

# Oregon’s Health Care Market Oversight Program

## Technical Advisory Group (TAG) Material

Revised 1/26/2022

### Purpose of TAG:

1. Further specify the concept of “essential services” which, in accordance with the statute, includes “services that are essential to achieve health equity”; and
2. Specify how a health care entity will determine if a transaction will *significantly* reduce essential services.

### Introduction

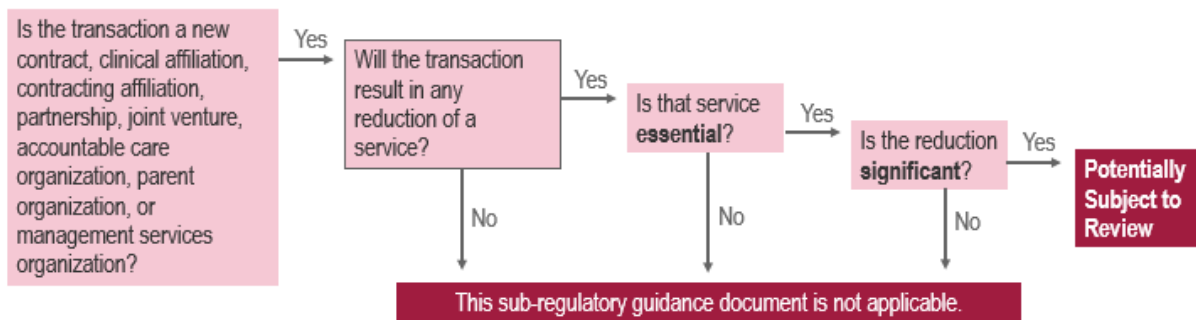
OHA must propose a rubric that health care entities can use to determine if a proposed transaction is subject to review. Health care entities must be able to operationalize the definition of “services that are essential to achieve health equity” and determine if the proposed transaction will result in a “significant reduction” of essential services.

The document below is intended to outline a two-part test in which health entities can:

1. Determine if a proposed transaction will result in a reduction of an essential service, and
2. Determine if that reduction is “significant”

Proposed new contracts, new clinical affiliations, or new contracting affiliations that will eliminate or significantly reduce essential services are subject to review. Additionally, proposed transactions to form a new partnership, joint venture, accountable care organization, parent organization or management services organization between or among health care entities that will eliminate or significantly reduce essential services are subject to review.

Flowchart showing when this sub-regulatory document is applicable<sup>1</sup>:



<sup>1</sup> A proposed transaction is only reviewable if the entities party to the proposed transactions meet the financial thresholds specified in HB2362 and the transaction is not otherwise exempt. For more information, see OAR 409-070-0010.

This document is not applicable if a proposed transaction will not reduce essential services.

The elimination of an essential service shall be considered a significant reduction of that service.

## **OHA Seeks Input from the TAG Regarding the Following Proposals**

House Bill 2362 defines essential services as “services that are funded on the prioritized list described in ORS 414.690” **and** “services that are essential to achieve health equity”.

### **1. Services Funded on the Prioritized List**

The Oregon Health Authority’s prioritized list consists of 662 conditions and the corresponding codes for diagnoses and treatment procedures.<sup>2</sup> As of January 1, 2022 the first 472 conditions on the prioritized list are funded.<sup>3</sup> At present, these conditions are therefore essential for the purposes of the Health Care Market Oversight Program. The prioritized list and what is funded on the list may change according to the Health Evidence Review Committee. Examples of funded conditions include but are not limited to pregnancy, prevention services, substance use disorder, reproductive services, diabetes, and many more.

All services funded on the prioritized list are “essential” in accordance with HB 2362.

### **2. Defining services that are essential to achieve health equity.**

The Legislature did not specify which services are essential to achieve health equity. The Oregon Health Authority uses the following definition of health equity<sup>4</sup>:

*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, age, 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:*

- The equitable distribution or redistribution of resources and power; and*
- Recognizing, reconciling, and rectifying historical and contemporary injustices.*

OHA’s task is to specify additional services that are not funded on the prioritized list but are essential to achieve health equity. These additional services should be defined in such a way that allows for entities to determine if the services they provide fit that definition. In other words, the definition must be clear and practical. The determination of whether a service meets the definition of “essential” will in some

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<sup>2</sup> For more about the prioritized list, see <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>

<sup>3</sup> <https://www.oregon.gov/oha/HPA/DSI-HERC/PrioritizedList/1-1-2022%20Prioritized%20List%20of%20Health%20Services.pdf>

<sup>4</sup> <https://www.oregon.gov/oha/OEI/Pages/Health-Equity-Committee.aspx>

cases serve as a deciding factor for whether an entity must submit a notice of material change transaction.

