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SENATE BILL DRS35190-MGfy-28A

Short Title: Preserving Competition in Healthcare Act. (Public)

Sponsors: Senators Burgin, Mayfield, and Corbin (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT PRESERVING COMPETITION IN HEALTHCARE BY REGULATING THE
CONSOLIDATION AND CONVEYANCE OF HOSPITALS.

The General Assembly of North Carolina enacts:

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

"Article 11C.

"Preserving Competition in Healthcare Act.

"§ 131E-214.20. Definitions.

The following definitions apply in this Article:

- (1) Acquiring entity. – The person or entity that gains ownership or control of a hospital entity as a result of a transaction subject to review under this Article.
- (2) Attorney General. – The Attorney General or any employee of the Department of Justice designated by the Attorney General.
- (3) Hospital entity. – Any corporation or governmental entity licensed as a hospital under Article 5 of Chapter 131E of the General Statutes, including any entity affiliated with such corporation or governmental entity through ownership, governance, or membership, such as a holding company or subsidiary.
- (4) Person. – Any individual, partnership, trust, estate, corporation, association, joint venture, joint stock company, or other organization.
- (5) State Auditor. – The State Auditor or any employee of the Office of the State Auditor designated by the State Auditor.
- (6) State Treasurer. – The State Treasurer or any employee of the Office of the State Treasurer designated by the State Treasurer.
- (7) Transaction. – Includes all of the following, if the value of the assets, control, or governance interest equals or exceeds five million dollars (\$5,000,000):
 - a. The sale, transfer, lease, exchange, optioning, conveyance, or other disposition of no less than fifty percent (50%) of the assets or operations of any hospital entity to any person or entity other than another hospital entity that controls, is controlled by, or is under common control with such hospital entity.
 - b. The transfer of control or governance of a hospital entity to a person or entity other than another hospital entity that controls, is controlled by, or is under common control with such hospital entity.



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- 1 c. Any binding legal obligation between two or more persons that results
2 in a transfer of control, responsibility, or governance of no less than
3 fifty percent (50%) of a hospital entity's assets to an acquiring entity.
4 d. Any transaction regardless of exact form that, if structured as a
5 purchase, merger, or joint venture, would be subject to review under
6 this Article.
7 e. Any transaction described in sub-subdivisions a. through d. of this
8 subdivision that is entered into by a hospital entity or by any person or
9 entity that controls, is controlled by, or is under common control with
10 such hospital entity.
11 f. All sales, transfers, conveyances, or other dispositions of no less than
12 fifty percent (50%) of a hospital entity's assets made in the course of a
13 bankruptcy proceeding.

14 **"§ 131E-214.21. Actions and decisions by the State Auditor, Attorney General, and State**
15 **Treasurer.**

16 Whenever an action or decision is required by the State Auditor, the Attorney General, and
17 the State Treasurer under this Article, they shall act or decide together and the opinion of the
18 majority shall prevail.

19 **"§ 131E-214.22. Applicability; waived transactions.**

20 This Article does not apply to a hospital entity if (i) the transaction is in the usual and regular
21 course of its activities and (ii) the State Auditor, Attorney General, and State Treasurer have
22 provided to the hospital entity a written waiver of this Article with respect to the transaction. A
23 determination by the State Auditor, Attorney General, and State Treasurer that a transaction
24 merits review under this Article shall be the final decision of the State and shall not be set aside
25 on judicial review unless found to be arbitrary and capricious.

26 **"§ 131E-214.24. Written notice and certification requirements for proposed transactions;**
27 **rules.**

28 (a) Prior to entering into any transaction subject to review under this Article, a hospital
29 entity shall provide the State Auditor, Attorney General, and State Treasurer with written notice
30 of the proposed transaction. The hospital entity shall simultaneously provide the State Auditor,
31 Attorney General, and State Treasurer with written certification that a copy of this Article in its
32 entirety has been provided to each member of the governing board or board of trustees of the
33 hospital entity.

34 (b) A hospital entity and an acquiring entity may provide the State Auditor, Attorney
35 General, and State Treasurer with a single written notice of a proposed transaction that meets the
36 requirements of this section; provided, however, that the State Auditor, Attorney General, and
37 State Treasurer may require additional information that the State Auditor, Attorney General, and
38 State Treasurer determines is necessary for a complete review of the proposed transaction from
39 any party.

