Section 1: Definitions.

(A) As used in [this Act], the following words shall have the following meanings:

i. “Health care entity” means a health care provider, health care facility, or provider organization.

ii. “Health care facility” means a licensed institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient facilities, ambulatory surgical or treatment centers, skilled nursing facilities, residential treatment centers, diagnostic, laboratory and imaging centers, imaging centers, free-standing emergency facilities, outpatient clinics, and rehabilitation and other therapeutic health settings.

iii. “Health care provider” means any person, corporation, partnership, governmental unit, state institution or any other entity qualified or licensed under state law to perform or provide health care services.

iv. “Health care services” means supplies, care, and services of medical, behavioral health, substance use disorder, mental health, surgical, optometric, dental, podiatric, chiropractic, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, supportive or geriatric nature.

v. “Material change transaction” means any of the following, occurring during a single transaction or in a series of related transactions [within a consecutive 12-month period]:

a. A corporate merger including one or more health care entities;

b. An acquisition of one or more health care entities, including insolvent health care entities. For the purposes of [this Act], “acquisition” means the direct or indirect purchase in any manner, including, but not limited to, lease, transfer, exchange, option, receipt of a conveyance, creation of a joint venture, or any other manner of purchase, such as by a health care system, private equity group, hedge fund, of a material amount of the assets or operations of a health care provider;

[Note: States may have a statutory definition of the word “material”. If not, policymakers may consider defining it in regulation.]
c. Any affiliation, arrangement, or contract that results in a change of control for a health care entity. For the purposes of [this Act], “change of control” means an arrangement in which any other person, corporation, partnership, or any other entity acquires direct or indirect control over the operations of a health care facility or provider in whole or in substantial part. For purposes of this section, an “arrangement” shall include any agreement, association, partnership, joint venture, or other arrangement that results in a change of governance or control for a health care entity;

d. The formation of a partnership, joint venture, accountable care organization, parent organization or management services organization for the purpose of administering contracts with carriers, third party administrators, pharmacy benefit managers or providers;

e. A sale, purchase, lease, affiliation or transfer of control of a board of directors that involves a hospital.

vi. “Material change transaction” does not include any of the following:
a. A clinical affiliation of health care entities formed for the purpose of collaborating on clinical trials; or
b. Graduate medical education programs; or
c. The mere offer of employment to, or hiring of, a physician.

vii. “Provider organization” means any corporation, partnership, business trust, association or organized group of persons, which is in the business of health care delivery or management, whether incorporated or not that represents 1 or more health care providers in contracting with carriers for the payments of health care services; provided, that “provider organization” shall include, but not be limited to, physician organizations, physician-hospital organizations, independent practice associations, provider networks, accountable care organizations and any other organization that contracts with carriers for payment for health care services.

Section 2: Notice.

(A) Any health care entity shall, before consummating any material change transaction, submit written notice to the Attorney General, state Department of Health, [and the state cost commission] not fewer than [60 days] before the date of the proposed material change transaction.

(B) Written notice shall include and contain the information the Attorney General [or the Department of Health or state cost commission] determines is required. The health care entity may include any additional information supporting the written notice of the material change transaction.

(C) Within [10 days] of receiving written notice of a material change transaction, the Attorney General shall post to the Attorney General’s website information about the material change transaction including:
i. A summary of the proposed transaction;
ii. An explanation of the groups or individuals likely to be impacted by the transaction;
iii. Information about services currently provided by the health care entity, commitments by the health care entity to continue such services and any services that will be reduced or eliminated;
iv. Details about any public hearings and how to submit comments;
v. The notice and other materials submitted by the health care entity, except for materials that the Attorney General determines would cause public harm.

Section 3: Preliminary Review

(A) Within [30 days] after receiving a notice described in [Section 2 of this Act], the Attorney General shall do one of the following:

i. Approve the material change transaction and notify the health care entity in writing that a comprehensive review is not required for the material change transaction;

ii. Approve the material change transaction subject to conditions set by the Attorney General and notify the health care entity in writing of the conditions under which the transaction may be completed; OR

iii. Notify the health care entity [and state cost commission] in writing that the transaction is subject to a comprehensive review. The Attorney General may request additional information necessary to perform a comprehensive review under [Section 4 of this Act].

