

Criteria for Convening a Community Review Board

The Health Care Market Oversight (HCMO) program ensures that transactions involving health care entities support the goals of health equity, lower costs, increased access, and better care. Under ORS 415.500 et seq., the Oregon Health Authority reviews proposed material change transactions and monitors health care markets. For more information, visit the [program website](#).

You can get this document in other languages, large print, braille or a format you prefer free of charge. Contact us by email at hcmo.info@oha.oregon.gov or by phone at 503-945-6161. We accept all relay calls.

Community review boards represent a key strategy to support the goals of the HCMO program, particularly goals 2 and 3 listed below, per OAR 409-070-0000:

1. Improve health, increasing the quality, reliability, availability, and continuity of care and reducing the cost of care for people living in Oregon.
2. **Achieve health equity and equitable access to care.**
3. **Implement a process that is transparent, robust and informed by the public, including the local community, through meaningful engagement.**
4. Use resources wisely and in collaboration with the Department of Justice when applicable.

This document provides guidance for when OHA may convene a community review board.

Role of Community Review Board

Community review boards comprise members of communities affected by a transaction, consumer advocates, and health care experts. A key role of the community review board is to provide recommendations about whether OHA should approve, approve with conditions, or disapprove proposed transactions. Community review boards may also recommend conditions to ensure that approved transactions advance health equity. Another role of a community review board is to provide information about potential effects of a transaction, including how the transaction could impact health equity, access to care, outcomes for specific populations, cost, and quality of care.

Type of Transaction

OHA is authorized by statute to convene a community review board for transactions that receive a comprehensive review. OHA will not convene community review boards for emergency reviews, preliminary reviews, or follow-up reviews.

Criteria for Convening a Community Review Board

OHA may, at its discretion, convene a community review board for a transaction that receives

a comprehensive review. Pursuant to ORS 415.501(8) and OAR 409-070-0062(2), in determining whether to convene a community review board, OHA considers the potential impacts of the proposed transaction, including, but not limited to, any of the following:

- A. The potential loss or change in access to essential services.
- B. The potential to impact a large number of residents in this state.
- C. A significant change in the market share of an entity involved in the transaction.

A. Potential loss or change in access to essential services

OHA may convene a community review board during a comprehensive review if the transaction may result in loss or changes to essential services. ORS 415.500 et seq. defines “essential services” as services that are funded on the Oregon Health Plan [prioritized list](#) (described in ORS 414.690) and services that are essential to achieve health equity. OHA has also identified the following services as essential to achieving health equity (See [Essential Services and Significant Reduction](#) guidance for more information):

- Any service directly related to the treatment of a chronic condition
- Pregnancy-related services
- Prevention services, including non-clinical services
- Health care system navigation and care coordination services

B. Potential to impact a large number of residents in this state

OHA may convene a community review board if the transaction will impact a large number of residents in the state. Transactions impacting a “large number of residents” are those that impact a market with a population of 50,000 or more residents.

C. Significant change in the market share of an entity involved in the transaction

OHA may convene a community review board if the transaction will result in a significant change in market share for an entity involved in a transaction. Market share refers to the proportion of total products and services provided by a particular health care entity. In general, an entity that provides more services to more consumers and generates more revenue in a region would have a greater market share.

OHA defines a “significant change” in market share based on the standards for evaluating market concentration outlined in the [US Department of Justice and Federal Trade Commission Merger Guidelines](#), issued December 18, 2023. These guidelines use the post-merger level of market concentration and market share and change in concentration and market share to determine whether there are anticompetitive effects.

The guidelines use Herfindahl-Hirschman Index (HHI) to assess market concentration. In determining whether to convene a community review board, OHA considers a change in market share to be significant if the post-merger HHI is greater than 1,800 and the change in HHI is greater than 100 suggests or the merged firms market share is greater than 30% and the change in HHI is greater than 100. (See the table below.)

| Indicator | Threshold for significant change |
|----------------------------|---|
| Post-merger HHI | Market HHI greater than 1,800 <i>and</i> Change in HHI greater than 100 |
| Merged firm's market share | Share greater than 30% <i>and</i> Change in HHI greater than 100 |

Please refer to the [Health Care Market Oversight Analytic Framework](#) for more information about how market share is defined and how market concentration is calculated.

