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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

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INTRODUCED BY PISCIOTTANO, VENKAT, ISAACSON, MADDEN, SANCHEZ,  
SCHLOSSBERG, KHAN, DELLOSO, HOWARD, MERSKI, N. NELSON, BOYD,  
KRAJEWSKI, GREEN AND CERRATO, FEBRUARY 5, 2024

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REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 5, 2024

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AN ACT

1 Providing for cause of action for antitrust conduct, for  
2 indirect purchaser recovery under State antitrust laws and  
3 for premerger notice of health care mergers and transactions;  
4 and imposing penalties.

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7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Pennsylvania  
11 Open Markets Act.

12 Section 2. Declaration of purpose.

13 The purpose of this act is to promote free enterprise and  
14 free trade in the marketplaces of this Commonwealth by  
15 prohibiting restraints of trade that are secured through  
16 monopolistic or collusive practices and that act or tend to act  
17 to decrease competition between and among persons engaged in  
18 commerce and trade.

19 Section 3. Definitions.

20 The following words and phrases when used in this act shall  
21 have the meanings given to them in this section unless the  
22 context clearly indicates otherwise:

23 "Acquisition." An agreement, arrangement or activity, the  
24 consummation of which results in a person acquiring, directly or  
25 indirectly, the control of another person or the ability to  
26 influence the competitive conduct of the target firm, and  
27 includes the acquisition of voting securities and noncorporate  
28 interests, such as assets, capital stock, membership interests  
29 or equity interests.

30 "Contracting affiliation." The formation of a relationship

1 between two or more entities that permits the entities to  
2 negotiate jointly with insurers or third-party administrators  
3 over rates for professional medical services or for one entity  
4 to negotiate on behalf of the other entity with insurers or  
5 third-party administrators over rates for professional medical  
6 services.

7 "Hart-Scott-Rodino Act." Title II of the Clayton Antitrust  
8 Act (Public Law 63-212, 15 U.S.C. § 18a).

9 "Health care facility." As defined in section 103 of the act  
10 of July 19, 1979 (P.L.130, No.48), known as the Health Care  
11 Facilities Act.

12 "Health care facility system." Either of the following:

13 (1) a parent corporation of one or more health care  
14 facilities and an entity affiliated with the parent  
15 corporation through ownership or control; or

16 (2) a health care facility and an entity affiliated with  
17 the health care facility through ownership.

18 "Health care practitioner." As defined in section 103 of the  
19 Health Care Facilities Act.

20 "Health care services." Medical, surgical, chiropractic,  
21 hospital, optometric, podiatric, pharmaceutical, ambulance,  
22 mental health, substance use disorder, therapeutic,  
23 preventative, diagnostic, curative, rehabilitative, palliative,  
24 custodial and other services relating to the prevention, cure or  
25 treatment of illness, injury or disease.

26 "Health care services revenue." The total revenue received  
27 for health care services in the previous 12 months.

28 "Insurer." As defined in 40 Pa.C.S. § 9103 (relating to  
29 definitions).

30 "Merger." A consolidation of two or more organizations,

1 including two or more organizations joining through a common  
2 parent organization or two or more organizations forming a new  
3 organization. The term does not include a corporate  
4 reorganization.

5 "Monopoly." The power to control prices and exclude  
6 competition as a seller.

7 "Monopsony." The power to control prices and exclude  
8 competition as a buyer.

9 "Person." A natural person, corporation, trust, partnership,  
10 an incorporated or unincorporated association, the Commonwealth,  
11 a State agency, municipal authority, political subdivision and  
12 any other legal entity.

13 "Provider organization." A corporation, partnership,  
14 business trust, association or organized group of persons,  
15 whether incorporated or not, that is in the business of health  
16 care delivery or management and that represents seven or more  
17 health care practitioners in contracting with insurers or third-  
18 party administrators for the payments of health care services.  
19 The term includes a physician organization, physician-hospital  
20 organization, independent practice association, provider network  
21 and accountable care organization.

22 "Third-party administrator." An entity that administers  
23 payments for health care services on behalf of a client in  
24 exchange for an administrative fee.

25 "Trade or commerce." Economic activity directly or  
26 indirectly affecting the people of this Commonwealth.

27 Section 4. Prohibited acts.

28 (a) Restraints of trade.--A contract, a combination in the  
29 form of trust or otherwise or a conspiracy in restraint of trade  
30 or commerce, is unlawful.

