CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Attorney General

RULE IDENTIFIER: 110-RICR-30-00-5

RULE TITLE: Pre-merger Notification Rule for Medical-Practice Groups

REASON FOR RULEMAKING:
These rules and regulations are promulgated to establish notification requirements when there is a material change in the ownership or control of medical-practice groups in Rhode Island. The Rule is intended to combat ever-increasing market concentration and rising health care costs that do not result in increased quality of care. It requires Rhode Island-based medical-practice groups to notify the Rhode Island Attorney General (RIAG), the state's primary antitrust regulator, of any merger, consolidation, or acquisition that would result in any of the following:

(1) ownership or control by a significant equity investor (defined to include private equity companies);
(2) a group of eight or more physicians, physician assistants, and/or nurse practitioners, or merger, consolidation, or affiliation with a hospital, hospital system, captive professional entity, medical foundation or other entity organized or controlled by such hospital or hospital system; or
(3) any formation of a management services organization or similar entity created to administer contracts with health insurance carriers or third-party administrators on behalf of a medical-practice group.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: n/a

TESTIMONY AND COMMENTS:
The Attorney General received comments (public hearing testimony and written submissions) from several individuals and organizations. As explained in this Statement, after careful consideration by the Attorney General, certain comments resulted in changes to the text of the Rule, while others did not. The following summarizes the comments that did not result in changes to the text of the Rule:

Concerns with Promulgation Authority
One comment alleged that this Rule exceeds the Attorney General's statutory authority, imposes unnecessary and overly broad burdens on health systems, and risks undermining access to care. Specifically, the comment claims that the cited statutory

authority “may not clearly authorize a notification of this scope,” and that the notification requirements set forth in this Rule are not narrowly tailored to prevent anti-competitive conduct. This Rule is set forth consistent with the RIAG’s authority to promulgate rules and regulations under § 6-36-22, which allows the RIAG to adopt such rules as are necessary and proper to carry out and effectuate the purposes of the Rhode Island Antitrust Act. Pre-merger reporting is a necessary and essential aspect of implementing and effectuating the powers under the Antitrust Act, as it enables the RIAG to identify, assess, and prevent potentially anti-competitive transactions before they occur. Without such advanced notification, the RIAG’s ability to enforce the antitrust laws effectively – and to safeguard competition and consumer welfare in health care markets – would be significantly impaired.

Expanding the list of triggering events and acquirers

A few comments advocated for the list of triggering events and list of potential acquirers to be broadened. Specifically, a comment requested that the list of triggering events include decisions by a Management Service Organization (MSO) or provider group to enter or leave a particular market, or to contract or cease contracting with a particular plan or carrier, be included as a material change subject to review. This suggestion has not been adopted, as the Rule, with respect to MSO formation, adequately provides notice of transactions that may raise competitive concerns. The comment also requested that the list of potential acquirers be broadened to include other types of profit-driven entities driving practice consolidation, such as for-profit health systems. This Rule captures the types of health system transactions identified by the commenter. The definition of “material change” includes, among other transactions, acquisitions of medical-practice groups by hospital systems or captive professional entities as well as transactions involving a “significant equity investor”, which includes an “entity a direct or indirect possession of equity in the capital, stock or profits totaling more than 10 percent of a medical-practice group or management services organization.” Accordingly, the requested change was not adopted, though a further adjustment of “material change” incorporated in the Final Rule is noted below.

Penalties and emergency exceptions

A comment alleged that the penalties set forth in the Rule are not appropriate and that the Rule provides no flexibility for distressed provider acquisitions or time-sensitive transactions and requested the inclusion of an exception process for acquisitions involving insolvent, at-risk, or safety net providers. This Rule does not include additional emergency exceptions as it imposes minimal administrative burden on transacting entities and specifically requires notice of an acquisition of insolvent providers. The standard 60-day notice remains important to ensure adequate review of these types of transactions and the Office of the Attorney General has discretion to allow a transaction to proceed prior to the expiration of the 60-day period. Further, the imposition of penalties for noncompliance with the notice requirement, as specified in the Rule, is consistent with the Office’s statutory authority.

Public Transparency
Two comments advocated for the incorporation of language regarding public transparency, encouraging the Office to balance the sensitivity of the information with the public's interest in mergers between healthcare entities. This Rule strikes an appropriate balance between the public's interest in having information about transactions and broader ownership structures of RI's health care system, while also protecting sensitive, commercially confidential information and ensuring compliance with requirements. The Rule also allows for disclosure of information in narrow contexts, in accordance with R.I. Gen. Laws 6-36-9(i)(3).

