
Health Care Market Oversight (HCMO) Program

House Bill 2362 – Second Rules Advisory Committee meeting

November 4, 2021



Attendance and Roll Call

Agenda for Second RAC Meeting

- Housekeeping and announcements
- Opening remarks from Jeremy Vandehey, Director of Health Policy & Analytics
- OHA staff briefly presents summary of changes in second draft (link [here](#))
- Discuss draft rules to solicit input (redline version [here](#); clean version [here](#))
 - Start where we ended at RAC #1: Section -0045 and HCMO Forms & Exhibits (linked [here](#))
 - Continue to 0050-0065, then 0070-0085, then Table 1 Fee Schedule
 - Return to beginning of draft rules to solicit input on the changes
- Public Comment

Housekeeping & Announcements

- This meeting is being recorded and will be posted on the program website
- For technical assistance, send a direct message to Brian Toups
- When providing input, please state your name and the organization you represent
- No need to restate a point made by someone else. OHA staff are capturing comments typed including “agree” for the record.
- Staff will summarize rule section, ask who has comments, and call on RAC members

RAC members and the public may also submit written comments to HCMO.info@dhsoha.state.or.us

Third RAC Meeting

A third RAC meeting has been scheduled:

November 15th 2pm-5pm


Staff will publish a third draft of the rules before the third RAC meeting

Opening Remarks

Jeremy Vandehey, Director of Policy & Analytics

Summary of the 2nd Draft Rules: Major Edits to the Scope of the Program

Introduction



OHA will solicit your input on all these changes after we discuss the rule sections we have not yet covered

OHA heard hundreds of comments at the first RAC and have received numerous letters with input

The second draft of the rules posted on the program website reflect only the **fundamental scoping** issues we heard at the first RAC meeting

For the third version of the rules, OHA will do a more comprehensive review of all comments at both the first and second RAC meetings, as well as submitted written comment

Day to day transactions

RAC members advised to exempt day to day transactions that have no potential impact on equity, cost, quality, and access.

Response:

- Added a definition of “administrative services” that are not subject to review
- Specified that a corporate affiliation to purchase administrative services that does not pool or increase price negotiation power is not a material change transaction

Transactions Subject to Review

- ✓ Mergers
- ✓ Acquisitions
- ✓ Clinical affiliations that pool price negotiating power or change control of an entity

Examples:

- Two medical groups form a new IPA to contract with a commercial payer;
- A medical group joins an IPA
- A hospital acquires a provider practice

Transactions Not Subject to Review

- ❖ Affiliations that do not impact control and are necessary to adopt advanced value-based payment
- ❖ Affiliations designed to enable entities to acquire goods or administrative services and do not pool price negotiating power

Examples:

- Affiliating to share EHR platform;
- Hospital contracts with medical group to provide call coverage with no pooling of price negotiating power;
- Medical group contracts with a billing company to help with the administration of billing & receiving payments

Defining Control

RAC members advised that a 10% threshold is too low

Response:

- For insurers and coordinated care organizations, control is presumed at 10%, thereby aligning with insurance code ORS 732.567
- However, for health care entities that are not insurers or coordinated care organizations, control is now presumed at 25%

The Authority's Review

RAC members advised that the transaction review should be clear, fair, predictable and consistent

Response:

- Required OHA to publish an Analytic Framework with standards that are clear, fair, predictable and consistent
- Added language clarifying that a proposed transaction will be subject to standards published when the entities submitted the notice

Requiring Executed Copies of Agreements

RAC members advised that requiring the final agreement is too burdensome and extends the timeline for transactions

Response:

- Added definition of “term sheet” and allows entities to submit notice based on the term sheet
- Added parameters outlining when the final executed copies of all definitive agreements are due

Guidance from OHA

RAC members advised that applicants should be able to obtain guidance before submitting a notice

Response:

- Added language to the Forms & Exhibits about OHA offering technical assistance to entities
- Added new section offering declaratory rulings

Additional Changes

- Added details about emergency review and confidentiality
- Posted draft fee schedule - Table 1
- Modified definition of “essential services”

**Continue Discussion about Draft
Rules, Forms & Exhibits**

Discussion Order of Draft Sections

0000 Scope and Purpose

0010 Covered Transactions
0015 Materiality Standard
0020 Excluded Transactions
0022 Emergency & Exempt Transactions

0005 Definitions

0025 Disclaimers of Affiliation

0050 Retention of Outside Advisors
0055 Preliminary 30-Day Review of a Notice
0060 Comprehensive Review of a Notice
0065 Conditional Approval; Suspension of Proposed Material Change Transaction

0070 Confidentiality
0075 Contested Case Hearings
0080 Continuing Jurisdiction; Information Requests
0085 Effective Date; Implementation

Table 1 Fee Schedule

0030 Requirement to File Notice of Material Change Transaction
0035 Material Change Transaction Involving a Domestic Health Insurer
0040 Material Change Transaction Involving a Charitable Organization or Hospital
0045 Form and Contents of Notice of Material Change Transaction
HCMO Forms & Exhibits

**Start
here
today**



Public Comment

Reminders

The program website contains all RAC materials and other information, including a link to subscribe to program updates

<https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>

OHA will develop and publish additional guidance documents and other resources before the launch of the program on March 1, 2022

Contact us at: HCMO.info@dhsoha.state.or.us

Reminders

The next RAC meeting occurs **November 15 from 2-5pm**
(Zoom link and call-in details are on the program website)

OHA welcomes written comments – send to HCMO.info@dhsoha.state.or.us