

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS15432-BCfa-5

Short Title: Healthcare Competition Reforms. (Public)

Sponsors: Senator Burgin (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE GREATER ACCESS TO AND COMPETITION FOR HEALTHCARE
3 SERVICES, TO PROVIDE WHISTLEBLOWER AND EMPLOYMENT PROTECTION
4 TO HEALTHCARE WORKERS, AND TO LIMIT THE CHIEF EXECUTIVE OFFICER
5 COMPENSATION OF NOT-FOR-PROFIT HOSPITALS THAT RECEIVE STATE
6 FUNDS.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. PRESERVING COMPETITION IN HEALTHCARE**

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

12 "Article 11C.

13 "Preserving Competition in Healthcare Act.

14 **"§ 131E-214.20. Definitions.**

15 The following definitions apply in this Article:

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



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

17 **"§ 131E-214.21. Actions and decisions by the State Auditor, Attorney General, and State**
18 **Treasurer.**

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

22 **"§ 131E-214.22. Applicability; waived transactions.**

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

29 **"§ 131E-214.24. Written notice and certification requirements for proposed transactions;**
30 **rules.**

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

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

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

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

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

(a) When the parties to the proposed transaction have provided the State Auditor, Attorney General, and State Treasurer with all of 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."

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

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

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

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

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

19 **§ 131E-214.30. Public hearing requirements; responsibility for public hearing costs;**
20 **exemptions and waivers.**

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

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

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

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

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

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

47 (e) At a hearing required by this section, the hospital entity and the acquiring entity may
48 make such presentations as they deem appropriate and shall provide a meaningful opportunity
49 for public input. The hospital entity and the acquiring entity shall also communicate to attendees
50 how interested parties may provide written comments about the proposed transaction, which shall

1 be identical to the statement required by sub-subdivision (2)b. of subsection (a) of
2 G.S. 131E-214.28.

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

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

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

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

27 **"§ 131E-214.32. Required considerations by the State Auditor, Attorney General, and State**
28 **Treasurer.**

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

- 32 (1) Whether the fair market value of any asset to be transferred from the hospital
33 entity to the acquiring entity has been manipulated by the actions of the parties
34 in a manner that causes the fair market value of the asset to decrease.
- 35 (2) Whether healthcare providers will be offered the opportunity to invest or own
36 an interest in the acquiring entity or a related party, and whether procedures
37 or safeguards are in place to avoid healthcare providers' conflicts of interest
38 with respect to patient referrals.
- 39 (3) Whether the terms of any management or services contract negotiated in
40 conjunction with the proposed transaction are reasonable.
- 41 (4) Whether the proposed transaction may have a significant effect on the cost,
42 availability, accessibility, or quality of healthcare services for any affected
43 community. In making this determination, the State Auditor, Attorney
44 General, and State Treasurer shall consider all of the following:
- 45 a. Whether sufficient safeguards are included to ensure that the affected
46 community will have continued access to affordable healthcare
47 services.
- 48 b. Whether the proposed transaction creates or has the likelihood of
49 creating an adverse effect on the cost, availability, accessibility, or
50 quality of healthcare services within the affected community.

