

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 737

Short Title: Preserving Competition in Health Care. (Public)

Sponsors: Representatives Rudow, Sasser, and Greene (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Finance, if favorable, Insurance, if favorable, Rules,
Calendar, and Operations of the House

April 19, 2023

1 A BILL TO BE ENTITLED
2 AN ACT PRESERVING COMPETITION IN HEALTH CARE BY REGULATING THE
3 CONSOLIDATION AND CONVEYANCE OF HOSPITALS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 131E of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 11C.

8 "Preserving Competition in Health Care Act.

9 "**§ 131E-214.20. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Acquiring entity. – The person or entity that gains ownership or control of a
12 hospital entity as a result of a transaction subject to review under this Article.
13 (2) Attorney General. – The Attorney General or any employee of the Department
14 of Justice designated by the Attorney General.
15 (3) Hospital entity. – Any corporation or governmental entity licensed as a
16 hospital under Article 5 of Chapter 131E of the General Statutes, including
17 any entity affiliated with such corporation or governmental entity through
18 ownership, governance, or membership, such as a holding company or
19 subsidiary.
20 (4) Person. – Any individual, partnership, trust, estate, corporation, association,
21 joint venture, joint stock company, or other organization.
22 (5) Transaction. – Includes all of the following:
23 a. The sale, transfer, lease, exchange, optioning, conveyance, or other
24 disposition of a material amount of the assets or operations of any
25 hospital entity to any person or entity other than another hospital entity
26 that controls, is controlled by, or is under common control with such
27 hospital entity.
28 b. The transfer of control or governance of a hospital entity to a person
29 or entity other than another hospital entity that controls, is controlled
30 by, or is under common control with such hospital entity.
31 c. Any binding legal obligation between two or more persons that results
32 in a transfer of control, responsibility, or governance of a substantial
33 portion of a hospital entity's assets to an acquiring entity.



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- 1 d. Any transaction regardless of exact form that, if structured as a
2 purchase, merger, or joint venture, would be subject to review under
3 this Article.
- 4 e. Any transaction determined by the Attorney General to merit review
5 under this Article because the transaction, if consummated, would
6 have a meaningful effect on competition in any part of this State
7 among hospital entities.
- 8 f. Any transaction described in sub-subdivisions a. through e. of this
9 subdivision that is entered into by a hospital entity or by any person or
10 entity that controls, is controlled by, or is under common control with
11 such hospital entity.
- 12 g. All sales, transfers, conveyances, or other dispositions of a substantial
13 portion of a hospital entity's assets made in the course of a bankruptcy
14 proceeding.

15 **"§ 131E-214.22. Applicability; waived transactions.**

16 This Article does not apply to a hospital entity if (i) the transaction is in the usual and regular
17 course of its activities and (ii) the Attorney General has provided to the hospital entity a written
18 waiver of this Article with respect to the transaction. The Attorney General's determination that
19 a transaction merits review under this Article shall be the final decision of the State and shall not
20 be set aside on judicial review unless found to be arbitrary and capricious.

21 **"§ 131E-214.24. Written notice and certification requirements for proposed transactions;**
22 **rules.**

23 (a) Prior to entering into any transaction subject to review under this Article, a hospital
24 entity shall provide the Attorney General with written notice of the proposed transaction. The
25 hospital entity shall simultaneously provide the Attorney General with written certification that
26 a copy of this Article in its entirety has been provided to each member of the governing board or
27 board of trustees of the hospital entity.

28 (b) A hospital entity and an acquiring entity may provide the Attorney General with a
29 single written notice of a proposed transaction that meets the requirements of this section;
30 provided, however, that the Attorney General may require additional information that the
31 Attorney General determines is necessary for a complete review of the proposed transaction from
32 any party.

33 (c) The written notice required under this section shall not become effective until the
34 Attorney General has acknowledged receipt of a complete notice in accordance with subsection
35 (a) of G.S. 131E-214.26.

36 (d) The Attorney General shall adopt rules specifying the required contents of the written
37 notice required by this section and the manner in which the written notice shall be provided to
38 the Attorney General in order to be deemed complete and effective. The rules shall allow for the
39 Attorney General, in the Attorney General's discretion, to require additional information about a
40 proposed transaction that is not expressly required in the rules adopted pursuant to this section.

41 **"§ 131E-214.26. Time line and process for Attorney General's decision to object or take no**
42 **action.**

43 (a) When the parties to the proposed transaction have provided the Attorney General with
44 all the information the Attorney General determines is necessary for a complete review of the
45 proposed transaction, the Attorney General shall provide the hospital entity and acquiring entity
46 with written acknowledgement that the Attorney General has received a complete notice that
47 meets the requirements of G.S. 131E-214.24. The Attorney General's written acknowledgement
48 pursuant to this subsection shall constitute the beginning of a 90-day review period. The Attorney
49 General shall not unreasonably withhold a determination that the parties have provided a
50 complete notice that meets the requirements of G.S. 131E-214.24.