1 (b) Monopolize or monopsonize.--It is unlawful for a person  
2 to monopolize or monopsonize, to attempt to monopolize or  
3 monopsonize or to combine or conspire with another person to  
4 monopolize or monopsonize, in any part of trade or commerce.

5 (c) Acquisitions.--It is unlawful for a person to acquire,  
6 directly or indirectly, the whole or any part of the stock,  
7 share capital or other equity interest of another person or the  
8 whole or any part of the assets of another person if any of the  
9 following apply:

10 (1) The effect of the acquisition is substantially to  
11 lessen competition.

12 (2) The effect of the acquisition tends to create a  
13 monopoly or monopsony of any part of trade or commerce.

14 (d) Market power.--It is unlawful for any person or persons  
15 with market power in the conduct of any business, trade or  
16 commerce, in a labor market, or in the furnishing of a service  
17 in this Commonwealth, to abuse that market power.

18 Section 5. Enforcement by Attorney General.

19 (a) Action on behalf of Commonwealth.--If the Attorney  
20 General has reason to believe that a person, foreign or  
21 domestic, has engaged in, is engaging in or is about to engage  
22 in an act or practice that is unlawful under this act, the  
23 Attorney General may bring a civil action in the name of the  
24 Commonwealth against the person to:

25 (1) Obtain a declaratory judgment that the action or  
26 practice violates this act.

27 (2) Enjoin an act or practice that violates this act by  
28 issuing a temporary restraining order, an ex parte temporary  
29 restraining order or a preliminary or permanent injunction,  
30 without bond.

1 (3) Recover a civil penalty of not less than \$100,000  
2 for each violation of this act or of an injunction, judgment  
3 or consent agreement issued or entered into under this act.

4 (4) Obtain an order requiring divestiture of assets:

5 (i) acquired in violation of this act and after the  
6 court determines that divestiture is necessary to avoid  
7 the creation or continuation of a monopoly or to avoid a  
8 likely substantial lessening of competition that results  
9 from a transaction found to be in violation of this act;  
10 or

11 (ii) to restore competition to a line of commerce  
12 that has been eliminated by a violation of this act.

13 (5) Recover actual damages, restitution or disgorgement  
14 on behalf of the Commonwealth and its agencies that are  
15 injured either directly or indirectly through a violation of  
16 this act.

17 (b) Action on behalf of natural person.--The Attorney  
18 General may bring a civil action in the name of the Commonwealth  
19 on behalf of a natural person injured directly or indirectly to  
20 recover damages, restitution or disgorgement through a violation  
21 of this act.

22 (c) Recovery authorized.--The Attorney General shall recover  
23 the costs of an investigation, expert costs and reasonable  
24 attorney fees and costs if successful in an action initiated  
25 under this section.

26 (d) Jurisdiction.--A civil action under this section may be  
27 brought in Commonwealth Court and in the court of common pleas  
28 of the county in which a party resides or has a principal place  
29 of business.

30 (e) Investigation.--

1 (1) If the Attorney General has reason to believe that a  
2 person, whether foreign or domestic, has engaged in or is  
3 engaging in a violation of this act or of a Federal antitrust  
4 law that may be enforced by the Attorney General, the  
5 Attorney General may initiate an investigation.

6 (2) As part of an investigation under this section, the  
7 Attorney General may administer oaths and affirmations,  
8 subpoena witnesses and documentary material, propound  
9 interrogatories to be answered in writing under oath and  
10 collect evidence.

11 (3) The Attorney General may use the information  
12 obtained under this section as the Attorney General  
13 determines necessary in the civil enforcement of this act or  
14 Federal antitrust law that may be enforced by the Attorney  
15 General, including presentation before a court.

16 (4) The Attorney General may cooperate with and  
17 coordinate enforcement of this act and a Federal antitrust  
18 law may be enforced by the Attorney General with the Federal  
19 Government and the several states, including using and  
20 sharing information and evidence obtained under this act.

21 Section 6. Measurement of damages.

22 (a) General rule.--In an action brought under this act, the  
23 prevailing party shall recover treble damages sustained,  
24 reasonable attorney fees and costs, expert witness fees and  
25 investigative costs.

26 (b) Method.--In an action under this act, damages may be  
27 proved and assessed in the aggregate by statistical or sampling  
28 methods, by the computation of illegal overcharges or  
29 underpayment or by another reasonable system of estimating  
30 aggregate damages as the court may permit without the necessity

1 of separately proving the individual claim of, or amount of  
2 damage to, persons on whose behalf the suit was brought.

