

DRAFT

MEMORANDUM

Date: June [XX], 2024

To: Sejal Hathi, Director, Oregon Health Authority (OHA)
Dave Baden, Deputy Director for Programs and Policy, OHA
Ali Hassoun, Interim Director of Health Policy & Analytics, OHA
Sarah Bartelmann, HCOMO Program Manager, OHA

From: Kroger-Albertsons Community Review Board

Cc: Health Care Market Oversight Program, OHA

Subject: Recommendation to OHA regarding Kroger's proposed purchase of Albertsons

The Kroger-Albertsons Community Review Board (Kroger CRB) was convened to provide input and a recommendation to the Oregon Health Authority (OHA) regarding Kroger's plans to purchase Albertsons and sell some stores to C&S Wholesale Grocers. The Kroger CRB's work supports OHA's Health Care Market Oversight program, in accordance with [Oregon Revised Statute \(ORS\) 415.501\(7\)](#) and [Oregon Administrative Rules \(OAR\) 409-070-0062](#).

Process and Criteria

The Kroger CRB held a total of six regular meetings and one public hearing between April 4 and June 13, 2024. Meeting transcripts, recordings, agendas, and all other materials have been posted to the [HCOMO website](#).

To arrive at a recommendation, the Kroger CRB reviewed publicly available information, including sworn testimony from representatives of Kroger, Albertsons, and C&S, and considered potential impacts of the transaction on pharmacy services in Oregon. The Kroger CRB assessed whether the transaction met the following approval criteria under OAR 409-070-0060(6).

1. There is no substantial likelihood that the transaction would: (must meet both criteria)
 - a. Have material anticompetitive effects in the region; and
 - b. Otherwise be hazardous or prejudicial to consumers or the public.
2. The transaction will improve health outcomes for residents of this state or benefit the public good and communities by: (must meet at least one of these criteria)
 - a. Reducing the growth in patient costs or maintaining sustainable cost growth;
 - b. Increasing access to services in medically underserved areas;
 - c. Rectifying historical and contemporary factors contributing to a lack of health equity or access to services; or
 - d. Improving health outcomes for residents of this state.

The Kroger CRB also considered whether any reasonable conditions could be placed on the transaction that would accomplish the goals set out in the above criteria.

OHA has published a summary report that provides additional detail on the Kroger CRB's process and discussions.

Recommendation and Rationale

The Kroger CRB recommends that OHA disapprove this proposed transaction. All seven members of the Kroger CRB unanimously agree to this recommendation.

Based on the information made publicly available by Kroger, Albertsons, and C&S Wholesale to date, the Kroger CRB unanimously concludes that the transaction does not meet any of the approval criteria under consideration. The Kroger CRB found the following:

- **The transaction is likely to reduce competition among pharmacies in Oregon.**
The Kroger CRB found that the merger is likely to reduce competition among pharmacies in Oregon. By creating a larger pharmacy chain, the merger could make it more difficult for smaller pharmacies to attract pharmacy employees, negotiate with pharmacy benefit managers (PBMs) and otherwise compete in Oregon's pharmacy market. The Kroger CRB did not identify conditions that could be applied to an approval of the transaction to address these concerns.
- **The transaction is likely to be hazardous or prejudicial to consumers or the public.**
The Kroger CRB identified numerous concerns about the transaction's potential to harm people in Oregon. Key concerns included potential reductions or disruptions in access to pharmacy services and increases in prescription drug costs. (See OHA's [summary report](#) for a more detailed summary of these concerns.)
- **The transaction is unlikely to reduce patient costs or maintain sustainable cost growth.**
The Kroger CRB found that the entities have not provided any evidence that the transaction would lead to lower prices for prescription drugs or other pharmacy products. The Kroger CRB raised concerns that C&S Wholesale does not have the experience or track record operating pharmacies to allow them to offer lower prices for prescriptions. The Kroger CRB's discussions surfaced concerns that reduced competition can generally be expected to lead to higher prices in the long run. The Kroger CRB determined that no conditions could be applied to an approval of the transaction to address these concerns.
- **The transaction is unlikely to increase access to services.**
The Kroger CRB found that the entities have not provided information showing that the transaction would improve access to services. The entities have not shared any plans to expand pharmacy access in Oregon, for example, by increasing the number of stores that have pharmacies, offering longer pharmacy operating hours, or hiring more pharmacy staff. The current plan appears to at best maintain the current level of services. The entities have also not provided sufficient information, including locations of the divested pharmacies, to determine the effects on medically underserved communities in Oregon. The transaction has the potential to reduce access to pharmacy services in rural communities, for people aged over 65, people with disabilities, and

other populations that face access barriers. (See OHA's [summary report](#) for more details.)

- **The transaction is unlikely to advance health equity or improve access to services.**

The entities have stated they intend to maintain the current level of services. The Kroger CRB found that the entities appear to have given little thought as to how they might improve pharmacy services, increase access, or partner with communities in Oregon to address pharmacy needs. The Kroger CRB identified several potential ways to address health equity concerns related to the proposed merger, however, the Kroger CRB feels strongly that the entities bear the responsibility for identifying and committing to specific actions, which they have not done. (See OHA's [summary report](#) for details.)

- **The transaction is unlikely to improve health outcomes for residents of this state.**

In addition to the reasons stated above, the Kroger CRB found that the entities have not identified or committed to specific plans for improving the health outcomes for people in Oregon.

The Kroger CRB's recommendation does not reflect the opinion of OHA nor its employees, nor any organizations of which Kroger CRB members may be a part.