

From Bill Kramer

Thank you for the opportunity to provide comments on the draft rule amendments that were presented at the September 4, 2024, meeting of the Health Care Market Oversight (HCMO) Program Rules Advisory Committee. I believe the Health Care Market Oversight program has the potential – if implemented effectively – to address the affordability crisis affecting employers, consumers, and patients.

I am concerned about the proposed rules related to confidentiality (409-070-0070 Confidentiality; Permitted Disclosures). It appears that the proposed rules are ambiguous at best, and possibly detrimental to the public interest.

The first section of the proposed rules on confidentiality is as follows:

(1) An applicant for review of a material change transaction may designate portions of a notice and any documents thereafter submitted by the applicant in support of the notice as confidential. Any portion or portions of a notice of material change transaction designated as confidential must be provided separately as one or more attachments. The applicant shall not include any confidential information in the notice of material change transaction form itself.

The second section of the proposed rules contains the following:

(2) . . . An applicant claiming confidentiality in respect of portions of a notice, or any documents thereafter submitted by the applicant in support of the notice, ~~shall~~**must** include a redaction log that provides a reasonably detailed statement of the grounds on which confidentiality is claimed, citing the applicable statutory basis for confidentiality of each portion.

The proposed rules refer to the existing rules regarding the Health Care Market Oversight Program (ORS 415.501 – Procedures for review of material change transactions). Section 13 of ORS 415.501 states:

(a) An entity *may not refuse* to provide documents or other information requested under subsection (4) or (12) of this section *on the grounds that the information is confidential.* [Emphasis added.]

(b) Material that is privileged or confidential may not be publicly disclosed if:

(A) The authority determines that disclosure of the material would cause harm to the public;

(B) The material may not be disclosed under ORS 192.311 (Definitions for ORS 192.311 to 192.478) to 192.478 (Exemption for Judicial Department); **or**

(C) The material is not subject to disclosure under ORS 705.137 (Information that is confidential or not subject to disclosure).

My first concern is the ambiguity and apparent contradiction between the proposed rules and existing rules regarding confidentiality. The proposed rules, which seem to assume that entities may withhold information they deem to be confidential, appear to contradict the existing rules, which state clearly that information should not be withheld on the grounds that it is confidential unless there is a clear statutory basis. There is a clear public interest in making as much information as possible about proposed transactions publicly available; the burden should be on the entities proposing to withhold information to clearly demonstrate that disclosure would cause harm to the public.

Furthermore, it is unclear what information would be considered confidential. The proposed rule refers to existing rules regarding confidentiality and public records, such as “trade secrets” and other business information. This is a very complex topic, and it would be valuable to have specific language about what information, if any, would be considered confidential in consideration of material change transactions.

I recommend that the proposed rules be modified to:

- **Remove the ambiguity and apparent contradictions between the proposed rules and existing rules regarding confidentiality; and**
- **Add specific language regarding what information, if any, would be considered confidential in consideration of material change transactions.**

Thank you for your consideration of these comments.

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Bill Kramer