

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

March 5, 2018

SENT VIA EMAIL

Counsel for Elliot Heath System
Ovide Lamontagne
Bernstein Shur
670 North Commercial Street
P.O. Box 1120
Manchester, NH 03105-1120
olamontagne@bernsteinshur.com

Counsel for Southern NH Health System
William Ardinger
Rath Young Pignatelli
One Capital Plaza
Concord, NH 03302-1500
wfa@rathlaw.com

RE: Elliot Health System and Southern New Hampshire Health System Combination

Dear Attorney Lamontagne and Attorney Ardinger:

Pursuant to N.H. RSA 356, the Combinations and Monopolies Act (the "Act"), the Consumer Protection and Antitrust Bureau (the "Bureau") conducted a pre-transaction review for the combination of Southern New Hampshire Health System ("SNHHS") and Elliot Health System ("EHS"). This preliminary review included analysis of information provided by the parties to the proposed transaction, as well as by other health care stakeholders.

SNHHS and EHS each are vertically integrated health care systems providing an array of inpatient, outpatient, and ancillary services at various locations in the southern area of the State. Although the Combination Agreement does not contemplate acquisition of one entity by the other, the resulting SolutionHealth regional system will purportedly constitute a single entity for *Copperweld* purposes. See *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

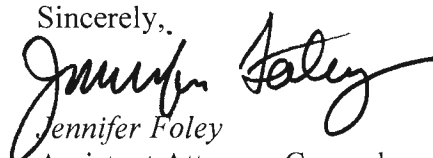
The state health care landscape involves ongoing consolidation activity among provider competitors, as well as a significant percentage of system-employed practitioners. The combination of EHS and SNHHS continues this trend, to include joining large physician networks. Our preliminary review suggests that the combination may lessen the existing competitive landscape in certain areas of southern New Hampshire for at least outpatient services such as pediatrics, pulmonology, and cardiology.

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Maintaining a healthy competitive landscape for providers of all service lines assists in retaining costs and improving quality of care. State law has several provisions that help facilitate channels of competition in the health care market, beyond the Act itself. Specifically, state law prohibits any contract or agreement that interferes with the ability of licensed physicians, to practice medicine in any geography after the termination of a professional services relationship with an entity. *See* RSA 329:31-a. State law preserves patients' rights to all medical information contained in their respective medical records, enabling patients to choose to seek their care from competitors in the health care marketplace. *See, e.g.,* RSA 151:21; RSA 332-I:1 & 2. State law also mandates hospitals and their affiliates to have policies in place "requiring physicians employed by such hospital to notify their patients when they are referring a patient for professional services to be provided by a physician employed by the same hospital or affiliate [and] also expressly state that no physician employed by the hospital or any affiliate is required or in any way obligated to refer patients to physicians also employed or under contract with the hospital or any affiliate." RSA 151:31; *see also* RSA 420-J:8, XIV.

This Office expects that, post-transaction, the combined system will comply with these state laws. At this juncture, the Bureau intends to take no formal action to challenge the transaction. This Office reserves the right to take any action authorized by the Act or other relevant law in order to address and remedy antitrust conduct and harm that may arise.

Sincerely,



Jennifer Foley

Assistant Attorney General
Consumer Protection and Antitrust Bureau
NH Department of Justice
(603) 271-7987 direct line

Cc:

David Martland, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110-2131
dmartland@nixonpeabody.com