John Santa MD MPH   November 14

CareOregon Transaction Comment   Who is in charge at HealthRight/SCAN

My name is John Santa. I am a retired primary care physician and health administrator. I oppose this transaction. I have spent more than 40 years in the health care industry in 20+ organizations. I have had the privilege to serve on the governance board of several organizations and chaired some of them. I have experienced multiple mergers and acquisitions including significant governance changes pre and post transactions.

The proposed governance structure of HealthRight/SCAN is one aspect of the transaction that is quite clear. If the transaction is approved by the state of Oregon, the CEO of HealthRight and the HealthRight Board are in charge of governance. All the other organizations named on the organizational chart are subsidiaries and subject to the reserve powers clearly identified by SCAN.

The OHA Form A prepared by SCAN on December 22, 2022 and amended March 24, 2023 to include Health Share reads as follows in Item 8 on page 7:

The operating agreements of Jackson County CCO, LLC and Columbia Pacific CCO, LLC are not being amended in connection with this transaction. Under such operating agreements, CareOregon currently has, and following closing CareOregon will retain and continue to exercise, certain reserve powers with respect to both CCOs.

Upon closing, the CareOregon Bylaws will be amended to give HealthRight certain reserve powers with respect to CareOregon. Generally speaking, the reserve powers require that HealthRight approve certain fundamental actions affecting CareOregon and the CCOs following review and approval of such actions by CareOregon. For instance, following approval by CareOregon, HealthRight must agree to any of the following actions with respect to CareOregon:

- *Appointment and removal the CareOregon CEO*
- *Amendment to the Articles of Incorporation and Bylaws of CareOregon*
- *The sale or other disposition of all or substantially all of the assets of CareOregon or a merger or consolidation of CareOregon*
- *Operating and capital budgets of CareOregon*
- *New legal entities, new lines of business or changes in the purpose of CareOregon*
- *Material related party agreements, material distributions or capital transfers, material third party investments, and material litigation*
- *CareOregon's exercise of certain reserve powers that CareOregon holds with respect to the CCOs.*

Additionally, HealthRight will approve members of the CareOregon board who are nominated by a committee of the CareOregon board. The reserve powers are set forth in Section 3.6 through 3.8 of the CareOregon Amended and Restated Bylaws.

I am not a lawyer, but these reserve powers seem to provide ultimate and complete authority to HealthRight/SCAN. Subsidiary boards have influence on day to day operations to some degree but all significant decisions require the approval of HealthRight/SCAN. This is what most folks would expect in an insurance company. The "buck" stops at HealthRight/SCAN.

Additionally, HealthRight will include an Audit Committee which will determine the degree of "risk" at HealthRight and its subsidiaries. While expected in an insurance company, this designation makes it clear HealthRight will be in charge of all insurance risk, not the CareOregon Board.

Some important governance issues are not addressed in the transaction documents.

For example, the original Form A filed by SCAN did not name Health Share as an involved CCO and the amended document contains language from SCAN emphasizing Health Share is not part of the transaction. SCAN asserts neither SCAN or CareOregon will have "authority over the management or operations of Health Share." CareOregon is one of multiple owners of Health Share and, more importantly, provides many of the administrative services Health Share is required to provide as a CCO. What will happen with this key relationship? CareOregon is responsible for 70-80% of Health Share's patients. What happens if the HealthRight Audit Committee and Health Share disagree when it comes to risk?. Under the new 1115 waiver Oregon has received, Health Share may want to administer and distribute waiver funds related to health related social needs. What if CareOregon wants to do so? What do the other owners of Health Share think of the proposed transaction? To the best of my knowledge Health Share has made no statement about the transaction. There is no statement about the transaction, nor a record of a discussion of it, on the web page for the Health Share Community Advisory Committee.

A key part of governance is creating a productive and collaborative corporate culture.

SCAN has a very different executive and board culture than CareOregon. SCAN top executives make 7 digit annual salaries. Board members receive 5 and 6 digit annual compensation. CareOregon executives have 6 digit salaries and board members are not compensated. 7 digit executive salaries and significant board compensation creates a very different culture that influences the entire organization and business approach. An obvious priority on significant profitability is created.

Current SCAN transaction documents identify multiple senior SCAN executives will move to HealthRight positions. Only one CareOregon executive is named as a HealthRight executive. This sends a very clear message to CareOregon employees who will be in charge. I can assure you from prior experience that employees will keep track of who is getting promoted, who is getting ignored. This can last for years.

CareOregon will have 4 board seats on the HealthRight Board but they will be a minority on the Board. Other Board members will come from SCAN. The CareOregon Board designees are very capable but outnumbered. One CareOregon designee has significant knowledge and experience related to Medicaid. Likely the SCAN Board culture will prevail on the HealthRight Board.

The SCAN CEO will become the HealthRight CEO. The CEO decision is always key in any transaction. It is highly likely that the organizational culture preferred by the CEO will prevail.

There is little information provided or assessment offered of how the delivery systems of either organization will respond to this transaction, especially the governance decisions. SCAN contracts only with medical groups willing to take full risk. CareOregon has a much more diverse delivery system with county health departments, safety net clinics and medical groups. Columbia Pacific and Jackson Care Connect have many rural physician groups and I suspect solo physicians. The culture and expectations of the insurer are key for many delivery system groups. CareOregon has always been considered a "mission driven" organization that reflects the missions of its delivery system.

Bottom line. CareOregon has performed well in Oregon's Medicaid CCO market. Its revenues and reserves have never been greater. It has performed well in terms of quality, access and equity though significant challenges remain in all three, especially when it comes to Behavioral Health. Despite this success, CareOregon leadership feels CareOregon is threatened by "bigger" national and state competitors. As a result, they propose to give all their resources and power to SCAN, a California Medicare Advantage insurer. SCAN offers many promises but no certain commitments in return. SCAN acknowledges multiple times that they have no expertise when it comes to Medicaid. Yet the proposed governance approach of HealthRight, the replacement organization for SCAN, is dominated in every respect by SCAN.

SCAN has a culture that encourages higher profitability and a delivery system that is willing to work with full risk. SCAN does not dominate in the markets it is in. CareOregon has always prioritized mission and reasonable margins. CareOregon's approach has been rewarded in the marketplace with a strong majority of Medicaid patients in every Medicaid market it serves and a stable mission driven delivery system that puts vulnerable patients first.

Transactions of this sort always result in strong cultural challenges, uncertainties, and fear. CareOregon and its delivery system will need to accept the SCAN culture. SCAN's priorities and profit expectations will likely prevail over Oregon's priorities. I think it is highly likely quality, access and equity will suffer. Power and resources will be transferred to SCAN from Oregon with no promise of anything in return. CareOregon will get "bigger," but I believe it is unlikely it will get better.