40 (c) The written notice required under this section shall not become effective until the
41 State Auditor, Attorney General, and State Treasurer have acknowledged receipt of a complete
42 notice in accordance with subsection (a) of G.S. 131E-214.26.

43 (d) The State Auditor, Attorney General, and State Treasurer shall adopt rules specifying
44 the required contents of the written notice required by this section and the manner in which the
45 written notice shall be provided to the State Auditor, Attorney General, and State Treasurer in
46 order to be deemed complete and effective. The rules shall allow for the State Auditor, Attorney
47 General, and State Treasurer, in their discretion, to require additional information about a
48 proposed transaction that is not expressly required in the rules adopted pursuant to this section.

49 **"§ 131E-214.26. Time line and process for decision to object or take no action.**

50 (a) When the parties to the proposed transaction have provided the State Auditor,
51 Attorney General, and State Treasurer with all the information expressly required by the rules

adopted under G.S. 131E-214.24(d), the State Auditor, Attorney General, and State Treasurer shall provide to the hospital entity and acquiring entity written acknowledgement of having received a complete notice that meets the requirements of G.S. 131E-214.24. Written acknowledgement by the State Auditor, Attorney General, and State Treasurer pursuant to this subsection shall constitute the beginning of a 90-day review period. The State Auditor, Attorney General, and State Treasurer shall not unreasonably withhold a determination that the parties have provided a complete notice that meets the requirements of G.S. 131E-214.24.

(b) If the State Auditor, Attorney General, and State Treasurer have provided to the hospital entity and acquiring entity written acknowledgement of having received a complete notice that meets the requirements of G.S. 131E-214.24, as required by subsection (a) of this section, a request by the State Auditor, Attorney General, and State Treasurer for additional information not expressly required by the rules adopted under G.S. 131E-214.24(d) does not delay the commencement of the 60-day review period under subsection (c) of this section.

(c) The State Auditor, Attorney General, and State Treasurer have a period of 60 days, commencing on the date they provide written acknowledgement to the hospital entity and acquiring entity of having received a complete notice that meets the requirements of G.S. 131E-214.24, to review the proposed transaction and notify the hospital entity, in writing, of their decision to either object to the proposed transaction or to take no action regarding the proposed transaction.

(d) Upon notice, in writing, to all parties to the transaction, the State Auditor, Attorney General, and State Treasurer may extend their 60-day review period for up to an additional 30 days if the extension is necessary to obtain additional information from one or more of the parties to the transaction or to complete any component of the review process specified in G.S. 131E-214.30 through G.S. 131E-214.36.

(e) During the review period, the parties to the proposed transaction are prohibited from consummating the transaction.

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

(a) Within 10 days after providing the State Auditor, Attorney General, and State Treasurer with written notice of a proposed transaction pursuant to subsection (a) of G.S. 131E-214.24, without regard to whether or not the State Auditor, Attorney General, and State Treasurer have acknowledged receipt of a complete notice, the hospital entity shall give written notice of the proposed transaction by publication in one or more newspapers of general circulation in every county in which (i) there exists a hospital entity whose control or governance would be altered by the proposed transaction or (ii) there resides a substantial number of patients of a hospital entity whose control or governance would be altered by the proposed transaction. The published written notice shall contain the following:

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

- a. The name of the hospital entity.
- b. The name of the acquiring entity.
- c. The names of any other parties to the proposed transaction.
- d. The nature of the proposed transaction.
- e. The anticipated consideration that will be paid by the acquiring entity.

(2) The following statements:

- a. "This notice is provided pursuant to G.S. 131E-214.24."
- b. "Any interested party wishing to provide written comments may submit the written comments directly to the Office of the Attorney General, 114 W. Edenton Street, Raleigh, NC 27603."

(3) The time, date, and location of any public hearing required under G.S. 131E-214.30, or the information necessary to access a public hearing

1 using teleconferencing or video-conferencing technology, as permitted under
2 subsection (c) of G.S. 131E-214.30. A public hearing shall not be conducted
3 earlier than 14 days after the publication of a notice pursuant to this section.

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

9 (b) A failure by the hospital entity giving notice under G.S. 131E-214.24 to provide a
10 published written notice as required by subsection (a) of this section shall be a sufficient ground
11 for the State Auditor, Attorney General, and State Treasurer to object to the proposed transaction.

