

U.S. State Healthcare Transaction Reviews: Oregon

Healthcare Transaction Reviews Generally¹

Private investment in U.S. healthcare companies has grown significantly in recent years. U.S. state regulators have taken notice and have recently adopted a number of state healthcare transaction review laws focused on antitrust, quality, access and cost. These laws are intentionally broad and are clearly meant to target healthcare transactions owned by private equity-backed companies, including physician management services organizations.

While the laws vary from state to state, they generally require parties to submit filings to state regulators, including attorneys general, of “material transactions,” which may include, but are not limited to, majority and minority changes of ownership, joint venture agreements, restructurings, and certain debt transactions. Additionally, many of the laws specifically target physician practice management organizations.

Key takeaways from the filing and review processes:

- ▶ There are currently healthcare transaction review laws requiring notice submissions, and in some cases regulatory approval, in 15 states, with pending legislation in several other states.
- ▶ Preparation of the initial filings and subsequent responses to regulators will increase transaction costs, lengthen post-signing to closing periods and, in some states, will be as long as six months and may be made public.
- ▶ The laws are intended to capture transactions that fall below the current threshold set by federal antitrust enforcers and, in many cases, are aimed specifically at private equity investments in healthcare assets. The reporting/filing thresholds vary from state to state and use several metrics, including transaction financial value, revenue of implicated healthcare entities, and the number of healthcare providers implicated in the transaction.
- ▶ The laws require pre-closing filings and, in some cases, approval. The filings require detailed information, including transaction financing, anticipated impacts on the company’s operations, commitment to quality of care, and impacts on overall market competition, to name a few.
- ▶ Transaction approval may come with post-closing conditions, monitoring, or reporting obligations.

¹ The information contained in this document should not be construed as legal advice. Many of the state laws impacting healthcare transactions are new, and regulators are still finalizing the corresponding regulations. Once the regulations are finalized, state regulators will likely interpret the regulations in unanticipated ways, which could lead to unpredictable outcomes.

Oregon Healthcare Market Oversight Program

Status	Active. The program launched on March 1, 2022. OR. REV. STAT. §§ 415.500; 415.501; OR. ADMIN. R. 409-070-0000 TO 409-07-0085
Purpose	Require that certain parties submit a 180 day pre-close notice to the Oregon Health Authority ("OHA") to analyze healthcare mergers, acquisitions, affiliations and other transactions involving regulated "healthcare entities" ("Healthcare Entities") to ensure the transaction(s) support statewide goals related to cost, equity, access, and quality. The notice must be approved before the transaction may proceed.
Impacted Healthcare Entities²	• Licensed or certified healthcare professionals • Hospitals / hospital systems • Health benefit plans • Coordinated care organizations • Prepaid managed healthcare services organizations • Medicare Advantage plans • Any entity that delivers healthcare items or services • Parent organizations or entities closely related to entities that provide healthcare items or services (this could include private equity)
Covered Transactions	Covered Transactions include the below but only if they satisfy the materiality standard in the following row: • Acquisition³, merger, or consolidation of a healthcare entity; • A transaction to form a new contract, new clinical affiliation, or new contracting affiliation between or among healthcare entities that will eliminate or significantly reduce essential services; • Formation of a corporate affiliation involving at least one healthcare entity; or • A transaction to form a new partnership, joint venture, accountable care organization, or management services organization between or among healthcare entities that will (1) eliminate or significantly reduce essential services, (2) consolidate or combine providers of essential services when contracting payment rates with payors, insurers, or coordinated care organizations. (3) consolidate or combine insurers when establishing health benefit premiums.
Who Must File – Material Transactions Only	Healthcare Entities party to a transaction in which: • At least one party had average annual revenue of at least \$25 million or more in the last three years and • Another party to the transaction had an average annual revenue of \$10 million or more; in the past three fiscal years, or, if the other party is a new entity, is projected to have an annual revenue of at least \$10 million in revenue over its first full year of operation.
Notice Timing	Minimum of 180 calendar days for a transaction to close. • 180 day pre-close notice to OHA, which must be approved before the transaction may proceed. • OHA has 30 days to conduct a preliminary review. • Preliminary review can result in approval of transaction (with or without conditions), if OHA finds one or more of the following: (1) transaction is in the interest of consumers and is urgently necessary to maintain the solvency of an entity involved, (2) transaction is unlikely to substantially reduce access to affordable healthcare in Oregon, (3) transaction is likely to be approved upon a comprehensive review, (4) transaction is not likely to substantially alter the delivery of healthcare in Oregon, or (5) comprehensive review is not warranted. • If a proposed transaction is approved with conditions, the Oregon Health Authority may suspend the effective date of the transaction for such reasonable time as necessary to complete an analysis of whether the conditions have been satisfied. • If after the preliminary review, OHA does not recommend approval, it will proceed with a comprehensive review. OHA will issue a proposed order within 180 days of filing unless extended by mutual agreement. • After a comprehensive review, a transaction may be approved (with or without conditions). OHA will conduct follow-up reviews of the transaction periodically. • OHA may refer the matter to the Oregon Department of Justice for failure to timely file a notice.
Exemptions	A Healthcare Entity may seek an exemption from review if the following conditions exist: • There is an emergency situation, including but not limited to a public health emergency, which immediately threatens healthcare services; and

² Healthcare Entity does not include long-term care facilities and residential facilities. Please see Or. Admin. R. § 409-070-0020 for a full list of excluded transactions.

³ "Acquisition" includes acquisition of a controlling interest, voting control, directly or indirectly, of more than 50% of any class of voting securities; acquisition of all or substantially all of the assets; provision of comprehensive management services; or where the healthcare entity merges tax ID numbers or corporate governance with another entity.

Note, OHA has identified certain presumptions that apply in determining whether a transaction results in an indirect or direct change of control or qualifies as a covered acquisition. E.g., if a person acquires, directly or indirectly, 25% or more of any voting class (see Or. Admin. R. § 409-070-0025 for more presumptions).

	• 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. • The Healthcare Entity must make a showing of good cause as to why an exemption is warranted.
Content of Notice	The initial filing will require information and supporting documentation including: • Services and staffing of the impacted entity/facility; • The nature and objectives of the proposed transaction; • Public impact of the transaction, including quality and equity measures; • Market competition; • The cost impact to the state and to consumers; • Post-transaction changes to operations; and • OHA may also request copies of the definitive agreements and financial statements.
Penalties for Non-Compliance	The Director of the Oregon Health Authority may issue civil penalties up to \$10,000 per offense for any of the following: • Failure to submit a material change transaction that was subject to review; • When an entity fails to comply with a condition as specified in an approval with conditions order; • When an entity fails to timely respond to clarifying questions or information requests; • When an Entity fails to provide requested documentation.

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