

## SUMMARY REPORT

# Kroger and Albertsons Preliminary Review

The Oregon Health Authority's [Health Care Market Oversight](#) (HCMO) program reviews proposed health care business deals, like mergers and acquisitions, to make sure they won't harm people and communities in Oregon. After completing a review, OHA issues a decision about whether a business deal, or transaction, involving a health care company should proceed as planned.

On August 8, 2023, OHA accepted a complete [notice of material change transaction](#) ("notice") from The Kroger Co. ("Kroger"), detailing plans to merge with Albertsons Companies, Inc. ("Albertsons"). After completing a 30-day preliminary review, OHA determined that the transaction warrants a comprehensive review.

This report summarizes findings from OHA's preliminary review of the proposed merger. This report is for informational purposes only and does not constitute proposed findings of fact or conclusions of law. All references to Oregon statutes and administrative rules are qualified in their entirety by the text of the statutes and rules. Nothing stated in this report should be viewed as an indication of OHA's evaluation of the comprehensive review criteria. A complete report will be made available following completion of OHA's comprehensive review.

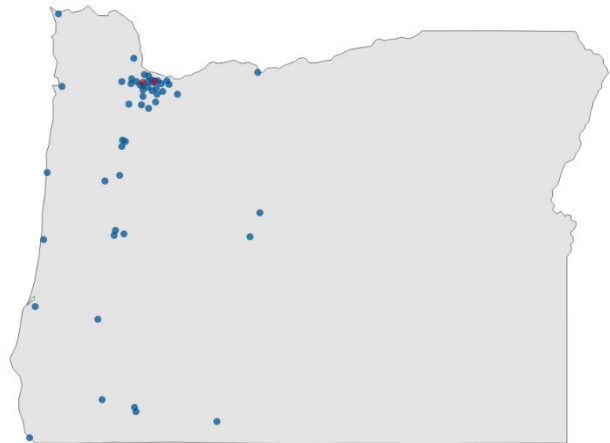
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## Kroger

Kroger is a public company that operates supermarkets in 35 states under a variety of names, including Fred Meyer and QFC. Kroger is one of the nation's largest supermarket chains, operating more than 2,700 stores and employing more than 415,000 people.<sup>1</sup>

Most stores operated by Kroger contain retail pharmacies, including 53 retail pharmacies in Fred Meyer and QFC stores in Oregon.<sup>i</sup> Kroger also operates a pharmacy benefit manager, specialty pharmacy services, and mail-order and online pharmacy business.<sup>ii</sup> According to data from Oregon's All Payer All Claims database for calendar years 2020-2022,

Map showing current **Fred Meyer** and **QFC** pharmacy locations.



<sup>i</sup> Retail pharmacies sell prescription drugs, over the counter medications, and non-prescription health care equipment and supplies to help treat common health issues and conditions. Specialty pharmacies distribute medications that are high cost, treat complex medical conditions, or require special supports to administer.

<sup>ii</sup> Pharmacy benefit managers are companies that provides prescription drug benefits on behalf of health insurers, employers, and other payers.

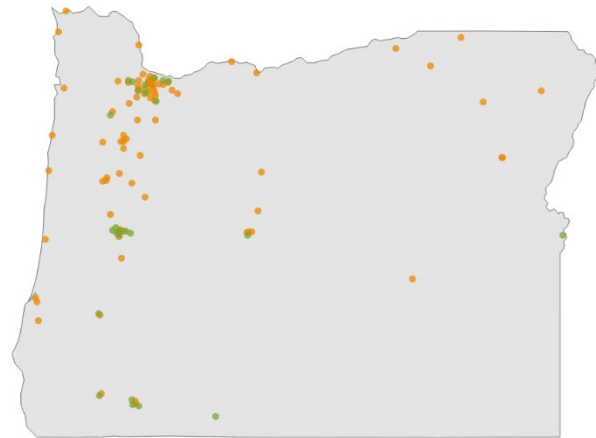
Kroger-owned pharmacies provided prescriptions for 22% of all people in Oregon who had a prescription filled during that time.<sup>2</sup>

## Albertsons

Albertsons is a public company that operates supermarkets in 34 states under a variety of names, including Safeway. Albertsons operates more than 2,200 retail stores and employs nearly 300,000 workers.<sup>3</sup>

Most Albertsons-owned supermarkets have retail pharmacies on site, including 106 retail pharmacies in stores in Oregon. Albertsons also offers telehealth services in partnership with Providence Health and Services and operates a specialty pharmacy. According to data from Oregon's All Payer All Claims database for calendar years 2020-2022, Albertsons-owned pharmacies provided prescriptions to 25% of all people who had a prescription filled in Oregon in that time period.<sup>4</sup>

Map showing current **Albertsons** and **Safeway** pharmacy locations.



