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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 3-2020
CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

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& LEGISLATIVE COUNSEL

FILING CAPTION: Updates to Coordinated Care Organizations CCO Financial Oversight Rules on Mergers & Acquisitions

EFFECTIVE DATE: 02/12/2020 THROUGH 08/09/2020

AGENCY APPROVED DATE: 02/12/2020

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NEED FOR THE RULE(S):

The Division needs to amend provisions of the rules relating to disclosures and processes that must be completed prior to, during, and following any acquisitions or mergers of CCOs.

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. These rules need to be adopted promptly so that the Authority may maintain adequate financial oversight of Coordinated Care Organizations (CCOs).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The current rules are viewable at: https://www.oregon.gov/oha/HSD/OHP/Policies/141rb010120-f.pdf

RULES:
410-141-5000, 410-141-5255, 410-141-5260, 410-141-5265, 410-141-5280

AMEND: 410-141-5000

RULE TITLE: FINANCIAL SOLVENCY REGULATION: Definitions

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs). The Division needs to amend provisions of the rules relating to disclosures and processes that must be completed prior to, during, and following any acquisitions or mergers of CCOs.

RULE TEXT:
When used and not otherwise defined in OAR 410-141-5005 through OAR-141-5380, the following terms shall have the meaning given in this section:
(1) "AICPA" means the American Institute of Certified Public Accountants.

(2) “Applicable Law” means,
(a) S.B. 1041;
(b) OAR 410-141-5000 to OAR-141-5380 and;
(c) Any other state or federal laws, rules, regulations or regulatory guidance applicable to the operations of CCOs in this state.
(3) “Assumption Reinsurance Agreement” means a contract that,
(a) Transfers obligations or risks of existing or in-force Member Contracts from a cedent CCO to a reinsurer that acquires the obligations or risks from the cedent, and
(b) Is intended to effect a novation of the transferred Member Contracts with the result that the reinsurer becomes directly liable to the Members of the transferor and the transferor’s contract obligations to the Members are extinguished.
(4) “Board” means the board of directors or other equivalent governing body of a company that is vested by the company’s organizational document(s) with responsibility and authority for the governance and overall management of the affairs of the company, irrespective of the name by which the governing body or the members of that governing body are designated, except that:
(a) An individual or a group of individuals is not the board of directors because of powers delegated to the individual or group by provisions in the articles of incorporation or other equivalent organizational documents authorizing the individual or group to exercise some or all of the powers which would otherwise be exercised by a board; and
(b) A coordinated care organization may have a governing body as required by ORS 414.625(2)(o) that is not the board of the CCO entity.
(5) “Capitated Subcontractor” means a third-party provider that enters into a Sub-capitation Arrangement with a CCO for any portion of the health care services covered by the CCO’s agreement with the Authority.
(6) “CGAD Report” means the corporate governance annual disclosure report described at OAR 410-141-5045.
(7) “DCBS” means the Department of Consumer and Business Services.
(8) “Delinquency proceeding” means any proceeding commenced against a CCO for the purpose of liquidating, rehabilitating or conserving the CCO.
(9) “Director” means, as context requires;
(a) A member of the board of directors or other equivalent governing body of a company that is vested by the company’s organizational document(s) with the responsibility and authority for the governance and overall management of the affairs of the company; or
(b) The Director of the Authority.
(10) “Impaired” with respect to a CCO means that the CCO’s assets do not exceed its liabilities and its required capitalization.
(11) “Loss Protection Program” means a program or set of arrangements maintained by a CCO that collectively are designed and operate to protect the CCO against catastrophic and unexpected loss or expenses related to capitated services the CCO is obligated to provide to its Members.
(12) “Member” means an individual covered by, and entitled to managed health care services under, a CCO’s contract with the Authority.
(13) “Member Contract” means the CCO’s agreement to provide managed health care services to a Member pursuant to the CCO’s contract with the Authority.
(14) “NAIC” means the National Association of Insurance Commissioners.
(15) “NAIC Forms and Instructions” means the current financial statement blanks, forms and instructions for health insurers as published and as revised by the NAIC from time to time.
(16) “Qualified United States Financial Institution” means an institution that,
(a) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers, and