- 1 c. Whether the acquiring entity has made a commitment to provide (i)
2 free care to individuals whose income is three hundred percent (300%)
3 or less of the federal poverty guidelines, (ii) free or discounted
4 healthcare to other individuals who are disadvantaged, uninsured, or
5 underinsured, and (iii) other benefits to the affected community to
6 promote improved healthcare. In determining whether the level of
7 commitment by the acquiring entity will have a significant effect on
8 the availability, accessibility, or quality of healthcare services for any
9 affected community if the proposed transaction is approved, the State
10 Auditor, Attorney General, and State Treasurer shall consider the
11 number of programs and activities and the amount of funding
12 dedicated by the acquiring entity, as compared to the hospital entity or
13 their affiliated foundations, to:
- 14 1. The delivery of healthcare services to individuals who are
15 uninsured or underinsured.
- 16 2. The delivery of other services or benefits to the affected
17 community to promote improved healthcare.
- 18 3. Medical education and teaching programs.
- 19 4. Medical research programs.
- 20 d. Whether the proposed transaction would result in the revocation of
21 hospital privileges for any healthcare provider.
- 22 e. Whether sufficient safeguards are included to maintain appropriate
23 capacity for health science research and healthcare provider education.
- 24 f. Whether the proposed transaction serves the public interest by
25 promoting the availability and accessibility of safe, essential, and
26 quality healthcare services and treatment.
- 27 (5) Whether the proposed transaction complies with all applicable State and
28 federal laws and regulations, including antitrust laws.
- 29 (6) Whether the proposed transaction will significantly harm competition in any
30 part of this State among healthcare providers.
- 31 (7) Whether the State Auditor, Attorney General, and State Treasurer have
32 received all of the information required by the rules adopted under
33 G.S. 131E-214.24(d) and timely responses to any additional requests for
34 information necessary to adequately evaluate the proposed transaction;
35 provided, however, that this subdivision shall not be a ground for disapproving
36 the proposed transaction, unless the State Auditor, Attorney General, and State
37 Treasurer have notified the hospital entity and the acquiring entity of any
38 inadequacy of information or data and has provided each with a reasonable
39 opportunity to remedy the inadequacy.
- 40 (8) Any objection to the transaction raised in comments submitted to the Attorney
41 General.
- 42 (b) In addition to the considerations specified in subsection (a) of this section, the State
43 Auditor, Attorney General, and State Treasurer shall also consider all of the following criteria in
44 making a decision about any proposed transaction subject to the provisions of this Article that
45 would alter the control or governance of a tax-exempt or publicly owned hospital entity:
- 46 (1) Whether the hospital entity would receive fair market value for its charitable
47 assets or social welfare assets. For the purpose of this subdivision, "social
48 welfare assets" means the average yearly monetary value of the benefits the
49 hospital entity provided to the community during the preceding five calendar
50 years.

- 1 (2) Whether the proceeds of the proposed transaction would be used in a manner
2 consistent with the trust under which the assets are held by the hospital entity.
3 (3) Whether the proceeds of the proposed transaction would be used by a county
4 or municipality for general or special revenue obligations not expressly
5 provided for when the hospital was established.
6 (4) Whether any proceeds of the proposed transaction would be controlled as
7 funds independently of the acquiring entity or related entities; provided,
8 however, that the proceeds of a proposed transaction may not be returned to
9 any county or municipal government except to the extent necessary to pay
10 lawful obligations to such county or municipal government.
11 (5) Whether the proposed transaction would result in a breach of fiduciary duty,
12 as determined by the Attorney General, including conflicts of interest related
13 to payments or benefits to officers, directors, board members, executives, or
14 experts employed or retained by the parties.
15 (6) Whether the governing body of the hospital entity exercised due diligence in
16 deciding to dispose of the hospital entity's assets, selecting the acquiring
17 entity, and negotiating the terms and conditions of the disposition.
18 (7) Whether the proposed transaction would result in private inurement to any
19 person.
20 (8) Whether any foundation established to hold the proceeds of the proposed
21 transaction would be broadly based in the community and be representative
22 of the affected community, taking into consideration the structure and
23 governance of the foundation.

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

30 "§ 131E-214.34. Reserved for future codification purposes.

31 "§ 131E-214.36. Contract authority for reviewing proposed transactions; assistance from
32 the Department of Health and Human Services; fees to recover costs incurred in
33 conducting reviews.

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

- 37 (1) Contract with, consult, and receive advice from any agency of the State or the
38 United States on such terms and conditions as the State Auditor, Attorney
39 General, and State Treasurer deem appropriate.
40 (2) At the sole discretion of the State Auditor, Attorney General, and State
41 Treasurer, contract with experts or consultants the State Auditor, Attorney
42 General, and State Treasurer deem appropriate to assist them in reviewing the
43 proposed transaction.

