To: HCMO RAC
From: Tom Sincic, MSN, FNP Retired. RAC Member
Date: 09/24/2024

This is an updated version of my previous submission. Find my language in blue.

> **The Millbank Memorial Fund Report of 2023 clearly states the issue. "Although rising costs can be attributed to a variety of factors, oversight of future consolidation is critical to any effort to protect the people of Oregon from continued cost increases that jeopardize their health and financial stability."**

It is important that we get the Administrative Rules right.

Key Topic Areas (listed here but comments are in order of the document):

1. **Health Equity Definition and Compliance with Health Equity Goals**
    a. **Affordability Versus Cost and Public Interest and Transparency**
2. **Fees to Cover Cost and Calculation Formulas versus Public Interest and statutory requirement to cover costs.**
3. **"Potential" or "May" Rather than "Will" in multiple locations. This needs changing**
4. **Emergency Exemptions versus Public Interest and Transparency**
5. **Measuring Everything**
    a. **Compliance with OHA Cost Containment Goals**
    b. **Retrospective Look at Previous Transactions**
6. **Undefined Terms–Must be Defined Throughout the Document**
7. **Confidentiality Clarity versus Public Interest and Transparency**
8. **Community Review Board**
9. **Timing of Notices versus Public Interest and Transparency**
10. **Definition of Insurer–need to look at most stringent process.**
    a. **Is the DOJ or OHA most stringent process**
11. **In-State or Out-of-State**
    a. **Look at Hospital Association of Oregon**
12. **Other Definitions**
        i. **Retrospective Look at other transactions**
13. **Who is making final decision**
    a. **Current timeline goes to Secretary of State**
    b. **OHPB Oversight–Statutory; Statement that not be involved.**
14. **Appeal Rights Issue**
    a. **Definition of "Person"**

Note: blue throughout the document indicates my comments and insertions.

I have carefully reviewed ORS 415.500 and 415.501, the current Administrative Rules, the Suggested Revised Administrative Rules and **OHA's Framework for Analyzing Proposed Material Change Transactions for the Health Care Market Oversight Program**

Final – Approved by the Oregon Health Policy Board on October 5, 2021

There are many issues/problems out of alignment with the adopted Guidelines and Framework including some of very high concern with the current Rules that are carried forward in the revision and new ones introduced in the revised document.

Per the adopted framework:
"Researchers have studied the impacts of this consolidation in the health care sector and have generally found that it leads to cost increases and no improvement of quality or patient outcomes…. OHA's job is to review what effects the transaction may have." This is consistent with the Millbank Memorial Fund Report of 2023.

"House Bill 2362 requires OHA's framework to be rooted in health equity and the Triple Aim - cost, quality, and access to services." The rules as proposed fail to be rooted in health equity. The rules as proposed fail to adequately review the effects according to the Triple Aim.

Comments including edit suggestions, questions, clarifications, and needed corrections are generally written in order of the document. However, there are places in the document where references to another portion are referenced.

I have heard that there will be a RAC in the Spring to deal with fees. There are several comments below related to fees. It is good that a RAC in Spring will address those. Strongly suggest early spring. What else will be the topic of a Spring RAC? The other necessary fixes should not wait.

Reminder: 409-070-0000 Scope and Purpose

- This is very consistent with the Statute and Guidelines and Framework that should set the stage for all that follows but many areas that follow in the current and revisions are inconsistent or contradictory to the Scope and Purpose as written and therefore. In my commentary, I have been mindful of this Scope and Purpose.

409-070-0005 Definitions

(13) "Domestic health insurer" means an insurer as defined in ORS 731.106 or a health care service contractor as defined in ORS 750.005 that is formed under the laws of this state and has a certificate of authority from the Department to insure personal health risks, or pay for or provide health care services, whether in the form of indemnity insurance, managed care products or any other form or type of individual or group health insurance or health care service contract.
Comment: It is important that the word "insurer" should refer to those entities who are only insurers as often entities that provide insurance have a vertical integration with other entities. In addition, through the practice of paneling and networks of providers, insurers have direct say in access to care and essential services.

(14) In accordance with ORS 415.500(2), "essential services" means:
(a) Services that are funded on the prioritized list of health services described in ORS 414.690, as in effect at the time of notice submission; and
(b) Services that are essential to achieve health equity.
Comment: The following should be moved and inserted from line 28 or referenced directly:

(a) Any service directly related to the treatment of a chronic condition;
(b) Pregnancy-related services;
(c) Prevention services including non-clinical services; or
(d) Health care system navigation and care coordination services.