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

14 **"§ 131E-214.30. Public hearing requirements; responsibility for public hearing costs;**
15 **exemptions and waivers.**

16 (a) Within 30 days after providing the State Auditor, Attorney General, and State
17 Treasurer with the written notice required under subsection (a) of G.S. 131E-214.24, without
18 regard to whether or not the State Auditor, Attorney General, and State Treasurer have
19 acknowledged receipt of a complete notice, the hospital entity and the acquiring entity shall
20 conduct one or more public hearings at a convenient time and in a convenient location in a county
21 in which there exists a hospital entity whose control or governance would be altered by the
22 proposed transaction. The public hearing required by this section shall not be conducted earlier
23 than 14 days after publication of the written notice required under G.S. 131E-214.28.

24 (b) At least seven days prior to the date of any public hearing, the hospital entity and the
25 acquiring entity shall give written notice to the State Auditor, Attorney General, and State
26 Treasurer of the time, date, and location of the public hearing. In addition, the hospital entity and
27 the acquiring entity shall give written notice to the governing bodies of both the county and the
28 municipality in which the hospital entity that is the subject of the proposed transaction is located,
29 as applicable.

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

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

37 (1) The extent to which the proposed transaction is expected to impact the cost,
38 availability, accessibility, and quality of healthcare services.

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

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

48 (f) In any transaction in which the hospital entity is a nonprofit or publicly owned entity,
49 the hospital entity and the acquiring entity shall provide information regarding the extent to which
50 the proposed transaction is expected to impact the nonprofit or community benefit activities of

the hospital entity, including a description of the resources that will be committed to the nonprofit or community benefit activities after the consummation of the transaction.

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

(h) The parties to the proposed transaction shall pay for all costs associated with the public hearing conducted in accordance with subsection (a) of this section.

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

"§ 131E-214.32. Required considerations by the State Auditor, Attorney General, and State Treasurer.

(a) The State Auditor, Attorney General, and State Treasurer shall consider all of the following criteria in making a decision about any transaction subject to the provisions of this Article:

- (1) Whether the fair market value of any asset to be transferred from the hospital entity to the acquiring entity has been manipulated by the actions of the parties in a manner that causes the fair market value of the asset to decrease.
- (2) Whether healthcare providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid healthcare providers' conflicts of interest with respect to patient referrals.
- (3) Whether the terms of any management or services contract negotiated in conjunction with the proposed transaction are reasonable.
- (4) Whether the proposed transaction may have a significant effect on the cost, availability, accessibility, or quality of healthcare services for any affected community. In making this determination, the State Auditor, Attorney General, and State Treasurer shall consider all of the following:
 - a. Whether sufficient safeguards are included to ensure that the affected community will have continued access to affordable healthcare services.
 - b. Whether the proposed transaction creates or has the likelihood of creating an adverse effect on the cost, availability, accessibility, or quality of healthcare services within the affected community.
 - c. Whether the acquiring entity has made a commitment to provide (i) free care to individuals whose income is three hundred percent (300%) or less of the federal poverty guidelines, (ii) free or discounted healthcare to other individuals who are disadvantaged, uninsured, or underinsured, and (iii) other benefits to the affected community to promote improved healthcare. In determining whether the level of

commitment by the acquiring entity will have a significant effect on the availability, accessibility, or quality of healthcare services for any affected community if the proposed transaction is approved, the State Auditor, Attorney General, and State Treasurer shall consider the number of programs and activities and the amount of funding dedicated by the acquiring entity, as compared to the hospital entity or their affiliated foundations, to:

1. The delivery of healthcare services to individuals who are uninsured or underinsured.
2. The delivery of other services or benefits to the affected community to promote improved healthcare.
3. Medical education and teaching programs.
4. Medical research programs.

d. Whether the proposed transaction would result in the revocation of hospital privileges for any healthcare provider.

e. Whether sufficient safeguards are included to maintain appropriate capacity for health science research and healthcare provider education.

f. Whether the proposed transaction serves the public interest by promoting the availability and accessibility of safe, essential, and quality healthcare services and treatment.

(5) Whether the proposed transaction complies with all applicable State and federal laws and regulations, including antitrust laws.

(6) Whether the proposed transaction will significantly harm competition in any part of this State among healthcare providers.

(7) Whether the State Auditor, Attorney General, and State Treasurer have received all the information required by the rules adopted under G.S. 131E-214.24(d) and timely responses to any additional requests for information necessary to adequately evaluate the proposed transaction; provided, however, that this subdivision shall not be a ground for disapproving the proposed transaction, unless the State Auditor, Attorney General, and State Treasurer have notified the hospital entity and the acquiring entity of any inadequacy of information or data and has provided each with a reasonable opportunity to remedy the inadequacy.

