

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 409
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS

FILED

10/03/2024 10:17 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Modify rules (housekeeping) for the Health Care Market Oversight Program.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Zachary Goldman
503-881-8698
zachary.k.goldman@oha.oregon.gov

421 SW Oak St
Ste 850
Portland, OR 97204

Filed By:
Pete Edlund
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/19/2024

TIME: 1:05 PM - 1:55 PM

OFFICER: Pete Edlund

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-254-5252

CONFERENCE ID: 1605372821

SPECIAL INSTRUCTIONS:

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1605372821?pwd=4I3Kao2FXko5dbzFHfPMoRZMpkn3LB.1>

Meeting ID: 160 537 2821

Passcode: 739779

One tap mobile

+16692545252,,1605372821# US (San Jose)

+16468287666,,1605372821# US (New York)

Dial by your location

• +1 669 254 5252 US (San Jose)

- +1 646 828 7666 US (New York)

Meeting ID: 160 537 2821

Find your local number: <https://www.zoomgov.com/join/1605372821>

Join by SIP

- 1605372821@sip.zoomgov.com

Join by H.323

- 161.199.138.10 (US West)
- 161.199.136.10 (US East)

Meeting ID: 160 537 2821

Passcode: 739779

NEED FOR THE RULE(S)

The Health Care Market Oversight Program located in OHA reviews proposed transactions involving health care entities in Oregon to make sure the transactions help Oregon's shared goals of health equity, lower consumer costs, increased access, and better care. The following housekeeping rules changes are needed for a clearer and more streamlined program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The program website is <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>. The program also maintains a website for rules changes and Rules Advisory Committee materials:

<https://www.oregon.gov/oha/HPA/HP/Pages/HCMO-Rules.aspx>.

This website hosts all publicly shared documents including drafts of rules, the list of rules advisory committee members, and additional documents.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule changes for the program may affect all communities in the state who access health care services. The Health Care Market Oversight program is designed to improve health equity in Oregon.

The proposed rule changes for the program may affect all communities in the state and are intended to improve health equity. The program was designed with equity at its core and analyzing the equity impacts of proposed health care business deals is a central function of the program.

These individuals and communities are affected by this rule change:

- People who face barriers to getting the health care they need;
- People who experience worse health outcomes and/or quality of health care compared to the population overall;
- People who experience high health care costs, including those with high co-pays, deductibles, premiums, and other out-of-pocket payments;
- People who receive lower wages from their employer because of their employer paying high health care costs for

employees.

FISCAL AND ECONOMIC IMPACT:

The program is designed to have a positive economic impact on people living in Oregon. The originating statute specifies that a health care entity may engage in a material change transaction if, after a review conducted by the Oregon Health Authority, the Authority determines that the transaction will, among other things, reduce the growth of patient costs. Moreover, after every approved material change transaction, the Authority is tasked with analyzing the transaction one, two, and five years later, focusing on, among other things, the cost trends and cost growth trends of the parties to the transaction.

There are no fiscal and economic impacts of the proposed housekeeping rules changes because these rules merely clarify the program operations.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) State agencies will not be affected by the rule changes. There may be an impact to local governments for those hospitals or health care entities that are a part of a Health District, if those entities engage in a proposed material change transaction. The program is designed to have a positive impact on the public.

2) Cost of compliance effect on small business:

a. The statute limits the number of entities subject to the new requirements. Only transactions that involve one entity with an average revenue of \$10 million or more and another entity with an average revenue of \$25 million or more are subject to the requirements of the program. It is possible that a small business with 50 or fewer staff could be subject to the requirements in this program, depending on the average revenue of the business. Only transactions involving a health care entity are subject to review under this program. The proposed rule changes do not alter the number or types of entities subject to review under this program.

In the two and a half years of the HCMO program operation, no small businesses have been subject to a transaction review.

b. The expected reporting, recordkeeping and administrative activities are unchanged as a result of these proposed rule changes. There may be costs associated with complying with the rules, but only for those small businesses that are engaging in a proposed material change transaction that is reviewable under the program.

c. For those small businesses that are engaging in a proposed material change transaction that is reviewable under the program, the cost for a preliminary review is \$2,000 and the cost for a comprehensive review, which may not be necessary, depends on the sizes of the entities involved in the transaction, as the statute requires.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

An invitation was sent to all subscribers of the program's GovDelivery list-serve soliciting participants for the Rules Advisory Committee. Some of those individuals are lobbyists who represent smaller health care entities. It is the program staff's goal to have a Rules Advisory Committee that consists of consumers of health care services, individuals who are affected by the program, consumer advocates, and individuals who represent health care entities.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

409-070-0000, 409-070-0005, 409-070-0015, 409-070-0020, 409-070-0022, 409-070-0025, 409-070-0030, 409-070-0035, 409-070-0040, 409-070-0042, 409-070-0045, 409-070-0050, 409-070-0055, 409-070-0060, 409-070-0062, 409-070-0065, 409-070-0070, 409-070-0075, 409-070-0080, 409-070-0082, 409-070-0085

AMEND: 409-070-0000

RULE SUMMARY: Changed the word "shall" to "must" for clarity.

CHANGES TO RULE:

409-070-0000

Scope and Purpose

(1) OAR 409-070-0000 through OAR 409-070-0085 are adopted pursuant to authority in ORS 415.501. OAR 409-070-0000 through OAR 409-070-0085 govern the procedure for filing notices of material change transactions and the criteria and procedure for review of material change transactions.¶

(2) Pursuant to ORS 415.501(1), the purpose of these rules is to promote the public interest and to advance the goals of the Authority and the Oregon Integrated and Coordinated Care Delivery System described in ORS 414.018 and ORS 414.570.¶

(3) The Authority and the Department ~~shall~~must aim to achieve the following goals when reviewing proposed material change transactions: ¶

(a) Improving health, increasing the quality, reliability, availability and continuity of care and reducing the cost of care for people living in Oregon.¶

(b) Achieving health equity and equitable access to care.¶

(c) A process that is transparent, robust and informed by the public, including the local community, through meaningful engagement.¶

(d) Using resources wisely and in collaboration with the Department when applicable.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 413.181, 415.500 to 415.900

RULE SUMMARY: Removed the word "shall" for clarity. Amended the definition of "person" for clarity.

CHANGES TO RULE:

409-070-0005

Definitions

When used and not otherwise defined in OAR 409-070-0000 through OAR 409-070-0085, the following terms shall have the meaning given in this section:¶

