundation's mission—whether through organizing a convening focused on a specific issue, providing seed funding for a promising new approach, sharing data and research, or investing in organizational infrastructure for a community partner— the Foundation's activities are strategically aligned with PacificSource's efforts to improve its members social determinants of health. As such, PacificSource is uniquely positioned to provide information, data and input to help the Foundation make strategic decisions that will address health inequities and disparities in Oregon, and particularly those that affect PacificSource's members. These learnings will improve the Foundation's programs and activities, which will in turn benefit PacificSource's members.

**15. December Response, Exhibit 11, document 2.a., page 3:**

**a. Provide the referenced documents PacificSource provided to KaufmanHall, as well as any output summaries, reports, or analyses by KaufmanHall.**

Please see materials prepared by KaufmanHall attached as Exhibit 20(1)-(3) and the HealthScape document referred to in the referenced email string as Exhibit 20(5).

**16. December Response, Exhibit 11, document 4:**

**a. Provide the referenced summary document regarding Project Lumberjack.**

Please see attached Exhibit 21.

**17. December Response, OHSU_RFI_23(a)_00000010:**

**a. OHSU refers to excluding PacificSource from the deal "because of its high cost and low apparent return." Provide the underlying analysis supporting this statement.**

OHSU understood that acquisition of Legacy's interest in PacificSource would require consideration payable to Legacy in addition to the $1 billion financial commitment that OHSU was prepared to make with respect to the Legacy assets. OHSU did not feel that it had the financial ability to make an additional investment and noted, that based on PacificSource's financial results, a passive investment in PacificSource would not guarantee a return on investment. This conclusion was based on a review PacificSource's finances and likely valuation, so did not require any specific financial modeling. OHSU was comfortable with obtaining a right of first refusal with respect to the PacificSource interest. This would allow OHSU an opportunity to ensure that this important asset was not sold to a third party that would not or could not ensure the stability of PacificSource.

With respect to the right of first refusal, OHSU did not conduct any modeling about acquiring an interest in PacificSource, as the information necessary to conduct the modeling, for example the cost and timing of acquisition, would only be available at such time as Legacy had identified a third-party purchaser at which point the right of first refusal would arise. Modeling without such information would be of little value.

**18. December Response, HCMO – 00005546:**

[redacted]

[redacted]

**19. December Response, HCMO – 00005548:**

[redacted]

[redacted]

[redacted]

**20. Given that the Legacy entities service southwest Washington, is that state involved in the regulatory approval process?**

OHSU and Legacy Health filed a notice of material change with the Washington Attorney General as required by RCW 19.390.

**a. If yes, provide copies of any notices or documentation submitted to or correspondence with any Washington agency regarding the transaction.**

Enclosed as Exhibit 30 is the notice, as well as Legacy Health’s response to an associated information request. Note that we are not including those exhibits to such filing that consist of the HCMO and Form A notices, which OHA and DCBS already possess.

**b. If no, provide the parties’ analyses supporting their determination that approval from Washington is not required.**

PacificSource Community Health Plans and PacificSource Health Plans are registered as foreign “health care service contractors” ("HCSCs") in Washington. Foreign HCSCs are not subject to a Form A filing. See RCW 48.31B.015. Foreign HCSCs must file a pre-acquisition notice (Form E) with the Washington

State Office of the Insurance Commissioner (“OIC”), unless an exception applies. RCW 48.31B.020; WAC 284-18-385. Exceptions apply for a transaction involving already affiliated persons and where there would be no increase in market share. RCW 48.31B.020(2)(b). The Foundation and PacificSource are under the common control of the same parent, Legacy Health, so they are affiliates. Moreover, the Foundation has no existing insurance operations, so the transaction will not increase market share. Accordingly, no Form E is required for this transaction. The parties are not aware of any other Washington regulatory approval process that would be implicated by the Foundation Transfer.

**21. Provide a pro forma balance sheet of the Foundation.**

As described in the Foundation's HCMO Notice #12.e., the Foundation’s financials are attached as Exhibit 22, which are consolidated with the Legacy Health financials.

**22. Explain why the System Combination Agreement provides OHSU with a right of first refusal on any future sale of PacificSource given that (a) the acquisition and ownership of PacificSource is not a part of OHSU’s long-term objectives, and (b) the prohibition in ORS 731.390 preventing OHSU from obtaining a certificate of authority to transact insurance.**

Although the acquisition and ownership of PacificSource is not a part of OHSU’s long-term objectives, the right of first refusal was intended to give OHSU the right to re-evaluate its interest in acquiring the PacificSource membership interest if the Foundation plans to sell the interest to an OHSU competitor in the future.

Although ORS 731.390 prevents OHSU from obtaining a certificate of authority to transact insurance, it does not apply to any acquisition by OHSU of Legacy Health’s PacificSource membership interest because OHSU would not hold a certificate of authority to transact insurance by owning the PacificSource membership interest.

**23. Have any discussions occurred between any board member, director, or executive at PacificSource with any board member, director, or executive at OHSU regarding OHSU’s right of first refusal or any potential acquisition of an interest in PacificSource by OHSU?**

To OHSU’s knowledge, no discussions occurred between any board member, director, or executive at PacificSource with any board member, director, or executive at OHSU regarding OHSU’s right of first refusal or any potential acquisition of an interest in PacificSource by OHSU. Given that the interest is owned by Legacy Health, OHSU believes the discussions could be perceived as tortious interference with Legacy Health’s relationship with PacificSource.

To PacificSource’s knowledge, no discussions have occurred between any board member, director, or executive at PacificSource with any board member, director, or executive at OHSU regarding OHSU’s right of first refusal or any potential acquisition of an interest in PacificSource by OHSU

**24. It is noted that the Integration Plan states that the Foundation must notify OHSU of any potential sale of PacificSource and OHSU has the right of first refusal. If the Foundation is independent, along with knowing the difficulty of finding a suitable buyer, this could potentially create more risk. Explain the necessity of this provision.**

OHSU requested this provision to give OHSU the opportunity to re-evaluate its interest in acquiring the PacificSource membership interest if the Foundation plans to sell the interest to an OHSU competitor in the future.

**25. We were unable to open the file titled "~$LHF Slide Deck for 2_23_2024 Board Meeting_FINAL(122446999.2)." Provide another copy in .ppt or .pdf format.**

Please see Exhibit 30 to Foundation HCMO filing at HCMO – 00001839 to HCMO – 00001862, which contains the presentation referenced above in .pdf format.

**26. Provide more details around the motivation for Legacy to spin off PacificSource into the Foundation.**

**a. The December Response states that Legacy will require additional capital in the amount between $300M and $750M in systems changes in future years. If the Transaction were not to close, how would the lack of OHSU funding affect the future of Legacy?**

Legacy Health has implemented a financial containment plan that has improved Legacy Health's financial outlook. If this transaction does not close, Legacy Health would first continue to implement the financial containment plan that is focused on ongoing initiatives such as reducing length of stay, improving operating room productivity, and reducing temporary labor.

Legacy Health would have to take some immediate actions to improve its long-term financial outlook, including:

- Obtaining rate increases from the State Medicaid program, Coordinated Care Organizations (CCO's), and Medicare Advantage to keep pace with labor and supply cost increases. This is particularly critical for women's services and Randall Children's Hospital as Legacy understand it is reimbursed less than other children's hospitals nationally and regionally for the same services.

- Legacy Health would need to look at the services we offer today and optimize or narrow services, especially those services that operate at negative margins and redirect resources to positive margin services.

- Finally, Legacy Health would have to sell unused real estate and other assets to raise capital for strategic investments in facility improvements, access, digital, and growth initiatives that will have a positive return on investment.

If this transaction does not proceed, the Legacy Health Board in a few years would likely resume the work to find strategic partners that are aligned with Legacy's not-for-profit and community-based mission.

