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**TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE PUBLIC HEALTH COMMITTEE
MARCH 5, 2014**

Good morning, Senator Gerratana, Representative Johnson, and members of the Committee. I appreciate the opportunity to testify here today in support of the *SB 35, An Act Concerning Notice of Acquisitions, Joint Ventures and Affiliation of Group Medical Practices*.

The purpose of this bill is to require notice and reporting in a market that affects every Connecticut consumer. In particular, the bill would give my Office meaningful notice of impending mergers and acquisitions between or among health care providers in this state.

The Attorney General is the primary antitrust enforcement officer for the State of Connecticut. This bill does not afford my Office any *additional enforcement* authority to investigate, prevent or undo a merger beyond what the General Assembly first provided in 1971 with the enactment of the Connecticut Antitrust Act. It would, however, provide us with important *information* that will facilitate my legislative mandate to ensure that competitive health care markets are maintained in Connecticut.

Almost every day, a media outlet -- the *New York Times*, *Wall Street Journal*, *Washington Post* or other regional or local newspaper -- reports another story about health care consolidation in this country. Between 2007 and 2012, there were close to 600 hospital mergers nationally, with 247 of those occurring in 2012. In addition, more and more large health systems have acquired their competitors and moved on to buy up physician groups and freestanding clinics. Connecticut has not been immune to this trend. Over the last several years, we have seen Hartford Healthcare acquire the Hospital of Central Connecticut (which had already been acquired Bradley Hospital) and William W. Backus Hospital; Danbury Hospital merge with New Milford Hospital and Norwalk Hospital; and Yale New Haven Hospital acquire the Hospital of St. Raphael. In addition, we know that for-profit hospitals are eager to expand their presence in the state -- through the acquisition of community hospitals and independent physician practices.

There currently are 31 general hospitals in this state; these hospitals are owned by 20 corporations. Although Connecticut is a relatively densely populated state with adequate hospital choice, the trend toward increased hospital consolidation and acquisition cannot continue indefinitely without at some point raising the specter of anticompetitive consequences. While most hospital mergers are well known to the public before they close and are reported in the news media, a large majority of acquisitions and mergers of medical groups, clinics, and ambulatory surgical centers are not publicized. These acquisitions and mergers often make

economic sense for the parties. While they may, in some instances, lead to greater efficiencies and more integrated care for patients, they also may lead to higher prices, fewer services, and lack of competition. When there is an independent specialty practice, such as cardiology or radiology, there often is competition for those services between the independent group and the local hospital. If the local hospital acquires that practice, however, there may no longer be any choice within a reasonable distance of the community. In a similar vein, large physician group acquisitions or mergers among competing physician groups also go largely unreported and may have the same impact on competition.

Under federal antitrust laws, companies above a certain size¹ must notify the United States Department of Justice and the Federal Trade Commission when they intend to be parties to a merger or acquisition, and must provide certain information regarding the proposal to those agencies. The federal act requiring this notice, the Hart-Scott-Rodino Antitrust Improvements Act, ("HSR") 15 USC 18a, was passed in 1976. Under the HSR Act, the parties may not consummate the transaction until they have responded to the reviewing agency's information requests and the statutory waiting period has expired. This process allows the business community to know whether the federal government has concerns about the possible competitive impact of the proposed acquisition or merger. While most transactions raise no competitive concerns, some do.

The primary purpose of SB 35 is to give the Attorney General sufficient information and time to review proposed transactions within the healthcare industry to assess whether such transactions run afoul of our state antitrust laws. With one exception, Connecticut law presently does not require merging companies to notify my Office of their plans. That exception is in the motor vehicle fuels industry. Section 42-511 of the General Statutes requires any person in the motor fuel industry to provide the Attorney General with a copy of any merger notice submitted to the federal antitrust enforcement agencies. I strongly believe there should be a similar legal requirement for mergers and acquisitions in the healthcare industry, which touches the lives of every Connecticut citizen in a most important way.

The first notification provision in the bill before you would require notice to the Attorney General of transactions in the health care market that must be reported to federal antitrust authorities under the HSR Act. The next section would require notice for any material change to the business or corporate structure of any physician group practice, *i.e.*, a merger or acquisition with a hospital or another group practice. Though most such transactions are not large enough to be a reportable event under the federal HSR Act, they may, by themselves or in the aggregate with several other small transactions, create an unlawful and anticompetitive monopoly in a given community for a given type of service, and thus lead to increased prices and less competition.

¹ In summary, the HSR threshold amount is determined by size of person and size of transaction. The size-of-person test is met if one party to the transaction has \$151.7 million or more in annual sales or total assets and the other has \$15.2 million or more in annual sales or total assets. The size of transaction test is met if, as a result of the transaction, the buyer will acquire or hold voting securities or assets of the seller, valued in excess of \$75.9 million.

Similar to the federal act's provisions, this proposal requires parties to provide notice prior to the effective date of the transaction. The notice and information provided to the Attorney General under this proposal will allow us to assess the potential competitive implications of transactions. If a transaction raises antitrust concerns, the Attorney General may ask for more information under our existing antitrust authority. In many cases, however, there will be no such concerns.

The final section of the bill requires all hospitals and hospital systems to file with the Attorney General and the Department of Public Health an annual report regarding the group practices they own or with which they are affiliated. Such regular reporting will allow the Attorney General to better monitor competition and more readily determine whether a particular transaction reported under the other sections of the bill has competitive implications.

Health care clearly is in a state of rapid change and consolidation. This bill will provide my Office with an important tool to fulfill my responsibilities under our antitrust laws in an area that affects all Connecticut citizens in a unique and profound way.

Thank you for your consideration. I would be happy to answer any questions from the Committee.