- (1) "Administrative services" means support and administration services, outsourced and subcontracted services and other equivalent services and servicing arrangements relating to, supporting or facilitating the provision of patient care and services.¶
- (2) "Authority" means the Oregon Health Authority.¶
- (3) "AVP methodologies" means the advanced value-based payment models (3A and higher) described in the Oregon Value-Based Payment Compact (June 28, 2021). ¶
- (4) "Business entity" has the meaning given in ORS 731.116.¶
- (5) "Carrier" means:¶
 - (a) A carrier as defined in ORS 743B.005 (but excluding subsection (d) thereof); or¶
 - (b) Any person that offers Medicare Advantage plans in this state.¶
- (6) "Charitable organization" has the meaning given in ORS 128.620.¶
- (7) "Comprehensive management services" means a person provides all or substantially all the personnel, or manages all or substantially all the operations, of a health care entity.¶
- (8) "Control" means the direct or indirect power to manage a legal entity or set the legal entity's policies, whether by owning voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office. ¶
- (9) "Coordinated care organization" has the meaning given in ORS 414.025.¶
- (10) "Corporate affiliation" means a health care entity controls, is controlled by, or is under common control with another legal entity. ¶
- (11) "Covered transaction" means a transaction described in OAR 409-070-0010.¶
- (12) "Department" means the Department of Consumer and Business Services.¶
- (13) "Domestic health insurer" means an insurer as defined in ORS 731.106 or a health care service contractor as defined in ORS 750.005 that is formed under the laws of this state and has a certificate of authority from the Department to insure personal health risks, or pay for or provide health care services, whether in the form of indemnity insurance, managed care products or any other form or type of individual or group health insurance or health care service contract.¶
- (14) In accordance with ORS 415.500(2), "essential services" means:¶
 - (a) Services that are funded on the prioritized list of health services described in ORS 414.690, as in effect at the time of notice submission; and¶
 - (b) Services that are essential to achieve health equity.¶
- (15) In accordance with ORS 415.500(3), "health benefit plan" has the meaning given in ORS 743B.005.¶
- (16) In accordance with ORS 415.500(4)(a), "health care entity" includes all of the following:¶
 - (a) An individual health professional licensed or certified in this state.¶
 - (b) A hospital, as defined in ORS 442.015.¶
 - (c) A hospital system.¶
 - (d) A carrier that offers a health benefit plan or Medicare Advantage plan in this state.¶
 - (e) A coordinated care organization or a prepaid managed care health services organization, as the term is defined in ORS 414.025.¶
 - (f) Any other person or business entity that has as a primary function the provision of health care items or services, including physical, behavioral or dental health items or services.¶
 - (g) Any other person or business entity that is a parent organization of, has control over, is controlled by, or is under common control with, an entity that has as a primary function the provision of health care items or services. ¶
- (17) In accordance with ORS 415.500(4)(b), "health care entity" does not include:¶
 - (a) Long term care facilities, as defined in ORS 442.015.¶
 - (b) Facilities licensed and operated under ORS 443.400 through 443.455.¶
- (18) "Health equity" means a health system having and offering infrastructure, facilities, services, geographic coverage, affordability and all other relevant features, conditions and capabilities that will provide all people with the opportunity and reasonable expectation that they 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 their socially determined circumstances.¶

(19) "Hospital" has the meaning given in ORS 442.015.¶

(20) "Hospital system" means:¶

(a) A parent corporation of one or more hospitals and any entity affiliated with the parent through ownership, governance, control, or membership; or¶

(b) A hospital and any entity affiliated with the hospital through ownership, governance, control, or membership.¶

(21) "Independent practice association" has the meaning given in ORS 743B.001.¶

(22) "Material change transaction" means a covered transaction that is material under the materiality standards set forth in OAR 409-070-0015.¶

(23) In accordance with ORS 415.500(8), "net patient revenue" means the total amount of income, after allowance for contractual amounts, charity care and bad debt, received for patient care and services, including: ¶

(a) Value-based payments, incentive payments, capitation payments, payments under any similar contractual arrangement for the prepayment or reimbursement of patient care and services; and¶

(b) Any payment received by a hospital to reimburse a hospital assessment under ORS 414.855.¶

(24) "Person" ~~has the meaning given in ORS 731.116.~~ means an individual, corporation, association, partnership, limited liability company, limited liability partnership, political subdivision, joint stock company, trust or unincorporated organization, or an entity or combination of entities similar to the entities described in this paragraph.¶

(25) "Program website" means the Authority's website for the Health Care Market Oversight Program, currently at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>. ¶

(26) "Provider" means a person licensed, certified or otherwise authorized or permitted by laws of Oregon to administer or provide medical or mental health services in the ordinary course of business or practice of a profession. ¶

(27) In accordance with ORS 415.500(9), "revenue" of a party to the transaction means: ¶

(a) Net patient revenue; or ¶

(b) The gross amount of premiums received by a health care entity that are derived from health benefit plans.¶

(28) "Services that are essential to achieve health equity" means:¶

(a) Any service directly related to the treatment of a chronic condition; ¶

(b) Pregnancy-related services;¶

(c) Prevention services including non-clinical services; or ¶

(d) Health care system navigation and care coordination services.¶

(29) "Term sheet" means a memorandum of understanding or letter of intent setting forth the negotiated terms and conditions of the proposed transaction in reasonable detail, signed by the parties to a proposed transaction, or any other equivalent document that sets forth an agreement in principle for a proposed transaction.¶

(30) "These rules" means the rules set forth in OAR 409-070-0000 through OAR 406-070-0085.¶

(31) "Voting security" means a security that entitles the owner or holder of the security to vote at a meeting of shareholders, a membership interest having voting rights in a limited liability company or nonprofit corporation, a partnership interest having voting rights in a limited or general partnership or any other type of instrument that confers on the holder of the instrument voting rights in the governance of a legal entity. A "voting security" also includes a security that is convertible into a voting security or that is evidence of a right to acquire a voting security.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0015

RULE SUMMARY: Removed language about a newly organized legal entity and added new language about what is considered an in-state entity.

CHANGES TO RULE:

409-070-0015

Materiality Standard

(1) Pursuant to ORS 415.500(6) and (9) and ORS 415.501(4), a covered transaction under OAR 409-070-0010 is a material change transaction and ~~shall~~must be subject to review under these rules if:

(a) At least one party to the transaction had average annual revenue of \$25 million or more in the party's three most recent fiscal years; and

(b) Another party to the transaction:

(A) Had average annual revenue of \$10 million or more in that party's three most recent three fiscal years; or

(B) If such party is a newly organized legal entity, is projected to have at least \$10 million in revenue over its first full year of operation at normal levels of utilization or operation. A party is a newly organized legal entity if:

~~(i) The entity is newly formed or capitalized in connection with the transaction or in connection to a health care entity for the purposes of a transaction including but not limited to a special purpose entity; or~~

~~(ii) The entity is an existing entity whose form of ownership is changed in connection with the transaction.~~

Changes in the form of ownership include but are not limited to a change from physician-owned to private equity-owned and publicly-held to a privately-held form of ownership.

(2) A covered transaction under OAR 409-070-0010 that qualifies as material under paragraph (1) of this rule ~~shall~~must be subject to review under these rules notwithstanding that the transaction involves a health care entity ~~located~~ in this state and an out-of-state entity if the transaction may increase the price of health care services or limit access to health care services in this state.

(a) For the purpose of these rules, an entity is considered in-state if it:

(A) is based or domiciled in Oregon;

(B) owns or operates business locations in Oregon;

(C) is registered with the Oregon Secretary of State to conduct business in Oregon;

(D) is engaged in profit-seeking activity in Oregon; or

(E) provides health care services to residents of Oregon.

(b) An entity that is domiciled outside of Oregon and registered to conduct business in Oregon may be considered out-of-state under these rules if:

(A) the entity served no more than 100 Oregon residents annually for each of the three previous fiscal years; or

(B) the entity is a health care insurer, the proposed transaction involves only health care insurers, and the combined market share held by the health care insurer immediately after the completion of the proposed transaction does not exceed five percent of the total market share in any market.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0020

RULE SUMMARY: Amended rule about excluded transactions and what actions OHA would take.