Many of the services funded on the prioritized list are essential to achieve health equity. The following proposed definition of *additional* services that are essential to achieve health equity should not be misconstrued as the only services that are essential to achieve health equity in a general sense. The following proposed definition of services that are essential to achieve health equity apply only to operationalizing the Health Care Market Oversight Program (i.e., for entities determining whether or not they must submit a notice of material change transaction).

#### Proposed definition of services that are essential to achieve health equity

The services listed below are essential to achieve health equity.

**i) Any service directly related to the treatment of a chronic condition is essential** to achieve health equity for the purposes of administering the Health Care Market Oversight Program. The term chronic condition is defined as:

- a condition that lasts one year or more and
- requires ongoing medical attention or limits activities of daily living or both.<sup>5</sup>

The beforementioned phrase “directly related to” means services that are intended to treat the condition or the symptoms of that condition.

**ii) Pregnancy-related services are essential** to achieve health equity for the purposes of administering the Health Care Market Oversight Program. Most pregnancy-related services are funded on the prioritized list and are therefore already essential. Any other pregnancy-related service is also considered essential.

**iii) Prevention services, including non-clinical services, are essential** to achieve health equity for the purposes of administering the Health Care Market Oversight Program. Many prevention services are funded on the prioritized list and are therefore already essential. Prevention services include appropriate screenings, chronic disease prevention programs, nutritional education programs, programs that encourage activity among children, and more. The term “non-clinical” in this context means services rendered outside of a clinical setting or rendered by individuals without medical training (e.g., a school-based program to encourage physical activity).

**iv) Health care system navigation and care coordination services are essential** to achieve health equity for the purposes of administering the Health Care Market Oversight Program. Many of these services are funded on the prioritized list and are therefore already essential. Health care system navigation and care coordination services include assisting new patients and new health plan members with accessing needed care, helping individuals access referrals, translation services, and more.

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<sup>5</sup> Center for Disease Control, National Center for Chronic Disease Prevention and Health Promotion. <https://www.cdc.gov/chronicdisease/about/index.htm>. Access January 6, 2022.

**2. How to determine if a transaction will significantly reduce essential services**

A “significant reduction” of services occurs when a transaction will result in *any* of the concepts outlined in draft OAR 409-070-0010 (3) changing by the following amounts or more:

**Table 1**

Draft OAR language from 409-070-0010(3)	Determining “significant reduction”	Example
(a) An increase in time or distance for community members to access essential services, particularly for historically or currently underserved populations or community members using public transportation	A transaction that would result in an increase of 50% or more of the median time or distance travelled for existing patients is considered a significant reduction. A transaction is also considered a significant reduction if the transaction will result in a doubling or more of the distance between the health service location and the closest public transportation access point such as a bus, train, or light rail stop; this does not apply to entities that are less than 1 mile away from a public transportation access point and does not apply to entities that are more than 10 miles away from a public transportation access point.	A hospital is proposing to acquire a large clinic. The transaction would result in the clinic closing and the medical providers who render essential services would serve the clinic’s existing patients out of a building on the hospital’s campus. The median travel time of existing clinic patients is 30 minutes and median travel time to the new location would be more than 45 minutes, which is 50% greater than 30 minutes. This is considered significant.
(b) A reduction in the number of providers, including the number of culturally competent providers <sup>6</sup> , health care interpreters, or traditional healthcare workers, or a reduction in the number of clinical experiences or training opportunities for individuals enrolled in a professional clinical education program.	A transaction that would result in a decrease of 50% or more of trained culturally competent providers, health care interpreters, or traditional healthcare workers is considered a significant reduction. A transaction that will result in a decrease of 50% or more of the number of clinical experiences or training opportunities for individuals enrolled in a professional	A proposed merger of two large clinics would result in one clinic reducing the number of traditional health workers from 20 to 10. These traditional health workers provide health system navigation and care coordination services. This is considered significant.

