

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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**STATE OF OREGON
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS DIVISION**

In the Matter of the Proposed)
Material Change Transaction of)
St. Charles Health System, Inc. and)
Neuromusculoskeletal Center of the)
Cascades, P.C.) Transaction ID: 035

This Order resolves the Notice of Material Change Transaction (the “Notice”) filed by St. Charles Health System, Inc. (“St Charles”) with respect to its proposed acquisition of the Neuromusculoskeletal Center of the Cascades, P.C. (“The Center”) (the “Transaction”). (St. Charles and The Center are sometimes referred to collectively as the “Entities.”) The Entities filed the Notice with the Oregon Health Authority (“OHA”) under the Health Care Market Oversight Program pursuant to Oregon Revised Statutes (ORS) 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.

On September 24, 2024, OHA confirmed receipt of a complete Notice of Material Change Transaction in compliance with OAR 409-070-0030 and 0045. Pursuant to ORS 415.501(5) and OAR 409-070-0055, OHA timely conducted a preliminary review of the proposed transaction. OHA’s review analyzed the potential impact of the Transaction in four domains: cost, access, quality, and equity. The analysis followed guidelines and methods set out in the Health Care Market Oversight Analytic Framework (see <https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/OHA-HCMO-Analytic-Framework-FINAL.pdf>), which is grounded in the goals, standards, and criteria for transaction review and approval outlined in OAR 409-070-0000 through OAR 409-070-0085. OHA’s analysis is posted to the HCMO website at <https://www.oregon.gov/oha/HPA/HP/Pages/HCMO-transaction-notice-and-reviews.aspx> and is incorporated herein by reference. A public comment period was open from September 24, 2024, to October 24, 2024. OHA received two public comments.

Now, therefore, upon due consideration of the circumstances, including the Notice of Material Change Transaction, documentation filed in support of the Notice of Material Change Transaction, databases maintained by OHA, websites of the Entities, press reports, academic research articles, and other publicly available reports, OHA enters the following Proposed Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

OHA FINDS that:

1. On or about September 23, 2024, St. Charles filed the Notice with OHA.
2. On or about September 24, 2024, OHA notified St. Charles that it received a complete Notice. OHA commenced the preliminary review pursuant to OAR 409-070-0055.
3. OHA accepted public comments on the Transaction from September 24, 2024, through October 24, 2024. OHA received two public comments.
4. St. Charles is an Oregon nonprofit corporation that owns and operates hospitals in the cities of Bend, Madras, Prineville, and Redmond. St. Charles's Bend location is the only Level II trauma center¹ serving Deschutes, Crook, Jefferson, Harney, Lake, and Klamath Counties and owns and operates multiple medical clinics throughout Central Oregon. St. Charles's locations in Madras, Prineville, and Redmond all are designated as Level IV trauma centers.
5. St. Charles provides inpatient and outpatient services including surgical services, emergency services, intensive care services, acute care, and ambulatory care for many different specialties, including behavioral health care, pediatrics, cardiology, oncology, gynecology, and obstetrics, and more. St. Charles currently has 381 hospital beds across its four hospitals and, as of the filing of the Notice, employed 4,981 staff.
6. The Center is an independent, physician-owned professional corporation in Oregon. The Center consists of a group of 27 fellowship trained sub-specialist physicians who provide orthopedic, neurosurgical, physical medicine and rehabilitation services to the central and eastern Oregon region. The Center also employs 27 advanced practice providers and approximately 200 other employees.
7. On July 16, 2024, St. Charles signed a non-binding letter of intent to make employment offers to substantially all of the health care providers and the majority of staff currently employed by The Center. The letter also outlines St. Charles' interest in purchasing substantially all of the assets of The Center.
8. The Entities state the following in the Notice:
 - a. The proposed transaction will stabilize and maintain access to orthopedic and trauma services for residents of central and eastern Oregon.
 - b. By joining St. Charles, The Center will gain from the efficiencies associated with operating as part of a larger organization.
 - c. Post-closing, St. Charles will immediately begin recruiting for additional providers to address the community's need for services.
9. In the Notice, the Entities commit to negotiating a purchase price for the assets being purchased by St. Charles based upon a fair market value analysis being conducted by an independent third-party.

¹ OHA designates trauma center levels pursuant to ORS 431A.065 and OAR 333-200-0090.

10. The current market for musculoskeletal services in the primary service area (PSA) for The Center is highly consolidated. Post-closing, St. Charles will deliver 79% of musculoskeletal procedures in the PSA and the resulting Herfindahl-Hirschman Index (HHI) will be 6,685.
11. Currently, patients are not charged any facility fees for services rendered by providers of The Center in an outpatient setting. St. Charles receives higher commercial payments for many of the same outpatient procedures as compared to The Center, with some payments more than five times as much as The Center.