**i. Why is Legacy donating its interest in PacificSource rather than selling to address financial needs?**

While selling PacificSource may raise a certain amount of capital, it is unlikely that Legacy Health would realize returns sufficient to fund projected capital needs. PacificSource is an important strategic asset for an independent Legacy Health. Legacy Health has long believed that achieving sustainable margins will require the expansion of value-based contracts. This, in turn, requires a strategically aligned payor partner that can drive sufficient member volumes to value-based arrangements. As such, PacificSource was critical to Legacy Health's strategy for long-term financial sustainability, and would continue to be if Legacy Health stayed independent.

Given OHSU's lack of interest in PacificSource, Legacy Health is donating PacificSource to the Foundation so that it can maximize the value of the asset to further the charitable mission of the Foundation in its role as successor to Legacy Health.

**b. The Foundation is a temporary parent and plans to sell PacificSource as soon as possible to an appropriate buyer. Why does this not cause more potential disruption the community?**

The decision to transfer the Foundation to PacificSource minimizes any disruption relative to the alternatives. Crucially, OHSU is not interested in acquiring PacificSource, and Legacy Health cannot force OHSU to do so. Thus, including PacificSource in the System Combination is not a viable alternative. Moreover, as discussed below, even if OHSU was willing to take control of PacificSource temporarily to facilitate a sale (which they are not), PacificSource would be faced with substantial operational uncertainty. First, OHSU is a public entity and has never had a role in the ownership or management of PacificSource. As such, transferring PacificSource to OHSU would require PacificSource to adopt and comply with new operational priorities and rules. Second, OHSU would likely still seek to sell PacificSource to a third party as soon as practicable, but such sale process would be overseen by individuals with few connections at PacificSource and no experience with its mission, culture, or goals. Accordingly, transferring Legacy Health's 50% member interest in PacificSource to OHSU was not viable, nor would it have reduced operational disruption or uncertainty.

Moreover, as described elsewhere, a rushed sale of PacificSource would maximize disruption while potentially undermining the long-term goals of both PacificSource and the Foundation. As described in our December Response, the Foundation is committed to identifying a transaction partner for PacificSource that is both mission aligned and mission enhancing. The Foundation will, in turn, devote the proceeds of the sale of PacificSource to improving health equity and access in Oregon and Southwest Washington. Admittedly, identifying a transaction partner that can achieve both these goals will take substantial time and expertise. However, the alternative would be to sell PacificSource to whatever entity is best positioned to close on an acquisition of PacificSource before the System Combination closes. This would likely result in PacificSource being sold pursuant to a rushed process that does not allow for the level of mutual due diligence necessary to ensure that the transaction would achieve its stated goals.

In contrast, transferring the 50% member interest in PacificSource to the Foundation preserves the status quo to the greatest extent possible. The Foundation Board will be populated by many of the same individuals who currently oversee PacificSource as members of the Legacy Health board. Moreover, the Foundation is currently an affiliate of, and shares a mission with, Legacy Health, meaning there will be no change to the priorities or governance structure of PacificSource. And finally, this structure helps ensure that Legacy Health and the Foundation can find the right long-term partner for PacificSource who will ensure that PacificSource continues to thrive not just over the next 5 years, but also long into the future.

**c. We understand that it might have taken more time to find an appropriate permanent buyer for PacificSource. However, why would it not have been more prudent for Legacy to sell PacificSource first to avoid potential further disruption risk, especially considering the recent interest noted in Section 4 above?**

As described in the HCMO notice associated with the system combination, the success of the combined public university health system depends on a prompt closing. Thus, conditioning the closing of the system combination on the sale of PacificSource would have posed an unacceptable risk to both institutions. Selling a controlling interest in PacificSource, a licensed health care service contractor and coordinated care organization, is a significant undertaking. It requires the board to establish transaction goals, hire transaction advisors, solicit offers, review offers, select a buyer, conduct necessary mutual due diligence, negotiate transaction terms, obtain necessary third-party consents, and gain regulatory approval. This is a years-long process in the best of times, but potentially longer if Legacy Health was forced to conduct such a sale while simultaneously undertaking the monumental task of planning for the integration of Legacy Health with OHSU. Thus, even a rushed process to find a buyer for PacificSource would have delayed the closing of the system combination by at least a year--likely more--which would have done long term damage to OHSU, Legacy Health and the combined system. Moreover, as described above, such a rushed transaction process would have risked further, long-term disruption to the extent it resulted in a suboptimal partner for PacificSource.

**d. The December Response states that the Legacy board authorized a Strategic Collaborations Committee ("SCC") to evaluate potential transaction partners. The materials indicate that the SCC reviewed the Transaction, including what to do with PacificSource given that OHSU was not considering including Legacy's interest in PacificSource as part of the Transaction. Provide all details regarding the exploration with potential independent 3rd party buyers. If there were no 3rd party buyers, provide evidence that a reasonable attempt was made to identify potential buyers.**

As described in detail above, Legacy Health's priority was to ensure the System Combination closed as quickly as possible, with the best integration planning that time and antitrust law would allow. Accordingly, as soon as Legacy Health learned that OHSU would not acquire PacificSource, the board and its advisors immediately began considering an alternative destination for PacificSource. For the reasons articulated above, a sale to an unaffiliated third party would not have been practicable given the need to identify a mission-aligned organization, negotiate definitive transaction terms, conduct mutual due diligence, obtain third-party approvals, and navigate the regulatory approval processes applicable to the change of control of an insurer and CCO.

Instead, the Legacy Health board agreed that, while PacificSource should eventually be sold, such a sale should advance PacificSource's mission while maximizing the return for the Foundation and its health equity goals. The only way to accomplish these goals was through a competitive, deliberative sales process that would occur post-closing. In that context, the transfer of Legacy Health's interest in PacificSource is in the best interest of PacificSource, the Foundation, and the communities served by the Foundation and PacificSource.

However, as described in our December Response, Legacy Health and the Foundation are actively working to facilitate the post-closing sale of PacificSource. The Legacy Health Board is in the process of engaging independent transaction advisors with experience managing similar transactions.

**e. The December Response states that at one point, PacificSource, PHA and Legacy discussed an option whereby PacificSource would redeem or repurchase Legacy's 50% membership interest in PacificSource, and that VMG was engaged to value that membership interest. It appears there was not a meeting of the minds on the dollar amount. What other factors contributed to not completing this deal?**

The redemption terms offered by PacificSource were that (i) a 17.5% membership interest would be redeemed instead of the full 50% membership interest, (ii) the purchase price of $100M would be paid over 20 years at a 4% interest rate, (iii) there would be no distributions paid to members of PacificSource during the 20 year term, and (iv) the Foundation would have a proportionally-reduced number of PacificSource board seats. See Exhibit 23. Given the purchase price, below-market interest rate, long payment terms, loss of Board seats and the fact PacificSource does not currently pay distributions to members and would not pay distributions for 20 years, accepting this offer would have left the Foundation with an unsellable remaining interest and a substantial likelihood that the Foundation may not receive any further liquidity with respect to the membership interest after this redemption.

**f. Provide a timeline on the full due diligence work performed by PacificSource and the Foundation around the redemption, repurchase, sale or other disposition of Legacy's 50% membership interest in PacificSource. Did the Foundation Board ever express concerns about entering into a Memorandum of Understanding (MOU) prior to the determination of how Legacy's 50% membership interest in PacificSource would be disposed or about having sufficient time to perform due diligence?**

The Foundation Board performed diligence with respect to the Foundation Transfer between March 1, 2024 and May 24, 2024. During this period, the Foundation Board and/or its special committee met approximately on a weekly basis to discuss diligence matters with respect to the Foundation Transfer. See Foundation Board Materials attached as Exhibit 34.A. to Foundation's HCMO Notice. The Foundation Board appointed a special committee to perform and manage diligence regarding the Foundation Transfer and make a recommendation to the Legacy Board. See Charter of Special Committee attached as Exhibit 34.A.3c to Foundation's HCMO Notice.

