

Use of Outside Advisors for Material Change Transaction Review

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. This document describes how and when OHA will use outside advisors to support transaction reviews and determine potential impacts on markets and communities.

Criteria for Using Outside Advisors

When OHA receives a notice of a proposed transaction, a preliminary review must be completed within 30 days.¹ If the proposed transaction does not meet the criteria for approval within the preliminary review time period, OHA will complete a comprehensive review within 180 days of filing.² OHA may engage outside advisors for material change transactions that receive a comprehensive review. OHA will not engage outside advisors to support preliminary or emergency reviews. The table below describes criteria for OHA to engage outside advisors to support material change transaction reviews.

Why OHA may engage outside advisors	Example scenarios
An independent third-party is needed to ensure transparency, equity, and/or credibility	A party to a transaction requests involvement of an outside advisor. A proposed transaction is unusually complex.
OHA staff lack the specialized capabilities, experience, or expertise to conduct the review	The review will require using specific analytic methodologies for which OHA staff do not have expertise (e.g., specific accounting methods).
OHA does not have the resources or capacity to perform aspects of a review process	OHA receives multiple concurrent notices that require comprehensive review and requires outside advisors to ensure that OHA can complete the reviews in 180 days.
There are relevant conflicts of interest that limit OHA's ability to ensure independent or unbiased findings	One or more entities is in a partnership or relationship with OHA that could impact or be impacted by the review. One or more entities is involved in legal action with OHA that could impact or be impacted by the review. Staff conflict of interest (e.g., a member of the Health Care Market Oversight team is related to an employee of a transaction entity). See DHS/ OHA Conflict of Interest policy for more information.

¹ See OAR 409-070-0055 for more information regarding preliminary reviews

² See OAR 409-070-0060 for more information regarding comprehensive reviews

Service Categories

OHA will engage outside advisors who are qualified and have expertise in evaluating material change transactions and analyzing health care costs, quality, access, equity, and markets. This may include:

- Legal counsel
- Actuarial services and analysis
- Economic analysis and modeling
- Financial and valuation analysis
- Social equity analysis
- Health impact analysis
- Accounting services

The Oregon Department of Justice (DOJ) is not considered an outside advisor. “Legal counsel” in the list of service categories above refers to Special Assistant Attorneys General, i.e. lawyers or law firms retained by DOJ to advise state agencies.

Contracting Process

OHA will retain a pool of outside advisors that have been selected through competitive procurement when possible. If necessary, OHA may retain outside advisors for a proposed transaction review by procedures other than competitive procurement. For example, OHA may retain outside advisors without a competitive procurement if a review requires technical expertise beyond the capabilities of OHA’s regular outside advisors or if conflicts of interest disqualify OHA’s regular outside advisors, among other reasons.

Each outside advisor will have an executed contract that details compensation, e.g., hourly rates, and service categories. OHA will publicly post a list of potential outside advisors. OHA may also engage with outside advisors contracted by DOJ, the Oregon Department of Administrative Services, or the Oregon Department of Consumer and Business Services.

OHA will ensure that outside advisors are not subject to any conflicts of interest and will execute any necessary agreements to protect the confidentiality and privacy of information disclosed by entities during material transaction reviews. To avoid conflicts of interest and delays to transaction review, parties to a transaction should not engage any of OHA’s publicly announced outside advisors in connection with a material change transaction if the party has not previously engaged the advisor. Parties should not consult or contract with OHA’s publicly announced outside advisors for technical or other assistance with a material change transaction.

Statutory and Rule Guidance

ORS 415.500 et seq. (14) The authority or the Department of Justice may retain actuaries, accountants or other professionals independent of the authority who are qualified and have expertise in the type of material change transaction under review as necessary to assist the authority in conducting the analysis of a proposed material change transaction.

Administrative Rules

OAR citations reflect proposed rule language. Upon filing of final rules for the Health Care Market Oversight program, this document will be updated to capture any changes to the proposed language.

OAR 409-070-0050. Retention of Outside Advisors

(1) Pursuant to Section 2(14) of the 2021 Act, the Authority or the Department of Justice may retain at the expense of the parties to a material change transaction any actuaries, accountants, consultants, legal counsel and other advisors not otherwise a part of the Authority's staff as the Authority may reasonably need to assist the Authority in reviewing the proposed material change transaction. The retention of such advisors shall not be subject to any otherwise applicable procurement process, provided that the Authority or the Department of Justice, as applicable, shall make a determination that such advisors have the requisite qualifications and expertise to review the proposed transaction. The Authority or the Department of Justice, as applicable, shall require that the retained advisors certify in writing that:

- (a) They are not subject to any conflict of interest associated with reviewing a given transaction, and
- (b) They will protect any confidential information disclosed to them in the course of their review of the transaction. Material that is privileged or confidential and therefore exempt or determined by the Authority to be exempt from public disclosure under Section 2(13)(b) of the 2021 Act may be shared with the retained advisors, and such disclosure shall not constitute a waiver of the privileged or confidential status of the material.

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