

Criteria for Community Review Boards

The Health Care Market Oversight program was created to ensure 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 (OHA) will monitor changes to the health care market by reviewing proposed material change transactions. As defined in ORS 415.500 et seq., Community Review Boards provide recommendations and input to OHA about proposed material change transactions and include members of affected communities, consumer advocates, and health care experts.

Community Review Boards represent a key strategy to support the goals of the Health Care Market Oversight (HCMO) program, particularly goals 2 and 3 listed below, per OAR 409-070-0000:

1. Improve health, increasing the quality, reliability, availability, and continuity of care and reducing the cost of care for people living in Oregon.
2. Achieve health equity and equitable access to care.
3. Implement a process that is transparent, robust and informed by the public, including the local community, through meaningful engagement.
4. Use resources wisely and in collaboration with the Department of Justice when applicable.

This document provides further clarification and criteria for when OHA may convene a Community Review Board.

Role of Community Review Board

A key role of the Community Review Board is to provide recommendations about whether OHA should approve, approve with conditions, or reject proposed transactions and recommend conditions that may be necessary to ensure that approved transactions advance health equity. Community Review Boards also provide information about potential effects of a transaction, including how the transaction could impact health equity, access to care, outcomes for specific populations, cost, and quality of care.

Type of Transaction

OHA may convene a community review board for any transactions that receive a comprehensive review. OHA will not convene community review boards for emergency reviews or transactions that are subject only to a preliminary review. OHA will notify entities as soon as possible after determining that a Community Review Board is warranted.

Criteria for Convening a Community Review Board

ORS 415.500 et seq. states that, in determining whether to convene a community review board, the Oregon Health Authority shall consider the potential impacts of the proposed transaction, including, but not limited to, any of the following:

- A. The potential loss or change in access to essential services.
- B. The potential to impact a large number of residents in this state.
- C. A significant change in the market share of an entity involved in the transaction.

A. Potential loss or change in access to essential services

ORS 415.500 et seq. defines “essential services” as services that are funded on the prioritized list described in ORS 414.690¹ and services that are essential to achieve health equity. OHA has identified the following services as essential to achieving health equity²:

- Any service directly related to the treatment of a chronic condition
- Pregnancy-related services
- Prevention services, including non-clinical services
- Health care system navigation and care coordination services

OHA may convene a Community Review Board for transactions that receive comprehensive review if analyses reveal that there may be any changes to essential services.

B. Potential to impact a large number of residents in this state

OHA will consider a proposed transaction to impact a “large number of residents” if the transaction will impact a market that includes 50,000 or more residents.

C. Significant change in the market share of an entity involved in the transaction

Market share refers to the proportion of total products and services provided by a particular health care entity. For example, an entity that provides more services to more consumers and generates more revenue in a region would have a greater market share.

Horizontal transactions occur when two entities that provide similar products or services join (e.g., one hospital acquires another or physician practices merge to form a larger group practice). For horizontal transactions, OHA defines a “significant change” in market share based on the standards for evaluating market concentration outlined in the US Department of Justice and Federal Trade Commission Horizontal Merger guidelines.³ These guidelines use the post-merger level of market concentration and the change in concentration resulting from a merger, both measured using the Herfindahl-Hirschman Index (HHI), as an initial screen for potential anticompetitive effects. An increase in HHI of 100 points or more, resulting in a post-merger HHI of 1,500 or greater (i.e., a moderately or highly concentrated market) generally prompts further analysis by the agencies of the merger’s competitive effects. For the purpose of determining whether to convene a Community Review Board, OHA will consider a change in market share to be “significant” if the HHI resulting from the transaction is 1,500 or greater *and* the increase in HHI is greater than 100 points. The following changes would qualify as a significant change:

Post-transaction HHI	Post-transaction Market Classification	Significant change threshold
1500 to 2500	Moderately Concentrated Markets	HHI increase of more than 100 points
Above 2500	Highly Concentrated Markets	HHI increase of more than 100 points

Please refer to the [Health Care Market Oversight Analytic Framework](#) for more information about how market share is defined and how market concentration is calculated.

