

# HCMO Use of Confidential Information

The Health Care Market Oversight program ensures that transactions involving health care entities support the goals of health equity, lower costs, increased access, and better care. Under ORS 415.500 et seq., the Oregon Health Authority reviews proposed material change transactions and monitors health care markets. For more information, visit the [program website](#).

You can get this document in other languages, large print, braille or a format you prefer free of charge. Contact us by email at [hcmo.info@oha.oregon.gov](mailto:hcmo.info@oha.oregon.gov) or by phone at 503-945-6161. We accept all relay calls.

Entities planning a material change transaction (“applicants”) are required to notify HCMO of the transaction by submitting a Notice of Material Change Transaction form (“Notice”). OHA may also request that applicants provide additional information necessary for HCMO to complete its review. This document describes OHA’s requirements for applicants to designate portions of the Notice and any documents submitted to OHA in support of the Notice as confidential.

## Importance of Transparency

Transparency is an important objective of the HCMO program. By making information about proposed transactions public, HCMO informs communities about planned transactions before they happen and provides communities with the opportunity to offer input on how the transaction may impact them. Comments from members of the public are critical to informing OHA’s review of proposed material change transactions.

## Submitting Confidential Information to OHA

Pursuant to OAR 409-070-0070, an applicant may designate portions of a Notice and any documents thereafter submitted in support of the Notice as confidential. In doing so, an applicant must follow the requirements of OAR 409-070-0070. Specifically, an applicant must submit:

1. A full unredacted version of the Notice or document marked as “CONFIDENTIAL;”
2. A redacted version of the Notice or document (from which the confidential portions have been removed or obscured) marked as “PUBLIC” which will be made available to the public; and

3. 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.

Confidential materials provided by an applicant in connection with a transaction that is subject to review by both OHA and the Department of Consumer and Business Services will be maintained as confidential materials in accordance with ORS 415.501(13)(c) and ORS 705.137.

## **Additional Information Requested by OHA**

After receiving the Notice and during the review period, OHA may request additional information from an entity that is party to the material change transaction. Pursuant to ORS 415.501(13)(a), an applicant may not refuse to provide documents or other information on the grounds that the information is confidential. An applicant must follow the requirements of OAR 409-070-0070 when designating additional information and/or documents submitted to OHA as confidential.

## **OHA's Use of Confidential Information**

### **HCMO Reporting**

If the HCMO program determines that certain confidential information is important to support OHA's decisions related to the transaction, OHA may seek consent from the person who provided the information or document to use specific statements or information from the confidential materials in HCMO reporting pursuant to ORS 415.501(13)(c). In such cases, HCMO will contact the individual via email prior to publication of any public reports, specifying the information or statements it is requesting to include in HCMO reporting.

### **Public Disclosure**

An applicant's submission that complies with the requirements of OAR 409-070-0070 and is considered to be confidential will be maintained as confidential materials and will not be disclosed to any person without the consent of the person who provided such information pursuant to ORS 415.501(13)(c). Information protected under ORS 415.501(13)(c) is exempt from disclosure under ORS 192.311 to 192.478.

Interpretation of the Oregon Public Records Law, as determined by OHA upon advice of the Oregon Department of Justice, shall determine if the confidential information claimed to be exempt under ORS 192.311 to 192.478 is in fact exempt from disclosure. OHA will not be liable to applicant or any other person for release of information applicant claims to be confidential under ORS 192.311 to 192.478 if determined not to be exempt.

# Statutory and Administrative Rule Guidance

## Statutes

### ORS 415.501(4)

An entity shall submit to the authority a notice of a material change transaction, other than a transaction described in subsection (3) of this section, in the form and manner prescribed by the authority, no less than 180 days before the date of the transaction and shall pay a fee prescribed in ORS 415.512.

### ORS 415.501(12)

The authority may request additional information from an entity that is a party to the material change transaction, and the entity shall promptly reply using the form of communication requested by the authority and verified by an officer of the entity if required by the authority.

### ORS 415.501(13)

(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.

(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 to 192.478; or

(C) The material is not subject to disclosure under ORS 705.137.

(c) The authority shall maintain the confidentiality of all confidential information and documents that are not publicly available that are obtained in relation to a material change transaction and may not disclose the information or documents to any person, including a member of the review board, without the consent of the person who provided the information or document. Information and documents described in this paragraph are exempt from disclosure under ORS 192.311 to 192.478.

## Administrative Rules

### OAR 409-070-0070

(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. The applicant shall file two versions of the notice. One shall be marked as "CONFIDENTIAL" and shall contain the full unredacted version of the notice or supporting materials and shall be maintained as such by the Authority and the Department. The second shall be marked as "PUBLIC" and shall contain a redacted version of the notice or supporting materials (from which the confidential portions have been removed or obscured) and shall be made available to the public by the Authority. 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 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.

(2) Confidential materials filed by an applicant in connection with a transaction that is subject to

review by each of the Authority and the Department shall be maintained as confidential materials in accordance with paragraph (1) of this rule, ORS 415.501(13)(c) and ORS 705.137.