1 **(b)** Within 90 days after the Attorney General provides written acknowledgement of
2 having received a complete notice that meets the requirements of G.S. 131E-214.24, the Attorney
3 General shall notify the hospital entity, in writing, of the Attorney General's decision to either
4 object to the proposed transaction or to take no action regarding the proposed transaction.

5 **(c)** Upon notice, in writing, to all parties to the transaction, the Attorney General may
6 extend the 90-day review period for up to an additional 60 days if the extension is necessary to
7 obtain additional information from one or more of the parties to the transaction or to complete
8 any component of the review process specified in G.S. 131E-214.30 through G.S. 131E-214.36.

9 **(d)** During the review period, the parties to the proposed transaction are prohibited from
10 consummating the transaction.

11 **"§ 131E-214.28. Published written notice of proposed transaction; failure to give notice.**

12 **(a)** Within five days after providing the Attorney General with written notice of a
13 proposed transaction pursuant to subsection (a) of G.S. 131E-214.24, without regard to whether
14 or not the Attorney General has acknowledged receipt of a complete notice, the hospital entity
15 shall give written notice of the proposed transaction by publication in one or more newspapers
16 of general circulation in every county in which (i) there exists a hospital entity whose control or
17 governance would be altered by the proposed transaction or (ii) there resides a substantial number
18 of patients of a hospital entity whose control or governance would be altered by the proposed
19 transaction. The published written notice shall contain the following:

20 **(1)** A brief restatement of the nature of the transaction, as specified in the written
21 notice provided to the Attorney General under G.S. 131E-214.24, which shall
22 include the following:

23 **a.** The name of the hospital entity.

24 **b.** The name of the acquiring entity.

25 **c.** The names of any other parties to the proposed transaction.

26 **d.** The nature of the proposed transaction.

27 **e.** The anticipated consideration that will be paid by the acquiring entity.

28 **(2)** The following statements:

29 **a.** "This notice is provided pursuant to G.S. 131E-214.24."

30 **b.** "Any interested party wishing to provide written comments may
31 submit the written comments directly to the Office of the Attorney
32 General, 114 W. Edenton Street, Raleigh, NC 27603."

33 **(3)** The time, date, and location of any public hearing required under
34 G.S. 131E-214.30, or the information necessary to access a public hearing
35 using teleconferencing or video-conferencing technology, as permitted under
36 subsection (c) of G.S. 131E-214.30. A public hearing shall not be conducted
37 earlier than 14 days after the publication of a notice pursuant to this section.

38 **(4)** In the event the hospital entity is a nonprofit or publicly owned entity, a link
39 to a webpage that allows any member of the public to view a detailed summary
40 of the proposed transaction and copies of all transactional and collateral
41 agreements not otherwise exempt from public disclosure under Chapter 132
42 of the General Statutes or G.S. 131E-97.3.

43 **(b)** A failure by the hospital entity giving notice under G.S. 131E-214.24 to provide a
44 published written notice as required by subsection (a) of this section shall be a sufficient ground
45 for the Attorney General to object to the proposed transaction.

46 **(c)** This section does not apply to a sale, transfer, conveyance, or other disposition of a
47 substantial portion of a hospital entity's assets made in the course of a bankruptcy proceeding.

48 **"§ 131E-214.30. Public hearing requirements; responsibility for public hearing costs;**
49 **exemptions and waivers.**

50 **(a)** Within 30 days after providing the Attorney General with the written notice required
51 under subsection (a) of G.S. 131E-214.24, without regard to whether or not the Attorney General

1 has acknowledged receipt of a complete notice, the hospital entity and the acquiring entity shall
2 conduct one or more public hearings at a convenient time and in a convenient location in a county
3 in which there exists a hospital entity whose control or governance would be altered by the
4 proposed transaction. The public hearing required by this section shall not be conducted earlier
5 than 14 days after publication of the written notice required under G.S. 131E-214.28.

6 (b) At least seven days prior to the date of any public hearing, the hospital entity and the
7 acquiring entity shall give written notice to the Attorney General of the time, date, and location
8 of the public hearing. In addition, the hospital entity and the acquiring entity shall give written
9 notice to the governing bodies of both the county and the municipality in which the hospital entity
10 that is the subject of the proposed transaction is located, as applicable.

