

Public Comments

018 Optum & The Corvallis Clinic Request for Emergency Exemption

This document includes written public comments related to the review of transaction 018 Optum & The Corvallis Clinic by Oregon Health Authority (OHA) under the [Health Care Market Oversight](#) program. OHA received written public comment via email to hcmo.info@oha.oregon.gov. Comments are presented below in the order received and may include typos or misspellings. Personal contact information for individuals has been removed.

OHA expresses no views on the substance of these comments, and their publication does not constitute an endorsement by OHA of the views expressed.

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Public Comments

1. Subject: Re:Emergency exemption request optum/corvallis clinic merger

Received 3/10/24

Please forward this question to the appropriate entity:

If an exemption is granted to this merger, will the OHA continue to monitor the services and interactions the merged clinic has with its patients? Will the Clinic continue to accept other medical insurance and Medicare that is not under the United Health umbrella?

I am troubled that there is this emergency request for an exemption. Is there no provision that can provide other funding sources to the Corvallis Clinic to remain solvent until the appropriate analysis by OHA can be finished? This appears to be a 'loophole' that can be taken advantage of by outside large corporations in taking over Oregon physician groups.

Thank you for considering my questions about this matter.

Sincerely,

Barbara Markello

2. Subject: Urgent: Corvallis Clinic

Received 3/10/24

The Corvallis Clinic Merger Proposal

A Case Against the Merger and the Emergency Exemption

The Clinic (TCC) has been struggling financially for a long time. TCC took a financial hit in 2020 after Oregon adopted the [gross receipts tax](#). The tax hurt TCC and many other businesses that have many transactions and receipts, but thin margins. TCC had to pay that tax on all transactions, including those from Medicaid and Medicare which TCC says were already too low to cover their costs. One of the surgeons in the clinic told me that TCC was just recovering from the tax crisis when the pandemic hit. That sharply diminished their income because they could not perform income-generating procedures.

TCC approached **Samaritan and Kaiser**, which we have heard would have been willing to help with daily operations of the clinic, but not take on the debt that the clinic held. One step TCC took over a year ago was asking patients to **switch from Traditional Medicare (TM) to Medicare Advantage (MA)**, hoping to boost their income. It was a poorly executed maneuver that frightened the many patients who preferred TM.

On November 26, 2022, four of us (two doctors, a retired hospital insurance consultant, and a business consultant) **sat down with TCC CEO, Board Chair, and CFO**. We were impressed with the despair we could see in their eyes and hear in their voices. We offered to help in any way we could. Several of us followed up with emails and phone calls **without response from the TCC leaders** we spoke with.

In early 2023, TCC approached Optum. Optum and TCC then approached the OHA's Health Care Market Oversight (HCMO) program in early December seeking approval of a merger. You can see the process in the [attached slides](#). **Public testimony was overwhelmingly negative on the proposal**. [Click here to view the first 299](#). Click here to [view the last 66](#). As of March 4, HCMO had received 365 comments, of which **307 were against the merger**. Most of the testimony warned of the **bad reputation of UHG/Optum** and likely increased costs and impaired health care. Of the 58 comments that favored the merger, 18 came in after February 25. Fourteen appeared to be form letters.

On Friday, March 8, Optum invoked the emergency exception clause (see slide 10), which would allow OHA to approve the merger without conditions. [Here is the application for emergency exemption](#).

1. **Optum's answer to Question 7** begs elaboration (the question is vague).

***Question:** Has any entity involved in the material change transaction engaged with consumers about the proposed transaction and received input from consumers?*

Answer: Yes No (If yes, describe). "Prior to this application for emergency exemption, the proposed transaction has elicited substantial public attention and input." **An accurate answer would have been, "Yes and the substantial public attention and input was overwhelmingly opposed to the merger."**

2. **The HCMO statute suggests more detail should be provided** than has been provided. The public should have access to the financial information that justifies an

emergency exemption and a chance to comment. There needs to be a justification for any confidentiality. Refer to: [409-070-0022 Emergency and Exempt Transactions](#).