Comment: Regardless of where it is placed, does the prioritized list include all mental health needs. There is a potential of equity here unless it would be interpreted as distance travel to get care for these things as being not an important consideration.

(17) In accordance with ORS 415.500(4)(b), "health care entity" does not include:
(a) Long term care facilities, as defined in ORS 442.015.
(b) Facilities licensed and operated under ORS 443.400 through 443.455.
Comment: This limitation seems to create a problem as attempts to include long term care are a real thing. Please explain.

(18) "Health equity" means a health system having and offering infrastructure, facilities, services, geographic coverage, affordability and all other relevant features, conditions and capabilities that will provide all people with the opportunity and reasonable expectation that they can reach their full health potential and well-being and are not disadvantaged by their race, ethnicity, language, disability, age, gender, gender identity, sexual orientation, social class, intersections among these communities or identities, or their socially determined circumstances.
Comment: The proposed rules fail to use OHPB's definition of health equity. Since OHPB is the approving body of the Guidelines and Framework for these rules: **OHA's Framework for**

Analyzing Proposed Material Change Transactions for the Health Care Market Oversight Program

Final – Approved by the Oregon Health Policy Board on October 5, 2021 calls for use of the OHPB definition (see reference below).

> ”Health equity, including the entities’ demonstrated commitment to addressing health disparities and inequities 4”

“4 See the definition of health equity, as approved by the Oregon Health Policy Board https://www.oregon.gov/oha/OEI/Pages/Health-Equity-Committee.aspx”

This discrepancy needs to be remedied.

(23) In accordance with ORS 415.500(8), "net patient revenue" means the total amount of income, after allowance for contractual amounts, charity care and bad debt, received for patient care and services, including:
(a) Value-based payments, incentive payments, capitation payments, payments under any similar contractual arrangement for the prepayment or reimbursement of patient care and services; and
(b) Any payment received by a hospital to reimburse a hospital assessment under ORS 414.855.
Comment: It is okay that a definition from a different statute is used here but why is “net patient revenue” used as a basis for determining fees later in the document. This seems like a lot of deductions. Also see (27)

(27) In accordance with ORS 415.500(9), "revenue" of a party to the transaction means:
(a) Net patient revenue; or
(b) The gross amount of premiums received by a health care entity that are derived from health benefit plans.
Comment: Please explain how this and (23) are used in determining fees and deciding if a transaction is subject to review.

(28) “Services that are essential to achieve health equity” means:
(a) Any service directly related to the treatment of a chronic condition;
(b) Pregnancy-related services;
(c) Prevention services including non-clinical services; or
(d) Health care system navigation and care coordination services.
Comment: See (14) above.

409-070-0010 Covered Transactions

(1) Pursuant to ORS 415.500(6) and (10) and subject to the materiality standards under OAR 409-070-0015, transactions that are subject to review under these rules are the following:

(a) A merger or consolidation of a health care entity with another entity;
(b) An acquisition of a health care entity by another entity;
(c) A transaction to form a new contract, new clinical affiliation or new contracting affiliation between or among health care entities that ~~**will**~~ **may eliminate or** ~~**significantly**~~ **reduce essential services**;
(d) Formation of a corporate affiliation involving at least one health care entity; or
(e) A transaction to form a new partnership, joint venture, accountable care organization, parent organization or management services organization between or among health care entities that ~~will~~ may:
(A) Eliminate or significantly reduce essential services;
(B) Consolidate or combine providers of essential services when contracting payment rates with payers, insurers, or coordinated care organizations; or
(C) Consolidate or combine insurers when establishing health benefit premiums.
Comment: Since the research shows there a likelihood of cost increases with no improvement in quality or patient outcomes, the language here is problematic and inconsistent with intent of the statute, adopted Guidelines and Framework and purposes in 409-070-0085. Since you cannot prospectively know if it "will" eliminate or significantly reduce essential services", the word "may" should be inserted. In addition, "significantly" needs to be struck as it has no meaning or reference here and any reduction would be contrary to the intent of the statute and purposes of 409-070-0085. Please also see comment below on (3) that attempts to define arbitrarily "a change of one-third or more".

