Regulatory Analysis Summary and Supporting Documentation:

To combat ever-increasing market concentration and rising costs in the healthcare market, the Rhode Island Attorney General's Office ("RIAG") is exercising its antitrust authority to regulate Rhode Island-based medical-services groups. Increased consolidation of healthcare providers "has driven American health care prices to new heights" without an attendant increase in quality of care.[1] Accordingly, state Attorney General oversight of merger and acquisition activity in the health care services industry is essential to protect consumers and contain costs. The Rule ensures that the RIAG is made aware of non-hospital healthcare transactions and is thus able to effectively exercise its antitrust authority in the healthcare services industry.

Per-person spending on healthcare in Rhode Island is 2.45 times higher today than it was in 2000,[2] and from 2016 to 2020 Rhode Island spent more on health care per capita than 70% of states.[3] Market consolidation has been a primary driver of increased prices nationwide.[4] Under R.I. Gen. Laws § 6-36-9, the RIAG is tasked with enforcing the state's antitrust laws, which serve to prohibit "unreasonable restraints of trade and monopolistic practices" in order to ensure that "the prices of goods and services … be fairly determined by free-market competition."[5] And under the Hospital Conversions Act, the Attorney General has the power to "adopt rules and regulations to accomplish the purpose" of the Hospital Conversions Act ("HCA"). The defined purposes of the HCA include "establish[ing] a review process and criteria for review of hospital conversion" and "assur[ing] the viability of a safe, accessible and affordable healthcare system."[6] The HCA requires parties to obtain RIAG approval prior to horizontal hospital conversion or consolidation.[7] At the federal level, the Hart-Scott-Rodino Act ("HSR") requires federal notification of deals that will surpass certain monetary thresholds.[8] And yet, "the bulk of the growth of the largest [physician] groups" from 2007 to 2013 did not necessarily result from large or horizontal mergers, but from "hiring new physicians or

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[1] Katherine L. Gudiksen et al., *Who Can Rein in Health Care Prices? State and Federal Efforts to Address Health Care Provider Consolidation,* THE MILBANK MEMORIAL FUND ISSUE BRIEF, 6 (2021), https://www.milbank.org/wp-content/uploads/2021/06/Gudiksen_Who-can-control-hc-costs_ib_v4.pdf.
[2] Rhode Island Office of the Health Insurance Commissioner, *Health Care Spending and Quality in Rhode Island*, OHIC ANNUAL REPORT, 5, https://ohic.ri.gov/sites/g/files/xkgbur736/files/2023-05/Health%20Care%20Spending%20and%20Quality%20in%20Rhode%20Island_FINAL%202023%2005.pdf.
[3] KFF, *Health care expenditures per capita by state of residence,* https://www.kff.org/other/state-indicator/health-spending-per-capita/ (last visited May 6, 2025).
[4] Jaime S. King et al., *Preventing Anticompetitive Healthcare Consolidation: Lessons from Five States*, THE SOURCE, 6 (2020), https://ssrn.com/abstract=3627865.
[5] R.I. GEN. LAWS § 6-36-2.
[6] R.I. GEN. LAWS § 23-17.14-3(1)–(3).
[7] R.I. GEN. LAWS § 23-17.14-6.
[8] Thomas G. Wollman, *Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act*, AMERICAN ECONOMIC REVIEW: INSIGHTS 77, 81 (2019), https://pubs.aeaweb.org/doi/pdfplus/10.1257/aeri.20180137.

acquiring very small groups."[9] These transactions are frequently below the HSR reporting threshold and go undetected, yet have been shown to lead to health care market consolidation, worse patient outcomes, and higher rates of mortality.[10] And while the RIAG has the authority to block small-group consolidations that are "monopolistic" or "unreasonable restraints of trade," there is no rule requiring notification to the RIAG or federal regulators of small, non-hospital transactions. It is near-impossible to investigate potentially anti-competitive combinations and behavior without the RIAG first knowing that a transaction will take place because plans for combination are generally closely held confidential commercial information. This Rule therefore serves to narrow the gap by ensuring that the RIAG has notice of potentially anticompetitive transactions with sufficient lead time to intervene before consolidation is consummated.