We have the grounds to protest that:

1. The Optum answer to question 7 was misleading and inadequate.
2. The public deserves to know the details of this claim including any expected payments to shareholders. The public interest outweighs the interest in confidentiality (see paragraph above).

Optum has repeatedly refused to let the public see the financials of TCC, claiming the information would “harm shareholder value.”

Click [here](#) for testimony that John Santa sent in late afternoon on Friday, March 8, after we learned of the emergency exception maneuver. Part of the justification that Optum is using to invoke the emergency exception is the major breach of medical information, that occurred two weeks ago involving United Health Group, affecting over 100,000 Americans. Ironically that breach has affected cash flow into clinics, such as TCC and aids the Optum argument that there would be dire consequences if the merger were denied. In truth, the breach should trigger a moratorium on any agreement with UHG.

Sincerely,

Mike Huntington M.D.

Bruce Thomson M.D.

Corvallis, OR

3. Subject: 018 Optum Oregon-The Corvallis Clinic Emergency Exemption Request Testimony

Received 3/10/24

To: Oregon Health Care Market Oversight Staff

Please find my attached testimony/commentary that demonstrates there is no justification for any urgent granting of an emergency exemption of the Optum-The Corvallis Clinic proposal. And perhaps, you will find that there is no justification for such an exemption at all should you proceed with a complete evaluation including a needed public comment period.

Take Care,

Tom Sincic, MSN, Family Nurse Practitioner-Retired

To: Oregon Health Care Market Oversight Program

3/11/2024

RE: 018 Optum Oregon-The Corvallis Clinic Emergency Exemption Request

Now that there is a request from Optum and The Corvallis Clinic for an “emergency exemption” to the other processes to be followed prior to approval of the acquisition, it is clear that based on the elements required under the “emergency and exempt transaction” portion of the statute that those elements have not been met. The community and general public must know that they can continue to trust the HCMO team and OHA as it does its diligence in addressing this acquisition according to its purposes (health equity, lower consumer costs, increased access, and better care) and the statute as written. I submit my insights into the many needed considerations.

I will start with reference to the following with my comments in red:

(1) Pursuant to ORS 415.501(8)(a), the Authority, for good cause shown may exempt an otherwise covered transaction from review if the Authority finds that:

- **Has there really been a good cause shown or only stated? Perhaps they have provided a reason but is the reason a good cause as required in (a) and (b).**

(a) There is an emergency situation, including but not limited to a public health emergency, which immediately threatens health care services; and

- **There has been no declared “public health emergency” or any known emergency. What entity has declared an emergency? Unless of course emergency is based on the nonpayment of claims by United Healthcare (<https://prospect.org/health/2024-03-10-unitedhealth-exploits-emergency-change-ransomware-oregon/>) of which Optum is a part. Who has the right to declare an emergency? United Healthcare is responsible for paying claims and certainly cannot justify an emergency of its own making that would enhance its opportunity to make the purchase. (“And’ is an operative word here).**

(b) The transaction is urgently needed to protect the interest of consumers and to preserve the solvency of an entity other than a domestic health insurer.

- **(Again the operative word is “and”). Who are the defined consumers in this case? Are they anyone who has used or might use the clinic services in the future? The interests of consumers would surely be at a minimum “health equity, lower consumer costs, increased access, and better care” and possibly more. The only way to know that is through complete transparency and hearing from the “consumers” as called for in (3) and (4) below. “Solvency” can only be known through sharing of all financials including information about who are the creditors. It is possible the interested parties are also the creditors.**

Next I will reference the following with my comments in red:

(3) An applicant for emergency exemption under paragraph (1) of this rule shall provide the Authority, and an applicant for emergency exemption under paragraph (2) of this rule shall provide the Department, with the following:

(a) A detailed explanation of the grounds for the application, including a complete statement of the facts, circumstances and conditions which justify emergency exemption and the conditions necessitating immediate relief;

- There is no evidence that a complete statement of the facts, circumstances and conditions which justify emergency exemption and the conditions necessitating immediate relief have been provided.