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.
(17) “Primary Reserve” means the primary Restricted Reserve Fund required by OAR 410-141-5285.
(18) “Receiver” means a receiver, rehabilitator, liquidator or conservator, as the contract may require.
(19) “Restricted Reserve Account” means the reserve account required by OAR 410-141-5285.
(20) “Restricted Reserve Funds” means the funds required to be deposited and maintained in the Restricted Reserve Account under OAR 410-141-5285.
(21) “Restricted Reserve” means the Restricted Reserve Account, the Primary Reserve, the Secondary Reserve and the Restricted Reserve Funds required by OAR 410-141-5285.
(22) “Secondary Reserve” means the secondary Restricted Reserve Fund required by OAR 410-141-5285.
(23) “S.B. 1041” means 2019 Oregon Laws Ch. 478 (Enrolled S.B. 1041), as approved and enacted on June 20, 2019.
(24) “Statutory Accounting Principles” means generally accepted statutory accounting principles for health insurers as prescribed, adopted or otherwise approved by DCBS for the financial and solvency regulation of health insurers under Oregon law, as supplemented by generally accepted statutory accounting principles prescribed, adopted or otherwise approved by the NAIC, including without limitation, those accounting practices, principles and procedures set forth in the NAIC’s Accounting Practices and Procedures Manual.
(25) “Sub-Capitated Arrangement” means a contract or other arrangement between the CCO and a Sub-Capitated Counterparty under which the Sub-Capitated Counterparty agrees to provide, as subcontractor to the CCO, certain of the health care services required of the CCO under its agreement with the Authority in return for a fixed capitation payment, the effect of which is to transfer claim frequency and utilization risk to the third-party provider.
(26) “Sub-Capitated Counterparty” means the third-party provider under a Sub-Capitated Arrangement with a CCO.
(27) “SVO” means the Securities Valuation Office of the NAIC.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

AMEND: 410-141-5255

RULE TITLE: CCO ACQUISITIONS AND MERGERS: Purpose; Definitions

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs). The Division needs to amend provisions of the rules relating to disclosures and processes that must be completed prior to, during, and following any acquisitions or mergers of CCOs.

RULE TEXT:

(1) The purpose of OAR 410-141-5255 to OAR 410-141-5285 is that of regulating the control or ownership of a CCO or of a CCO holding company system, in order to promote the public interest including the interests of CCO Members and stakeholders and to advance the goals and mission of the Authority and the Oregon Integrated and Coordinated Care Delivery System described in ORS 414. 018 and ORS 414.620.

(2) The Authority shall adhere to the following guiding principles when reviewing proposed acquisitions:

(a) The health of Oregon Health Plan members and all Oregonians are at the center when analyzing potential impacts of proposed acquisitions;

(b) Health equity, access to care, health care quality, and costs are fundamental;

(c) The process shall be transparent, robust and informed by the public and stakeholders through meaningful engagement; and

(d) The Authority shall use resources wisely and collaborate with DCBS when applicable.

(3) Unless the context otherwise requires, as used in OAR 410-141-5255 to OAR 410-141-5285:

(a) "Acquiring party" means a person that acquires or attempts to acquire control of a CCO, that enters into an agreement to merge with or otherwise acquire control of a CCO as described in OAR 410-141-5260 or that engages in an activity described in OAR 410-141-5260, or an intermediary or subsidiary corporation that holds, directly or indirectly, the assets or voting securities or assumes the liabilities of a CCO or other entity:

(b) "Acquisition" means an agreement, arrangement or activity that results in a person acquiring control of another person, directly or indirectly, including but not limited to an acquisition of voting securities, a merger, an acquisition of assets or bulk reinsurance;

(c) "Coordinated Care Organization (CCO)" means a CCO or a person that controls a CCO;

(d) "Health Equity" definition: Oregon will have established a health system that creates health equity when all people can reach their full health potential and well-being and are not disadvantaged by their race, ethnicity, language, disability, gender, gender identity, sexual orientation, social class, intersections among these communities or identities, or other socially determined circumstances. Achieving health equity requires the ongoing collaboration of all regions and sectors of the state, including tribal governments to address:

(A) The equitable distribution or redistributing of resources and power; and

(B) Recognizing, reconciling and rectifying historical and contemporary injustices.