CHANGES TO RULE:

409-070-0020

Excluded Transactions

(1) Pursuant to ORS 415.500(6)(b) and (7), the following transactions are not material change transactions subject to review under these rules:¶

(a) A clinical affiliation of health care entities formed to collaborate on clinical trials or graduate medical education programs.¶

(b) A medical services contract or an extension of a medical services contract as described in paragraph (2) of this rule.¶

(c) An affiliation that, pursuant to ORS 415.500(6)(b)(C):¶

(A) Does not impact the corporate leadership, governance or control of a health care entity; and ¶

(B) Is necessary to adopt AVP methodologies to meet the health care cost growth targets under ORS 442.386.¶

(d) Contracts under which one health care entity, for and on behalf of a second health care entity, provides patient care and related services or provides administrative services relating to, supporting or facilitating the provision of patient care and services, if the second health care entity:¶

(A) Maintains responsibility, oversight and control over the patient care and related services; ¶

(B) Bills and receives reimbursement for the patient care and related services; and¶

(C) Does not provide comprehensive management services.¶

(e) Transactions in which a participant that is a health center as defined in 42 U.S.C. 254b, while meeting all of the participant's obligations, acquires, affiliates with, partners with or enters into any agreement with another entity unless the transaction would result in the participant no longer qualifying as a health center under 42 U.S.C. 254b.¶

(f) A transaction that consists solely of a change in the immediate or intermediate ownership of a health care entity but which (i) does not change the ultimate ownership or control of the health care entity, and (ii) does not result in the acquisition of control of the health care entity by any person not previously affiliated with the health care entity. ¶

(g) Agreements between an affiliate and a health care entity that are subject to ORS 732.574(2)(d)(D).¶

(2) For purposes of paragraph (1)(b) of this rule: ¶

(a) A "medical services contract" means a contract to provide medical or mental health services, including physical, behavioral or dental health services, entered into by:¶

(A) A carrier or coordinated care organization and an independent practice association;¶

(B) A carrier, coordinated care organization, independent practice association or network of providers and one or more providers;¶

(C) An independent practice association and an individual health professional or an organization of providers;¶

(D) A medical, dental, vision or mental health clinic; or¶

(E) A medical, dental, vision or mental health clinic and an individual health professional to provide medical, dental, vision or mental health services.¶

(b) 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 similar to those authorized by ORS chapter 58, 60 or 70.¶

(3) ~~Upon review of a complete notice of material change transaction submitted in accordance with OAR 409-070-0030(1)(a) and OAR 409-070-0045(5), the Authority may determine that the~~ a transaction qualifies as an excluded transaction ~~excluded~~ under this rule. ~~T~~ the Authority shall provide the parties with written notice of that determination, following which ~~must notify the parties and the notice shall~~ must be deemed withdrawn and a. All further proceedings in respect of the notice ~~shall~~ must be terminated and ended. The Authority's written notice to the parties under this paragraph (3) ~~shall~~ must be accompanied by a refund of the fee, if any, that was paid in connection with the notice of material change transaction.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0022

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Added language about emergency transactions and when OHA must publish information.

CHANGES TO RULE:

409-070-0022

Emergency and Exempt Transactions

(1) Pursuant to ORS 415.501(8)(a), the Authority, for good cause shown, may exempt an otherwise covered transaction from review if the Authority finds that:¶

(a) There is an emergency situation, including but not limited to a public health emergency, which immediately threatens health care services; and¶

(b) The transaction is urgently needed to protect the interest of consumers and to preserve the solvency of an entity other than a domestic health insurer. ¶

(2) If a proposed transaction would otherwise be subject to review because it involves a change in control of a domestic health insurer, the Department, in consultation with the Authority, for good cause shown, may exempt the transaction from review if the Department finds that:¶

(a) There is an emergency situation, including but not limited to a public health emergency, which immediately threatens health care services; and¶

(b) The transaction is urgently needed to protect the interest of consumers and to preserve the solvency of the domestic health insurer. ¶

(3) An applicant for emergency exemption under paragraph (1) of this rule ~~shall~~must provide the Authority, and an applicant for emergency exemption under paragraph (2) of this rule ~~shall~~must provide the Department, with the following: ¶

(a) A detailed explanation of the grounds for the application, including a complete statement of the facts, circumstances and conditions which justify emergency exemption and the conditions necessitating immediate relief;¶

(b) A detailed explanation of all the terms, conditions and agreements that comprise the transaction and the manner in which such terms, conditions and agreements will respond to the conditions necessitating expedited consideration of the exemption application;¶

(c) A detailed explanation of the reasons why the transaction is in the public interest and in the interest of those consumers and markets that are or will be served by the parties following closing of the transaction; ¶

(d) If the application for emergency exemption requires or otherwise is based upon, in whole or in part, a disclaimer of a rebuttable presumption of control, the application ~~shall~~must include a disclaimer of control meeting the requirements of OAR 409-070-0025;¶

(e) Such additional information, documents and analysis as the Authority or the Department, as applicable, may require in order to evaluate the application and the asserted grounds for emergency exemption;¶

(f) An undertaking by the parties to make such further filings with, and submit such further information to, the Authority or the Department, as applicable and to cooperate with and assist the Authority or the Department, as applicable, in conducting such further investigations, hearings and examinations, as may be required following the allowance of emergency exemption for the transaction;¶

(g) Payment of a fee in accordance with OAR 409-070-0030; and¶

(h) An undertaking by the parties to reimburse the Authority for expenses described in OAR 409-070-0050.¶

(4) The Authority with respect to an application filed under paragraph (1) of this rule, and the Department with respect to an application filed under paragraph (2) of the rule, ~~shall~~must:¶

(a) Provide a period for the filing of comments in respect of the application unless the Authority or the Department, as applicable, determines that:¶

(A) The public interest in providing comments is outweighed by the interest in confidentiality of the applicant for emergency exemption; or ¶

(B) the nature of the emergency situation presented and the urgency of the need for emergency exemption will not allow time for the filing and consideration of comments. ¶

(b) Provide the applicant with ten calendar days' advance notice prior to posting the application for public comment.¶

(5) The Department ~~shall~~must promptly provide an application filed under paragraph (2) of this rule to the Authority, and such an application ~~shall~~must be deemed to include an express consent to the sharing between the Authority and the Department of such application and all material in connection therewith.¶

(6) The Authority will publish from time to time a list of other categories or types of transactions that ~~shall~~must be exempt from review under these rules. ¶

(7) An applicant for emergency exemption may contest the Authority's determination as provided in OAR 409-

070-0075. Unless otherwise ordered in the course of such proceedings, the time periods for preliminary and comprehensive review of the transaction under OAR 409-070-0055 or OAR 409-070-0060 ~~shall~~must remain applicable, without abatement or reduction, in the event a preliminary or comprehensive review of the transaction is thereafter required.¶

(8) For emergency transactions that the Authority exempts from review, the Authority ~~will~~must publish the entity names and type of the covered transaction the earlier of either (a) or (b) of this section: ¶

(a) no less than 6 months after the transaction has consummated or closed, or ¶

(b) immediately after an entity involved in the transaction discloses the nature of the emergency to the public or the nature of the emergency is otherwise publicly known.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0025

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Added language about an entity's ability to contest OHA's determination under OAR 409-070-0075.

