

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

S

1

SENATE BILL 16

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

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

Referred to: Rules and Operations of the Senate

January 26, 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.
- 34 d. Any transaction regardless of exact form that, if structured as a
35 purchase, merger, or joint venture, would be subject to review under
36 this Article.



* S 1 6 - V - 1 *

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

12 **"§ 131E-214.22. Applicability; waived transactions.**

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

18 **"§ 131E-214.24. Written notice and certification requirements for proposed transactions;**
19 **rules.**

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

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

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

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

38 **"§ 131E-214.26. Time line and process for Attorney General's decision to object or take no**
39 **action.**

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

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

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

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

7 **"§ 131E-214.28. Published written notice of proposed transaction; failure to give notice.**

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

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

19 a. The name of the hospital entity.

20 b. The name of the acquiring entity.

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

22 d. The nature of the proposed transaction.

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

24 (2) The following statements:

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

26 b. "Any interested party wishing to provide written comments may
27 submit the written comments directly to the Office of the Attorney
28 General, 114 W. Edenton Street, Raleigh, NC 27603."

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

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

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

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

44 **"§ 131E-214.30. Public hearing requirements; responsibility for public hearing costs;**
45 **exemptions and waivers.**

46 (a) Within 30 days after providing the Attorney General with the written notice required
47 under subsection (a) of G.S. 131E-214.24, without regard to whether or not the Attorney General
48 has acknowledged receipt of a complete notice, the hospital entity and the acquiring entity shall
49 conduct one or more public hearings at a convenient time and in a convenient location in a county
50 in which there exists a hospital entity whose control or governance would be altered by the

1 proposed transaction. The public hearing required by this section shall not be conducted earlier
2 than 14 days after publication of the written notice required under G.S. 131E-214.28.

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

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

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

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

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

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

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

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

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

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

49 (j) The parties may forego a public hearing required by this section if the Attorney
50 General provides the parties with a written waiver to do so. As part of such a waiver, the Attorney

1 General may reduce the number of public hearings required by subsection (a) of this section or
2 eliminate the hearing requirement altogether.

3 **"§ 131E-214.32. Required considerations by Attorney General.**

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

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

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

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

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

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

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

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

35 1. The delivery of health care services to individuals who are
36 uninsured or underinsured.

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

39 3. Medical education and teaching programs.

40 4. Medical research programs.

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

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

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

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

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

51 **"§ 131E-214.34. Demand for information for review.**

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

7 **§ 131E-214.36. Attorney General's contract authority for reviewing proposed**
8 **transactions; assistance from the Department of Health and Human Services;**
9 **fees to recover costs incurred in conducting reviews.**

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

12 (1) Contract with, consult, and receive advice from any agency of the State or the
13 United States on such terms and conditions as the Attorney General deems
14 appropriate.

15 (2) At the Attorney General's sole discretion, contract with experts or consultants
16 the Attorney General deems appropriate to assist the Attorney General in
17 reviewing the proposed transaction.

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

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

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

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

32 (1) A fee in an amount sufficient to cover the cost of all contracts entered into by
33 the Attorney General pursuant to subsection (a) of this section.

34 (2) A fee of up to fifty thousand dollars (\$50,000) to cover the following:

35 a. Actual costs incurred by the Attorney General in reviewing any
36 proposed transaction under this Article, including (i) costs incurred by
37 the Attorney General for conducting a public hearing pursuant to
38 subsections (f) and (g) of G.S. 131E-214.30 and (ii) attorney fees at
39 the maximum billing rate used by the Attorney General to bill State
40 agencies for legal services.

41 b. Actual costs incurred by the Department of Health and Human
42 Services for preparing a report for the Attorney General pursuant to
43 subsection (c) of this section. Upon receipt of this fee from the
44 acquiring entity, the Attorney General shall reimburse the Department
45 of Health and Human Services for the actual cost of preparing the
46 report. Reimbursement of these costs shall receive priority over any
47 reimbursement of costs that will ultimately inure to the Attorney
48 General or to the Department of Justice.