## Proposed Transaction

Kroger is planning to pay \$24.6 billion to acquire all outstanding shares of Albertsons stock and will take on \$4.7 billion of Albertsons' net debt. Following the merger, Albertsons will become a subsidiary of Kroger. The entities state that the purpose of the transaction is to create a more competitive combined company. In the notice, Kroger states that it has no plans to reduce health care or pharmacy services in Oregon.

Kroger and Albertsons expect to divest some stores in order to meet state and federal regulatory requirements. They expect to divest 100-375 stores nationwide by creating a standalone public company ("SpinCo") prior to closing the transaction.<sup>5</sup> Divestitures would include the pharmacies located in these grocery stores. The entities have not yet shared information about which stores would be divested or how they make divestiture decisions.

## OHA's Review

OHA completed a preliminary review of the proposed transaction. During the review, OHA conducted initial analyses on the potential impact of the proposed transaction on cost, quality, access, and health equity in Oregon. HCMO focuses on health care services and items, therefore the preliminary review focused on assessing the proposed transaction's effects on prescription drug services.

Retail pharmacies provide access to prescription drugs, over the counter medications, and non-prescription health care equipment and supplies. OHA's analysis used data from prescription claims submitted by pharmacies to insurance companies. OHA did not consider over-the-counter medications or other health care items in its market share analyses. OHA's review also did not assess impacts on grocery or other markets.

OHA held a 14-day public comment period and received one [public comment](#).

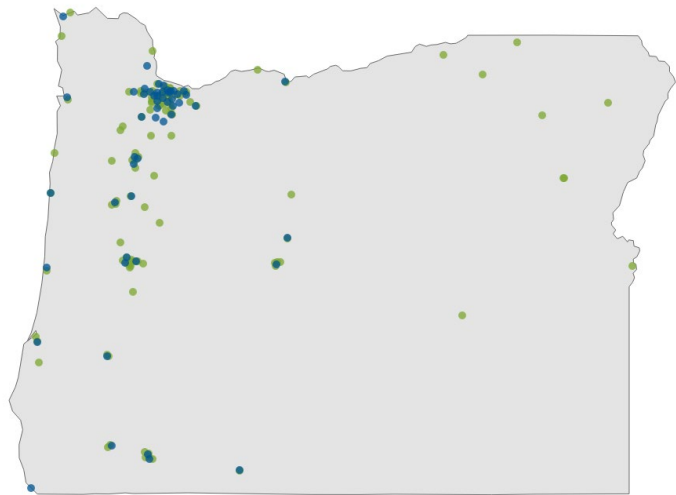
## Preliminary Analysis

OHA’s preliminary analysis focused on assessing how the proposed transaction could affect market concentration and access to pharmacy services. OHA also looked at the scale of the transaction and which geographic regions may be impacted.

### Potential to result in a significant change in Kroger’s market share

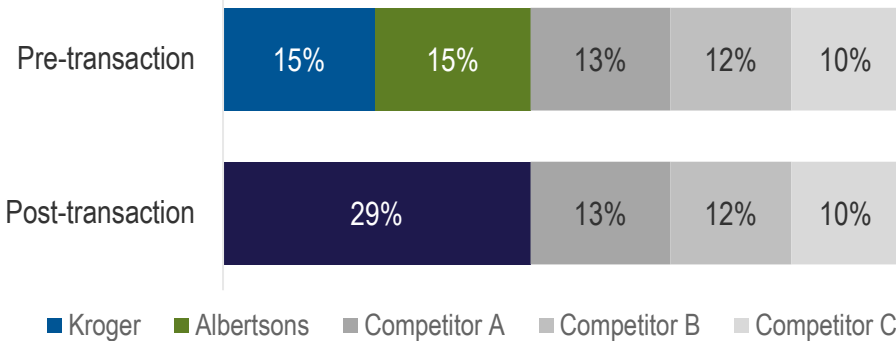
Since Kroger and Albertsons offer similar products and services, including retail pharmacy and specialty pharmacy services, and many of their Oregon stores are located within close geographic proximity of each other, this deal represents horizontal consolidation. Consolidation, or concentration, refers to the degree of competition in a market. A highly concentrated market will generally have a smaller number of companies, each with a larger market share. Less concentrated markets have more competing companies, each with smaller market shares. The more concentrated the market is, the more likely companies are to charge higher prices for their products and services.