CHANGES TO RULE:

409-070-0025

Acquisition of Control; Presumptions and Disclaimers

(1) The following presumptions will apply in determining whether a transaction involving a health care entity results in the acquisition of direct or indirect control of that health care entity: ¶

(a) A transaction ~~shall~~must be rebuttably presumed to involve an acquisition of control of a health care entity that is a domestic health insurer or a coordinated care organization if a person, directly or indirectly, acquires voting control of ten percent (10%) or more of any class of voting securities of the domestic health insurer or the coordinated care organization.¶

(b) For a health care entity other than a domestic health insurer or coordinated care organization, a transaction ~~shall~~must be rebuttably presumed to involve an acquisition of control of the health care entity if a person, directly or indirectly, acquires voting control of twenty-five percent (25%) or more of any class of voting securities of the health care entity.¶

(c) For any health care entity, a transaction ~~shall~~must be irrebuttably presumed to involve an acquisition of control of the health care entity if a person, directly or indirectly, acquires voting control of more than fifty percent (50%) of any class of voting securities of the health care entity.¶

(2) A person seeking to rebut the presumption described in paragraph (1)(b) of this rule ~~shall~~must apply to the Authority, on a form prescribed by the Authority, for a disclaimer of control determination. Such application must show that the proposed transaction would not result in control of the health care entity, or that control would not be changed by the proposed transaction, and must fully disclose all material relationships and bases for control between the disclaimer applicant and the person(s) to which the disclaimer applies, as well as the basis for disclaiming control or change of control. The Authority may determine, after giving persons that have an interest in the Authority's determination notice and opportunity to be heard and after making specific findings of fact to support the determination, that control would exist or would be changed by a proposed transaction.¶

(3) A disclaimer application filed under paragraph (2) of this rule is effective unless, within thirty calendar days after the Authority receives the disclaimer application, the Authority notifies the disclaimer applicant that the disclaimer has been disallowed.¶

(4) Paragraphs (2) and (3) of this rule do not apply to transactions involving a domestic health insurer or a coordinated care organization. For a domestic health insurer, the disclaimer of affiliation procedure is in ORS 732.568. For a coordinated care organization, the disclaimer of affiliation procedure is in OAR 410-141-5315.¶

(5) Filing a disclaimer application does not relieve a health care entity of the requirement to submit a notice of material change transaction in accordance with OAR 407-070-0030. If a disclaimer application shows that a proposed transaction would not result in control of the health care entity or that control would not be changed by the proposed transaction, then the Authority ~~shall~~must discontinue any review of the transaction and refund any fee paid in connection with the notice of material change transaction.¶

(6) A health care entity that submits a disclaimer application may contest the Authority's determination as provided in OAR 409-070-0075. Unless otherwise ordered in the course of such proceedings, the time periods for preliminary and comprehensive review of the transaction under OAR 409-070-0055 or OAR 409-070-0060 will remain applicable, without abatement or reduction, in the event a preliminary or comprehensive review of the transaction is thereafter required.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0030

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Added language about fees and deadline for payment.

CHANGES TO RULE:

409-070-0030

Requirement to File a Notice of Material Change Transaction

(1) Any health care entity ~~shall~~must:¶

(a) Submit to the Authority a notice of material change transaction not involving an activity described in ORS 732.521 with respect to a domestic health insurer. The notice ~~shall~~must contain the information required under OAR 409-070-0045.¶

(b) Submit to the Department a notice of material change transaction for an activity described in ORS 732.521 with respect to a domestic health insurer. The notice ~~shall~~must be submitted as an addendum to filings required by ORS 732.517 to ORS 732.546 or ORS 732.576. The Department ~~shall~~must promptly provide to the Authority the notice submitted under this subsection to enable to the Authority to conduct its review in accordance with OAR 409-070-0035.¶

(2) The notice of material change transaction required under paragraph (1) of this rule ~~shall~~must be filed not fewer than 180 calendar days prior to the proposed effective date of the material change transaction. For purposes of ~~OAR 409-070-0000 to OAR 409-070-0085~~these rules, the effective date of a material change transaction is the date when the proposed transaction will be consummated or closed. If the Authority determines that a health care entity has failed to timely file a notice of material change transaction pursuant to this subsection, the Authority may refer the health care entity to the Oregon Department of Justice.¶

(3) Effective January 1, 2023, a fee ~~shall~~must be paid to the Authority in connection with a notice of material change transaction filed under this rule on or after January 1, 2023.¶

(a) The fee amount ~~shall~~must be \$2,000 for an emergency transaction in accordance with OAR 409-070-0022 or a preliminary review in accordance with OAR 409-070-0055.¶

(b) The fee amount for a comprehensive review ~~shall~~must be based on the average annual revenue or projected revenue, as applicable, in accordance with OAR 409-070-0015(1), of the following entity (the "smaller entity"):¶

(A) For transactions between two entities, the entity with smaller revenue; or¶

(B) For transactions involving more than two entities, the entity with the second largest average annual revenue.¶

(c) Comprehensive review fees ~~shall~~must be determined as follows:¶

(A) For transactions in which the revenue of the smaller entity is greater than or equal to \$10 million and less than \$50 million, the fee ~~shall~~must be \$25,000.¶

(B) For transactions in which the revenue of the smaller entity is greater than or equal to \$50 million and less than \$200 million, the fee ~~shall~~must be \$80,000.¶

(C) For transactions in which the revenue of the smaller entity is greater than or equal to \$200 million and less than \$500 million, the fee ~~shall~~must be \$90,000.¶

(D) For transactions in which the revenue of the smaller entity is greater than or equal to \$500 million, the fee ~~shall~~must be \$100,000.¶

(d) The fee amount for a comprehensive review includes the fee associated with the preliminary review.¶

(e) For purposes of this rule, "revenue" includes projected revenue, if applicable in accordance with OAR 409-070-0015(1)(b)(B).¶

(4) Fees required under Section (3) must be paid within 30 calendar days following receipt of an invoice for payment. Any approval of a material change transaction may be conditioned on the payment of fees pursuant to paragraph (3) of this rule. The obligation of the parties to pay the fee to the Authority does not depend on whether the Authority approves the transaction. The obligation to pay fees is an obligation of the person filing the notice of material change transaction and any other parties to the transaction designated by the Authority.

Statutory/Other Authority: ORS 415.501, 415.512

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0035

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Added language about exempt transactions or when the Department of Consumer and Business Services does not review a transaction.

CHANGES TO RULE:

409-070-0035

Material Change Transaction Involving a Domestic Health Insurer

(1) The Authority ~~shall~~must review a proposed material change transaction for an activity described in ORS 732.521 with respect to a domestic health insurer pursuant to the procedures set forth in OAR 409-070-0055 (preliminary review) and, if applicable, OAR 409-070-0060 (comprehensive review). ¶

(a) At the conclusion of the preliminary review period provided in OAR 409-070-0055, the Authority ~~shall~~must report to the Department.¶

(A) The results of the Authority's review under OAR 409-070-0055; or¶

(B) That the Authority intends to review the proposed material change transaction under OAR 409-070-0060, including whether the Authority intends to appoint a community review board pursuant to OAR 409-070-0062. ¶

(b) If the Authority reviews the proposed material change transaction under OAR 409-070-0060, it ~~shall~~must promptly provide to the Department the results of its review not later than the period specified in OAR 409-070-0060. ¶

(c) The periods for review under OAR 409-070-0055 and OAR 409-070-0060 ~~shall~~must begin running upon the Authority's receipt from the Department of a complete notice of material change transaction as required under OAR 409-070-0030(1)(b) and subject to OAR 409-070-0045(5). ¶

(2) The Department ~~shall~~must receive and consider the results of the Authority's review prior to entering its decision on the proposed material change transaction. The Department ~~shall~~must coordinate with the Authority to incorporate the results of the Authority's review into the final determination issued by the Department pursuant to ORS 732.528 or ORS 732.542, as applicable. In the event the proposed material change transaction is deemed exempt from review or is otherwise not reviewed by the Department but remains subject to review by the Authority, the Authority must proceed with its review of the transaction pursuant to OAR 409-070-0045, OAR 409-070-0055, and OAR 409-070-0060 and must render the final determination. ¶

(3) The filing of a notice of material change transaction that is subject to review by each of the Authority and the Department under this rule shall be deemed to include an express consent to the sharing between the Authority and the Department of confidential material submitted in connection with such proposed material change transaction. Confidential material provided by any party in connection with such proposed material change transaction ~~shall~~must be maintained as confidential material in accordance with ORS 705.137 and ORS 415.103, and OAR 409-070-0070, and may be shared between the Authority and the Department pursuant to ORS 705.137(3)(b) & (c) and (4), and ORS 192.355(1), (9), (10) and (31), as applicable. Such sharing shall not constitute a waiver of the confidential status of such materials.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0040

RULE SUMMARY: Changed the word "shall" to "must" for clarity.