3 (c) Computation.--Damages may be proved and assessed in the  
4 aggregate by statistical or sampling methods, by the computation  
5 of illegal overcharges or by another reasonable system of  
6 estimating aggregate damages as the court may permit, without  
7 the necessity of separately proving the individual claim of, or  
8 amount of damage to, persons on whose behalf the suit was  
9 brought.

10 (d) Interest.--Damages for injuries by reason of anything  
11 prohibited under this act shall include interest computed from  
12 the date on which the injury is sustained, at a rate equal to  
13 the statutory rate for postjudgment interest, and the cost of  
14 suit, including reasonable attorney fees.

15 Section 7. Premerger notification regarding health care.

16 (a) General notification.--A person conducting business in  
17 this Commonwealth that is required to file the notification and  
18 report form for certain mergers and acquisitions under the Hart-  
19 Scott-Rodino Act shall provide the same notice and documentation  
20 in its entirety to the Office of Attorney General at the same  
21 time that notice is filed with the Federal Trade Commission or  
22 the United States Department of Justice.

23 (b) Health care notification.--

24 (1) It is the intent of the General Assembly to ensure  
25 that competition beneficial to consumers in health care  
26 markets across this Commonwealth remains vigorous and robust.

27 (2) The General Assembly supports the intent through  
28 this section, which provides the Office of Attorney General  
29 with notice of all material health care transactions in this  
30 Commonwealth, so that the Office of Attorney General has the

1 information necessary to determine whether an investigation  
2 under this act is warranted for potential anticompetitive  
3 conduct and consumer harm.

4 (3) In addition to requiring notice under subsection (a)  
5 for transactions not involving health care, this section is  
6 also intended to supplement the Hart-Scott-Rodino Act by  
7 requiring notice of health care transactions not reportable  
8 under the reporting thresholds of the Hart-Scott-Rodino Act  
9 and by providing the Office of Attorney General with a copy  
10 of filings made in accordance with the Hart-Scott-Rodino Act.

11 (c) Notice of material change.--

12 (1) Not less than 120 days prior to the effective date  
13 of a health care transaction that results in a material  
14 change, the parties to the health care transaction shall  
15 submit written notice to the Office of Attorney General of  
16 the material change.

17 (2) For the purposes of this section, a material change  
18 includes a merger, acquisition or contracting affiliation  
19 between two or more entities of the following types:

- 20 (i) health care facilities;
- 21 (ii) health care facility systems; or
- 22 (iii) provider organizations.

23 (3) A material change includes proposed changes  
24 identified in paragraph (1) between a Pennsylvania entity and  
25 an out-of-State entity where the out-of-State entity  
26 generates at least \$10,000,000 in health care services  
27 revenue from patients residing in this Commonwealth and the  
28 entities are of the types identified in paragraph (2). A  
29 party to a material change that is licensed or operating in  
30 this Commonwealth shall submit a notice as required under

1 this section.

2 (4) For purposes of paragraph (2), a merger, acquisition  
3 or contracting affiliation between two or more health care  
4 facilities, health care facility systems or provider  
5 organizations only qualifies as a material change if the  
6 health care facilities, health care facility systems or  
7 provider organizations did not previously have common  
8 ownership or a contracting affiliation.

9 (d) Notice requirements.--

10 (1) The written notice provided by the parties, as  
11 required by subsection (c), shall include:

12 (i) The names of the parties and their current  
13 business addresses.

14 (ii) Identification of all locations where health  
15 care services are currently provided by each party.

16 (iii) Identification of all health care  
17 practitioners who currently provide health care services  
18 for each party.

19 (iv) A brief description of the nature and purpose  
20 of the proposed material change.

21 (v) The anticipated effective date of the proposed  
22 material change.

23 (2) Nothing in this section shall be construed to  
24 prohibit the parties to a material change from voluntarily  
25 providing additional information to the Office of Attorney  
26 General.

27 (e) Requests for additional information.--

28 (1) The Office of Attorney General must make a request  
29 for additional information from the parties under this act  
30 within 30 days of the date notice is received under

1 subsections (a), (c) and (d).

2 (2) Nothing in this subsection shall be construed to  
3 preclude the Office of Attorney General from conducting an  
4 investigation or enforcing Federal or State antitrust laws at  
5 a later date.