(b) A detailed explanation of all the terms, conditions and agreements that comprise the transaction and the manner in which such terms, conditions and agreements will respond to the conditions necessitating expedited consideration of the exemption application;

- There is no evidence that detailed explanation of all the terms, conditions and agreements that comprise the transaction and the manner in which such terms, conditions and agreements will respond to the conditions necessitating expedited consideration of the exemption application have been provided.

(c) A detailed explanation of the reasons why the transaction is in the public interest and in the interest of those consumers and markets that are or will be served by the parties following closing of the transaction;

- There is no evidence that a detailed explanation of the reasons why the transaction is in the public interest and in the interest of those consumers and markets that are or will be served by the parties following closing of the transaction have been provided. This necessitates transparency and involvement to determine the “public interest”.

(e) Such additional information, documents and analysis as the Authority or the Department, as applicable, may require in order to evaluate the application and the asserted grounds for emergency exemption;

- This implies no redacting of information given the Authority.

Next, I reference the following with my comments in red:

(4) The Authority with respect to an application filed under paragraph (1) of this rule, and the Department with respect to an application filed under paragraph (2) of the rule, shall:

- The operative word is “shall”

(a) Provide a period for the filing of comments in respect of the application (this is a shall) unless the Authority or the Department, as applicable, determines that:

(A) The public interest in providing comments is outweighed by the interest in confidentiality of the applicant for emergency exemption;

- How can the public interest possibly be outweighed by the financial interests of the parties involved? or

(B) the nature of the emergency situation presented and the urgency of the need for emergency exemption will not allow time for the filing and consideration of comments.

- This would require absolute transparency of all transaction elements.

(b) Provide the applicant with ten calendar days' advance notice prior to posting the application for public comment.

- This represents 10 days plus the public comment period plus the post comment determination.

(5) The Department shall promptly provide an application filed under paragraph (2) of this rule to the Authority, and such an application shall be deemed to include an express consent to the sharing between the Authority and the Department of such application and all material in connection therewith.

- **This clearly states “all materials” to the Authority (no redactions) and would need to be available to the public in order for the public to provide meaningful public comment.**

Sincerely,

Tom Sincic MSN, FNP-Retired

Portland, OR

4. Subject: Corvallis Clinic/Optum Merger Comment

Received 3/10/24

Greetings,

I wish to submit comment regarding The Corvallis Clinic/Optum merger as it stands to greatly impact the community I serve. I concur with the testimony previously submitted by John Santa on March 7, 2024. I will share an excerpt from that testimony:

Some suggestions:

1. It will be important that OHA release a summary of the Corvallis Clinic financial situation that demonstrates to the community the justification for discounting the significant opposition.
2. There is skepticism that many of the conditions will be enforced sufficiently to make a difference. Penalties are not identified. Timing is unclear. UnitedHealth is in court in multiple states for multiple problems as is.
3. There is conflicting/confusing language about no compete clauses. It appears that no compete clauses that were already in place under Corvallis Clinic will remain. Existing clinicians should be given a 6-12 month waiver of their no compete that requires 90 day notice to the Clinic and 60 day notice to patients. Item 17 in the order is confusing. It also mentions no competes but appears to only apply to “existing” shareholders.
4. Condition 5 seems to intend to prohibit intentional efforts to change the Clinic payer mix but the terms used such as “serves” and “discriminates” seems vague. Corvallis Clinic is believed to have been trying to change payer mix for the last 1-2 years. This is especially true for Medicare. The current payer mix may already be “discriminatory.”
5. Under fiscal conditions it seems there should be a prohibition on mandated changes in referral mix or patterns especially involving other Optum/United organizations such as home health, hospice. It seems there should be an effort that retains referral patterns if that is a patient preference and/or more convenient.
6. Requiring the Monitor be held to a confidentiality agreement seems counter to their position and could undermine their credibility. The most likely source of actionable information will come from clinicians who will expect the Monitor to inform as needed parties who can take action.
7. There is no prohibition on Gag Clauses and there should be especially for non shareholders.
8. Enabling Optum to end the Patient and Family Advisory Council at 5 years seems arbitrary. Why not let the Council itself decide if it is worth continuing? I have worked with PFACs all over the country for five years. They all work if you do them right and there are 3 national organizations who can show any organization how to do them right. Have someone who knows about PFACs review this before final decision making.