(e) "Significant portion" means, when acquired in one transaction or in a related or integrated series of transactions within any consecutive twelve-month period, ten percent or more of:

(A) The assets of the CCO; or

(B) The CCO's in-force benefit contracts.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

AMEND: 410-141-5260

RULE TITLE: CCO ACQUISITIONS AND MERGERS: Activities Prohibited Unless Certain Provisions Satisfied

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs). The Division needs to amend provisions of the rules relating to disclosures and processes that must be completed prior to, during, and following any acquisitions or mergers of CCOs.

RULE TEXT:

(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 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.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

AMEND: 410-141-5265

RULE TITLE: CCO ACQUISITIONS AND MERGERS: Procedure For Acquiring Controlling Interest

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs). The Division needs to amend provisions of the rules relating to disclosures and processes that must be completed prior to, during, and following any acquisitions or mergers of CCOs.

RULE TEXT:

(1) An acquiring party shall:

(a) Complete and file Form A which is described in OAR 410-141-5270 with the Authority for approval. If more than one acquiring party must file Form A under this paragraph, any or all acquiring parties that are acting in concert may jointly file Form A.

(b) Deliver or mail to the CCO to which the activity described in OAR 410-141-5260 applies, concurrently with filing the statement under paragraph (a) of this subsection, a statement that has the information specified in this section. A statement mailed under this paragraph must be sent by certified mail, return receipt requested. If a joint statement is filed under paragraph (a) of this subsection, the joint statement must be the statement mailed or delivered under this paragraph;

(2) A person required to file Form A pursuant to OAR 410-141-5260 and this rule shall furnish the required information on Form A which is described in OAR 410-141-5270.

(3) If the person being acquired is considered to be a CCO solely because of the definition of "CCO" in OAR 410-141-5255, the name of the CCO on the cover page shall be indicated as follows: "ABC Company, a subsidiary of XYZ Holding Company."

(4) References to "the CCO" contained in Form A shall refer to both the subsidiary CCO and the person being acquired.

(5) The statement an acquiring party files with the Authority under this section must be made under oath or affirmation and must have the following information:

(a) The name and address of the CCO that is subject to the acquisition and of each acquiring party that must file the statement, additional biographical and business information about each acquiring party that must file the statement, and business plans and information regarding persons who will serve as or perform functions of directors or officers, as required by the Authority.

(b) The source, nature and amount of the consideration used or to be used in effecting the activity, a description of any transaction in which funds were or are to be obtained for the activity and the identity of persons that provide the consideration. If a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the acquiring party filing the statement requests confidentiality.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the acquiring party's preceding five fiscal years, or for as long as the acquiring party and any predecessors of the acquiring party have existed, if the acquiring party and the acquiring party's predecessors have existed for a shorter period of time, and similar unaudited information as of a date not earlier than 90 days before the statement was filed.

(d) Any plan or proposals that each acquiring party that must file a statement has to liquidate the CCO, to sell the CCO's assets or to merge or consolidate the CCO with any person or to make any other material change in the CCO's business, corporate structure or management.

(e) The number of shares of any security of a type described in OAR 410-141-5260 that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement or acquisition of any security of a type described in OAR 410-141-5260 and a statement as to the method by which the acquiring party determined the fairness of the proposal.

(f) The amount of each class of any security of a type described in OAR 410-141-5260 that each acquiring party owns beneficially or concerning which each acquiring party has a right to acquire beneficial ownership.