The Foundation Board discussed that it would perform the necessary due diligence before identifying a signing date for the MOU. See Foundation Board Minutes 3.22.24 attached as Exhibit 34.4.b. to HCMO Notice. Subsequently, during the March 29, 2024 meeting, the Foundation Board was advised that PacificSource may be interested in purchasing Legacy's 50% member interest in PacificSource. While Legacy Health evaluated PacificSource's proposal, the Board continued to evaluate other aspects of the Foundation Transfer and Foundation's activities following the closing of the OHSU-Legacy Affiliation. See 3.29.24 Foundation Board Minutes attached as Exhibit 34.5.b. to HCMO Notice.

During the April 5, 2024 meeting of the Foundation Board, members expressed some concern about executing the MOU before the final transaction structure was known, and questioned whether there would be sufficient time to engage in due diligence. See 4.5.24 Foundation Board Minutes attached as Exhibit 34.6.b. to the HCMO Notice. To address these concerns, the MOU was revised to include both pathways with respect to PacificSource: grant of Legacy's member interest in PacificSource to the Foundation or grant of the proceeds from sale of Legacy's 50% member interest in PacificSource. During both the April 19 and 26, 2024 meetings, the Foundation Board was advised that the Foundation Board is not required to approve the MOU until it feels comfortable that it has all necessary information to make a fully informed decision. See 4.19.24 and 4.26.24 Foundation Board Minutes attached as Exhibit 34.8.b and 9.b. to the HCMO Notice. After careful review of transaction materials over the next month, on May 24, 2025, Foundation Board's special committee recommended the Foundation Board to approve the transactions contemplated by the MOU. See 5.24.25 Legacy Board Meeting Minutes attached as Exhibit 34.12.c. to the HCMO Notice.

Subsequently, Legacy Health and the Foundation formed a joint workgroup that met on June 18, 2024, to develop shared understanding of the impact of the Foundation Transfer, identify focus areas and strategies to advance health access, equity, cost and quality in Oregon and Southwest Washington, and clarify a path forward for the Foundation following the Foundation Transfer and the Legacy-OHSU Affiliation. See Foundation Board Materials attached as Exhibit 34.C. to the HCMO Notice.

g. **At one time there was a proposal for PacificSource to buy back only a percentage of its membership interest from Legacy. Therefore, the Foundation would be taking on a smaller percentage, which could potentially solve the tax issue it may face in the future. Provide details for the reasoning why this was taken off the table.**

The redemption terms offered by PacificSource were that (i) a 17.5% membership interest would redeemed instead of the full 50% membership interest, (ii) the price of $100M would be paid over 20 years at a 4% interest rate, (iii) there would be no distributions paid to members of PacificSource during the 20 year term, and (iv) the Foundation would have a proportionally-reduce number of PacificSource board seats. Given the purchase price, long payment terms, loss of Board seats and the fact PacificSource does not currently pay distributions to members and would not for 20 years, accepting this offer would have left the Foundation with an unsellable remaining interest and a substantial likelihood that the Foundation may not receive any further liquidity with respect to the membership interest after this redemption.

**h. Is there any reason why Legacy cannot keep PacificSource until it can be sold and agree in advance with OHSU that the proceeds from the sale will be donated to the Foundation?**

As described in the enclosed letter from OHSU, the combined public university health system has no interest in acquiring control of PacificSource. Doing so would impose significant costs on OHSU in the form of staff time, regulatory approvals, and overall organizational risk. It would also distract from the critical work that needs to be done to execute on OHSU's strategic plan and achieve overall transaction goals.  Also, if OHSU was responsible for selling an asset as significant as PacificSource for the benefit of an unrelated third party (the Foundation), OHSU would incur all the costs and risks of the sale. but receive none of the proceeds. And finally, such a transaction structure would likely cause more uncertainty and disruption because, unlike the Foundation, OHSU is not a current affiliate of PacificSource and its leadership has no knowledge of or experience with PacificSource.

Legacy Health and the Foundation are committed to finding a transaction partner for PacificSource that will bolster PacificSource's longstanding mission. The continuity of leadership between Legacy Health and the Foundation will help ensure that the sales process is informed by the organizational knowledge about PacificSource's history, mission, and future goals. OHSU cannot replicate this expertise or experience.

**27. The Form A application states that, "the Foundation expects to receive approximately $350 million from Legacy as part of the Foundation Transfer in the form of a charitable grant." Provide a detailed description along with dollar amounts to reconcile this $350M.**

Please see attached as Exhibit 24.

**a. It appears that the decision to move $350M came from an expert evaluation analysis. Provide details of this analysis that demonstrate the $350M figure is sufficient to capitalize the Foundation.**

There was not an expert evaluation analysis of the calculation of the Initial Foundation Funding Amount set forth in Section 3.5.2 of the System Combination Agreement. The terms of that calculation were developed by the parties. Discussions regarding the terms began via the exchange of draft term sheets during the initial discussions between the parties. Given the projected net cash amount and the expected value of the 50% PacificSource membership interest, the parties are confident that the Foundation will be sufficiently capitalized to achieve its goals.

**b. Provide the assumptions associated with the risk-based capital (RBC) and liquidity analysis along with the governing body who reviewed and signed off on it.**

The Foundation is not a regulated health insurer or coordinated care organization. Accordingly, it does not have any risk based capital or liquidity requirements. Please see the response to Inquiry 3.e. for a discussion of the adequacy of PacificSource's capital and surplus.

**28. On December 5, 2024, AM Best downgraded the Financial and Credit Ratings of PacificSource. The Financial Strength Rating was downgraded from A- (Excellent) to B++ (Good). AM Best assessed the PacificSource balance sheet strength as weak. Provide details of the rationale for AM Best's change in the rating, including any mention of the proposed PacificSource transition.**

Neither PacificSource nor Legacy Health can speak to the rationale for AM Best's change in rating beyond what it has said publicly. We therefore direct the agencies to AM Best's press release, which is available on their website.

**29. Provide a detailed narrative plan of operation for PacificSource post-closing along with the written assumptions used when preparing the PacificSource projections.**

PacificSource has not prepared such a document and it is not practicable to do so for the purposes of this filing. As stated above, PacificSource plans to continue operating in the ordinary course of business and does not expect that the System Combination will affect its ability to do so. Moreover, there is substantial uncertainty unrelated to the System Combination, including federal funding changes, CCO 3.0 procurement timeline, and economic uncertainty. As such, any narrative for plan operation would likely be rendered moot by subsequent events. PacificSource will continue its work based on the company's mission and vision statements, and its 90-plus year history of serving its members, employees and communities.

**30. The 2024 MOU between Legacy and the Foundation states that the Foundation will change from a fundraising Charity to a grantmaking Foundation. The skills and attributes for the Foundation Board of Directors will change. This concept is mentioned again in the Grant Agreement.**

**a. Who is making this decision to change from a fundraising Charity to a grantmaking Foundation?**

The 2023 letter of intent between Legacy Health and OHSU describes funding a foundation as part of the combination. The shared commitment to fund an independent grantmaking foundation is a key attribute of the combination. Because future fundraising for the combined health system will be coordinated through OHSU Foundation, Legacy Health will no longer need a separate fundraising charity to fundraise for Unity Center for Behavioral Health, Meridian Park Hospital, Emanuel Medical Center, Mount Hood Medical Center, and Legacy Health. This shift of responsibilities, together with Legacy Health and the Foundation's shared purpose, governance and mission, made the Foundation an ideal recipient for Legacy Health's grant funds.

Moreover, given that Legacy Health is a supporting organization described in IRC

Section 509(a)(3), it is prohibited from making grants to private foundations and limited to making distributions to or for the benefit of its supported organizations. Treas. Reg. § 1.509(a)-4(e)(1). The Foundation is a permissible grantee because it is operated and controlled in connection with Legacy Health's supported organizations, in that Legacy Health is the sole member of the Foundation.

