

# Emergency Exemption

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](mailto:hcmo.info@oha.oregon.gov) or by phone at 503-945-6161. We accept all relay calls.

This document describes what an emergency exemption means and the situations in which a proposed transaction may qualify for an emergency exemption from the HCMO program's review.

## Transactions that Qualify for an Emergency Exemption

The HCMO program is required by statute to make rules about when an entity would qualify for an emergency exemption from HCMO review and what steps an entity must take to apply for one.

There are two conditions that must be met for a transaction to qualify for an emergency exemption:

- First, there must be an emergency situation that threatens health care services. Examples of this are a public health emergency (such as the COVID-19 pandemic) and when a health care entity like a clinic or hospital is on the verge of closing and going out of business.
- Second, the proposed transaction must be urgently needed to protect consumers' or patients' interests and to preserve the solvency of an entity. For example, a proposed transaction may prevent a health care entity like a clinic or hospital from going out of business, and the continuation of the clinic's or hospital's services is in consumers' interest.

An entity must be in significant financial distress and on the brink of closing in order to meet the HCMO criteria. Generally, in determining whether an emergency exemption should be granted the HCMO program will prioritize the availability of health care services for a community.

## Two ways for an entity to apply for an emergency exemption

There are two ways entities may request an emergency exemption from HCMO review.

1. Submitting a [Request for Emergency Exemption from Material Change Transaction Review](#)

(request) to HCMO prior to filing a notice of material change transaction with HCMO.

After this request is filed, the HCMO program will publish the request on the [program website](#) and provide a period for public comment unless the HCMO program determines that either the need for confidentiality of the entity outweighs the public interest or the nature and urgency of the emergency does not allow time for public comment. If the HCMO program determines that it will post the request, HCMO program staff must provide the entity with at least 10 calendar days' advance notice before posting the request to the program website.

If the HCMO program does decide to maintain the request as confidential, the HCMO program will publish the entity names and the type of the covered transaction on the program website at least 6 months after the transaction closes.

2. Submitting a request while the HCMO program is already reviewing submitted notice of material change transaction.

At any point during a preliminary or comprehensive review the entity can submit a request if there is an emergency situation that immediately threatens health care services, and the proposed transaction is urgently needed to protect the interest of the consumers and to preserve the solvency of the entity. Once a request is submitted, the remaining time period for preliminary or comprehensive will automatically pause while the HCMO program reviews the request.

Since the HCMO program is already reviewing the transaction and the public is already aware of the transaction, HCMO will publish the request on the program website. The HCMO program will provide a period for public comment on the request unless the urgency of the need for the emergency exemption will not allow time for public comments.

If the request is denied during the course of an ongoing HCMO program review, the paused preliminary or comprehensive review will resume with the same remaining time period in existence prior to the request filing.

## **A transaction that receives an emergency exemption is not reviewed or approved**

If the HCMO program grants an emergency exemption, the HCMO program does not review the proposed transaction. This means that the proposed transaction is not subject to HCMO program requirements, and the entity is not required to file a notice of material change transaction with the HCMO program. As a result of exempting a transaction from HCMO program review, the HCMO program does not have the authority to impose conditions on the proposed transaction.

# Statutory and Administrative Rule Guidance

## Statute

### ORS 415.501(4)

(4) An entity shall submit to the authority a notice of a material change transaction, other than a transaction described in subsection (3) of this section, in the form and manner prescribed by the authority, no less than 180 days before the date of the transaction and shall pay a fee prescribed in ORS 415.512.

### 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;

## Administrative Rules

### 409-070-0022. Emergency and Exempt Transactions

- 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 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.
- 3) An applicant for emergency exemption under paragraph (1) of this rule must provide the Authority, and an applicant for emergency exemption under paragraph (2) of this rule must provide the Department, with the following:
  - a. A detailed explanation of the grounds for the application, including a complete statement of the facts, circumstances and conditions which justify emergency exemption and the conditions necessitating immediate relief;
  - b. A detailed explanation of all the terms, conditions and agreements that comprise the transaction and the manner in which such terms, conditions and agreements will respond to the conditions necessitating expedited consideration of the

- exemption application;
  - c. A detailed explanation of the reasons why the transaction is in the public interest and in the interest of those consumers and markets that are or will be served by the parties following closing of the transaction;
  - d. If the application for emergency exemption requires or otherwise is based upon, in whole or in part, a disclaimer of a rebuttable presumption of control, the application must include a disclaimer of control meeting the requirements of OAR 409-070-0025;
  - e. Such additional information, documents and analysis as the Authority or the Department, as applicable, may require in order to evaluate the application and the asserted grounds for emergency exemption;
  - f. An undertaking by the parties to make such further filings with, and submit such further information to, the Authority or the Department, as applicable and to cooperate with and assist the Authority or the Department, as applicable, in conducting such further investigations, hearings and examinations, as may be required following the allowance of emergency exemption for the transaction;
  - g. Payment of a fee in accordance with OAR 409-070-0030; and
  - h. An undertaking by the parties to reimburse the Authority for expenses described in OAR 409-070-0050.
- 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, must:
- 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 the application for public comment.
- 5) The Department must promptly provide an application filed under paragraph (2) of this rule to the Authority, and such an application must be deemed to include an express consent to the sharing between the Authority and the Department of such application and all material in connection therewith.
- 6) The Authority will publish from time to time a list of other categories or types of transactions that must be exempt from review under these rules.
- 7) An applicant for emergency exemption 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 must remain applicable, without abatement or reduction, in the event a preliminary or comprehensive review of the transaction is thereafter required.

- 8) For emergency transactions that the Authority exempts from review, the Authority must publish the entity names and type of the covered transaction the earlier of either (a) or (b) of this section:
- a. no less than 6 months after the transaction has consummated or closed, or
  - b. immediately after 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.