(g) A full description of any contracts, agreements or understandings with respect to any security of a type described in

OAR 410-141-5260 in which any acquiring party is involved, including but not limited to contracts, agreements or understandings that govern a transfer of any of the securities or that relate to joint ventures, loan or option arrangements, puts or calls, loan guarantees, guarantees against loss or guarantees of profits, division of losses or profits, or giving or withholding proxies. The description must identify the persons with which each acquiring party has entered into the contract, agreement or understanding.
(h) The names of persons who have purchased any securities of a type described in OAR 410-141-5260 during the 12 months before the date on which the acquiring party files the statement under this section, together with the dates of purchase and the amount and type of consideration the persons paid or agreed to pay.
(i) A description of any recommendations to purchase any securities of a type described in OAR 410-141-5260 that an acquiring party made during the 12 months before the date on which the acquiring party files the statement under this section, or of any recommendations that another person made as a result of interviewing an acquiring party or at an acquiring party's suggestion.
(j) Copies of all tender offers, requests, exchange offers, invitations to tender or agreements to acquire securities of a type described in OAR 410-141-5260, along with any additional material used to solicit the tender offers, requests, exchange offers, invitations to tender or agreements, if any additional material was distributed.
(k) The term of any contract, agreement or understanding for soliciting securities of a type described in OAR 410-141-5260 for tender that is made with or proposed to be made with a broker-dealer, together with the fees, commissions or other compensation the broker-dealer will receive in connection with the solicitation.
(L) Business plans for the CCO after the proposed activity, including analyses of the following (with any relevant supporting documentation):
(A) How, after the proposed activity, the CCO will be able to:
(i) Innovate, coordinate care, provide value, and deliver high-quality services;
(ii) Demonstrate commitment to addressing health disparities and inequities;
(iii) Be strongly connected to the community served by the CCO, including the CCO's community advisory council, community health improvement plan, and the Authority's requirements to engage with the community;
(iv) Provide services cost effectively and within cost growth limits imposed by the Authority or the state;
(v) Support social determinants of health in the community served by the CCO, as required by its Contract with the Authority;
(vi) Perform its responsibilities under the CCO Contract and applicable law;
(vii) Comply with requirements in the CCO Contract and applicable law concerning its governing body; and
(viii) Satisfy the policy priorities adopted by the Oregon Health Policy Board.
(B) If the proposed activity may result in the termination of members from a CCO or the transition of members from one CCO to another CCO, how the acquiring entity and CCO will facilitate those terminations and transitions in compliance with 42 C.F.R. §§ 438.52, 438.56, 438.62 and the CCO's contractual obligations to the Authority.
(C) Cost of, access to and quality of health care for Oregonians, including health care outside of the Medicaid program;
(D) Health equity in Oregon;
(E) The financial stability of the CCO and the financial strategies that may influence the CCO; and
(F) The CCO's medical loss ratio.
(m) An agreement to submit an enterprise risk report under OAR 410-141-5330 each year during which the acquiring party controls CCO and an acknowledgment that the acquiring party and all subsidiaries in the holding company system that are within the acquiring party's control will provide, at the director's request, information the director needs to evaluate enterprise risk to the CCO;
(n) Any additional information the Authority may require.
(6) All requests or invitations for tenders or advertisements that make a tender offer or request or invite tenders of securities for control of a CCO made by or on behalf of any acquiring party required to file Form A under this section must have the information specified in subsection (2) of this rule. Copies of the materials must be filed with the Authority at least 10 days before the time the materials are first published or sent or given to security holders. Any

additional materials that solicit or request the tenders after the initial solicitation or request must have the information specified in subsection (2) of this rule. Copies of the additional materials must be filed with the Authority at least 10 days prior to the time the materials are first published or sent or given to security holders.

(7) If any acquiring party required to file Form A under this section is a partnership, limited partnership, syndicate or other group, the Authority may require that the information specified in subsection (2) of this rule be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person that controls the partner or member. If any partner, member or person is a corporation or if the acquiring party is a corporation, the Authority may require that the information described in subsection (2) of this rule be given with respect to the corporation and each officer and Authority of the corporation and each person that is directly or indirectly the beneficial owner of more than 10 percent of the outstanding securities of the corporation.

