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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**DMAP 6-2022**

CHAPTER 410

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

**FILED**

02/03/2022 4:08 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Coordinated Care Organization (CCO) Requirements Under HB 2362 From Oregon Legislature's 2021 Regular Session

EFFECTIVE DATE: 03/01/2022 THROUGH 08/27/2022

AGENCY APPROVED DATE: 01/18/2022

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Filed By:

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NEED FOR THE RULE(S):

This rule is necessary to satisfy requirements under HB 2362 of the 2021 Oregon Legislature's regular session and signed into law by the Governor.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and recipients of Medicaid benefits. The Authority's has a statutory mandate under HB 2362 to monitor when two health care entities that meet certain criteria propose to merge, acquire, or affiliate their businesses.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 2362 of the 2021 Regular Session, viewable at:

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2362/Enrolled>

Notice of Proposed Rulemaking for Oregon Administrative Rules 409-070-0000 to 409-070-0085 viewable at:

[https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/2021-12-21\\_409-070-NoticeFilingTrackedChanges.pdf](https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/2021-12-21_409-070-NoticeFilingTrackedChanges.pdf)

AMEND: 410-141-5260

RULE SUMMARY: Compels CCOs to satisfy the requirements of OAR 409-070-0000 to 409-070-0085.

CHANGES TO RULE:

410-141-5260

CCO ACQUISITIONS AND MERGERS: Activities Prohibited Unless Certain Provisions Satisfied

(1) Unless a person first satisfies the provisions of OAR 410-141-5265 to OAR 410-141-5280, the person may not engage in any of the following activities: ¶

(a) A person other than the person that issues voting securities of a CCO may not acquire or attempt to acquire control of the CCO. For purposes of this paragraph, a person acquires or attempts to acquire control of a CCO if,

as a result of engaging in and completing any of the following actions, in the open market or otherwise, the person would directly or indirectly control the CCO, or would control the CCO by exercising a right to acquire or by conversion: ¶

(A) Making a tender offer for or a request or invitation for tenders of any voting security of the CCO; ¶

(B) Entering into any agreement to exchange securities for any voting security of the CCO; ¶

(C) Acquiring or seeking to acquire any voting security of the CCO; or ¶

(D) Otherwise engaging in any activity that constitutes a change in control of a CCO requiring pre-approval from the Authority, as described in the CCO Health Plan Services Contract with the Authority. ¶

(b) A person may not close or finalize an agreement to merge with or otherwise acquire control of a CCO. ¶

(c) A person may not engage or attempt to engage in any of the following activities: ¶

(A) Acquiring, directly or indirectly, ownership of all or a significant portion of the assets of a CCO. For purposes of this subparagraph, such an acquisition includes an offer, a request or invitation for offers, an acquisition or series of acquisitions in the open market, an exchange offer or agreement, an agreement that provides an option to purchase, or a purchase of or offer to purchase securities that are convertible into voting securities. ¶

(B) Bulk reinsurance by one CCO of all or a significant portion of the Members, or a major class of the Members, who are covered by another CCO or related or affiliated group of CCOs. The provisions of this subparagraph do not apply to ordinary or customary reinsurance, or reinsurance pursuant to a treaty or treaties approved by the Authority. ¶

(C) Any other arrangement that brings together under common ownership, control or responsibility all or a significant portion of the assets, liabilities or Member Contracts in force of two or more persons, at least one of which is a CCO. ¶

(2) The provisions of subsection (1) of this section do not apply to any offer, request, invitation, agreement or acquisition the Authority exempts by order as: ¶

(a) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control or ownership of a CCO; or ¶

(b) Otherwise not comprehended within the purposes of subsection (1) of this section. ¶

(3) A person that seeks in any manner to give up a controlling interest in a CCO shall file a confidential notice of the person's proposed divestiture with the Authority and send a copy of the notice to the CCO at least 30 days before the person ceases to own or hold a controlling interest in the CCO. The notice is confidential until the transaction that transfers control of the CCO concludes, unless the Authority determines, in the Authority's sole discretion, that keeping the notice confidential will interfere with the enforcement of this subsection. ¶

(a) The Authority shall determine in which instances an acquisition or divestiture of control will require a person to file for and obtain approval of the transaction; ¶

(b) This subsection does not apply if a person files a statement under OAR 410-141-5350. ¶

(4) If an acquisition is otherwise subject to this section, the acquiring party shall file a notice with the Authority in accordance with OAR 410-141-5265. An acquiring party that does not file the notice may be subject to the penalty specified in OAR 410-141-5380. ¶

(5) The Authority shall treat a notice and information that a person submits in accordance with this section, as well as any information that the person submits in accordance with OAR 410-141-5265 or 410-141-5270, as confidential and exempt from disclosure under ORS 192.311 to 192.478, to the extent the Authority determines that such information is trade secret, as defined in ORS 192.345, including compensation paid to providers by a CCO. ¶

(6) In addition to satisfying the requirements of OAR 410-141-5265 to OAR 410-141-5280, a material change transaction (as defined in OAR 409-070-0005) involving a CCO must satisfy the requirements of OAR 409-070-0000 to OAR 409-070-0085.

Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, ~~414.651~~

Statutes/Other Implemented: ORS 414.610 - 414.685