

## RAC Comments

My name is Karen Christianson, and I am a retired lawyer and a member of the Rules Advisory Committee. I am pleased that the HCMO staff has initiated a review of the program Administrative Rules. It is most appropriate to do that after approximately 2 years of program operation. I raise these questions and make comments in the spirit of strengthening this important program.

The schedule for adoption of the Draft changes to Chapter 409 of the administrative rules should be revised to accommodate the public comments and the comments and questions of the RAC. The schedule at present does not allow for an additional RAC meeting to review changes as drafted by staff. I would request that the schedule be modified to accommodate additional RAC meetings before a recommendation is made.

OAR 409-070-0022 Emergency and Exempt Transactions. ORS 415.501 (8) requires the authority to create rules to establish “Criteria to exempt an entity from the requirements of subsection (4) of this section if there is an emergency situation that threatens immediate care services, and the transaction is urgently needed to protect the interest of consumers.” The focus is on consumers, not protecting the solvency of an entity. In the rule as written too much focus is on the privacy of the entities and their solvency, rather than the protection of consumers.

This section is premised on the assumption that there is an emergency that is so critical that the entities can close the transaction and are not subject to any review, approval or follow up by HCMO. The situation may be so dire that public comment may not be permitted. This undercuts the goal of Chapter 409 of achieving “A process that is transparent, robust and informed by the public, including local community, through meaningful engagement.” There should always be public notice and comment.

Subsection (4) of this section requires HCMO to give the applicant 10 days notice prior to posting the Emergency Exemption application for public comment. This seems to be an unnecessary delay in the process. The applicant should assume that the redacted application will be subject to public comment as that should be the norm, not the exception. Also, all filings are made in a redacted public version and an unredacted confidential version so there is no reason that the public should not know that an application has been filed (see DRAFT 409-070-0070(2)). Section 0070(2) also mandates that any filing marked “Public” must be made available to the public.

Subparagraph (8) has been revised to require HCMO to publish a notice that an exempt transaction has been closed 6 months after closing unless the entity has given public disclosure, or the nature of the emergency is publically known. Both standards are vague and require action by HCMO when it has been determined that it has no jurisdiction over the transaction because of the emergency. What benefit is it to the public to know that a transaction is closed when under the current rule they might never have known it was contemplated?

OAR 409-070-0030 Requirement to File a Notice of Material Change Transaction. This section is proposed to be amended by adding (4) which requires fees to be paid within 30 days of an

invoice. That is reasonable for fees associated with the use of outside advisors by HCMO and is addressed in OAR 409-070-0050 (2). The fixed fees in this section should be paid at the time of filing the request for HCMO action, in the same way that court filing fees are paid at the time of filing. The fee for a Comprehensive Review should be paid by the entities before HCMO begins the review. An invoice could be generated at the same time as the requirement for comprehensive review is announced, but a shorter time for payment seems appropriate. It is appropriate to condition approval of a proposed transaction with the payment of any fees.

A question that was not addressed is whether the fees are adequate to cover the staff time for a preliminary review or emergency exemption. It seems that they are very low. If this is not the correct time to address the fee structure, I hope that it will be addressed during the budget process. The fees charged should reflect the staff costs necessary for the action requested.

409-070-0062 Community Review Board. Subparagraph (3) of this section appropriately prohibits the Authority from appointing to a CRB an individual who is employed by an entity that is a party to the transaction that is under review or is employed by a competitor of an entity. I would suggest that this prohibition be extended to cover a spouse as well. Subparagraph (4) undercuts this prohibition by allowing HCMO to allow a member of the CRB with an actual conflict of interest to participate by abstaining from participating in the actions related to the conflict of interest. Abstention is impossible given the scope and nature of the job of the CRB and the definition of conflicts of interest. In (4)(a) a conflict of interest is defined as a person who is employed by an entity that is a party to the transaction under review. This clearly conflicts with (3) which properly prohibits such a person from being appointed to a CRB. (4)(b) creates a similar conflict with a clear prohibition from appointment. Persons with a conflict of interest as defined in (4) should simply be prohibited from serving on a CRB and the language of the section should be edited to eliminate this contradiction. The definition of a conflict of interest should be removed from (4) and moved into (3).

Subsection (5) provides for compensation for CRB members. Subparagraph (e) provides for expense reimbursement. It would be more efficient to simply refer to ORS 292.495(4) rather than duplicate the language that presently exists here.

404-070-0070 Confidentiality. HCMO should be required in all cases to have the Attorney General's Office review the redaction log prepared by the entities seeking review to determine if in fact the redacted information is confidential under the law. Without scrutiny of the redactions, we cannot assure that the public is adequately informed of the nature of the transaction and its potential impact. Public comment quickly becomes meaningless if the information the public can see is redacted beyond what the law requires.