A BILL TO BE ENTITLED

AN ACT PRESERVING COMPETITION IN HEALTH CARE 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.

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) Transaction. – Includes all of the following:

a. The sale, transfer, lease, exchange, optioning, conveyance, or other
disposition of a material amount 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.

c. Any binding legal obligation between two or more persons that results
in a transfer of control, responsibility, or governance of a substantial
portion of a hospital entity’s assets to an acquiring entity.

d. Any transaction regardless of exact form that, if structured as a
purchase, merger, or joint venture, would be subject to review under
this Article.
§ 131E-214.22. Applicability; waived transactions.

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

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

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

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

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

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

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

(a) When the parties to the proposed transaction have provided the Attorney General with all the information the Attorney General determines is necessary for a complete review of the proposed transaction, the Attorney General shall provide the hospital entity and acquiring entity with written acknowledgement that the Attorney General has received a complete notice that meets the requirements of G.S. 131E-214.24. The Attorney General's written acknowledgement pursuant to this subsection shall constitute the beginning of a 90-day review period. The Attorney General 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) Within 90 days after the Attorney General provides written acknowledgement of having received a complete notice that meets the requirements of G.S. 131E-214.24, the Attorney General shall notify the hospital entity, in writing, of the Attorney General's decision to either object to the proposed transaction or to take no action regarding the proposed transaction.
(c) Upon notice, in writing, to all parties to the transaction, the Attorney General may extend the 90-day review period for up to an additional 60 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.

(d) 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 five days after providing the Attorney General with written notice of a proposed transaction pursuant to subsection (a) of G.S. 131E-214.24, without regard to whether or not the Attorney General has 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 Attorney General 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 using teleconferencing or video-conferencing technology, as permitted under subsection (c) of G.S. 131E-214.30. A public hearing shall not be conducted earlier than 14 days after the publication of a notice pursuant to this section.

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

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

(c) This section does not apply to a 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-214.30. Public hearing requirements; responsibility for public hearing costs; exemptions and waivers.

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

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

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

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

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

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

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

(f) In any transaction in which the hospital entity is a nonprofit or publicly owned entity,
the hospital entity and the acquiring entity shall provide information regarding the extent to which
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 Attorney General may
conduct a public hearing regarding a proposed transaction. At least seven days prior to the public
hearing, the Attorney General shall notify the hospital entity and the acquiring entity of the time,
date, and location of any hearing to be conducted by the Attorney General or of the information
necessary to access a public hearing to be conducted by the Attorney General via
teleconferencing or video-conferencing technology. At least 14 days prior to the public hearing,
the Attorney General 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 Attorney General, the Attorney General 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 every
public hearing conducted in accordance with subsection (a) of this section. Additionally, the
Attorney General may recover from the parties the costs incurred by the Attorney General for
conducting a public hearing on a proposed transaction, subject to the limitations specified in
G.S. 131E-214.36.

(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.

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

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

§ 131E-214.32. Required considerations by Attorney General.

(a) The Attorney General 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 health care 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 health care 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 health care services for any affected community. In making this determination, the Attorney General shall consider all of the following:

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

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

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

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

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

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 health care provider.

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

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

(5) Whether the proposed transaction complies with all applicable State and federal laws and regulations, including antitrust laws.
Whether the proposed transaction is otherwise in the public interest, including
the transaction's ultimate anticipated effect on competition in any part of this
State among health care providers.

Whether the Attorney General has been provided with sufficient information
and data by the parties to the transaction to adequately evaluate the proposed
transaction or the anticipated effects of the transaction on the public; provided,
however, that this subdivision shall not be a ground for disapproving the
proposed transaction, unless the Attorney General has 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.

Whether there is an objection by the governing body of a county or
municipality in which there exists a hospital entity whose control or
governance would be altered by the proposed transaction.

(b) The Attorney General shall 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 nonprofit or publicly owned hospital entity:

(1) Whether the hospital entity would receive full and 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,
however, that the proceeds of a proposed transaction may not be returned to
any county or municipal government except to the extent necessary to pay
lawful obligations to such county or municipal government.

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

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

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

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

(c) For any proposed transaction subject to the provisions of this Article that involves a
hospital owned by a municipality, as defined in subdivision (5) of G.S. 131E-6, or a hospital
authority, as defined in subdivision (14) of G.S. 131E-16, the Attorney General shall also
consider whether the transaction complies with the provisions of Article 2 of Chapter 131E of
the General Statutes governing the sale or conveyance of any rights of ownership the municipality
or hospital authority has in a hospital entity.

