Follow-up Reviews

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 describes OHA's approach to conducting follow-up reviews.

What is a follow-up review?

ORS 415.501(19) directs OHA to conduct follow-up reviews one, two, and five years following an approved transaction. Follow-up reviews must analyze:

- The health care entities' compliance with conditions placed on the transaction, if any;
- The cost trends and cost growth trends of the parties to the transaction; and
- The impact of the transaction on the health care cost growth target established under ORS 442.386.

This is not an exhaustive list. In conducting follow-up reviews, OHA may also analyze compliance with commitments made by the entities during the review and post-transaction changes in outcomes or areas of concern identified in the preliminary or comprehensive review.

Follow-up review process

Notification

HCMO staff will notify entities about initiating the review one year, two, and five years after the close of the transaction.

When starting a follow-up review, OHA will post information to its website and send a public notification through the HCMO email distribution list. OHA accepts public comments throughout follow-up review period.

Requests for information

Pursuant to OAR 409-070-0080, 409-070-0082, and 409-070-0085, OHA may require the entities provide additional information, reports, analyses and documentation as OHA requires to complete its follow up review. Entities are required to comply with requests for information pursuant to ORS 415.501(13) and OAR 409-070-0085. Failure to comply with OHA requests may result in OHA seeking all remedies available under law, including civil penalties.

OREGON HEALTH AUTHORITY

Entities may designate information confidential in accordance with OAR 409-070-0070 and OHA will maintain information that is confidential in accordance with ORS 705.137 and ORS 415.013. For more information about OHA's handling of confidential information, please see HCMO Use of Confidential Information. OHA will post publicly shareable submissions for follow-up reviews to the HCMO website.

Analysis and reporting

OHA's follow-up analyses include, but are not limited to, the following areas:

- Assessing compliance with any approval conditions
- Assessing compliance with any commitments made in the notice
- Analyzing cost trends and cost growth for the entities
- Assessing the impact of the transaction on Oregon's health care cost growth target
- Understanding changes that have occurred since the transaction and the impact of those changes on quality of care, access to care, and health equity
- Analyzing post-transaction changes in outcomes for any areas of concern identified in the initial or subsequent follow-up reviews

OHA's ability to analyze the factors listed above may vary depending on data availability, including reporting lag in data systems. As such, Year 1 and Year 2 reviews will largely focus on changes since the transaction and compliance with conditions, while Year 5 reviews are more likely to include analyses of impacts and outcomes.

After completing the follow-up review analysis, OHA will publish its findings in a public report. The report will be posted to the HCMO website.

Follow-up review outcomes

In follow-up reports, OHA may include the following conclusions, as applicable:

- Whether the transaction has contributed to cost growth
- Whether spending has increased for the health care entities
- Whether the entities have kept to commitments in the notice
- Whether the entities are in compliance with approval conditions

If entities are out of compliance with conditions, OHA may seek all available remedies under law.

Statutory and Administrative Rule Guidance

Statute

ORS 415.501

(13)(a) An entity may not refuse to provide documents or other information requested under subsection (4) or (12) of this section on the grounds that the information is confidential.

(b) Material that is privileged or confidential may not be publicly disclosed if:

(A) The authority determines that disclosure of the material would cause harm to the public;

(B) The material may not be disclosed under ORS 192.311 to 192.478; or

(C) The material is not subject to disclosure under ORS 705.137.

(c) The authority shall maintain the confidentiality of all confidential information and documents that are not publicly available that are obtained in relation to a material change transaction and may not disclose the information or documents to any person, including a member of the review board, without the consent of the person who provided the information or document. Information and documents described in this paragraph are exempt from disclosure under ORS 192.311 to 192.478.

(19) A health care entity that is a party to an approved material change transaction shall notify the authority upon the completion of the transaction in the form and manner prescribed by the authority. One year, two years and five years after the material change transaction is completed, the authority shall analyze:

(a) The health care entities' compliance with conditions placed on the transaction, if any;

(b) The cost trends and cost growth trends of the parties to the transaction; and

(c) The impact of the transaction on the health care cost growth target established under ORS 442.386.

(20) The authority shall publish the authority's analyses and conclusions under subsection (19) of this section and shall incorporate the authority's analyses and conclusions under subsection (19) of this section in the report described in ORS 442.386 (6).

(22) Whenever it appears to the Director of the Oregon Health Authority that any person has committed or is about to commit a violation of this section or any rule or order issued by the authority under this section, the director may apply to the Circuit Court for Marion County for an order enjoining the person, and any director, officer, employee or agent of

the person, from the violation, and for such other equitable relief as the nature of the case and the interest of the public may require.