(8) If any material change occurs in the facts set forth in the statement filed under this section, the party that filed the statement shall file with the Authority and send to the CCO, within two business days after the party learns of the change, an amendment that sets forth the change together with copies of all documents and other material relevant to the change.

(9) If an offer, request, invitation, agreement or acquisition described in OAR 410-141-5260 is proposed to be made by means of a registration statement under the Securities Act of 1933, 15 U.S.C.A. §77a et seq., or in circumstances that require disclosing similar information under the Securities Exchange Act of 1934, 15 U.S.C.A. § 78a et seq., or under a state law that requires a similar registration or disclosure, the party or parties may use the registration statement or disclosure to provide the information the party or parties must provide in the statement required under subsection (1) of this section.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

AMEND: 410-141-5280

RULE TITLE: CCO ACQUISITIONS AND MERGERS: Determination Concerning Proposed Activity, Time For Decision, Grounds For Refusal

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs). The Division needs to amend provisions of the rules relating to disclosures and processes that must be completed prior to, during, and following any acquisitions or mergers of CCOs.

RULE TEXT:

(1) Prior to approving or disapproving the proposed activity, the Authority shall engage the public and the Community Advisory Councils of the CCO. The Authority's engagement of the public shall include the following, coordinated with DCBS where efficient:

(a) Seeking recommendations by the Community Advisory Councils of the CCO regarding persons who should be notified,

(b) A public hearing in each service area of the CCO,

(c) A public comment period,

(d) An opportunity to provide input on a draft of the Authority's detailed analyses described under subsection (4), and

(e) Posting on the Authority's web site of the Form A and significant documents relating to the Form A.

(2) The Authority shall make a determination concerning the proposed activity described in OAR 410-141-5260 within a period that begins 60 days before the effective date of the activity. The Authority may refuse, after a public hearing, to approve a proposed activity if:

(a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance;

(b) The activity is inequitable or unfair to the Members or shareholders of any CCO involved in, or to any other person affected by, the proposed activity. However, in connection with an acquisition of the CCO's voting securities from the CCO's shareholders, the Authority shall evaluate whether the proposed acquisition is fair to the shareholders of the CCO to be acquired only with respect to any shareholders that are unaffiliated with the acquiring party or parties and that would remain after the acquisition is completed;

(c) The activity would substantially reduce;

(A) The security of and service to be rendered to Members of any CCO involved in the proposed activity or would otherwise prejudice the interests of such Members or other Oregonians;

(B) Access to and quality of health care for Oregonians, or would substantially increase the cost of health care for Oregonians, including health care outside of the Medicaid program; or

(C) The ability of any CCO involved in the proposed activity to:

(i) Perform its contractual obligations to the Authority;

(ii) Innovate, coordinate care, provide value, and deliver high-quality services;

(iii) Demonstrate commitment to addressing health disparities and inequities;

(iv) Be strongly connected to the community served by the CCO, including the CCO's community advisory council, community health improvement plan, and the Authority requirements to engage with the community;

(v) Provide services cost effectively and within cost growth limits imposed by the Authority or the state;

(vi) Support social determinants of health in the community served by the CCO, as required by its Contract with the Authority; or

(vii) Satisfy the Authority's policy priorities as required by its contract with the Authority or as adopted by the Oregon Health Policy Board.

(d) The activity provides for a foreign or alien CCO to be an acquiring party, and the Authority further finds that the CCO cannot satisfy the requirements of this state for transacting the CCO business that would be affected by the activity.

