Health Care Market Oversight Frequently Asked Questions

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.

This document provides high-level information about the Health Care Market Oversight program. Please see ORS 415.500 et seq. and OAR 409-070-0000 through 409-070-0085 for additional information.

Frequently Asked Questions

What is this program? What does it do? Who does it apply to?

The Health Care Market Oversight (HCMO) reviews proposed material change transactions involving health care entities, including,

- Hospitals,
- Health insurance companies,
- Medicare Advantage plans,
- Coordinated Care Organizations,
- Individual licensed health professionals, and
- Other entities providing health care products or services.

Reviews ensure that these proposed material change transactions support OHA's goals of:

- Health equity,
- Lower costs for consumers and payers,
- Increased access, and
- Better patient care

OHA does not review transactions involving long-term and residential care facilities.

Which transactions are subject to review?

Material change transactions are those that meet the requirements of ORS 415.500 et seq. and OAR 409-070-0000 through 409-070-0085 and subject to HCMO oversight. Transactions are subject to review when:

1. One of the entities has an average revenue of at least $25 million in the last three years

and another has an average revenue of at least $10 million in the last three years[1], and

2. Transactions fall within one of the following categories:
    - Mergers and acquisitions
    - Affiliations, contracts, and new contracting affiliations that will eliminate or significantly reduce essential services
    - New partnerships, joint ventures, accountable care organizations, parent organizations, or management services organizations that will:
        - Eliminate or significantly reduce essential services;
        - Consolidate or combine providers of essential services when contracting payment rates with payers; or consolidate or combine insurers when establishing health benefit premiums

What is excluded from review?

The following transactions are not required to file notice:

- Clinical affiliations to collaborate on clinical trials or graduate medical education;
- Medical services contracts;
- Affiliations that do not impact corporate leadership, governance, or control of an entity and are necessary to adopt advanced value-based payment methodologies;
- Contracts to provide patient care and services or administrative services for another health care entity, if the other health care entity both bills and receives reimbursement for patient care and services and also maintains responsibility, oversight and control over patient care and services; and
- Transactions involving a clinic designated as a Federally Qualified Health Center.

What is the process for an entity that is planning a transaction?

Entities that are planning a transaction should follow these steps:

1. Entities may request a pre-filing conference with OHA or submit an optional determination of covered transaction status form to OHA to determine whether a proposed transaction is subject to HCMO review.
2. A party to the proposed transaction completes and submits the Notice of Material Change Transaction Form at least 180 days prior to the anticipated transaction effective date. The form and instructions are posted on the HCMO website.
3. OHA will conduct a preliminary review of the transaction and decide to approve, approve with conditions, or conduct a more comprehensive review. OHA may ask entities to provide more information to inform the review process.
4. If approved after preliminary review, entities can proceed with the transaction, adhering conditions of the approval, if any.
5. If OHA is unable to approve the proposed transaction after preliminary review, OHA conducts a comprehensive review and decides whether to approve, approve with

[1] When more than two entities are consolidating, there is no revenue requirement for subsequent entities. For new entities, the new entity is projected to have at least $10 million in revenue over the first full year of operation at normal levels of utilization or operation.

conditions, or disapprove the proposed transaction.

6. If not approved after comprehensive review, entities may contest the decision. See OAR 409-070-0075 for more information.

What resources and technical assistance are available?

OHA offers a variety of supports and technical assistance:

- **Technical assistance:** You can request free technical assistance from program staff by emailing hcmo.info@oha.oregon.gov.
- **Pre-filling conference:** You can consult with program staff to see if your transaction is subject to review and discuss the filing process, what information may be requested, and submission timing.
- **Optional Determination of Covered Transaction Status Form:** You may submit an optional determination of covered transaction status form to OHA to see if your transaction is subject to review.
- **Pre-comprehensive review conference:** If OHA determines that your transaction will require a comprehensive review, you can request a conference with OHA staff to discuss the plan and timeline for the comprehensive review.
- **Guidance documents:** OHA has published multiple guidance documents on the HCMO program website.

When is the deadline to file notice for entities that are planning a transaction?

An entity must file a notice of material change transaction at least 180 calendar days prior to the proposed effective or closing date of the transaction. If an entity wishes to submit an optional determination of covered status form, HCMO recommends entities submit this form at least 210 days prior to the anticipated date of the planned transaction.