(3) A ~~**significant**~~ reduction of services occurs when the transaction will result in a change ~~of one-third or more~~ of any of the following:
(a) An increase in time or distance for community members to access essential services, particularly for historically or currently underserved populations or community members using public transportation;
(b) A reduction in the number of providers, including the number of culturally competent providers, health care interpreters, or traditional healthcare workers, or a reduction in the number of clinical experiences or training opportunities for individuals enrolled in a professional clinical education program;
(c) A reduction in the number of providers serving new patients, providers serving individuals who are uninsured, or providers serving individuals who are underinsured;
(d) Any restrictions on providers regarding rendering, discussing, or referring for any essential services;
(e) A decrease in the availability of essential services or the range of available essential services;
(f) An increase in appointment wait times for essential services;

(g) An increase in any barriers for community members seeking care, such as new prior authorization processes or required consultations before receiving essential services; or
(h) A reduction in the availability of any specific type of care such as primary care, behavioral health care, oral health care, specialty care, pregnancy care, inpatient care, outpatient care, or emergent care as relates to the provision of essential services.
Comment: The language here needs to be fixed to align with statute intent, Guidelines and Framework and purpose of rule. The arbitrary choice of such a large number as "one-third" is clearly contrary to the purposes of these Guidelines and Framework, rules as proposed, and the statute. Any decrease can be significant and have an impact on equity. The measure of one-third makes no sense when applied to (a), (d)(g).

409-070-0015 Materiality Standard
(1) Pursuant to ORS 415.500(6) and (9) and ORS 415.501(4), a covered transaction under OAR 409-070-0010 is a material change transaction and ~~shall~~ must be subject to review under these rules if:
(a) At least one party to the transaction had average **annual revenue of $25 million or more** in the party's three most recent fiscal years; and
(b) Another party to the transaction:
(A) Had average **annual revenue of $10 million or more** in that party's three most recent three fiscal years; or
(B) If such party is a newly organized legal entity, is projected to have at **least $10 million in revenue** over its first full year of operation at normal levels of utilization or operation. A party is a newly organized legal entity if:
(i) The entity is newly formed or capitalized in connection with the transaction or in connection to a health care entity for the purposes of a transaction including but not limited to a special purpose entity; or
(ii) The entity is an existing entity whose form of ownership is changed in connection with the transaction. Changes in the form of ownership include but are not limited to a change from physician-owned to private equity-owned and publicly-held to a privately-held form of ownership.
(2) A covered transaction under OAR 409-070-0010 that qualifies as material under paragraph (1) of this rule ~~shall~~ must be subject to review under these rules notwithstanding that the transaction involves a health care entity ~~located~~ in this state and an out-of-state entity if the transaction may increase the price of health care services or limit access to health care services in this state.
(a) For the purpose of these rules, an entity is considered in-state if it:
(A) is based or domiciled in Oregon;
(B) owns or operates business locations in Oregon;
(C) is registered with the Oregon Secretary of State to conduct business in Oregon;

(D) is engaged in profit-seeking activity in Oregon; or
(E) provides health care services to residents of Oregon.
(b) An entity that is domiciled outside of Oregon and registered to conduct business in Oregon may be considered out-of-state under these rules if:
(A) the entity served no more than 100 Oregon residents annually for each of the three previous fiscal years; or
(B) the entity is a health care insurer, the proposed transaction involves only health care insurers, and the combined market share held by the health care insurer immediately after the completion of the proposed transaction does not exceed five percent of the total market share in any market.
Comment: Please explain this section including how the dollar numbers chosen will meet the purposes and why the additions. (b) seems unnecessary. Again, when an "insurer" is mentioned, insurance should be the entity's only business.

409-070-0020 Excluded Transactions
(1) (d) (C) Does not provide comprehensive management services.
Comment: "comprehensive" is not defined. Please define.

(3) ~~Upon review of~~ If a complete notice of material change transaction submitted in accordance with OAR 409-070-0030(1)(a) and OAR 409-070-0045(5~~), the Authority may determine that the)~~ pertains to a transaction ~~qualifies as an~~ excluded ~~transaction~~ under this rule. ~~The~~, the Authority ~~shall provide~~ must notify the parties ~~with written~~ and the notice ~~of that determination, following which the notice shall~~ must be deemed withdrawn ~~and all~~. All further proceedings in respect of the notice ~~shall~~ must be terminated and ended. The Authority's written notice to the parties under this paragraph (3) ~~shall~~ must be accompanied **by a refund of the fee**, if any, that was paid in connection with the notice of material change transaction.
Comment: there needs to be a non-refundable filing fee and, later in these rules, a pre-conference fee. Work is incurred by the state and the entities involved must pay for all aspects of that work according to statute.