(e) The activity or the completion of the activity would substantially diminish competition in this state or tend to create

a monopoly. An activity that the Authority determines would substantially diminish competition in this state or tend to create a monopoly may be approved if within a specific period of time a party removes the basis upon which the Authority would have otherwise disapproved the activity.
(f) After the change of control or ownership, the CCO to which the activity described in OAR 410-141-5260 applies would not be able to satisfy the requirements for receiving a CCO contract to transact the line or lines of business for which the CCO is currently authorized.
(g) The financial condition of any acquiring party might jeopardize the financial stability of the CCO.
(h) The plans or proposals that the acquiring party has to liquidate the CCO, sell the CCO's assets or consolidate or merge the CCO with any person, or to make any other material change in the CCO's business or corporate structure or management, are unfair and unreasonable to the CCO's Members and not in the public interest.
(i) The competence, experience and integrity of the persons that would control the operation of the CCO are such that permitting the activity or permitting completion of the activity would not be in the interest of the CCO's Members and the public.
(j) Any CCO involved in the activity or any acquiring party does not comply with, or the activity presents a substantial risk that any such CCO or acquiring party will not comply with:
(A) ORS 414.625(2), with respect to the CCO's governing body;
(B) 42 C.F.R. Part 438, Subpart H or 42 C.F.R. 438.808, with respect to the CCO's ownership, control and affiliations;
(C) Minimum medical loss ratio requirements;
(D) Any other applicable law; or
(E) The CCO's contractual obligations to the Authority.
(k) The activity or completing the activity is likely to be hazardous or prejudicial to members of the CCO, other Medicaid members, or the insurance-buying public.
(L) The activity or completing the activity is likely to reduce the CCO's demonstrated commitment to addressing health disparities and inequities, create or increase disparities or inequities, or make it more difficult to achieve health equity in the state.
(m) The activity is subject to other material and reasonable objections.
(3) If the activity is subject to approval by DCBS, then:
(a) The Authority shall work in concert with DCBS to jointly analyze the proposed acquisition;
(b) The Authority may rely on DCBS as to grounds that are common to the DCBS approval and the Authority approval;
(c) The Authority shall exercise independent judgment as to grounds for the Authority's approval that are not grounds for DCBS approval; and
(d) The Authority shall approve the activity only if DCBS also approves the activity and shall do so concurrently.
(4) The Authority may disapprove, approve, or approve with conditions a proposed acquisition. OHA shall publish detailed analyses justifying OHA's decisions. If the Authority disapproves the proposed activity, the Authority shall promptly notify, in writing, the CCO and each acquiring party involved in the proposed activity, specifying the bases, factors and reasons for the disapproval and giving the CCO and each acquiring party that filed the statement relating to the proposed activity an opportunity to amend the statement, if possible, to obviate the Authority's objections.
(5) If the Authority determines that a party that proposes to acquire control of a CCO must maintain or restore the CCO's capital to a level required under the laws and rules of this state, the Authority shall make and communicate the determination to the acquiring party not later than 60 days after the acquiring party files the statement required under OAR 410-141-5265.
(6) The acquiring party or parties that filed Form A under OAR 410-141-5265 shall file any amendment to Form A that responds to the Authority's objection and, if a hearing was held on the proposed activity, shall resubmit the amendment at a hearing held under this section unless the Authority finds that a hearing is not necessary to protect the Members, shareholders or any other person the proposed activity affects.
(7) The Authority may retain at the acquiring party's expense any actuaries, accountants and other experts not otherwise a part of the Authority's staff as the Authority may reasonably need to assist the Authority in reviewing the

proposed activity.
(8) The Authority may establish the effective date of an activity to which OAR 410-141-5260 applies in the order that approves the activity.
(9) If the Authority issues a notice of approval, the acquiring party and the CCO must submit to the Authority the disclosures required by 42 C.F.R. § 455.104.
(10) Within 60 days after receiving a notice of approval or disapproval, any CCO or other party to a proposed activity, including the CCO subject to the acquisition, may appeal the Authority's final order as provided in ORS chapter 183. For purposes of the judicial review, the specifications the Authority must set forth in the Authority's written notice are the findings of fact and conclusions of law of the Authority.
(11) Not later than the 30th day after consummation of an activity described in OAR 410-141-5260, the acquiring party shall submit to the Authority a statement that the activity has been consummated. The statement must be made under the oath of the presiding officer of the board of directors of the acquiring party.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685