Health Care Market Oversight (HCMO) 2025 Rulemaking
Summary of public comment received

Oregon's Health Care Market Oversight (HCMO) program has received considerable public comment since the last rulemaking update in 2024. All public comments received through October 24, 2025 have been posted online: https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/2025-HCMO-Feedback-Rulemaking-Guiding-Principles.pdf

This document provides a summary of the suggestions and potential rule changes suggested in these comments, including categorizing them by theme and indicating whether OHA has incorporated the suggestion in the October 28, 2025 draft redline rules shared in advance of the first Rule Advisory Committee (RAC) meeting on November 6, 2025.

Some common themes include:

- Emergency Exemption
- Evaluation
- Confidentiality
- Transparency
- Health Equity

Note some comments were submitted for previous rulemaking and may not be applicable to current rules. Note some comments are still pending review and this document may be updated before the second RAC meeting on November 20, 2025.

OREGON HEALTH AUTHORITY

Comment #	Category/ Theme	Comment	Incorporated into 10.28 draft rules?	Notes
2, 4, 7	Emergency Exemption	Specific Concerns about the Emergency Exemption Rule: The criteria are so vague ("immediately threatens health care services" and "urgently needed to protect the interests of consumers and to preserve the solvency") that any struggling entity could justify an exemption	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
2, 4, 7	Emergency Exemption	Specific Concerns about the Emergency Exemption Rule: The exemption process can bypass public comment and meaningful review, undermining transparency and leaving local communities powerless to oppose deals that significantly impact access to care	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
2, 4, 7	Emergency Exemption	Specific Concerns about the Emergency Exemption Rule: There is no requirement for enforceable commitments regarding provider retention, service continuity, disallowing non-compete clauses, or follow-up review after an exempted transaction.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
2, 7	Emergency Exemption	Tighten Emergency Criteria: Define "emergency" using specific, transparent financial metrics (e.g., imminent payroll failure, actual closure notices), and require documented attempts at local remedies before permitting an external buyout.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
2, 7	Emergency Exemption	Mandate Full Disclosure: Even in emergencies, require the acquirer to disclose details of the proposed transaction publicly.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
2, 7	Emergency Exemption	Public Input and Accountability: Ensure every exemption includes a mandatory three-month public comment period	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
2, 7	Emergency Exemption	Follow-up Review: Require all exempted transactions to undergo retrospective evaluation of patient access, provider retention, and community impact within twelve months.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
2, 7	Emergency Exemption	Community Consultation, Vigorously consult the community: Involve affected counties, advocacy groups, and workforce representatives in the evaluation before finalizing exemptions.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.

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19	Emergency Exemption	Recommend changes that would strengthen the emergency exemption process	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
15	Evaluation	Evaluate whether organizational growth in housing, behavioral health, and addiction services is actually improving outcomes for Oregonians.	Not incorporated	The comment is outside the scope of HCMO.
15	Evaluation	Ensure that future approvals or oversight actions prioritize measurable community benefits-like reduced overdoses, lower crime, and fewer unsheltered people-not just organizational expansion.	Not incorporated	The comment is outside the scope of HCMO.
1, 3	Evaluation	I remain strongly in favor of a comprehensive, public, independent review of HCMO's decisions and impact over the last 4 years. engage an independent, public comprehensive review of the transparency/confidentiality process at HCMO, engage an independent, public, comprehensive review of the public engagement process at HCMO, and go to the public as part of that process.	Not incorporated	The comment was considered, but no change was made at this time.
12	Evaluation	Developing and testing risk-based criteria for assigning cases to Preliminary versus Comprehensive review. At present some number of cases do not seem to receive a degree of scrutiny commensurate with their actual complexity and true measure of threat.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within sub regulatory guidance.
12	Evaluation	Studying the Specialty Dental Brands case to understand why the solvency risks that emerged were not identified and managed in the review process. If additional regulatory authority is called for, make sure to add financial risk to the rulemaking agenda.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within sub regulatory guidance.
12	Evaluation	Undertaking a special study and threat assessment dealing with the impact of consolidation on access to pharmacy, hospice, and palliative care services in rural areas.	Not incorporated	The comment is currently reflected in HCMO statute.
12	Evaluation	Reviewing and refining Administrative Rules and Guidance pertaining to the conditional approval of applications. Clarify intent to require behavior changing actions as a condition.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within sub regulatory guidance.

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16	Evaluation	We encourage OHA to consider an entity's adherence to the Cost Growth Target and/or their related Performance Improvement Plan in the initial review of a proposed transaction and later annual reviews	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
3	Health Equity	HCMO should clarify why the definitions of health equity are different than the OHPB definition and explain if and when patient selection is should trigger transaction denial or condition prohibiting it.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
12	Confidentiality	Clarifying its authority to access material information from all entities having substantial involvement in a given transaction-- whether or not they are applicants-- especially if they are authoritative sources.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
12	Confidentiality	Addressing competing claims between applicants' unilateral assertion of trade secret protection and the public interest in transparency and public accountability. HCMO should pursue its authority to override trade secret protection when the public interest demands openness. A good example of potential flash points relates to PEIs claim to trade secret protection for so called "value added" strategies. Because trade secret protections call for specialized analysis, the DoJ's Sunshine Committee may be the most appropriate locus for this analysis. Consideration should be given to encouraging the AG's Office to renew its interest in this matter with participation of OHA/HCMO.	Partly incorporated	
15	Transparency	Require accountability and transparency in how public funds and grants are used, particularly when tied to real estate development and property acquisition.	Not incorporated	The comment is outside the scope of HCMO.
12	Outside Advisor	Taking full advantage of access to user-funded experts when and if needed to assist in the review of transactions. Independent experts can offer HCMO help with issue definition and problem spotting, data acquisition and analysis, and other matters germane to the program. These are currently important gaps. If necessary, HCMO should re-examine pertinent statutory and regulatory authority. (See, ORS 415.501 (14) and OAR 409-070-0050 for legal authority)	Not incorporated	The comment is currently reflected in HCMO statute, rule, frameworks, and sub regulatory guidance.
12	Other	Definitively nailing down HCMO's jurisdiction relative to PEIs including the obligation of PEIs to respond to data requests. If appropriate, this should be done in the rulemaking context. PEIs should be invited to engage in this discussion.	Partially incorporated	

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12	Other	Exploring opportunities to collaborate with the Attorney General's Office to access investigative tools subject to the AG's authority, specifically Civil Investigative Demands. (OR Rev Stat § 646A.589 (2023).		
12	Other	Requiring that applicants shoulder their burden of persuasion by rejecting data and information that are merely aspirational and not fact-based when suitable alternatives are available. If necessary, HCMO should revisit provisions of applicable rule and agency guidance and clarify the applicable legal standard.		
12	Other	Working to assure that all representations and commitments made by applicants are explicit and self-executing.		
16	Fees	In order to facilitate robust oversight of transactions approved with conditions, we recommend OHA update HCMO's fee structure to support the staff, expertise, and resources necessary to carry out follow up compliance reviews of transactions, separate from initial filing fees or fines due to non-compliance to cover the cost of these reviews.	Pending	Proposed revisions to the fee schedule will be discussed at RAC meeting #2
19	Follow-up Reviews	Consider eliminating the one-year follow-up analysis of transactions, while maintaining the two- and five-year follow-up reviews	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
19	Community Review Board	Think carefully about whether to convene a CRB and, if so, implement changes to fulfill its intended goals. 1) Establishing targets for recruitment to ensure a balance of diverse perspectives. 2) Creating tighter guidelines around who is eligible to serve and requiring mandatory public disclosures. 3) Ensure that the CRB is directed to consider the "balancing test" that is part of the HCMO review criteria. 4) Better define key terms used to evaluate transactions, particularly the phrase "hazardous and prejudicial to consumers or the public."	Partly incorporated	Some proposed changes are outside the scope of rulemaking and would need to occur within sub regulatory guidance.