409-070-0022 Emergency and Exempt Transactions
(1) Pursuant to ORS 415.501(8)(a), the Authority, for good cause shown, may exempt an otherwise covered transaction from review if the Authority finds that:
(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.

(2) If a proposed transaction would otherwise be subject to review because it involves a change in control of a domestic health insurer, the Department, in consultation with the Authority, for good cause shown, may exempt the transaction from review if the Department finds that:
(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 the domestic health insurer.
Comment: HCMO has a statutory mandate to protect the interest of consumers. HCMO does not have authority related to the solvency of domestic health insurers. (b) above should read as follows: "The transaction is urgently needed to protect the interest of consumers". This language would make the rules consistent with the Guiding Principles and Framework.

(3) An applicant for emergency exemption under paragraph (1) of this rule ~~shall~~ must provide the Authority, and an applicant for emergency exemption under paragraph (2) of this rule ~~shall~~ must provide the Department, with the following:
Comment: The subparts under this section call for more transparency to the public as certainly the public should know why this emergency exists. Who is being trusted to make sure this happens in a so-called emergency? This also reflects on the need for transparency and robust public participation as stated in the Guiding Principles as approved by OHPB on Oct. 5, 2021.

(4) The Authority with respect to an application filed under paragraph (1) of this rule, and the Department with respect to an application filed under paragraph (2) of the rule, ~~shall~~ must:
(a) Provide a period for the filing of comments in respect of the application unless the Authority or the Department, as applicable, determines that:
(A) The public interest in providing comments is outweighed by the interest in confidentiality of the applicant for emergency exemption; or
(B) the nature of the emergency situation presented and the urgency of the need for emergency exemption will not allow time for the filing and consideration of comments.
(b) ~~Provide the applicant with ten calendar days' advance notice prior to posting~~ Post the application for public comment within one business day.
Comment: This section is very contradictory to purpose. Please explain how confidentiality can outweigh the public interest. Also see edit in (b). If it is an emergency the public needs to know immediately. The redacted application contains no confidential information therefore the public should know of the application. The Guiding Principles call for this level of transparency at a minimum.

(8) For emergency transactions that the Authority exempts from review, the Authority ~~will~~ must publish the entity names and type of the covered transaction within one business day. ~~no less than 6 months after the transaction has consummated or closed, unless an entity involved in the transaction discloses the nature of the emergency to the public or the nature of the emergency is otherwise publicly known before 6 months after the transaction has consummated or closed.~~

Comment: Transparency is not furthered by the current or proposed language. We are talking about emergency here–the public certainly needs to know.

409-070-0025 Acquisition of Control; Presumptions and Disclaimers

(1) The following presumptions will apply in determining whether a transaction involving a health care entity results in the acquisition of direct or indirect control of that health care entity:

(a) A transaction ~~shall~~ must be rebuttably presumed to involve an acquisition of control of a health care entity that is a domestic health insurer or a coordinated care organization if a person, directly or indirectly, acquires voting control of ten percent **(10%)** or more of any class of voting securities of the domestic health insurer or the coordinated care organization.

(b) For a health care entity other than a domestic health insurer or coordinated care organization, a transaction ~~shall~~ must be rebuttably presumed to involve an acquisition of control of the health care entity if a person, directly or indirectly, acquires voting control of twenty-five percent **(25%)** or more of any class of voting securities of the health care entity.

(c) For any health care entity, a transaction ~~shall~~ must be rebuttably presumed to involve an acquisition of control of the health care entity if a person, directly or indirectly, acquires voting control of more than fifty percent **(50%)** of any class of voting securities of the health care entity.

Comment: The percents written above seem to be arbitrary. Please explain how they were arrived at.

(2) A person seeking to rebut the presumption described in paragraph (1)(b) of this rule ~~shall~~ must apply to the Authority, on a form prescribed by the Authority, for a disclaimer of control determination. Such application must show that the proposed transaction would not result in control of the health care entity, or that control would not be changed by the proposed transaction, and **must fully disclose** all material relationships and bases for control between the disclaimer applicant and the person(s) to which the disclaimer applies, as well as the basis for disclaiming control or change of control.

