

Oregon Health Authority - Health Care Market Oversight Program
Examples of Transactions and Whether or Not They are Subject to Review
November 10, 2021

The purpose of this document is to clarify what types of transactions will or will not be subject to review under the new Health Care Market Oversight Program, which was authorized by House Bill 2362 from the 2021 regular session.

Proposed mergers and acquisitions involving health care entities that meet or exceed the statutorily defined revenue thresholds will be subject to review. For affiliations and contracts involving health care entities that meet or exceed the revenue thresholds, the Oregon Health Authority has proposed a four-part test to determine if the proposed transaction is subject to review. Proposed affiliations or contracts will be subject to review if the transaction results in a 1) change of control, 2) significant reduction or elimination of essential services, 3) increase of market concentration among health care providers when contracting with payers, insurers, or CCOs, or 4) increase of market concentration among insurers when establishing health benefit premiums.

The Oregon Health Authority will periodically update this document with additional examples as a reference for entities.

For illustrative purposes, all examples below are assumed to meet the entity revenue thresholds of greater than or equal to \$10 million and \$25 million.

Mergers and Acquisitions

Type of Transaction	Example	Change of Control?	Significant reduction or elimination of essential services?	Increase of market concentration among health care providers when contracting with payers, insurers, or CCO?	Increase of market concentration among insurers when establishing health benefit premiums?	Does entity submit notice for review?
Merger	Two hospitals merge with no significant reduction of essential services	Yes	No	Yes	No	Yes
Acquisition	Insurer acquires another insurer with no significant reduction of essential services	Yes	No	No	Yes	Yes
Acquisition	Sale of 25% of the assets of a medical group	Yes, control is rebuttably presumed at 25%	No	No	No	Yes
Acquisition	Sale of 10% of the assets of a medical group or other provider	No, control is rebuttably presumed at 25%	No	No	No	No
Acquisition	Sale of 10% of an insurer to another entity	Yes, control is rebuttably presumed at 10%	No	No	No	Yes

Affiliations and Contracts

Type of Transaction	Example	Change of Control?	Significant reduction or elimination of essential services?	Increase of market concentration among health care providers when contracting with payers, insurers, or CCO?	Increase of market concentration among insurers when establishing health benefit premiums?	Does entity submit notice for review?
Affiliation or Contract	Medical groups affiliates with an IPA to contract with a commercial payer with no change of control	No	No	Yes	No	Yes
Affiliation or Contract	Medical group affiliates with an existing ACO or IPA for the purpose of contracting with payers	No	No	Yes	No	Yes
Affiliation or Contract	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 <i>not</i> negotiate on behalf of the medical groups with payers.	No	No	No, although the medical groups are affiliating, there is no increase of market concentration with respect to negotiating reimbursement with payers	No	No
Affiliation or Contract	An affiliation or contract between entities that will result in the elimination of essential services	No	Yes	No	No	Yes

Type of Transaction	Example	Change of Control?	Significant reduction or elimination of essential services?	Increase of market concentration among health care providers when contracting with payers, insurers, or CCO?	Increase of market concentration among insurers when establishing health benefit premiums?	Does entity submit notice for review?
Affiliation or Contract	An affiliation or contract between entities that will result in the significant reduction of essential services	No	Yes	No	No	Yes
Affiliation or Contract	An affiliation that will result in a change in governance of a subsidiary	Yes	No	No	No	Yes
Affiliation or Contract	Two insurers affiliate with no increase in market concentration when establishing benefit premiums	No	No	No	No	No
Affiliation or Contract	Hospital contracts with medical group to provide specialty call coverage to Emergency Department in hospital	No	No	No	No	No
Affiliation or Contract	Hospital contracts with staffing agency to provide locum tenens physician services in hospital	No	No	No	No	No
Affiliation or Contract	Hospital contracts with medical group to provide electronic health record access to medical group to	No	No	No	No	No

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	access common patients for care purposes					
Affiliation or Contract	Rural hospital contracts with a “nighthawk” remote radiology service provider for nighttime imaging reads for the Emergency Department	No	No	No	No	No
Affiliation or Contract	Hospital and medical group contract to provide NICU staffing services	No	No	No	No	No
Affiliation or Contract	Hospital contracts with its parent entity for the parent to provide electronic medical record services to the hospital or vice versa	No	No	No	No	No
Affiliation or Contract	Large medical group contracts with a third-party administrator to assist the group with the administrative components of contracting with payors.	No	No	No, there is no increase in market concentration when contracting with payers.	No	No
Affiliation or Contract	Rural hospital and urban hospital enter into transfer agreement for	No	No	No	No	No

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	transfer of patient to a higher level of care					
Affiliation or Contract	Clinic and medical group enter into block lease for space in a medical office building	No	No	No	No	No
Affiliation or Contract	Multiple medical groups offer their support and logos in favor a specific housing initiative	No	No	No	No	No
Affiliation or Contract	Rural hospital recruits primary care physician to community	No	No	No	No	No
Affiliation or Contract	Two hospitals offer joint continuing medical education to their medical staffs	No	No	No	No	No
Affiliation or Contract	Community call agreement to cover hospital Emergency Departments	No	No	No	No	No
Affiliation or Contract	New joint venture formed between dialysis company and hospital to deliver dialysis services	No	No	No	No	No

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Affiliation or Contract	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	No	No	No	No
Affiliation or Contract	Contract between a hospital or medical group and a billing company or a human resources company	No	No	No	No	No
Affiliation or Contract	Two health systems enter into contract or purchase order with a supplier of supplies (glove, equipment, etc.)	No	No	No	No	No
Affiliation or Contract	Insurers and health systems collaborate on a mass vaccine site	No	No	No	No	No