CHANGES TO RULE:

409-070-0040

Material Change Transaction Involving a Charitable Organization or Hospital

(1) The parties ~~shall~~must provide a copy of any notice of a material change transaction involving a health care entity that is, controls, or is controlled by a charitable organization to the Charitable Activities Section of the Oregon Department of Justice in addition to the notice submitted to the Authority in accordance with OAR 409-070-0030(1)(a). ¶

(2) To the extent applicable, a health care entity involved in a material change transaction remains subject to the charitable registration and reporting requirements contained in ORS 128.610 et seq. and to the Attorney General notification and other provisions contained in ORS Chapter 65, the Nonprofit Corporations Act, including Attorney General review and approval of hospital transfers within the scope of ORS 65.803. ¶

(3) The filing of a notice of material change transaction that is subject to review by each of the Authority and the Charitable Activities Section of the Oregon Department of Justice under this rule ~~shall~~must be deemed to include an express consent to the sharing between the Authority and the Department of Justice of confidential material submitted in connection with such proposed material change transaction. The Authority may consult with the Department of Justice regarding the potential effects of a proposed material change transaction on the charitable organization or its assets or charitable assets held by a health care entity. Confidential material provided by any party in connection with such proposed material change transaction shall be maintained as confidential material in accordance with OAR 409-070-0070. Such sharing shall not constitute a waiver of the confidential status of such materials. ¶

(4) The Authority may condition its approval of a material change transaction involving a health care entity that is, controls, or is controlled by a charitable organization on a required filing with, and approval by, the Charitable Activities Section of the Oregon Department of Justice.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0042

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Add new language about confidentiality.

CHANGES TO RULE:

409-070-0042

Optional Application for Determination of Covered Transaction Status

(1) Any party to a proposed transaction may, but ~~shall~~must not be required to, submit a written application to the Authority requesting a determination whether such transaction is a covered transaction pursuant to these rules. The Authority ~~shall~~must notify the applicant in writing of its determination within 30 calendar days following receipt of the application and any additional information requested by the Authority. If the Authority determines that the proposed transaction is a covered transaction, and the parties desire to pursue the transaction, the parties ~~shall~~must file a notice in accordance with these rules. ¶

(2) An application for determination pursuant to paragraph (1) of this rule ~~shall~~must contain:¶

(a) A detailed explanation of the transaction, including the parties to such transaction and all relevant terms, conditions and agreements that comprise the transaction;¶

(b) A detailed explanation of the reasons the parties to the proposed transaction believe such transaction is not a covered transaction pursuant to these rules; and¶

(c) Such additional information, documents and analyses as the Authority may require in order to evaluate the application and the asserted grounds on which it should not be considered a covered transaction pursuant to these rules. ¶

(3) The submission of an application pursuant to this rule does not toll any timelines or notice requirements under these rules.¶

(4) No fee shall be required in connection with an optional application filed under this rule. However, if the Authority determines that the transaction is a covered transaction, and if a notice of material change transaction is thereafter filed, a fee in accordance with OAR 409-070-0030 ~~shall be payable~~must be payable.¶

(5) Confidential material provided by any party in connection with an optional determination must be maintained as confidential in accordance with OAR 409-070-0070.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0045

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Moved language about tolling from this rule. Added new language requiring entities to notify OHA when the transaction completes.

CHANGES TO RULE:

409-070-0045

Form and Contents of Notice of Material Change Transaction

(1) A notice of material change transaction required to be filed under OAR 409-070-0030(1)(a) ~~shall~~must be made using the form available at the Program website. Unless expressly provided otherwise, if any item is inapplicable or the answer to any item is in the negative, a statement to that effect ~~shall~~must be made.¶

(2) A party or the parties to a material change transaction for which a filing will be made under this rule are encouraged to contact the Authority and arrange for a pre-filing conference. If the Authority decides to conduct a comprehensive review under OAR 409-070-0060, the Authority ~~shall~~must offer the parties or parties a comprehensive review conference. The pre-filing conference or comprehensive review conference ~~shall~~must preview the transaction and filing and the Authority's expectations for the review of the transaction including timing, the use of outside experts, the potential involvement of a community review board in accordance with OAR 409-070-0062, and other relevant issues. As applicable, the Department will participate along with the Authority in any such conference.¶

(3) One complete copy of the notice, including exhibits and all other papers and documents filed as part of the notice, ~~shall~~must be filed with the Authority by electronic delivery. The notice ~~shall~~must be signed electronically or otherwise in the manner prescribed in the form notice.¶

(4) All copies of any financial statements or exhibits ~~shall~~must be clear, easily readable and suitable for printing. Debits in credit categories and credits in debit categories ~~shall~~must be designated so as to be clearly distinguishable as such.¶

The notice and statements therein must be in the English language and monetary values ~~shall~~must be stated in United States currency. If any exhibit or other paper or document filed with the notice is in a foreign language, it ~~shall~~must be accompanied by a translation into the English language. Any monetary value shown in a foreign currency ~~shall~~must be converted into United States currency.¶

(5) A notice of material change transaction ~~shall~~must include either complete and final executed copies of all the definitive agreements pursuant to which the transaction will be documented and closed or a term sheet. If a notice is filed on the basis of a term sheet, then:¶

(a) The parties must furnish the Authority with complete and final executed copies of all the definitive agreements pursuant to which the transaction will be documented and closed, together with a detailed description of any respect in which the definitive agreements depart from the term sheet, no later than: ¶

(A) Fifteen days before closing the transaction, if the Authority approved the transaction without comprehensive review; or¶

(B) Fifteen days after the commencement of the comprehensive review period, if the transaction was not approved following preliminary review. If the parties are unable to furnish complete and final executed copies of all the definitive agreements within that fifteen-day period, then the running of the period for review of the notice ~~shall~~must be tolled upon such notification and ~~shall~~must not resume until the parties have furnished such executed copies.¶

(b) To the extent that the definitive agreements materially deviate from the term sheet, the Authority may extend the review period and may withdraw or modify an order based on the term sheet. ¶

(6) If the Authority considers a notice of material change transaction to be incomplete, ~~or if the Authority requires additional information or clarification of any information to proceed with its review, the Authority shall notify the parties of the information or clarification that is required. The running of the period for review of the notice shall be tolled upon such notification and shall resume when the Authority deems the notice complete. must notify the parties of the information or clarification that is required.~~¶

(7) Any party that has filed a notice of material change transaction ~~shall~~must promptly advise the Authority of any changes in the information so furnished on the notice arising subsequent to the date upon which the information was furnished but prior to disposition of the material change transaction by the Authority. ¶

