

Out-of-State Entities

The Health Care Market Oversight (HCMO) 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](#).

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This document describes how the HCMO program relates to entities that are based outside of Oregon.

Out-of-State Entity

The HCMO program reviews many different types of transactions involving many different types of entities. Other guidance documents describe what types of transactions and entities are subject to HCMO review.

Pursuant to ORS 415.500(6)(a)(B), if a transaction involves a health care entity in Oregon and an out-of-state entity, a transaction that otherwise qualifies as a material change transaction is subject to review by the HCMO program if it may:

- result in increases in the price of health care, or
- limit access to health care services in this state.

Generally, an entity is considered in-state for purposes of HCMO review if it:

- is based or domiciled in Oregon,
- owns or operates business locations in Oregon,
- is registered with the Oregon Secretary of State to conduct business in Oregon,
- is engaged in profit-seeking activity in Oregon, (e.g., a mail-order pharmacy that provides services in Oregon), or
- provides health care services to residents of Oregon.

There may be instances in which a foreign entity provides services to only a small number of Oregon residents. In this instance, the HCMO program considers the following in determining whether a foreign entity is considered “out-of-state”:

- a) The foreign entity must have served **no more than** 100 Oregon residents annually for

each of the previous three fiscal years; or

- b) The foreign 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 does not exceed five percent of the total market share in any market for each of the previous three fiscal years.

If applicable, entities may submit to OHA their Form A exemption from the Oregon Department of Consumer and Business Services.

If a foreign entity is deemed “out-of-state” under bullet a) or b) above, HCMO then determines whether the proposed material change transaction may either result in increases in the price of health care or limit access to health care services in this state. This analysis is covered in the “Potential Effects of the Transaction” section below.

Potential Effects of the Transaction

ORS 415.500(6)(a)(B) states that a transaction is subject to HCMO review if the transaction involves an out-of-state entity and “may result in increases in the price of health care or limit access to health care services” in Oregon.

Any type of consolidation, including horizontal, vertical, and cross-market consolidation may increase the price of health care services.

- Horizontal consolidation occurs when two entities that provide the same type of services in the same geographic area merge, such as one hospital buying another hospital within the same metropolitan area.
- Vertical consolidation occurs when two entities that provide different (but related) types of services merge, such as a hospital buying a physician group.
- Cross-market consolidation occurs when two entities providing similar services in different geographic areas combine, including entities that operate in different states.

Further, any type of change in ownership has the potential to limit access to health care services unless the transaction is structured so as to preclude any changes in decision-making authority pertaining to access to health care services in Oregon, including the types of services available, staffing of services, contracting with payers, and any other matters that have the potential to change access to health care services for people in Oregon.

Statutory and Administrative Rule Guidance

Statutes

ORS 415.500

(6)(a) “Material change transaction” means:

(B) If a transaction involves a health care entity in this state and an out-of-state entity, a transaction that otherwise qualifies as a material change transaction under this paragraph that may result in increases in the price of health care or limit access to health care services in this state.

Administrative Rules

OAR 409-070-0015 Materiality Standard

(2) A covered transaction under OAR 409-070-0010 that qualifies as material under paragraph (1) of this rule shall 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.