

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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**STATE OF OREGON
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS DIVISION**

In the Matter of the Proposed) Proposed Order
Material Change Transaction of)
Elevance Health, Inc. and) Transaction ID: 020
The Kroger Co.)

This Order resolves the Notice of Material Change Transaction (“Notice”) filed by Elevance Health, Inc. (“Elevance”) with respect to acquiring Kroger Specialty Pharmacy Holdings, Inc. (“KSP”) from The Kroger Co. (“Kroger”). Elevance filed the Notice with the Oregon Health Authority (“OHA”) under the Health Care Market Oversight Program pursuant to Oregon Revised Statutes (ORS) 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.

On July 18, 2024, OHA confirmed receipt of a complete Notice in compliance with OAR 409-070-0030 and -0045. Pursuant to ORS 415.501(5) and OAR 409-070-0055, OHA timely conducted a preliminary review of the proposed transaction. OHA’s review analyzed the potential impact of the transaction in four domains: cost, access, quality, and equity. The analysis followed guidelines and methods set out in the Health Care Market Oversight Analytic Framework (see <https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/OHA-HCMO-Analytic-Framework-FINAL.pdf>), which is grounded in the goals, standards, and criteria for transaction review and approval outlined in OAR 409-070-0000 through OAR 409-070-0085. OHA’s analysis is be posted to the HCMO website at <https://www.oregon.gov/oha/HPA/HP/Pages/HCMO-transaction-notices-and-reviews.aspx> and is incorporated herein by reference. A public comment period was open from July 18, 2024, to September 9, 2024. OHA received no public comments.

Now, therefore, upon due consideration of the circumstances, including the Notice, documentation filed in support of the Notice, databases maintained by OHA, websites of the Entities, press reports, academic research articles, and other publicly available reports, OHA enters the following Proposed Order.

FINDINGS OF FACT

OHA FINDS that:

1. On or about May 22, 2024, Elevance filed the Notice with OHA.
2. On or about June 7, 2024, OHA notified Elevance that the Notice was incomplete, provided guidance about submission requirements, and requested supplemental information regarding the Entities business in Oregon, post-transaction plans, and recent mergers and acquisitions.
3. On or about July 16, 2024, Elevance filed a revised Notice with OHA.
4. On or about July 18, 2024, OHA confirmed receipt of a complete Notice and commenced the preliminary review pursuant to OAR 409-070-0055.
5. On or about July 18, 2024, OHA began tolling the preliminary review period pursuant to OAR 409-070-0045(6) pending the receipt of complete responses to the June 7, 2024, supplemental information request.
6. On or about August 8, 2024, OHA notified Elevance that it received a complete response to the June 7, 2024, supplemental information request. OHA notified Elevance that it intended to complete its review on or before September 9, 2024.
7. OHA held a public comment period from July 18, 2024, through September 9, 2024, and received no public comments.
8. Elevance is a publicly traded corporation incorporated in Indiana and licensed to conduct insurance operations in all 50 states, the District of Columbia, and Puerto Rico. Elevance is owned by its shareholders and governed by a board of directors. Elevance's total 2023 revenues were \$171.3 billion.
9. Elevance subsidiaries provide a range of products and services, including individual, employer group, Medicaid, and Medicare Advantage insurance plans; managed care and administrative services; and pharmacy, health care, and technology services.
10. Elevance is the parent company of CarelonRx, Inc. ("CarelonRX"), Elevance's pharmacy business. CarelonRx offers specialty pharmacy services through its BioPlus subsidiary and infusion services through its Paragon Healthcare, Inc. ("Paragon") subsidiary.
11. Kroger is a publicly traded company that operates more than 2,700 grocery stores in 35 states and the District of Columbia under a number of banner names. Kroger is owned by its shareholders and governed by a board of directors. Kroger's 2023 revenue was \$150 billion. Kroger operates more than 2,200 retail pharmacies nationwide.
12. KSP is a wholly owned subsidiary of Kroger that provides clinical pharmacy and infusion services.