(23) The remedies provided under this section are in addition to any other remedy, civil or criminal, that may be available under any other provision of law.

ORS 415.900

(1) In addition to any other penalty imposed by law, the Director of the Oregon Health Authority may impose a civil penalty, as determined by the director, for a violation of ORS 413.037 or 415.501. The amount of the civil penalty may not exceed $10,000 for each offense. The civil penalty imposed on an individual health professional may not exceed $1,000 for each offense.

(2) Civil penalties shall be imposed and enforced in accordance with ORS 183.745.

Administrative Rules

OAR 409-070-0070 Confidentiality

(1) An applicant for review of a material change transaction may designate portions of a notice and any documents thereafter submitted by the applicant in support of the notice as confidential. Any portion or portions of a notice of material change transaction designated as confidential must be provided separately as one or more attachments. The entities must not include any confidential information in the notice of material change transaction form itself.

(2) Entities submitting forms, documents, materials, or other information, including an optional application for determination of covered transaction status under OAR 409-070-0042 or a request for emergency exemption under OAR 409-070-0022 must file two versions of the submitted documents. One must be marked as "CONFIDENTIAL" and must contain the full unredacted version of the notice or supporting materials and must be maintained as such by the Authority and the Department. The second must be marked as "PUBLIC" and must contain a redacted version of the notice or supporting materials (from which the confidential portions have been removed or obscured) and must be made available to the public by the Authority. An applicant claiming confidentiality in respect of portions of a notice, or any documents thereafter submitted by the applicant in support of the notice, must include a redaction log that provides a reasonably detailed statement of the grounds on which confidentiality is claimed, citing the applicable statutory basis for confidentiality of each portion.

(3) Confidential materials filed by an applicant in connection with a transaction that is subject to review by each of the Authority and the Department must be maintained as confidential materials in accordance with paragraph (1) of this rule, ORS 415.501(13)(c) and ORS 705.13.

(4) Confidential materials filed by an applicant in connection with a transaction that is

subject to review by the Authority under these rules and under the Authority's CCO Acquisitions and Mergers in OAR 410- 141-5255, et seq., must be maintained as confidential materials in accordance with paragraph (1) of this rule and ORS 415.501(13)(c).

(5) The Authority may authorize sharing a confidential document, material or other information as appropriate among the administrative divisions and staff offices of the Authority for the purpose of administering and enforcing the program.

(6) Disclosing a document, material or other information to the Authority under this section or sharing a document, material or other information as authorized in subsection (3) of this section does not waive an applicable privilege or claim of confidentiality in the document, material or other information.

409-070-0080 Compliance with Conditions; Information Requests

(1) Following approval of a material change transaction, the Authority may verify compliance with any conditions that the Authority included in its approval of the transaction and issue such additional orders, following notice and opportunity for hearing, as may be necessary to enforce compliance with the terms and conditions of the approval of the transaction; provided however, that the Authority may not impose new conditions that are unrelated to, or not reasonably required to enforce compliance with, those conditions, if any, that were included in the Authority's approval of the transaction. Such verification of compliance must occur, at minimum, at the intervals required by ORS 415.501(19).

(2) No person may file or cause to be filed with the Authority or the Department any notice, article, certificate, report, statement, application or any other information required or permitted to be so filed and known to such person to be false or misleading in any material respect.

409-070-0082 Follow-up Analyses After the Material Change Transaction

(1) Following approval of a material change transaction, the Authority must conduct follow-up analyses one year, two years, and five years after the material change transaction is completed, in accordance with ORS 501.501(19).

(2) The Authority may require that the parties provide such information, reports, analyses and documentation as the Authority may require in order to monitor and assess the impacts and effects of the material change transaction as required in ORS 415.501(19), including specifically, but without limitation, the effects and status of the material change transaction under OAR 409-070-0065 and OAR 409-070-0060(5).

(3) The entity or entities must provide all requested information in accordance with OAR 409-070-0070 and may not refuse to provide requested information.

409-070-0085 Information Requests

The Authority may request additional information, or clarification of submitted information, from parties to proceed with its review of a material change transaction under these rules. The Authority must notify the parties of the information or clarification that is required to be submitted to the Authority, and the parties must promptly reply to such requests. The running of the period for review of the material change transaction will be tolled upon such notification and will resume when the Authority deems the information request to be complete.