Collaborative State Effort
A few comments advocated for increased state-wide collaboration from government entities to address provider consolidation. While the enforcement authority under this Rule is delegated exclusively to the Attorney General, the Office regularly collaborates with other state agencies in working to uphold state antitrust laws, and to address the broader issue of provider consolidation.

Additional Technical Feedback
Several comments provided technical feedback on the Rule as it relates to adjusting, adding, or removing definitions of certain terms. Several technical revisions have been incorporated in the Final Rule, as noted below. Other changes, such as defining "captive professional entity," were not adopted because the text is sufficiently clear and the requested clarifications are not necessary.

CHANGE TO TEXT OF THE RULE:
In consideration of comments received, three changes were made between the text of the proposed Rule and the text of the Final Rule. These changes are consistent with, and a logical outgrowth of, the proposed Rule. The changes are as follows:

1. § 5.5.3. A. *Removing the definition of "Investigative Demand."* A comment observed that the term "investigative demand" was included in the definitions section of the proposed rule but was not used in the body of the rule.

   In consideration of the comment, the term has been removed from the definitions section; this change has no bearing on the substance of the Rule.

2. § 5.5.3. C.6. *Adding additional language to the "Material Change" definition section to address the trigger conditions.* Commenters expressed concern that the criteria for a material change were not appropriately targeted to capture certain large transactions involving health systems or that they could inadvertently capture certain small/isolated transactions such as transactions involving solo practitioners. The commenters recommended the language be clarified to account for these concerns.

   As discussed above, the language in the Rule is broad enough to capture transactions involving by non-hospital health systems such as those the

commenter identified. However, in consideration of the comment regarding inadvertently capturing certain transactions involving solo practices, language was added to clarify that certain transactions involving a solo practice that are the direct result of either the death or retirement of the provider are exempt.

3. § 5.5.3 F. *Clarifying the definition of "Health Insurance Carrier".* A comment observed that the definition of "Health insurance carrier" includes a reference to a "director," but the term is not specified.

   In consideration of the comment, the definition of "Health Insurance Carier" was revised to specify the director referenced is the director of the Department of Business Regulation.

4. § 5.5.6 A. *Clarifying the penalties.* Comments related to penalties resulted in clarification that the penalties for failing to provide pre-merger notification are "up to" $100,000.

5. *Correcting grammatical and formatting errors.*

   The Rule includes minor grammatical and formatting changes that are not substantive.

REGULATORY ANALYSIS:

This Rule is anticipated to generate significant, long-term public health, welfare, and economic benefits for the State of Rhode Island and its residents. Per-person health care spending in Rhode Island is 2.45 times higher than it was in 2000, and from 2016 to 2020, the state's per capita health care costs exceeded 74% of other states. Market consolidation has been a primary driver of these increases nationwide. To address growing market concentration and rising health care costs, the Rhode Island Attorney General ("RIAG") is exercising its antitrust authority to require pre-transaction notice of certain transactions involving Rhode Island-based medical-practice groups.

Despite existing federal and state requirements, transacting parties are not required to notify the RIAG of non-hospital health care transactions. Without advance notice, it is near-impossible for the RIAG to investigate potentially anti-competitive transactions because such plans are generally closely held confidential commercial information. This Rule ensures that the RIAG receives timely notice of transactions that could materially affect market conditions, thereby enabling effective antitrust oversight. Continuing without such requirement would leave the RIAG without advance visibility into many transactions, allowing anticompetitive consolidation to proceed unchecked. While a more expansive requirement, mandating detailed data submissions in addition to the notice, could improve oversight, it would impose significant administrative costs on parties and RIAG staff and risk delaying beneficial transactions. The proposed Rule achieves the desired oversight at minimal burden: a notice that provides sufficient information for the RIAG to evaluate potential impacts on competition, cost, and quality.

The benefits of the Rule clearly justify its modest costs. By providing advance notice, the RIAG can prevent excessive consolidation, protect consumers from rising health care prices, and preserve access to high-quality care. At the same time, the Rule minimizes administrative and financial burdens on parties, ensuring cost-effective implementation. Substantive benefits for Rhode Islanders, and the state, stemming from this Rule include enhanced antitrust oversight, increased market transparency, consumer protection from rising health care costs, preservation of access to quality, affordable health care, and long-term system stability. The Attorney General believes this Rule will achieve these goals, delivering meaningful public health, welfare, and economic benefits for Rhode Island.