11 (c) With written notice to, and approval by, the Attorney General, the hospital entity and
12 the acquiring entity may conduct a public hearing required by this section via online
13 teleconferencing and video-conferencing technology; provided, however, that doing so does not
14 meaningfully limit the opportunity for public input concerning the proposed transaction.

15 (d) At a hearing required by this section, the hospital entity and the acquiring entity shall
16 provide the following information:

17 (1) The extent to which the proposed transaction is expected to impact the cost,
18 availability, accessibility, and quality of health care services.

19 (2) The process involved in reaching a fair sales price for the hospital entity,
20 including whether any director, officer, agent, or employee of the hospital
21 entity will benefit directly or indirectly from the proposed transaction.

22 (e) At a hearing required by this section, the hospital entity and the acquiring entity may
23 make such presentations as they deem appropriate and shall provide a meaningful opportunity
24 for public input. The hospital entity and the acquiring entity shall also communicate to attendees
25 how interested parties may provide written comments about the proposed transaction, which shall
26 be identical to the statement required by sub-subdivision (2)b. of subsection (a) of
27 G.S. 131E-214.28.

28 (f) In any transaction in which the hospital entity is a nonprofit or publicly owned entity,
29 the hospital entity and the acquiring entity shall provide information regarding the extent to which
30 the proposed transaction is expected to impact the nonprofit or community benefit activities of
31 the hospital entity, including a description of the resources that will be committed to the nonprofit
32 or community benefit activities after the consummation of the transaction.

33 (g) In addition to any hearing required under this section, the Attorney General may
34 conduct a public hearing regarding a proposed transaction. At least seven days prior to the public
35 hearing, the Attorney General shall notify the hospital entity and the acquiring entity of the time,
36 date, and location of any hearing to be conducted by the Attorney General or of the information
37 necessary to access a public hearing to be conducted by the Attorney General via
38 teleconferencing or video-conferencing technology. At least 14 days prior to the public hearing,
39 the Attorney General shall also give written notice of the hearing by publication in one or more
40 newspapers of general circulation in any county in which there exists a hospital entity whose
41 control or governance would be altered by the proposed transaction. At a hearing conducted by
42 the Attorney General, the Attorney General shall provide a meaningful opportunity for public
43 input that includes opportunities for questions and answers and comments.

44 (h) The parties to the proposed transaction shall pay for all costs associated with every
45 public hearing conducted in accordance with subsection (a) of this section. Additionally, the
46 Attorney General may recover from the parties the costs incurred by the Attorney General for
47 conducting a public hearing on a proposed transaction, subject to the limitations specified in
48 G.S. 131E-214.36.

49 (i) The provisions of this section do not apply to the sale, transfer, conveyance, or other
50 disposition of a substantial portion of a hospital entity's assets made in the course of a bankruptcy
51 proceeding.

1 (j) The parties may forego a public hearing required by this section if the Attorney
2 General provides the parties with a written waiver to do so. As part of such a waiver, the Attorney
3 General may reduce the number of public hearings required by subsection (a) of this section or
4 eliminate the hearing requirement altogether.

5 **"§ 131E-214.32. Required considerations by Attorney General.**

6 (a) The Attorney General shall consider all of the following criteria in making a decision
7 about any transaction subject to the provisions of this Article:

8 (1) Whether the fair market value of any asset to be transferred from the hospital
9 entity to the acquiring entity has been manipulated by the actions of the parties
10 in a manner that causes the fair market value of the asset to decrease.

11 (2) Whether health care providers will be offered the opportunity to invest or own
12 an interest in the acquiring entity or a related party, and whether procedures
13 or safeguards are in place to avoid health care providers' conflicts of interest
14 with respect to patient referrals.

15 (3) Whether the terms of any management or services contract negotiated in
16 conjunction with the proposed transaction are reasonable.

17 (4) Whether the proposed transaction may have a significant effect on the cost,
18 availability, accessibility, or quality of health care services for any affected
19 community. In making this determination, the Attorney General shall consider
20 all of the following:

21 a. Whether sufficient safeguards are included to ensure that the affected
22 community will have continued access to affordable health care
23 services.

24 b. Whether the proposed transaction creates or has the likelihood of
25 creating an adverse effect on the cost, availability, accessibility, or
26 quality of health care services within the affected community.

27 c. Whether the acquiring entity has made a commitment, at least
28 comparable to the commitment demonstrated by the hospital entity or
29 a foundation affiliated with the hospital entity, to provide (i) health
30 care to individuals who are disadvantaged, uninsured, or underinsured
31 and (ii) other benefits to the affected community to promote improved
32 health care. In determining whether the levels of commitment are
33 comparable under this sub-subdivision, the Attorney General shall
34 consider the number of programs and activities and the amount of
35 funding dedicated by the acquiring entity and the hospital entity or
36 their affiliated foundations to:

37 1. The delivery of health care services to individuals who are
38 uninsured or underinsured.