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20	Other	In conjunction with the current Rule Update, I recommend that the RAC review these comments and then proceed to identify additional ways the Rules and Framework can be used to buttress statutory enforcement and standard-setting authority.		
20	Resource needs	The Program currently obtains financial resources from two principal sources: the state's general fund and a schedule of user-fees. The combination of the two is insufficient and has not been changed to keep pace with the volume, risk, and complexity of applications submitted for review. An important consequence is that some fraction of complex, high risk applications are reviewed at the less-intensive (and less costly) preliminary level because of budget constraints. One result is that higher complexity transactions—reviewed at the preliminary level--tend to be rushed, under-funded, and miscalculated. For discussion, see, HCMO Market Risks, 3 Enforcement Challenge, Public Safeguards, Lessons-Learned. Comment submitted to HCMO by Larry Kirsch, September 12, 2025 Kirsch Comment 9- 12-25 (Specialty Dental Brands, Transaction 04). Also see, Hughes and Murphy, https://www.americanprogress.org/article/empowering-state-attorneys-general-to-fight-health-care-consolidation/ (2023). To help project resource needs and to inform the Governor's Office, the Legislature, and applicants, I recommend that the RAC propose the addition of a new subsection (5) to OAR 409-070-0050. "HCMO should undertake an annual study to compute an objective volume-risk-complexity adjustment factor to be used to project its workload-related budgetary needs from both sources.		

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20	Consumer protection	In the context of consumer protection, a variety of transactions involving complex vertical consolidations and horizontal arrangements with entities such as Private Equity Investors pose special risks. An especially important one relates to rural areas and smaller towns where market competition tends to be weak and the impact of any consolidation on patients and communities can be disproportionately significant. Without additional resources, investigation into the impact of market practices on consumer safeguards will generally be superficial and inadequate in the context of rural Oregon. Accordingly, I recommend that rural and small-town venues be specifically incorporated in this risk factor analysis.		
20	Confidentiality	A recent 9 th Circuit Court of Appeals decision has strengthened HCMO's ability to challenge trade secret designations based on a "public interest" exception. PhRMA v. Stolfi, No. 24-1570 D.C. No. 6:19-cv-01996MO (August 26, 2025). Based on this public interest exemption ruling, I recommend adding the words "in light of the ruling in PhRMA v. Stolfi No. 24-1570 D.C. No. 6:19-cv01996MO (August 26, 2025) at the end of the first sentence of subsection (1).		
20	Community review board, Confidentiality	I also recommend that any appointed Community Advisory Committee be afforded access to trade secret protected data subject to confidentiality agreements for the purpose of administering and enforcing the program. I suggest adding the following sentence at the conclusion of OAR 409-070- 0070 (redline subsection 6). "The Authority shall share a confidential document, material or other information as appropriate with members of an appointed Community Review Board subject to suitable nondisclosure agreements."		

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20	Requirement to file	I also recommend that the RAC clarify the obligation of all entities substantially involved in a given transaction to meet the same data production obligations as applicants. Add “to include any person or entity with a substantial involvement in any aspect of the transaction” after the word “entity” in subsection 3 (redline). In my review, I encountered assertions advanced by materially involved Private Equity Investors that they were exempt from production responsibilities because they did not have direct applicant status. In many instances, PEIs have information that is at least as important to consumers as the parties themselves. There is no reason to exempt PEIs or others similarly situated from production and disclosure responsibilities.		
20	Form and contents of Notice of Material Change Transaction	Finally, I observed that in many instances HCMO did not require applicants to meet what I would consider to be their legal burdens of production and persuasion. In lieu of demanding production of evidence (as defined in ORS 40.115) in support of its application, HCMO accepted aspirational statements, conclusory remarks, and other lesser forms of proof. I recommend that OAR 409-070-0045(9) be clarified by adding a new subsection (d) “HCMO shall require that applicants meet the evidentiary standards set forth in ORS 40.115”.		
20	Form and contents of Notice of Material Change Transaction	To add consumer protection to the review criteria already delineated in the Rules, I recommend that the RAC propose a new sub-section OAR 409-070-0045(9)(d) that would provide as follows: “HCMO shall determine if the proposed transaction is hazardous or prejudicial to consumers or is inequitable or unfair or reduces the security of services provided. HCMO shall make detailed findings of fact that set forth the factual basis for its findings. It shall also provide corresponding conclusions of law based on its assessment.”		

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20	Comprehensive review	I also recommend that the OAR 409-070-0060(5)(D) be amended by adding “inequitable or unfair or reduces the security of services provided” after the word “public”.		
20	Conditional approval	To address the application of “conditions” to the review process, I recommend that the RAC propose the following modification of OAR 409- 070-0065(1). Following the word “conditions” substitute “that demonstrate with specificity how the conditions will further the purposes and goals...”. Then add, “If HCMO is unable to approve an application as submitted or as conditioned pursuant to this subsection, it shall issue a final order rejecting the application”.		
20	Follow-up	To strengthen compliance and assure follow-up and accountability, I recommend that the RAC propose the following modification of OAR 409- 070-0082(2). Substitute “must” for “may” the first time it appears in the sub-section.		

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20	Compliance	I further recommend that the RAC propose the substitution of “must” for “may” when it first appears in the first sentence of OAR 409-070- 0080(1).		

These comments were submitted for consideration in previous rulemaking (2024) and have been resubmitted. These comments are still under review for applicability in the 2025 rulemaking.

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17	Definitions	(13) "Domestic health insurer" means an insurer as defined in ORS 731.106 or a health care service contractor as defined in ORS 750.005 that is formed under the laws of this state and has a certificate of authority from the Department to insure personal health risks, or pay for or provide health care services, whether in the form of indemnity insurance, managed care products or any other form or type of individual or group health insurance or health care service contract. Comment: Is a “Domestic health insurer” the same as “insurer” used elsewhere in this document? An “insurer’ an entity whose only business is insurance, i.e. a true insurer that has no relationship to the actual provision of health services. I find it problematic as these entities often have a vertical intergration with other enitities. In addition, through the practice of paneling and networks of providers have direct say in access to care and essential services.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.