(8) Any objection to the transaction raised in comments submitted to the Attorney General.

(b) In addition to the considerations specified in subsection (a) of this section, the State Auditor, Attorney General, and State Treasurer shall also consider all of the following criteria in making a decision about any proposed transaction subject to the provisions of this Article that would alter the control or governance of a tax-exempt or publicly owned hospital entity:

(1) Whether the hospital entity would receive fair market value for its charitable assets or social welfare assets. For the purpose of this subdivision, "social welfare assets" means the average yearly monetary value of the benefits the hospital entity provided to the community during the preceding five calendar years.

(2) Whether the proceeds of the proposed transaction would be used in a manner consistent with the trust under which the assets are held by the hospital entity.

(3) Whether the proceeds of the proposed transaction would be used by a county or municipality for general or special revenue obligations not expressly provided for when the hospital was established.

(4) Whether any proceeds of the proposed transaction would be controlled as funds independently of the acquiring entity or related entities; provided,

1 however, that the proceeds of a proposed transaction may not be returned to
2 any county or municipal government except to the extent necessary to pay
3 lawful obligations to such county or municipal government.

4 (5) Whether the proposed transaction would result in a breach of fiduciary duty,
5 as determined by the Attorney General, including conflicts of interest related
6 to payments or benefits to officers, directors, board members, executives, or
7 experts employed or retained by the parties.

8 (6) Whether the governing body of the hospital entity exercised due diligence in
9 deciding to dispose of the hospital entity's assets, selecting the acquiring
10 entity, and negotiating the terms and conditions of the disposition.

11 (7) Whether the proposed transaction would result in private inurement to any
12 person.

13 (8) Whether any foundation established to hold the proceeds of the proposed
14 transaction would be broadly based in the community and be representative
15 of the affected community, taking into consideration the structure and
16 governance of the foundation.

17 (c) For any proposed transaction subject to the provisions of this Article that involves a
18 hospital owned by a municipality, as defined in G.S. 131E-6, or a hospital authority, as defined
19 in G.S. 131E-16, the State Auditor, Attorney General, and State Treasurer shall also consider
20 whether the transaction complies with the provisions of Article 2 of Chapter 131E of the General
21 Statutes governing the sale or conveyance of any rights of ownership the municipality or hospital
22 authority has in a hospital entity.

23 "§ 131E-214.34. Reserved for future codification purposes.

24 "§ 131E-214.36. Contract authority for reviewing proposed transactions; assistance from
25 the Department of Health and Human Services; fees to recover costs incurred in
26 conducting reviews.

27 (a) Within the time periods prescribed by G.S. 131E-214.26, the State Auditor, Attorney
28 General, or State Treasurer may do any of the following to assist in the review of a proposed
29 transaction covered by this Article:

30 (1) Contract with, consult, and receive advice from any agency of the State or the
31 United States on such terms and conditions as the State Auditor, Attorney
32 General, and State Treasurer deem appropriate.

33 (2) At the sole discretion of the State Auditor, Attorney General, and State
34 Treasurer, contract with experts or consultants the State Auditor, Attorney
35 General, and State Treasurer deem appropriate to assist them in reviewing the
36 proposed transaction.

37 Notwithstanding the provisions of this subsection, the State Auditor, Attorney General, and
38 State Treasurer shall not incur contract costs that exceed an amount that is reasonable and
39 necessary for a review of the proposed transaction.

40 (b) In exercising the authority to enter into contracts pursuant to this section, the State
41 Auditor, Attorney General, and State Treasurer are exempt from Article 3 of Chapter 143 of the
42 General Statutes.

43 (c) The State Auditor, Attorney General, and State Treasurer may request from the
44 Department of Health and Human Services a report on the anticipated effects of any proposed
45 transaction on access to, or the pricing of, healthcare services in any part of the State. If the State
46 Auditor, Attorney General, and State Treasurer did not unreasonably delay in requesting such a
47 report, the review period prescribed by G.S. 131E-214.26 may be extended an additional 30 days
48 to allow for the completion of such a report; provided, however, that the total review period for
49 the State Auditor, Attorney General, and State Treasurer may not exceed 180 days from the date
50 they notify the parties to the transaction that they have submitted a complete notice pursuant to
51 subsection (a) of G.S. 131E-214.26.

