

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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**STATE OF OREGON
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS DIVISION**

In the Matter of the Proposed)	Proposed Findings of Fact, Conclusions of
Material Change Transaction of)	Law, and Order
PeaceHealth and Northwest Surgical)	
Specialists, LLP)	Transaction ID: 0012

This Order resolves the Notice of Material Change Transaction (the "Notice") filed by PeaceHealth, a nonprofit corporation ("PeaceHealth") on or about July 17, 2023, with respect to its proposed acquisition of Northwest Surgical Specialists, LLP, an Oregon limited liability partnership ("NWSS"). (PeaceHealth and NWSS are sometimes referred to collectively as the "Entities.") The Entities filed the Notice with the Oregon Health Authority ("OHA") under the Health Care Market Oversight Program pursuant to Oregon Revised Statutes (ORS) 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.

On July 17, 2023, OHA confirmed receipt of a complete Notice of Material Change Transaction in compliance with OAR 409-070-0030 and 0045. Pursuant to ORS 415.501(5) and OAR 409-070-0055, OHA timely conducted a preliminary review of the proposed transaction. OHA's review analyzed the potential impact of the transaction in four domains: cost, access, quality, and equity. The analysis followed guidelines and methods set out in the Health Care Market Oversight Analytic Framework (see <https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/OHA-HCMO-Analytic-Framework-FINAL.pdf>), which is grounded in the goals, standards, and criteria for transaction review and approval outlined in OAR 409-070-0000 through OAR 409-070-0085. OHA's analysis will be posted to the HCMO website at <https://www.oregon.gov/oha/HPA/HP/Pages/HCMO-transaction-notices-and-reviews.aspx>. A public comment period was open from July 17, 2023, through July 31, 2023.

Now, therefore, upon due consideration of the circumstances, including the Notice of Material Change Transaction, documentation filed in support of the Notice of Material Change Transaction, databases maintained by OHA, websites of the Entities, press reports, academic research articles, and other publicly available reports, OHA enters the following Proposed Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

OHA FINDS that:

1. On or about July 3, 2023, PeaceHealth filed the Notice with OHA.
2. On or about July 7, 2023, OHA notified PeaceHealth that the Notice was incomplete, provided guidance about submission requirements, and requested additional information.
3. On or about July 13, 2023, PeaceHealth filed a revised Notice with OHA.
4. On or about July 17, 2023, OHA notified PeaceHealth that it received all requested information and confirmed receipt of a complete Notice. OHA commenced the preliminary review pursuant to OAR 409-070-0055 and communicated that the review would be completed on or before August 16, 2023, unless extended in accordance with applicable statutes and administrative rules.
5. OHA held a public comment period from July 17, 2023, through July 31, 2023, and received no public comments.
6. PeaceHealth is a nonprofit corporation headquartered in Vancouver, Washington that operates hospitals, clinics, and other health care facilities in Washington, Oregon, and Alaska.
7. PeaceHealth operates four hospitals in Oregon, with locations in the cities of Eugene, Springfield, Florence, and Cottage Grove.
8. PeaceHealth is the sole member of Health Ventures, a Washington nonprofit corporation, which owns a majority stake in the RiverBend Ambulatory Surgery Center, LLC ("RiverBend ASC"), also known as Day Surgery at RiverBend, located in Springfield, Oregon.
9. PeaceHealth Medical Group ("PHMG"), a division of PeaceHealth, operates 61 medical clinics across Lane County and employs 398 Oregon practitioners, of whom 28 are surgeons. PHMG provides primary care, surgery, gastroenterology, cardiology, and other medical specialties.
10. There are 182 surgeons on staff across all of PeaceHealth's Oregon facilities.
11. NWSS is a surgery practice that operates a Clinic Space in Springfield, Oregon. NWSS' physicians and advanced practice providers provide cancer, breast, trauma and acute care, colorectal, and vascular surgical care to patients.
12. NWSS is owned and governed by 7 physician partners and employes 8 physicians, 4 advanced practice providers, and 30 other employees.
13. As of the date of the Notice, NWSS physicians performed surgical procedures at PeaceHealth, the Day Surgery at RiverBend, McKenzie Willamette Hospital, and McKenzie Surgery Center.