The boards of Legacy Health and the Foundation are comprised of community leaders from Oregon and Southwest Washington. These community leaders have the experience and expertise needed to manage the assets and fulfill the missions of those organizations. It is important to Legacy Health and the Foundation that the post-closing Foundation Board be community-led and composed of community members with the experience and expertise essential to launch a new health equity foundation. Achieving this requires (i) a limited subset of continuing Legacy Health directors and Foundation trustees with experience and expertise needed for stewarding the assets and transferring knowledge, and (ii) new board members who would be identified through a community engagement process to join the Foundation Board. The Giving Practice (see additional information in response to Inquiry #49 below) will partner with community to create a public process to solicit recommendations and nominations for new members of the transition fiduciary board and the grantmaking board.

**31. If there is an RBC or liquidity event, what sources will be available for PacificSource to utilize in order to continue to meet regulatory requirements?**

PacificSource will retain the same tools to address an RBC or liquidity event that it does today. Neither Legacy Health nor PHA have made any capital contributions to PacificSource since Legacy Health's initial acquisition of PacificSource, and the parties are confident that no such contributions will be necessary in the foreseeable future. Please see the response to Inquiry #3 above for a description of the Foundation's role in addressing liquidity concerns.

**32. It has been stated that there are no Foundation financial projections available. Provide a 5-year projection regarding unrestricted assets only.**

As of December 31, 2024, the Foundation has approximately $1,725,000 in unrestricted assets. The estimated initial Foundation funding would add an additional $300,000,000, that would be restricted to health equity and access in Oregon and Southwest Washington. The bulk of the Foundation's current assets are institutional funds, as the term is defined in ORS 128.316(5), that are legally restricted to benefit Unity Center for Behavioral Health, Meridian Park Medical Center, Emanuel Medical Center, Mount Hood Medical Center, and Legacy Health.

Community engagement is the focus of the Foundation post-closing, and it will be overseen by a community-led grantmaking board. Initial expenses identified include costs for consultants and stipends for community members to participate in this process. The transition fiduciary board and grantmaking board will co-design the Foundation's initial strategic framework. In addition, the grantmaking board will decide early stage grants.

33. **Explain why the grant agreement imposes limits on the Foundation's ability to make grants to Legacy/OHSU competitors or to solicit funds for the Foundation's mission and how these limits benefit the public and/or the mission of the Foundation.**

    The ability to restrict competitors from receiving grants from the Foundation and to prevent the Foundation from competing with OHSU and its foundations for grants from donors were key terms for OHSU in agreeing to the transfer of the Initial Foundation Funding Amount and the PacificSource membership interest to the Foundation at the closing of the System Combination. The restriction against competitors receiving grants from the Foundation prevents assets of Legacy Health from going to the benefit of competitors of the combined system. Otherwise, those competitors could use such granted funds to negatively affect the business and success of the combined system.

34. **How will OHSU monitor Foundation compliance with grant restrictions articulated in Attachment 3 of the MOU?**

    While the parties have not agreed on a methodology for monitoring compliance, OHSU may request regular reports of the Foundation's grants and grantmaking activity.

35. **In the event that the Foundation is unable to sell its interest in PacificSource to a suitable purchaser for its estimated value within the timeframe permitted to transfer excess business holdings, describe any other mechanisms the Foundation might use to avoid taxes imposed on excess business holdings. What analysis has the Foundation done concerning the potential financial impact of a sale of the interest for less than its estimated value, or of the donation of the interest?**

    The Foundation is exempt from tax under Section 501(c)(3) of the Internal Revenue Code and is a public charity described in Section 509(a)(1). Assuming the Foundation ultimately sells its member interest in PacificSource through an arm's length transaction that is fair and reasonable to the Foundation, there should not be any tax consequences to the Foundation if the sale amount is more or less than its basis. Moreover, there should not be negative tax consequences to the Foundation if it grants its member interest to another 501(c)(3) public charity. The Foundation will report the sale or grant of its member interest on its IRS Form 990. The Foundation currently plans to transfer its member interest in the next five to ten years to ensure it is not subject to excise taxes imposed on private foundations for excess business holdings, or to the net investment income tax on private foundation investments. The exact timeframe during which the Foundation must transfer its member interest to avoid excess business holdings excise tax may be extended as further described below.

    The grant payment schedule outlines six grant installment payments to be made by Legacy Health beginning at closing, and then by OHSU through 2031. These grant payments will support the continuation of the Foundation's classification as a 501(c)(3) public charity described under IRC Section 509(a)(1) for up to 12 years after closing; additional substantial public support would extend that timeline.

    The Foundation's post-closing transition fiduciary board will focus on preserving the mission, services and value of PacificSource as it identifies a nonprofit corporation to steward its member interest into the future. The transition fiduciary board will evaluate opportunities to sell or grant some or all its member interest in PacificSource in that period of time.

If the transition fiduciary board is not able to identify a nonprofit corporation interested in acquiring the Foundation's member interest in that period of time, to avoid a potential tax on excess business holdings, the Foundation could change its governance structure to qualify as a 501(c)(3) supporting organization described under IRC Section 509(a)(3). To do this, the Foundation would (1) amend its articles of incorporation and bylaws to name the supported organization(s) or class of supported organizations that would appoint the majority of the Foundation Board, and (2) report this change to the IRS through filing its subsequent IRS Form 990, which would indicate the Foundation is a Type I supporting organization described under 509(a)(3) of the Code. Though the Foundation is not required to obtain a new determination letter from the IRS to change among Sections of 509(a), it could choose to follow the procedure outlined in Rev. Proc. 2023-12 to file an IRS Form 8940 and make a miscellaneous determination request to receive a new determination letter reflecting its status as a supporting organization.

**36. Provide any analysis and other documentation relating to the Foundation's potential conversion into a supporting organization, including documents identifying any potential supported organizations, and including any examples of other such conversions. What would the impact of such a conversion be on the operations and charitable mission of the Foundation?**

A 501(c)(3) public charity isn't constrained to classify itself on its annual IRS Form 990 Schedule A as the type of public charity named in its IRS exemption determination letter. Rather, the organization must list the public charity status it meets in that tax year. For example, charities can move from a 509(a)(1) organization to one described under 509(a)(2) through the IRS Form 990, depending on their revenue. Similarly, if a public charity meets the organizational, operational, control and relationship tests detailed in Treas. Reg. 1.509(a)-4, it can change to a supporting organization described in 509(a)(3).

To qualify as a Type I supporting organization, a majority of the Foundation Board must be appointed by the supported organization(s). The Foundation would seek supported organization(s) with an aligned mission and vision that would support the Foundation with its mission to further health equity and access in Oregon and Southwest Washington. The charitable mission and operations of the Foundation would continue, with a new governance model and partner in the supported organization(s).

The Foundation has not discussed names of potential supported organizations, so the following examples are merely illustrations of how a supporting organization could be structured. Community foundations are the supported organizations for many 509(a)(3) organizations that operate robust grantmaking programs in furtherance of the community foundation's mission to strengthen their communities. In that model, the community foundation appoints a majority of the board of the supporting organization. A supporting organization can name a class of organizations (e.g. all coordinated care organizations in Oregon), or it can also name one or more government entities or tribes (e.g. the State of Oregon; or federally recognized tribes in Oregon and Southwest Washington).