39 2. The delivery of other services or benefits to the affected
40 community to promote improved health care.

41 3. Medical education and teaching programs.

42 4. Medical research programs.

43 d. Whether the proposed transaction would result in the revocation of
44 hospital privileges for any health care provider.

45 e. Whether sufficient safeguards are included to maintain appropriate
46 capacity for health science research and health care provider
47 education.

48 f. Whether the proposed transaction serves the public interest by
49 promoting the availability and accessibility of safe, essential, and
50 quality health care services and treatment.

- 1 (5) Whether the proposed transaction complies with all applicable State and
2 federal laws and regulations, including antitrust laws.
- 3 (6) Whether the proposed transaction is otherwise in the public interest, including
4 the transaction's ultimate anticipated effect on competition in any part of this
5 State among health care providers.
- 6 (7) Whether the Attorney General has been provided with sufficient information
7 and data by the parties to the transaction to adequately evaluate the proposed
8 transaction or the anticipated effects of the transaction on the public; provided,
9 however, that this subdivision shall not be a ground for disapproving the
10 proposed transaction, unless the Attorney General has notified the hospital
11 entity and the acquiring entity of any inadequacy of information or data and
12 has provided each with a reasonable opportunity to remedy the inadequacy.
- 13 (8) Whether there is an objection by the governing body of a county or
14 municipality in which there exists a hospital entity whose control or
15 governance would be altered by the proposed transaction.
- 16 (b) The Attorney General shall consider all of the following criteria in making a decision
17 about any proposed transaction subject to the provisions of this Article that would alter the
18 control or governance of a nonprofit or publicly owned hospital entity:
- 19 (1) Whether the hospital entity would receive full and fair market value for its
20 charitable assets or social welfare assets. For the purpose of this subdivision,
21 "social welfare assets" means the average yearly monetary value of the
22 benefits the hospital entity provided to the community during the preceding
23 five calendar years.
- 24 (2) Whether the proceeds of the proposed transaction would be used in a manner
25 consistent with the trust under which the assets are held by the hospital entity.
- 26 (3) Whether the proceeds of the proposed transaction would be used by a county
27 or municipality for general or special revenue obligations not expressly
28 provided for when the hospital was established.
- 29 (4) Whether any proceeds of the proposed transaction would be controlled as
30 funds independently of the acquiring entity or related entities; provided,
31 however, that the proceeds of a proposed transaction may not be returned to
32 any county or municipal government except to the extent necessary to pay
33 lawful obligations to such county or municipal government.
- 34 (5) Whether the proposed transaction would result in a breach of fiduciary duty,
35 as determined by the Attorney General, including conflicts of interest related
36 to payments or benefits to officers, directors, board members, executives, or
37 experts employed or retained by the parties.
- 38 (6) Whether the governing body of the hospital entity exercised due diligence in
39 deciding to dispose of the hospital entity's assets, selecting the acquiring
40 entity, and negotiating the terms and conditions of the disposition.
- 41 (7) Whether the proposed transaction would result in private inurement to any
42 person.
- 43 (8) Whether any foundation established to hold the proceeds of the proposed
44 transaction would be broadly based in the community and be representative
45 of the affected community, taking into consideration the structure and
46 governance of the foundation.
- 47 (c) For any proposed transaction subject to the provisions of this Article that involves a
48 hospital owned by a municipality, as defined in subdivision (5) of G.S. 131E-6, or a hospital
49 authority, as defined in subdivision (14) of G.S. 131E-16, the Attorney General shall also
50 consider whether the transaction complies with the provisions of Article 2 of Chapter 131E of

1 the General Statutes governing the sale or conveyance of any rights of ownership the municipality
2 or hospital authority has in a hospital entity.

3 **"§ 131E-214.34. Demand for information for review.**

4 The Attorney General may demand that the hospital entity giving notice under
5 G.S. 131E-214.24 provide such information as the Attorney General reasonably deems necessary
6 to complete the review of any proposed transaction covered by this Article. A failure by the
7 hospital entity giving notice under G.S. 131E-214.24 to provide timely information as required
8 by the Attorney General shall be a sufficient ground for the Attorney General to object to the
9 proposed transaction.

