

May 21, 2026

Oregon Health Authority - Health Policy and Analytics
800 NE Oregon St., Suite 772
Portland, OR 97232
Email: hcmo.info@oha.oregon.gov

Re: Written Comment regarding Notice of Proposed Rulemaking to amend rules for the Health Care Market Oversight Program, including fee schedule.

Dear OHA Program Staff:

Asante strongly opposes the proposed rule changes regarding the new HCMO rulemaking.

The HCMO process is broken. As it stands, the Oregon Health Authority routinely goes beyond the Legislative Intent of this law and prevents, either directly or through substantial delay, otherwise permissible transactions from moving forward.

The tactics are well known to those who have participated in the process – extraordinarily long and burdensome RFIs, near unlimited tolling and, if a transaction does make it through, then harsh and unworkable conditions.

There appears to be an ideological opinion that hospital or provider consolidation is about increasing market power to drive up prices – the reality is that many hospitals and independent provider groups are on the brink of failure, and often a merger or consolidation is the only lifeline remaining before bankruptcy or closure.

Instead of addressing underlying root causes – including overregulation and below-cost reimbursement, OHA instead is looking to *expand* the costs and burdens on providers of the HCMO process.

This decision will likely result in clinic and service closures and loss of access for rural communities.

HCMO has become a textbook example of a solution creating consequences more damaging than the problem it was intended to solve.

Recent Example of HCMO Review Gone Wrong

We would like to share a recent experience that Asante had going through the HCMO process and how the proposed rule changes will make things tangibly worse.

By way of background, Asante recently attempted to purchase a failing surgery center business, Surgery Center of Southern Oregon LLC (SCSO), located across the street from the Rogue Regional Medical Center campus – an organization in which Asante has been a minority-share owner for almost 3 decades. The transaction barely met the thresholds and we anticipated that it would be a fairly straightforward review.

After being buried in RFIs and document requests for months, and with the surgery center on the brink of closure, Asante and SCSO filed for an emergency exemption – at the suggestion of OHA staff. Upon doing so, HCMO served another new, voluminous Request for Information (RFI). Ultimately the parties had no other option but to withdraw after HCMO failed to approve this request prior to a last-ditch deadline for SCSO to remain open.

Now SCSO is closing on June 30th. The staff will lose their jobs and the community loses an access point.

Rule Change – Fee Increase

The cost of going through even preliminary review, let alone comprehensive review, is significant.

Hiking fees 1,400% for preliminary review and up to 700% for comprehensive review is shocking. These filing fees will now top out at \$350,000.

None of these proposed changes reigns in spending on outside lawyers who the agency routinely hires, even for small transactions, at upwards of \$1,500 an hour – costs which are passed along to the applicant.

There is no accountability for the agency or these outside lawyers, and we suspect they routinely drive up the cost and complexity of these engagements.

This is going to ensure that only the largest, and likely out-of-state, entities can afford to participate in the process – hollowing out the middle and putting undue pressure on smaller, independent providers and systems.

Fee changes of this magnitude should be within the purview of the Legislature, not done through arbitrary rulemaking.

Rule Change – Addition of Violations and Civil Penalties

The new rules add \$10,000 penalties for a wide variety of somewhat ambiguous actions, which are completely at the discretion of OHA.

For example, if an entity “fails to timely respond to a clarifying question or information request” or “fails to provide requested documentation,” the applicant can be fined \$10,000 for each occurrence.

This is problematic for numerous reasons, including that there is no objective standard for whether an applicant has correctly answered a question.

During Asante’s most recent experience, OHA on several occasions did not accept answers to at times subjective questions – under this framework, which would expose an applicant to a fine that would be punitive, arbitrary and unfair.

During this same review, OHA requested 3rd party payer contracts – something they note in their own subregulatory guidance that they do not do during preliminary review.

We pushed back on this request, asking that they follow their own rules. Now we would be fined for doing so. This should not be an area of discretion – the HCMO Program team has gone as far to threaten nebulous (and non-existent) potential criminal sanctions for simply asking them to follow their own rules – there is little doubt this will be a tool used help expand their power.

Without objective, predictable questions and frameworks that OHA is required to adhere to, this will be used as a hammer against applicants and does nothing to ensure that OHA adheres to the process outlined by the Legislature.

Rule Change – “Timely” Responses

As Asante and many others have highlighted in both written and verbal testimony, OHA has misused the RFI process and used it to avoid the statutory timelines set out for approval and to burden applicants with questions outside the scope of review.

During our recent review, OHA consistently expected answers and documents on unreasonable timeframes. While our teams were responsive, often there was a disconnect with the HCMO team as to the availability of resources.

In our most recent review, the failing and understaffed surgery center relied primarily on a single person to gather information, all while managing the balance of day-to-day operations.

The incentive to timely respond to RFIs is that the parties are, typically, furiously working towards closing what is often a necessary transaction and HCMO is holding that process up.

Imposing penalties because something takes longer than the arbitrary timeframe set by OHA is misguided and shows the significant gap in OHA’s understanding, versus how things actually work in the field.

Conclusion

At a time when tremendous pressure is being put on hospitals and providers, OHA should be taking every opportunity to decrease the administrative cost and regulatory burden for those operating within the state.

These rule changes are the exact opposite of what we need, and this will no doubt contribute to more closures and losses of services in our state.

We urge OHA to pull these rules back and reconsider their philosophy on how they manage this program.