



**IN THE GENERAL ASSEMBLY STATE OF \_\_\_\_\_**

**Regulation and Approve Health Insurance Mergers**

1 Be it enacted by the People of the State of \_\_\_\_\_, represented in the General  
2 Assembly:

3 **Section 1. Title.** This act shall be known as and may be cited as “Regulation and Approval of  
4 Health Insurance Mergers.”

5 **Section 2. Purpose.** The Legislature hereby finds and declares that:

6 (a) Concentrated health insurance markets result in anticompetitive consequences including  
7 increased health insurance premiums, increasing patient financial responsibility for  
8 larger co-pays and deductibles, coverage exclusions and reduced access to care;

9 (b) Applying the Department of Justice/Federal Trade Commission merger guideline  
10 standards, the AMA has found that 70 percent of the Metropolitan Statistical Areas  
11 (MSA) of the 388 examined were highly concentrated, and in 89 percent of those MSAs,  
12 a single health insurer holds at least a 30 percent share of the commercial market.

13 *Drafting Note: If local or state conditions show higher concentrations than the national*  
14 *data, then State Medical Association should include additional language documenting*  
15 *competitive market information.*

16 (c) Physicians have virtually no bargaining power with dominant health insurers in a position  
17 to exert monopsony power. To maintain relationships with their patients, physicians can

1 be forced to accept inadequate reimbursement rates likely to lead to a reduction in the  
2 amount of time physicians can spend with their patients and ultimately, a reduction in the  
3 supply of physician services;

4 (d) Increased state oversight, regulation, and independent investigation to determine a  
5 proposed merger's impact on competition will protect competition among insurance  
6 companies in this state;

7 (e) Competition among health insurers will lead to lower premiums, enhanced customer  
8 services, and innovative ways to improve quality while lowering costs; and

9  
10 (f) While the federal and state antitrust enforcement authorities have broad responsibilities,  
11 the State Insurance Commissioner has greater resources to focus specifically on the  
12 state's health insurance market. To that end, the State Insurance Department must  
13 conduct a comprehensive, open analysis of proposed mergers and their impact on health  
14 care markets, consumers, physicians and non-physician providers.

15 **Section 3. Definitions.**

16 (a) Acquisition" Any agreement, arrangement or activity that results in a person acquiring,  
17 directly or indirectly, the control of health insurer and includes, but is not limited to, the  
18 acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

19 (b) "Health Insurer" means any entity, including an insurance company authorized to issue  
20 health insurance, a Health Maintenance Organization (HMO), or any other entity  
21 providing a plan of health insurance, health benefits or health care services that is subject  
22 to the insurance laws and regulations of this state or subject to the jurisdiction of the  
23 Commissioner of Insurance of this State and contracts or offers to contract to provide,  
24 deliver, arrange for, pay for or reimburse any of the costs of health care services.

- 1 (c) “Insurer-Applicant” An insurer-applicant is an insurer seeking permission from the State  
2 Insurance Department to acquire or be acquired by another insurer.
- 3 (d) “Relevant Market” The relevant market has two dimensions. The first is the product  
4 market that consists of the products or services with which each of the insurer-  
5 applicant’s products or services effectively competes. The second is the geographic area  
6 within which the insurer-applicant practically competes in marketing each of its products  
7 or services.
- 8 (e) “Market or Monopoly Power” Market or monopoly power is the ability of a seller to  
9 increase its profits by reducing output and charging a price above a competitive level. It  
10 has also been described as the power to control prices or exclude competition.
- 11 (f) “Monopsony Power” Monposony power is the ability of a buyer to force suppliers to sell  
12 to it at a lower price than would prevail in a competitive market. An insurer has  
13 monopsony power when physicians and non-physician providers have little opportunity  
14 to sell their services other than to the monopsonist.
- 15 (g) “Market Concentration” Market concentration refers to the size, size distribution and  
16 number of firms in a market. A highly concentrated market is one in which the share of  
17 the four largest insurers is 75 percent or more of the market.
- 18 (h) “Collusion” Collusion is a secret activity undertaken by two or more persons for an anti-  
19 competitive purpose, such as price fixing.
- 20 (i) “Market Conduct Examination” A market conduct examination reviews the business  
21 practices of insurers and producers and is designed to monitor marketing, advertising,  
22 policyholder services, underwriting, rating, claims practices, covered lives, medical  
23 expense ratio and any anticompetitive, exclusionary or collusive behavior.