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17	Definitions	(14) In accordance with ORS 415.500(2), "essential services" means: (a) Services that are funded on the prioritized list of health services described in ORS 414.690, as in effect at the time of notice submission; and (b) Services that are essential to achieve health equity. Comment; The following should be moved and inserted from line 28 or referenced directly: *(a) Any service directly related to the treatment of a chronic condition;* *(b) Pregnancy-related services;* *(c) Prevention services including non-clinical services; or* *(d) Health care system navigation and care coordination services.* Comment: Regardless of where it is placed, this definition represents a serious concern. It includes no acute care, infectious disease, emergency services and acute mental health needs. There is no equity here and would be interpreted as distance travel to get care for these things as being not an important consideration.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Definitions	(17) In accordance with ORS 415.500(4)(b), "health care entity" does not include: (a) Long term care facilities, as defined in ORS 442.015. (b) Facilities licensed and operated under ORS 443.400 through 443.455. Comment: This limitation seems to create a problem as attempts to include long term care are a real thing. Please explain.	Not incorporated	The proposed change is outside the scope of rulemaking. Change would need to occur within Oregon Revised Statute 415.500 et seq.
17	Definitions	(18) "Health equity" means a health system having and offering infrastructure, facilities, services, geographic coverage, affordability and all other relevant features, conditions and capabilities that will provide all people with the opportunity an d reasonable expectation that they can reach their full health potential and well-being and are not disadvantaged by their race, ethnicity, language, disability, age, gender, gender identity, sexual orientation, social class, intersections among these communities or identities, or their socially determined circumstances. Comment: This is not consistent with the OHPB definition. Since OHPB is the approving body of these rules, having the same definition only makes sense. If OHA has a definition elsewhere, this discrepancy should be remedied or	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.

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		explained.		
17	Definitions	(23) In accordance with ORS 415.500(8), "net patient revenue" means the total amount of income, after allowance for contractual amounts, charity care and bad debt, received for patient care and services, including: (a) Value-based payments, incentive payments, capitation payments, payments under any similar contractual arrangement for the prepayment or reimbursement of patient care and services; and (b) Any payment received by a hospital to reimburse a hospital assessment under ORS 414.855. Comment: It is okay that a definition from a different statute is used here but why is "net patient revenue" used as a basis for determining fees later in the document. This is seems like a lot of deductions. Also see (27)	Not incorporated	Proposed revisions to the fee schedule will be discussed at RAC meeting #2
17	Definitions	(27) In accordance with ORS 415.500(9), "revenue" of a party to the transaction means: (a) Net patient revenue; or (b) The gross amount of premiums received by a health care entity that are derived from health benefit plans. Comment: Please explain how this and (23) are used in determining fees and deciding if a transaction is subject to review.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Definitions	(28) "Services that are essential to achieve health equity" means: (a) Any service directly related to the treatment of a chronic condition; (b) Pregnancy-related services; (c) Prevention services including non-clinical services; or (29) Health care system navigation and care coordination services. Comment: See (14) above.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Covered Transactions	(1) Pursuant to ORS 415.500(6) and (10) and subject to the materiality standards under OAR 409-070-0015, transactions that are subject to		

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		review under these rules are the following: (a) A merger or consolidation of a health care entity with another entity; (b) An acquisition of a health care entity by another entity; (c) A transaction to form a new contract, new clinical affiliation or new contracting affiliation between or among health care entities that **~~will~~ may eliminate or ~~significantly~~ reduce essential services**; (d) Formation of a corporate affiliation involving at least one health care entity; or (e) A transaction to form a new partnership, joint venture, accountable care organization, parent organization or management services organization between or among health care entities that ~~will~~ may: **(A) Eliminate or significantly reduce essential services** **(B) Consolidate or combine providers of essential services when contracting payment rates with payers, insurers, or coordinated care organizations; or** **(C) Consolidate or combine insurers when establishing health benefit premiums**. Comment: The language here seems problematic and inconsistent with intent of the statute and purposes in 409-070- 0085. Since you cannot prospectively know if it "will eliminate or significantly reduce essential services", the word "may" should be inserted. In addition, "significantly" needs to be struck as it has no meaning or reference here and any reduction would be contrary to the intent of the statute and purposes of 409-070-0085. Please also see comment below on (3) that attempts to define arbitrarily "a change of one-third or more".		
17	Covered Transactions	(3) A **~~significant~~** reduction of services occurs when the transaction will result in a change ~~of **one-third or more**~~ of any of the following: (a) An increase in time or distance for community members to access essential services, particularly for historically or currently underserved populations or community members using public transportation; (b) A reduction in the number of providers, including the number of culturally competent providers, health care interpreters, or		

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		traditional healthcare workers, or a reduction in the number of clinical experiences or training opportunities for individuals enrolled in a professional clinical education program; (c) A reduction in the number of providers serving new patients, providers serving individuals who are uninsured, or providers serving individuals who are underinsured; (d) Any restrictions on providers regarding rendering, discussing, or referring for any essential services; (e) A decrease in the availability of essential services or the range of available essential services; (f) An increase in appointment wait times for essential services; (g) An increase in any barriers for community members seeking care, such as new prior authorization processes or required consultations before receiving essential services; or (h) A reduction in the availability of any specific type of care such as primary care, behavioral health care, oral health care, specialty care, pregnancy care, inpatient care, outpatient care, or emergent care as relates to the provision of essential services. Comment: The language here is very concerning and needs to be fixed to align with statute intent and purpose of rule. The use of the word "will" and the arbitrary choice of such the large number "one-third" is clearly contrary to the purposes of these rules as drafted and the statute. Any decrease can be significant and have an impact on equity.		
17	Covered Transactions	(1) Pursuant to ORS 415.500(6) and (9) and ORS 415.501(4), a covered transaction under OAR 409-070-0010 is a material change transaction and ~~shall~~ must be subject to review under these rules if: (a) At least one party to the transaction had average **annual revenue of $25 million or more** in the party's three most recent fiscal years; and (b) Another party to the transaction: (A) Had average **annual revenue of $10 million or more** in that party's three most recent three fiscal years; or (B) If such party is a newly organized legal entity, is projected to have at	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.

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		least $10 million in revenue over its first full year of operation at normal levels of utilization or operation. A party is a newly organized legal entity if: (i) The entity is newly formed or capitalized in connection with the transaction or in connection to a health care entity for the purposes of a transaction including but not limited to a special purpose entity; or The entity is an existing entity whose form of ownership is changed in connection with the transaction. Changes in the form of ownership include but are not limited to a change from physician-owned to private equity-owned and publicly-held to a privately-held form of ownership. (2) A covered transaction under OAR 409-070-0010 that qualifies as material under paragraph (1) of this rule ~~shall~~ must be subject to review under these rules notwithstanding that the transaction involves a health care entity ~~located~~ in this state and an out-of-state entity if the transaction may increase the price of health care services or limit access to health care services in this state. (a) For the purpose of these rules, an entity is considered in-state if it: (A) is based or domiciled in Oregon; (B) owns or operates business locations in Oregon; (C) is registered with the Oregon Secretary of State to conduct business in Oregon; (D) is engaged in profit-seeking activity in Oregon; or (E) provides health care services to residents of Oregon. (b) An entity that is domiciled outside of Oregon and registered to conduct business in Oregon may be considered out- of-state under these rules if: (A) the entity served no more than 100 Oregon residents annually for each of the three previous fiscal years; or (B) the entity is a health care insurer, the proposed transaction involves only health care insurers, and the combined market share held by the health care insurer immediately after the completion of the proposed transaction does not exceed five percent of the total market share in any market.		