14. On July 31, 2023, NWSS and PeaceHealth executed an Asset Purchase Agreement (“Agreement”) formalizing the terms of the proposed transaction. According to the terms of the Agreement, PeaceHealth will purchase all furniture and equipment currently located at the NWSS clinic, rights to all telephone numbers currently in use by NWSS, and NWSS’ inventory of medical and other supplies. Additionally, PeaceHealth will assume the equipment lease for an ultrasound machine. The total purchase price is \$121,600
15. Following the acquisition, the Entities maintain that PeaceHealth will hire seven of eight NWSS physicians, four advanced practice providers, and 15 other employees, all of whom would become employees of PHMG.
16. According to the Entities, PeaceHealth intends to execute a space lease for NWSS’s Clinic Space following the acquisition.
17. The Entities have stated that following the acquisition, as employees of PHMG, the former NWSS’ physicians will continue to offer the same services at the same locations as they did as of the date of the Notice. Decisions regarding hospital and ambulatory surgery center (“ASC”) services will continue to be made jointly by the physicians and their patients, and PeaceHealth will not impose any limitations on the physicians’ ability to practice at hospitals or other facilities not affiliated with PeaceHealth.
18. The payer mixes of PeaceHealth and NWSS are similar. Both PeaceHealth and NWSS see proportionally more patients with Medicaid coverage (also known as Oregon Health Plan (“OHP)) or Medicare coverage as compared to the percent of individuals residing in the primary service area with OHP or Medicare coverage.
19. The Entities maintain that following the acquisition, PeaceHealth will not charge facility fees for any services rendered by former NWSS physicians for which no facility fees are currently applied.
20. The Entities maintain that former NWSS employees will not be subject to any restrictions on future employment opportunities (e.g., through noncompete agreements or other contractual arrangements) as a condition for their employment with PeaceHealth.

CONCLUSIONS OF LAW

1. The Notice is supported by the required documentation and meets the requirements of the Health Care Market Oversight Program rules for approval with respect to acquisitions of health care Entities pursuant to ORS 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.
2. OHA finds that:
 - a. The transaction is not likely to substantially alter the delivery of health care in Oregon.

- i. The proposed transaction is unlikely to reduce the availability or breadth of surgical care services for the communities served by NWSS. The physicians and other providers will continue serving patients and performing surgical procedures from the same locations. It is not expected that the transaction will result in significant changes to the types of health insurance accepted for surgical care services.
- ii. Further, PeaceHealth asserts it will neither restrict future employment opportunities as a condition for former NWSS physician employment with PeaceHealth, nor will PeaceHealth charge any new facility fees for services rendered by former NWSS physicians.

ORDER AND CONDITIONS

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED that:

1. The transaction is hereby APPROVED WITH CONDITIONS upon the basis of the information contained in the Notice of Material Change Transaction to date.
2. For a period of five (5) years following the close of the transaction, this Order shall be conditioned upon and subject to the following:
 - a. PeaceHealth shall not charge facility fees for any services rendered by former NWSS physicians for which no facility fees are currently applied.
 - b. PeaceHealth shall not subject former NWSS employees to any restrictions on future employment opportunities as a condition for employment, or subsequent bona fide advancement of the former NWSS employee by PeaceHealth.
3. The Entities shall notify OHA within one (1) business day following completion of the Transaction by email to hcmo.info@oha.oregon.gov.

This Order will be posted to the Health Care Market Oversight Program website at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

OHA reserves the right to enforce the Conditions set forth herein to the fullest extent provided by the law. In addition to civil penalties and any legal remedies available, OHA shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of these Conditions.

OHA is required to analyze and publish the Entities' compliance with Conditions placed on the Transaction and to assess the impact of the Transaction under ORS 415.501(19) and (20). OHA is required to publish its analyses and conclusions and include same in the annual health care cost and spending trend report under ORS 442.386(6).

Per OAR 409-070-0080, OHA may require the Entities to provide any information, reports, analyses, and documentation needed to monitor and assess the impact of the Transaction.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedures Act (chapter 183, Oregon Revised Statutes), ORS 415.019, and OAR 409-070-0075. You are entitled to be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited resources. The Oregon Health Authority will be represented by an Assistant Attorney General from the Oregon Department of Justice.

To request a contested case hearing, your request must be in writing and must be received within fifteen (15) days from the date this Final Order was personally served, mailed, or electronically transmitted to you, based on the date at the top of this document.

A request sent by U.S. mail is "received" on the date it is postmarked. Your request may also be emailed. Your request should be sent to:

hcmo.info@oha.oregon.gov

or

Health Care Market Oversight Program
421 SW Oak St
Suite 850
Portland, OR 97204

If you submit a request for a contested case hearing, you will be notified of the time place of the hearing. Information on the hearing process will be provided to you in accordance with ORS 183.413(2). Any hearing will be conducted by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

If you fail to request a hearing within the time allowed, if you request a hearing and subsequently withdraw your request for a hearing, if you request a hearing and fail to appear for the hearing, or if a hearing is scheduled and you later notify OHA that you will not appear at the specified time and place, you will have waived your right to a hearing, and this proposed order will become a final order by default. If

OHA issues a final order by default, it designates its file on this matter, including all materials that you have submitted relating to this matter, as the record in this case for purposes of proving a prima facie case.

Dated this 16th day of August, 2023



Sarah Bartelmann, MPH
Health Care Market Oversight Program
Manager
Oregon Health Authority

NOTICE TO ACTIVE DUTY SERVICEMEMBERS. Active-duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 00-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.