Comment: Does “fully disclose” mean the public gets to know?

(4) Paragraphs (2) and (3) of this rule do not apply to transactions involving a **domestic health insurer or a coordinated care organization**. For a domestic health insurer, the disclaimer of

affiliation procedure is in ORS 732.568. For a coordinated care organization, the disclaimer of affiliation procedure is in OAR 410-141-5315.
Comment: This seems potentially problematic. Do all of (2) and (3) not apply or only the form? Again, it is rare that insurance is the only business. In the case of coordinated care organizations, they are doing much more than insuring.

(6) A health care entity that submits a disclaimer application may contest the Authority's determination as provided in OAR 409-070-0075. Unless otherwise ordered in the course of such proceedings, the time periods for preliminary and comprehensive review of the transaction under OAR 409-070-0055 or OAR 409-070-0060 will remain applicable, without abatement or reduction, in the event a preliminary or comprehensive review of the transaction is thereafter required.
Comment: Looking forward to the explanation of this addition.

409-070-0030 Requirement to File a Notice of Material Change Transaction

(3) Effective January 1, 2023, a fee ~~shall~~ must be paid to the Authority in connection with a notice of material change transaction filed under this rule on or after January 1, 2023.
Comment: The fees under this item seem too low. How were they arrived at? Do the amounts and timing of collection allow HCMO to be self-sustaining? Do the amounts allow the hires needed to do the work in the time allotted? ORS 415.501 requires fees to be sufficient to reimburse the costs of administering the program.

(4) Fees required under Section (3) must be paid within 30 calendar days following receipt of an invoice for payment. Any approval of a material change transaction may be conditioned on the payment of fees pursuant to paragraph (3) of this rule. The obligation of the parties to pay the fee to the Authority does not depend on whether the Authority approves the transaction. The obligation to pay fees is an obligation of the person filing the notice of material change transaction and any other parties to the transaction designated by the Authority.
Comment: Failure of payment should allow for denial. All initial application fees and requests that result in a fee should be paid at time of application or request. Only the consultant fees that the Authority later deems necessary can be billed but should be paid at time the entity agrees to continue. The fees should be paid at the time of filing the Notice of Material Change Transaction, Emergency Exemption Request and when the Authority determines that a Comprehensive Review is required.

409-070-0035 Material Change Transaction Involving a Domestic Health Insurer

Comment: Must be clear that insurance is only business and no other partnerships, subsidiaries, etc. I believe that this is extremely rare in today's consolidation and private equity world.

409-070-0040 Material Change Transaction Involving a Charitable Organization or Hospital
(1) The parties ~~shall~~ must provide a copy of any notice of a material change transaction involving a health care entity that is, controls, or is controlled by a charitable organization to the Charitable Activities Section of the Oregon Department of Justice in addition to the notice submitted to the Authority in accordance with OAR 409-070-0030(1)(a).
(2) To the extent applicable, a health care entity involved in a material change transaction remains subject to the charitable registration and reporting requirements contained in ORS 128.610 et seq. and to the Attorney General notification and other provisions contained in ORS Chapter 65, the Nonprofit Corporations Act, including Attorney General review and approval of hospital transfers within the scope of ORS 65.803.
(3) The filing of a notice of material change transaction that is subject to review by each of the Authority and the Charitable Activities Section of the Oregon Department of Justice under this rule ~~shall~~ must be deemed to include an express consent to the sharing between the Authority and the Department of Justice of confidential material submitted in connection with such proposed material change transaction. The Authority ~~may~~ must consult with the Department of Justice regarding the potential effects of a proposed material change transaction on the charitable organization or its assets or charitable assets held by a health care entity. Confidential material provided by any party in connection with such proposed material change transaction shall be maintained as confidential material in accordance with OAR 409-070-0070. Such sharing shall not constitute a waiver of the confidential status of such materials.
(4) The Authority ~~may~~ must condition its approval of a material change transaction involving a health care entity that is, controls, or is controlled by a charitable organization on a required filing with, and approval by, the Charitable Activities Section of the Oregon Department of Justice.
Comment: This is extremely important. It must always be known whether an entity is a charitable organization. Since the DOJ regulates charitable organizations the DOJ **must** always be consulted and a condition of approval. This is consistent with the Guideline: "Use resources wisely and collaborate with DCBS and DOJ when applicable". This is a wise use.