CONCLUSIONS OF LAW

1. The Notice is supported by the required documentation and meets the requirements of the Health Care Market Oversight Program rules for approval with respect to acquisitions of health care Entities pursuant to ORS 415.500 through 415.900 and OAR 409-070-0000 through 409-070-0085.
2. OHA finds that:
 - a. The material change transaction is not likely to substantially alter the delivery of health care in Oregon as long as the Entities comply with the Approval Conditions enumerated below.
 - i. The market for musculoskeletal services in the primary service area is highly consolidated. The Entities involved in the transaction have significant market share for musculoskeletal services and providers in the region. This transaction will result in vertical consolidation in an already highly consolidated market.
 - ii. It is unlikely that the proposed transaction will adversely affect access to services currently provided by The Center. However, given the dominant market share of the Entities, it will be important that providers can decide the appropriate setting when treating a patient, and that providers can maintain relationships with other hospitals and facilities if they so desire. It will be important that St. Charles is able to successfully recruit and retain providers, as mentioned in the notice, to maintain and improve patient access. OHA's imposed conditions are expected to alleviate OHA's concerns.
 - iii. Currently, patients are not charged any facility fees for services rendered by providers of The Center in an outpatient setting. St. Charles receives higher commercial payments for many of the same outpatient procedures as compared to The Center, with some payments more than five times as much as The Center. It will be important that St. Charles does not increase patients' costs by imposing new facility fees for outpatient services rendered by The Center providers. OHA's imposed conditions are expected to alleviate OHA's concerns.
 - iv. The proposed transaction is not expected to adversely affect health care quality or worsen health equity.

ORDER AND CONDITIONS

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED that:

1. The transaction is hereby APPROVED WITH CONDITIONS upon the basis of the information contained in the Notice of Material Change Transaction to date.
2. The transacting parties shall complete the Transaction consistent with the Notice of Material Change Transaction (“notice”), and as conditionally approved by OHA.
3. The transacting parties shall adhere to the representations made in the notice and any subsequent filings with OHA.
4. For a period of ten (10) years following the close of the transaction, St. Charles shall not charge facility fees for any services rendered by former The Center health care providers for which no facility fees are currently applied.
5. For a period of five (5) years following the close of the transaction, St. Charles shall not subject former employees of The Center to any restrictions on future employment opportunities as a condition for employment or subsequent bona fide advancement of the former The Center employee by St. Charles.
6. In accordance with Oregon Administrative Rule 409-070-0045(5), the Entities must furnish the Authority with complete and final executed copies of all the definitive agreements pursuant to which the transaction will be documented and closed, together with a detailed description of any respect in which the definitive agreements depart from the submitted letter of intent no later than fifteen (15) days before closing the transaction.
7. For a period of five (5) years following the close of the transaction, St. Charles shall apply its existing Medical Staff Bylaws (“Bylaws”) provisions that prohibit credentialing or privileging decisions based on an applicant’s business or employment affiliation, and not, deny, limit, or restrict a health care provider’s privileges at St. Charles (including admitting privileges, courtesy privileges, or surgical privileges) based on the health care provider’s current or former affiliation with The Center. In the event St. Charles seeks to modify or amend its Bylaws in a manner that is inconsistent with this Condition, St. Charles shall provide a copy of its modified Bylaws to OHA no later than ten (10) business days in advance of adoption.
8. For a period of five (5) years following the close of the transaction, St. Charles shall not impose limitations on where health care providers performing services for The Center maintain hospital admitting privileges, courtesy privileges, or surgical privileges, or perform surgical procedures; provided, however, that nothing contained herein shall prohibit St. Charles from: (i) requiring that such services be rendered through the provider’s employment with St. Charles; and (ii) prioritizing services for patients in St. Charles’ primary service area (i.e., Central Oregon) to ensure adequate access to services.
9. For a period of five (5) years following the close of the transaction, St. Charles shall not limit or otherwise restrict the location of where the former The Center employee opts to perform a given medical procedure, be it in an outpatient clinic office setting, an ambulatory surgery center, a hospital operating room, or another setting; provided, however, that nothing contained herein shall prevent St. Charles from directing patient care based on factors such as patient and provider location, staffing, community need, capacity, patient preferences, or payer requirements.
10. In the event of an unforeseen change in market conditions, St. Charles will be permitted to petition OHA for any needed modifications to or exceptions from any of the Conditions contained herein. St. Charles shall apply in writing to OHA for any needed modifications to or exceptions from the Conditions. Within ten (10) business days following receipt of St. Charles’s petition, OHA shall either (1) notify St. Charles of

its determination of the St. Charles's requested modification or exception; or (2) notify St. Charles of any additional information needed by OHA to further evaluate St. Charles's request. If OHA requires additional information to evaluate St. Charles's request, OHA shall notify St. Charles of the information required and the running of the ten (10) business days shall be tolled upon such notification and shall resume upon OHA's receipt of the requested information. To the extent St. Charles is aggrieved by OHA's determination, St. Charles will have the right to request a contested case hearing pursuant to ORS 415.019 and OAR 409-070-0075.