1 (j) “Financial Examination Reports” A financial examination report is a financial  
2 examination that is performed on insurance companies licensed within this state. A  
3 financial examination looks at the company's financial condition as of a particular date,  
4 to determine whether it meets the financial requirements to continue doing business in  
5 the state. In addition, the examiners review the insurance company's compliance with  
6 some of the many insurance laws under which it operates.

7 **Section 4. Approval Required.** No entity subject to the jurisdiction of the Insurance  
8 Commissioner that provides or seeks to provide health insurance in this state may acquire control  
9 of, merge or consolidate with another insurer unless the acquisition has been approved by the  
10 State Insurance Commissioner after the Commissioner has held public hearings concerning the  
11 proposed acquisition at which all persons and individuals requesting to participate in the hearings  
12 have been given an opportunity to be heard. Each insurer that seeks to acquire, be acquired,  
13 merge or consolidate with another insurer must file an application as prescribed by the  
14 Commissioner.

15 **Section 5. Standards and Factors to Consider when Determining Approval of Proposed**  
16 **Merger.** The State Insurance Department shall enter an order prohibiting a proposed merger if  
17 there is substantial evidence that the effect of the acquisition may be substantially to lessen  
18 competition in any line of commerce in this state or tend to create a monopoly or monopsony  
19 therein. In determining whether a proposed merger would violate this standard, the State  
20 Insurance Department shall consider the following:

21 (a) Any acquisition involving two or more insurers is prima facie evidence that the  
22 merger may substantially lessen competition or tend to create a monopoly or  
23 monopsony as follows:

1 1) If the relevant market for health insurance before the merger is highly  
2 concentrated and if the involved insurers possess the following shares of the  
3 market:

4 Insurer A	Insurer B
5 4 percent	4 percent or more
6 10 percent	2 percent or more
7 15 percent	1 percent or more

8 2) If the relevant market for health insurance is not highly concentrated and the  
9 involved insurers possess the following shares of the market:

10 Insurer A	Insurer B
11 5 percent	5 percent or more
12 10 percent	4 percent or more
13 15 percent	3 percent or more
14 19 percent	1 percent or more

15 3) If the relevant market for health insurance before the merger is not highly  
16 concentrated, and would become highly concentrated if the merger is  
17 consummated.

18 (b) Even though an acquisition is not a prima facie violation, pursuant to (a) above, the  
19 State Insurance Department may find a violation of the competitive standard or in the  
20 event of a prima facie violation, an insurer-applicant may rebut the prima facie  
21 violation pursuant to (a) above, based on the following mitigating or aggravating  
22 factors:

23 1) The purpose, intent, or motive for the merger or acquisition;

- 1           2) A determination of the relevant market, market shares of the merging parties  
2                   and concentration and trend toward concentration in the relevant market;
- 3           3) Barriers to and ease of entry into the relevant market for competitors;
- 4           4) The opportunity for collusion in the industry, the homogeneity of products,  
5                   the number of buyers and sellers and the history of collusive behavior in the  
6                   market;
- 7           5) Probable effects of the merger on consumers and on suppliers of health;
- 8           6) Whether the financial condition of any acquiring party may negatively affect  
9                   the financial stability of the insurer, or prejudice the interests of its  
10                  policyholders or the interests of any remaining security holders who are  
11                  unaffiliated with the acquiring party; and
- 12          7) The terms of the offer, request, invitation, agreement or acquisition and  
13                  whether it is fair and reasonable to the security holders of the insurer.

14          (c) Investigation Documents. Each insurer-applicant shall provide the following  
15                  information to the State Insurance Department along with its application to acquire or  
16                  be acquired. This information must be provided for each of the most recent five years,  
17                  and for the state as a whole, for each metropolitan statistical area within the state,  
18                  and, if possible, for each county within the state:

- 19           1) Enrollment by product category;
- 20           2) Per member per month (PMPM) charges by product category, as well as  
21                  average premium renewal rate, gross administrative fee as a percentage of  
22                  medical payment, underwriting margins and increases for different customer  
23                  segments;

- 1           3) Medical expense ratio by product category;
- 2           4) Total utilization data by product category for emergency room (number of
- 3                 emergency department visits per 1000);
- 4           5) The average contracted compensation rate paid to physicians by product
- 5                 category and specialty as a percentage of the current Medicare fee schedule;
- 6           6) The number of physicians by product category and specialty in the insurer-
- 7                 applicant's directly contracted network; and
- 8           7) If an insurer applicant has a not-for-profit status, contribution to local
- 9                 community projects, tax benefits received, months in reserves and amount of
- 10                 surplus.