What are the timeframes of this program?

Entities must file a notice of material change transaction at least 180 calendar days before the proposed effective date of the transaction.

OHA must complete a preliminary review within 30 calendar days of when an entity files a notice of material change transaction unless tolled or extended under law. A preliminary review looks at the submitted information to understand the potential effects of a transaction.

If a transaction requires a comprehensive review, OHA will complete the comprehensive review within 180 calendar days of when an entity files a notice of material change transaction unless tolled or extended under law. A comprehensive review involves a more detailed look at the potential effects of a transaction and may include additional data sources, methodologies, and community engagement approaches.

How can community members or interested parties provide input on a proposed transaction?

OHA will publicly post all notices of proposed transactions to the program website and solicit

written public comment. Anyone may share input about a proposed transaction. Public comments may be used to assess the impact of a proposed transaction on communities and people or groups interested in the transaction. Public comments can be shared with OHA in these ways:

- Email hcmo.info@oha.oregon.gov
- Leave a voicemail at 503-945-6161
- Fill out the public comment form

Under ORS 415.501(7), OHA may convene a community review board to make recommendations related to transactions that receive a comprehensive review. Pursuant to ORS 415.501(11) and OAR 409-070-0062 Community review boards must include members of affected communities, consumer advocates, and health care experts. See the HCMO program website for administrative rules and guidance documents that provide more information about the role of community review boards.

What is the review and approval process?

When an entity files a transaction notice, OHA will conduct a preliminary review to determine how the transaction may affect health care access, health equity, quality of care, and costs for consumers and payers. After the preliminary review, OHA will either approve the transaction, approve with conditions, or require a comprehensive review. Transactions may be approved after preliminary review if they:

- Are in the interest of consumers
- Are urgently needed to maintain the solvency of an entity
- Are unlikely to reduce access to affordable health care
- Are unlikely to substantially alter the delivery of health care in Oregon

OHA may conduct a comprehensive review if there are concerns about the effects of a transaction on equity, access to care, quality of care, or health care costs. After a comprehensive review, OHA may approve a transaction if:

- There is no substantial likelihood that the transaction:
  - Is contrary to law,
  - Will have material anti-competitive market effects,
  - Will not harm the financial stability of a health care entity involved in a transaction,
  - Will not be hazardous or prejudicial to consumers or the public, and

- The transaction will benefit public and community good or improve health outcomes for the state.

Other programs and agencies also regulate transactions. How will OHA work with these other regulatory authorities to streamline processes for entities?

Where inter-agency information sharing is needed, OHA will share the minimum necessary information in accordance with regulations or contractual agreements governing privacy and

confidentiality. HCMO staff will collaborate with the following agencies and programs:

- **Department of Consumer and Business Services (DCBS)**. OHA will collaborate with DCBS on any transaction involving at least one domestic insurance company. OHA and DCBS will each carry out their own review, and OHA will provide a recommendation to DCBS, who will decide the outcome of the review.
- **Department of Justice (DOJ).** OHA may rely on legal advice and analysis by DOJ as needed. Depending on the scope of work and internal capacity, DOJ may contract with an external law firm for legal counsel.
- **Other OHA programs and divisions**. For any transaction involving a Coordinated Care Organization (CCO), the program may coordinate with other OHA programs that regulate CCO activities. The program may consult with other OHA programs regarding data and quantitative methods, particularly relating to measures of cost and hospital performance. Staff of other OHA programs may provide analytic support on reviews and share data collected by the programs on an as-needed basis.

How is the program funded?

The Health Policy and Analytics 2023-25 Legislatively Adopted Budget includes other funds (OF) budget for the HCMO program. The OF budget reflects potential revenue generated by fees collected from entities involved in transactions. Fees are based on the type of review required and the revenue of entities filing a transaction notice. Entities that are not required to submit a transaction notice will not be subject to any fees. OHA began collecting fees as of January 1, 2023.

What fees will entities pay when they file a transaction notice?

ORS 415.512 directs OHA to collect fees to cover the costs of administering the HCMO program. OAR 409-070-0030 details fee amounts for HCMO notice of material change transaction and emergency exemption filings.