January 17, 2025

Re: Health Care Market Oversight Program Review of Proposed OHSU-Legacy Transaction

Submitted via: hcmo.info@oha.oregon.gov

Dear Oregon Health Authority,

Thank you for the opportunity to provide feedback on Oregon Health & Science University's ("OHSU") proposed acquisition of Legacy Health System ("Legacy"). **As a group of organizations that represent Oregonians across the state, we urge OHA ("the Agency") to consider the impact on access to high quality affordable care for Oregonians in the region during the review of this transaction.** Additionally, in the event that the Agency were to approve the transaction, we recommend a set of conditions that would be essential in protecting Oregonians from the negative impacts associated with hospital consolidation.

Health care remains unaffordable for many in Oregon – a majority of Oregonians have experienced hardship due to high health care costs in 2024. Health care consolidation is a key driver of higher prices for patients and greater health care spending, often with no improvement in the quality of care provided and consolidation leads to less competition and patient choice.

Impact on Oregonian's Provider Choice

The proposed transaction between OHSU and Legacy will have significant impacts on the market dynamics in the Portland metro area which is already heavily consolidated. This proposed transaction will provide OHSU with the highest market share in the area in terms of inpatient services, in addition to increased market share across other lines of service. OHSU will also assume operations of Legacy's 70 outpatient clinics including primary care, urgent care and specialty care clinics throughout the same regions, in addition to operating six hospitals. Given the reach of these two health systems, the proposed transaction would have a significant impact on the emergency services, maternal health, behavioral health, and other types of care choices available for consideration by Oregonians.

Impact on Prices and Oregonian's Out-of-Pocket Costs

Lack of market competition due to the consolidation of hospitals and provider practices not only limits consumer choice, but also raises prices. A 2022 RAND Corporation review found that estimated price increases associated with hospital mergers have ranged from 3 to 65 percent. Evidence shows that just two years after a hospital merger, prices on average increased by 1.6% – in areas with heavily consolidated markets, like Portland, prices rose nearly 5.2%. Another study found that areas with the highest levels of hospital market concentration had annual premiums that were 5% higher on average than those in the least concentrated areas. Price increases at hospital-owned physician offices are also larger when the acquiring hospital has a larger share of the inpatient market. This evidence is especially concerning given that Portland metro area health care prices are already higher than the national average and continue to rise each year.

Rising prices lead to higher costs for Oregonians, impacting people through higher insurance premiums and soaring out-of-pocket costs, like copays or deductibles. On average, 42% of Americans' premium dollars go to hospitals, resulting in an average increase of over $1,000 per year for families and over $370 per year for individuals enrolled in employer-sponsored health plans. Additionally, as hospitals acquire more physician offices, they are able to treat these locations as "hospital-based outpatient departments" which allows them to bill a higher rate that often includes an unexpected, expensive facility fee. Facility fees drive up premiums if covered by insurance, and as they are often not covered by insurance Oregonians are left on the hook to cover these fees.

Impact on Oregonian's Health Care Access

Rarely does lower market competition, less provider choice, and the higher costs associated with hospital consolidation lead to greater access and quality of care for people. In fact, hospital consolidation efforts often widen health care disparities for many communities, including rural communities, low-income people, LGBTQ+ people, disabled people and those with chronic conditions, and communities of color. Hospital consolidation often means communities face service line reductions or closures. Facilities are assessed on their profitability and are closed when they aren't viewed as money-makers, without regard for community need.

The growing medical debt crisis is impossible to separate from rising hospital prices due to consolidation. As people have a harder time affording rising service prices after their local hospital consolidates, they often have no other choice but to take on medical debt to access the care they need. In Oregon, nearly half of adults who hold medical debt owed at least some of that debt to hospitals. Hospital-related medical debt is not only more prevalent, it's also more expensive. Adults with past-due hospital bills generally have much higher total amounts of debt than those with past-due bills only owed to non-hospital providers. Research also shows some evidence of consolidated tax-exempt hospitals decreasing their spending towards charity care, compared to unmerged hospitals.

Recommendations for OHA

As OHA considers the proposed transaction between OHSU and Legacy, we encourage the Agency to fully weigh the foregoing concerns about patient access and healthcare affordability. In addition, if the merger is approved, we strongly urge the Agency to impose conditions that will protect consumers. At a minimum, OHA should consider the following conditions:

- Maintaining access to facilities and lines of service: OHA should require, as a condition of this transaction, that OHSU receive approval from the Agency before moving forward with any material reduction or termination of essential health services to ensure robust access to services is maintained for the community.
- Limit price increases: OHA should look to other states' transaction review programs that also aim to protect patients. For example, Massachusetts' Attorney General imposed a seven-year price constraint period to ensure that prices remained below the Massachusetts cost growth target.
- Prohibit outpatient facility fees: As a condition of this transaction, OHSU should be prohibited from charging new *and* existing facility fees on evaluation and management

CPT codes and in hospital-owned outpatient locations.

- Prohibit anticompetitive contracting practices: As a condition of this transaction, OHSU should be prohibited from using all-or-nothing contracting, most-favored-nation clauses, anti-incentive clauses, and gag clauses in contracts with employers, health plans, or other providers of health coverage.
- Maintain community benefit programs: Research shows some evidence of consolidated tax-exempt hospitals decreasing their spending on charity care, compared to unmerged hospitals. As a condition of this transaction, OHSU should be required to meet a minimum spending amount for community benefits, equal to or higher than the current level of community benefit provided by Legacy to their community. OHA should consider an emphasis on community benefit spending in the areas identified in the hospital's most recent community health needs assessments. OHSU should be prohibited from meeting this specific requirement through pouring additional funding into health professions' training and research, or by reporting Medicaid shortfall, both categories which experts agree are often not connected to community health needs.
- Support charity care programs: As a condition of this transaction, OHSU should be required to maintain a robust charity care program policy and notify OHA of any changes to this policy.
- Ensure Compliance: OHA should require annual compliance reporting by OHSU for a period of no less than 10 years on OHSU's adherence to these conditions.

We appreciate the opportunity to provide comments on the proposed transaction between OHSU and Legacy. We hope that OHA considers these comments during your review. Please do not hesitate to reach out to Kelsey Wulfkuhle at kwulfkuhle@usofcare.org or Charlie Fisher at cfisher@ospirg.org if you have any questions.

Sincerely,

OSPIRG

UNITED STATES of CARE

Oregon Consumer Justice

Health Care for ALL Oregon