§ 131E-214.34. Demand for information for review.
§ 131E-214.36. Attorney General's contract authority for reviewing proposed transactions; assistance from the Department of Health and Human Services; fees to recover costs incurred in conducting reviews.

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

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

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

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

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

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

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

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

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

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

   b. Actual costs incurred by the Department of Health and Human Services for preparing a report for the Attorney General pursuant to subsection (c) of this section. Upon receipt of this fee from the acquiring entity, the Attorney General 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 Attorney General or to the Department of Justice.

(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 Attorney General 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 Attorney General 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 Attorney General any fee authorized by this section by the applicable deadline specified in this subsection shall be sufficient grounds for the Attorney General to object to the proposed transaction:

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

(2) Upon an objection by the acquiring entity within seven days after the Attorney General imposes the fee, the fee is payable to the Attorney General 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 by Attorney General.

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

(b) Within 30 days after notifying the parties to a transaction that the Attorney General objects to the transaction, if the Attorney General still objects to the transaction, the Attorney General 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 acquiring entity's principal place of business is located, if located within the State. The Attorney General and the parties to a transaction may mutually agree, in writing, to extend the time period in which the Attorney General may file such an action.

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

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

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

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

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

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

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

c. The benefits of the transaction outweigh any disadvantages attributable to a reduction in competition likely to result from the
transaction. In assessing disadvantages attributable to a reduction in
competition likely to result from the transaction, the court may draw
upon (i) the determinations of federal courts and North Carolina courts
concerning unreasonable restraint of trade and (ii) antitrust principles
and law.

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

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

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

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

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

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

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

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

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

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

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

5. In particular, a court reviewing a transaction subject to review
under this Article should consider not just the first-order
anticompetitive effects but also downstream effects, such as
the effect on the acquiring entity's negotiating power with
insurance providers, the effect on the market for primary care
in the relevant market, and whether the transaction is likely to
create conditions that will lead to further monopolization in the
future.

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

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

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

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

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

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

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

(2) An agreement by the acquiring entity to pay the contract amount determined
by the Attorney General, in consultation with the Secretary of Health and
Human Services, for retaining an independent health care access monitor to
conduct post-transaction monitoring of the acquiring entity's assets and
operations for a period of not less than three years. The contract amount shall
not exceed the actual amount paid by the Department of Health and Human
Services to the independent health care access monitor retained to conduct the
post-transaction monitoring services required by this section. Contract
amounts paid by an acquiring entity to the Department of Health and Human
Services to retain a monitor to conduct post-transaction monitoring services required by this section do not count against the maximum fees specified in G.S. 131E-214.36.

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

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

(1) The extent to which the community has access to health care services provided by the acquiring entity.
(2) The amount of financial assistance for medical services provided by the acquiring entity.
(3) Any changes in the price of health care services provided by the acquiring entity.
(4) Any changes in the quality of health care services provided by the acquiring entity.

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

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

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

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

(2) Regardless of whether the hospital entity was a nonprofit, publicly owned, or for-profit entity, the Attorney General has the burden of demonstrating by
clear and convincing evidence that the benefits of either unwinding the
transaction or altering the control or governance of the assets involved in the
transaction in order to restore the benefits of health care 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 health care provider
competition in any part of the State.

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

(g) After consummation of a transaction, an acquiring entity may not change the financial
assistance policy regarding individuals who are uninsured or underinsured that were in effect at
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, except that an
acquiring entity may implement an increase in the applicable income limits used to determine
eligibility for financial assistance that becomes effective immediately. 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 must send the notice to both the
patient's last known mailing address and to the email address on file for the patient, which
includes all of the following:

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

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

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

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

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

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

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

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

(c) The Department of Health and Human Services shall not issue a new or renewal
license to operate a hospital under Article 5 of Chapter 131E of the General Statutes, or any
applicable rules, on behalf of any hospital that is a party to a transaction entered into in violation
of the notice, public hearing, and review requirements of this Article.
(d) Nothing in this Article shall be construed to limit the statutory or common law authority of the Attorney General to protect charitable trusts and assets located in this State. The penalties and remedies set forth in this Article are in addition to, and not a replacement for, any other civil or criminal actions the Attorney General is authorized by statute or common law to file, including actions seeking rescission of a transaction, injunctive relief, or any combination of these, and other remedies available under statute or common law."

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