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

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

50 (c) The State Auditor, Attorney General, and State Treasurer may request from the
51 Department of Health and Human Services a report on the anticipated effects of any proposed

1 transaction on access to, or the pricing of, healthcare services in any part of the State. If the State
2 Auditor, Attorney General, and State Treasurer did not unreasonably delay in requesting such a
3 report, the review period prescribed by G.S. 131E-214.26 may be extended an additional 30 days
4 to allow for the completion of such a report; provided, however, that the total review period for
5 the State Auditor, Attorney General, and State Treasurer may not exceed 180 days from the date
6 they notify the parties to the transaction that they have submitted a complete notice pursuant to
7 subsection (a) of G.S. 131E-214.26.

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

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

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

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

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

51 **"§ 131E-214.38. Objection to proposed transaction.**

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

4 (b) If the State Auditor, Attorney General, and State Treasurer object to the transaction,
5 the State Auditor, Attorney General, and State Treasurer shall file an action in either (i) the
6 superior court of any county in which there exists a hospital entity whose control or governance
7 would be altered by the proposed transaction or (ii) the superior court of the county in which the
8 acquiring entity's principal place of business is located, if located within the State. The State
9 Auditor, Attorney General, State Treasurer, and the parties to a transaction may mutually agree,
10 in writing, to extend the time period in which the State Auditor, Attorney General, and State
11 Treasurer may file such an action. If the time period for the State Auditor, Attorney General, and
12 State Treasurer to file an action objecting to the transaction is extended by mutual agreement
13 under this subsection, the parties to the transaction are prohibited from consummating the
14 transaction during that time.

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

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

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

24 (3) The State Auditor, Attorney General, and State Treasurer shall name as
25 defendants the hospital entity, the governing body of the hospital entity, and
26 the acquiring entity. Additionally, if the State Auditor, Attorney General, and
27 State Treasurer allege a breach of fiduciary duty by an individual director or
28 officer of the hospital entity, the State Auditor, Attorney General, and State
29 Treasurer may name such director or officer as a defendant.

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

33 a. A breach of fiduciary duty occurred in the negotiation of the
34 transaction and consummation of the transaction would result in a
35 breach of fiduciary duty.

36 b. The assets of the hospital entity dedicated to charitable purposes prior
37 to the transaction would not continue to be dedicated to the same or
38 equivalent charitable purposes following consummation of the
39 transaction.

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

49 (5) In determining whether the State Auditor, Attorney General, and State
50 Treasurer have met the burden of proof under subdivision (4) of this

1 subsection, the court should consider evidence of any of the applicable criteria
2 listed in G.S. 131E-214.32.

3 (6) The court may issue a decision approving the transaction, approving the
4 transaction subject to modification, or disapproving the transaction. Any party
5 may appeal a decision of the court approving the transaction subject to
6 modification, except the State Auditor, Attorney General, and State Treasurer
7 shall not appeal a decision of the court approving the transaction subject to the
8 same modifications initially sought by the State Auditor, Attorney General,
9 and State Treasurer.

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

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

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

18 (3) The State Auditor, Attorney General, and State Treasurer shall name as
19 defendants the hospital entity and the acquiring entity.

20 (4) In any action brought pursuant to this subsection, the State Auditor, Attorney
21 General, and State Treasurer shall have the burden of establishing by clear and
22 convincing evidence that consummation of the transaction would have
23 significant and deleterious effects on cost, availability, accessibility, and
24 quality of healthcare in the State or any portion of the State and that the
25 negative consequences of such a transaction outweigh any potential benefits.
26 In assessing disadvantages attributable to a reduction in competition likely to
27 result from consummation of the transaction, the court may rely upon
28 determinations by federal courts and North Carolina courts concerning
29 unreasonable restraint of trade and antitrust violations.

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

34 (6) The court may issue a final determination approving the transaction,
35 approving the transaction subject to modification, or disapproving the
36 transaction. Any party may appeal a decision of the court approving the
37 transaction subject to modification, except the State Auditor, Attorney
38 General, and State Treasurer shall not appeal a decision of the court approving
39 the transaction subject to the same modification the State Auditor, Attorney
40 General, and State Treasurer initially sought.