There are three areas that are not addressed that should be considered:

1. OHA should commit to an analysis of existing Optum clinics in Portland and Eugene. These clinics have had time to be converted to Optum systems. We are under the impression that many providers have left these clinics. In some cases, sites have closed. Other quality indicators could have declined. Anticipating that there will be future attempts to acquire Oregon groups by Optum we urge an ongoing analysis be started of all Optum clinics in Oregon. This can and likely should be done using data that can be collected independent of Optum.
2. Many remain concerned about the impact of the Blackcat ransomware attack. We don't think the attack is a reason to deny the application, but we do think the decision should be delayed until United can publicly commit to a date when resolution of all the problems will be achieved. Today's Washington Post warns this is now a nationwide problem. The American Hospital Association suggests this may be the largest health care information breach in history. If financial losses at Corvallis Clinic are truly as precarious as stated Optum should prioritize the Clinic and resolve any connections or breach issues first.
3. Many are concerned that a substantial part of the transaction resources may go to a small subset of Corvallis Clinic and Optum executives and providers. The public should know this given the health equity issues this will create. Why would the managers of a business about to collapse be rewarded? If such stock purchase is planned it should be disclosed to the public, it should occur only after sufficient time has passed and data has established that the Clinic has returned to stable operations. It should only occur if those individual providers remain at the Clinic at the same level of commitment and only in proportion to the Clinic's ability to pay them. Keeping the community in mind, an equal amount should be donated to the Clinic Foundation for use by the Community to reverse social determinants. OHA has an ambitious goal to reach health by 2030. As the definition used by OHA stresses, health equity is all about the transfer of power and resources. Let's not further slow progress by going the wrong way on this transfer of power and resources.

Respectfully,

Nancy V. Wyse

Commissioner, Benton County

5. Subject: CC / Optum Emergency Application

Received 3/11/24

Argument in Opposition to the Request for Exemption

You may know of me through my work on the Joint Task Force on Universal Health Care, or because of my current efforts as a civically minded individual to expedite the formation of a local health district which could financially stabilize The Corvallis Clinic, retaining its local ownership.

The decision of the applicants to step away from negotiation of conditions for approval, and to replace it with a Request for Exemption from the approval process presents a quandary for HCOMO which can only be resolved rationally by finding a foothold in the law upon which to base a response. I offer the wording of the Request for Emergency Exemption form itself as a means to argue the footholds.

“Under OAR 409-070-0022, Oregon Health Authority (OHA) may exempt an otherwise covered transaction from review if there is an

emergency situation that immediately threatens health care services, and the proposed transaction is urgently needed **to protect the interest of consumers** and **to preserve the solvency of an entity.**”

I have highlighted two operative phrases which will now be addressed individually.

Although written in ironically dispassionate terms compared to the true weight of continuing to provide life sustaining care to “consumers,” the state interest in patient care is beyond dispute. But on what measure is patient (and state) interest be evaluated? What constitutes a bona fide justification for exercising state intervention to protect an interest in one case or to protect against intervention in another?

- a) The current application for exemption states in part: “...[T]he Clinic has determined that a prompt closing of the proposed transaction is the only viable path to ... maintaining local access to primary and specialty medical care and services within the service area of The Corvallis Clinic.” But this sentence is absent a necessary discussion of ‘compared to what?’ The Clinic oriented view as expressed in the application assumes that if The Corvallis Clinic becomes insolvent, all patients are completely without care, that none of its providers would practice medicine ever again and that none of its patients would seek care otherwise available in the service area.
- b) Samaritan Health which operates in the same service area as The Clinic, has shared information locally that it is prepared to quickly absorb the providers and patients of The Clinic should The Clinic cease operations. In fact it is difficult to imagine Samaritan not doing so given its historical commitment to the communities in which it operates.