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		Comment: Please explain this section including how the dollar numbers chosen will meet the purposes and why the additions. (b) seems unnecessary. Again, when an "insurer" is mentioned, insurance should be the entities only business.		
17	Excluded Transactions	(1) (d) (C) Does not provide comprehensive management services. Comment: "comprehensive" is not defined. Please define.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Fees	(3) ~~Upon review of~~ If a complete notice of material change transaction submitted in accordance with OAR 409-070- 0030(1)(a) and OAR 409-070-0045(5~~), the Authority may determine that the~~) pertains to a transaction ~~qualifies as an~~ excluded ~~transaction~~ under this rule. ~~The~~, the Authority ~~shall provide~~ must notify the parties ~~with written~~ and the notice ~~of that determination, following which the notice shall~~ must be deemed withdrawn ~~and all~~. All further proceedings in respect of the notice shallmust be terminated and ended. The Authority's written notice to the parties under this paragraph (3) shallmust be accompanied **by a refund of the fee**, if any, that was paid in connection with the notice of material change transaction. Comment: there needs to be a non-refundable filing fee and later a pre-conference fee. Work is incurred by the state and the entities involved must pay for all aspects of that work.	Pending	Proposed revisions to the fee schedule will be discussed at RAC meeting #2
17	Emergency Exemption	(1) Pursuant to ORS 415.501(8)(a), the Authority, for good cause shown, may exempt an otherwise covered transaction from review if the Authority finds that: (a) There is an emergency situation, including but not limited to a public health emergency, which immediately threatens health care services; **and** (b) The transaction is urgently needed to protect the interest of consumers **and** to preserve the solvency of an entity other than a domestic health insurer. (2) If a proposed transaction would otherwise be subject to review because	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.

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		it involves a change in control of a domestic health insurer, the Department, in consultation with the Authority, for good cause shown, may exempt the transaction from review if the Department finds that: (a) There is an emergency situation, including but not limited to a public health emergency, which immediately threatens health care services; **and** (b) The transaction is urgently needed to protect the interest of consumers **and** to preserve the solvency of the domestic health insurer. Comment: "and" is a key word here and means both. Must protect the interest of consumers. This then reflects on the need for transparency and robust public participation. Who is being trusted to make sure this happens in a so-called emergency.		
17	Emergency Exemption	(3) An applicant for emergency exemption under paragraph (1) of this rule shallmust provide the Authority, and an applicant for emergency exemption under paragraph (2) of this rule shallmust provide the Department, with the following: Comment: The subparts under this section call for more transparency to the public as certainly the public should know why this emergency exists.		
17	Emergency Exemption	(4) The Authority with respect to an application filed under paragraph (1) of this rule, and the Department with respect to an application filed under paragraph (2) of the rule, shallmust: (a) Provide a period for the filing of comments in respect of the application unless the Authority or the Department, as applicable, determines that: (A) The public interest in providing comments is outweighed by the interest in confidentiality of the applicant for emergency exemption; or (B) the nature of the emergency situation presented and the urgency of the need for emergency exemption will not allow time for the filing and consideration of comments. (b) ~~Provide the applicant with ten calendar days' advance notice prior to posting~~ Post the application for public comment within one business day.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.

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		Comment: This section is very contradictory to purpose. Please explain how confidentiality can outweigh the public interest. Also see edit in (b). If it is an emergency the public needs to know immediately.		
17	Emergency Exemption	(8) For emergency transactions that the Authority exempts from review, the Authority willmust publish the entity names and type of the covered transaction no less than 6 months after the transaction has consummated or closed, unless an entity involved in the transaction discloses the nature of the emergency to the public or the nature of the emergency is otherwise publicly known before 6 months after the transaction has consummated or closed. Comment: This is confusing and needs to be rewritten for improved clarity.	Partially incorporated	
17	Acquisition of Control	(1) The following presumptions will apply in determining whether a transaction involving a health care entity results in the acquisition of direct or indirect control of that health care entity: (a) A transaction shallmust be rebuttably presumed to involve an acquisition of control of a health care entity that is a domestic health insurer or a coordinated care organization if a person, directly or indirectly, acquires voting control of ten percent **(10%)** or more of any class of voting securities of the domestic health insurer or the coordinated care organization. (b) For a health care entity other than a domestic health insurer or coordinated care organization, a transaction shallmust be rebuttably presumed to involve an acquisition of control of the health care entity if a person, directly or indirectly, acquires voting control of twenty-five percent **(25%)** or more of any class of voting securities of the health care entity. (c) For any health care entity, a transaction shallmust be irrebuttably presumed to involve an acquisition of control of the health care entity if a person, directly or indirectly, acquires voting control of more than fifty percent **(50%)** of any class of voting securities of the health care entity. Comment: The percents written above seem to be arbitrary. Please explain how they were arrived at.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.

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17	Acquisition of Control	(2) A person seeking to rebut the presumption described in paragraph (1)(b) of this rule shallmust apply to the Authority, on a form prescribed by the Authority, for a disclaimer of control determination. Such application must show that the proposed transaction would not result in control of the health care entity, or that control would not be changed by the proposed transaction, and **must fully disclose** all material relationships and bases for control between the disclaimer applicant and the person(s) to which the disclaimer applies, as well as the basis for disclaiming control or change of control. Comment: Does "fully disclose" mean the public gets to know?	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Acquisition of Control	(4) Paragraphs (2) and (3) of this rule do not apply to transactions involving a **domestic health insurer or a coordinated care organization**. For a domestic health insurer, the disclaimer of affiliation procedure is in ORS 732.568. For a coordinated care organization, the disclaimer of affiliation procedure is in OAR 410-141-5315. Comment: This seems potentially problematic. Do all of (2) and (3) not apply or only the form? Again, it is rare that insurance is the only business. In the case of coordinated care organizations, they are doing much more than insuring.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Acquisition of Control	(6) A health care entity that submits a disclaimer application may contest the Authority's determination as provided in OAR 409-070-0075. Unless otherwise ordered in the course of such proceedings, the time periods for preliminary and comprehensive review of the transaction under OAR 409-070-0055 or OAR 409-070-0060 will remain applicable, without abatement or reduction, in the event a preliminary or comprehensive review of the transaction is thereafter required. Comment: Looking forward to explanation of this addition.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Requirement to File a Notice of	(3) Effective January 1, 2023, a fee ~~shall~~ must be paid to the Authority in connection with a notice of material change transaction filed under this	Pending	Proposed revisions to the fee schedule will be discussed at RAC meeting #2