<sup>6</sup> Cultural competency is defined as “a lifelong process of examining the values and beliefs and developing and applying an inclusive approach to health practice in a manner that recognizes the content and complexities of provider-patient communication and interaction and preserves the dignity of individuals, families, and communities”. See OAR 943-090-0000 through 943-090-0020

Draft OAR language from 409-070-0010(3)	Determining “significant reduction”	Example
	clinical education program is considered a significant reduction.	
(c) A reduction in the number of providers serving new patients, providers serving individuals who are uninsured, or providers serving individuals who are underinsured. <sup>7</sup>	A transaction that would result in a decrease of 50% or more of the number of providers serving new patients or individuals who are uninsured is considered a significant reduction. Additionally, a reduction is considered significant if the transaction will result in the number of providers decreasing such that the number of patients who are responsible for the entire cost of a visit increases by 50% or more.	A proposed material change transaction would result in a clinic reducing the number of essential service providers who see uninsured patients from 25 to 10 providers. Such a reduction is more than 50% and is therefore significant.
(d) Any restrictions on providers regarding rendering, discussing, or referring for any essential services	A transaction that would result in any decrease of 50% or more of any given essential service as a result of restrictions placed on providers rendering, discussing, or referring for an essential service is considered a significant reduction.	Two hospitals propose to merge and as a result, one hospital would reduce its maternity services and provide less than half the births as it did before the transaction. Such a reduction is considered significant.
(e) A decrease in the availability of essential services or the range of available essential services	A transaction that would result in any decrease of 50% or more of essential services due to the lack of availability is considered a significant reduction.	A health system proposes to acquire a multi-specialty clinic. The transaction would not change the overall number of 15 providers employed by the clinic but would let go of all 5 Cardiologists, who provide services funded on the prioritized list, and subsequently hire other specialists. The number of essential services related to cardiology has been reduced by more than 50%. Such a reduction is considered significant. A second example is if the transaction above would not change the overall number of 15

<sup>7</sup> For the purposes of the Health Care Market Oversight Program, the term “underinsured” means individuals who have medical insurance, but also face deductibles and other out-of-pocket spending that serves as a significant barrier when accessing health care services. Entities involved in a transaction that will reduce the number of providers serving individuals who are underinsured should analyze the number of patients whom the entity bills for the full cost of a visit.

Draft OAR language from 409-070-0010(3)	Determining “significant reduction”	Example
		providers employed by the clinic but they would no longer accept patients with the Oregon Health Plan. Such a reduction of availability of essential services is considered significant.
(f) An increase in appointment wait times for essential services	A transaction that would result in an increase of 50% or more of appointment wait times is considered significant.	A private equity firm proposes to acquire a clinic that provides services funded on the prioritized list. Appointment wait times would increase from 5 business days to 9 business days due to the terms of the transaction. Such an increase is more than 50% and is considered significant.
(g) An increase in any barriers for community members seeking care, such as new prior authorization processes or required consultations before receiving essential services	A transaction that would result in a 50% or more decrease of availability of an essential service due to any barrier such as new prior authorization processes, required consultations or delays.	A health system proposes to acquire a clinic and would impose new prior authorizations for substance use disorder treatment (an essential service). It can be assumed that the new prior authorization process would likely reduce the number of rendered treatment visits from 1,000 to 500. Such a decrease is 50% and is considered significant.
(h) A reduction in the availability of any specific type of care such as primary care, behavioral health care, oral health care, specialty care, pregnancy care, inpatient care, outpatient care, or emergent care as relates to the provision of essential services	A transaction that would result in a 50% or more decrease in the specified types of care, as measured by the number of providers or services rendered, is considered significant.	A private equity firm proposes to acquire a multi-specialty clinic and would reduce the number of behavioral health providers who render services funded on the prioritized list. The transaction would reduce the number of providers from 24 to 12. Such a reduction is 50% and is considered significant.

### Determining Significant Reductions of Essential Services for Transactions Involving Insurers

The statutory language in HB 2362 and the Health Care Market Oversight Program does not entail an evaluation of an insurer’s network or network adequacy. Rather, the statute focuses on *changes* in the provision of essential services that result from covered material change transactions.

For transactions involving insurers, a significant reduction of essential services occurs when an insurer reduces or eliminates coverage of essential services in any of their health plan products as a result of the transaction. A reduction in coverage or complete removal from coverage of essential services by the insurer as a result of the transaction increases out-of-pocket spending for consumers and therefore raises relevant concerns about access and equity. In this case, the transaction would be subject to review and a notice of material change transaction would be required.

For transactions involving an insurer and a health care delivery entity (e.g., hospital, health system, provider group, clinic), where the delivery system itself is altered as a result of the transaction, all other considerations for determining a significant reduction of essential services outlined in this document shall apply (e.g., increasing time or distance to services, decreasing number of providers of services, etc.).

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### 3. Examples of Applying the Rubric

**Example A:** Two large multi-specialty clinics are discussing a new clinical affiliation between the two entities and as a result of that affiliation there would be a reduction of services. The entities’ average annual revenue exceeds the statutory thresholds of \$10 million and \$25 million and the proposed transaction is not otherwise exempt from review.