(d) The State Auditor, Attorney General, and State Treasurer may impose upon the acquiring entity a fee of up to fifty thousand dollars (\$50,000) to cover one or more of the following:

- (1) The cost of all contracts entered into by the State Auditor, Attorney General, and State Treasurer pursuant to subsection (a) of this section.
- (2) Actual costs incurred by the State Auditor, Attorney General, and State Treasurer in reviewing any proposed transaction under this Article, including (i) costs incurred by the State Auditor, Attorney General, and State Treasurer for conducting a public hearing pursuant to subsections (f) and (g) of G.S. 131E-214.30 and (ii) attorneys' fees at the maximum billing rate used by the Attorney General to bill State agencies for legal services.
- (3) Actual costs incurred by the Department of Health and Human Services for preparing a report for the State Auditor, Attorney General, and State Treasurer pursuant to subsection (c) of this section. Upon receipt of this fee from the acquiring entity, the State Auditor, Attorney General, and State Treasurer shall reimburse the Department of Health and Human Services for the actual cost of preparing the report. Reimbursement of these costs shall receive priority over any reimbursement of costs that will ultimately inure to the State Auditor, Attorney General, and State Treasurer.

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

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

- (1) Absent an objection by the acquiring entity within seven days after the State Auditor, Attorney General, and State Treasurer impose the fee, the fee is payable to the State Auditor, Attorney General, or State Treasurer within 30 days after the date the State Auditor, Attorney General, or State Treasurer imposes the fee.
- (2) Upon an objection by the acquiring entity within seven days after the State Auditor, Attorney General, and State Treasurer impose the fee, the fee is payable to the State Auditor, Attorney General, and State Treasurer within 30 days after the date the court issues an order determining that the acquiring entity is liable for the fee.

"§ 131E-214.38. Objection to proposed transaction.

(a) The State Auditor, Attorney General, and State Treasurer may object to any transaction covered by this Article by providing written notice to the parties within the time frame prescribed by G.S. 131E-214.26.

(b) If the State Auditor, Attorney General, and State Treasurer object to the transaction, the State Auditor, Attorney General, and State Treasurer shall file an action in either (i) the superior court of any county in which there exists a hospital entity whose control or governance would be altered by the proposed transaction or (ii) the superior court of the county in which the

1 acquiring entity's principal place of business is located, if located within the State. The State
2 Auditor, Attorney General, State Treasurer and the parties to a transaction may mutually agree,
3 in writing, to extend the time period in which the State Auditor, Attorney General, and State
4 Treasurer may file such an action. If the time period for the State Auditor, Attorney General, and
5 State Treasurer to file an action objecting to the transaction is extended by mutual agreement
6 under this subsection, the parties to the transaction are prohibited from consummating the
7 transaction during that time.

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

9 (1) The State Auditor, Attorney General, and State Treasurer shall file an action
10 in the name of the State seeking injunctive relief to restrain the parties from
11 taking further action to consummate the transaction or to compel the parties
12 to modify the transaction. The court may issue an order granting such
13 injunctive relief.

14 (2) The State Auditor, Attorney General, and State Treasurer may apply to the
15 court for temporary or preliminary injunctive relief pending a final
16 determination of the case.

17 (3) The State Auditor, Attorney General, and State Treasurer shall name as
18 defendants the hospital entity, the governing body of the hospital entity, and
19 the acquiring entity. Additionally, if the State Auditor, Attorney General, and
20 State Treasurer allege a breach of fiduciary duty by an individual director or
21 officer of the hospital entity, the State Auditor, Attorney General, and State
22 Treasurer may name such director or officer as a defendant.

23 (4) In any action brought pursuant to this subsection, the State Auditor, Attorney
24 General, and State Treasurer bear the burden of establishing by clear and
25 convincing evidence one of the following:

26 a. A breach of fiduciary duty occurred in the negotiation of the
27 transaction and consummation of the transaction would result in a
28 breach of fiduciary duty.

29 b. The assets of the hospital entity dedicated to charitable purposes prior
30 to the transaction would not continue to be dedicated to the same or
31 equivalent charitable purposes following consummation of the
32 transaction.