**37. Provide an itemized estimation of the funds transfer to the Foundation, including an estimate of the unrestricted assets of all Legacy entities as of December 31, 2024, and the estimated value of each of the deductions nos. i through vii listed in Exhibit 1 – Foundation Transfer Calculation.**

| | | **12/31/24 (,000)** |
|---|---|---|
| **(a)** | the unrestricted cash and investments of all Legacy Health Entities (other than unspent bond proceeds) | $1,393,914 |
| | | |
| **(b)** | Less the sum of | |
| (i) | all outstanding debt of Legacy Health Entities | 727,611 |
| (ii) | net proceeds (gross proceeds less total direct (i.e. out of pocket) transaction costs) of any sales of Legacy Health Entity assets, entities or operations outside of Legacy's ordinary course of business, which have been or are consummated after March 31, 2023, other than the net proceeds of the transactions referenced at Exhibit G hereto | 153,644 |
| (iii) | the difference (positive or negative) between Legacy Health Entities' working capital minus a normalized level of five percent (5%) of trailing 12-month operating revenue | 15,688 |
| (iv) | to the extent not already deducted from Legacy Health Entities' unrestricted cash and investments, any compensation increases, stay bonuses, severance costs, parachute payments or similar amounts paid (or committed to be paid) to Legacy Health's management on or after December 1, 2022 (all of which must be paid by Legacy Health to Legacy Health management at or prior to the Closing) | 32,367 |
| (v) | the value of the non-donor restricted assets of Legacy Health Foundation | 1,726 |
| (vi) | the portion of unrestricted Legacy Health cash (the "Self-Insurance Holdback Amount"), which shall be retained at Closing by OHSU, or remitted at Closing to OHSU, and maintained in a segregated OHSU account (the "Self-Insurance Holdback Account") and which shall, subject to any withdrawals necessary to pay self-insured claims as provided for in Section 3.5.5, be paid by OHSU System to Legacy Health Foundation on the fifth anniversary of Closing, as more fully described in Section 3.5.5 | 32,000 |
| (vii) | $140 million of unrestricted Legacy Health cash (the "Holdback Amount") which shall be remitted at Closing to OHSU | 140,000 |
| **(b)** | **Sum of (i) – (vii)** | 1,103,016 |
| | | |
| (a)-(b) | The positive difference between (a) and (b), if any, is the "Initial Foundation Funding Amount" | 290,898 |
| | | |
| | Plus Net Proceeds of Transactions referenced at Exhibit G | |
| + | Davis Building | 5,981 |
| + | Vacant Land - Vancouver WA | 3,556 |
| | | |
| | Estimated Initial Foundation Funding Amount – applying 12/31/2024 numbers | 300,435 |

a. **In light of the fact that the Foundation and/or agencies may need to verify that the appropriate amounts have been paid, explain how each itemized amount was determined, and how those amounts can be matched to the balance sheet or other financial records.**

The amounts on the above December 31, 2024, calculation are either fixed amounts, or are sourced from the Legacy Health balance sheet. The unspent cash and investment of all Legacy Health Entities is a total from the Legacy Health balance sheet, less endowments. The outstanding debt of Legacy Health Entities is from the Legacy Health balance sheet, and the value of non-donor restricted assets of Legacy Health Foundation is from the Foundation's financial statement. The remaining numbers are fixed amounts, though the fixed amount in (b)(ii) decreases by $316,115 each month for ongoing rent.

b. **Are the contingent payments described as the unutilized portions of the Self-Insurance Holdback Amount and the Indemnification Holdback Amount in addition to or included within the estimated payment of $350 million?**

The calculation attached as Exhibit H to the System Combination Agreement estimated the Initial Foundation Funding Amount to be approximately $350M as of the end of 2023. This approximate amount is after the deduction of the $140M Indemnification Holdback Amount and after the deduction of the $32M Self-Insurance Holdback Amount.

38. **Is the approval of Pacific Health Associates necessary for the transfer of Legacy's interest in PacificSource to the Foundation?**

No, the transfer of Legacy Health's PacificSource membership interest to the Foundation will occur prior to the closing of the System Combination. Therefore, because the Foundation is a controlled affiliate of Legacy Health, this transfer is a "Member Internal COC" pursuant to the current PacificSource Member Agreement, and Sections. 2.1 to 2.7 of the Member Agreement are not applicable. Please see Section 2.8 of the Member Agreement.

Because this transfer occurs prior to the closing of the System Combination transaction, there is not a transfer of control of Legacy Health at the time of the transfer of the membership interest to the Foundation. Moreover, there is not a transfer of control of the Foundation after the transfer of the membership interest to the Foundation because the Foundation is excluded from the System Combination.

Therefore, approval of Pacific Health Associates is not necessary for the transfer of Legacy Health's membership interest in PacificSource to the Foundation.

a. **Does Pacific Health Associates have a right of first refusal with respect to the transfer to the Foundation? If not, explain.**

No, because as noted, the transfer of Legacy Health's PacificSource membership interest to the Foundation is a "Member Internal COC" pursuant to the current PacificSource Member Agreement, meaning Sections 2.1 to 2.7 of the Member Agreement are not applicable.

**b. Is this transaction considered a member change of internal control transaction pursuant to Section 2.8 of the PacificSource member agreement? Has Pacific Health Associates approved the transaction, indicated that it will not exercise its right of first refusal, or placed any conditions on the transaction?**

Yes, the transfer of the PacificSource membership interest to the Foundation is a "Member Internal COC" pursuant to the current PacificSource Member Agreement. Therefore, Sections 2.1 to 2.7 of the Member Agreement are not applicable, including the referenced right of first refusal.

Pacific Health Associates has not placed any conditions on the transaction.

**39. Will Pacific Health Associates' approval be necessary for the Foundation's sale of its interest in PacificSource to a third party?**

Any subsequent transfer by the Foundation of the PacificSource membership interest would require compliance with the right of first refusal in favor of Pacific Health Associates in the Member Agreement, or, consent from Pacific Health Associates' to a waiver of that right.

**a. What would be the effects, including tax effects, of the denial of such approval?**

Because the transfer of Legacy Health's PacificSource member interest to the Foundation will occur prior to the closing of the combination, that transfer is a Member Internal Change of Control pursuant to the current Member Agreement. Any subsequent transfer from the Foundation of its member interest or change of control of the Foundation would require compliance with PacificSource's then-current Member Agreement.

Were the Foundation unable to obtain approval to sell or transfer its member interest in PacificSource to a third party, it would evaluate the necessity of changing its governance structure such that it qualified as a supporting organization under IRC Sections 501(c)(3) and 509(a)(3) in order to avoid an excess business holdings excise tax. See responses to Inquiries 35 and 36 for more detail on how this change would be effectuated.

**b. What would be the effect of Pacific Health Associates' exercise of its right of first refusal with respect to that transaction, and how does that interact with OHSU's right of first refusal under the SCA?**

Pacific Health Associates' exercise of its right of first refusal would apply first because Pacific Health Associates is not an organization that, alone or in connection with its subsidiaries and Controlled Affiliates, operates one or more hospitals in Oregon or Washington State.

If Pacific Health Associates' does not purchase the interest pursuant to its right of first refusal, the OHSU right of first refusal would apply second if the transfer is to an organization that, alone or in connection with its subsidiaries and Controlled Affiliates, operates one or more hospitals in Oregon or Washington State.

**40. Have there been any communications between Legacy and Pacific Health Associates regarding this proposed transaction or any proposed transfer of Legacy's interest in PacificSource?**

In early 2024, prior to the public announcement of the System Combination, representatives of Legacy Health, PacificSource, and Pacific Health Associates met several times to discuss the overall transaction and the necessary regulatory approvals and Legacy's proposed transfer of its PacificSource member interest to its Foundation. During the latter half of 2024, Legacy's nonprofit counsel continued to provide PHA's counsel occasional updates on the OHSU-Legacy transaction and related regulatory process. In January 2025, Legacy Health circulated draft amendments to the PacificSource Member Agreement, as discussed in response to Inquiry #6.a.

Finally, representatives of Legacy Health and PHA participate in all PacificSource board meetings and Legacy representatives have at times shared information related to the proposed transactions at those meetings.

a. **If so, identify the individuals at Legacy and Pacific Health Associates involved in such communications and the form in which the communications occurred (email, phone call, board presentation, etc.).**

The 2024 meetings occurred via video conference and involved the counsel of Legacy Health (Craig Armstrong, Hatfield Knivila, LLC and Reed Smith LLP) and PHA (Miller Nash LLP), as well as a representative of PacificSource (Kristi Kernutt). Later periodic updates from Legacy's counsel for nonprofit matters (Stoel Rives LLP) were provided by telephone or video conference or email.

PacificSource board meetings involve PacificSource's then-current board members. A board roster is enclosed as Exhibit 31.

b. **Provide all documents reflecting or related to any communications between Legacy and Pacific Health Associates regarding this proposed transaction or any other proposed transfer of Legacy's interest in PacificSource.**

Enclosed as Exhibit 32 is the January 6, 2025, email correspondence regarding revisions to the PacificSource member agreement. We are not aware of any other substantive communications.