(8) The Authority may require that statements of revenue and revenue projections be presented in accordance with generally accepted accounting principles or statutory accounting principles, as applicable, and be prepared by a duly qualified and credentialed accounting expert.¶

(9) The Authority's review of the information provided in a notice of material change ~~will~~must be analyzed using the Analytic Framework, published on the Program website, with standards that:¶

(a) Are clear, fair, predictable, and consistent;¶

(b) Use measures of quality and access that can be meaningfully compared to current and past performance across

Oregon and, if available, in other states; and¶¶

(c) Include equity analyses that stratify cost, quality, and access data by the characteristics specified in the definition of health equity to the greatest extent allowable by data availability. ¶¶

(10) After submission, any party to a notice of material change transaction may rescind the notice at any time and for any reason. If the Authority has not commenced a preliminary review under OAR 409-070-0055, the fee paid in connection with the notice ~~shall~~must be refunded. If the Authority has commenced a preliminary review under OAR 409-070-0055, the fee paid in connection with the notice shall not be refunded, and the parties shall remain obligated to reimburse the Authority for costs and expenses incurred prior to withdrawal in accordance with OAR 409-070-0050.¶¶

(11) In accordance with ORS 415.501(19), a health care entity that is a party to an approved material change transaction must notify the Authority, in writing, of the completion of the transaction no more than one (1) business day after the completion of the transaction.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0050

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Removed inaccurate language about procurement.

CHANGES TO RULE:

409-070-0050

Retention of Outside Advisors

(1) Pursuant to ORS 415.501(14), the Authority or the Department of Justice may retain at the expense of the parties to a material change transaction any actuaries, accountants, consultants, legal counsel and other advisors not otherwise a part of the Authority's staff as the Authority may reasonably need to assist the Authority in reviewing the proposed material change transaction. ~~The retention of such advisors shall not be subject to any otherwise applicable procurement process, provided that the Authority or the Department of Justice, as applicable, shall make a determination that such advisors have the requisite qualifications and expertise to review the proposed transaction. The Authority or the Department of Justice, as applicable, shall~~ Authority or the Department of Justice, as applicable, must require that the retained advisors certify in writing that: ¶

(a) They are not subject to any conflict of interest associated with reviewing a given transaction, and: ¶

(b) They will protect any confidential information disclosed to them in the course of their review of the transaction. Material that is privileged or confidential and therefore exempt or determined by the Authority to be exempt from public disclosure under ORS 415.501(13)(b) may be shared with the retained advisors, and such disclosure shall not constitute a waiver of the privileged or confidential status of the material. ¶

(2) The parties to a material change transaction ~~shall~~ must reimburse the Authority ~~on a monthly basis, within thirty~~ 30 calendar days after receipt of an invoice from the Authority, for all reasonable and actual costs incurred by the Authority in connection with its review of the material change transaction. Such costs ~~shall~~ must include, but are not limited to, the costs and expenses of any advisors retained by the Authority or the Department of Justice pursuant to paragraph (1) of this rule and its other out-of-pocket costs but excluding any unallocated staff or interagency costs of the Authority. Invoices provided by the Authority pursuant to this paragraph (2) ~~shall~~ must contain a reasonably detailed summary of the costs incurred, provided that in no event ~~shall~~ must such invoices include any communications protected by the attorney-client or other applicable privilege. ¶

(3) Any approval of a material change transaction ~~shall~~ may be conditioned on the parties reimbursing the Authority pursuant to paragraph (2) of this rule. The obligation of the parties to reimburse the Authority does not depend on whether the Authority approves the transaction. The obligation to reimburse is an obligation of the person filing the notice of material change transaction and any other parties to the transaction designated by the Authority. ¶

(4) The Authority ~~shall~~ must notify applicants before any costs are incurred when a transaction review requires the use of outside advisors.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0055

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Amended other terms for clarity.

CHANGES TO RULE:

409-070-0055

Preliminary 30-Day Review of a Notice of Material Change Transaction

(1) Pursuant to ORS 415.501(5) and after receipt of a complete notice of material change transaction in accordance with OAR 409-070-0030(1)(a) and OAR 409-070-0045(5), the Authority ~~shall~~must complete a preliminary review to determine whether the proposed material change transaction meets one or more of the criteria set forth in paragraph (2) of this rule. The Authority ~~shall~~must, subject to OAR 409-070-0070, publish the notice of material change transaction. For the duration of the preliminary review period, the Authority ~~shall~~must accept and publish public comments pertaining to the material change transaction. ¶

(2) At the conclusion of the preliminary review described in paragraph (1) of this rule, the Authority ~~shall~~must approve, or approve with conditions as provided in OAR 409-070-0065, a material change transaction, or, in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved, if the Authority determines that the transaction meets one or more of the following criteria: ¶

(a) The material change transaction is in the interest of consumers and is urgently necessary to maintain the solvency of an entity involved in the transaction; ¶

(b) The material change transaction is unlikely to substantially reduce access to affordable health care in Oregon; ¶

(c) The material change transaction is likely to meet the criteria set forth in OAR 409-070-0060; ¶

(d) The material change transaction is not likely to substantially alter the delivery of health care in Oregon; or ¶

(e) Comprehensive review of the material change transaction is not warranted given the size and effects of the transaction. ¶

(3) If after a preliminary review, the Authority does not approve or recommend for approval, as applicable, a material change transaction in accordance with this paragraph (2), the Authority ~~shall~~must notify the parties and ~~shall~~must thereafter conduct a comprehensive review pursuant to OAR 409-070-0060. ¶

(4) Unless extended by agreement among the Authority and the parties to a proposed material change transaction, the Authority ~~shall~~must complete the preliminary review described in paragraph (1) within 30 calendar days of the Authority's written confirmation of receipt of a complete notice of material change transaction or on the first business day thereafter if the 30th day is a weekend or state-recognized holiday, ~~unless the parties agree to an extension of time.~~ The Authority ~~shall~~must notify the parties at the conclusion of the preliminary review period the results of the preliminary review. If the Authority fails to complete such preliminary review within 30 calendar days of the Authority's receipt of a complete notice of material change transaction, the proposed material change transaction ~~shall~~must be subject to the comprehensive review procedure provided in OAR 409-070-0060.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Removed language about requests for additional information. Amended other phrases for clarity.

CHANGES TO RULE:

409-070-0060

Comprehensive Review of a Notice of a Material Change Transaction

(1) Pursuant to ORS 415.501(7), the Authority ~~shall~~must conduct a comprehensive review of a proposed transaction if the Authority determines not to approve the transaction at the conclusion of its preliminary review. ¶

(2) The Authority ~~shall~~must notify the entity that submitted the notice of material change transaction if a comprehensive review will occur. ~~The Authority shall notify the entity that submitted the notice of material change transaction if the Authority requires additional information from any of the parties to the transaction. The entity is required to respond to the Authority's request for additional information within 15 calendar days from the date the Authority sent such request unless the Authority and entity mutually agree on a different timeline.~~ ¶

~~(3) The Authority shall and must~~ notify the entity that submitted the notice of material change transaction the fee amount associated with the comprehensive review pursuant to OAR 409-070-0030. A party to the transaction ~~shall~~must pay the fee amount in full no later than 30 calendar days after ~~the date the Authority sent such notification~~receipt of an invoice from the Authority. ¶