33 c. Consummation of the transaction would have significant and
34 deleterious effects on the cost, availability, accessibility, and quality
35 of healthcare in the State or any portion of the State, and the negative
36 consequences of the transaction would outweigh any potential
37 benefits. In assessing the disadvantages attributable to a reduction in
38 competition likely to result from consummation of the transaction, the
39 court may rely upon determinations by federal courts and North
40 Carolina courts concerning unreasonable restraint of trade and
41 antitrust violations.

42 (5) In determining whether the State Auditor, Attorney General, and State
43 Treasurer have met the burden of proof under subdivision (4) of this
44 subsection, the court should consider evidence of any of the applicable criteria
45 listed in G.S. 131E-214.32.

46 (6) The court may issue a decision approving the transaction, approving the
47 transaction subject to modification, or disapproving the transaction. Any party
48 may appeal a decision of the court approving the transaction subject to
49 modification, except the State Auditor, Attorney General, and State Treasurer
50 shall not appeal a decision of the court approving the transaction subject to the

- 1 same modifications initially sought by the State Auditor, Attorney General,
2 and State Treasurer.
- 3 (d) If the hospital entity is a for-profit entity:
- 4 (1) The State Auditor, Attorney General, and State Treasurer shall file an action
5 in the name of the State seeking injunctive relief to restrain the parties from
6 taking further action to consummate the transaction. The court may issue an
7 order granting such injunctive relief.
- 8 (2) The State Auditor, Attorney General, and State Treasurer may apply to the
9 court for temporary or preliminary injunctive relief pending final disposition
10 of the case.
- 11 (3) The State Auditor, Attorney General, and State Treasurer shall name as
12 defendants the hospital entity and the acquiring entity.
- 13 (4) In any action brought pursuant to this subsection, the State Auditor, Attorney
14 General, and State Treasurer shall have the burden of establishing by clear and
15 convincing evidence that consummation of the transaction would have
16 significant and deleterious effects on cost, availability, accessibility, and
17 quality of healthcare in the State or any portion of the State and that the
18 negative consequences of such a transaction outweigh any potential benefits.
19 In assessing disadvantages attributable to a reduction in competition likely to
20 result from consummation of the transaction, the court may rely upon
21 determinations by federal courts and North Carolina courts concerning
22 unreasonable restraint of trade and antitrust violations.
- 23 (5) In determining whether the State Auditor, Attorney General, and State
24 Treasurer have met the burden of proof under subdivision (4) of this
25 subsection, the court should consider evidence of any of the applicable criteria
26 listed in G.S. 131E-214.32.
- 27 (6) The court may issue a final determination approving the transaction,
28 approving the transaction subject to modification, or disapproving the
29 transaction. Any party may appeal a decision of the court approving the
30 transaction subject to modification, except the State Auditor, Attorney
31 General, and State Treasurer shall not appeal a decision of the court approving
32 the transaction subject to the same modification the State Auditor, Attorney
33 General, and State Treasurer initially sought.
- 34 (e) Any party to a transaction that is subject to review under this Article may decline to
35 enter into a transaction that has been modified by order of the court upon a final determination.
36 However, if the parties agree to enter into a transaction that has been modified by order of the
37 court upon a final determination, then the modified transaction shall not be subject to renewed
38 objection from the State Auditor, Attorney General, and State Treasurer.
- 39 **"§ 131E-214.40. Post-transaction reporting; authorization to file further action.**
- 40 (a) Following a decision by the State Auditor, Attorney General, and State Treasurer not
41 to object to a transaction subject to review under this Article, or following a final decision in a
42 judicial proceeding brought pursuant to G.S. 131E-214.38, the acquiring entity shall submit to
43 the State Auditor, Attorney General, and State Treasurer an annual report on the acquiring entity's
44 compliance with the terms of the purchase agreement for the transaction, including any
45 representations made to, or modifications made by, the State Auditor, Attorney General, and
46 State Treasurer. The State Auditor, Attorney General, and State Treasurer shall adopt rules
47 specifying the required contents of the annual report required by this subsection.
- 48 (b) If the hospital entity that is a party to the transaction is a nonprofit or publicly owned
49 entity, the acquiring entity or any foundation or charitable trust established pursuant to the
50 transaction shall, in addition to submitting the annual report required by subsection (a) of this
51 section, report annually to the State Auditor, Attorney General, and State Treasurer on its

charitable activities and the disposition of its charitable assets in the manner and form prescribed by the State Auditor, Attorney General, and State Treasurer.