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	Material Change Transaction	rule on or after January 1, 2023. Comment: The fees under this item seem too low. How were they arrived at. Do the amounts and timing of collection allow HCMO to be self-sustaining? Do the amounts allow the hires needed to do the work in the time allotted?		
17	Requirement to File a Notice of Material Change Transaction	(4) Fees required under Section (3) must be paid within 30 calendar days following receipt of an invoice for payment. Any approval of a material change transaction may be conditioned on the payment of fees pursuant to paragraph (3) of this rule. The obligation of the parties to pay the fee to the Authority does not depend on whether the Authority approves the transaction. The obligation to pay fees is an obligation of the person filing the notice of material change transaction and any other parties to the transaction designated by the Authority. Comment: Failure of payment should allow for denial. All initial application fees and requests that result in a fee should be paid at time of application or request. Only the consultant fees that the Authority later deems necessary can be billed but should be paid at time the entity agrees to continue.	Pending	Proposed revisions to the fee schedule will be discussed at RAC meeting #2
17	Material Change Transaction Involving a Domestic Health Insurer	Comment: Must be clear that insurance is only business and no other partnerships, subsidaries, etc. I believe that this is extremely rare in today's consolidation and private equity world.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Material Change Transaction Involving a Charitable Organization or Hospital	(1) The parties shallmust provide a copy of any notice of a material change transaction involving a health care entity that is, controls, or is controlled by a charitable organization to the Charitable Activities Section of the Oregon Department of Justice in addition to the notice submitted to the Authority in accordance with OAR 409-070-0030(1)(a). (2) To the extent applicable, a health care entity involved in a material change transaction remains subject to the charitable registration and reporting requirements contained in ORS 128.610 et seq. and to the Attorney General notification and other provisions contained in ORS Chapter 65, the Nonprofit Corporations Act, including Attorney		

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		General review and approval of hospital transfers within the scope of ORS 65.803. (3) The filing of a notice of material change transaction that is subject to review by each of the Authority and the Charitable Activities Section of the Oregon Department of Justice under this rule shallmust be deemed to include an express consent to the sharing between the Authority and the Department of Justice of confidential material submitted in connection with such proposed material change transaction. The Authority ~~may~~ must consult with the Department of Justice regarding the potential effects of a proposed material change transaction on the charitable organization or its assets or charitable assets held by a health care entity. Confidential material provided by any party in connection with such proposed material change transaction shall be maintained as confidential material in accordance with OAR 409- 070-0070. Such sharing shall not constitute a waiver of the confidential status of such materials.) The Authority ~~may~~ must condition its approval of a material change transaction involving a health care entity that is, controls, or is controlled by a charitable organization on a required filing with, and approval by, the Charitable Activities Section of the Oregon Department of Justice. Comment: This is extremely important. It must always be known whether an entity is a charitable organization. Since the DOJ regulates charitable organizations the DOJ **must** always be consulted and a condition of approval.		
17	Optional Application for Determination of Covered Transaction Status	(1) Any party to a proposed transaction may, but shallmust not be required to, **submit a written application to the Authority requesting a determination whether such transaction is a covered transaction pursuant to these rules**. The Authority shallmust notify the applicant in writing of its determination within 30 calendar days following receipt of the application and any additional information requested by the Authority. If the Authority determines that the proposed transaction is a covered transaction, and the parties desire to pursue the transaction, the parties shallmust file a notice in accordance with these rules. Comment: where is the mechanism for determining this? Is this related to	Not Incorporated	The comment was considered as part of previous rulemaking but no change was made.

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		the preconference? If so, that should be referenced here. Is this (4)? There should be a fee associated with this application.		
17	Optional Application for Determination of Covered Transaction Status	(4) ~~No~~ A fee of _____shall be required in connection with an optional application filed under this rule. However, if the Authority determines that the transaction is a covered transaction, ~~and if a notice of material change transaction is thereafter filed, a fee in accordance with OAR 409-070-0030~~ shallmust be payable with application. Comment: There needs to be a nominal fee say $2000. See edit.	Pending	Proposed revisions to the fee schedule will be discussed at RAC meeting #2
17	Form and Contents of Notice of Material Change Transaction	(2) A party or the parties to a material change transaction for which a filing will be made under this rule are encouraged to contact the Authority and arrange **for a pre-filing conference**. If the Authority decides to conduct a comprehensive review under OAR 409-070-0060, the Authority shallmust offer the parties or parties a comprehensive review conference. The pre-filing conference or comprehensive review conference shallmust preview the transaction and filing and the Authority's expectations for the review of the transaction including timing, the use of outside experts, the potential involvement of a community review board in accordance with OAR 409-070-0062, and other relevant issues. ~~As applicable,~~ The Department of Justice ~~will~~ must participate along with the Authority in any such conference. Comment: A pre-filling conference incurs costs so fees should be paid. Since this is a pre-filling situation, it cannot be clearly known if the DOJ needs to be involved. Therefore the DOJ must participate to help sort this out and answer questions. This would make the pre-conference more meaningful. See edits.	Pending	Proposed revisions to the fee schedule will be discussed at RAC meeting #2
17	Form and Contents of Notice of Material Change Transaction	(6) If the Authority considers a notice of material change transaction to be incomplete, or if the Authority ~~requires~~ parties of the information or clarification that is required. ~~The running of the period for review of the notice shall be tolled upon such notification and shall resume when the Authority deems the notice complete.~~ Comment: Do these changes lower the expectations of the applicant. Please explain.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.

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17	Form and Contents of Notice of Material Change Transaction	(8) ~~The Authority may require that s~~Statements of revenue and revenue projections be presented in accordance with generally accepted accounting principles or statutory accounting principles, as applicable, and be prepared by a duly qualified and credentialed accounting expert. Comment: This needs to be one standard generally accepted accounting or statutory accounting principles. The authority should not need to be looking at anything other than those in doing its analysis. See edit.	Not incorporated	Change or explanation may occur within sub regulatory guidance or via separate communication.
17	Form and Contents of Notice of Material Change Transaction	(10) After submission, any party to a notice of material change transaction may rescind the notice at any time and for any reason. ~~If the Authority has not commenced a preliminary review under OAR 409-070-0055, t~~The fee paid in connection with the notice ~~shallmust~~ will not be refunded~~. If the Authority has commenced a preliminary review under OAR 409-070-0055, the fee paid in connection with the notice shall not be refunded,~~ and the parties shall remain obligated to reimburse the Authority for costs and expenses incurred prior to withdrawal in accordance with OAR 409- 070-0050. Comment: Why must fees be refunded? See edit.	Pending	Proposed revisions to the fee schedule will be discussed at RAC meeting #2
17	Outside Advisors	(1)Pursuant to ORS 415.501(14), the Authority or the Department of Justice may retain at the expense of the parties to a material change transaction any actuaries, accountants, consultants, legal counsel and other advisors not otherwise a part of the Authority's staff as the Authority may reasonably need to assist the Authority in reviewing the proposed material change transaction. ~~The retention of such advisors shall not be subject to any otherwise applicable procurement process, provided that the~~The Authority or the Department of Justice, as applicable, ~~shall make a determination that such advisors have the requisite qualifications and expertise to review the proposed transaction. The Authority or the Department of Justice, as applicable, shall~~must require that the retained advisors certify in writing that: Comment: Please explain these deletions.		
17	Outside Advisors	(3) Before ~~A~~any approval of a material change transaction ~~shallmay~~ must be conditioned on the parties reimbursing the Authority pursuant to paragraph		