(43) The Authority ~~shall~~must issue proposed findings of fact and conclusion of law, along with the Authority's proposed order at the conclusion of its comprehensive review and ~~shall~~must allow the parties and the public a reasonable opportunity to make written comments to the proposed findings and conclusions and the proposed order. If the comprehensive review includes a community review board, recommendations of the community review board ~~shall~~must be in writing and appended to the proposed order. Unless otherwise directed by the Authority, written comments to the proposed findings and conclusions and the proposed order ~~shall~~must be filed with the Authority within thirty calendar days following publication. The Authority ~~shall~~must make any filed comments available to the public promptly following receipt. ¶

(54) The Authority ~~shall~~must consider the parties' and the public's written exceptions and issue a final order setting forth the Authority's findings and conclusions in respect of the proposed transaction. If the comprehensive review included a community review board, the Authority's findings and conclusions ~~shall~~must include an explanation of the reasons why the Authority accepted, rejected or modified the recommendations of the community review board. ¶

The final order ~~shall~~must include any commitments by the health care entity to continue services currently provided by the health care entity. A party to the proposed transaction may contest the final order as provided in OAR 409-070-0075. ¶

(65) Subject to any conditions prescribed under ~~OAR 409-070-0065~~these rules, the Authority ~~shall~~must approve a material change transaction that does not involve a domestic insurer, or in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved, if pursuant to ORS 415.501(9), the Authority determines that the transaction satisfies (a) below and also satisfies either (b) or (c) below: ¶

(a) There is no substantial likelihood that the transaction would: ¶

(A) Have material anticompetitive effects in the region (such as significantly increased market concentration among providers when contracting with payers, carriers, or coordinated care organizations, or among carriers when establishing health benefit premiums that is likely to increase costs for consumers) not outweighed by benefits in increasing or maintaining services to underserved populations; ¶

(B) Be contrary to law; ¶

(C) Jeopardize the financial stability of a health care entity involved in the transaction; or ¶

(D) Otherwise be hazardous or prejudicial to consumers or the public. ¶

(b) The transaction will benefit the public good and communities by: ¶

(A) Reducing the growth in patient costs in accordance with the health care cost growth targets established under ORS 442.386 or maintain a rate of cost growth that exceeds the target that the entity demonstrates is in the best interest of the public; ¶

(B) Increasing access to services in medically underserved areas; or ¶

(C) Rectifying historical and contemporary factors contributing to a lack of health equity or access to services. ¶

(c) The transaction will improve health outcomes for residents of this state. ¶

(76) Unless extended by agreement among the Authority, the Department, as applicable, and the parties to the proposed transaction, the Authority ~~shall~~must issue a proposed order, or in the case of a material change transaction involving a domestic health insurer, issue a recommendation to the Department, following its

comprehensive review within 180 calendar days of the filing of a complete notice of material change transaction, subject to tolling or extension as provided in these rules. A transaction may be disapproved if the parties do not agree to an extension of time necessary to accomplish a tribal consultation.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0062

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Corrected a statute citation. Added language regarding staff who facilitate community advisory councils. Removed duplicative language about conflict of interest.

CHANGES TO RULE:

409-070-0062

Community Review Board

(1) The Authority may appoint and convene a community review board to participate in the comprehensive review of a material change transaction, pursuant to ORS 4215.501(11). A community review board ~~shall~~must:¶

(a) Advise the Authority on the impact of the transaction to the community; and¶

(b) Make recommendations to the Authority on the approval or disapproval of a transaction, or the approval of a transaction subject to certain conditions. ¶

(2) In determining whether to convene a community review board, the Authority ~~shall~~must consider the potential impacts of the proposed transaction, including, but not limited to:¶

(a) The potential loss or change in access to essential services.¶

(b) The potential to impact a large number of residents in this state.¶

(c) A significant change in the market share of an entity involved in the transaction.¶

(3) A community review board ~~shall~~must consist of members of the affected community, including persons who represent populations that experience health disparities, consumer advocates and health care experts. Not more than one-third of the members of the community review board may be representatives of corporate providers. The Authority may not appoint to a community review board an individual who is employed by an entity that is a party to the transaction that is under review or is employed by a competitor that is of a similar size to an entity that is a party to the transaction. As part of the community review board appointment process, the Authority will notify the coordinated care organization staff who facilitate the community advisory councils, as defined in ORS 414.575, representing the affected community.¶

(4) Community review board members ~~shall~~must declare any potential or actual conflict of interest by filing a notice, pursuant to ORS 415.501(11)(b). A notice of conflict of interest for an appointed community review board member will be made public. If the Authority determines that a member of the community review board has an actual conflict of interest, the member ~~shall~~must abstain from participating in community review board actions related to the conflict of interest. A conflict of interest exists when a community review board member: ¶

~~(a) Is employed by an entity that is a party to the transaction under review;¶~~

~~(b) Is employed by a similar sized competitor to an entity that is a party to the transaction under review;¶~~

~~(c) Has a financial stake in an entity that is a party to the transaction under review; or¶~~

~~(d)~~ (b) Has governance or decision-making authority for an entity that is a party to the transaction under review. ¶

(5) As defined by ORS 292.495(4), qualified community review board members ~~shall~~must receive per diem compensation and reimbursement of travel or other expenses related to the performance of community review board member's official duties as determined by the Authority. ¶

(a) Per diem compensation ~~shall~~must be equal to the per diem paid to members of the Legislative Assembly under ORS 171.072, for each full or partial day during which the qualified member is engaged in the performance of official duties.¶

(b) Reimbursement of actual and necessary travel or other expenses incurred in the performance of a qualified member's official duties ~~shall~~must be in the manner and amount provided in ORS 292.495.¶

(c) A qualified member of a community review board may decline to accept compensation or reimbursement of expenses related to the qualified member's service on a community review board. ¶

(d) To be considered a qualified member, a member of a community review board must attest by signature that they meet the conditions and income limits specified in ORS 292.495(4). ¶

(e) Non-qualified members of a community review board ~~shall~~must be reimbursed for actual and necessary travel and other expenses incurred in the performance of their official duties in the manner and amount provided in ORS 292.495. ¶

(6) A community review board ~~shall~~must make written recommendations to the Authority on a proposed transaction based on the criteria listed in paragraph (1) of this rule.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0065

RULE SUMMARY: Removed a clause in a sentence for clarity.

CHANGES TO RULE:

409-070-0065

Conditional Approval; Suspension of Proposed Material Change Transaction

(1) Following completion of a preliminary review pursuant to OAR 409-070-0055 or a comprehensive review pursuant to OAR 409-070-0060, which may include the appointment of a community review board pursuant to OAR 409-070-0062, the Authority may approve, or recommend for approval ~~in the case of transaction involving a domestic insurer~~, a material change transaction with conditions designed to further the purposes and goals described in OAR 409-070-0000.¶

(2) If the Authority approves a material change transaction with conditions as set forth in paragraph (1) of this rule, the Authority may suspend, or in the case of transaction involving a domestic insurer recommend that the Department suspend, the effective date of the transaction for such reasonable time as necessary to conduct an examination and complete an analysis of whether the conditions have been satisfied.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0070

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Added new language about confidentiality including OHA's ability to share confidential information among the administrative divisions and offices in OHA.