(B) A comprehensive review is required when any of the following apply to the material change transaction:

i. Will result in the transfer of assets valued above [$2 million];
ii. Occurs in a highly consolidated market for any line of services offered by any party to the material change transaction;
iii. Will cause a significant change in market share, such that any resulting health care entity possesses market power upon completion;
iv. If either party to the material change transaction possesses market power prior to the transaction;
v. If the Attorney General, at the Attorney General’s sole discretion, determines that the material change transaction is likely to have a material impact on the cost, quality, or access to health care services in any region in the state.

(C) For purposes of [this section], “market power” means possessing 30% or more market share in any line of service in the relevant geographic area or under other criteria that the Attorney General may define by regulation
Section 4: Comprehensive Review Process

(A) No later than [30 days] after determining a transaction is subject to a comprehensive review, the Attorney General shall:

i. Conduct one or more public meetings, one of which shall be in the county in which the health care entity is located, to hear comments from interested parties; and

ii. [Notify the state cost commission of the determination under Section 3 of the proposed material change or contract with consultants to] produce a cost and market impact review (CMIR) report.

(B) The CMIR report may examine factors relating to the proposed transaction, transacting parties, and their relative market position, including, but not limited to:

i. The market share of any transacting party;

ii. Any previous transaction involving either transacting party, including, but not limited to acquisitions or mergers of similar health care providers;

iii. The prices charged by either of the transacting parties for services, including its relative price compared to other providers for the same services in the same geographic area;

iv. The quality of the services provided by any health care provider(s) party to the transaction, including patient experience;

v. The cost and cost trends of the health care provider in comparison to total health care expenditures statewide;

vi. The availability and accessibility of services similar to those provided, or proposed to be provided, through the provider or provider organization within its primary service areas and dispersed service areas;

vii. The impact of the material change transaction on competing options for the delivery of health care services within its primary service areas and dispersed service areas;

viii. The role of the transacting parties in serving at-risk, underserved, and government payer patient populations;

ix. The role of the transacting parties in providing low margin or negative margin services within its primary service areas and dispersed service areas;
x. Consumer concerns, including but not limited to, complaints or other allegations that the provider or provider organization has engaged in any unfair method of competition or any unfair or deceptive act or practice; and

xi. Any other factors that the Attorney General or the [state cost commission or consultant] determines to be in the public interest.

[Note: This list of factors was adapted from the factors considered by the Health Policy Commission in Massachusetts when writing CMIR reports. Policymakers can choose whether to specify a non-exhaustive list of factors or create the list through regulation. For states without a cost commission, defining what factors a contracted expert should consider in a CMIR may be helpful to determine the legislative intent in what the scope of the report should entail. Additionally, some states may have a statutory definition of “public interest”. In those states, lawmakers may want to consider defining “public interest” in this section or using a different term.]

(C) The Attorney General [or state cost commission] may request additional information or documents from the transacting parties necessary to conduct a CMIR. Failure to respond or insufficient responses to requests for information by transacting parties may result in the extension of the deadline for the Attorney General or state cost commission to complete the CMIR, the imposition of conditions for approval, or the disapproval of the material change transaction.

(D) The Attorney General [and state cost commission] shall keep confidential all nonpublic information and documents obtained under [this section] and shall not disclose the confidential information or documents to any person without the consent of the party that produced the confidential information or documents, except that the Attorney General may disclose any information to an expert or consultant under contract with the office of the Attorney General to review the proposed transaction, provided that the expert or consultant is bound by the same confidentiality requirements as the office of the Attorney General. The confidential information and documents shall not be public records and shall be exempt from [state open records act].

(E) In addition to commissioning a CMIR report, the Attorney General may, in his or her sole discretion:
   i. Contract with, consult, and receive advice from any state agency [including the Department of Health, Department of Insurance, or any other state agency] on those terms and conditions that the Attorney General deems appropriate.
   ii. Contract with experts or consultants to assist in reviewing the proposed agreement or transaction.

