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TITLE 110 – ATTORNEY GENERAL

CHAPTER 30 – CIVIL DIVISION

SUBCHAPTER 00 – N/A

PART 5 – PRE-MERGER NOTIFICATION RULE FOR MEDICAL-PRACTICE GROUPS

5.1 Purpose

- A. These Rules and Regulations (the "Rule") are promulgated to set forth the statewide health services pre-merger notification regulation. The Rule is intended to govern the pre-merger notification requirements for health services providers operating in Rhode Island.

5.2 Authority

- A. The Attorney General's antitrust authority is vested in R.I. Gen. Laws § 6-36-1. This Rule has been promulgated pursuant to R.I. Gen. Laws § 6-36-22. The Rule has been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

5.3 Scope

- A. Pursuant to R.I. Gen. Laws § 6-36-1 et seq., the Attorney General is vested with authority that includes the power to promulgate regulations to implement and effectuate the Office's antitrust powers. This Rule establishes a health services pre-merger notification that will allow the Attorney General to investigate potentially anti-competitive combinations and behavior.

5.4 Severability

- A. If any provision of this Rule or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rule shall not be affected thereby.

5.5 Pre-merger Notification Rule for Medical Practice Groups

5.5.1 Purpose

- A. This Rule is intended to govern pre-merger notifications for Rhode Island-based health services providers, as set forth in the Rule.

5.5.2 Policy

- A. The increasing consolidation in the health services industry necessitates strengthened reporting requirements to ensure that the Attorney General's Office, Rhode Island's primary antitrust regulatory, is notified of potentially unlawful transactions.

5.5.3 Definitions

- A. "Person" means any natural person or the estate thereof, or trust or association of persons, whether formal or otherwise, or any corporation, partnership, company, or other legal or commercial entity.
- B. "Material change" means:
 - 1. The merger, consolidation or other affiliation of a medical-practice group with
 - a. Another medical-practice group that results in a medical-practice group comprised of eight (8) or more physicians, physician assistants, and/or nurse practitioners, or
 - b. A hospital, hospital system, captive professional entity, medical foundation or other entity organized or controlled by such hospital or hospital system;
 - 2. The acquisition of all or substantially of all the properties, assets, capital stock, membership interests, or other equity interests of a medical practice group by
 - a. Another medical-practice group that results in a medical-practice group comprised of eight (8) or more physicians, physician assistants, and/or nurse practitioners, or
 - b. A hospital, hospital system, captive professional entity, medical foundation or other entity organized or controlled by such a hospital or hospital system;
 - 3. The employment of all or substantially all of the physicians of a medical-practice group by
 - a. Another medical-practice group that results in a medical-practice group comprised of eight (8) or more physicians, physician assistants, and/or nurse practitioners, or
 - b. A hospital, hospital system, captive professional entity, medical foundation or other entity organized by, controlled by or otherwise affiliated with such hospital or hospital system;
 - 4. The acquisition of one (1) or more insolvent medical-practice groups by

- a. Another medical-practice group that results in a medical-practice group comprised of eight (8) or more physicians, physician assistants, and/or nurse practitioners, or
 - b. A hospital, hospital system, captive professional entity, medical foundation or other entity organized by, controlled by or otherwise affiliated with such hospital or hospital system, or
 - 5. Any formation of a partnership, joint venture, accountable care organization, parent corporation, management services organization, or other organization created for administering contracts with health insurance carriers or third-party administrators or current or future contracting on behalf of one or more medical-practice groups, or
 - 6. Transactions involving a significant equity investor which result in a change of ownership or control of a medical-practice group; provided, however, that transactions in which one of the entities involved is a solo practice and the transaction is the direct result of either the death or retirement of the provider in the solo practice shall be excluded.
- C. "Hospital" means an institution which is primarily engaged in providing diagnostic and therapeutic (including psychiatric) services to inpatients for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.
- D. "Hospital system" means:
- 1. A parent corporation of one or more hospitals and any entity affiliated with such parent corporation through ownership, governance or membership, or
 - 2. A hospital and any entity affiliated with such hospital through ownership, governance, or membership.
- E. "Health insurance carrier" means any entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director of the department of business regulation, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services, including, without limitation, an insurance company offering accident and sickness insurance, a health maintenance organization, a nonprofit hospital, medical or dental service corporation, or any other entity providing a plan of health insurance or health benefits by which healthcare services are paid or financed for an eligible individual or his or her dependents by such entity on the basis of a periodic premium, paid directly or through an association, trust, or other intermediary, and issued, renewed, or delivered within or without Rhode Island to cover a natural person who is a resident of this state, including a certificate issued to a natural person that evidences coverage under a policy or contract issued to a trust or association.

- F. "Medical-practice group" means a single legal entity formed primarily for the purpose of being a physician group practice in any organizational form recognized by the state in which the group practice achieves its legal status, including, but not limited to, a partnership, professional corporation, limited-liability company, limited liability partnership, foundation, not-for-profit corporation, faculty practice plan, or similar association.
- G. "Significant equity investor" means:
1. Any private equity company with a financial interest in a medical-practice group or management services organizations, or
 2. An investor, group of investors or other entity with 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.
- H. "Private equity company" means any company that collects capital investments from individuals or entities and purchases, as a parent company or through another entity that the company completely or partially owns or controls, a direct or indirect ownership share of a medical-practice group or management services organization.

5.5.4 Written Notification Requirement

- A. No less than sixty (60) days prior to the effective date of any transaction that results in a material change to the business or corporate structure of a medical-practice group, the parties to the transaction shall submit written notice to the Attorney General of such material change.

5.5.5 Compliance Form

- A. The Attorney General shall provide a form on its website detailing the information required to comply with § 5.5.4(A) of this Part. The form shall contain fields for at least the following pieces of information:
1. The parties to the transaction;
 2. A brief description of the nature and purpose of the proposed material change;
 3. An identification of all locations where health services are currently provided by each party to the transaction;
 4. An identification of any new services and locations contemplated following the finalization of the transaction;
 5. Anticipated effective date for the transaction; and

6. The contact information for all parties to the transaction.

5.5.6 Penalties

- A. The penalty for failing to provide pre-merger notification may be up to \$200 per day starting on the 59th day prior to the effective date of the transaction and up to \$100,000 for failing to provide pre-merger notification after a transaction's effective date.
- B. The Attorney General may also pursue injunctive relief in Superior Court to pause the finalization of any proposed transaction subject to § 5.5.4(A) of this Part until the parties to a transaction have been in compliance with § 5.5.4(A) of this Part for at least sixty (60) days.

5.5.7 Disclosure of Information

- A. The information and materials supplied to the attorney general pursuant to this Rule shall not be permitted to become public or disclosed by the attorney general or his or her employees beyond the extent necessary for law enforcement purposes in the public interest in accordance with R.I. Gen. Laws § 6-36-9(i)(3).