¹ <https://www.oregon.gov/oha/HPA/DSI-HERC/PrioritizedList/1-1-2022%20Prioritized%20List%20of%20Health%20Services.pdf>

² Service essential to achieve health equity may be refined by a Technical Advisory Group that will convene in January 2022.

³ U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines:

<https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf>

Additional considerations

In addition to the items listed above, OHA may convene a Community Review Board if any of the following are present:

- The transaction involves a Medically Underserved Area, as designated by the federal Health Resources and Services Administration (HRSA).⁴ A region may be designated as a Medically Underserved Area if it has a shortage of primary care providers.
- The transaction involves a Health Professional Shortage Area, as designated by HRSA. A region, facility, or population group may be designated as a Health Professional Shortage Area if it has a shortage of primary care, mental health, or dental health providers.⁵
- The transaction may adversely affect the health services of priority and underserved populations and communities.
- OHA lacks necessary data or information about affected populations and would benefit from engaging members of the community. This may include information about how the proposed transaction could impact health equity or access.
- Members of the affected community express a need to convene a Community Review Board and OHA agrees that a community review board is warranted.

Process for Engaging Community Review Boards

When a Community Review Board is deemed appropriate, OHA will publicly post and disseminate information about the board, including, but not limited to time and location of scheduled meetings, member application materials and process steps, and a summary of the proposed transaction. Individuals interested in participating in a Community Review Board will complete an application and declare any conflicts of interest. The application will include questions about an individual's experience and background, demographic characteristics, and interest in joining the Community Review Board.

Applicants will be selected for a Community Review Board based on these criteria:

- OHA will recruit members from geographic areas and communities that may be affected by the proposed transaction, including consumers who have been affected by previous transactions, consumers of services provided by entities, health care providers affected by previous transactions, health care providers who have contracts with entities, and/or health care providers who provide services similar to those provided by entities.
- No more than one-third of the members may be representatives of institutional health care providers, including hospitals, health systems, or medical groups.
- Individuals who are employed by an entity party to a transaction or a similar-sized competitor may not participate in the community review board.
- OHA will support the recruitment of diverse Community Review Board members, seeking to include individuals with different lived experiences and self-reported identities.⁶ Community Review Board members should proportionally reflect the diversity of the overall affected population.

⁴ HRSA Medically Underserved Area finder: <https://data.hrsa.gov/tools/shortage-area/mua-find>

⁵ HRSA Health Professional Shortage Areas: <https://bh.w.hrsa.gov/workforce-shortage-areas/shortage-designation>

⁶ Lived experience refers one's life experience based on self-reported identity, such as race, ethnicity, language, disability, age, sex, gender identity, sexual orientation, social class, and intersections among these identities, or other socially determined circumstances that may impact health equity and an individual's ability to reach their full health potential and well-being.

Statutory and Rule Guidance

ORS 415.500 et seq.

Section 2 (8)

The authority shall prescribe by rule:

- (a) Criteria to exempt an entity from the requirements of subsection (4) of this section if there is an emergency situation that threatens immediate care services and the transaction is urgently needed to protect the interest of consumers;
- (b) Provision for the authority's failure to complete a review under subsection (5) of this section within 30 days; and
- (c) Criteria for when to conduct a comprehensive review and appoint a review board under subsection (7) of this section that must include, but is not limited to:
 - (A) The potential loss or change in access to essential services;
 - (B) The potential to impact a large number of residents in this state; or
 - (C) A significant change in the market share of an entity involved in the transaction.

Section 2 (11)

A review board convened by the authority under subsection (7) of this section must consist of members of the affected community, consumer advocates and health care experts. No more than one-third of the members of the review board may be representatives of institutional health care providers. The authority may not appoint to a review board an individual who is employed by an entity that is a party to the transaction that is under review or is employed by a competitor that is of a similar size to an entity that is a party to the transaction.

A member of a review board shall file a notice of conflict of interest and the notice shall be made public.