10 **"§ 131E-214.36. Attorney General's contract authority for reviewing proposed**
11 **transactions; assistance from the Department of Health and Human Services;**
12 **fees to recover costs incurred in conducting reviews.**

13 (a) Within the time periods prescribed by G.S. 131E-214.26, the Attorney General may
14 do any of the following to assist in the review of a proposed transaction covered by this Article:

- 15 (1) Contract with, consult, and receive advice from any agency of the State or the
16 United States on such terms and conditions as the Attorney General deems
17 appropriate.
- 18 (2) At the Attorney General's sole discretion, contract with experts or consultants
19 the Attorney General deems appropriate to assist the Attorney General in
20 reviewing the proposed transaction.

21 Notwithstanding the provisions of this subsection, the Attorney General shall not incur
22 contract costs that exceed an amount that is reasonable and necessary for a review of the proposed
23 transaction.

24 (b) In exercising the authority to enter into contracts pursuant to this section, the Attorney
25 General is exempt from Article 3 of Chapter 143 of the General Statutes.

26 (c) The Attorney General may request from the Department of Health and Human
27 Services a report on the anticipated effects of any proposed transaction on access to, or the pricing
28 of, health care services in any part of the State. If the Attorney General did not unreasonably
29 delay in requesting such a report, the review period prescribed by G.S. 131E-214.26 may be
30 extended an additional 30 days to allow for the completion of such a report; provided, however,
31 that the total review period may not exceed 180 days from the date the Attorney General notifies
32 the parties to the transaction that they have submitted a complete notice pursuant to subsection
33 (a) of G.S. 131E-214.26.

34 (d) The Attorney General may impose upon the acquiring entity the following fees:

- 35 (1) A fee in an amount sufficient to cover the cost of all contracts entered into by
36 the Attorney General pursuant to subsection (a) of this section.
- 37 (2) A fee of up to fifty thousand dollars (\$50,000) to cover the following:
 - 38 a. Actual costs incurred by the Attorney General in reviewing any
39 proposed transaction under this Article, including (i) costs incurred by
40 the Attorney General for conducting a public hearing pursuant to
41 subsections (f) and (g) of G.S. 131E-214.30 and (ii) attorney fees at
42 the maximum billing rate used by the Attorney General to bill State
43 agencies for legal services.
 - 44 b. Actual costs incurred by the Department of Health and Human
45 Services for preparing a report for the Attorney General pursuant to
46 subsection (c) of this section. Upon receipt of this fee from the
47 acquiring entity, the Attorney General shall reimburse the Department
48 of Health and Human Services for the actual cost of preparing the
49 report. Reimbursement of these costs shall receive priority over any
50 reimbursement of costs that will ultimately inure to the Attorney
51 General or to the Department of Justice.

1 (e) The acquiring entity may object to paying any fee imposed under this section. If the
2 acquiring entity objects, it may seek an order from a court of competent jurisdiction to limit the
3 acquiring entity's liability for the fee. In determining whether to issue an order, the court shall
4 consider the reasonableness of any contract the Attorney General entered into with any expert
5 and the cost of contracting with the expert relative to the value of the proposed transaction. If the
6 court declines to enter the acquiring entity's proposed order, the acquiring entity shall reimburse
7 the Attorney General for costs associated with the litigation and such reimbursement shall not
8 count against the maximum allowed fee of fifty thousand dollars (\$50,000) specified in
9 subsection (d) of this section.

10 (f) The failure of an acquiring entity to pay to the Attorney General any fee authorized
11 by this section by the applicable deadline specified in this subsection shall be sufficient grounds
12 for the Attorney General to object to the proposed transaction:

13 (1) Absent an objection by the acquiring entity within seven days after the
14 Attorney General imposes the fee, the fee is payable to the Attorney General
15 within 30 days after the date the Attorney General imposes the fee.

16 (2) Upon an objection by the acquiring entity within seven days after the Attorney
17 General imposes the fee, the fee is payable to the Attorney General within 30
18 days after the date the court issues an order determining that the acquiring
19 entity is liable for the fee.

20 **"§ 131E-214.38. Objection to proposed transaction by Attorney General.**

21 (a) The Attorney General may object to any transaction covered by this Article within
22 the time frame prescribed by G.S. 131E-214.26.

23 (b) Within 30 days after notifying the parties to a transaction that the Attorney General
24 objects to the transaction, if the Attorney General still objects to the transaction, the Attorney
25 General shall file an action in either (i) the superior court of any county in which there exists a
26 hospital entity whose control or governance would be altered by the proposed transaction or (ii)
27 the superior court of the county in which the acquiring entity's principal place of business is
28 located, if located within the State. The Attorney General and the parties to a transaction may
29 mutually agree, in writing, to extend the time period in which the Attorney General may file such
30 an action.