49 (e) The acquiring entity may object to paying any fee imposed under this section. If the
50 acquiring entity objects, it may seek an order from a court of competent jurisdiction to limit the
51 acquiring entity's liability for the fee. In determining whether to issue an order, the court shall

1 consider the reasonableness of any contract the Attorney General entered into with any expert
2 and the cost of contracting with the expert relative to the value of the proposed transaction. If the
3 court declines to enter the acquiring entity's proposed order, the acquiring entity shall reimburse
4 the Attorney General for costs associated with the litigation and such reimbursement shall not
5 count against the maximum allowed fee of fifty thousand dollars (\$50,000) specified in
6 subsection (d) of this section.

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

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

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

17 **"§ 131E-214.38. Objection to proposed transaction by Attorney General.**

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

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

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

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

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

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

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

43 a. No breach of fiduciary duty occurred in the negotiation of the
44 transaction and consummation of the transaction would not result in a
45 breach of fiduciary duty.

46 b. Any assets of the hospital entity dedicated to charitable purposes prior
47 to the transaction would continue to be dedicated to the same or
48 equivalent charitable purposes following consummation of the
49 transaction.

50 c. The benefits of the transaction outweigh any disadvantages
51 attributable to a reduction in competition likely to result from the

1 transaction. In assessing disadvantages attributable to a reduction in
2 competition likely to result from the transaction, the court may draw
3 upon (i) the determinations of federal courts and North Carolina courts
4 concerning unreasonable restraint of trade and (ii) antitrust principles
5 and law.

6 (5) The court may issue a final determination approving the transaction,
7 approving the transaction subject to modification, or disapproving the
8 transaction. Any party may appeal a decision of the court approving the
9 transaction subject to modification, except the Attorney General may not
10 appeal a decision of the court approving the transaction subject to the same
11 modifications initially sought by the Attorney General.

12 (d) If the hospital entity is a for-profit entity:

13 (1) The Attorney General shall file an action in the name of the State seeking
14 injunctive relief to restrain the parties from taking further action to
15 consummate the transaction. The court may issue an order granting such
16 injunctive relief.

17 (2) The Attorney General may apply to the court for temporary or preliminary
18 injunctive relief pending final disposition of the case.

19 (3) The Attorney General shall name as defendants the hospital entity and the
20 acquiring entity.

21 (4) In any action brought pursuant to this subsection, the Attorney General shall
22 have the burden of establishing by clear and convincing evidence that
23 consummation of the transaction would have significant and deleterious
24 effects on cost, availability, accessibility, and quality of health care in the State
25 or any portion of the State and that the negative consequences of such a
26 transaction outweigh any potential benefits.

27 a. In assessing disadvantages attributable to a reduction in competition
28 likely to result from consummation of the transaction, the court may
29 draw upon the determinations of federal courts and North Carolina
30 courts concerning unreasonable restraint of trade and upon antitrust
31 principles and law; provided, however, that the court takes into
32 consideration the following findings of the General Assembly, which
33 reflect the public policy of the State:

34 1. For a number of reasons, transactions involving hospital
35 entities often escape rigorous scrutiny under traditional
36 antitrust review.

37 2. Despite traditional judicial deference to such transactions,
38 most experts agree that the bulk of the evidence clearly
39 demonstrates that the consolidation of hospital entities
40 increases health care prices and reduces the quality of health
41 care.

42 3. Accordingly, hospital entity consolidations in this State should
43 be subject to more rigorous review than has traditionally been
44 provided under antitrust law.

45 4. In particular, a court reviewing a transaction subject to review
46 under this Article should consider a broad definition of the
47 relevant market, given that consumers in the State often travel
48 significant distances for certain procedures.

49 5. In particular, a court reviewing a transaction subject to review
50 under this Article should consider not just the first-order
51 anticompetitive effects but also downstream effects, such as

1 the effect on the acquiring entity's negotiating power with
2 insurance providers, the effect on the market for primary care
3 in the relevant market, and whether the transaction is likely to
4 create conditions that will lead to further monopolization in the
5 future.