11. For a period of five (5) years following the close of the transaction, St. Charles shall keep the records specified in this condition. OHA will require this information for the statutorily required follow-up reviews and monitoring compliance with conditions.
 - a. Six (6) months following the close of the transaction, St. Charles shall report to OHA:
 - i. the number of The Center physicians who were hired by St. Charles and remain employees;
 - ii. the number of The Center physicians who were not hired by St. Charles after the close of the transaction;
 - iii. The number of The Center advanced practice providers who were hired by St. Charles and remain employees;
 - iv. The number of The Center advanced practice providers who were not hired by St. Charles after the close of the transaction;
 - v. the number of The Center non-provider staff who were hired by St. Charles and remain employees; and
 - vi. the number of The Center non-provider staff who were not hired by St. Charles after the close of the transaction.
12. St. Charles shall provide an annual Compliance Report to OHA. The first such report shall be due no later than 12 months following the closing date of the Transaction, and subsequent reports shall be due every 12 months thereafter. Each annual submission shall include a publicly shareable version of the Compliance Report, which shall be published on the Health Care Market Oversight program website.
 - a. For a period of five (5) years, the report shall include:
 - i. St. Charles's certification of compliance with Condition Nos. 3-4 and Nos. 6-8.
 - ii. A qualitative narrative describing the recruitment efforts to add additional orthopedists, neurosurgeons, and physiatrists to the team to further stabilize and ensure access to these critical services.
 - iii. For Condition No. 8, provide a qualitative narrative detailing the factors such as patient and provider location, staffing, community need, capacity, patient preferences, or payer requirements that resulted in any changes to the location of where orthopedic, neurosurgical, or psychiatry services were provided.
 - b. For a period of ten (10) years, the report shall include:
 - i. St. Charles's certification of compliance with Condition No. 3.
13. The Entities shall notify OHA within one (1) business day following completion of the Transaction by email to hcmo.info@oha.oregon.gov.

This Order will be posted to the Health Care Market Oversight Program website at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

OHA reserves the right to enforce the Conditions set forth herein to the fullest extent provided by the law. In addition to civil penalties and any legal remedies available, OHA shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of these Conditions.

OHA is required to analyze and publish the Entities' compliance with Conditions placed on the Transaction and to assess the impact of the Transaction under ORS 415.501(19) and (20). OHA is required to publish its analyses and conclusions. Per OAR 409-070-0080, OHA may require the Entities to provide any information, reports, analyses, and documentation needed to monitor and assess the impact of the Transaction.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedures Act (chapter 183, Oregon Revised Statutes), ORS 415.019, and OAR 137-070-0075. You are entitled to be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited resources. The Oregon Health Authority will be represented by an Assistant Attorney General from the Oregon Department of Justice.

To request a contested case hearing, your request must be in writing and must be received within fifteen (15) days from the date this Final Order was personally served, mailed, or electronically transmitted to you, based on the date at the top of this document.

A request sent by U.S. mail is "received" on the date it is postmarked. Your request may also be emailed. Your request should be sent to:

hcmo.info@oha.oregon.gov

or

Health Care Market Oversight Program
421 SW Oak St
Suite 850
Portland, OR 97204

If you submit a request for a contested case hearing, you will be notified of the time place of the hearing. Information on the hearing process will be provided to you in accordance with ORS 183.413(2). Any hearing will be conducted by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

If you fail to request a hearing within the time allowed, if you request a hearing and subsequently withdraw your request for a hearing, if you request a hearing and fail to appear for the hearing, or if a hearing is scheduled and you later notify OHA that you will not appear at the specified time and place, you will have waived your right to a hearing, and this proposed order will become a final order by default. If OHA issues a final order by default, it designates its file on this matter, including all materials that you have submitted relating to this matter, as the record in this case for purposes of proving a prima facie case.

Dated this 24 day of October, 2024



Sarah Bartelmann, MPH
Cost Programs Manager
Oregon Health Authority

NOTICE TO ACTIVE DUTY SERVICEMEMBERS. Active-duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.