31 (c) If the hospital entity is a nonprofit or publicly owned entity:

32 (1) The Attorney General shall file an action in the name of the State seeking
33 injunctive relief to restrain the parties from taking further action to
34 consummate the transaction or to compel the parties to modify the transaction.
35 The court may issue an order granting such injunctive relief.

36 (2) The Attorney General may apply to the court for temporary or preliminary
37 injunctive relief pending a final determination of the case.

38 (3) The Attorney General shall name as defendants the hospital entity, the
39 governing body of the hospital entity, and the acquiring entity. Additionally,
40 if the Attorney General alleges a breach of fiduciary duty by an individual
41 director or officer of the hospital entity, the Attorney General may name such
42 director or officer as a defendant.

43 (4) In any action brought pursuant to this subsection, the parties to the proposed
44 transaction bear the burden of establishing by clear and convincing evidence
45 all of the following:

46 a. No breach of fiduciary duty occurred in the negotiation of the
47 transaction and consummation of the transaction would not result in a
48 breach of fiduciary duty.

49 b. Any assets of the hospital entity dedicated to charitable purposes prior
50 to the transaction would continue to be dedicated to the same or

- 1 equivalent charitable purposes following consummation of the
2 transaction.
- 3 c. The benefits of the transaction outweigh any disadvantages
4 attributable to a reduction in competition likely to result from the
5 transaction. In assessing disadvantages attributable to a reduction in
6 competition likely to result from the transaction, the court may draw
7 upon (i) the determinations of federal courts and North Carolina courts
8 concerning unreasonable restraint of trade and (ii) antitrust principles
9 and law.
- 10 (5) The court may issue a final determination approving the transaction,
11 approving the transaction subject to modification, or disapproving the
12 transaction. Any party may appeal a decision of the court approving the
13 transaction subject to modification, except the Attorney General may not
14 appeal a decision of the court approving the transaction subject to the same
15 modifications initially sought by the Attorney General.
- 16 (d) If the hospital entity is a for-profit entity:
- 17 (1) The Attorney General shall file an action in the name of the State seeking
18 injunctive relief to restrain the parties from taking further action to
19 consummate the transaction. The court may issue an order granting such
20 injunctive relief.
- 21 (2) The Attorney General may apply to the court for temporary or preliminary
22 injunctive relief pending final disposition of the case.
- 23 (3) The Attorney General shall name as defendants the hospital entity and the
24 acquiring entity.
- 25 (4) In any action brought pursuant to this subsection, the Attorney General shall
26 have the burden of establishing by clear and convincing evidence that
27 consummation of the transaction would have significant and deleterious
28 effects on cost, availability, accessibility, and quality of health care in the State
29 or any portion of the State and that the negative consequences of such a
30 transaction outweigh any potential benefits.
- 31 a. In assessing disadvantages attributable to a reduction in competition
32 likely to result from consummation of the transaction, the court may
33 draw upon the determinations of federal courts and North Carolina
34 courts concerning unreasonable restraint of trade and upon antitrust
35 principles and law; provided, however, that the court takes into
36 consideration the following findings of the General Assembly, which
37 reflect the public policy of the State:
- 38 1. For a number of reasons, transactions involving hospital
39 entities often escape rigorous scrutiny under traditional
40 antitrust review.
- 41 2. Despite traditional judicial deference to such transactions,
42 most experts agree that the bulk of the evidence clearly
43 demonstrates that the consolidation of hospital entities
44 increases health care prices and reduces the quality of health
45 care.
- 46 3. Accordingly, hospital entity consolidations in this State should
47 be subject to more rigorous review than has traditionally been
48 provided under antitrust law.
- 49 4. In particular, a court reviewing a transaction subject to review
50 under this Article should consider a broad definition of the