Map showing current **Kroger** and **Albertsons** locations.



OHA’s analysis of prescription pharmacy claims data from calendar years 2020-2022 showed that Kroger and Albertsons are currently the two largest prescription pharmacy providers in the state, each holding about 15% of the prescription drug market.<sup>6</sup> The next largest pharmacy provider holds 13% of the market share for prescription drugs. A merger between these two market leaders would result in a company with nearly 30% of the retail prescription drug market in Oregon. Kroger’s post-transaction market share, absent any divestitures, would be more than double that of the next biggest competitor in Oregon. OHA’s preliminary review did not assess how proposed store divestitures in Oregon would impact Kroger’s market share.

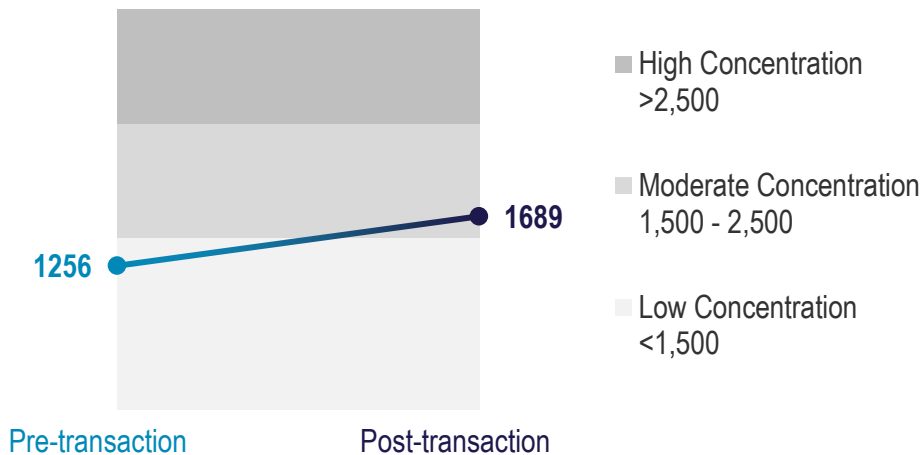
If the deal goes through without divesting any stores, the **combined company's** share of the retail prescription drug market in Oregon will be more than double that of its closest competitor.



OHA also calculated the Herfindahl-Hirschman Index (HHI) to assess market concentration associated with the transaction. HHI is a measure commonly used by federal and state antitrust enforcement agencies. The pre-transaction HHI statewide is 1256, indicating a low level of market concentration. The post-transaction HHI would be 1689, which indicates moderate concentration – an increase of 433 points.<sup>7</sup>

Transactions occurring in more concentrated markets and those involving a significant change in concentration are more likely to have adverse effects on competition and lead to price increases. Based on federal merger guidelines, this transaction has the potential to significantly reduce competition.<sup>8</sup> The proposed transaction would have varying impacts in local markets across Oregon, depending on number and size of competing retail pharmacies in an area. For example, in rural areas with fewer pharmacy providers, any further increase in concentration would pose a higher risk of price increases.

**Pre-transaction HHI** shows that the prescription pharmacy market in Oregon is relatively unconcentrated; **post-transaction**, HHI would increase and the market could become moderately concentrated.

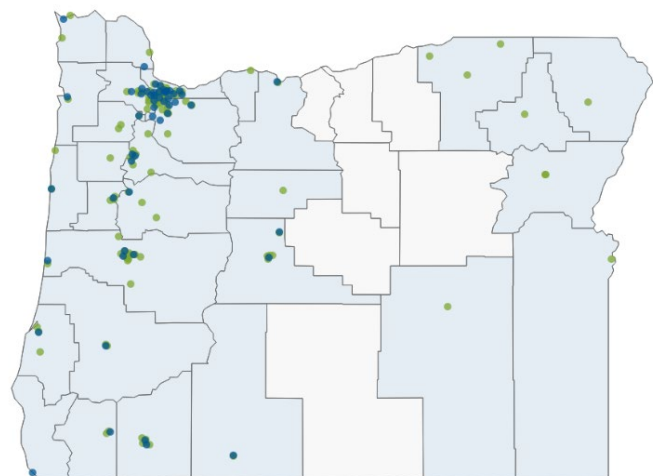


### Potential to impact a large number of people in Oregon

In Oregon, Kroger and Albertsons currently operate more than 150 retail pharmacy locations in Fred Meyer, Albertsons, Safeway, and QFC stores in 29 counties. People living in these counties represent nearly 99% of the statewide population.<sup>9</sup>

This means that any changes to access to pharmacy services, cost and prices, quality of care, or health equity as a result of the transaction have the potential to affect the communities where most Oregonians live and work. The map at right shows pharmacy locations across the state. Counties shaded in blue have at least one Kroger- or Albertsons-owned pharmacy location.

