



OHA's Framework for Analyzing Proposed Material Change Transactions for the Health Care Market Oversight Program

Final – Approved by the Oregon Health Policy Board on October 5, 2021

Background

In 2020 the Oregon Health Policy Board (OHPB) approved “OHA’s Framework for Analyzing Proposed Mergers and Acquisitions” in response to Senate Bill 1041, which was enacted in 2019 and established new responsibilities for OHA to review proposed mergers and acquisitions involving Coordinated Care Organizations (CCOs).¹

House Bill 2362, enacted in 2021, establishes new responsibilities for OHA to review qualifying material change transactions such as mergers, acquisitions, and affiliations involving not only CCOs but also other health care entities such as health insurance companies, hospitals, provider organizations, and more.² For example, the new Health Care Market Oversight Program would review a proposed: acquisition of one hospital by another hospital; merger of two provider organizations; or a private equity firm acquiring a provider organization. Only entities that meet specific revenue thresholds are subject to OHA’s review.

House Bill 2362 requires OHA to review proposed material change transactions and approve, approve with conditions, or reject these transactions. The new review process is in addition to and different from the Oregon Department of Consumer and Business Services’ (DCBS) and OHA’s existing authority to review mergers and acquisitions of insurance companies and of CCOs. The new review process also differs from the Oregon Department of Justice’s (DOJ) existing authority to review transactions involving charitable assets such as non-profit hospitals.

Nationally, many health systems, hospitals, provider groups, and other health care entities have consolidated, and the pace of consolidation has increased in the past decade. Researchers have studied the impacts of this consolidation in the health care sector and have generally found that it leads to cost increases and no improvement of quality or patient outcomes. This generalization may or may not apply to a particular transaction, however, and OHA’s job is to review what effects the transaction may have.

House Bill 2362 charges OHA with reviewing of what effects the material change transaction may have. OHA must take a first look at a material change transaction to decide whether it justifies convening a review board consisting of members of the affected community, consumer advocates and health care experts. When a review board is justified, OHA leads an in-depth analysis of the proposed material change transaction that may engage legal, economic, and community expertise.

¹ HB1041 (2019) <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1041/Enrolled>.

² HB 2362 (2021) <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2362/Enrolled>

Oregon Health Policy Board's Role

House Bill 2362 specifies that “the Oregon Health Authority shall adopt by rule criteria approved by the Oregon Health Policy Board for the consideration of requests by health care entities to engage in a material change transaction and procedures for the review of material change transactions.”

As distinct from the existing OHA and DCBS approach in regulating risk-bearing companies, OHA can apply a different framework for reviewing proposed material change transactions. House Bill 2362 requires OHA's framework to be rooted in health equity and the Triple Aim - cost, quality, and access to services.

A key priority for the Oregon Health Policy Board and its committees is achieving health equity in Oregon. The framework below is designed to ensure all reviews conducted by OHA align with the OHPB's priorities of health equity and achieving the Triple Aim. Moreover, the framework builds on the previously approved framework for how OHA should review mergers and acquisitions involving CCOs, as codified in House Bill 1041.

Approval of the guiding principles and framework below fulfills the OHPB's obligation, as required by House Bill 2362, and provides clear, strategic guidance to OHA regarding how to approach the material change transaction reviews.

Guiding Principles

When reviewing proposed material change transactions, OHA shall

- Focus on improving the health of people living in Oregon
- Ground all analyses in the impact to health equity
- Ground all analyses in the impact to equitable access to care, specifically essential services
- Ground all analyses in the impact to health care quality and costs to consumers, patients, employers, and other purchasers
- Meaningfully engage the public in a robust and transparent process which may include the creation of review boards³
- Use resources wisely and collaborate with DCBS and DOJ when applicable

Framework

OHA's review of a proposed material change transaction shall, consistent with the depth of review that the transaction justifies, consider the following concepts:

- Health equity, including the entities' demonstrated commitment to addressing health disparities and inequities⁴
- Equitable access to essential and other services

³ The statute uses the term “stakeholder review board” and specifies that “a review board convened by the authority...must consist of members of the affected community, consumer advocates and health care experts. No more than one-third of the members of the review board may be representatives of institutional health care providers.”

⁴ See the definition of health equity, as approved by the Oregon Health Policy Board
<https://www.oregon.gov/oha/OEI/Pages/Health-Equity-Committee.aspx>

- Health care quality for all people living in Oregon and the costs to consumers, patients, employers, and other purchasers
- The demonstrated commitment to and the ability of the entities to achieve Oregon's Sustainable Health Care Cost Growth Target⁵
- The market share of the entities involved in the transaction
- The financial stability of the entities involved in the transaction, for situations in which there is an immediate threat to health care services and the transaction is urgently needed to protect the interest of consumers

For material change transactions involving CCOs, OHA's review will also include the following elements, which were included in the previously OHPB-approved "Framework for Analyzing Proposed Mergers and Acquisitions":

- The CCO's relationship with its local community, including Community Advisory Council(s), local public health authority(ies), local mental health authority(ies) and others
- The ability of the CCO to innovate, coordinate care, provide value, and deliver high-quality services
- The CCO's governance and its ability to satisfy State requirements, including OHA's policy priorities as outlined in contract or as adopted by the Oregon Health Policy Board
- The ability of the CCO to support social determinants of health
- The financial stability of the CCO, including the CCO's financial strategies that may influence the merged organization

⁵ <https://www.oregon.gov/oha/HPA/HP/Pages/Sustainable-Health-Care-Cost-Growth-Target.aspx>

Appendix

The term “material change transaction” in House Bill 2362 means

- a merger of a health care entity with another entity;
- an acquisition of one or more health care entities by another entity;
- a new contract, clinical affiliation, or contracting affiliation that will eliminate or significantly reduce essential services;
- a corporate affiliation involving at least one health care entity; or
- a new partnership, joint venture, accountable care organization, parent organization or management services organization.

House Bill 2362 also includes many exceptions to the definition of material change transaction that are not subject to OHA’s review.