



Office of the Attorney General  
State of Connecticut

**TESTIMONY OF  
ATTORNEY GENERAL GEORGE JEPSEN  
BEFORE THE JUDICIARY COMMITTEE  
MARCH 25, 2015**

Good afternoon Senator Coleman, Representative Tong, and distinguished members of the Judiciary Committee. I appreciate the opportunity to testify about Senate Bill 1120, *An Act Concerning Application of the State's Antitrust Laws to Hospital Mergers and Acquisitions*. As drafted, this bill would make unlawful a merger, acquisition or combination of merger and acquisition involving two or more hospitals unless "each hospital that is a party to such merger, acquisition or combination of merger and acquisition demonstrates to the satisfaction of the Office of Healthcare Access ["OHCA"] and the office of the Attorney General that such merger, acquisition or combination of merger and acquisition shall not lessen competition among hospitals nor increase prices for inpatient and outpatient services." While I appreciate the intent of the proposal and the proponents' concerns about increased consolidation in the healthcare sector, I have concerns about the way the bill is presently drafted.

Senate Bill 1120 would change the well-developed body of antitrust law used by federal and state antitrust enforcement agencies and courts to assess the competitive implications of proposed mergers and acquisitions. Under what is known as the "rule of reason", courts undertake a thorough analysis to determine whether a proposed transaction will substantially lessen competition or tend to create a monopoly for a specific market and, if so, whether there are countervailing pro-consumer considerations that justify the transaction. My Office, in conjunction with the Federal Trade Commission ("FTC") or the U.S. Department of Justice ("DOJ"), has conducted several antitrust investigations of proposed hospital mergers in Connecticut over the past few years. Under existing law, if my Office or the federal enforcement agency investigating a proposed transaction believes it may violate antitrust law, we may file a lawsuit challenging the transaction. Only a court can decide whether a transaction violates antitrust law.

This bill, in contrast, would require parties to demonstrate *to the satisfaction of my Office and OHCA* that a transaction would neither lessen competition among hospitals nor increase prices for inpatient and outpatient services. The bill, therefore, would change my Office's role under antitrust law – and just with respect to hospital mergers and acquisitions – from civil prosecutor to regulator by requiring parties to demonstrate to my Office and OHCA, rather than a court, that the transaction would not lessen competition or increase prices. This is not an appropriate role for my Office, which is charged under antitrust law with a prosecutorial, not an adjudicative, function.

If the legislature wishes to create an administrative process to review the competitive implications of hospital mergers and acquisitions, that process should be vested in a state agency with existing authority to conduct contested cases under the Uniform Administrative Procedures Act. Such proceedings must include procedures that address the parties' due process rights. Any such regulatory scheme also must be reconciled with the existing antitrust framework so as not to disrupt or confuse my Office's role or the well-developed body of existing case law governing mergers and acquisitions. Finally, to the extent the legislature believes that consolidation in the health care sector warrants a higher level of scrutiny than exists under current antitrust law, it should set forth the additional, specific criteria under which such transactions should be examined.

Thank you once again for the opportunity to testify about this important matter. Please feel free to contact me with any questions or concerns.