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		(2) of this rule. The obligation of the parties to reimburse the Authority does not depend on whether the Authority approves the transaction. The obligation to reimburse is an obligation of the person filing the notice of material change transaction and any other parties to the transaction designated by the Authority. Comment: Wow! This is definitely a must. Was this an oversight? See edits. Sugget a rewrite such that the continuation of processes must be conditioned on payment of fees. Failure to reimburse fees according to the scheduled time may result in denial of the transaction without refund of fees previously paid.		
17	Preliminary 30-Day Review	(1) Pursuant to ORS 415.501(5) and after receipt of a complete notice of material change transaction in accordance with OAR 409-070-0030(1)(a) and OAR 409-070-0045(5), the Authority shallmust complete a preliminary review to determine whether the proposed material change transaction meets one or more of the criteria set forth in paragraph (2) of this rule. The Authority shallmust, subject to OAR 409-070-0070, publish the notice of material change transaction. For the duration of the preliminary review period, the Authority shallmust accept and publish public commentcomments pertaining to the material change transaction. (2) At the conclusion of the preliminary review described in paragraph (1) of this rule, the Authority shallmust approve, or approve with conditions as provided in OAR 409-070-0065, a material change transaction, or, in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved, only if the Authority determines that the transaction meets **one or more** of the following criteria: Comment: “one or more” as written seems inconsistent with statute and purpose. See edit above adding “only” and following adding the word ‘or” and changing the “or” in (d) to “and”		.
17	Preliminary 30-Day Review	(a) 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; or (b) The material change transaction is ~~unlikely to substantially~~ does		

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		not reduce access to affordable health care in Oregon; (c) The material change transaction is ~~likely to~~ meets the criteria set forth in OAR 409-070-0060; (d) The material change transaction ~~is not likely to substantially~~ does not alter the delivery of health care in Oregon; ~~or~~ and Comment: see edits above as (b), (c), and (d) must be met to be aligned with purpose.		
17	Preliminary 30-Day Review	(e) Comprehensive review of the material change transaction is not warranted **given the size and effects** of the transaction. Comment: Please explain/define "size and effect" criteria so that the essential services as now defined to include acute care and mental health are preserved. Closure of small independent mental health and other health services can have serious impacts in communities		
17	Preliminary 30-Day Review	(3) If after a preliminary review, the Authority does not approve or recommend for approval, as applicable, a material change transaction in accordance with ~~this~~ (small edit) paragraph (2), the Authority shallmust notify the parties and shallmust thereafter conduct a comprehensive review pursuant to OAR 409-070-0060. (4) Unless extended by agreement among the Authority and the parties to a proposed material change transaction, the Authority shallmust complete the preliminary review described in paragraph (1) within 30 calendar days of the Authority's written confirmation of receipt of a complete notice of material change transaction or on the first business day thereafter if the 30th day is a weekend or state-recognized holiday, unless the parties agree to an extension of time.. The Authority shallmust notify the parties at the conclusion of the preliminary review period the results of the preliminary review. If the Authority fails to complete such preliminary review within 30 calendar days of the Authority's receipt of a complete notice of material change transaction, the proposed material change transaction shallmust be subject to the comprehensive review procedure provided in OAR 409-070-0060.		

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		Comment: Suggest a rewrite of (3) combined with (4) as these sections have redundancies and some contracdictions.		
17	Comprehensive Review	(2) The Authority shallmust notify the entity that submitted the notice of material change transaction if a comprehensive review will occur. ~~The Authority shall notify the entity that submitted the notice of material change transaction if the Authority requires additional information from any of the parties to the transaction. The entity is required to respond to the Authority's request for additional information within 15 calendar days from the date the Authority sent such request unless the Authority and entity mutually agree on a different timeline.~~ (3) ~~The Authority shall~~ and must notify the entity that submitted the notice of material change transaction the fee amount associated with the comprehensive review. pursuant to OAR 409-070-0030. A party to the transaction shallmust pay the fee amount in full no later than 30 calendar days after ~~the date~~ receipt of an invoice from the Authority sent such notification. Comment: Why the changes in (2) and (3)? There needs to be consequence for failure to respond. What would be the method for tracking when the entity received the invoice? The invoice could be sent with the notice.		
17	Comprehensive Review	(43) The Authority shallmust issue proposed findings of fact and conclusion of law, along with the Authority's proposed order at the conclusion of its comprehensive review and shallmust allow the parties and the public **a reasonable opportunity** to make written comments to the proposed findings and conclusions and the proposed order. If the comprehensive review includes a community review board, recommendations of the community review board shallmust be in writing and appended to the proposed order. Unless otherwise directed by the Authority, written comments to the proposed findings and conclusions and the proposed order shallmust be filed with the Authority within thirty calendar days following publication. The Authority shallmust make any filed comments available to the public promptly following receipt. Comment: "reasonable opportunity" is undefined. This section needs a rewrite to		

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		make sure it follows the Scope and Purpose: “A process that is transparent, robust and informed by the public, including the local community, through meaningful engagement.“		
17	Comprehensive Review	(6 or now 5)(a) There is ~~no substantial~~any likelihood that the transaction would: Comment: Use of substantial has no real meaning when comes to equitable health services impacting each individual or community regardless of size.		
17	Comprehensive Review	(C) Jeopardize the financial stability of a health care entity involved in the transaction; ~~or~~ and Comment: “and” needs to be inserted here as all the items need to be satisfied.		
17	Comprehensive Review	(D) Otherwise be **hazardous or prejudicial** to consumers or the public. Comment: “hazardous or prejudicial” are undefined. Why not just say “harmful”? How is this being measured?		
17	Comprehensive Review	(b) The transaction will benefit the public good and communities by: (A) Reducing the growth in patient costs in accordance with the health care cost growth targets established under ORS 442.386 or maintain a rate of cost growth that exceeds the target that the **entity demonstrates is in the best interest of the public;** Comment: How will this be demonstrated? Is this the responsibility of the Cost Growth Target Committee?		
17	Comprehensive Review	(B) Increasing access to services in medically underserved areas; or (C) Rectifying historical and contemporary factors contributing to a lack of health equity or access to services. Comment: Are there clear methods to measure these?		
17	Community Review Board	(2) In determining whether to convene a community review board, the Authority shallmust consider the **potential** impacts of the proposed transaction, including, but not limited to: (a) The **potential** loss or change in access to essential services. (c) A potential significant change in the market share of an entity involved in the transaction.		

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		Comment: “Potential” is finally introduced here. This should be reflected throughout the rules. Notably similar to mentioned in **409-070-0010 Covered Transactions** where I inserted the word “may”		
17	Community Review Board	(3) Comment: Very unclear and contradictory and needs a complete rewrite. An example is the use in (5)(e) of “Non- qualified members of the community review board”. How can there be such a person on the community review board?		
17	Confidentiality ; Permitted Disclosures	Comment: Looking forward to a complete explanation of these revisions. It is essential that DOJ be involved in determining whether the confidentiality requested is justified.		
17	Contested Case Hearings	Comment: Is it the intent of this section to block aggrieved/harmed individuals all pathways to contest. There will certainly me harm. If this is the case, why?		
17	Follow-up Analysis After the Material Change Transaction	Comment: Looking forward to the explanation of this addition section.		
18	Definitions (Person)	~~(24) "Person" has the meaning given in ORS 731.116.~~ (24)"Person" means an individual, corporation, association, partnership, limited liability company, limited liability partnership, political subdivision, joint stock company, trust or unincorporated organization, or an entity or combination of entities similar to the entities described in this paragraph. This proposed change substantially expands the scope of the definition of person and creates ambiguity. For example, when would an "entity or combination of entities" qualify as a person? Does it depend on whether there is common ownership? Does a contractual relationship qualify? Does the HCMO program now apply to counties because a "person" includes		