(c) If the State Auditor, Attorney General, and State Treasurer deem it reasonable and necessary to do so based on the acquiring entity's failure to comply with the terms of the agreement approved by the State Auditor, Attorney General, and State Treasurer or by a court pursuant to G.S. 131E-214.28, including any modifications to the agreement made by the State Auditor, Attorney General, and State Treasurer, then the State Auditor, Attorney General, and State Treasurer may file an action for relief to restore the benefits of healthcare provider competition in any part of the State, subject to all of the following:

- (1) If the transaction was approved only after a final judicial determination pursuant to G.S. 131E-214.38, the State Auditor, Attorney General, and State Treasurer shall file the action in the same court that made the final judicial determination. If the transaction was approved by the State Auditor, Attorney General, and State Treasurer without a final judicial determination pursuant to G.S. 131E-214.38, the State Auditor, Attorney General, and State Treasurer may file an action in either (i) the superior court of any county in which there exists a hospital entity whose control or governance would be altered by the proposed transaction or (ii) the superior court of the county in which the acquiring entity's principal place of business is located, if located within the State.
- (2) The State Auditor, Attorney General, and State Treasurer may seek any relief necessary to remedy a violation of the agreement.
- (3) The State Auditor, Attorney General, and State Treasurer have the burden of demonstrating by clear and convincing evidence that the benefits of the relief sought to restore the benefits of healthcare provider competition in any part of the State clearly outweigh the costs of doing so, including the transactional costs associated with doing so and any likelihood that the resulting market would not provide the benefits of healthcare provider competition in any part of the State.
- (4) No such action may be brought more than five years after the consummation of a transaction.

(d) After consummation of a transaction, an acquiring entity shall not change the financial assistance policy regarding patients who are uninsured or underinsured that were in effect for the hospital entity immediately preceding consummation of the transaction without first providing 120 days' notice, in writing, to the Attorney General; its hospital staff, including physicians in a contractual relationship with the acquiring entity; and patients who have previously benefited from the hospital entity's financial assistance policy. This subsection does not prohibit an acquiring entity from increasing the applicable income limits used to determine patient eligibility for financial assistance at any time following consummation of the transaction, and it does not require an acquiring entity to provide prior notice to the State Auditor, Attorney General, and State Treasurer about the increased income limits. In order to meet the notice requirements of this subsection with respect to patients who have previously benefited from the hospital entity's financial assistance policy, the acquiring entity shall do all of the following:

- (1) Provide written notice to both the patient's last known mailing address and to the email address on file for the patient that includes at least all of the following:
 - a. A description of how the acquiring entity's new financial assistance policy will differ from the hospital entity's financial assistance policy.
 - b. A description of the process for obtaining financial assistance under the acquiring entity's new financial assistance policy, including a list of (i) all forms a patient would be required to complete in order to be

1 eligible for financial assistance and (ii) all documents a patient would
2 be required to produce as part of the acquiring entity's new financial
3 assistance policy.

4 c. A link to a webpage that allows members of the public to view the new
5 financial assistance policy and any forms a patient would be required
6 to complete in order to be eligible for financial assistance.

7 d. A toll-free telephone number for patients to call to ask questions about
8 the acquiring entity's new financial assistance policy.

9 (2) Educate all physicians affiliated with the acquiring entity, including
10 physicians in a contractual relationship with the acquiring entity, on the new
11 financial assistance policy. Physicians shall verbally inform patients about the
12 new financial assistance policy at appointments occurring during the 120-day
13 notice period required by this subsection.

14 **"§ 131E-214.42. Violations; penalties; preservation of statutory and common law authority**
15 **of the State Auditor, Attorney General, and State Treasurer.**

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

17 (b) Each member of the governing boards and each chief financial officer of the parties
18 to a transaction entered into in violation of this Article are subject to a civil penalty of up to fifty
19 thousand dollars (\$50,000) each per transaction, unless the violation was made in wanton
20 disregard of the law, in which case the civil penalty may be up to one million dollars (\$1,000,000)
21 each per transaction. The State Auditor, Attorney General, and State Treasurer shall institute
22 proceedings to impose a civil penalty authorized by this section in a court of competent
23 jurisdiction in Wake County, and the court shall determine the amount of the civil penalty to be
24 imposed under this section. The clear proceeds of civil penalties provided for in this subsection
25 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

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

37 **SECTION 2.** This act becomes effective December 1, 2025, and applies to activities
38 occurring on or after that date.