6 (f) Health care premerger notification.--A health care  
7 practitioner or provider organization conducting business in  
8 this Commonwealth that files a premerger notification with the  
9 Federal Trade Commission or the United States Department of  
10 Justice, in compliance with the Hart-Scott-Rodino Act, shall  
11 provide a copy of the filing to the Office of Attorney General.  
12 Providing a copy of the Hart-Scott-Rodino Act filing to the  
13 Office of Attorney General satisfies the notice requirement  
14 under subsection (d).

15 (g) Materials submitted to the Office of Attorney General.--

16 (1) Information submitted to the Office of Attorney  
17 General under this section shall be maintained and used by  
18 the Office of Attorney General in the same manner and under  
19 the same protections as provided under this act.

20 (2) Nothing in this section shall be construed to limit  
21 the Office of Attorney General's authority under this act.

22 (3) Failure to comply with this section does not provide  
23 a private cause of action.

24 (h) Penalty for noncompliance.--A person that fails to  
25 comply with this section is liable to the Commonwealth for a  
26 civil penalty of not more than \$200 per day for each day of  
27 noncompliance.

28 Section 8. Civil investigation.

29 (a) Power of Attorney General to conduct.--

30 (1) If the Attorney General has reason to believe that a

1 person, whether foreign or domestic, has engaged in or is  
2 engaging in a violation of this act or of a Federal antitrust  
3 law that may be enforced by the Attorney General, the  
4 Attorney General may initiate an investigation.

5 (2) As part of an investigation under this section, the  
6 Attorney General may administer oaths and affirmations,  
7 subpoena witnesses and documentary material, propound  
8 interrogatories to be answered in writing under oath and  
9 collect evidence.

10 (3) The Attorney General may use the information  
11 obtained under this section as the Attorney General  
12 determines necessary in the civil enforcement of this act or  
13 Federal antitrust law that may be enforced by the Attorney  
14 General, including presentation before a court.

15 (4) An interrogatory or subpoena served under this  
16 subsection shall inform the party served of the right to file  
17 a petition as provided in subsection (b).

18 (b) Petition authorized.--

19 (1) Not later than five business days after the service  
20 of an interrogatory or subpoena, or at any time before the  
21 return date specified in the interrogatory or subpoena, the  
22 party served under this section may file in Commonwealth  
23 Court a petition for an order modifying or setting aside the  
24 interrogatory or subpoena.

25 (2) The party must serve the Attorney General with a  
26 copy of the petition.

27 (3) The petitioner may raise an objection or privilege  
28 that would be available under this act or upon service of a  
29 subpoena in a civil action.

30 (c) Location for production of documentary material.--

1           (1) If documentary material that the Attorney General  
2 seeks to obtain by subpoena is not located within this  
3 Commonwealth and is not reducible to electronic reproduction  
4 and transmission, the party subpoenaed may make the  
5 documentary material available to the Attorney General to  
6 examine the documentary material at the place where the  
7 documentary material is located.

8           (2) The Attorney General may designate representatives,  
9 including officials of the state in which the documentary  
10 material is located, to inspect the documentary material on  
11 the Attorney General's behalf.

12           (3) The Attorney General may respond to similar requests  
13 from officials of other states and may inspect documentary  
14 material on their behalf.

15           (d) Investigation enforcement order.--

16           (1) The Attorney General may apply to Commonwealth Court  
17 for an order compelling compliance of a party who fails to  
18 obey a subpoena or answer an interrogatory issued under this  
19 section without lawful excuse and upon reasonable notice to  
20 all persons affected by the subpoena or interrogatory.

21           (2) The Attorney General may request that an individual  
22 who refuses to comply with a subpoena or answer an  
23 interrogatory on the grounds that the testimony or  
24 documentary material may incriminate the individual be  
25 ordered by the court to provide the testimony or documentary  
26 material.

27           (3) Except for a prosecution for perjury, an individual  
28 who complies with a court order to provide testimony or  
29 matter after asserting a privilege against self-incrimination  
30 to which the individual is entitled by law shall not have the

1 testimony or documentary material provided, or evidence  
2 derived therefrom, or received against the individual used in  
3 a criminal investigation or proceeding.

4 (e) Duty to comply.--A person, whether foreign or domestic,  
5 upon whom an interrogatory or subpoena is served pursuant to  
6 this section shall comply with the terms of the interrogatory or  
7 subpoena unless otherwise provided by this section or by court  
8 order.