409-070-0042 Optional Application for Determination of Covered Transaction Status
(1) Any party to a proposed transaction may, but ~~shall~~ must not be required to, **submit a written application to the Authority requesting a determination whether such transaction is a covered transaction pursuant to these rules**. The Authority ~~shall~~ must notify the applicant in writing of its determination within 30 calendar days following receipt of the application and

any additional information requested by the Authority. If the Authority determines that the proposed transaction is a covered transaction, and the parties desire to pursue the transaction, the parties ~~shall~~ must file a notice in accordance with these rules.
Comment: where is the mechanism for determining this? Is this related to the preconference? If so, that should be referenced here. Is this (4)? There should be a fee associated with this application.

(4) ~~No~~ A fee of _____ shall be required in connection with an optional application filed under this rule. However, if the Authority determines that the transaction is a covered transaction, ~~and if a notice of material change transaction is thereafter filed, a fee in accordance with OAR 409-070-0030 shall~~ must be payable with application.
Comment: There needs to be a nominal fee say $2000. See edit.

409-070-0045 Form and Contents of Notice of Material Change Transaction
(2) A party or the parties to a material change transaction for which a filing will be made under this rule are encouraged to contact the Authority and arrange **for a pre-filing conference**. If the Authority decides to conduct a comprehensive review under OAR 409-070-0060, the Authority ~~shall~~ must offer the parties or parties a comprehensive review conference. The pre-filing conference or comprehensive review conference ~~shall~~ must preview the transaction and filing and the Authority's expectations for the review of the transaction including timing, the use of outside experts, the potential involvement of a community review board in accordance with OAR 409-070-0062, and other relevant issues. ~~As applicable,~~ The Department of Justice ~~will~~ must participate along with the Authority in any such conference.
Comment: A pre-filling conference incurs costs so fees should be paid. Since this is a pre-filling situation, it cannot be clearly known if the DOJ needs to be involved. Therefore the DOJ must participate to help sort this out and answer questions. This would make the pre-conference more meaningful. See edits.

(6) If the Authority considers a notice of material change transaction to be incomplete, or if the Authority requires must notify the parties of the information or clarification that is required. ~~The running of the period for review of the notice shall be tolled upon such notification and shall resume when the Authority deems the notice complete.~~
Comment: Do these changes lower the expectations of the applicant. Please explain.

(8) ~~The Authority may require that s~~ Statements of revenue and revenue projections be presented in accordance with generally accepted accounting principles or statutory accounting principles, as applicable, and be prepared by a duly qualified and credentialed accounting expert.

Comment: This needs to be one standard generally accepted accounting or statutory accounting principles. The authority should not need to be looking at anything other than those in doing its analysis. See edit.

(10) After submission, any party to a notice of material change transaction may rescind the notice at any time and for any reason. ~~If the Authority has not commenced a preliminary review under OAR 409-070-0055, t~~The fee paid in connection with the notice ~~shall~~must will not be refunded~~. If the Authority has commenced a preliminary review under OAR 409-070-0055, the fee paid in connection with the notice shall not be refunded,~~ and the parties shall remain obligated to reimburse the Authority for costs and expenses incurred prior to withdrawal in accordance with OAR 409-070-0050.
Comment: Why must fees be refunded? Agency time has been spent at the request of the entity and the State should get a fee. See edit.

409-070-0050 Retention of Outside Advisors
(1) Pursuant to ORS 415.501(14), the Authority or the Department of Justice may retain at the expense of the parties to a material change transaction any actuaries, accountants, consultants, legal counsel and
other advisors not otherwise a part of the Authority's staff as the Authority may reasonably need to assist the Authority in reviewing the proposed material change transaction. ~~The retention of such advisors shall not be subject to any otherwise applicable procurement process, provided that the~~The Authority or the Department of Justice, as applicable, ~~shall make a determination that such advisors have the requisite qualifications and expertise to review the proposed transaction. The Authority or the Department of Justice, as applicable, shall~~must require that the retained advisors certify in writing that:
Comment: Please explain these deletions.

