

February 4, 2022

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Directors Allen and Vandehey,

On behalf of Oregon's 62 hospitals and the communities they serve, the Oregon Association of Hospitals and Health Systems (OAHHS) is providing these written comments in response to the following draft guidance documents posted on January 28, 2022, pertaining to the Health Care Market Oversight (HCMO) Program:

- Draft Furnishing Final Definitive Agreement
- Draft Determining Changes in Control guidance

The Draft Furnishing Final Definitive Agreement document appears to be largely a restatement of the proposed rules, although we expect that entities may find the flow chart helpful.

We recommend the following changes to the Draft Determining Changes in Control guidance:

- The guidance attempts to describe when a change in ownership of assets rises to the level of a change in control, which would make it an acquisition under proposed OAR 409-070-0010(2). However, one of the criteria listed in the flow chart and at the bottom of page 1 is whether the purchase is for all or substantially all of a health care entity's assets. This is not part of the definition of control under proposed OAR 409-070-0005(8); rather, it is a separate criterion for determining whether an acquisition has occurred under proposed OAR 409-070-0010(2) and should not be a factor in determining whether there has been a change in control. Similarly, the following statement is incorrect: "As codified in OAR 409-070-0010(2), a transaction in which a person or entity acquires all or substantially all of a health care entity's assets and operations is considered a change of control."
- The first question in the flow chart on page 1 is "Is the asset purchase – a covered material change transaction...?" One may not be able to determine whether the purchase

is a covered material change transaction without first determining whether there has been a change in control. Therefore, this should not be the starting point of the flow chart.

- If the above two issues are corrected, the guidance would essentially be a restatement of the proposed rules that does not add meaningful clarity for regulated entities. The examples on page 2 illustrate rather simplistic scenarios that do not reflect the nuance of typical transactions involving health care entities. Guidance applying the standards in the proposed rules to more realistic examples would be more useful.

More broadly, we reiterate our concern with the large volume of highly technical sub-regulatory documentation being released with overlapping and incredibly brief turnaround times for public comment. The process is not providing adequate opportunity for engagement with impacted parties to ensure that the HCMO Program is operationalized in a functional manner.

We continue to sound the alarm that the Health Care Market Oversight Program is not ready for implementation, and we encourage a delay of the March 1 rollout. The volume and density of the draft guidance documents illustrate the incredible complexity of this Program, and it is critical that we take the necessary time to operationalize it in a manner that will not disrupt important collaboration across our health system and the delivery of care in our communities. Any other course of action would be irresponsible to Oregonians.

Sincerely,

A handwritten signature in black ink, appearing to read "Andi Easton". The signature is fluid and cursive, with a large initial "A" and "E".

Andi Easton
Vice president of government affairs
Oregon Association of Hospitals and Health Systems