41 (e) Any party to a transaction that is subject to review under this Article may decline to
42 enter into a transaction that has been modified by order of the court upon a final determination.
43 However, if the parties agree to enter into a transaction that has been modified by order of the
44 court upon a final determination, then the modified transaction shall not be subject to renewed
45 objection from the State Auditor, Attorney General, and State Treasurer.

46 **"§ 131E-214.40. Post-transaction reporting; authorization to file further action.**

47 (a) Following a decision by the State Auditor, Attorney General, and State Treasurer not
48 to object to a transaction subject to review under this Article, or following a final decision in a
49 judicial proceeding brought pursuant to G.S. 131E-214.38, the acquiring entity shall submit to
50 the State Auditor, Attorney General, and State Treasurer an annual report on the acquiring entity's
51 compliance with the terms of the purchase agreement for the transaction, including any

1 representations made to, or modifications made by, the State Auditor, Attorney General, and
2 State Treasurer. The State Auditor, Attorney General, and State Treasurer shall adopt rules
3 specifying the required contents of the annual report required by this subsection.

4 (b) If the hospital entity that is a party to the transaction is a nonprofit or publicly owned
5 entity, the acquiring entity or any foundation or charitable trust established pursuant to the
6 transaction shall, in addition to submitting the annual report required by subsection (a) of this
7 section, report annually to the State Auditor, Attorney General, and State Treasurer on its
8 charitable activities and the disposition of its charitable assets in the manner and form prescribed
9 by the State Auditor, Attorney General, and State Treasurer.

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

17 (1) If the transaction was approved only after a final judicial determination
18 pursuant to G.S. 131E-214.38, the State Auditor, Attorney General, and State
19 Treasurer shall file the action in the same court that made the final judicial
20 determination. If the transaction was approved by the State Auditor, Attorney
21 General, and State Treasurer without a final judicial determination pursuant
22 to G.S. 131E-214.38, the State Auditor, Attorney General, and State Treasurer
23 may file an action in either (i) the superior court of any county in which there
24 exists a hospital entity whose control or governance would be altered by the
25 proposed transaction or (ii) the superior court of the county in which the
26 acquiring entity's principal place of business is located, if located within the
27 State.

28 (2) The State Auditor, Attorney General, and State Treasurer may seek any relief
29 necessary to remedy a violation of the agreement.

30 (3) The State Auditor, Attorney General, and State Treasurer have the burden of
31 demonstrating by clear and convincing evidence that the benefits of the relief
32 sought to restore the benefits of healthcare provider competition in any part of
33 the State clearly outweigh the costs of doing so, including the transactional
34 costs associated with doing so and any likelihood that the resulting market
35 would not provide the benefits of healthcare provider competition in any part
36 of the State.

37 (4) No such action may be brought more than five years after the consummation
38 of a transaction.

39 (d) After consummation of a transaction, an acquiring entity shall not change the financial
40 assistance policy regarding patients who are uninsured or underinsured that were in effect for the
41 hospital entity immediately preceding consummation of the transaction without first providing
42 120 days' notice, in writing, to the Attorney General; its hospital staff, including physicians in a
43 contractual relationship with the acquiring entity; and patients who have previously benefited
44 from the hospital entity's financial assistance policy. This subsection does not prohibit an
45 acquiring entity from increasing the applicable income limits used to determine patient eligibility
46 for financial assistance at any time following consummation of the transaction, and it does not
47 require an acquiring entity to provide prior notice to the State Auditor, Attorney General, and
48 State Treasurer about the increased income limits. In order to meet the notice requirements of
49 this subsection with respect to patients who have previously benefited from the hospital entity's
50 financial assistance policy, the acquiring entity shall do all of the following:

- 1 (1) Provide written notice to both the patient's last known mailing address and to
2 the email address on file for the patient that includes at least all of the
3 following:
4 a. A description of how the acquiring entity's new financial assistance
5 policy will differ from the hospital entity's financial assistance policy.
6 b. A description of the process for obtaining financial assistance under
7 the acquiring entity's new financial assistance policy, including a list
8 of (i) all forms a patient would be required to complete in order to be
9 eligible for financial assistance and (ii) all documents a patient would
10 be required to produce as part of the acquiring entity's new financial
11 assistance policy.
12 c. A link to a webpage that allows members of the public to view the new
13 financial assistance policy and any forms a patient would be required
14 to complete in order to be eligible for financial assistance.
15 d. A toll-free telephone number for patients to call to ask questions about
16 the acquiring entity's new financial assistance policy.
17 (2) Educate all physicians affiliated with the acquiring entity, including
18 physicians in a contractual relationship with the acquiring entity, on the new
19 financial assistance policy. Physicians shall verbally inform patients about the
20 new financial assistance policy at appointments occurring during the 120-day
21 notice period required by this subsection.

22 **"§ 131E-214.42. Violations; penalties; preservation of statutory and common law authority**
23 **of the State Auditor, Attorney General, and State Treasurer.**

- 24 (a) Any transactions entered into in violation of this Article shall be null and void.
25 (b) Each member of the governing boards and each chief financial officer of the parties
26 to a transaction entered into in violation of this Article are subject to a civil penalty of up to fifty
27 thousand dollars (\$50,000) each per transaction, unless the violation was made in wanton
28 disregard of the law, in which case the civil penalty may be up to one million dollars (\$1,000,000)
29 each per transaction. The State Auditor, Attorney General, and State Treasurer shall institute
30 proceedings to impose a civil penalty authorized by this section in a court of competent
31 jurisdiction in Wake County, and the court shall determine the amount of the civil penalty to be
32 imposed under this section. The clear proceeds of civil penalties provided for in this subsection
33 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
34 (c) The Department of Health and Human Services shall not issue a new or renewal
35 license to operate a hospital under Article 5 of this Chapter, or any applicable rules, on behalf of
36 any hospital that is a party to a transaction entered into in violation of the notice, public hearing,
37 and review requirements of this Article.
38 (d) Nothing in this Article shall be construed to limit the statutory or common law
39 authority of the State Auditor, Attorney General, or State Treasurer to protect charitable trusts
40 and assets located in this State. The penalties and remedies set forth in this Article are in addition
41 to, and not a replacement for, any other civil or criminal actions the State Auditor, Attorney
42 General, or State Treasurer is authorized by statute or common law to file, including actions
43 seeking rescission of a transaction, injunctive relief, or any combination of these, and other
44 remedies available under statute or common law."

45 **SECTION 1.(b)** There is appropriated from the General Fund to the Office of the
46 State Auditor the sum of fifty thousand dollars (\$50,000) in nonrecurring funds for the 2026-2027
47 fiscal year to be used for examination of proposed transactions under this Part.

48 **SECTION 1.(c)** Subsection (a) of this section is effective January 1, 2027, and
49 applies to activities occurring on or after that date. Subsection (b) of this section is effective July
50 1, 2026.
51

1 **PART II. WHISTLEBLOWER AND EMPLOYMENT PROTECTIONS FOR**
2 **HEALTHCARE PROFESSIONALS**

3 **SECTION 2.1.** G.S. 75-1.1 is amended by adding a new subsection to read:

4 "(c1) The learned profession exception of this section applies to health care providers, as
5 defined in G.S. 90-21.11, only for acts and omissions directly related to the provision of medical,
6 dental, or other health care that are subject to litigation under Article 1B of Chapter 90 of the
7 General Statutes."

8 **SECTION 2.2.(a)** Article 3 of Chapter 95 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 95-28.1B. Health care professional whistleblower protection.**

11 (a) The following definitions apply in this section:

12 (1) Health care professional. – An individual who is a licensed physician,
13 physician assistant, advanced practice registered nurse as defined by the North
14 Carolina Board of Nursing, or registered nurse.