**41. Provide all Pacific Health Associates board minutes, agendas, materials, and correspondence to, from, and among entity executives and board members (e.g., memos, emails) related to the proposed transaction.**

PHA is in the process of compiling this documentation, and will provide it as soon as it is available.

**42. Explain why Pacific Health Associates did not buy out Legacy's PacificSource member interest.**

Pacific Health Associates does not have any interest in purchasing Legacy Health's PacificSource membership interest and does not have sufficient unrestricted assets to purchase the interest.

a. **Explain why a partial buyout was not ultimately pursued.**

Pacific Health Associates does not have any interest in purchasing Legacy Health's PacificSource membership interest and does not have sufficient unrestricted assets to purchase the interest.

b. **Explain the benefit of transferring the 50% member interest to the Foundation instead of a purchase by Pacific Health Associates.**

Pacific Health Associates was not interested in purchasing the interest.

**43. Did Legacy consider donating its 50% membership in PacificSource to Pacific Health Associates? Provide all documentation of that consideration.**

No, the transfer of the PacificSource membership interest to the Foundation is in furtherance of Legacy Health achieving its goal of ensuring that the Legacy Health Foundation has the assets necessary to make a meaningful impact on health equity and access in Oregon and Southwest Washington. Transferring PacificSource to the Foundation will therefore preserve and enhance Legacy Health's charitable mission long into the future, despite Legacy Health becoming a component of OHSU. A transfer of the interest to Pacific Health Associates would mean the use of the assets would be based on the mission of Pacific Health Associates and not the mission of the Foundation determined by Legacy Health.

**44. Are discussions still underway with Pacific Health Associates regarding a buyout of PacificSource's member interest? What is the status of those discussions? Provide any documentation reflecting those discussions or analysis of any proposal.**

Pacific Health Associates is not interested in purchasing the interest and there are no discussions between Pacific Health Associates and Legacy Health regarding this.

**45. The June 28, 2024 email from John Espinola to Mark Werner (Bates HCMO-00005513) states that "Legacy needs to achieve a return on its investment." Explain how Legacy is achieving a return on its investment by donating its PacificSource member interest to the Foundation, along with the cash surplus from the OHSU transaction.**

Legacy Health's PacificSource membership interest is a significant asset and the Initial Foundation Funding Amount is expected to be a significant asset. Transferring these assets and their value to the Foundation provides substantial opportunity to the Foundation to further the Foundation's mission. Accepting less than the full value of an asset like the PacificSource membership interest would negatively impact the ability of the Foundation to achieve its mission, and negatively impact the achievement of Legacy's transaction goals that are furthered by the Foundation's mission and future work.

**46. How will the Foundation evaluate potential offers from prospective buyers for its PacificSource membership?**

The Foundation expects that the parties would retain financial, legal and accounting advisers to help ensure that the transaction is fair and maximizes PacificSource's value to the Foundation and preserves PacificSource's existing services. Per PacificSource's current by-laws, any PacificSource member must be an Oregon nonprofit public benefit corporation or a foreign nonprofit corporation which, if incorporated in Oregon, would qualify as a public benefit corporation. The Foundation will assess whether a prospective buyer holds itself to the same principles as PacificSource so as to allow the two entities - together - to further PacificSource's mission to provide better health, better care, and better cost to the people and communities it serves.

Legacy Health and the Foundation firmly believe that the sale of PacificSource should be determined and completed by the Foundation after closing. Because the Foundation's post-closing board has not been constituted, it would be premature to dictate the specific process for finding a buyer. That said, the parties anticipate that the Foundation's Board of Directors would establish a competitive and comprehensive process that reflects the fact that PacificSource is a mission-driven organization. The post-closing Foundation Board, which will include community voices and members with experience in fundamental transactions, will control the sales process.

Pre-closing, Legacy Health will help facilitate and prepare for the post-closing sale, including by communicating with interested parties, engaging advisors to assist with the process, and providing diligence information to interested parties, noting that all such activities will be in collaboration with the Foundation and PacificSource. However, Legacy Health does not anticipate making any binding commitments regarding any sale of PacificSource, as the post-closing Foundation Board must evaluate and approve any such transaction.

a. **What guardrails or incentives are in place to ensure the Foundation receives a return on Legacy's original investment in PacificSource?**

   As with every investment, there is no guarantee that either Legacy Health or the Foundation will receive a financial return on Legacy Health's original investment in PacificSource. Moreover, there is no legal requirement that either receive such a return. As 501(c)(3) charitable organizations, both Legacy Health and the Foundation are required to ensure their assets are used for their charitable purposes and that their actions do not result in any private benefit. This legal requirement means any sale to a commercial enterprise must be at arm's length. Both the Oregon Nonprofit Corporation Act and PacificSource member agreement require any member of PacificSource be a public benefit corporation or a foreign corporation that could otherwise qualify as one. This legal framework is in line with Legacy Health and the Foundation's missions as well. The Foundation could also choose to grant all or some of its illiquid interest in PacificSource to another public charity, in which case it would have no financial return on that member interest, but the value of the asset would remain dedicated to its mission and charitable purpose.

**47. Explain the parties' reasoning for concluding that it was necessary to fund an independent foundation to promote health equity and access as opposed to funding a foundation within the control of OHSU and/or Legacy. Why do the parties prefer to fund an independent foundation versus creating a foundation within the combined system? Provide any documents discussing the importance of the foundation being independent or that discuss the parties' consideration of alternatives to funding an independent foundation.**

Funding an independent foundation was a key term in OHSU and Legacy Health's 2023 letter of intent. Legacy Health recognized that if it had pursued a private equity acquisition, the transaction with a for-profit entity would necessarily yield a conversion foundation, that is, a foundation created in order to ensure charitable assets remain dedicated to a charitable purpose (instead of inuring to the benefit of investors) when a nonprofit hospital or health insurance company is acquired by a for-profit entity or converts to for-profit status. By combining with OHSU, a public corporation that is functionally equivalent to a public benefit corporation and 501(c)(3) public charity, Legacy Health will be able to ensure that the full value of its charitable assets is preserved for charitable, public benefit purposes. Thus, unlike when a nonprofit hospital or health insurance company becomes a for-profit entity through conversion, merger or acquisition, a conversion foundation is not required to preserve charitable assets in this transaction. However, Legacy Health saw the meaningful impact such conversion foundations have made in their communities, and believed selling its assets to a for-profit should not be a prerequisite for Oregon to have an independent health equity foundation.

Making a grant to launch a health equity foundation both aligns with and furthers Legacy Health's commitment to advance health equity and provides support for programs and initiatives to improve healthcare and health outcomes, particularly by addressing social determinants of health which strongly affect individuals' health and wellbeing well before they ever set foot in a hospital. Legacy Health believes it is in the best interest of Legacy Health, its patients and the public to both integrate with a public university and fund an independent health equity foundation.

For Legacy, funding a foundation outside of OHSU ensures its mission can innovate beyond the walls of hospitals and clinics. The Foundation would not be confined by OHSU policy or positions and could serve as an independent voice to advocate and inform policymakers. As OHSU and Legacy each do now, the combined system will continue to play an important role in community health. The Foundation will partner with the combined system and with community-based organizations. In funding an independent foundation, the parties are creating a neutral voice in the space of health equity that can serve as convener, strategic and thoughtful grantmaking, and a hub for resources and innovation that will work to align and amplify existing efforts to advance health equity.

The Foundation will also serve an important oversight role. Ensuring there would be a separate entity with a transition fiduciary board that could serve in this role gave the Legacy Board additional confidence that its goals would be accomplished. The continuing directors serving on the transition fiduciary board will work with the new directors to ensure knowledge transfer on this topic, while the grantmaking board launches community engagement to support community-led grantmaking.