(3) Before ~~A~~any approval of a material change transaction ~~shallmay~~ must be conditioned on the parties reimbursing the Authority pursuant to paragraph (2) of this rule. The obligation of the parties to reimburse the Authority does not depend on whether the Authority approves the transaction. The obligation to reimburse is an obligation of the person filing the notice of material change transaction and any other parties to the transaction designated by the Authority.
Comment: Wow! This is definitely a must. Was this an oversight? See edits. Suggest a rewrite such that the continuation of processes must be conditioned on payment of fees. Failure to reimburse fees according to the scheduled time may result in denial of the transaction without refund of fees previously paid.

409-070-0055 Preliminary 30-Day Review of a Notice of Material Change Transaction

(1) Pursuant to ORS 415.501(5) and after receipt of a complete notice of material change transaction in accordance with OAR 409-070-0030(1)(a) and OAR 409-070-0045(5), the Authority ~~shall~~ must complete a preliminary review to determine whether the proposed material change transaction meets one or more of the criteria set forth in paragraph (2) of this rule. The Authority ~~shall~~ must, subject to OAR 409-070-0070, publish the notice of material change transaction. For the duration of the preliminary review period, the Authority ~~shall~~ must accept and publish public ~~comment~~ comments pertaining to the material change transaction.
(2) At the conclusion of the preliminary review described in paragraph (1) of this rule, the Authority ~~shall~~ must approve, or approve with conditions as provided in OAR 409-070-0065, a material change transaction, or, in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved, only if the Authority determines that the transaction meets **one or more** of the following criteria:
Comment: "one or more" as written seems inconsistent with statute, Guidelines and Framework, and purpose. See edit above adding "only" and following adding the word 'or" and changing the "or" in (d) to "and"

(a) The material change transaction is in the interest of consumers and is urgently necessary to maintain the solvency of an entity involved in the transaction; or
(b) The material change transaction ~~unlikely to substantially~~ does not reduce access to affordable health care in Oregon;
(c) The material change transaction ~~likely to~~ meets the criteria set forth in OAR 409-070-0060;
(d) The material change transaction ~~is not likely to substantially~~ does not alter the delivery of health care in Oregon; ~~or~~ and
Comment: see edits above as (b), (c), and (d) must be met to be aligned with purpose.

(e) Comprehensive review of the material change transaction is not warranted **given the size and effects** of the transaction.
Comment: Please explain/define "size and effect" criteria so that the essential services as now defined to include acute care and mental health are preserved. Closure of small independent mental health and other health services can have serious impacts in communities.

(3) If after a preliminary review, the Authority does not approve or recommend for approval, as applicable, a material change transaction in accordance with ~~this~~ (small edit) paragraph (2), the Authority ~~shall~~ must notify the parties and ~~shall~~ must thereafter conduct a comprehensive review pursuant to OAR 409-070-0060.
(4) Unless extended by agreement among the Authority and the parties to a proposed material change transaction, the Authority ~~shall~~ must complete the preliminary review described in paragraph (1) within 30 calendar days of the Authority's written confirmation of receipt of a

complete notice of material change transaction or on the first business day thereafter if the 30th day is a weekend or state-recognized holiday, unless the parties agree to an extension of time. The Authority ~~shall~~ must notify the parties at the conclusion of the preliminary review period the results of the preliminary review. If the Authority fails to complete such preliminary review within 30 calendar days of the Authority's receipt of a complete notice of material change transaction, the proposed material change transaction ~~shall~~ must be subject to the comprehensive review procedure provided in OAR 409-070-0060.
Comment: Suggest a rewrite of (3) combined with (4) as these sections have redundancies and some contradictions.

409-070-0060 Comprehensive Review of a Notice of a Material Change Transaction
(2) The Authority ~~shall~~ must notify the entity that submitted the notice of material change transaction if a comprehensive review will occur. ~~The Authority shall notify the entity that submitted the notice of material change transaction if the Authority requires additional information from any of the parties to the transaction. The entity is required to respond to the Authority's request for additional information within 15 calendar days from the date the Authority sent such request unless the Authority and entity mutually agree on a different timeline.~~
(3) ~~The Authority shall~~ and must notify the entity that submitted the notice of material change transaction the fee amount associated with the comprehensive review. pursuant to OAR 409-070-0030. A party to the transaction ~~shall~~ must pay the fee amount in full no later than 30 calendar days after ~~the date~~ receipt of an invoice from the Authority sent such notification.
Comment: Why the changes in (2) and (3)? There needs to be consequences for failure to respond. What would be the method for tracking when the entity received the invoice? The invoice could be sent with the notice.