9 (f) Liability.--

10 (1) A person who:

11 (i) fails to appear with the intent to avoid, evade  
12 or prevent compliance, in whole or in part, with an  
13 investigation under this act or who removes from a place,  
14 conceals, withholds, mutilates, alters, destroys or by  
15 other means falsifies a matter or documentary material in  
16 the possession, custody or control of a person, subject  
17 to the request or subpoena; or

18 (ii) knowingly conceals relevant information with  
19 the intent to avoid, evade or prevent compliance shall be  
20 liable for a civil penalty as provided in this  
21 subsection.

22 (2) The Attorney General may, upon petition to  
23 Commonwealth Court, recover a civil penalty not to exceed  
24 \$25,000. If a civil penalty is assessed in or as the result  
25 of litigation, the Attorney General is entitled to reasonable  
26 attorney fees and costs.

27 (g) Access to information of other agencies and  
28 confidentiality.--

29 (1) If criminal or civil intelligence, records of  
30 investigations, investigative information or other

1 information held by a Federal or State agency is available to  
2 the Attorney General on a confidential or restricted basis,  
3 the Attorney General may obtain and use the information  
4 unless otherwise prohibited by law.

5 (2) A record of an investigation or intelligence or  
6 investigative information that is exempt from disclosure  
7 under the act of February 14, 2008 (P.L.6, No.3), known as  
8 the Right-to-Know Law, shall remain confidential and be  
9 exempt from disclosure under that act.

10 (h) Records of investigation.--A written response, testimony  
11 or document obtained by the Attorney General under this section,  
12 or information derived directly or indirectly from a written  
13 response, testimony or document obtained by the Attorney  
14 General, shall be deemed a record of an investigation and shall  
15 be exempt from disclosure under the Right-to-Know Law.

16 Section 9. Criminal penalties.

17 A person, including an agent or officer of the person, who  
18 knowingly commits an unlawful act under section 4(a) or (b) is  
19 guilty of a felony of the third degree and, upon conviction,  
20 shall be sentenced to a term of imprisonment of not more than  
21 four years or sentenced to pay a fine of not more than  
22 \$1,000,000, or both. If the person who knowingly committed an  
23 unlawful act under section 4(a) or (b) is a corporation, the  
24 corporation shall be sentenced to pay a fine of not more than  
25 \$1,000,000. An indictment or information based on a violation of  
26 a of the provisions of this act must be found within five years  
27 after the violation. No criminal proceeding barred by a prior  
28 limitation shall be revived by this act.

29 Section 10. Standing.

30 An individual or entity who has suffered damages as a result

1 of prohibited acts enumerated in section 4 shall have standing  
2 to commence an action in a court of competent jurisdiction.

3 Section 11. Antitrust enforcement by private parties.

4 (a) Election.--The plaintiff in an action commenced under  
5 this act may elect to sue for and recover either treble damages  
6 sustained or the full amount of the plaintiff's overcharge or  
7 underpayment without regard to any portion of the overcharge or  
8 underpayment that was recovered upon resale. An action under  
9 this section may be brought by a person injured in the person's  
10 business or property under this act, regardless of whether the  
11 person dealt directly or indirectly with the defendant. A remedy  
12 under this section is in addition to any other remedy under law  
13 and may not diminish or offset any other remedy. Proof of  
14 liability as a result of anticompetitive conduct in violation of  
15 this act shall not require proof of individual reliance.

16 (b) Class action.--An action brought under this section may  
17 be maintained as a class action pursuant to the Pennsylvania  
18 Rules of Civil Procedure.

19 Section 12. Cooperation with Federal Government and other  
20 states.

21 The Attorney General may cooperate with and coordinate  
22 enforcement of this act and Federal antitrust law that may be  
23 enforced by the Attorney General with the Federal Government and  
24 the several states, including using and sharing information and  
25 evidence obtained under this act.

26 Section 13. Exceptions.

27 This act shall not make illegal an activity or conduct exempt  
28 under any statute of the United States or the Commonwealth.

29 Section 14. Applicability.

30 This act shall not apply to a cooperative association or an

1 employee-owned enterprise, corporate or otherwise, of farmers,  
2 gardeners or dairy producers, including livestock farmers and  
3 fruit growers, nor to a contract, agreement or arrangement made  
4 by the association or enterprise, nor to a bona fide labor  
5 union.

6 Section 15. Action not barred as affecting or involving  
7 interstate or foreign commerce.

8 An action under this act may not be barred on the grounds  
9 that the activity or conduct complained of affects or involves  
10 interstate or foreign commerce.

11 Section 16. Remedies cumulative.

12 The remedies afforded by this act are cumulative.

13 Section 17. Effective date.

14 This act shall take effect in 60 days.