**48. It appears that OHSU will have to borrow funds to make capital improvements to Legacy's facilities. The amount that OHSU will need to borrow is affected by the amount of funds or assets that Legacy donates to the Foundation. Explain how the benefits of Legacy donating assets to the Foundation outweigh the costs associated with borrowing funds to improve Legacy's facilities.**

The financial benefits of this transaction are evidenced by OHSU's projections for the integrated public university health system. Specifically, as a result of this transaction OHSU projected that it will assume (a) $3 billion of Legacy Health assets, (b) $1.4 billion in Legacy Health liabilities, and (c) $1 billion in debt to finance capital expenditures across the integrated public university health system. Thus, upon the closing of this transaction, OHSU's net assets (i.e., assets minus liabilities) will increase from $4 billion to over $5.5 billion—a number that takes into account the capital commitment and net transfers to the Legacy Health Foundation. Additionally, while the integrated public university health system projects short-term operational losses through 2028 (most of which are driven by factors other than the combination), these losses are offset by an increase in the integrated public university health system's net worth. This increase is driven by the capital commitment, economic efficiencies, and improved financial performance associated with this combination.

Thus, as a result of the System Combination, OHSU is netting approximately $1.5 billion in assets. In that context, the benefits of this transaction substantially outweigh any potential borrowing costs.

**49. Why has Legacy decided to transfer proceeds to a transformed Foundation instead of making a restricted donation to a pre-existing healthcare foundation with experience in health care equity in this region?**

Legacy Health and OHSU engaged in lengthy due diligence and negotiations in the time between signing the letter of intent and the System Combination Agreement. The Foundation was involved in this confidential activity because of its post-closing duties described in the System Combination Agreement. Both because part of the Foundation's mission is to support Legacy Health and because Legacy Health is the Foundation's sole member, the Foundation Board was the obvious choice to involve in the confidential discussions. Moreover, the structure allows for a transition fiduciary board to fulfil the oversight roles within the System Combination Agreement while it also launches its community-led grantmaking board. The end result will be a new grantmaking foundation with a Board and mission built by the community.

Legacy Health is a supporting organization described in IRC Section 509(a)(3), and it is prohibited from making grants to private foundations and limited to making distributions to or for the benefit of its supported organizations. Treas. Reg. § 1.509(a)-4(e)(1). The Foundation is a permissible grantee because it is a public charity operated and controlled in connection with Legacy Health's supported organizations, in that Legacy Health is the sole member of the Foundation.

The Foundation is well-positioned to launch as an independent health equity foundation. Its current Board has identified three members with professional experience with investments, insurance, CCO's, working with Medicaid populations, and community engagements who will continue their service post-closing. The Board will be supplemented with continuing directors from Legacy Health who will bring their ongoing knowledge and experience, and new members to be identified from Oregon and Southwest Washington.

The grantmaking board will oversee community engagement to develop the Foundation's values and mission framework.

Legacy has engaged The Giving Practice, an independent third-party consultancy experienced in philanthropy and community engagement and housed within Philanthropy Northwest, a nonprofit philanthropy network with the mission of growing philanthropy's capacity to do transformative work toward redistributing resources and power to underinvested communities in the Northwest. The Giving Practice is applying its extensive experience with conversion foundations and community engagement. The Giving Practice has been in conversation with a broad cross-section of the community in Oregon and Southwest Washington representing a wide range of civic leaders, community organizations and philanthropic funders. The Giving Practice will continue its work to support the launch of the Foundation by partnering with community to create a public process to solicit recommendations and nominations for new members of the transition fiduciary board and the grantmaking board. Legacy and the Foundation commit to co-creating with communities across the State and SW Washington in furtherance of OHA's definition of health equity.

**50. Identify any donor-restricted funds that the Foundation or Legacy currently hold, including the purpose of and amount in each fund. Identify any donor-restricted funds that the parties anticipate will be transferred or otherwise affected by this transaction and outline the process the parties will use to evaluate whether donor-restricted funds should be modified or transferred to another organization and how any such change will be made.**

The Foundation is the designated recipient of charitable funds for Legacy Health, Unity Center for Behavioral Health, Emanuel Medical Center, Meridian Park Medical Center, and Mount Hood Medical Center. The chart attached as Exhibit 28 provides detail on the donor-restricted funds held by the Foundation, including (a) the name of the donor-restricted fund, (b) the unit for which the fund is held, (c) a brief description of the purpose of the fund, (d) whether the fund is endowed by donor restriction (note: some funds are currently managed as endowed funds as a result of a board decision to manage them as such; accordingly, the requirement the fund be endowed may be lifted at any time by action of the board), and (e) current dollar value of the fund. Donor-restricted funds include both those funds (1) established at the request of a donor or donors for a particular purpose, and (2) created by the Foundation to solicit and accept contributions from donors for a particular purpose. Either way, the funds are donor-restricted funds in that donors gave with the expectation that the Foundation would expend funds for a particular program or purpose. Between the date of this response and the date of closing, the Foundation may establish additional donor-restricted funds or close out any donor-restricted funds that have been fully spent down in accordance with their purpose.

At closing, the Foundation will continue to hold all then-existing donor-restricted funds. The Foundation does not plan to transfer any donor-restricted funds to other organizations in connection with the transaction prior to closing. Following closing, the Foundation will coordinate with OHSU Foundation, the hospitals and clinics for which the Foundation raised charitable funds, and the Unity joint venture partners to facilitate transfer of donor-restricted funds in accordance with the terms of any gift instruments establishing donor-restricted funds and applicable law such that they can continue to be expended in alignment with donor intent. In consultation with the above-named entities, the Foundation may determine that some funds can be immediately applied by the hospitals, and other funds should be transferred and held for future use in accordance with donor restrictions.

The transaction will not affect the restricted funds held at the other four Legacy foundations, which shall continue to exist as nonprofit corporations affiliated with the combined system.

**51. Legacy has indicated that the board members for the Foundation have not yet been identified. Have any existing board members of Legacy or the Foundation expressed an interest in serving on the board of the Foundation?**

Incorporating community input, Legacy Health and Legacy Health Foundation have changed the Foundation's transition governance structure and composition. At closing of the combination, the Foundation will launch with a transition fiduciary board and a community-led grantmaking board. Please see enclosed visual as Exhibit 29.

The transition fiduciary board will attend to the following transition duties: (i) enforcement of Legacy Health's rights under the System Combination Agreement, including rights related to OHSU governance, employee protections, and the $1 billion capital commitment to Legacy Health; (ii) oversight of the illiquid member interest in PacificSource, a vital resource for the Medicaid community which will be transferred to the Foundation at closing; and (iii) stewardship of Legacy Health Foundation's existing restricted funds. The transition fiduciary board will initially be composed of eleven people: four continuing from Legacy Health, three from Legacy Health Foundation, and four new directors unaffiliated with Legacy Health, Legacy Health Foundation or OHSU. Having a subset of Legacy Health directors and Legacy Health Foundation trustees continue as part of the transition fiduciary board is essential to fulfilling these ongoing duties.

In addition to a transition fiduciary board, the Foundation will now have a community-led grantmaking board comprised of eleven new members from across Oregon and Southwest Washington who will make grantmaking decisions and will oversee robust community engagement to expand the number and representation of board members and ensure community-led development of a working set of values and vision.

**a. If yes, identify those board members. Have any of these persons agreed to serve without compensation?**

The Giving Practice will partner with community to create a public process to solicit recommendations and nominations for new members of the transition fiduciary board and the grantmaking board. Legacy Health and Legacy Health Foundation have identified the following seven individuals to serve as continuing directors on the transition fiduciary board, all of whom must complete the NAIC affidavit prior to closing:

- Legacy Health: Edgar Navas, Nancy Locke, Dr. Nasreen Ilias-Khan, Dr. Nathalie Johnson.
- Legacy Health Foundation: Gabe Goddard, Michael Llewelyn, Dr. Lewis Low,

At present, the Legacy Health Foundation trustees do not receive any compensation. The continuing directors do not have an expectation of compensation for their service on the transition fiduciary board. The transition fiduciary board and grantmaking board will work together to identify how to support broad representation and participation in the Foundation's activities, which may include stipends or other compensation.