Looking at the probabilities that Samaritan Health could absorb the providers and patients of The Clinic, or alternatively, that creditors of The Clinic would cooperate to keep The Clinic operating long enough for other alternatives such as the formation of a local health district, the full doom of the application should be regarded as significantly overstated, though not totally unworthy of consideration. What constitutes “interest of consumers?” Does a change of location of several blocks invoke state interests? Does a delay of several weeks for non-urgent care invoke state interests? No matter what happens to The Clinic as an entity, medical necessity and medical opportunity will soon erase temporary disruption. How does the state weigh temporary interests of inconvenience to some patients against its duty to evaluate the permanent interests of the full community?

Moving on the second phrase from the application form, OHA has some level of ability to exempt the proposed transaction from review “to preserve the solvency of an entity.” Does the wording require that the state have an interest in preserving the existence of an entity, separate and different from its interest in preserving patient care? What would that legitimate interest be? Should all ownership entities be absolutely protected regardless of the positive or negative consequences? As long as patient interest

is adequately preserved through other means, is it really the intent of the statute that the preservation of the ability of the current owners to receive a small compensation for their distressed entity-ownership is so important that it completely negates the statutory interest of the community to be involved in evaluating the long term effects of the transaction? This is a hard question. And if the applicants have wrongly judged the time frame of their exigency such that there is less time than they thought for deliberation, does that misjudgment fall to their benefit without contest, or against their case and in favor of maintaining the statutory rights of investigative evaluation?

HCMO will address these questions explicitly or implicitly in their response to the request for exemption and no one should envy their responsibility to do so. In concluding this argument against the request for exception, whatever happens this week should be about multi-decade interest in patient care and not distracted by the moment to moment fears that come and go. The idea that HCMO has some statutory responsibility to preserve The Corvallis Clinic in its current state is not under consideration. If The Clinic is sold, the current locally owned entity known as The Corvallis Clinic will not be preserved.

Warren George

Corvallis

6. Subject: FW: Optum invocation of "emergency"

Received 3/11/24

Dear Sarah,

I am writing in hopes that the agency will not grant the emergency exemption for the Optum acquisition of The Corvallis Clinic. Per OAR 409-070-0022, the rationale for an emergency exemption is to 1) protect the interest of consumers and to 2) preserve the solvency of an entity.

The first objective should be primary and should be focused on the intermediate and long-term community needs for medical care. The Corvallis Clinic as currently constituted is not the only configuration of medical professionals that will serve consumer interest. Samaritan Health Services and other entities, such as our Community Health Centers of Benton and Linn Counties, may absorb many of the providers at Corvallis Clinic. While elective and non-emergency services may be delayed in the short-term, this outcome would retain local ownership and improve access to high quality, community-based care.

This "emergency" was exacerbated by Optum's parent company, UnitedHealth. UnitedHealth's poor management of Change Healthcare halted the flow of information and claims processing, greatly weakening The Corvallis Clinic's financial position. Is it appropriate to grant emergency access to this acquisition to a predatory, vertically integrated company that has just ensured it will get access to Corvallis Clinic at a fire sale price?

Is preservation of capital for the current owners more important than the long-term access to quality care for our consumers? Based on Optum/UnitedHealth acquisitions elsewhere, we would likely see a burst of short-term investment followed by penny-pinching to squeeze maximum profits out of The "Corvallis" Clinic. Providers will separate from the clinic and its services will likely

increasingly focus on high-profit elective services. How is that in the long-term interest of our community?

Many thanks for your consideration.

Xan Augerot

Commissioner, Benton County

About HCMO

The Health Care Market Oversight program reviews proposed health care business deals to make sure they support statewide goals related to cost, equity, access, and quality. For more info, you can connect with HCMO staff:



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