To Members of the CRB and OHA/HCMO Staff

Re: The Cost and Consumer Harm Criteria

The impact of the proposed merger on costs, its implications for health insurance premiums and patient cost-sharing, and its relation to the statewide growth target aroused substantial interest and skepticism among CRB members. Although some members expressed concern about the general capacity of economists and healthcare analysts to make cost forecasts in the current environment, it is important to keep in mind that the burden of persuading OHA (and the CRB) on the question of costs and the corresponding criterion of "adverse impact on consumers" falls exclusively on the Applicants. With this in mind the proper inquiry for OHA and CRB to make should be: Have the Applicants made a convincing demonstration that their underlying assumptions, data, methods for estimating costs, and results and their analysis of the impact on consumers are adequately supported and reasonable? Or are they too optimistic or questionable to support a reliable finding?

As of today, the Applicants-- with the acquiescence of OHA-- have yet to make their financial projections available to the CRB. Question 7 Exhibits 4 and 5—the OHSU/Legacy cost forecasts-- remain completely redacted. At least from a CRB perspective, it is impossible to see how Board Members can possibly make findings and recommendations about cost without full access to these source documents and the ability to ask follow-up questions. Regrettably, an updated public records request reveals that OHA is not committing itself to a release of these exhibits--the necessary building blocks for an independent CRB review-- before the CRB's clock runs out. If this matter is not resolved, properly and within a sufficient time period, the CRB would have no option but to take a pass on the cost and consumer harm criteria and to clearly state its reasons to the public. Any other course of action would threaten the credibility of an independent consumer review process.

Here are a couple of illustrative comments and suggestions OHA and the CRB might wish to consider.

In the OHSU Response to the questions raised by the CRB, the Applicants paint an optimistic picture of their combined post-transaction asset position. Further, they do not explain their assumptions about operating losses. (See the Applicants response to question 9). The consequences, if they are overly optimistic, could mean a lowering of Legacy and OHSU credit ratings and a corresponding increase in the cost of borrowing—a cost factor which would ultimately be shifted to consumers. (For a discussion, see C. Wihtol, "Years of Losses Would Follow OHSU's Absorption of Legacy Health" (Lund Report, October 1, 2024). The CRB doesn't know what assumptions and forecast methods underpinned OHSU's description of net assets and operating losses.

Second, in just one sentence OHSU indicates that the "integrated public health system" would negotiate contracts with insurers in a "collaborative manner". What this means is that OHSU and Legacy would use their combined bargaining leverage to secure an increase in negotiated reimbursements from health insurers. If successful, it is safe to assume that this added cost would also be passed on to consumers. Increased leverage is plainly a significant purpose of the transaction—one that has ramifications for both the "competitive impact" and "consumer impact" evaluation criteria. In a comment previously made by OHSU President Steve Stadum, the suggestion was made that the merger would not increase bargaining leverage or adversely affect prices through negotiation. If this indeed is an element of the financial projections, it certainly merits very careful analysis.

Third, the response to the CRB's question about the integration of retirement benefits and the cost implications for PERS was inconclusive. It is not clear how retirement benefits were factored into the cost estimates. One way to get a better fix on this question would be to ask the Applicants to estimate two alternative scenarios: one would be a "no retirement benefit merger" and the other would be a "full merger" within some reasonable time frame. The two options would provide an idea of the overall impact of a merger of retirement benefits through PERS.

Respectfully submitted,

:Larry Kirsch

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