Additional considerations

In addition to the items listed above, OHA may convene a community review board if any of the following are present:

- The transaction involves a [Medically Underserved Area](#), as designated by the federal Health Resources and Services Administration (HRSA). A region may be designated as a Medically Underserved Area if it has a shortage of primary care providers.
- The transaction involves a [Health Professional Shortage Area](#), as designated by HRSA. A region, facility, or population group may be designated as a Health Professional Shortage Area if it has a shortage of primary care, mental health, or dental health providers.
- The transaction may adversely affect the health services of priority and underserved populations and communities.
- OHA lacks necessary data or information about affected populations and would benefit from engaging members of the community. This may include information about how the proposed transaction could impact health equity or access.
- Members of the affected community express a need to convene a community review board and OHA agrees that a community review board is warranted.

Process for Engaging Community Review Boards

When a community review board is deemed appropriate, OHA will publicly post and disseminate information about the board, including, but not limited to time and location of scheduled meetings, member application materials and process steps, and a summary of the proposed transaction. Individuals interested in participating in a community review board will complete an application and declare any conflicts of interest. The application will include questions about an individual's experience and background, demographic characteristics, and interest in joining the community review board.

Applicants will be selected for a community review board based on these criteria:

- OHA will recruit members from geographic areas and communities that may be affected by the proposed transaction.

- OHA will seek to recruit consumers who have been affected by previous transactions, consumers of services provided by entities, health care providers operating in affected geographic areas, health care providers affected by previous transactions, and/or health care providers who provide services similar to those provided by entities.
- No more than one-third of the members may be representatives of institutional health care providers, including hospitals, health systems, or medical groups.
- Community review board members may not be employed by an entity party to a transaction or a similar-sized competitor.
- OHA will support the recruitment of diverse community review board members and seek to include individuals with different lived experiences and self-reported identities.¹ OHA will aim for community review board members to reflect the diversity of the overall affected population.

¹ Lived experience refers one's life experience based on self-reported identity, such as race, ethnicity, language, disability, age, sex, gender identity, sexual orientation, social class, and intersections among these identities, or other socially determined circumstances that may impact health equity and an individual's ability to reach their full health potential and well-being.

Statutory and Administrative Rule Guidance

This section lists applicable statutes and administrative rules.

Statutes

ORS 415.501(7)

- a) Except as provided in paragraph (b) of this subsection, if a transaction does not meet the criteria in subsection (6) of this section, the authority shall conduct a comprehensive review and may appoint a review board of stakeholders to conduct a comprehensive review and make recommendations as provided in subsections (11) to (18) of this section. The authority 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.
- b) The authority or the department may intervene in a transaction described in ORS 415.500 (6)(a)(C) in which the final authority rests with another state and, if the transaction is approved by the other state, may place conditions on health care entities operating in this state with respect to the insurance or health care industry market in this state, prices charged to patients residing in this state and the services available in health care facilities in this state, to serve the public good.

ORS 415.501(8)

The authority shall prescribe by rule:

- a) Criteria to exempt an entity from the requirements of subsection (4) of this section if there is an emergency situation that threatens immediate care services and the transaction is urgently needed to protect the interest of consumers;
- b) Provision for the authority's failure to complete a review under subsection (5) of this section within 30 days; and
- c) Criteria for when to conduct a comprehensive review and appoint a review board under subsection (7) of this section that must include, but is not limited to:
 - A) The potential loss or change in access to essential services;
 - B) The potential to impact a large number of residents in this state; or
 - C) A significant change in the market share of an entity involved in the transaction.

ORS 415.501(11)

- a) A review board convened by the authority under subsection (7) of this section must consist of members of the affected community, consumer advocates and health care experts. No more than one-third of the members of the review board may be representatives of institutional health care providers. The authority may 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.
- b) A member of a review board shall file a notice of conflict of interest and the notice shall

be made public.