15 (2) Hospital. – Any of the following:

16 a. A facility that has an organized medical staff and is designed, used,
17 and operated to provide health care, diagnostic and therapeutic
18 services, and continuous nursing care primarily to inpatients where
19 such care and services are rendered under the supervision and direction
20 of physicians licensed under Article 1 of Chapter 90 of the General
21 Statutes, to two or more persons over a period in excess of 24 hours.

22 b. A facility designated by the Centers for Medicare and Medicaid
23 Services as a rural emergency hospital as defined under 42 C.F.R. §
24 485.502 or under section 125 of Division CC of the Consolidated
25 Appropriations Act of 2021, Public Law 116-260.

26 c. Any outpatient department including a portion of a hospital operated
27 as an outpatient department, on or off of the hospital's main campus,
28 that is operated under the hospital's control or ownership and is
29 classified as a Business Occupancy by the Life Safety Code of the
30 National Fire Protection Association as referenced under 42 C.F.R. §
31 482.41.

32 d. Any hospital-owned medical practice.

33 (3) Medical staff bylaws. – A document that is required by a licensing,
34 accrediting, or regulatory body that governs the organization and operation of
35 a hospital's medical staff by defining the structure, roles, responsibilities, and
36 relationships between the medical staff, stakeholders, hospital administration,
37 and hospital governing board.

38 (4) Stakeholder. – An incorporator, officer, director, shareholder, or employee of
39 a (i) professional corporation as defined by G.S. 55B-2 or (ii) domestic or
40 foreign entity that provides nonclinical services to a professional corporation
41 as defined by G.S. 55B-2 rendering professional service under Article 1 of
42 Chapter 90 of the General Statutes.

43 (b) It is the policy of this State that health care professionals have the right to report
44 violations of medical staff bylaws to appropriate authorities and make comments concerning
45 patient care for the protection of the public. Therefore, no person, firm, corporation, or
46 unincorporated association, or a stakeholder, may subject a health care professional to adverse
47 action, including, but not limited to, withdrawal of hospital privileges, termination, demotion,
48 compensation reduction, or hostile work environment for reporting a violation of medical staff
49 bylaws or making comments concerning patient care."

50 **SECTION 2.2.(b)** G.S. 95-241(a)(1) reads as rewritten:

1 "(a) No person shall discriminate or take any retaliatory action against an employee
2 because the employee in good faith does or threatens to do any of the following:

- 3 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
4 proceeding or other action, or testify or provide information to any person
5 with respect to any of the following:

6 ...

7 f. ~~G.S. 95-28.1A~~ G.S. 95-28.1A or G.S. 95-28.1B.

8"

9 SECTION 2.2.(c) The North Carolina Board of Medicine may adopt rules to
10 implement this section.

11 SECTION 2.2.(d) This section is effective when it becomes law and applies to
12 employers, employees, and prospective employees on or after that date.

13 SECTION 2.3.(a) Chapter 66 of the General Statutes is amended by adding a new
14 Article to read:

15 "Article 52.

16 "Limitations on Agreements With Health Care Professionals.

17 "**§ 66-515. Definitions.**

18 The following definitions apply in this Article:

- 19 (1) Health care professional. – An individual who is a licensed physician,
20 physician assistant, advanced practice registered nurse as defined by the North
21 Carolina Board of Nursing, or registered nurse.
22 (2) Medical staff bylaws. – As defined in G.S. 95-28.1B(a).
23 (3) Nondisclosure agreement. – An agreement that restricts the ability of a party
24 to disclose information.
25 (4) Non-compete clause or clause. – An agreement that restricts a party from
26 engaging in certain types of employment or business activities for a specified
27 period of time within a specified geographic area.

28 "**§ 66-516. Nondisclosure agreements limited.**

29 (a) Any nondisclosure agreement entered into with a health care professional must
30 explicitly state that it does not restrict the health care professional from reporting safety concerns,
31 ethical violations, or illegal activities.