Each clinic has 30 providers – 60 providers in total - that range in specialty. The transaction would result in decreasing the number of oncologists from ten to six. No other changes would occur.

Step 1: Are the services that those oncologists provide “essential”?

- Are the services funded on the prioritized list?
- Are the services directly related to the treatment of a chronic condition, pregnancy-related service, prevention service, or navigation/care coordination service?

In this example, the answer to both questions is “yes” if cancer treatment services provided by oncologists at the clinic are funded on the prioritized list and cancer is considered a chronic condition. The services to be reduced would therefore be considered “essential.”

Step 2: Is the reduction of the essential service “significant”?

- Is the nature of the service reduction reflected in any of the eight categories specified in Table 1 above?

<b>Applying the example to the concepts in OAR 409-070-0010(3)</b>	<b>Does this meet the definition of “significant”?</b>
(a) There is no change in location and no closing of any locations	No
(b) There <b>is a reduction</b> of providers, but not by 50% or more	No
(c) There <b>is a reduction</b> of providers serving new patients and individuals who are uninsured or underinsured, but not by 50% or more	No
(d) There are no restrictions regarding rendering, discussing, or referring to any essential services	No
(e) There <b>is a decrease</b> in the availability of essential services, but not by 50% or more because there are other oncologists to provide the essential services	No
(f) There <b>is an increase</b> in appointment wait times, but in this example the six oncologists will serve patients such that wait times do not increase by 50% or more	No
(g) There is no increase in any barriers for community members seeking care	No
(h) There <b>is a reduction</b> of a specific type of care, namely oncology care, which is a specialty, but the decrease is not by 50% or more	No



This transaction will result in a reduction of essential services, but the reduction is not significant. No notice of material change transaction is required because this transaction is a clinical affiliation that will not “significantly” reduce essential services.

**Example B:** A hospital and a clinic are discussing a contracting affiliation and as a result of that contracting affiliation some primary care providers would be moved from practicing in the clinic to practicing on the hospital’s campus in a neighboring city 25 miles away. The entities’ average annual revenue exceeds the statutory thresholds of \$10 million and \$25 million and the proposed transaction is not otherwise exempt from review.

Step 1: Are the primary care providers’ services “essential”?

- Are the services funded on the prioritized list?
- Are the services directly related to the treatment of a chronic condition, pregnancy-related service, prevention service, or navigation/care coordination service?

Primary care services and related treatments are funded on the prioritized list and primary care providers routinely treat chronic conditions, provide prevention services, and provide navigation and care coordination services. The services, therefore, are likely to be considered “essential.”

Step 2: Is the reduction of the essential service “significant”?

- Is the nature of the service reduction reflected in any of the eight categories specified in Table 1 above?

<b>Applying the example to the concepts in OAR 409-070-0010(3)</b>	<b>Does this meet the definition of “significant”?</b>
(a) There is an increase in time and distance for community members. The median distance traveled by patients to the clinic is 10 miles, and at the new location on the hospital campus would be 25 miles. This is greater than a 50% increase.	Yes
(b) There is no reduction of providers.	No
(c) There is no reduction of providers serving new patients and individuals who are uninsured or underinsured.	No
(d) There are no restrictions regarding rendering, discussing, or referring to any essential services.	No
(e) There is no decrease in the availability of essential services.	No
(f) There is no increase in appointment wait times	No
(g) There is no increase in any barriers for community member seeking care, such as prior authorizations or required consultations before receiving essential services.	No
(h) There is no reduction of a specific type of care.	No

This transaction will result in a reduction of essential services, and that reduction is significant. A notice of material change transaction is required because this is a contracting affiliation that will significantly reduce essential services.

#### **4. Timing of Reductions of Essential Services**

The statute and rules require entities to submit a notice of material change transaction in some instances when the transaction will result in a significant reduction or elimination of essential services. For the purposes of the Health Care Market Oversight program, entities must consider any significant reduction or elimination of essential services that will occur within twelve months after the effective date of the transaction and the reduction is intended, anticipated, or under the control of the entity. In other words, significant reductions of essential services that occur twelve months after the transaction effective date should be presumed to result from the transaction if those reductions are intended, anticipated, or under the control of the entity. Reductions that are both unforeseen and uncontrollable by the entity, such as but not limited to when a provider leaves or retires, or when a pandemic disrupts health care services, shall not be considered changes that were a result of a transaction.

The purpose for this twelve-month timeline is to provide specificity for entities as they determine if a transaction is subject to review under the Health Care Market Oversight Program. The program does not oversee decisions that an entity makes unilaterally regarding what services they will provide, expand, or reduce; the program's oversight is relegated to transactions and reductions in essential services that result from a transaction.