- 1 relevant market, given that consumers in the State often travel
2 significant distances for certain procedures.
- 3 5. In particular, a court reviewing a transaction subject to review
4 under this Article should consider not just the first-order
5 anticompetitive effects but also downstream effects, such as
6 the effect on the acquiring entity's negotiating power with
7 insurance providers, the effect on the market for primary care
8 in the relevant market, and whether the transaction is likely to
9 create conditions that will lead to further monopolization in the
10 future.
- 11 b. The particular subjects of scrutiny in sub-sub-subdivisions a.4. and
12 a.5. of this subdivision are illustrative rather than exhaustive, and the
13 court should balance the presumption in favor of the transaction
14 established by the burden of proof with a rigorous scrutiny of the
15 transaction's ultimate likely effect on the price and quality of health
16 care in the State or any part of the State.
- 17 (5) The court may issue a final determination approving the transaction,
18 approving the transaction subject to modification, or disapproving the
19 transaction. Any party may appeal a decision of the court approving the
20 transaction subject to modification, except the Attorney General may not
21 appeal a decision of the court approving the transaction subject to the same
22 modification the Attorney General initially sought.
- 23 (e) Any party to a transaction that is subject to review under this Article may decline to
24 enter into a transaction that has been modified by order of the court upon a final determination.
25 However, if the parties agree to enter into a transaction that has been modified by order of the
26 court upon a final determination, then the modified transaction shall not be subject to renewed
27 objection from the Attorney General, except as provided for in subsection (f) of
28 G.S. 131E-214.40.
- 29 **"§ 131E-214.40. Post-transaction monitoring; authorization to file further action.**
- 30 (a) Following a decision by the Attorney General not to object to a transaction subject to
31 review under this Article, or following a final determination in a judicial proceeding brought
32 pursuant to G.S. 131E-214.38, the acquiring entity shall be subject to post-transaction monitoring
33 by an independent health care access monitor for a period of not less than three years, as
34 prescribed by this section, in order to determine the measurable effect of the transaction on the
35 accessibility, price, and quality of health care in the State.
- 36 (b) Within 30 days after a decision by the Attorney General not to object to a transaction
37 subject to review under this Article or a final determination approving the transaction in a judicial
38 proceeding, the acquiring entity shall enter into a contract with the Department of Health and
39 Human Services that contains all of the following:
- 40 (1) An agreement by the Department of Health and Human Services to retain an
41 independent health care access monitor to (i) conduct post-transaction
42 monitoring of the acquiring entity's assets and operations for a period of not
43 less than three years and (ii) submit quarterly reports of the monitor's findings
44 to the Department of Health and Human Services and the Attorney General.
45 The Department of Health and Human Services, in its sole discretion, shall
46 select the independent health care access monitor to be retained to perform the
47 post-transaction monitoring required under the contract.
- 48 (2) An agreement by the acquiring entity to pay the contract amount determined
49 by the Attorney General, in consultation with the Secretary of Health and
50 Human Services, for retaining an independent health care access monitor to
51 conduct post-transaction monitoring of the acquiring entity's assets and

1 operations for a period of not less than three years. The contract amount shall
2 not exceed the actual amount paid by the Department of Health and Human
3 Services to the independent health care access monitor retained to conduct the
4 post-transaction monitoring services required by this section. Contract
5 amounts paid by an acquiring entity to the Department of Health and Human
6 Services to retain a monitor to conduct post-transaction monitoring services
7 required by this section do not count against the maximum fees specified in
8 G.S. 131E-214.36.

9 (3) An agreement by the acquiring entity to provide the independent health care
10 access monitor with appropriate access to its records in order to enable the
11 monitor to fulfill the functions specified in subsection (c) of this section.

12 (c) Each independent health care access monitor retained by the Department of Health
13 and Human Services to provide post-transaction monitoring services for an acquiring entity
14 pursuant to this section shall monitor and report quarterly to the Attorney General and the
15 Department of Health and Human Services on the following:

16 (1) The extent to which the community has access to health care services provided
17 by the acquiring entity.

18 (2) The amount of financial assistance for medical services provided by the
19 acquiring entity.

20 (3) Any changes in the price of health care services provided by the acquiring
21 entity.

22 (4) Any changes in the quality of health care services provided by the acquiring
23 entity.

24 (d) The Attorney General, in consultation with the Secretary of Health and Human
25 Services, may extend the period of post-transaction monitoring for up to an additional seven
26 years following the expiration of the initial three-year period; provided, however, that the total
27 amount of post-transaction monitoring shall not exceed 10 years following consummation of the
28 transaction. If the Attorney General, in consultation with the Secretary of Health and Human
29 Services, agrees to extend the period of post-transaction monitoring beyond the initial three-year
30 period, then the acquiring entity or its successor entity shall not be required to pay more than
31 fifty percent (50%) of the cost for retaining the independent health care access monitor beyond
32 the initial three-year period. The Department of Justice and the Department of Health and Human
33 Services shall each pay twenty-five percent (25%) of the remaining costs associated with
34 retaining the independent health care access monitor beyond the initial three-year period from
35 funds available to each department.

36 (e) In addition to the post-transaction monitoring provided for in this section, in the event
37 that the hospital entity was a nonprofit or publicly owned entity, the acquiring entity or any
38 foundation or charitable trust established pursuant to the transaction shall annually report to the
39 Attorney General on its charitable activities and the disposition of its charitable assets in the
40 manner and form prescribed by the Attorney General.