11           (d) Investigation Process. The State Insurance Department shall conduct an independent  
12                 investigation of the proposed consolidation that shall include:

- 13                 1) The market conduct examination and financial examination reports, or
- 14                         equivalent, for this state and any other state where the insurers do business;
- 15                 2) The consumer complaint information and any relevant records maintained by
- 16                         the division or any state or federal agency related to the insurer-applicant; and
- 17                 3) Any other research the State Insurance Department feels relevant to the
- 18                         investigation and decision-making process.

19           (e) Investigation Report. The State Insurance Department shall complete an  
20                 investigation report as follows:

- 21                 1) An investigation report shall describe the investigation process, all criteria and
- 22                         facts analyzed and the reasoning for the decision; and

1           2) The investigation report and an executive summary of that report must be  
2           made available to the public as soon as it is completed. All data, reports and  
3           any information related to the proposed merger shall be available to the  
4           public.

5           (f) Merger Evaluation Process. The State Insurance Department shall ensure that the  
6           following requirements are met prior to issuing a decision on a merger application:

7           1) Conspicuous public notice of any application filing no later than five days  
8           after receipt of the application in all newspapers of general circulation in the  
9           state (whether in paper or electronic form), and such notice must include at  
10          least one Sunday edition of said newspapers;

11          2) Conspicuous public notice of the first required hearing shall be made not less  
12          than 60 days and no more than 90 days from date of application receipt. The  
13          notice must be made for at least three consecutive days in all newspapers of  
14          general circulation in the state, (whether in paper or electronic form) and must  
15          include at least one Sunday edition of said newspapers,

16          3) Conspicuous public notice of the second required hearing shall be no less than  
17          30 days after and no more than 90 days from the first hearing. The notice must  
18          be made for at least three consecutive days in all newspapers of general  
19          circulation in the state, (whether in paper or electronic form) and must include  
20          at least one Sunday edition of said newspapers;

21          4) The State Insurance Department shall schedule further public hearings if it  
22          deems appropriate;



- 1           5) The State Insurance Department must exclusively dedicate a specific section  
2           of its website to the proposed mergers where consumers and other interested  
3           parties and individuals may readily access documents and other information  
4           concerning the proposed merger. The State Insurance Department must, on  
5           the first page of its website, conspicuously direct website visitors to this  
6           section of its website.
- 7           6) The State Insurance Department shall make no final determination of the  
8           merger approval until all public testimony has been considered;
- 9           7) Public notice must include the hearing date, place, time, subject matter, a link  
10          to all merger materials available for public review and the deadline for  
11          submitting public comments;
- 12          8) At the hearings, the insurer-applicants, any person to whom notice of hearing  
13          was sent and any other person whose interests may be affected thereby have  
14          the right to present evidence, examine and cross-examine witnesses and offer  
15          oral and written arguments and, in connection therewith, are entitled to  
16          conduct discovery proceedings in the same manner as is presently allowed in  
17          the district courts of this state;
- 18          9) The State Insurance Department may retain, at the insurer-applicant's  
19          expense, any attorneys, actuaries, accountants and other experts as may  
20          reasonably be necessary to assist the State Insurance Department in reviewing  
21          the proposed acquisition;
- 22          10) The State Insurance Department shall review all testimony, written comments  
23          and other information;

1 11) The State Insurance Department shall make public all discovery, application  
2 and any other relevant documents within 24 hours of receipt;

3 12) The State Insurance Department shall consider all decision-making criteria  
4 specified in this section; and

5 13) The State Insurance Department may not rely solely on the information  
6 submitted by the insurers in making this determination.

7 **Section 6. Effective.** This Act shall become effective immediately upon being enacted into law.

8 **Section 7. Severability.** If any provision of this Act is held by a court to be invalid, such  
9 invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of  
10 this Act are hereby declared severable.