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May 11, 2023

Senator Donna Bailey, Chair
Representative Anne Perry, Chair
Committee on Health Coverage, Insurance and Financial Services
100 State House Station
Augusta, ME 04333

RE: *L.D. 1399, An Act to Improve State Oversight of Proposed Health Care Entity Transactions*

Dear Senator Bailey and Representative Perry:

I am writing to provide comments in opposition to L.D. 1399, *An Act to Improve State Oversight of Proposed Health Care Entity Transactions*. Existing law provides adequate oversight authority with respect to such transactions. This bill would impose significant unnecessary procedural burdens on the Attorney General and parties to transactions that do not raise anticompetitive concerns.

Maine's antitrust laws give my office broad authority to review transactions that may substantially lessen competition in any market, including health care. Those antitrust laws do not dictate any process or timing requirements, permitting a flexible approach based on the specific circumstances of the transaction and ensuring that my office's review is based on the substantive merits and not rushed by arbitrary deadlines.

L.D. 1399 requires a new three-step process for all covered health care transactions, which includes mergers, acquisitions, changes in control and joint ventures of any size. Many of these transactions would not violate antitrust laws or pose any anticompetitive concerns, and for these the bill adds burdens with no accompanying gain for consumers.

The bill imposes extremely tight deadlines to complete several significant tasks. It would be difficult, if not impossible, to comply with these deadlines while still giving the thorough attention that will often be warranted. For those transactions which require comprehensive review,

the bill would impose substantial burdens—including more accelerated deadlines—without any apparent benefit from prescriptive additional oversight.

The bill would require my office to hold at least one hearing to receive public comment; to engage an expert to determine the impacts of the proposed transaction and submit a written report within 185 days; and to approve or deny the transaction within 30 days of receiving the expert's written report. This last requirement would make Maine an outlier even among those states that require notification of health care mergers, none of which requires preacquisition approval by the Attorney General.

The bill also requires my office to promulgate additional rules implementing this cumbersome process. These rules would necessarily establish additional procedural requirements that do not exist in current law.

Finally, existing antitrust laws make investigations confidential, thereby encouraging full cooperation by the parties and a fulsome consideration and discussion of the issues raised by the transaction under review. In addition to requiring my office to determine within 10 days whether any materials submitted with the notice are confidential and whether any materials would cause harm to the public if published, the bill would limit the confidentiality of information obtained during the review to only "private proprietary information." This new standard for confidentiality could create confusion and lead to disputes regarding whether information is public or confidential under freedom of access laws and is therefore likely to discourage cooperation.

Sincerely,



Aaron M. Frey
Attorney General