
Health Care Market Oversight (HCMO) Program

House Bill 2362 – Third Rules Advisory Committee meeting

November 15, 2021



Attendance and Roll Call

Agenda for Third RAC Meeting

- Housekeeping and announcements
- Opening remarks from Jeremy Vandehey, Director of Health Policy & Analytics
- Discuss draft rules to solicit input (redline version [here](#); clean version [here](#))
 - Start with Statement of Need & Fiscal Impact Statement ([here](#))
 - Continue with beginning of rules, focusing on sections that have updates
 - Updated Fee Schedule ([here](#))
- 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 changes in each 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

Opening Remarks

Jeremy Vandehey, Director of Policy & Analytics

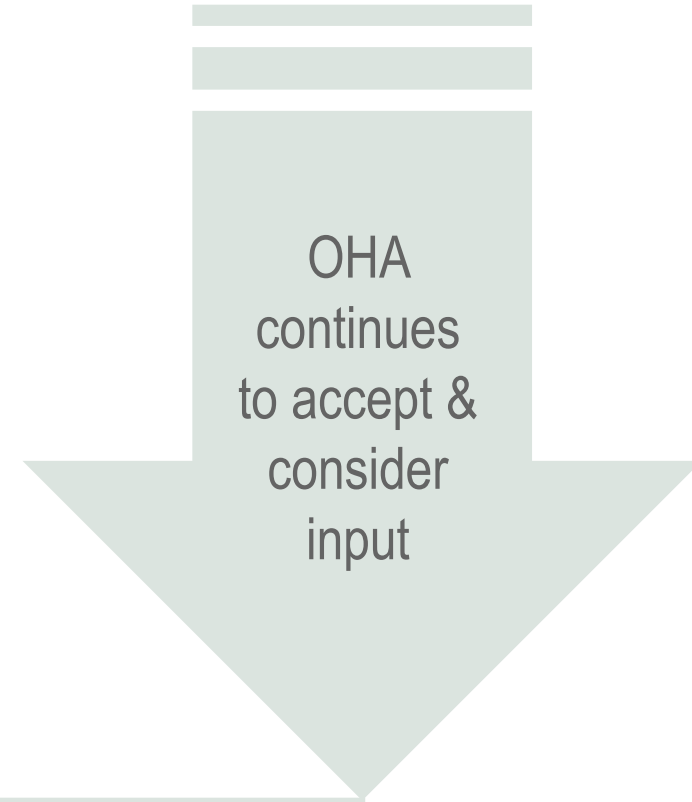
Updates

In addition to posting revised rules, fee schedule, and statement of need, OHA posted on program website:

- An input tracker, including written feedback and RAC statements as of November 10th ([here](#))
- Examples of transactions that are and are not subject to review ([here](#))

Current Rules Timeline

- ❑ Notify Legislators & file notice with Secretary of State – Dec 6, 2021
- ❑ Publish in Secretary of State bulletin – Jan 4, 2022
- ❑ Rules Hearing – Jan 17, 2022 (at the earliest)
- ❑ Last day for public comment – Jan 24, 2022
- ❑ File final rule with Secretary of State – Jan 25, 2022 (at the earliest)



Third Draft Rules: Summary of Major Edits

Program Ramp-Up Period

OHA initially proposed a ramp-up period of 6 months but extended to the first 10 months

From Mar 1, 2022 - Dec 31, 2022, transactions will be deemed approved unless OHA notifies an entity of the Authority's serious concerns, and subsequently requires a review of the transaction.

The updated fee schedule also reflects different fee amounts for this ramp-up period.

What Transactions are Subject to Review

OHA offers technical assistance to entities and entities may apply for a letter of determination about if their transaction is reviewable

Is revenue of one entity \geq \$10m and the other entity \geq \$25m? → Yes

Is the transaction a merger? Or an acquisition? Or an affiliation or contract that:

- will eliminate or significantly reduce essential services;
- will result in a change of control of an entity;
- will result in an increase of market concentration among health care providers when contracting with payers, insurers, or coordinated care organizations; or
- will result in an increase of market concentration among insurers when establishing health benefit premiums?

Yes → **Review**

No No to all

No Review

Also, **no review** if:

- applicant rebuts the notion of a change of control and OHA agrees
- OHA exempts the transaction from review after receiving the notice

Draft Fee Schedule: 2022

HB 2362 SECTION 4. (1) The Oregon Health Authority shall prescribe by rule a fee to be paid under section 2 (3) of this 2021 Act, proportionate to the size of the parties to the transaction, sufficient to reimburse the costs of administering section 2 of this 2021 Act. (2) Moneys received by the authority under this section shall be deposited to the Oregon Health Authority Fund established in ORS 413.101 to be used for carrying out section 2 of this 2021 Act.

During the 10-month ramp-up period, transactions will be subject to an expedited review with a flat fee of \$200.

If OHA finds serious concerns with a proposed transaction and a preliminary or comprehensive review is required, the flat fee will be \$2,000 for a preliminary or \$5,000 for a comprehensive review.

Draft Fee Schedule: Jan - Jun 2023

Starting in 2023, transactions that require emergency or preliminary review will be subject to a flat fee of \$2,000

The fee structure for transactions requiring a comprehensive review is on a sliding scale based on the size of the smaller entity – ranging from \$25,000 to \$100,000

Before June 30, 2023, OHA will publish a fee schedule for the 2023-2025 biennium

Additional Edits to the Draft Rules

- Added considerations in 409-070-0010 about “significant reduction or elimination of essential services”
- Entities no longer must apply for exclusion. See removal of 409-070-0020(3)
- Simplified 409-070-0042 to allow for entities to obtain a determination of covered transaction status from OHA
- Allowed electronic signatures on forms and no certification required
- Required OHA to provide invoices with detailed summaries when retaining outside advisors
- Removed language in 409-070-0070 allowing community review board members from obtaining confidential information

**Continue Discussion about Draft
Rules & Fee Schedule**

Discussion Order of Draft Sections

Statement of Need and Fiscal Impact Statement

0000 Scope and Purpose

0005 Definitions

0010 Covered Transactions

0015 Materiality Standard

0020 Excluded Transactions

Table 1 Fee Schedule

0022 Emergency Transactions

0025 Disclaimers of Control

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

0042 Optional Application for Determination of Covered Transaction Status

0045 Form and Contents of Notice of Material Change Transaction

0050 Retention of Outside Advisors

0055 Preliminary 30-Day Review of a Notice of Material Change Transaction

0060 Comprehensive Review of a Notice of Material Change Transaction

0065 Conditional Approval; Suspension of Proposed Material Change Transaction

0070 Confidentiality

0075 Contested Case Hearings

0080 Continuing Jurisdiction; Information Requests

0085 Effective Date; Implementation

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

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