

Date: January 21, 2022

To: Jeremy Vandehey, Health Policy & Analytics Division Director, Oregon Health Authority
Zachary Goldman, Economic Policy Advisor, Oregon Health Authority

From: Kristen Downey, Director Government Affairs, Providence - Oregon

RE: Oregon's Health Care Market Oversight Program Technical Advisory Group

Providence appreciates the Health Care Market Oversight Program Technical Advisory Group conversation on Jan. 12, 2022. While the discussion provided some important clarity that we hope will be captured in final materials, as outlined below, we do want to note our continued concern with the TAG process. These documents are fundamental to ensuring that the Health Care Market Oversight Program is objective, clear and transparent and should be established in the final rules.

Specific to the proposed materials, Providence requests the Oregon Health Authority's consideration of the following:

Introduction

Clarification is needed regarding when an entity is required to file. As drafted, the materials suggest that the OHA will hold entities accountable for unforeseen scenarios, completely outside an entities control. Examples of this might include:

- A provider deciding to move for personal reasons 3 months after transaction, impacting access by 50% because there are only two providers for a specific service;
- 7 months after transaction it becomes clear that there is a need to increase access to a specific service in order to meet community need, impacting payer mix by increasing Medicare reimbursement; or
- A worldwide pandemic or natural disaster occurs 6 months after the transaction is approved, impacting any number of things like workforce, wait times, transportation, etc.

Recommendation:

In order to clarify filing requirements and hold entities appropriately accountable for significant reductions, as defined throughout the document – significant reductions should be intended or anticipated by the entities as part of the planned transaction.

The flow chart on slide 15 of the TAG materials is helpful. We recommend replacing the flow chart language “Will the transaction result in any reduction of service?” with “Does that transaction plan for, or anticipate, any reduction of service?”

Table 1

Providence appreciates the OHA's efforts to find a percentage to determine “significant.” While we believe 50% is appropriate for most situations, this will not be a perfect measure. We would appreciate consideration for the fact that in some circumstances, particularly in small and rural communities when

the numerator is small, minor changes with no significant impact on the community might trigger this threshold.

Similar to concerns Providence has previously expressed related to the proposed rules, OAR 409-070-0010 section 3, we respectfully request consideration for the following:

- (b) Providence believes the following language is outside the scope of the authorizing statute. We respectfully request that the following be removed: “or a reduction in the number of clinical experiences of training opportunities for individuals enrolled in a professional clinical education program.”
- (c) Providence agrees that addressing the needs of the underinsured is an important area of focus but would recommend deleting that “or providers serving individuals who are underinsured.” There is no common definition of “underinsured” and it is highly dependent on the circumstances of the individual and the type of plan they have.
- (d) As a Catholic health care system, Providence objects to this provision as being outside the scope of the authorizing statute and asks that it be removed. The restrictions described in the provision should not be allowed, particularly if there is no net change in access to essential services. Conscience objections are protected by the First Amendment, affirmed in law, and nothing in the regulations should require us to file notice based on these objections nor should we be prevented from practicing in a way that is consistent with our sincerely held religious beliefs, which is constitutionally protected.

Timing of Reductions of Essential Services

Per our comments under the introduction section, it is unreasonable to suggest that changes occurring up-to 12 months post transaction are within an entities control. In order to clarify filing requirements and hold entities appropriately accountable for significant reductions, as defined throughout the document – significant reductions should be intended or anticipated by the entities as part of the planned transaction.