32 (b) No health care professional may be required to enter into a nondisclosure agreement
33 that would do any of the following:

- 34 (1) Prevent the health care professional from discussing patient safety concerns
35 with licensing agencies, accrediting bodies, or other regulatory or oversight
36 entities.
37 (2) Restrict the health care professional's ability to report to the appropriate
38 authorities violations of law, medical ethics, or medical staff bylaws.

39 "**§ 66-517. Certain non-compete clauses prohibited.**

40 An employment contract for a health care professional employed by a hospital, as defined in
41 G.S. 95-28.1B, shall not contain a non-compete clause.

42 "**§ 66-518. Provision of information.**

43 Any policy, nondisclosure agreement, non-compete clause, medical staff bylaw, or any other
44 type of contractual agreement with a health care professional shall not prohibit the provision of
45 new practice information upon request by a patient, and, if available, the recipient of that request
46 shall provide that information upon that request.

47 "**§ 66-519. Remedies.**

48 (a) A nondisclosure agreement or non-compete clause that violates this Article is void
49 and unenforceable.

1 **(b)** A health care professional who prevails in an action under this Article challenging the
2 enforceability of a nondisclosure agreement or non-compete clause is entitled to damages plus
3 reasonable attorneys' fees and costs."

4 **SECTION 2.3.(b)** This section is effective July 1, 2026, and applies to contracts
5 entered into, modified, or renewed on or after that date.

6 7 **PART III. NONPROFIT HOSPITAL CEO COMPENSATION LIMITS**

8 **SECTION 3.** Article 5 of Chapter 131E of the General Statutes is amended by adding
9 a new section to read:

10 **"§ 131E-99.1. Hospital compensation fairness.**

11 **(a)** Definitions. – The following definitions apply in this section.

12 **(1)** Chief executive officer. – The highest-ranking executive in a hospital who is
13 responsible for making major corporate decisions and managing overall
14 operations, regardless of the individual's actual job title.

15 **(2)** Compensation. – Salary; bonus payments, whether based on performance or
16 otherwise; incentive payments; severance payments; loans to be repaid on
17 terms including interest less burdensome than the going market rate; value of
18 use of hospital-provided vehicles, housing, or other perquisites not generally
19 available to employees; stock or stock options and any dividends or other
20 benefits of the ownership of stock or stock options.

21 **(3)** Minimum compensation. – The value of the annual compensation received by
22 a full-time employee of a qualifying hospital who receives the minimum wage
23 defined in G.S. 95-25.3. If no employee receives the minimum wage defined
24 in G.S. 95-25.3, the minimum compensation shall be the value of the annual
25 compensation received by the lowest-paid, full-time employee of a qualifying
26 hospital.

27 **(4)** Qualifying hospital. – A hospital licensed under this Article that accepts funds
28 from the State and is exempt from taxation under section 501(c)(3) of the
29 Internal Revenue Code (26 U.S.C. § 501(c)(3)).

30 **(b)** Chief Executive Officer Compensation. – No chief executive officer of a qualifying
31 hospital shall receive an annual compensation that is more than 400 times greater than the
32 minimum compensation.

33 **(c)** Civil Penalty. – If the chief executive officer of a qualifying hospital receives an
34 annual compensation that is more than 400 times greater than the minimum compensation, the
35 qualifying hospital shall be assessed a civil penalty equal to the amount of the chief executive
36 officer's annual compensation.

37 **(d)** Reporting and Payment. – No later than March 1 of each year, all qualifying hospitals
38 shall report to the Commission the minimum compensation and chief executive officer
39 compensation for the preceding year. The Commission shall notify any qualifying hospital of any
40 civil penalty owed under subsection (c) of this section no later than April 1 of each year, and any
41 civil penalties must be paid by a qualifying hospital no later than May 1 of each year.

42 **(e)** Rules. – The Commission shall have the authority to adopt rules necessary to
43 implement the provisions of this section."

44 45 **PART IV. EFFECTIVE DATE**

46 **SECTION 4.** Unless otherwise provided, this act is effective when it becomes law.