Map showing Oregon counties with a Kroger or Albertsons pharmacy location.



## Potential to significantly impact access to care

OHA looked at how the proposed transaction could impact access to pharmacy and prescription drug services. Access can be affected by a variety of factors, including store geographic locations and hours of operation, pharmacy staffing, types of insurance accepted, and travel time to receive care.

In its initial analyses, OHA identified ways in which this transaction could significantly impact access to care, particularly for rural communities and military service members. This transaction has the potential to affect access to pharmacy and prescription drug services if it restricts access to pharmacy services through store closures or changes to store operations or if there are changes to the types of insurance that the companies accept.

### Store closures or changes to store operations

The entities expect that transaction will likely result in Kroger and Albertsons divesting some stores – and pharmacies – that currently operate in Oregon. While the entities have not shared which stores could be divested, stores located within close geographic proximity may be candidates for divestiture. In Oregon, 35 zip codes have both Kroger- and Albertsons-owned retail pharmacy locations.<sup>10</sup> Roughly 1.3 million people, 30% of the Oregon population, live in these zip codes and could be impacted by store divestitures.<sup>11</sup>

While the entities have committed to keeping stores open, the future for divested locations is less clear. For example, in 2014, Albertsons received regulatory approval to acquire Safeway after agreeing to sell 146 stores to Haggen, a small supermarket chain in the Northwest. Haggen filed for bankruptcy months later and blamed the Albertsons deal for its demise. Albertsons bought back dozens of the stores it had sold, while many other locations closed.<sup>12</sup>

*In many of our state's more remote areas, grocery store pharmacies are often the only retail pharmacy option for many miles. These pharmacies serve a critical function, offering essential prescription medications, vaccinations, and health consultations to vulnerable populations.*

- Public Comment

Many people across Oregon, including those living in rural and remote locations, already struggle to access prescription drugs. In some communities, residents may have few options to get prescriptions filled. Changes to store locations or store closures could result in reduced access.

### Insurance changes

When a pharmacy changes the types of insurance coverage it will accept, it can also impact access to care for patients. TRICARE provides health care coverage for military service members, retirees, and their families. As of 2022, around 69,000 people in Oregon were enrolled in TRICARE coverage.<sup>13</sup>

Beginning in 2023, Kroger stopped accepting TRICARE at its retail pharmacies.<sup>14</sup> Albertsons pharmacies continue to accept TRICARE. If the transaction results in Albertsons pharmacies no longer accepting TRICARE, military families could face barriers to getting the prescription drugs they need.

## Next Steps

Based on the preliminary review, OHA has determined that the transaction requires a comprehensive review. The transaction will receive a comprehensive review, per ORS 415.501(6)(b), because OHA has not determined that the proposed transaction meets any of the following approval criteria during the preliminary review:

1. The material change transaction is in the interest of consumers and is urgently necessary to maintain the solvency of an entity involved in the transaction;
2. The material change transaction is unlikely to substantially reduce access to affordable health care in Oregon;
3. The material change transaction is likely to meet the criteria set forth in OAR 409-070-0060;
4. The material change transaction is not likely to substantially alter the delivery of health care in Oregon; or
5. Comprehensive review of the material change transaction is not warranted given the size and effects of the transaction.

These criteria are specified in administrative rules for the Health Care Market Oversight Program and are consistent with Oregon law.

OHA will complete the comprehensive review in accordance with applicable statutes and administrative rules. The comprehensive review will be completed within 180 days of when OHA accepted a completed notice, unless otherwise extended or tolled. Upon completion of the comprehensive review, OHA will issue a proposed order to approve, approve with conditions, or disapprove the transaction. OHA will accept comments from the public and the entities prior to issuing the final order. This transaction is also subject to federal and state antitrust oversight, and OHA will monitor the progress of those efforts.

