



CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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NOTICE OF PROPOSED EMERGENCY EXEMPTION DETERMINATION – St. Charles Health System – The Center, Transaction #035

This determination resolves the Request for Emergency Exemption from Material Change Transaction Review (the “Request”) received on July 19, 2024, from St. Charles Health System, Inc. (“St. Charles”). St. Charles filed the Request with the Oregon Health Authority (“OHA”) under the Health Care Market Oversight (HCMO) Program pursuant to Oregon Revised Statute (ORS) 415.501(8)(a) and Oregon Administrative Rule (OAR) 409-070-0022.

BACKGROUND

On July 19, 2024, OHA received the Request from St. Charles pertaining to the proposed transaction between St. Charles and the Neuromusculoskeletal Center of the Cascades, P.C. (“The Center”) (the “Transaction”). (St. Charles and The Center are herein collectively referred to as the “Entities”).

Pursuant to ORS 415.501(8)(a) and OAR 409-070-0022, OHA conducted a timely review of the Request to determine whether there was an emergency situation which immediately threatened health care services and whether the transaction is urgently needed to protect the interests of consumers and to preserve the solvency of The Center.

The Entities waived their right to receive ten calendar days’ advance notice prior to posting the Request for public comment under OAR 409-070-0022(4)(b). OHA opened a public comment period from July 24, 2024 to July 31, 2024. The Entities submitted two letters of support and the HCMO program received one public comment.

Now, therefore, upon due consideration of the circumstances, including the Request, confidential information provided by the Entities, databases maintained by the OHA, websites of the Entities, press reports, and publicly available reports, OHA enters the following Proposed Findings of Fact, Analysis, Conclusions of Law, and Determination.

FINDINGS OF FACT

OHA FINDS that:

1. On July 19, 2024, St. Charles filed the Request with OHA.

2. On or about July 24, 2024, the Entities waived their right to receive ten calendar days' advance notice prior to posting the Request for public comment.
3. OHA held a public comment period from July 24, 2024 through July 31, 2024, and received one public comment.
4. St. Charles is an Oregon nonprofit health system that owns and operates four hospitals and multiple medical clinics throughout Deschutes, Jefferson, and Crook Counties.
5. The Center is an independent, physician-owned group of 27 providers and approximately 200 employees that offers neurology, neurosurgery, occupational medicine, orthopedics, and physiatry services to Central Oregon including Bend, Redmond, Sisters, Prineville, Powell Butte, Culver, Madras, Warm Springs, La Pine, John Day, Burns, and Lakeview.
6. The Entities entered into a Letter of Intent to pursue employment by St. Charles for certain The Center staff and physicians, and to allow St. Charles to assume responsibility for The Center clinics and equipment leases. The Entities have not yet entered into a definitive agreement finalizing the terms of the proposed acquisition.

ANALYSIS

Applicable Review Criteria

Pursuant to OAR 409-070-0022(1),¹ in determining whether circumstances exist to warrant approval of an emergency exemption, OHA must consider whether:

- (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.

The Entities assert in the Request that they seek an emergency exemption “due to the inability of The Center to remain an independent entity as a result of several market forces, including the increasing costs of labor and supplies, flat to declining reimbursements, and the rapid departure of physicians from the community providing essential orthopedic, neurosurgical, and physical medicine and rehabilitation care.”

The Entities state that inflation in staff wages, supplies, and overhead expenses have made it impossible to maintain competitive rates of pay for physicians and to recruit new physicians. Entities also assert that The Center has been financially and operationally overwhelmed in its attempt to recruit physicians, increase staff, expand medical office space and other operational resources necessary to make up for the current gap in capacity.

Further, while Entities provided net loss statistics for the Central Oregon region pertaining to orthopedists and physical medicine and rehabilitation providers, Entities did not provide information as to net loss of providers for The Center itself if such a net loss exists. Instead, from the confidential and public information provided by the

¹ The definitions in OAR 409-070-0005 and ORS 415.500 are incorporated by reference.

Entities it is clear The Center has been focusing on recruiting and retaining providers, including offering employment to Desert Orthopedics providers upon the provider groups closure on December 31, 2023.

Entities further state that The Center is only able to pay its physicians compensation that is significantly below market, and that upon closing of the proposed transaction, St. Charles will compensate existing The Center employees at least as favorably as they are currently compensated. There are no concrete statements indicating that all existing providers and staff at The Center will receive competitive compensation upon becoming direct employees of St. Charles.

Entities provided additional confidential information to OHA regarding the financial position of The Center, including days cash on hand and the duration with which The Center has been operating with said levels of days cash on hand. It appears The Center has been operating at the same cashflow levels for an extended period of time which does not indicate an immediate threat of insolvency. Entities have not provided a concrete measure indicating The Center is suffering from significant financial distress and is currently on the brink of closure. Entities arguments center on the status of health care in the region itself and the need to expand and bolster their capacity to recruit additional providers in order to meet the increasing need in the community.

CONCLUSIONS OF LAW

OHA FINDS that:

The Transaction does not qualify for an emergency exemption under OAR 409-070-0022(1).

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

The HCMO program acknowledges that The Center reports experiencing financial, staffing and recruitment challenges to meet the demand for providers and care in the region. However, Entities have not identified that absent immediate approval of its Request, The Center will be under the threat of immediate closure. The HCMO program determines that there is not an emergency situation that immediately threatens health care services. The condition of OAR 409-070-0022(1)(a) is not met.

- (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.

Given the public and confidential information shared by the Entities, there is no indication that absent immediate approval of this Request, The Center will be insolvent. OHA finds that the proposed transaction is not urgently needed to preserve the solvency of The Center. The condition of OAR 409070-0022(1)(b) is not met.

PROPOSED DETERMINATION

1. The transaction does not qualify for an emergency exemption from material change transaction review pursuant to ORS 415.501(8)(a) and OAR 409-070-0022.
2. Applicants must complete a Notice of Material Change Transaction form for the transaction and submit to hcmo.info@oha.oregon.gov at least 180 days prior to the proposed effective date of the transaction. OHA will complete a preliminary review of the transaction within 30 calendar days of confirmed receipt of a complete Notice of Material Change Transaction form. The form will be posted to the Health Care Market

Oversight program website, and OHA will accept written public comments during the preliminary review period.

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), OAR 409-070-0022(7) and OAR 409-070-0075(4). 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 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, and described in contested case procedures (ORS 183.310 through 183.500) and the Attorney General’s Model Rules of Procedure (OAR 137-003-0500 through 137-003-0700)

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 determination will become a final determination by default. OHA has designated the relevant portions of its files 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 upon default. You may request judicial review of a final determination by default by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date the notice became the final determination by default.

Dated this 2nd day of August, 2024

Sincerely,



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