6 b. The particular subjects of scrutiny in sub-sub-subdivisions a.4. and
7 a.5. of this subdivision are illustrative rather than exhaustive, and the
8 court should balance the presumption in favor of the transaction
9 established by the burden of proof with a rigorous scrutiny of the
10 transaction's ultimate likely effect on the price and quality of health
11 care in the State or any part of the State.

12 (5) The court may issue a final determination approving the transaction,
13 approving the transaction subject to modification, or disapproving the
14 transaction. Any party may appeal a decision of the court approving the
15 transaction subject to modification, except the Attorney General may not
16 appeal a decision of the court approving the transaction subject to the same
17 modification the Attorney General initially sought.

18 (e) Any party to a transaction that is subject to review under this Article may decline to
19 enter into a transaction that has been modified by order of the court upon a final determination.
20 However, if the parties agree to enter into a transaction that has been modified by order of the
21 court upon a final determination, then the modified transaction shall not be subject to renewed
22 objection from the Attorney General, except as provided for in subsection (f) of
23 G.S. 131E-214.40.

24 **"§ 131E-214.40. Post-transaction monitoring; authorization to file further action.**

25 (a) Following a decision by the Attorney General not to object to a transaction subject to
26 review under this Article, or following a final determination in a judicial proceeding brought
27 pursuant to G.S. 131E-214.38, the acquiring entity shall be subject to post-transaction monitoring
28 by an independent health care access monitor for a period of not less than three years, as
29 prescribed by this section, in order to determine the measurable effect of the transaction on the
30 accessibility, price, and quality of health care in the State.

31 (b) Within 30 days after a decision by the Attorney General not to object to a transaction
32 subject to review under this Article or a final determination approving the transaction in a judicial
33 proceeding, the acquiring entity shall enter into a contract with the Department of Health and
34 Human Services that contains all of the following:

35 (1) An agreement by the Department of Health and Human Services to retain an
36 independent health care access monitor to (i) conduct post-transaction
37 monitoring of the acquiring entity's assets and operations for a period of not
38 less than three years and (ii) submit quarterly reports of the monitor's findings
39 to the Department of Health and Human Services and the Attorney General.
40 The Department of Health and Human Services, in its sole discretion, shall
41 select the independent health care access monitor to be retained to perform the
42 post-transaction monitoring required under the contract.

43 (2) An agreement by the acquiring entity to pay the contract amount determined
44 by the Attorney General, in consultation with the Secretary of Health and
45 Human Services, for retaining an independent health care access monitor to
46 conduct post-transaction monitoring of the acquiring entity's assets and
47 operations for a period of not less than three years. The contract amount shall
48 not exceed the actual amount paid by the Department of Health and Human
49 Services to the independent health care access monitor retained to conduct the
50 post-transaction monitoring services required by this section. Contract
51 amounts paid by an acquiring entity to the Department of Health and Human

1 Services to retain a monitor to conduct post-transaction monitoring services
2 required by this section do not count against the maximum fees specified in
3 G.S. 131E-214.36.

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

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

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

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

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

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

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

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

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

43 (1) If the transaction was approved only after a final judicial determination
44 pursuant to G.S. 131E-214.38, the Attorney General shall file the action in the
45 same court that made the final judicial determination. If the transaction was
46 approved by the Attorney General without a final judicial determination
47 pursuant to G.S. 131E-214.38, the Attorney General may file an action in any
48 superior court in which jurisdiction would be proper under subsection (b) of
49 G.S. 131E-214.38.

50 (2) Regardless of whether the hospital entity was a nonprofit, publicly owned, or
51 for-profit entity, the Attorney General has the burden of demonstrating by

1 clear and convincing evidence that the benefits of either unwinding the
2 transaction or altering the control or governance of the assets involved in the
3 transaction in order to restore the benefits of health care provider competition
4 in any part of the State clearly outweigh the costs of doing so, including the
5 transactional costs associated with doing so and any likelihood that the
6 resulting market would not provide the benefits of health care provider
7 competition in any part of the State.

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

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

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

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

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

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

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

38 **"§ 131E-214.42. Violations; penalties; common law authority of Attorney General.**

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

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

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

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

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