

Health Care Market Oversight

Frequently Asked Questions

This document provides high-level information about the Health Care Market Oversight program. Please see ORS 415.500 et seq. and OAR 409-070-0000 through 409-070-0085 for legal requirements.

What is this new program? What does it do? Who does it apply to?

As set forth in the authorizing legislation, the new Health Care Market Oversight (HCMO) program exists to make sure that health care entity transactions support:

- [Health equity](#),
- Lower costs for consumers and payers,
- Increased access, *and*
- Better patient care

HCMO was established by HB 2362, which the Oregon Legislature passed in 2021. This mandate requires the Oregon Health Authority (OHA) to review and approve proposed material change transactions between health care entities, including

- hospitals,
- health insurance companies,
- Medicare Advantage plans,
- coordinated care organizations,
- individual licensed health professionals, and
- other entities providing health care products or services.

A **transaction** occurs when two or more business entities combine.

Material change transactions are those that meet program requirements and must be reviewed OHA.

The statute does not require OHA to review transactions between long-term and residential care facilities. See the program administrative rules for specific definitions: <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

Which transactions are subject to review?

Transactions are subject to review when:

1. One of the entities has a revenue of at least \$25 million and another has a revenue of at least \$10 million¹,
and
2. Transactions fall within one of the following categories:
 - Mergers and acquisitions
 - Affiliations and contracts that will eliminate or significantly reduce essential services
 - New partnerships, joint ventures, accountable care organizations, parent organizations, or management services organizations that will:
 - eliminate or significantly reduce essential services;

¹ When more than two entities are consolidating, there is no revenue requirement for subsequent entities

- consolidate or combine providers of essential services when contracting payment rates with payers; or consolidate or combine insurers when establishing health benefit premiums

What is excluded from review?

The following transactions are not required to file notice:

- clinical affiliations to collaborate on clinical trials or graduate medical education,
- medical services contracts,
- affiliations that do not affect corporate leadership or control of an entity and are necessary to adopt advanced value-based payment methodologies
- corporate restructuring
- transactions involving a clinic designated as a Federally Qualified Health Center
- all affiliations and contracts that do not significantly reduce or eliminate essential services

What is the process for an entity that is planning a transaction?

- Step 1** Entities consider an optional pre-filing conference with OHA during which staff from OHA can inform the entity if the transaction is subject to review
- Step 2** The entity completes and submits the Notice of Material Change Transaction Form. The form and instructions are posted on the program website:
<https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>
- Step 3** OHA will conduct a preliminary review of the transaction and decide to approve, approve with conditions, or conduct a more comprehensive review. OHA may ask entities to provide more information to inform the review process.
- Step 4** If approved, entities can proceed with the transaction, adhering to any conditions of the approval. If not approved after the comprehensive review, entities may contest the decision. See 409-070-0075 for more information.

What resources and technical assistance are available?

Technical assistance: You can request free technical assistance from program staff by emailing hcmo.info@dhsoha.state.or.us.

Pre-filing conference: You can consult with program staff to see if your transaction is subject to review and discuss the filing process, what information may be requested, and submission timing.

Pre-comprehensive review conference: If OHA determines that your transaction will require a comprehensive review, you can request a conference with OHA staff to discuss the plan and timeline for the comprehensive review.

Guidance documents: OHA has published multiple guidance documents on the program website:
<https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>

When does this program start?

The program begins March 1, 2022. This means that any qualifying transaction that closes on March 1, 2022 or later is subject to review.

When is the deadline to file notice for entities that are planning a transaction?

An entity must file a notice of material change transaction at least 180 calendar days prior to the proposed effective or closing date of the transaction.

Will the program have a ramp-up period and what does that mean?

Yes. From March 1, 2022 until December 31, 2022, OHA will approve all transactions unless program staff notify an entity of serious concerns that require review. Program fees are also waived through the end of 2022.

What are the timeframes of this program?

Entities must file a notice of material change transaction at least 180 calendar days before the proposed effective date of the transaction.

OHA must complete a preliminary review within 30 calendar days of when an entity files a notice of material change transaction. If a transaction requires a comprehensive review, OHA will complete the comprehensive review within 180 calendar days of when an entity files a notice of material change transaction.

How can community members or interested parties provide input on a proposed transaction?

OHA will publicly post all notices of proposed transactions to the program website and solicit written public comment. Anyone may share input about a proposed transaction. Public comments may be used to assess the impact of a proposed transaction on communities and people or groups interested in the transaction.

Under HB 2362, OHA may convene a community review board to make recommendations related to transactions that receive a comprehensive review. Community review boards must include members of affected communities, consumer advocates, and health care experts. See the program website for administrative rules and guidance documents that provide more information about the role of community review boards:

<https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

A preliminary review

looks at the submitted information to understand the potential effects of a transaction. Preliminary reviews are completed within 30 days of when OHA receives a completed notice.

A comprehensive review

involves a more detailed look at the potential effects of a transaction and may include additional data sources, methodologies, and community engagement approaches. Comprehensive reviews are completed within 180 days of when OHA receives a completed notice.

What is the review and approval process?

When an entity files a transaction notice, OHA will conduct a preliminary review to determine how the transaction may affect health care access, health equity, quality of care, and costs for consumers and payers. After the preliminary review, OHA will either approve the transaction, approve with conditions, or require a comprehensive review. Transactions may be approved after preliminary review if they:

- Are in the interest of consumers
- Are urgently needed to maintain the solvency of an entity
- Are unlikely to reduce access to affordable health care
- Are unlikely to substantially alter the delivery of health care in Oregon

OHA may conduct a comprehensive review if there are concerns about the effects of a transaction on equity, access to care, quality of care, or health care costs. After a comprehensive review, OHA may approve a transaction if it:

- Is lawful,

- Does not have anti-competitive market effects,
- Will not harm the financial sustainability of a health care entity involved in a transaction,
- Will not be hazardous to consumers or the public, and
- Will benefit public and community good or improve health outcomes for the state.

Some entities are already required to submit transaction information to other regulatory authorities. How will OHA work with these other regulatory authorities to streamline processes for entities?

Where inter-agency information sharing is needed, OHA will share the minimum necessary information in accordance with regulations or contractual agreements governing privacy and confidentiality. We will collaborate with the following agencies and programs:

- **Department of Consumer and Business Services (DCBS).** OHA will collaborate with DCBS on any transaction involving at least one domestic insurance company. OHA and DCBS will each carry out their own review, and OHA will provide a recommendation to DCBS, who will decide the outcome of the review.
- **Department of Justice (DOJ).** OHA may rely on legal advice and analysis by DOJ as needed. Depending on the scope of work and internal capacity, DOJ may contract with an external law firm for legal counsel.
- **Other OHA programs and divisions.** For any transaction involving a Coordinated Care Organization (CCO), the program may coordinate with other OHA programs that regulate CCO activities. The program may consult with other OHA programs regarding data and quantitative methods, particularly relating to measures of cost and hospital performance. Staff of other OHA programs may provide analytic support on reviews and share data collected by the programs on an as-needed basis.

How is the program funded?

The program is funded with General Funds for the 2021-2023 biennium, after which program costs will be covered by fees collected from entities involved in transactions. Fees will be determined based on the type of review required and the revenue of entities filing a transaction notice. Entities that are not required to submit a transaction notice will not be subject to any fees. OHA will begin collecting fees for transaction notices filed as of January 1, 2023.

What fees will entities pay when they file a transaction notice?

Fees are waived in 2022. OHA will collect fees for transaction notices filed on or after January 1, 2023. OHA will determine and post fee amounts prior to January 1, 2023.

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