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Chair, Senate Judiciary Committee
California State Senate

The Honorable Iñóñá understand that the California legislature enforcers greater ability to review and block private equity for healthcare facilities. Specifically, the bill requires that private equity seeking to purchase or acquire control over a healthcare facility notification to state officials. The bill also gives the Attorney block such transactions, depending on whether they serve the would reinforce certain aspects of California's state bar on t and its state bar on noncompete agreements. In light of the F consolidation and private equity investment in healthcare m efforts to more closely monitor mergers and acquisitions with undermine the availability and affordability of quality health

The Federal Trade Commission's (FTC) mission includes pr healthcare markets that benefits patients, healthcare employ out this mission, Congress has charged the FTC with enforc mergers and acquisitions whose effect may be substantially create a monopoly.

¹ The FTC also enforces the Federal Trade Commission Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.² Pursuant to its statutory mandate, the FTC investigates mergers and acquisitions, business practices, and other activities that may violate the Clayton Act or the FTC Act and brings enforcement actions to stop and remedy violations of these laws.

Vigorous competition among healthcare providers in an open marketplace provides patients with the benefits of lower prices, higher quality, greater access, innovation for goods and services, and

¹ See Clayton Act, 15 U.S.C. § 18.

² See Federal Trade Commission Act, 15 U.S.C. § 45.

otherwise sidestep review.⁹ These types of collaborations between agencies can strengthen our respective individual efforts and ensure that the agencies are deploying every resource at their disposal to protect Americans from predatory tactics in healthcare markets.

Private equity firms have been significantly expanding into healthcare markets.¹⁰ Given both empirical research and accounts from market participants, I have a growing concern about the public impact of private equity acquisitions of healthcare service providers such as outpatient clinics, nursing homes, and physician practices.¹¹ The FTC, alongside the Department of J (c)-6hmoncepublisior

extracts, rather than generates value. In health care, this can have devastating consequences for patients, doctors, nurses, and the broader public.

States have a key role to play in protecting the public from business practices in healthcare markets that undermine fair competition and harm the public. There is a “long history” of states “providing common-law and [state] statutory remedies against monopolies and unfair business practices.”¹⁴ States are powerful antitrust enforcers in their own right and can serve as force multipliers to federal enforcement efforts. States can also be critical partners in addressing the continued financialization of healthcare markets, and legislation like AB-3129 can be a valuable part of that effort.

Federal law requires that merging parties report certain large transactions to federal antitrust agencies before consummating the transaction and provides for a waiting period to allow review by the federal antitrust agencies prior to consummation.¹⁵ Pre-merger reporting protects competition by providing law enforcement an opportunity to investigate and bring suit against problematic mergers before they lessen competition. However, when companies make a series of acquisitions that are not reported to authorities because they are individually below reporting thresholds, or make a combination of reported and unreported transactions, they can amass significant control over key product, service, or labor markets while potentially escaping pre-consummation review by antitrust enforcers. Although proposed changes to the HSR form¹⁶ aim to improve visibility about filing parties’ serial acquisitions or roll-up strategies through enhanced prior acquisition reporting, states’ oversight can provide a crucial supplement to protect Americans from unlawful consolidation in healthcare markets.

By enacting pre-consummation oversight provisions that go beyond federal law, states can help identify and stop anticompetitive transactions in the healthcare sector that raise costs for patients, lower quality, and lead to worse pay and job quality for healthcare workers. I welcome and support the provisions in AB-3129 that expand California’s pre-merger notification requirements by subjectin

arose in response to concerns about the commercialization and financialization of medicine as well as concerns regarding conflicting interests between profit and patient care. Today, many states, including California, maintain a medical practice act that controls, to varying degrees, the ability of corporate lay entities to own or employ physicians and thereby control the practice of medicine.¹⁹

AB-3129 seeks to strengthen California's CPOM laws by prohibiting a private equity investor or hedge fund involved in any manner with a physician, psychiatric, or dental practice doing business in California, from "interfering with the professional judgment" of medical practitioners or "exercis[ing] control over" key elements of patient care, like what diagnostic tests, treatments, or referrals are appropriate.²⁰ I support efforts to ensure that medical practitioners can freely apply their independent professional judgment to provide quality care to their patients. Medical professionals should not be forced to subordinate their own medical judgment to corporate decision-makers' profit motives at the expense of patient health. I note that while AB-3129 pertains to private equity and hedge funds in particular, entities of all types—including non-profits—should not be permitted to interfere in the relationship between patients and their expert medical practitioners.

The ability of states to devise complementary solutions to pressing policy problems is a strength

The final rule's its relation to state laws and its preservation of state authority is discussed in detail in Section VI of the final statement of basis and purpose.²⁷ As the Commission explains, states can continue to play a critical role in restricting the use of noncompetes. State restrictions are especially important with regard to employers or activities that are outside the FTC's jurisdiction—including, among others, certain healthcare non-profits.²⁸ Thus, state laws can fill gaps with respect to noncompetes that are beyond the FTC's jurisdiction.²⁹

As the Commission explains in the statement of basis and purpose for the final rule, the rule does not preempt state laws that restrict noncompetes and do not conflict with it, including both broader state prohibitions and state prohibitions that are narrower in scope.³⁰ That is, state laws cannot authorize noncompetes that are prohibited by the rule, but states may, for example, continue to pursue enforcement actions under their laws prohibiting noncompetes even if the state law prohibits a narrower or broader subset of noncompetes than the FTC's rule.³¹ In short, the FTC's rule does not negate the value of state laws that restrict noncompetes. Rather, such laws can play an important role in combatting harmful noncompetes.

Finally, AB-3129 prohibits private equity and hedge fund acquirers of healthcare facilities from barring providers in that practice from “disparaging, opining, or commenting on that practice in any manner as to any issues involving quality of care, utilization of care, ethical or professional challenges in the practice of medicine or dentistry, or revenue-increasing strategies employed by the private equity group or hedge fund.”³² Ensuring that financial investors cannot stifle medical professionals from speaking freely is critical, and I support the effort to ensure that these non-disparagement clauses are void and unenforceable.

As Chair of the FTC, I am committed to using all available tools and authorities to protect people's access to affordable, high-quality health care. Doing so requires that we keep pace with how firms are acquiring and deploying monopoly power or undermining competition in the modern economy. Addressing continuing consolidation and increasing financialization of our healthcare system requires an all-hands-on-deck effort from federal and state policymakers and