ORS 415.501(15) through (17)

(15) A review board may hold up to two public hearings to seek public input and otherwise engage the public before making a determination on the proposed transaction. A public hearing must be held in the service area or areas of the health care entities that are parties to the material change transaction. At least 10 days prior to the public hearing, the authority shall post to the authority's website information about the public hearing and materials related to the material change transaction, including:

- a) A summary of the proposed transaction;
- b) An explanation of the groups or individuals likely to be impacted by the transaction;
- c) Information about services currently provided by the health care entity, commitments by the health care entity to continue such services and any services that will be reduced or eliminated;
- d) Details about the hearings and how to submit comments, in a format that is easy to find and easy to read; and
- e) Information about potential or perceived conflicts of interest among executives and members of the board of directors of health care entities that are parties to the transaction.

(16) The authority shall post the information described in subsection (15)(a) to (d) of this section to the authority's website in the languages spoken in the area affected by the material change transaction and in a culturally sensitive manner.

(17) The authority shall provide the information described in subsection (15)(a) to (d) of this section to:

- a) At least one newspaper of general circulation in the area affected by the material change transaction;
- b) Health facilities in the area affected by the material change transaction for posting by the health facilities; and
- c) Local officials in the area affected by the material change transaction.

ORS 415.501(18)

A review board shall make recommendations to the authority to approve the material change transaction, disapprove the material change transaction or approve the material change transaction subject to conditions, based on subsection (9) of this section and the criteria adopted by rule under subsection (2) of this section. The authority shall issue a proposed order and allow the parties and the public a reasonable opportunity to make written exceptions to the proposed order. The authority shall consider the parties' and the public's written exceptions and issue a final order setting forth the authority's findings and rationale for adopting or modifying the recommendations of the review board. If the authority modifies the recommendations of the review board, the authority shall explain the modifications in the final order and the reasons for the modifications. A party to the material change transaction may

contest the final order as provided in ORS chapter 183.

Administrative Rules

OAR 409-070-0062 Community Review Board

- 1) The Authority may appoint and convene a community review board to participate in the comprehensive review of a material change transaction, pursuant to ORS 415.501(11). A community review board must:
 - a) Advise the Authority on the impact of the transaction to the community; and
 - b) Make recommendations to the Authority on the approval or disapproval of a transaction, or the approval of a transaction subject to certain conditions.
- 2) In determining whether to convene a community review board, the Authority must consider the potential impacts of the proposed transaction, including, but not limited to:
 - a) The potential loss or change in access to essential services.
 - b) The potential to impact a large number of residents in this state.
 - c) A significant change in the market share of an entity involved in the transaction.
- 3) A community review board must consist of members of the affected community, including persons who represent populations that experience health disparities, consumer advocates and health care experts. Not more than one-third of the members of the community review board may be representatives of corporate providers. The Authority may not appoint to a community 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. As part of the community review board appointment process, the Authority will notify the coordinated care organization staff who facilitate the community advisory council, as defined in ORS 414.575, representing the affected community.
- 4) Community review board members 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 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) Has a financial stake in an entity that is a party to the transaction under review; or
 - b) Has governance or decision-making authority for an entity that is a party to the transaction under review.
- 5) As defined by ORS 292.495(4), qualified community review board members must receive per diem compensation and reimbursement of travel or other expenses related to the performance of community review board member's official duties as determined by the Authority.
 - a) Per diem compensation must be equal to the per diem paid to members of the Legislative Assembly under ORS 171.072, for each full or partial day during which the qualified member is engaged in the performance of official duties.
 - b) Reimbursement of actual and necessary travel or other expenses incurred in the

performance of a qualified member's official duties must be in the manner and amount provided in ORS 292.495.

- c) A qualified member of a community review board may decline to accept compensation or reimbursement of expenses related to the qualified member's service on a community review board.
 - d) To be considered a qualified member, a member of a community review board must attest by signature that they meet the conditions and income limits specified in ORS 292.495(4).
 - e) Non-qualified members of a community review board must be reimbursed for actual and necessary travel and other expenses incurred in the performance of their official duties in the manner and amount provided in ORS 292.495.
- 6) A community review board must make written recommendations to the Authority on a proposed transaction based on the criteria listed in paragraph (1) of this rule.