

August 15, 2022

Patrick Allen, Director
Oregon Health Authority
500 Summer Street NE, E-20
Salem, OR 97301

RE: Concerns, HCMO proposed rules, OAR 409-070

Delivered electronically to:

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Director Allen,

Salem Health Hospitals & Clinics is concerned about the Authority's timing for development of the Health Care Market Oversight program. The first and now second round of administrative rules were developed during the height of historic pandemic, regulatory, and financial pressures on the health care continuum as a whole and hospitals in particular. This limits our ability to engage meaningfully in a regulatory process that directly affects our organization.

The Authority's continued reliance on sub-regulatory guidance for so many important details of the program is troubling. Hospitals and health systems, the Authority, and the public all deserve administrative rules written in plain language that clearly identify which transactions are subject to review. There is no statutory requirement for involvement of the public or affected stakeholders in development of sub-regulatory guidance. We fail to understand why the Authority has chosen to rely upon sub-regulatory guidance rather than working with affected stakeholders and the public toward greater clarity in the administrative rules.

As we've stated in previous comments, fairness, predictability and clarity are critical to the development of any administrative rules. These are reasonable expectations in any application of the law, but they are especially important for the HCMO program.

We note with interest the newly developed fee schedule proposed in these rules. We understand that the HCMO is an Other Funds program. That said, we believe that the fee schedule as proposed could have a chilling effect on collaborative transactions that have the potential to benefit Oregonians and add to the administrative cost of health care. We suggest that the Authority seek legislative approvals to transition this program from Other Funds to General Fund and to waive fees as necessary to preserve access to care for Oregonians.

You and I have discussed the pressures building on Oregon's health care system: a nationwide shortage of nurses, doctors, and other staff; costs that far outpace revenues; discharge barriers; inpatient and emergency department boarding; hospitals with demand beyond their bed capacity. Each of these problems is complex and will not be solved in the short term, and each threatens to reduce access to care in our state.

Now and in the coming years, hospitals, health systems, and regulators in Oregon will have to creatively work together to protect Oregonian's access to care in the face of these systemic challenges. The proposed fee schedule and the lack of clarity around the HCMO program has the potential to hamper these efforts. OAR 409-070-0030 sub 4 describes a generous biennial fee increase that is not tied to any outside measure of actual labor costs. We suggest tying increases in this fee to the CPI or another reasonable measure of inflation.

We continue to be concerned at the inability of parties to a transaction to be fully informed of the regulatory costs before entering into the HCMO process. The Authority may need the assistance of experts to complete comprehensive review of a transaction, but should be able to provide an estimate of their total expenditures before engaging such experts at the expense of others. We request that the Authority commit in rule to providing an estimate of expenses related to retention of outside advisors for comprehensive review.

OAR 409-070-0022 sub 8 allows the Authority to wait 24 months before publishing entity names and the type of covered transaction. We are not opposed to this, but would like to better understand the Authority's reasons for including it in rule.

OAR 409-070-0062 proposes that community review board members declare any potential or actual conflict of interest. It would be prudent for the Authority to in rule prohibit members from profiting at any point in the future through information gained through community review board service.

Thank you for the opportunity to comment on these rules and air broader concerns. Salem Health is committed to working in healthy partnership with the Oregon Health Authority, its staff and programs.

Sincerely,



Cheryl Nester Wolfe
President and Chief Executive Officer