CHANGES TO RULE:

409-070-0070

Confidentiality; Permitted Disclosures

(1) An applicant for review of a material change transaction may designate portions of a notice and any documents thereafter submitted by the applicant in support of the notice as confidential. ~~The applicant shall file two versions of the notice.~~ Any portion or portions of a notice of material change transaction designated as confidential must be provided separately as one or more attachments. The entities must not include any confidential information in the notice of material change transaction form itself. ¶

(2) Entities submitting forms, documents, materials, or other information, including an optional application for determination of covered transaction status under OAR 409-070-0042 or a request for emergency exemption under OAR 409-070-0022 must file two versions of the submitted documents. One shall~~shall~~must be marked as "CONFIDENTIAL" and ~~shall~~must contain the full unredacted version of the notice or supporting materials and ~~shall~~must be maintained as such by the Authority and the Department. The second ~~shall~~must be marked as "PUBLIC" and ~~shall~~must contain a redacted version of the notice or supporting materials (from which the confidential portions have been removed or obscured) and ~~shall~~must be made available to the public by the Authority. An applicant claiming confidentiality in respect of portions of a notice, or any documents thereafter submitted by the applicant in support of the notice, ~~shall~~must include a redaction log that provides a reasonably detailed statement of the grounds on which confidentiality is claimed, citing the applicable statutory basis for confidentiality of each portion. ¶

(23) Confidential materials filed by an applicant in connection with a transaction that is subject to review by each of the Authority and the Department ~~shall~~must be maintained as confidential materials in accordance with paragraph (1) of this rule, ORS 415.501(13)(c) and ORS 705.137.¶

(4) Confidential materials filed by an applicant in connection with a transaction that is subject to review by the Authority under these rules and under the Authority's CCO Acquisitions and Mergers in OAR 410-141-5255, et seq., must be maintained as confidential materials in accordance with paragraph (1) of this rule and ORS 415.501(13)(c). ¶

(5) The Authority may authorize sharing a confidential document, material or other information as appropriate among the administrative divisions and staff offices of the Authority for the purpose of administering and enforcing the program. ¶

(6) Disclosing a document, material or other information to the Authority under this section or sharing a document, material or other information as authorized in subsection (3) of this section does not waive an applicable privilege or claim of confidentiality in the document, material or other information.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0075

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Removed language to streamline the contested case hearing process.

CHANGES TO RULE:

409-070-0075

Contested Case Hearings

~~(1) The Authority shall hold a contested case hearing upon a written request for a hearing within the time specified in paragraph (3) of this rule by a person aggrieved by any act, threatened act or failure of the Authority to act under ORS 415.501 or OAR 409-070-0000 to OAR 409-070-0085. ¶~~

~~(2) Contested case hearings shall~~ Contested case hearings must be conducted pursuant to ORS 183.411 through ORS 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 through OAR 137-003-0700, and the provisions of this rule. ¶

~~(3)~~ A party to a material change transaction that wishes to contest a final order issued by the Authority that fully resolves the notice of material change transaction must request a hearing within 15 calendar days from the date of service of the final order and a notice of right to a hearing. ¶

~~(4)~~ An applicant for emergency exemption under OAR 409-070-0022 or a disclaimer under OAR 409-070-0025 that wishes to contest a determination issued by the Authority must request a hearing within 15 calendar days from the date of service of the determination and a notice of right to a hearing. ¶

~~(5)~~ The Authority's determination: ¶

(a) Not to approve a transaction at the conclusion of the preliminary review period pursuant to OAR 409-070-0055; and ¶

(b) That a transaction is a covered transaction following application under OAR 409-070-0042 shall, in each case, be interlocutory and shall not be reviewable prior to the issuance of the final order that fully resolves the notice of material change transaction. ¶

~~(6)~~ The issues to be considered in a contested case conducted pursuant to this rule shall be limited in scope to the facts and conclusions contained in the final order or determination. ¶

~~(7)~~ In a contested case conducted pursuant to this rule, the party requesting the contested case hearing shall have the burden of proof. ¶

~~(8)~~ In a contested case conducted pursuant to this rule, an administrative law judge assigned by the Office of Administrative Hearings shall serve a proposed order on all parties and the Authority, unless prior to the hearing the Authority notifies the administrative law judge that a final order may be served, within 30 calendar days of the close of the evidentiary record in the contested case. ¶

~~(9)~~ The Authority shall must issue a final order within 30 days of receipt of the proposed order, which may adopt some or all of the proposed order, as the Authority shall must determine in its sole discretion. The final order is effective immediately upon being signed or as otherwise provided in the order. ¶

~~(10)~~ The time limits established in paragraphs ~~(8)~~ and ~~(9)~~ of this rule may be waived or shortened by agreement among the parties and the Authority. ¶

~~(11)~~ All contested case hearing decisions are subject to judicial review under ORS 183.482 in the Court of Appeals. ¶

~~(12)~~ In cases where the decision is to be made by the Department, contested case hearings for a domestic insurer shall be conducted by the Department in accordance with ORS 732.526.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.019, 415.500-415.900

AMEND: 409-070-0080

RULE SUMMARY: Changed the word "shall" to "must" for clarity. Removed language about information needed for assessing impacts of a material change transaction and moved it to a new rule.

CHANGES TO RULE:

409-070-0080

Compliance with Conditions; Information Requests

(1) Following approval of a material change transaction, the Authority may verify compliance with any conditions that the Authority included in its approval of the transaction and issue such additional orders, following notice and opportunity for hearing, as may be necessary to enforce compliance with the terms and conditions of the approval of the transaction; provided however, that the Authority may not impose new conditions that are unrelated to, or not reasonably required to enforce compliance with, those conditions, if any, that were included in the Authority's approval of the transaction. Such verification of compliance ~~shall~~must occur, at minimum, at the intervals required by ORS 415.501(19).¶

~~(2) The Authority may require that the parties provide such information, reports, analyses and documentation as the Authority may require in order to monitor and assess the impacts and effects of the material change transaction as required in ORS 415.501(19), including specifically, but without limitation, the effects and status of the material change transaction under OAR 409-070-0062(1) and OAR 409-070-0060(5).¶~~

~~(3) No person shall~~No person may file or cause to be filed with the Authority or the Department any notice, article, certificate, report, statement, application or any other information required or permitted to be so filed and known to such person to be false or misleading in any material respect.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 413.037, 415.013, 415.103, 415.500 to 415.900

ADOPT: 409-070-0082

RULE SUMMARY: New language about follow-up analyses, as required by statute. This language was previously in other rules.

CHANGES TO RULE:

409-070-0082

Follow-up Analyses After the Material Change Transaction

(1) Following approval of a material change transaction, the Authority must conduct follow-up analyses one year, two years, and five years after the material change transaction is completed, in accordance with ORS 501.501(19).

¶

(2) The Authority may require that the parties provide such information, reports, analyses and documentation as the Authority may require in order to monitor and assess the impacts and effects of the material change transaction as required in ORS 415.501(19), including specifically, but without limitation, the effects and status of the material change transaction under OAR 409-070-0065 and OAR 409-070-0060(5). ¶

(3) The entity or entities must provide all requested information in accordance with OAR 409-070-0070 and may not refuse to provide requested information.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900

AMEND: 409-070-0085

RULE SUMMARY: New language about OHA's ability to request information from entities. New language also specifies that the running of the period for review will be tolled upon and will resume when OHA deems the information request to be complete.

CHANGES TO RULE:

409-070-0085

~~Effective Date; Implementation~~ Information Requests

~~The effective date of these rules is January 1, 2023. These rules shall apply to notices of Authority may request additional information, or clarification of submitted information, from parties to proceed with its review of a material change transaction under these rules. The Authority must notify the parties of the information or clarification that is required to be submitted to the Authority, and the parties must promptly reply to such requests. The running of the period for review of the material change transactions receive will be tolled upon or after January 1, 2023~~ such notification and will resume when the Authority deems the information request to be complete.

Statutory/Other Authority: ORS 415.501

Statutes/Other Implemented: ORS 415.500 to 415.900