13. On February 23, 2024, Elevance (by and through its subsidiary ATH Holding Company, LLC) and Kroger entered into a Stock Purchase Agreement (“Agreement”), where Elevance will acquire 100% of the voting securities of KSP in exchange for approximately \$485 million, according to the terms of the Agreement and public filings with the U.S. Securities and Exchange Commission.
14. Post-closing of the proposed transaction, KSP will operate as part of CarelonRX.
15. Elevance does not offer commercial, Medicaid, or Medicare insurance plans in Oregon. Elevance derives limited revenue from services to Oregon residents, primarily through remote services or services to Oregon residents who are employed or insured in other states.
 - a. Neither BioPlus nor Paragon operate physical locations in Oregon.
 - b. BioPlus provides remote specialty pharmacy services to a small number of Oregon patients.
 - c. Paragon did not provide infusion services to Oregon residents in 2023.
16. KSP does not operate any dispensary or infusion locations in Oregon and there are no KSP employees located in Oregon. KSP operates five subsidiary specialty pharmacy and infusion businesses registered to do business in Oregon:
 - a. Kroger Specialty Pharmacy, Inc, a Florida corporation
 - b. Kroger Specialty Pharmacy CA, LLC, a Delaware limited liability company.
 - c. Kroger Specialty Pharmacy, FL 2, LLC, a Delaware limited liability company.
 - d. Kroger Specialty Infusion CA, LLC, a California limited liability company.
 - e. Kroger Specialty Infusion, TX, LLC, a Texas limited liability company.
17. According to the Notice, the purpose of the proposed transaction is to support Elevance’s whole-health strategy and provide consumers with improved reliable access to specialty pharmacy services.
18. Elevance states that it does not expect the transaction to result in changes to services offered in Oregon.
19. This transaction is unlikely to significantly increase market concentration:
 - a. Elevance’s share of the specialty pharmacy market in Oregon is less than 1%, while KSP’s market share is less than 4%.

- b. KSP serves less than 1% of the infusion market in Oregon. Elevance does not provide infusion services in Oregon.

CONCLUSIONS OF LAW

1. The Notice is supported by the required documentation and meets the requirements of the Health Care Market Oversight Program rules for approval with respect to acquisitions of health care Entities pursuant to ORS 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.
2. OHA finds that:
 - a. Comprehensive review of the material change transaction is not warranted given the size and effects of the transaction.
 - i. None of the entities involved in the transaction have significant market share for services provided in Oregon, nor is the transaction likely to result in significant changes to market concentration. KSP does not operate locations or employ staff in Oregon and provides remote services for a small number of Oregon patients. Elevance does not offer insurance plans or have physical clinical locations in Oregon. Elevance companies do provide some services remotely, pay for services for out-of-state patients, and potentially serve Oregon residents who have coverage in other states; however, these services account for insignificant market shares. The transaction is unlikely to increase consolidation in Oregon.

ORDER AND CONDITIONS

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED that:

1. The transaction is hereby APPROVED upon the basis of the information contained in the Notice of Material Change Transaction to date.
2. The Entities shall notify OHA within one (1) business day following completion of the Transaction by email to hcmo.info@oha.oregon.gov.

This Order will be posted to the Health Care Market Oversight Program website at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

OHA will conduct follow-up reviews to assess the impact of the transaction in accordance with ORS 415.501(10). OHA will publish findings from follow-up reviews. Per OAR 409-070-0080, OHA may require the Entities to provide any information, reports, analyses, and documentation needed to monitor and assess the impact of the Transaction.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedures Act (chapter 183, Oregon Revised Statutes), ORS 415.019, and OAR 409-070-0075. You are entitled to be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited resources. The Oregon Health Authority will be represented by an Assistant Attorney General from the Oregon Department of Justice.

To request a contested case hearing, your request must be in writing and must be received within fifteen (15) days from the date this Final Order was personally served, mailed, or electronically transmitted to you, based on the date at the top of this document.

A request sent by U.S. mail is “received” on the date it is postmarked. Your request may also be emailed. Your request should be sent to:

hcmo.info@oha.oregon.gov

or

Health Care Market Oversight Program
421 SW Oak St
Suite 850
Portland, OR 97204

If you submit a request for a contested case hearing, you will be notified of the time place of the hearing. Information on the hearing process will be provided to you in accordance with ORS 183.413(2). Any hearing will be conducted by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

If you fail to request a hearing within the time allowed, if you request a hearing and subsequently withdraw your request for a hearing, if you request a hearing and fail to appear for the hearing, or if a hearing is scheduled and you later notify OHA that you will not appear at the specified time and place, you will have waived your right to a hearing, and this proposed order will become a final order by default. If OHA issues a final order by default, it designates its file on this matter, including all materials that you have submitted relating to this matter, as the record in this case for purposes of proving a prima facie case.

Dated this 9th day of September, 2024



Sarah Bartelmann, MPH

Health Care Market Oversight
Program Manager
Oregon Health Authority