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		political subdivisions? We are aware of no issues in applying the existing definition of "person," which aligns with the intended scope of the statute. ***Request:*** We request that OHA retain the existing definition of "person" at OAR 409-070- 0005(24) and not adopt the proposed revision. *(24) "Person" has the meaning given in ORS 73 7.7 76.*		
18	Materiality Standard	**409-070-0015 Materiality Standard** ***Newly Organized Legal Entity*** *(7) Pursuant to ORS 475.500(6) and (9) and ORS 475.507(4), a covered transaction under OAR 409-* 070-0070 *is a material change transaction and ~~shall~~ must be subject to review under these rules if'* *(a) At least one party to the transaction had average annual revenue of $25 million or more in the* *party's three most recent fiscal years; and* *(b) Another party to the transaction:* *(A) Had average annual revenue of$* 7 0 *million or more in that party's three most recent* *three [sic] fiscal years; or* *(8) If such party is a newly organized legal entity, is projected to have at least$* 70 *million* *in revenue over its first full year of operation at normal levels of utilization or operation. A* *party is a newly organized legal entity if.* *~~(i) The entity is newly formed or capitalized in connection with~~ ~~the~~ ~~transaction or in~~* *~~connection to a health care entity for the purposes of a transaction including but not limited to a special purpose entit1~~ ~~or~~* *~~(ii) The~~ entity is an existing entity whose form of ownership is changed in connection with the transaction. Changes in the form of ownership include but are not limited to a change from physician-owned to private equity-owned and publicly-held to a privately-held form of ownership.*		

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		We support the deletion of language previously included in OAR 409-070-0015(1)(b)(B)(i), including the text related to a "special purpose entity," as this language was confusing and arbitrary in its application. Whether a transaction is subject to review should not turn on whether an entity chooses to effectuate the transaction via a subsidiary, as this has no bearing on the purpose, significance, or effect of the transaction. We have concerns with OAR 409-070-0015(1)(b)(B)(ii). Specifically, what does it mean for an entity to change its "form of ownership"? We are not aware of a legal definition of "form of ownership," and the examples provided ("physician-owned" and "private equity-owned") appear to refer to types of owners, rather than "form of ownership." It is also not clear what standards parties should use to identify their existing "form of ownership." And it is not clear what standards OHA will use to determine whether the form of ownership has "changed." Moreover, the statute does not include the phrase "form of ownership," nor does it give OHA the authority to review a transaction solely based on the identity of the purchaser (e.g. a nonprofit rather than a physician). Instead, the provisions regarding "newly organized entity" should apply only if the formation of such an entity is itself a covered transaction. The formation of an entity can be a covered transaction only under OAR 409-070-0010(1)(e) (i.e. a new partnership, joint venture, accountable care organization, parent organization or management services organization that will reduce		

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		essential services or combine providers in contracting payment rates). Accordingly, all language regarding "form of ownership" should be deleted and replaced with a definition of newly organized entity that cross references OAR 409-070-0010(1)(e). ***Request:*** We request that OHA revise the proposed rule at OAR 409-070-0015 (1)(b)(B) as follows: *If such party is a newly organized legal entity, is projected to have at least $ 70 million in revenue over its first full year of operation at normal levels of utilization or operation. A party is a newly organized legal entity if it is an entity described in OAR 409-070-0070(e).*		
18	Materiality Standard	***In-State Entity*** *(2) A covered transaction under OAR 409-070-0070 that qualifies as material under paragraph (1) of this rule ~~shall~~ must be subject to review under these rules notwithstanding that the transaction involves a health care entity ~~located~~ in this state and an out-of-state entity if the transaction may increase the price of health care services or limit access to health care services in this state.* *(a) For the purpose of these rules, an entity is considered in-state if it: (A) is based or domiciled in Oregon; (B) owns or operates business locations in Oregon; (C) is registered with the Oregon Secretary of State to conduct business in Oregon; (D) is engaged in profit-seeking activity in Oregon; or (E) provides health care services to residents of Oregon.* The definition of "in-state" entity is overly broad and vague. An entity		

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		should not be considered "in- state" merely because it "provides health care services to residents of Oregon." This would render a Florida entity "in-state" merely because it treats an Oregon resident who is visiting Disney World. It would be a waste of taxpayer dollars and government resources for OHA to review transactions involving entities that do not provide any services in the state. Similarly, there is no accepted definition of what it means to be "engaged in profit seeking activity in Oregon." Does this mean a nonprofit entity can never meet this standard? What if the company serves patients in Oregon, but pursuant to a contract in another state? This language creates unnecessary ambiguity. ***Request:*** We request that OHA: define "in-state entity" based on in-state activities. Specifically, we request that OAR 409-070-0015(2)(a) read in whole: (a)*For the purpose of these rules, an entity is considered in-state if it: (A) is based or domiciled in Oregon, or* *(B) is registered with the Oregon Secretary of State to conduct business in Oregon.*		
18	Materiality Standard	***Out-of-State Entity*** *(2) A covered transaction under OAR 409-070-0070 that qualifies as material under paragraph (7) of this rule shell-must be subject to review under these rules notwithstanding that the transaction involves a health care entity ~~located~~ in this state and an out-of-state entity if the transaction may increase the price of health care services or limit access to health care services in this state.* *(b) An entity that is domiciled outside of Oregon and registered to conduct business in Oregon may be considered out-of-state under these*		

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		rules if (A) the entity served no more than 700 Oregon residents annually for each of the three previous fiscal years; or *(B) the entity is a health care insurer, the proposed transaction involves only health care insurers, and the combined market share held by the health care insurer immediately after the completion of the proposed transaction does not exceed five percent of the total market share in any market.* This out-of-state criteria has no basis in the statute, and we oppose it. The statute simply uses the phrase "out-of-state entity." The phrase "out-of-state entity" has a common meaning, and we should expect that is what legislators expected when they reviewed this statute. The rule that OHA proposed creates an arbitrary standard (no more than 100 Oregon residents in each of the last three years) that has no basis in statute, and it will create practical challenges. First, this 100 Oregon residents threshold will result in OHA reviewing many transactions that have no plausible impact on the state. Oregon residents routinely seek services at out-of-state providers, either because they travel to a center of excellence (e.g. St. Jude Children's Research Hospital) or seek care while on vacation. Accordingly, a test solely based on serving Oregonians will invariably capture entities that conduct no in-state business, contravening the legislature's intent to exempt out-of-state entities from the statute. Moreover, multi-state health care entities frequently serve a nominal number of Oregonians despite having no meaningful in-state		

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		presence. It would be a waste of taxpayer dollars and government resources for OHA to review a transaction involving an entity that, for example, served 101 Oregon residents three years ago and for each year since then. Any threshold for determining whether an entity is out-of-state should take into account whether the entity has sufficient in-state business to have a meaningful impact on care delivery. And finally, not all health care entities have an effective way of tracking an individual's "residence." Mailing addresses and place of service are imperfect proxies for an individual's actual place of residence. This is especially true with entities that provide services in states bordering Oregon. An out-of-state entity should be any entity that does not provide patient care services in Oregon or does not derive substantial revenue from the provision of health care services in Oregon. ***Request:*** We request that OHA revise OAR 409-070-0015(2)(b)(A) as follows: *An entity that is domiciled outside of Oregon and registered to conduct business in Oregon shall be considered out-of-state under these rules if the entity collected less than $ 70 million in net patient revenue from services provided in Oregon over the last fiscal year.*		
18	Materiality Standard	***Increase the price or limit access*** ORS 415.500(6)(a)(B) dictates that a transaction involving an out-of-state entity will nonetheless be subject to review if it "may result in increases in the price of health care or limit access to health care services in this state." The proposed permanent rules provide no guidance on how OHA will assess whether a transaction "may increase the price of health care		

