A Step Forward for Health Care Market Oversight:

Oregon Health Authority's Health Care Market Oversight Program

EXECUTIVE SUMMARY

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Controlling costs and improving access, equity, and quality are critical goals for an effective and efficient health care delivery system. Consolidation has dramatically altered health care markets throughout the country in ways that limit their ability to achieve these goals. Specifically, research has repeatedly shown that consolidation leads to higher prices and reduced access to essential services.[1,2]

Like many other parts of the country, Oregon has experienced significant consolidation in the health care industry. Since 2020, concerns have intensified that provider financial struggles exacerbated by the COVID-19 pandemic would drive further consolidation.[3] A recent report from the Oregon Health Authority (OHA) found that health care costs per person in Oregon grew by 49% from 2013 to 2019, faster than the national average and faster than income and inflation.[4] The service categories that experienced the fastest increases were outpatient services, professional services, pharmacy, and emergency services.[4] Unsurprisingly, these rising costs have resulted in Oregonians spending more of their income on health care, using savings to pay medical bills, incurring debt or medical bankruptcy, delaying medical care, or going without care altogether.[5] Although rising costs can be attributed to a variety of factors, oversight of future consolidation is critical to any effort to protect the people of Oregon from continued cost increases that jeopardize their health and financial stability.

In light of these troubling statistics, the Oregon legislature passed a law in 2021 creating a health care market oversight program and endowed the OHA with the authority to address the unchecked rise in consolidation and the downstream impacts on cost, access, equity, and quality. Although state and federal antitrust enforcement continues to be a crucial tool to combat consolidation in health care markets, the extensive time and resources needed to litigate such cases often limit its use to particularly large and egregious cases. State health care market oversight programs, like Oregon's, can serve as important complements to antitrust enforcement as these programs can review transactions of various sizes, examine the cumulative effects of small transactions on markets, and evaluate transactions across a much wider array of factors beyond just antitrust implications.

When establishing the Health Care Market Oversight Program (HCMO), the Oregon legislature looked to Massachusetts's pioneering Health Policy Commission (HPC) and went a step further by granting OHA the authority to block transactions outright or impose conditions to mitigate the potential for adverse effects. OHA receives notice of a wide range of health care entity transactions and engages in pretransaction reviews that include an in-depth analysis of the potential effects of transactions on cost, competition, access, equity, and quality and encompasses a broad scope of transactions involving a wide range of health care entities that reach the established financial threshold.

OHA's review process uses a two-phase framework, which consists of a preliminary review and, if warranted, a comprehensive review. Upon receipt of a notice of a proposed transaction, OHA has 30 days to complete its preliminary review. At this phase of the review process, OHA examines readily available data to make an initial determination of whether the transaction is critical to an entity's solvency and the potential impacts of the proposed transaction on cost, access, equity, and quality of health services. After the preliminary review, OHA may approve or conditionally approve the transaction; however, if there are indications during the preliminary review that the transaction may lead to significant adverse effects on cost, access, equity, or quality, OHA may then engage in a comprehensive review. The comprehensive review, which must be completed within 180 days of the initial notice, takes a deeper dive into the factors assessed during the preliminary review. It will likely examine additional data beyond what was used in the first review and may, at OHA's discretion, include input from the community through a Community Review Board.

OHA is also charged with post-transaction monitoring and oversight and is required to conduct post-transaction reviews one, two, and five years after they occur. Furthermore, OHA has demonstrated its dedication to transparency by making information on potential transactions readily available to the public on its website, including notices, public comments, review reports, and final decisions. Finally, OHA must complete a statewide study of the impact of health care consolidation every four years to monitor Oregon's changing health care landscape and address concerning consolidation trends.

Although the HCMO program is new and to date has completed only a few reviews, Oregon has established one of the strongest merger oversight programs in the country. While it is too soon to draw any definitive conclusions about its effectiveness and impact, the early implementation of the law provides insight into the benefits and challenges of implementing a health care market oversight program. The choices made in implementing the HCMO program offer multiple valuable considerations for other states seeking to address harmful consolidation in health care markets. To implement an effective market oversight program:

1. State policymakers need a detailed understanding of the drivers of health care costs in the state.
2. State legislators should aim to give a health care market oversight program as much authority as possible to allow flexibility.

3. States should strike a balance when deciding the breadth of review to use state resources effectively.
4. States should strive for a high-level of transparency and public participation, as both are critical to effectively review transactions and minimize the risk of regulatory failure.
5. Any imposed conditions should be enforceable and targeted.

This report provides an overview of the HCMO program, including a discussion of the transactions that are subject to review, the review process, and post-transaction monitoring and compliance. It also presents the work of the program to date. Finally, the report discusses the current legal challenge to the program and offers broad considerations for other states considering implementing or strengthening policies to oversee and address health care consolidation.

NOTES

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5. Oregon Health Authority. Impact of health care costs on people in Oregon, 2019. Published April 2022. Accessed December 14, 2022. https://www.oregon.gov/oha/HPA/HP/Cost%20Growth%20Target%20documents/Impact-of-Health-Care-Costs-on-Oregonians.pdf.

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