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Thank you for the opportunity to provide comments on the HB 2362 Healthcare Market Oversight (HCMO) rules. As outlined in our first several letters, the organizations listed above are dedicated to providing access to quality healthcare across Oregon, and include many small and independent clinic owners operating outside of the larger hospital systems. We appreciate the Authority providing updated drafts and materials, scheduling additional RAC meetings and being otherwise responsive to feedback. Each new version of the rules continue to improve, and we recognize that The Authority has made several edits at our suggestion. As well, we greatly appreciate the creation of the sub-regulatory documents, and other tools designed to assist providers in compliance.

Our members look forward to continued participation in the Technical Advisory Group (TAG), to further refine and define several key elements and other outlying issues. Given the proximity of the 2022 Session, and to the March 1 HCMO implementation deadline, our groups do suggest a

delay in implementation so that all outlying issues can be settled before the launch of such a significant program.

Additionally, despite the many positive changes in the draft of the rules, there are some remaining areas of concern, which we have raised in previous comments and in RAC meetings:

- High filing fees and uncapped legal/outside advisor costs
- There remains a general concern about how the Authority intends to enforce the program if standards being developed through rulemaking are not clear at the outset of the program. Using language such as making referrals to the Department of Justice (see OAR 409-070-0030(2)) or building in language about filing false or misleading information (see OAR 409-070-0080(3)) sets a tone at the outset that this is potentially a civil and criminal sanctioning program rather than a health care community standard building program
- Providers need clarity on the added conditions OHA may impose under 0065(1) apart from those referenced in Section 2(18) of the statute

Additional concerns/comments by section:

*OAR 409-070-0010. MATERIAL CHANGE TRANSACTIONS: Covered Transactions*

In general, we appreciate that this section has been narrowed from original drafts. Providers also appreciate forthcoming guidance documents related to measuring the potential reduction of essential services, but do want to note that the items listed in (3) are difficult or impossible for independent providers to measure. Additionally, there should be a clear threshold or clear flexibilities allowed for the different considerations. As one RAC member pointed out, if a clinic moves down the block, it may result in a slightly longer commute to some patients—even if the new location has the capacity for additional providers.

*OAR 409-070-0020. MATERIAL CHANGE TRANSACTIONS: Excluded Transactions*

As stated in previous comments, we greatly appreciate the changes to this section, particularly the removal of the requirement to apply for all exclusions and the addition of (3).

*OAR 409-070-0022. MATERIAL CHANGE TRANSACTIONS: Emergency Transactions*

As outlined in previous letters, we believe that these emergency exemptions should only be used in a true emergency, and as such, we feel that the information requested by the authority is too onerous, and that the potential for hearings and/or a public comment period is inappropriate and will dissolve public confidence unnecessarily (Section 4).

*OAR 409-070-0030. MATERIAL CHANGE TRANSACTIONS: Requirement to File a Notice of Material Change Transaction*

We appreciate that the proposed structure is a sliding scale, but maintain that the sliding scale should apply not just to the size of the entity, but also to the size of the transaction. We request this structure will be considered for the 2023-25 biennium.

Providers appreciate that fees can be returned to applicants who choose not to move forward, and that the Authority added language regarding estimations and detailed invoices in other portions of the rule.

*OAR 409-070-0042. MATERIAL CHANGE TRANSACTIONS: Optional Application for Determination of Covered Transaction*

Providers greatly appreciate the addition and edits to this section of the rule.

*OAR 409-070-0045. MATERIAL CHANGE TRANSACTIONS: Form and Contents of Notice Material Change Transactions*

Providers appreciate the opportunity for a pre-filing conference.

*OAR 409-070-0050. MATERIAL CHANGE TRANSACTIONS: Retention of Outside Advisors*

We appreciate the addition of a detailed invoice, the conflict of interest language (1a), and the notice prior to costs being incurred (4). However, the addition the Department of Justice to the requirements remains concerning. As well, approval of the transaction should not be hinged on reimbursement. And, entities should be made aware of the estimated potential costs when noticed that the Authority intends to use outside advisors, as this information may inform their decision to withdraw or move forward.

*OAR 409-070-0055. MATERIAL CHANGE TRANSACTIONS: Preliminary 30-Day Review of a Notice of Material Change Transaction*

As outlined in our first letter, we maintain that the findings of the preliminary 30-day review should be disputable. Additionally, as stated in previous letters and RAC meetings, providers maintain that if the Authority is unable to meet the 30-day deadline outlined in statute and this rule, the transaction should be automatically approved (4). This is especially concerning to smaller clinics and practices who have less of an ability to pay for extensive consultant fees that may come with a comprehensive review. This requested change is consistent with existing Oregon statute in other areas, including ORS 723.022 (3).

*OAR 409-070-0060. MATERIAL CHANGE TRANSACTIONS: Comprehensive Review of a Notice of Material Change Transaction*

If a transaction is going to be subject to the comprehensive review, there needs to be clear, fair and transparent standards included in the rule as to when the review boards will be engaged, and the membership makeup of the boards. Our members look forward to further discussing these parameters at upcoming TAG meetings.

*OAR 409-070-0065. MATERIAL CHANGE TRANSACTIONS: Conditional Approval; Suspension of Proposed Material Change Transaction*

Further clarity is needed on the added conditions the Authority may impose under 0065(1) apart from those referenced in Section 2(18) of the statute.

*(1)OAR 409-070-0080. MATERIAL CHANGE TRANSACTIONS: Compliance with Conditions; Information Requests*

There remains a general concern about how the Authority intends to enforce the program if standards being developed through rulemaking are not clear at the outset of the program. Using language such as making referrals to the Department of Justice (see OAR 409-070-0030(2)) or building in language about filing false or misleading information (see OAR 409-070-0080(3)) sets a tone at the outset that this is potentially a civil and criminal sanctioning program rather than a health care community standard-building program.

Thank you for consideration of the above comments. The groups signatory to this letter look forward to participating in the additional TAG meetings.

Sabrina Riggs	<a href="mailto:sabrina@daltonadvocacy.com">sabrina@daltonadvocacy.com</a>
Courtnei Dresser	<a href="mailto:courtnei@theoma.org">courtnei@theoma.org</a>
Jen Lewis-Goff	<a href="mailto:jlewis-goff@oregondental.org">jlewis-goff@oregondental.org</a>
Kristine Phillips Evertz	<a href="mailto:kristinepe@summitstrategies.us">kristinepe@summitstrategies.us</a>
Dan Cushing	<a href="mailto:cushing@pwlobby.com">cushing@pwlobby.com</a>
Doug Riggs	<a href="mailto:doug@ngrc.com">doug@ngrc.com</a>