

Use of Outside Advisors for Material Change Transaction Reviews

The Health Care Market Oversight 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](#).

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This document describes how and when OHA will use outside advisors to support transaction reviews and determine potential impacts on markets and communities.

Criteria for Using Outside Advisors

When OHA receives a notice of a proposed transaction, a preliminary review must be completed within 30 days, unless extended by agreement between OHA and the entities pursuant to OAR 409-070-0055(4) or tolled pursuant to 409-070-0085. If the proposed transaction does not meet the criteria for approval within the preliminary review time period, OHA will complete a comprehensive review pursuant to OAR 409-070-0060.

Per ORS 415.501(14), OHA may engage OHA may engage outside advisors to support material change transactions and parties to the transaction shall bear the cost of retaining outside advisors. The table below describes criteria for OHA to engage outside advisors to support material change transaction reviews.

Reason to engage outside advisors	Example scenarios
An independent third-party is needed to ensure transparency, equity, and/or credibility	A party to a transaction requests involvement of an outside advisor. A proposed transaction is unusually complex.
OHA staff lack the specialized capabilities, experience, or expertise to conduct the review	The review will require using specific analytic methodologies for which OHA staff do not have expertise (e.g., specific accounting methods). The review requires specific subject matter expertise that OHA staff do not possess.
OHA does not have the resources or capacity to perform aspects of a review process	OHA receives multiple concurrent notices that require comprehensive review and requires outside advisors to ensure that OHA can complete the reviews in 180

	days.
There are relevant conflicts of interest that limit OHA's ability to ensure independent or unbiased findings	<p>One or more entities is in a partnership or relationship with OHA that could impact or be impacted by the review.</p> <p>One or more entities is involved in legal action with OHA that could impact or be impacted by the review.</p> <p>Staff conflict of interest (e.g., a member of the Health Care Market Oversight team is related to an employee of a transaction entity). See ODHS/ OHA Conflict of Interest policy for more information.</p>

Service Categories

OHA will engage outside advisors who are qualified and have expertise in evaluating material change transactions and analyzing health care costs, quality, access, equity, and markets. This may include:

- Legal counsel
- Actuarial services and analysis
- Economic analysis and modeling
- Financial and valuation analysis
- Accounting services
- Claims analytics
- Health care management expertise
- Community engagement and facilitation expertise

The Oregon Department of Justice (DOJ) is not considered an outside advisor. "Legal counsel" in the list of service categories above refers to Special Assistant Attorneys General (i.e., lawyers or law firms retained by DOJ to advise state agencies).

OHA will ensure that outside advisors are not subject to any conflicts of interest and will execute any necessary agreements to protect the confidentiality and privacy of information disclosed by entities during material transaction reviews. For more information about HCMO's handling of confidential information, please see [HCMO Use of Confidential Information](#).

To avoid conflicts of interest and delays to transaction review, parties to a transaction should not engage any of OHA's contracted outside advisors in connection with a material change transaction if the party has not previously engaged the advisor. Parties should not consult or contract with OHA's contracted outside advisors for technical or other assistance with a material change transaction.

Statutory and Rule Guidance

Statute

ORS 415.501(14)

The authority or the Department of Justice may retain actuaries, accountants or other professionals independent of the authority who are qualified and have expertise in the type of material change transaction under review as necessary to assist the authority in conducting the analysis of a proposed material change transaction.

Administrative Rules

OAR 409-070-0050 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 Authority or the Department of Justice, as applicable, must require that the retained advisors certify in writing that:
 - a) They are not subject to any conflict of interest associated with reviewing a given transaction, and:
 - b) They will protect any confidential information disclosed to them in the course of their review of the transaction. Material that is privileged or confidential and therefore exempt or determined by the Authority to be exempt from public disclosure under ORS 415.501(13)(b) may be shared with the retained advisors, and such disclosure shall not constitute a waiver of the privileged or confidential status of the material.
- 2) The parties to a material change transaction must reimburse the Authority within 30 calendar days after receipt of an invoice from the Authority, for all reasonable and actual costs incurred by the Authority in connection with its review of the material change transaction. Such costs must include, but are not limited to, the costs and expenses of any advisors retained by the Authority or the Department of Justice pursuant to paragraph (1) of this rule and its other out-of-pocket costs but excluding any unallocated staff or interagency costs of the Authority. Invoices provided by the Authority pursuant to this paragraph (2) must contain a reasonably detailed summary of the costs incurred, provided that in no event must such invoices include any communications protected by the attorney-client or other applicable privilege.
- 3) Any approval of a material change transaction may be conditioned on the parties reimbursing the Authority pursuant to paragraph (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.
- 4) The Authority must notify applicants before any costs are incurred when a transaction review requires the use of outside advisors.