Section 2 (15)

A review board may hold up to two public hearings to seek public input and otherwise engage the public before making a determination on the proposed transaction. A public hearing must be held in the service area or areas of the health care entities that are parties to the material change transaction. At least 10 days prior to the public hearing, the authority shall post to the authority's website information about the public hearing and materials related to the material change transaction, including: (a) A summary of the proposed transaction; (b) An explanation of the groups or individuals likely to be impacted by the transaction; (c) Information about services currently provided by the health care entity, commitments by the health care entity to continue such services and any services that will be reduced or eliminated; (d) Details about the hearings and how to submit comments, in a format that is easy to find and easy to read; and (e) Information about potential or perceived conflicts of interest among executives and members of the board of directors of health care entities that are parties to the transaction.

Section 2 (16)

(16) The authority shall post the information described in subsection (15)(a) to (d) of this section to the authority's website in the languages spoken in the area affected by the material change transaction and in a culturally sensitive manner.

Section 2 (17)

The authority shall provide the information described in subsection (15)(a) to (d) of this section to:

- (a) At least one newspaper of general circulation in the area affected by the material change transaction;
- (b) Health facilities in the area affected by the material change transaction for posting by the health facilities; and
- (c) Local officials in the area affected by the material change transaction.

Section 2 (18)

A review board shall make recommendations to the authority to approve the material change transaction, disapprove the material change transaction or approve the material change transaction subject to conditions, based on subsection (9) of this section and the criteria adopted by rule under subsection (2) of this section. The authority shall issue a proposed order and allow the parties and the public a reasonable opportunity to make written Enrolled House Bill 2362 (HB 2362-B) Page 5 exceptions to the proposed order. The authority shall consider the parties' and the public's written exceptions and issue a final order setting forth the authority's findings and rationale for adopting or modifying the recommendations of the review board. If the authority modifies the recommendations of the review board, the authority shall explain the modifications in the final order and the reasons for the modifications. A party to the material change transaction may contest the final order as provided in ORS chapter 183.

Administrative Rules

OAR 409-070-0060. Comprehensive Review of a Notice of Material Change Transaction

(2) Pursuant to Section 2(11) of the 2021 Act, a comprehensive review may include the appointment by the Authority of a community review board to participate in the conduct of the comprehensive review and the making of recommendations to the Authority on the approval or disapproval of the transaction, or the approval of the transaction as modified or subject to conditions. The Authority, at its discretion, may convene a community review board to advise the Authority on the impact of the transaction to the community. In determining whether to convene a community review board, the Authority shall consider the potential impacts of the proposed transaction, including, but not limited to:

- (a) The potential loss or change in access to essential services.
- (b) The potential to impact a large number of residents in this state.
- (c) A significant change in the market share of an entity involved in the transaction.

(3) A community review board convened by the Authority under paragraph (2) of this rule shall consist of members of the affected community with emphasis on persons who are representative of populations that experience health disparities, consumer advocates and health care experts. Not more than one-third of the members of the community review board may be representatives of corporate providers. The Authority may not appoint to a community review board an individual who is employed by an entity that is a party to the transaction that is under review or is employed by a competitor that is of a similar size to an entity that is a party to the transaction. As part of the community review board appointment process, the Authority will notify coordinated care organization community advisory councils, as defined in ORS 414.575, representing the affected community.

(4) Members of a community review board shall be considered public officials subject to the conflict-of-interest requirements in ORS chapter 244. If a member of the community review board possesses a potential conflict of interest, as defined in ORS 244.020, the member shall file a notice of conflict of interest, which shall be made public, and the Authority shall determine whether the member has an actual conflict of interest, as defined in ORS 244.020. If the Authority determines that a member of the community review board has an actual conflict of interest, as defined in ORS 244.020, it shall appoint a replacement member to the community review board.

(5) Hearings and proceedings before a community review board shall be conducted pursuant to subsections (15) through (17) of section 2 of the 2021 Act.

(6) A community review board shall make written recommendations to the Authority on a proposed transaction based on the criteria listed in paragraphs (2) and (8) of this rule.

OHA Health Equity Definition

Oregon will have established a health system that creates health equity when all people 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 other socially determined circumstances. Achieving health equity requires the ongoing collaboration of all regions and sectors of the state, including tribal governments to address:

- The equitable distribution or redistribution of resources and power; and
- Recognizing, reconciling, and rectifying historical and contemporary injustices.

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HEALTH POLICY AND ANALYTICS
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