

Safe Harbor & Transactions Not Subject to Review

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 presents transactions that are not subject to review due to safe-harbor protection or because the authorizing statute or final rules specifically exempt the transaction from review. This document also lists examples of transactions that are not subject to review.

Excluded Transactions Due to Safe-Harbor Status

Effective Date	Transaction
3/1/2022	Material change transactions in which one of two entities involved in the transaction is a solo practice and the transaction is the direct result of either the death or retirement of the provider in the solo practice.

The Oregon Health Authority may add to the list of excluded transactions due to safe-harbor status and re-post on the program website at any time.

Excluded Transactions in Accordance with Statute & Rule

The Oregon Revised Statute (ORS) 415.500 and Oregon Administrative Rule (OAR) 409-070-0020 specifies transactions that are not subject to review under the Health Care Market Oversight (HCMO) program. The following types of transactions are not subject to review:

- Clinical affiliations formed for the purpose of collaborating on clinical trials or graduate medical education programs.
- Medical services contracts or an extension of a medical service contract as defined by ORS 415.500(7)(a).
 - Note: a medical services contract does not include a contract of employment or a contract creating a legal entity and ownership of the legal entity that is authorized under ORS chapter 58, 60, or 70 or under any other law authorizing the creation of a professional organization. This type of contract may be subject to review.
- An affiliation that does not impact the corporate leadership, governance or control of an entity and is necessary to adopt advanced value-based payment methodologies to meet the health care cost growth targets under ORS 442.386.

- Contracts under which one health care entity, for and on behalf of a second health care entity, provides patient services or provides administrative services relating to the provision of patient services if the second health care entity:
 - maintains responsibility and control over the patient services,
 - bills and receives reimbursement for the patient services, and
 - does not provide comprehensive management services.
- Transactions involving Federally Qualified Health Centers.
Transactions that consist solely of corporate restructures that do not change the ultimate control of the health care entity, as outlined on OAR 409-070-0025, and do not result in the acquisition of control of the entity by any person not previously affiliated with the entity.

Examples of transactions that are not subject to review

Transactions subject to HCMO review are defined in OAR 409-070-0010. All of the examples below are transactions that do not meet the HCMO program criteria and are not subject to review. For illustrative purposes, all examples below are assumed to meet the entity revenue thresholds outlined in ORS 415.501(6). The table below shows both the details of the transaction example and an explanation as to why it is not subject to review by the Health Care Market Oversight program.

Examples of Transactions Not Subject to Review	Explanation
The sale of 10% of the voting shares of a medical group	There is no change of control in this example, because for entities that are not insurers or Coordinated Care Organizations, control is not rebuttably presumed until 25% of voting shares has been acquired.
Four medical groups affiliate to form a new management services organization to provide billing and collection services to the four medical groups. The new management services entity will not negotiate on behalf of the medical groups with payers. No changes in control and no reduction of essential services.	Although this transaction results in a new management services organization, there is no consolidation of providers of essential services when contracting payment rates with payers.
Two insurers want to share resources. No change of control. Establishing health benefit premiums is not a component of the affiliation.	There is no consolidation of insurers when establishing health benefit premiums.
Hospital contracts with medical group to provide specialty call coverage to Emergency Department in hospital	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Hospital contracts with staffing agency to provide locum tenens physician	No change of control. No reduction of essential services. No consolidation of providers when

Examples of Transactions Not Subject to Review	Explanation
services in hospital	contracting payment rates with payers.
Hospital contracts with medical group to provide electronic health record access to medical group to access common patients for care purposes	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Rural hospital contracts with a “nighthawk” remote radiology service provider for nighttime imaging reads for the Emergency Department	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Hospital and medical group contract to provide NICU staffing services	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Hospital contracts with an affiliate to provide electronic medical record services to the hospital or vice versa	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Large medical group contracts with a third-party administrator to assist the group with the administrative components of contracting with payors.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Rural hospital and urban hospital enter into transfer agreement for transfer of patients to a higher level of care	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Clinic and medical group enter into agreement for space in a medical office building	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Two clinics agree to share space, exam rooms, and resources. The clinics are not combining providers when contracting rates with payers.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Multiple medical groups offer their support and logos in favor a specific housing initiative	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Rural hospital recruits primary care physician to community	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Two hospitals offer joint continuing medical education to their medical staffs	The statute specifically excludes from the program clinical affiliations that are formed for the purposes of collaborating on graduate medical education programs.
Community call agreement to cover hospital Emergency Departments	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
New joint venture formed between dialysis company and hospital to	No change of control. No reduction of essential services. No consolidation of providers when

Examples of Transactions Not Subject to Review	Explanation
deliver dialysis services on a non-exclusive basis. No change in essential services and no combining providers when contracting payments rates with payers.	contracting payment rates with payers.
Parent entity of provider of contraception services affiliates with a national pro-choice organization and the national organization provides, among other things, a strategic advocacy affiliation	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Contract between a hospital or medical group and a billing company or a human resources company. The contract does not allow for combining payment rate negotiations with payers.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Two health systems enter into contract or purchase order with a supplier of supplies (gloves, equipment, etc.)	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers. If these two health systems are also insurers, in this example there is no consolidation of insurers when establishing health benefit premiums.

