

Safe Harbor and Transactions Not Subject to Review

The Health Care Market Oversight program was created to ensure that transactions involving health care entities support the goals of health equity, lower costs, increased access, and better care. This document presents transactions that are **not subject to review** due to safe-harbor protection or because the authorizing statute or final rules specifically exclude the transaction from review. This document also lists examples of transactions that are excluded from review.

For more information, visit the program website at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

Exempted Transactions Due to Safe-Harbor Status

In accordance with OAR 409-070-0022(6), the following table lists transaction types that are exempt from review by the Health Care Market Oversight program.

Effective Date	Transaction
3/1/2022	Material change transactions in which one of two entities involved in the transaction is a solo practice and the transaction is the direct result of either the death or retirement of the provider in the solo practice.
3/1/2022	Material change transactions approved in writing by the Oregon Health Authority between July 27, 2021, enactment date of the authorizing legislation, and February 28, 2022. The terms, conditions, and agreements that comprise the transaction must remain unchanged from what the Oregon Health Authority approved.

The Oregon Health Authority may add to the above list of exempted transactions and re-post on the program website (<https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>) at any time.

Transactions may also be exempted from review in an emergency situation pursuant to OAR 409-070-0022. Entities may apply for an emergency exemption by completing the [Emergency Exemption Form](#) and emailing to hcmo.info@dhs.oha.state.or.us.

Excluded Transactions in Accordance with Statute & Rule

The authorizing statute (ORS 415.500) and rule (ORS 409-070-0020) specifies transactions that are **not** subject to review under the Health Care Market Oversight program. The following types of transactions are **not** subject to review:

- Clinical affiliations formed for the purpose of collaborating on clinical trials or graduate medical education programs.
- Medical services contracts or an extension of a medical service contract as defined by ORS 415.500(7)(a).
 - Note: a medical services contract does not include a contract of employment or a contract creating a legal entity and ownership of the legal entity that is authorized under ORS chapter 58, 60, or 70 or under any other law authorizing the creation of a professional organization. This type of contract may be subject to review.
- An affiliation that does not impact the corporate leadership, governance or control of an entity and is necessary to adopt advanced value-based payment methodologies to meet the health care cost growth targets under ORS 442.386.
- Contracts under which one health care entity, for and on behalf of a second health care entity, provides patient services or provides administrative services relating to the provision of patient services if the second health care entity:
 - maintains responsibility and control over the patient services,
 - bills and receives reimbursement for the patient services, and
 - does not provide comprehensive management services.
- Transactions involving Federally Qualified Health Centers.
- Transactions that consist solely of corporate restructures that do not change the ultimate control of the health care entity and do not result in the acquisition of control of the entity by any person not previously affiliated with the entity.
- Agreements between an affiliate and a health care entity that are subject to ORS 732.574(2)(d)(D), which include management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements.

Examples of Excluded Transactions

All of the examples below are transactions that do not meet the Health Care Market Oversight program criteria and are excluded from review. For illustrative purposes, all examples below are assumed to meet the entity revenue thresholds of greater than or equal to \$25 million and \$10 million.

The table below shows both the details of the transaction example and an explanation as to why it is excluded from review by the Health Care Market Oversight program.

As a reminder, the Health Care Market Oversight program is charged with reviewing the following types of transactions:

1. Merger
2. Acquisition
3. New contract, new clinical affiliation, or new contracting affiliation that will eliminate or significantly reduce essential services
4. Corporate affiliation, defined as a health care entity that controls, is controlled by, or is under common control with another legal entity
5. New partnership, joint venture, accountable care organization, parent organization or management services organization that will:
 - a. Eliminate or significantly reduce essential services,
 - b. Consolidate providers of essential services when contracting payment rates with payers, or
 - c. Consolidate insurers when establishing health benefit premiums

Examples of Transactions Excluded from Review	Explanation
The sale of 10% of the voting shares of a medical group.	There is no change of control in this example, because for entities that are not insurers or Coordinated Care Organizations, control is not rebuttably presumed until 25% of voting shares has been acquired.
Four medical groups affiliate to form a new management services organization to provide billing and collection services to the four medical groups. The new management services entity will not negotiate on behalf of the medical groups with payers. No changes in control and no reduction of essential services.	Although this transaction results in a new management services organization, there is no consolidation of providers of essential services when contracting payment rates with payers.
Two insurers want to share resources. No change of control. Establishing health benefit premiums is not a component of the affiliation.	No change of control. There is no consolidation of insurers when establishing health benefit premiums.
Hospital contracts with medical group to provide specialty call coverage to Emergency Department in hospital.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Hospital contracts with staffing agency to provide locum tenens physician services in hospital.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Hospital contracts with medical group to provide electronic health record access to medical group to access common patients for care purposes.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Rural hospital contracts with a “nighthawk” remote radiology service provider for nighttime imaging reads for the Emergency Department.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Hospital and medical group contract to provide NICU staffing services.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Hospital contracts with an affiliate to provide electronic medical record services to the hospital or vice versa.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Large medical group contracts with a third-party administrator to assist the group with the administrative components of contracting with payers.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Rural hospital and urban hospital enter into transfer agreement for transfer of patients to a higher level of care.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Clinic and medical group enter into agreement for space in a medical office building.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Two clinics agree to share space, exam rooms, and resources. The clinics are not combining providers when contracting rates with payers.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Multiple medical groups offer their support and logos in favor a specific housing initiative.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.

Examples of Transactions Excluded from Review	Explanation
Rural hospital recruits primary care physician to community.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Two hospitals offer joint continuing medical education to their medical staffs.	The statute specifically excludes from the program clinical affiliations that are formed for the purposes of collaborating on graduate medical education programs.
Community call agreement to cover hospital Emergency Departments.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
New joint venture formed between dialysis company and hospital to deliver dialysis services on a non-exclusive basis. No change in essential services and no combining providers when contracting payments rates with payers.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Parent entity of provider of contraception services affiliates with a national pro-choice organization and the national organization provides, among other things, a strategic advocacy affiliation.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Contract between a hospital or medical group and a billing company or a human resources company. The contract does not allow for combining payment rate negotiations with payers.	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers.
Two health systems enter into contract or purchase order with a supplier of supplies (gloves, equipment, etc.).	No change of control. No reduction of essential services. No consolidation of providers when contracting payment rates with payers. If these two health systems are also insurers, in this example there is no consolidation of insurers when establishing health benefit premiums.

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