**b. If no, describe the process by which interested board members will be identified and selected. Provide any documents that relate to the recruitment or selection of existing board members to serve on the board of the Foundation post-closing.**

See response to Inquiry 51(a) above.

**52. Will there be any restrictions on the amount or percentage of funds that the Foundation can spend on programs in Southwest Washington versus Oregon?**

To-date the only restrictions have been imposed by Legacy Health as the donor, and those are on place and purpose: health equity and access in Oregon and Southwest Washington. The transition fiduciary board and grantmaking board will co-design an initial strategic framework, and the grantmaking board will oversee ongoing community engagement to determine health equity strategic and responsive grantmaking strategy. This may include more specifics on resource allocation for programs that are specific to Oregon versus Southwest Washington, and programs that cross borders. This may also include a spend-down plan or other board-imposed restrictions.

**53. Provide consolidated financial statements for PacificSource for 2014 through 2018.**

The requested financial statements are attached as Exhibit 25.

**54. What was Legacy's expected return on its investment when it acquired its membership in PacificSource? State the reasons and analysis underlying this expectation and provide any documentation of Legacy's evaluation of its expected return.**

A partnership between Legacy and PacificSource was expected to create value through not only financial investment but also through strategic synergies that leveraged the combined capabilities of each organization resulting in incremental financial return. These partnership synergy strategies initially focused on growth and financial performance in the Portland metro area, which could then be expanded to additional markets.

Central to the execution of all partnership synergy strategies was the development of an integrated care model that supported effective care and revenue management. The introduction products in multiple lines of business in the Portland market was also expected to create value by supporting membership growth and enhancing the performance of the integrated care model.

In addition to partnership synergy strategies, PacificSource would have access to partnership capital to realize investment opportunities that would support membership and financial growth in markets outside of Portland. Based on scenario forecast modeling, by 2018 the partnership could produce between \$9M and \$50M in incremental underwriting income compared to forecast projections of PacificSource as a stand-alone entity. An intermediate scenario estimates incremental underwriting income of ~\$25M. See analysis prepared by HealthScape Advisors attached hereto as Exhibit 20(4).

**55. Since 2016, have any subsidiaries of PacificSource declared any dividends that were paid out to another PacificSource entity (e.g., PSCS paying out a dividend to PSHP)? If so, identify the date, amount, and the entities that declared the dividend, and where the monies ultimately resided.**

PacificSource contributed $55 million in 2019 and $25 million in 2020 down through the organization structure to PacificSource Community Solutions; this was a result of the expanded territories – and membership – that PCS took over in the 2.0 reprocurement process. As that membership was absorbed and finances stabilized, that capital could be moved back up the organizational structure, such that $30 million was distributed in 2022 from PCS to PacificSource Community Health Plans and then to PacificSource Health Plans and, in 2023, $50 million was distributed from PCS to PCHP. Additionally, in 2016, PCS distributed $20 million up through the org structure to PacificSource, with another $20 million in 2017.

**56. Provide all documentation related to Legacy's valuation of its PacificSource membership interest when it acquired the interest and any documentation related to the decision to purchase the interest.**

Please see Exhibit 26.

**57. Provide details (amounts, timing, reason, etc.) for any historical capital infusions to PacificSource from its members (Legacy and PHA) through December 31, 2024.**

No capital infusions have been provided.

**58. Provide both the draft amended Articles of Incorporation and Bylaws of PacificSource.**

At this time, there are no amended articles of incorporation or Bylaws of PacificSource.

**Tax Matters**

**59. What is the mechanism, under corporate law, by which the Foundation will make the conversion to an independent nonprofit public benefit corporation?**

**a. Will this conversion be a taxable event?**

Please see response to Inquiry 59(b) below.

**b. Will the Foundation retain its current 501(c)(3) tax-status or will it be required to reapply for exemption?**

The Foundation will amend its Oregon nonprofit articles of incorporation to change its name and eliminate Legacy Health as its sole member. This document will be filed with the Oregon Secretary of State. The Foundation will also adopt amended and restated bylaws reflecting its new independent governance structure. The Foundation will notify the Oregon Department of Justice Charitable Activities Section and the IRS of its change in name and updated documents when it files its IRS Form 990 for the year in which the new documents are adopted. The Foundation is not required to re-apply to the IRS for recognition of tax-exempt status.

The change in governance structure and mission statement is not a taxable event and does not have income tax implications. The Foundation will be a 501(c)(3) public charity both before and after the change of its documents, and will continue to conduct charitable activities.

**60. Will the grant of the membership interest in PacificSource and cash from Legacy to the Foundation adversely impact the Foundation's public charity status such that the Foundation may be expected to lose its public charity status?**

**a. If the grant is not expected to adversely impact the Foundation's public charity status, explain why.**

The grant of the member interest and liquid assets will not adversely impact the Foundation's public charity status. As further discussed in response to Inquiry 35, the Foundation's public charity status may change not because of its acceptance of a member interest PacificSource, but because of a future change in revenue received by the Foundation.

**b. If the grant is expected to adversely impact the Foundation's public charity, confirm the following:**

**i. When or how quickly would the Foundation be expected to convert to a private foundation?**

The grant payment schedule outlines six grant installment payments to be made by Legacy Health beginning at closing, and then by OHSU through 2031. These grant payments will support the continuation of the Foundation's classification as a 501(c)(3) public charity described under 509(a)(1); any additional public support would extend that timeline. If the Foundation does not either receive any additional funding after the final grant from the combined system or convert its governance structure to a supporting organization, it would be reclassified as a private foundation by 2036.

**ii. If the Foundation must convert to a private foundation, how will that impact the following:**

**1. The Foundation's ability to own a 50% interest in PacificSource? In other words, would the interest in PacificSource be considered a business enterprise subject to the excess business holding limitations?**

a. **If so, by when would the Foundation need to dispose of the excess business holding?**

The Foundation plans to transfer its member interest in the next five to ten years or change its governance structure to a supporting organization before it can no longer meet the public support test to ensure it is not subject to excise taxes imposed on private foundations for excess business holdings, or to the income tax on private foundation investments. If the Foundation does not either receive any additional funding after the final grant from the combined system or convert its governance structure to a supporting organization, it would be reclassified as a private foundation by 2036. If a charitable organization classified as a private foundation held the 50% member interest in PacificSource, it would be considered an excess business holding.

2. **The Foundation's ability to meet the annual payout requirement imposed on private foundations.**

   i. **Will the Foundation need to treat its interest in PacificSource as an investment asset for purposes of calculating the private foundation payout?**

   Please see response to Inquiry #60(b)(ii)(2)(iii) below.

   ii. **If so, how will the interest be valued and what is the expected value range?**

   Please see response to Inquiry #60(b)(ii)(2)(iii) below.

   iii. **If so, what is the expected annual payout? Will the Foundation have sufficient cash/cash flow to meet the payout?**

   This Inquiry combines elements that will not be true at once. The Foundation will not have an annual payout requirement so long as it is a 501(c)(3) public charity, including if it changes its governance structure to a supporting organization. Only private foundations have minimum distribution requirements. Private foundations also have excess business holdings rules and excise taxes. The Foundation intends to either transfer all of its member interest in PacificSource before it is reclassified as a private foundation or it will change its governance structure to a supporting organization. However, if the Foundation retains less than 35% member interest in PacificSource while it is classified as a private foundation, then that holding would not subject it to an excise tax on excess business holdings and the value of that mission-related investment would be included in its assets and calculation to determine its minimum distribution requirement.

**61. Does the Foundation have tax counsel experienced in tax-exempt organization issues providing advice? If yes, provide the name and affiliated firm of such counsel.**

Legacy Health engaged Stoel Rives LLP to provide tax-exempt organization counsel related to the grant to and its role as member of Legacy Health Foundation. Lane Powell PC (now Ballard Spahr LLP) provided independent counsel to Legacy Health Foundation Board of Trustees regarding accepting the assets pursuant to the terms of the Memorandum of Understanding and Grant Agreement. The transition fiduciary board may choose to continue with either of these firms or find different counsel after closing.