Statutory and Administrative Rule Guidance

Statute

ORS 415.500(6)

(6)(a) “Material change transaction” means:

(A) A transaction in which at least one party had average revenue of \$25 million or more in the preceding three fiscal years and another party:

(i) Had an average revenue of at least \$10 million in the preceding three fiscal years; or

(ii) In the case of a new entity, is projected to have at least \$10 million in revenue in the first full year of operation at normal levels of utilization or operation as prescribed by the authority by rule.

(B) If a transaction involves a health care entity in this state and an out-of-state entity, a transaction that otherwise qualifies as a material change transaction under this paragraph that may result in increases in the price of health care or limit access to health care services in this state.

(b) “Material change transaction” does not include:

(A) A clinical affiliation of health care entities formed for the purpose of collaborating on clinical trials or graduate medical education programs.

(B) A medical services contract or an extension of a medical services contract.

(C) An affiliation that:

(i) Does not impact the corporate leadership, governance or control of an entity; and

(ii) Is necessary, as prescribed by the authority by rule, to adopt advanced value-based payment methodologies to meet the health care cost growth targets under ORS 442.386.

(D) Contracts under which one health care entity, for and on behalf of a second health care entity, provides patient care and services or provides administrative services relating to, supporting or facilitating the provision of patient care and services, if the second health care entity:

(i) Maintains responsibility, oversight and control over the patient care and services; and

(ii) Bills and receives reimbursement for the patient care and services.

(E) Transactions in which a participant that is a health center as defined in 42 U.S.C. 254b, while meeting all of the participant’s obligations, acquires, affiliates with, partners with or enters into any agreement with another entity unless the transaction would result in the participant no longer qualifying as a health center under 42 U.S.C. 254b.

Administrative Rules

OAR 409-070-0020 Excluded Transactions

(1) Pursuant to ORS 415.500(6)(b) and (7), the following transactions are not material change transactions subject to review under these rules:

- (a) A clinical affiliation of health care entities formed to collaborate on clinical trials or graduate medical education programs.
- (b) A medical services contract or an extension of a medical services contract as described in paragraph (2) of this rule.
- (c) An affiliation that, pursuant to ORS 415.500(6)(b)(C):
 - (A) Does not impact the corporate leadership, governance or control of a health care entity; and
 - (B) Is necessary to adopt AVP methodologies to meet the health care cost growth targets under ORS 442.386.
- (d) Contracts under which one health care entity, for and on behalf of a second health care entity, provides patient care and related services or provides administrative services relating to, supporting or facilitating the provision of patient care and services, if the second health care entity:
 - (A) Maintains responsibility, oversight and control over the patient care and related services;
 - (B) Bills and receives reimbursement for the patient care and related services; and
 - (C) Does not provide comprehensive management services.
- (e) Transactions in which a participant that is a health center as defined in 42 U.S.C. 254b, while meeting all of the participant's obligations, acquires, affiliates with, partners with or enters into any agreement with another entity unless the transaction would result in the participant no longer qualifying as a health center under 42 U.S.C. 254b.
- (f) A transaction that consists solely of a change in the immediate or intermediate ownership of a health care entity but which (i) does not change the ultimate ownership or control of the health care entity, and (ii) does not result in the acquisition of control of the health care entity by any person not previously affiliated with the health care entity.
- (g) Agreements between an affiliate and a health care entity that are subject to ORS 732.574(2)(d)(D).

(2) For purposes of paragraph (1)(b) of this rule:

- (a) A "medical services contract" means a contract to provide medical or mental health services, including physical, behavioral or dental health services, entered into by:
 - (A) A carrier or coordinated care organization and an independent practice association;
 - (B) A carrier, coordinated care organization, independent practice association or network of providers and one or more providers;
 - (C) An independent practice association and an individual health professional or an organization of providers;
 - (D) A medical, dental, vision or mental health clinic; or

- (E) A medical, dental, vision or mental health clinic and an individual health professional to provide medical, dental, vision or mental health services.
- (b) A "medical services contract" does not include a contract of employment or a contract creating a legal entity and ownership of the legal entity that is authorized under ORS chapter 58, 60 or 70 or under any other law authorizing the creation of a professional organization similar to those authorized by ORS chapter 58, 60 or 70.
- (3) If a complete notice of material change transaction submitted in accordance with OAR 409-070-0030(1) and OAR 409-070-0045(5) pertains to a transaction excluded under this rule, the Authority must notify the parties and the notice must be deemed withdrawn. All further proceedings in respect of the notice must be terminated and ended. The Authority's written notice to the parties under this paragraph (3) must be accompanied by a refund of the fee, if any, that was paid in connection with the notice of material change transaction.