(F) Not more that [185 days] after receiving written notice from the Attorney General that the transaction is subject to a comprehensive review under [Section 4], the [state cost commission or consultant] shall submit to the Attorney General a CMIR report; provided that the health care entity has complied with the Attorney General’s [or state cost commission’s] requests for information or documents pursuant [this section] within [21 days] of the request or by a later date set by mutual agreement of the health care entity and the Attorney General [or state cost commission].
[Note: Nothing in this section prevents policymakers from creating a streamlined process in regulation to conduct a smaller CMIR with reduced timelines to review smaller transactions with few competitive concerns.]

(G) The Attorney General [and state cost commission] shall be entitled to [charge costs to or receive reimbursement from] the transacting parties for all actual, reasonable, direct costs incurred in reviewing, evaluating, and making the determination referred to in [this section], including administrative costs.

[Note: Lawmakers should follow existing state law regarding procurement practices when drafting this section to determine whether the Attorney General should be reimbursed or whether the transacting parties should be billed directly. The Attorney General should maintain complete discretion in choosing consultants or experts to review the transaction.]

Section 5: Approval Authority

(A) The Attorney General shall have discretion to approve, conditionally approve, or disapprove of any material change transaction for which the Attorney General receives notice under [Section 2 of this Act].

(B) The Attorney General shall inform the health care entity of the determination within [30 days of notice under Section 2], or in the case of comprehensive review, within [30 days of the Attorney General’s receipt of the CMIR]. No proposed material change transaction may be completed before the Attorney General has informed the health care entity of the Attorney General’s determination.

(C) In making the determination, the Attorney General may consider any factors that the Attorney General deems relevant, including, but not limited to:

i. The likely impact, as described in the CMIR report where applicable, of the material change on:
   a. The growth in patient costs;
   b. The availability or accessibility of health care services to the affected community;
   c. Provider cost trends and containment of total state health care spending;
   d. Access to services in medically underserved areas;
   e. Rectifying historical and contemporary factors contributing to a lack of health equities or access to services;
   f. The functioning of the markets for healthcare and health insurance;
   g. The potential for the material change transaction to affect health outcomes or health equity for residents of this state; or
   h. The potential loss or change in access to essential services.

ii. Whether the material change transaction is proper under [state antitrust laws];

iii. Whether the benefits of the transaction are likely to outweigh the anticompetitive effects from the transaction;

iv. If the transaction is in the public interest.
[Note: Lawmakers should tailor this non-exhaustive list of factors to state priorities. Lawmakers may want to list specific services in Section 5 (C)(i)(g) or choose to define “essential services” in regulation and to help define when transactions are in the public interest. As above, lawmakers should note if their state has a statutory definition of “public interest” and if that definition is appropriate here.]

(D) This section does not limit or alter any existing authority of the Attorney General or any state agency to enforce any other law including state or federal antitrust law or to review non-profit transactions.

Section 6: Post-transaction Oversight

(A) The Attorney General may enforce conditions imposed by a conditional approval pursuant to [Section 5] to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and other equitable remedies a court deems appropriate for breach of any of the conditions and shall be entitled to recover its attorney’s fees and costs incurred in remedying each violation.

(B) In order to monitor effectively ongoing compliance with the terms and conditions of any transaction, the Attorney General may, in his or her sole discretion, contract with experts and consultants to assist in this regard.

(C) One year, two years, and five years after the completion of the material change transaction approved or conditionally approved by the Attorney General after a comprehensive review under [Section 4], the health care entity or the person, corporation, partnership, or any other entity that acquired direct or indirect control over the health care entity must submit reports to the Attorney General that:

i. Demonstrate compliance with conditions placed on the transaction, if any; and

ii. Analyze cost trends and cost growth trends of the parties to the transactions.

(D) The Attorney General shall be entitled to [charge costs to or receive reimbursement from] the transacting parties for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including contract and administrative costs.

[Note: Lawmakers should follow existing state law regarding procurement practices when drafting this section to determine whether the Attorney General should be reimbursed or whether the transacting parties should be billed directly. The Attorney General should maintain complete discretion in choosing consultants or experts to review the transaction.]

(E) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. The transacting parties shall pay the Attorney General promptly for all contract costs.
Section 7: Regulations

(A) The Attorney General [or state cost commission] may adopt regulations implementing [this Act].