41 (f) If, upon review of the post-transaction monitoring, the Attorney General deems it
42 reasonable and necessary to do so based on the deleterious anticompetitive effects of the
43 transaction on access to, and the price and quality of, health care in any part of the State, the
44 Attorney General may file an action to unwind the transaction or, if the court determines that
45 unwinding the transaction is not practicable, to otherwise alter the control or governance of assets
46 involved in the transaction in order to restore the benefits of health care provider competition in
47 any part of the State, subject to the following:

48 (1) If the transaction was approved only after a final judicial determination
49 pursuant to G.S. 131E-214.38, the Attorney General shall file the action in the
50 same court that made the final judicial determination. If the transaction was
51 approved by the Attorney General without a final judicial determination

1 pursuant to G.S. 131E-214.38, the Attorney General may file an action in any
2 superior court in which jurisdiction would be proper under subsection (b) of
3 G.S. 131E-214.38.

4 (2) Regardless of whether the hospital entity was a nonprofit, publicly owned, or
5 for-profit entity, the Attorney General has the burden of demonstrating by
6 clear and convincing evidence that the benefits of either unwinding the
7 transaction or altering the control or governance of the assets involved in the
8 transaction in order to restore the benefits of health care provider competition
9 in any part of the State clearly outweigh the costs of doing so, including the
10 transactional costs associated with doing so and any likelihood that the
11 resulting market would not provide the benefits of health care provider
12 competition in any part of the State.

13 (3) No such action may be brought more than 10 years after the consummation of
14 a transaction.

15 (g) After consummation of a transaction, an acquiring entity may not change the financial
16 assistance policy regarding individuals who are uninsured or underinsured that were in effect at
17 the hospital entity immediately preceding consummation of the transaction without first
18 providing 120-days' notice, in writing, to the Attorney General; its hospital staff, including
19 physicians in a contractual relationship with the acquiring entity; and patients who have
20 previously benefited from the hospital entity's financial assistance policy, except that an
21 acquiring entity may implement an increase in the applicable income limits used to determine
22 eligibility for financial assistance that becomes effective immediately. In order to meet the notice
23 requirements of this subsection with respect to patients who have previously benefited from the
24 hospital entity's financial assistance policy, the acquiring entity must send the notice to both the
25 patient's last known mailing address and to the email address on file for the patient, which
26 includes all of the following:

27 (1) A description of how the acquiring entity's new financial assistance policy will
28 differ from the hospital entity's financial assistance policy.

29 (2) A description of the process for obtaining financial assistance under the
30 acquiring entity's new financial assistance policy, including a list of (i) all
31 forms a patient would be required to complete in order to be eligible for
32 financial assistance and (ii) all documents a patient would be required to
33 produce as part of the acquiring entity's new financial assistance policy.

34 (3) A link to a webpage that allows any member of the public to view the new
35 financial assistance policy and any forms a patient would be required to
36 complete in order to be eligible for financial assistance.

37 (4) A toll-free telephone number that patients can call to ask questions regarding
38 the acquiring entity's new financial assistance policy.

39 The acquiring entity shall educate all physicians affiliated with the acquiring entity, including
40 physicians in a contractual relationship with the acquiring entity, on the new financial assistance
41 policy. Physicians shall verbally inform patients about the new financial assistance policy at
42 appointments occurring during the 120-day notice period required by this subsection.

43 **"§ 131E-214.42. Violations; penalties; common law authority of Attorney General.**

44 (a) Any transactions entered into in violation of this Article shall be null and void.

45 (b) Each member of the governing boards and each chief financial officer of the parties
46 to a transaction entered into in violation of this Article are subject to a civil penalty of up to one
47 million dollars (\$1,000,000) each per transaction. The Attorney General shall institute
48 proceedings to impose a civil penalty authorized by this section in a court of competent
49 jurisdiction in Wake County, and the court shall determine the amount of the civil penalty to be
50 imposed under this section. The clear proceeds of civil penalties provided for in this subsection
51 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

1 (c) The Department of Health and Human Services shall not issue a new or renewal
2 license to operate a hospital under Article 5 of Chapter 131E of the General Statutes, or any
3 applicable rules, on behalf of any hospital that is a party to a transaction entered into in violation
4 of the notice, public hearing, and review requirements of this Article.

5 (d) Nothing in this Article shall be construed to limit the statutory or common law
6 authority of the Attorney General to protect charitable trusts and assets located in this State. The
7 penalties and remedies set forth in this Article are in addition to, and not a replacement for, any
8 other civil or criminal actions the Attorney General is authorized by statute or common law to
9 file, including actions seeking rescission of a transaction, injunctive relief, or any combination
10 of these, and other remedies available under statute or common law."

11 **SECTION 2.** This act becomes effective December 1, 2023, and applies to activities
12 occurring on or after that date.