

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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Date Mailed: October 14, 2024

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

In the Matter of the Proposed) Proposed Findings of Fact, Conclusions of
Material Change Transaction of) Law, and Order
**Willow Creek Healthcare, LLC, Avamere)
Home Health Care, LLC and Signature Hospice) Transaction ID: 033
Medford, LLC**

This Order resolves the Notice of Material Change Transaction (the “Notice”) filed by Willow Creek Healthcare, LLC (“Willow Creek”) with respect to its proposed acquisition of Avamere Home Health Care, LLC (“AHHC”) and Signature Hospice Medford, LLC (“Signature Hospice Medford”) (the “Transaction”). (Willow Creek, AHHC, and Signature Hospice Medford are sometimes referred to collectively as the “Entities.”) The Entities 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 August 23, 2024, OHA confirmed receipt of a complete Notice of Material Change Transaction 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 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 August 23, 2024, to October 14, 2024. OHA received no public comments.

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

FINDINGS OF FACT

OHA FINDS that:

1. On or about July 5, 2024, Willow Creek filed the Notice with OHA.
2. On or about July 17, 2024, OHA notified Willow Creek that the Notice was incomplete, provided guidance about submission requirements, and requested supplemental information to help inform its review of the Transaction.
3. On or about August 23, 2024, OHA notified Willow Creek that it received a complete Notice. OHA commenced the preliminary review pursuant to OAR 409-070-0055.
4. OHA accepted public comments on the Transaction from August 23, 2024, through October 14, 2024. OHA received no public comments.
5. The Pennant Group, Inc. is a Delaware for-profit, publicly traded corporation that operates as a holding company of independent operating subsidiaries that provide healthcare services, focusing on home health, hospice care, and senior living communities. Pennant operates in 13 states, including Oregon, and operates 117 home health and hospice agencies and 54 senior living communities. Pennant's total 2023 revenues were approximately \$545 million.
6. The Pennant Group, Inc. currently owns two affiliate home health operations and two affiliate hospice operations in Oregon, which operate under the names Rogue River Healthcare, LLC and Connected Healthcare, Inc.
7. Willow Creek is a Nevada limited liability company and wholly owned subsidiary of Cornerstone Healthcare, Inc. ("Cornerstone"), a Nevada corporation. Cornerstone is a wholly owned subsidiary of Pennant.
8. Avamere Home Health Care, LLC ("Avamere Home Health") is an Oregon limited liability company and wholly owned direct subsidiary of Signature Group, LLC. Avamere Home Health's primary service area encompasses Grants Pass, Medford, and Ashland.
9. Signature Hospice Medford, LLC ("Signature Hospice") is an Oregon limited liability company and wholly owned indirect subsidiary of Signature Group, LLC. Signature Hospice's primary service area encompasses Grants Pass, Medford, and Ashland.
10. Signature Group, LLC ("Signature") is an Oregon limited liability company that owns home health and hospice agencies operating in Oregon. Signature's total 2023 revenues were approximately \$78 million.
11. On July 5, 2024, certain subsidiaries of Pennant and certain subsidiaries of Signature entered into an Asset Purchase Agreement (the "Agreement") with the intent of Pennant's subsidiaries purchasing the agencies and operations of certain home health and hospice agencies owned by Signature's subsidiaries. This Agreement is separated into six different transactions, each of which underwent a separate review by OHA. In addition to the present transaction, the remaining five reviews are labelled as 028 Signature-Pennant NP2U, 029 Signature-Pennant Tigard, 030 Signature-Pennant Lincoln City, 031 Signature-Pennant Bend, and 032 Signature-Pennant Eugene/Albany.

12. In this Transaction, Willow Creek plans to purchase the assets of Avamere Home Health and Signature Hospice.
13. The current home health market in the primary service area for Avamere Home Health (Grants Pass, Medford, and Ashland) is highly consolidated. Post-closing, Pennant will become the largest provider of home health services in the region with a Herfindahl-Hirschman Index (HHI) increase of more than 700 points.
14. The Entities receive most of their revenue from Medicare Advantage plans and Original Medicare which uses rates that are set by the federal government. Medicaid and commercial plans comprise a small percentage of the entities' revenue.
15. The Entities state that once the Transaction closes, Willow Creek will "roll the existing seller payers' contracts onto new paper with new ownership demographics to allow the agency to continue to provide patient care." Further, the Entities state that post-closing, Pennant will add a commercial payer that currently does not have a contract with Avamere Home Health.
16. Pennant states that their home health and hospice model creates regional learning collaboratives where agencies work together to improve their quality scores. Pennant believes this learning collaborative will improve the quality scores of Avamere Home Health and Signature Hospice post-closing.

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 OAR 409-070-0000 through 409-070-0085.
2. OHA finds that:
 - a. The material change transaction is unlikely to substantially reduce access to affordable health care in Oregon.
 - i. The entities involved in the transaction have significant market share for services provided in Oregon, and the transaction is likely to increase consolidation. However, the vast majority of the entities' revenue come from Medicare Advantage plans and Original Medicare, which to some degree limits any price/cost effects from the proposed transaction.
 - ii. The proposed transaction is not expected to change the level of services available to the community or the types of services offered to patients. However, the proposed transaction could result in disruptions in care for current patients or access issues for future patients based on their insurance type or plan.
 - iii. OHA has concerns about the entities steering patients to certain agencies. Statements made by the entities, if adhered to, would mitigate these concerns.

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 WITH CONDITIONS upon the basis of the information contained in the Notice of Material Change Transaction to date.
2. The transacting parties shall complete the Transaction consistent with the Notice and as conditionally approved by OHA.
3. The transacting parties shall adhere to the representations made in the notice and subsequent filings with OHA.
4. For a period of at least two (2) years, the Pennant/Willow Creek entity must continue accepting patients covered by Medicare Advantage plans in effect since 2024 and previously accepted by Avamere Home Health Care, LLC and Signature Hospice Medford, LLC. Locations of the entity must continue to participate in all Medicare Advantage networks in the same network status or tier as prior to the transaction.
5. For a period of at least five (5) years, the Pennant/Willow Creek entity must continue accepting patients covered by Medicaid, including Oregon Health Plan coverage by any coordinated care organization, regardless of status as dually covered in Medicare and Medicaid.
6. For a period of at least five (5) years, unless requested by a Payer, the Pennant/Willow Creek entity, the applicable subsidiary, or corporate parent must not expressly or implicitly condition the participation of or impose any contract terms, including prices or other conditions, with any payer. This includes:
 - a. Engaging a payer in all-or-nothing contracting by expressly or impliedly requiring the payer to maintain a contract with all affiliates of Pennant in order to have a contract with a single affiliate of Pennant; and
 - b. Explicitly or implicitly penalizing a payer for contracting with third-party home health or hospice agencies, including setting significantly higher than existing contract prices or out-of-network fees for any or all of Pennant affiliate locations.
7. 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 reserves the right to enforce the Conditions set forth herein to the fullest extent provided by the law. In addition to civil penalties and any legal remedies available, OHA shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of these Conditions.

OHA is required to analyze and publish the Entities' compliance with Conditions placed on the Transaction and to assess the impact of the Transaction under ORS 415.501(19) and (20). OHA is required to publish its analyses and conclusions. 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 137-070-0075. 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 14 day of October, 2024



Sarah Bartelmann, MPH
Health Care Market Oversight Program Manager
Oregon Health Authority

NOTICE TO ACTIVE DUTY SERVICEMEMBERS. Active-duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 00-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.