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		services or limit access to health care services in this state." The guidance published by OHA on this subject, which was effective July 19, 2024, provides little clarity and seems to suggest (wrongly) that the out-of-state exception is never available. The guidance states that a transaction "may increase the price of health care services" if the transaction is *"[any] type of consolidation*, including horizontal, vertical, and cross-market consolidation." (emphasis added). Every transaction results in some level of consolidation. So, under OHA's guidance, how would a transaction ever qualify for the exception created by the legislature? Similarly, the July guidance states that a transaction has the potential to limit access to health care services **"unless** the transaction is structured so as to preclude any changes in decision-making authority pertaining to access to health care services in Oregon, including the types of services available, staffing of services, contracting with payers, and any other matters that have the potential to change access to health care services for people in Oregon." (emphasis in original). A change of control transaction, by definition, changes decision-making authority (see OAR 409-070-0005(8)). Thus, read literally, this OHA guidance suggests that no change of control transaction could ever qualify for the out-of-state exception. Such unclear, standardless guidance invites arbitrary enforcement. ***Request:*** We request that OHA revise the proposed rules to include objective standards to determine whether a transaction qualifies for the		

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		out-of-state exception at OAR 409-070- 0015(2), and that such standards exempt transactions involving out-of-state entities that have no reasonable likelihood of increasing costs or reducing access.		
18	Retention of Outside Advisors	1) Pursuant to ORS 415.501(14), the Authority or the Department of Justice may retain at the expense of the parties to a material change transaction any actuaries, accountants, consultants, legal counsel and other advisors not otherwise a part of the Authority's staff as the Authority may reasonably need to assist the Authority in reviewing the proposed material change transaction. The ~~retention of such advisors shall not be subject to any otherwise applicable procurement process, provided that the Authority or the Department of Justice, as applicable, shall make a determination that such advisors have the requisite qualifications and expertise to review the proposed transaction. The Authority or the Department of Justice, as applicable, shall~~ Authority or the Department of Justice, as applicable, must require that the retained advisors certify ... OHA engages outside advisors to assist OHA in its review of transactions. OHA passes through the costs of its outside advisors to the parties to the transaction, such as a hospital. The cost of OHA's outside advisors is an extraordinary burden on the parties to a transaction, often far outstripping the baseline filing fees. Currently, the parties have no ability to audit or challenge an invoice, and OHA has no incentive to limit the costs passed through to the parties. ***Request:*** We request that OHA clarify the intent and effect of this		

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		proposed change and put processes in place to bring transparency and oversight to the fees charged by outside advisors.		
18	Community Review Board	(4) Community review board members ~~shall~~ must declare any potential or actual conflict of interest by filing a notice, pursuant to ORS 415.501(11)(b). A notice of conflict of interest for an appointed community review board member will be made public. If the Authority determines that a member of the community review board has an actual conflict of interest, the member ~~shall~~ must abstain from participating in community review board actions related to the conflict of interest. A conflict of interest exists when a community review board member: ~~(a) Is employed by an entity that is a party to the transaction under review;~~ ~~(b) Is employed by a similar sized competitor to an entity that is a party to the transaction under review.;~~ (c) . . . If read independently, this proposed change would appear to permit OHA to appoint to the community review board both (a) an employee of an entity that is party to the transaction and (b) an employee of a competitor to an entity that is a party to the transaction. However, ORS 415.501 (11) prohibits such appointments. The statute dictates that: The authority *mav not* appoint to a review board an individual who is employed by an entity that is a party to the transaction that is under review or is employed by a competitor that is of a similar size to an entity that is a party to the transaction. (emphasis added.) Accordingly, this proposed rule appears to permit what the HCMO authorizing statute prohibits.		

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		Request: We request that OHA avoid any statutory conflict by retaining the existing rule text, which prohibits OHA from appointing to the community review board either employees of an entity that is a party to the transaction or employees of competitors to an entity that is a party to the transaction.		
18	Follow-up Analysis	Any follow-up review should focus on specific issues of concern identified in the initial review and should not burden the parties to provide data that is either irrelevant to the initial approval decision or that OHA could obtain elsewhere (e.g. from the APAC database). Request: We request that OHA revise OAR 409-070-0082(2) as follows: (2)The Authority may require that the parties provide such information, reports, analyses and documentation as the Authority may require in order to assess the entities' compliance with conditions placed on the transaction, if any, as required in ORS 415.501 (19).		
18	Information Requests	We understand OHA's need to collect information from the parties and the problems that can arise if the parties do not respond promptly. However, the automatic and unilateral tolling of the 180-day review period for each information request exceeds OHA's statutory authority and is unnecessary given available alternatives. The HCMO authorizing statute is clear: OHA *"shall* complete the comprehensive review no later than 180 days after receipt of the notice *unless* the parties to the transaction agree to an extension of time." ORS 415.501(?)(emphasis added). Nothing in OHA's authorizing statute gives OHA the authority to unilaterally extend this 180-day review period.[2] Indeed, the obligation for OHA to complete its review within 180 days is the cornerstone of the overall structure of the statute. Parties to a		

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		material change transaction must file the notice no less than 180 days prior to the transaction date; OHA then has the parallel statutory obligation to complete its review within 180 days so that, if approved, the transaction can close on the transaction date. If OHA tolls the review period every time it requires clarification, the obligation to file 180-days in advance is meaningless as OHA has no parallel obligation to complete its review within any knowable timeframe. Moreover, automatic and unilateral tolling is unnecessary. OHA could equally give the parties a reasonable deadline to respond to supplemental information requests. If the parties fail to respond by such date, OHA could give the parties an option either to (a) extend the review period by mutual consent, or (b) suffer a negative inference in the final review report based on their failure to respond in a timely manner. We have no doubt that it is a difficult task for OHA to engage in these reviews and complete its work in a timely manner. It is an enormously burdensome and frustrating process for hospitals, too. The HCMO program is diverting dollars that could be spent on patient care to compliance with this program, and the HCMO program is slowing down transactions that benefit Oregon communities. Hospitals, and other health care entities, do not have unilateral authority to say this is hard and give themselves more time. OHA does not have that authority either, and it should not purport to have it through this rule. All sides must work efficiently and effectively to ensure our communities have access to		

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		health care in this state. We strongly encourage OHA to simplify the process and this program, and create objective, clear standards for those under its enforcement authority. ***Request:*** We request that OHA retain the existing language in OAR 409-070-0060(2) giving the parties at least 15 calendar days to respond to supplemental information request and remove any language purporting to give OHA the unilateral authority to extend the review period.		
18	Other	Finally, we encourage OHA to engage in further rulemaking to reduce the number of ongoing ambiguities in the law, such as ambiguities relating to the calculation of "revenue."		