## Comprehensive Review

A comprehensive review allows OHA to conduct more in-depth analyses to understand how the transaction might affect people and communities in Oregon. During the comprehensive review, OHA will analyze the likely impact of the transaction on access, cost, quality, and equity and determine whether the transaction meets the criteria for approval under OAR 409-070-0060(6). For more information about comprehensive review analyses, please see HCMO's [Analytic Framework](#). OHA may engage outside advisors to perform analysis or consult with OHA in accordance with ORS 415.501(14).

## Participate in a community review board

OHA plans to convene a community review board for the comprehensive review. Community review boards provide input about transactions and make a recommendation to OHA about whether or not the transaction should be approved. Members can include people who live and work in affected communities, consumer advocates, health care experts, and health care providers.

If you would like to participate in the community review board for this transaction, email [hcmo.info@oha.oregon.gov](mailto:hcmo.info@oha.oregon.gov). HCMO staff will provide information about the timeline, member requirements, and application process.

## **Submit a public comment**

OHA will accept and post public comments throughout the comprehensive review period. Public comments can be submitted via email to [hcmo.info@oha.oregon.gov](mailto:hcmo.info@oha.oregon.gov). Public comments will be posted to OHA's website and may be included in reports. Please do not include private or sensitive information in submitted comments.

## References

<sup>1</sup> Kroger investor relations website, available at: <https://ir.kroger.com/home/default.aspx> (accessed 8/29/23)

<sup>2</sup> Analysis performed by HCMO staff using data from Oregon's All Payer All Claims database for calendar years 2020-2022. For more information about APAC, visit OHA's [website](#).

<sup>3</sup> Albertsons investor relations website, available at: <https://www.albertsonscorporate.com/investors/overview/default.aspx> (accessed 8/29/23)

<sup>4</sup> Analysis performed by HCMO staff using data from Oregon's All Payer All Claims database for calendar years 2020-2022. For more information about APAC, visit OHA's [website](#).

<sup>5</sup> Press Release. "Kroger and Albertsons Companies Announce Definitive Merger Agreement." Kroger and Albertsons Companies Announce Definitive Merger Agreement - The Kroger Co. Accessed August 28, 2023. <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx>. (accessed 8/24/23)

<sup>6</sup> Analysis performed by HCMO staff using data from Oregon's All Payer All Claims database for calendar years 2020-2022. For more information about APAC, visit OHA's [website](#). Calculated as number of APAC prescription drug claims from 2020-2022 from the submitted NPIs divided by the number of claims from retail pharmacies, MCO pharmacies, and mail order pharmacies in Oregon.

<sup>7</sup> Analysis performed by HCMO staff using data from Oregon's All Payer All Claims database for calendar years 2020-2022. For more information about APAC, visit OHA's [website](#). See HCMO's [Analytic Framework](#) for more information about calculating HHI.

<sup>8</sup> U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, August 19, 2010, available at <https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf>. See also, US Department of Justice and the Federal Trade Commission, Draft Merger Guidelines, July 2023, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p859910draftmergerguidelines2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf).

<sup>9</sup> Oregon Blue Book, 2022 County Population Estimates, available at: <https://sos.oregon.gov/blue-book/Pages/local/county-population.aspx> (accessed 8/28/23)

<sup>10</sup> Analysis performed by HCMO staff using pharmacy location information provided by the entities.

<sup>11</sup> U.S. Census Bureau, 2017-2021 American Community Survey 5-Year Estimates (accessed 8/29/23)

<sup>12</sup> Meyersohn, Nathaniel. "There's a Big Problem with the Kroger-Albertsons Supermarket Merger | CNN Business." CNN, November 29, 2022. <https://www.cnn.com/2022/11/29/business/kroger-albertsons-merger-ftc-antitrust/index.html>. (accessed 8/28/23)

<sup>13</sup> Defense Health Agency. Evaluation of the TRICARE Program: Fiscal Year 2022 Report to Congress, February 28, 2022. <https://health.mil/Reference-Center/Reports/2022/10/07/Evaluation-of-the-TRICARE-Program-FY-2022-Report-to-Congress>. (accessed 8/28/23)

<sup>14</sup> TRICARE. "4 Changes Coming to Tricare Pharmacy Program in 2023." TRICARE Newsroom, December 21, 2022. <https://newsroom.tricare.mil/News/TRICARE-News/Article/3252509/4-changes-coming-to-tricare-pharmacy-program-in-2023>. (accessed 8/24/23)