(43) The Authority ~~shall~~ must issue proposed findings of fact and conclusion of law, along with the Authority's proposed order at the conclusion of its comprehensive review and ~~shall~~ must allow the parties and the public **a reasonable opportunity** to make written comments to the proposed findings and conclusions and the proposed order. If the comprehensive review includes a community review board, recommendations of the community review board ~~shall~~ must be in writing and appended to the proposed order. Unless otherwise directed by the Authority, written comments to the proposed findings and conclusions and the proposed order ~~shall~~ must be filed with the Authority within thirty calendar days following publication. The Authority ~~shall~~ must make any filed comments available to the public promptly following receipt.
Comment: "reasonable opportunity" is undefined. This section needs a rewrite to make sure it follows the Scope and Purpose and Guidelines: "A process that is transparent, robust and informed by the public, including the local community, through meaningful engagement."

(6 or now 5)(a) There is ~~no substantial~~any likelihood that the transaction would:
Comment: Use of substantial has no real meaning when it comes to equitable health services impacting each individual or community regardless of size. Replace with "any".

(C) Jeopardize the financial stability of a health care entity involved in the transaction; ~~or~~ and
Comment: "and" needs to be inserted here as all the items need to be satisfied.

(D) Otherwise be **hazardous or prejudicial** to consumers or the public.
Comment: "hazardous or prejudicial" are undefined so need to be defined or perhaps just say "harmful"? How is this being measured?

(b) The transaction will benefit the public good and communities by:
(A) Reducing the growth in patient costs in accordance with the health care cost growth targets established under ORS 442.386 or maintain a rate of cost growth that exceeds the target that the **entity demonstrates is in the best interest of the public;**
Comment: Needs to be clear on how this will be demonstrated. Is this the responsibility of the Cost Growth Target Committee as mentioned in the Framework? "The demonstrated commitment to and the ability of the entities to achieve Oregon's Sustainable Health Care Cost Growth Target."

(B) Increasing access to services in medically underserved areas; or
(C) Rectifying historical and contemporary factors contributing to a lack of health equity or access to services.
Comment: Need to have clear methods to measure these.

409-070-0062 Community Review Board
(2) In determining whether to convene a community review board, the Authority must consider the **potential** impacts of the proposed transaction, including, but not limited to:
(a) The **potential** loss or change in access to essential services.

(c) A potential significant change in the market share of an entity involved in the transaction.
Comment: "Potential" is finally introduced here. This should be reflected throughout the rules. Notably similar to mentioned in **409-070-0010 Covered Transactions** where I inserted the word "may"

(3) Comment: Very unclear and contradictory and needs a complete rewrite.and
(4) should be revised to read as follows:

(3)A Community Review Board must consist of members of the affected community, including persons who represent populations that experience health disparities, consumer advocates and health care experts. The Community Review Board must consist of at least three members and no more than one-third of the members may be representatives of health care providers. The Authority may not appoint to a community review board an individual who (a)is employed by an entity that is a party to the transaction under review or
(b)is employed by a competitor that is of a similar size to an entity that is a party to the transaction or
(c) has a financial stake in an entity that is a party to the transaction under review or
(d) has governance or decision-making authority for an entity that is a party to the transaction under review.

(4)Community review board members must declare any potential or actual conflict of interest by filing a notice, pursuant to ORS 414.501(11)(b). The notice must be made public. If the Authority determines that a member of the Community Review Board has an actual conflict of interest they will be removed from the Board.

409-070-0070 Confidentiality; Permitted Disclosures

Comment: It is essential that DOJ be involved in determining whether the confidentiality requested is justified.

Suggested Language (5) add to this section : The Authority must submit the submitted unredacted documents and the redaction log prepared by an entity to the transaction to the DOJ to determine if the redacted material is confidential. Any material or information that is not confidential must be made public. This is consistent with the Guiding Principle which states:

> "Use resources wisely and collaborate with DCBS and DOJ when applicable". This is certainly wise use.

409-070-0075 Contested Case Hearings

Comment: Is it the intent of this section to block aggrieved/harmed individuals all pathways to contest. There will certainly be harm. Aggrieved individuals need to be all real individuals. The Guiding Principles state: "Ground all analyses in the impact to health care quality and costs to consumers, patients, employers, and other purchasers". This principle should certainly allow them to be aggrieved/harmed.