



**TESTIMONY OF ROBERT M. LANGER  
FOR THE  
CONNECTICUT HOSPITAL ASSOCIATION  
SUBMITTED TO THE  
JUDICIARY COMMITTEE  
WEDNESDAY, MARCH 25, 2015**

**SB 1120, An Act Concerning Application Of The State's Antitrust Laws To Hospital Mergers And Acquisitions**

My name is Robert M. Langer. I am a partner in the Hartford office of the law firm Wiggin and Dana LLP. I appear here today on behalf of my client, the Connecticut Hospital Association (CHA), to oppose **SB 1120, An Act Concerning Application Of The State's Antitrust Laws To Hospital Mergers And Acquisitions**.

By way of brief background, before I entered private practice in 1994, I served as an Assistant Attorney General for the Connecticut Attorney General's Office (AGO) beginning in 1973. From 1980 to 1994, I was the Connecticut Assistant Attorney General in charge of the then-combined Antitrust and Consumer Protection Department. I have also taught antitrust law for more than 30 thirty years, and have written extensively on the subject, including a treatise that I co-author. To be clear, I do not speak today for, or on behalf of, the AGO.

This bill would establish an entirely new, untested and unworkable set of standards to evaluate hospital mergers and acquisitions. It is unclear what problem SB 1120 is trying to solve or what issues it is trying to address.

There are a large number of competition factors that necessarily go into the evaluation of every merger and acquisition under both the federal and state antitrust laws. The bill states that either a "lessening of competition" or "an increase in prices for inpatient and outpatient services" would permit the AGO and the Office of Healthcare Access (OHCA) to declare the merger or acquisition to be unlawful. SB 1120 does not define "lessening of competition." Does it have the same meaning as it does under Section 7 of the Clayton Act, 15 U.S.C. § 18? If not, the confusion created by differing standards would be highly problematic. If two hospitals are not in competition with each other, would the statute still apply? What if one hospital is truly failing? Would the bill prevent that hospital from surviving under the aegis of another institution, or must it go out of business? These are but a small number of the problematic issues regarding the complexity and uncertainty created by this bill.

The AGO has previously taken the position that it already possesses the authority to challenge mergers and acquisitions under the antitrust laws. What this bill would necessarily do is convert the AGO into an administrative agency. The bill on its face provides no means for any review of decisions rendered by either OHCA or the AGO. The AGO is not an administrative agency under the Uniform Administrative Procedure Act (See Conn. Gen. Stat. § 4-166(1)).

Would OHCA and the AGO have unbridled authority to approve or disapprove transactions? What role do the courts play, if any? Because the AGO is not an administrative agency, if it held a hearing independent of OHCA, would Conn. Gen. Stat. § 4-183 apply, allowing an appeal? Would OHCA and the AGO hold separate hearings and both have to come to the same conclusion as to the merits of the transaction regarding the standards in the bill? What if one said yes, and other no? Since the remedies under the Connecticut Antitrust Act (CATA) would not appear to apply, why place this bill within CATA in the first instance? CATA contains substantive provisions that must be brought before the Connecticut Superior Court (or in some circumstances the federal courts) and adjudicated by our judicial system. Would the bill now constitute the exclusive authority to address hospital mergers and acquisitions in Connecticut, or would the provisions of CATA apply in parallel with the provisions of this bill?

The questions I have posed identify many problems with SB 1120.

On behalf of CHA, I respectfully urge the Committee to reject this bill. Thank you.