Concentration in the health care market is steadily increasing.[11] Effective antitrust enforcement is a key means for restraining increases in market concentration.[12] Because antitrust intervention depends upon RIAG notification, without the proposed rule, the health care services market will likely continue to consolidate in accordance with recent trends. Two sources of concentration in healthcare services are hospital-physician integration (when hospitals acquire physicians or physician groups), as well as acquisition of small group physician practices or individual physicians by larger physician groups. Evidence suggests that both types of concentration are occurring in Rhode Island. Health care services consolidation significantly harms consumer welfare. When physician groups are acquired by hospitals, their prices may increase with no corresponding increase in quality of care.[13] Vertical integrations among physician groups and specialists similarly lead to higher costs and can result in "significantly" altered physician care practices.[14]

In addition to medical-practice group transactions involving hospitals and other medical groups, there have been more frequent reports and studies finding significant private equity consolidation among medical groups.[15] Private equity companies and investors

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[9] Cory Capps et al., *Physician Practice Consolidation Driven By Small Acquisitions, So Antitrust Agencies Have Few Tools To Intervene*, 36 HEALTH AFFAIRS 1556, 1560 (2017), https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0054.

[10] Paul J. Eliason et al., *How Acquisitions Affect Firm Behavior and Performance: Evidence from the Dialysis Industry*, 135 THE QUARTERLY JOURNAL OF ECONOMICS 221, 1 (2020), https://www.ftc.gov/system/files/documents/public_events/1349883/eliasonheebshmcdevittroberts.pdf.

[11] King et al., *supra* note 4, at 8; *see also* Sam Hughes & Natasha Murphy, *Empowering State Attorneys General To Fight Health Care Consolidation*, CTR. FOR AM. PROGRESS (Feb. 16, 2023), https://www.americanprogress.org/article/empowering-state-attorneys-general-to-fight-health-care-consolidation/ (last visited May 6, 2025) (stating that the fraction of hospitals owning any office-based physician practices increased from 28% in 2009 to 53% in 2015).

[12] *See, e.g.*, Hughes & Murphy, *supra* note 22 ("As health care markets become more concentrated, strong antitrust enforcement becomes increasingly important to reining in rising health care costs.").

[13] Eliason at al., *supra* note 14, at 1.

[14] Soroush Saghafian et al., *The Impact of Vertical Integration on Physician Behavior and Healthcare Delivery: Evidence from Gastroenterology Practices*, NBER WORKING PAPER SERIES 1 (2023), https://www.nber.org/papers/w30928 (last visited May 6, 2025).

[15] Ola Abdelhadi et al., *Private Equity–Acquired Physician Practices and Market Penetration Increased Substantially, 2012–21*, 43 HEALTH AFF. 354 (2024).

may structure their investments with respect to medical-practice groups by using management services organizations or similar affiliate entities that purportedly provide administrative/nonclinical services to the medical group, often in exchange for substantial fees.[16] Through the use of these and other vehicles, private equity investors may be able to exert effective administrative control over multiple medical-group practices throughout a market. Researchers have previously found that increasing private equity consolidation among medical-group practices can result in significant increases in health care prices in certain markets,[17] higher rates of practitioner turnover,[18] or potential deteriorations in quality of care.[19] Accordingly, to ensure appropriate monitoring of private equity-related transactions affecting Rhode Island based medical-practice groups, this Rule would require notification to the Office of the Attorney General of transactions involving significant equity investors.

The benefits of the Rule greatly outweigh the costs. By empowering the RIAG to investigate potentially anticompetitive transactions, the Rule will prevent excessive market consolidation, slow the growth of health care prices, and prevent degradation in quality of care. A pre-merger notification rule is essential for effectuating the Office's antitrust powers and thus falls within the scope of the statute's grant of regulatory authority.

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[16] Sajith Matthews & Renato Roxas, *Private equity and its effect on patients: a window into the future*, 23 INT'L J. HEALTH ECON. MGMT 1 (2022).
[17] Yashaswini Singh et al., *Association of Private Equity Acquisition of Physician Practices with Changes in Health Care Spending and Utilization*, 3 JAMA HEALTH FORUM e222886 (2022).
[18] Victoria Berquist et al., *Sale of Private Equity–Owned Physician Practices and Physician Turnover,* 6 JAMA HEALTH FORUM e245376 (2025).
[19] Kassem S. Faraj et al., *Acquisition of urology practices by private equity firms and performance in the Merit-Based Incentive Payment System*, 10 UROLOGY PRACTICE 597 (2023).