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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-NINTH SESSION

**H. F. No. 5**

01/08/2015 Authored by Mack, Daudt, Hoppe, Davids, Dean, M., and others

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

03/11/2015 Adoption of Report: Amended and re-referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act  
1.2 relating to MNsure; requiring the commissioner of commerce to seek federal  
1.3 approval to allow the purchase of qualified health plans and the receipt of  
1.4 premium tax credits and cost-sharing reductions outside of MNsure; making  
1.5 changes to the organization of MNsure; requiring background checks on  
1.6 navigators operating in MNsure; removing certain exemptions; amending  
1.7 Minnesota Statutes 2014, sections 62V.03, subdivision 2; 62V.04, subdivisions 1,  
1.8 2, 4; 62V.05, subdivisions 1, 4, 5; 62V.11, subdivision 2, by adding a subdivision;  
1.9 proposing coding for new law in Minnesota Statutes, chapter 62V.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. **EXPANDED ACCESS TO QUALIFIED HEALTH PLANS AND**  
1.12 **SUBSIDIES.**

1.13 The commissioner of commerce, in consultation with the board of directors of  
1.14 MNsure and the MNsure legislative oversight committee, shall develop a proposal to  
1.15 allow individuals to purchase qualified health plans outside of MNsure directly from  
1.16 health plan companies and to allow eligible individuals to receive advanced premium tax  
1.17 credits and cost-sharing reductions when purchasing these health plans. The commissioner  
1.18 shall seek all federal waivers and approvals necessary to implement this proposal.  
1.19 The commissioner shall submit a draft proposal to the MNsure board and the MNsure  
1.20 legislative oversight committee at least 30 days before submitting a final proposal to the  
1.21 federal government and shall notify the board and legislative oversight committee of any  
1.22 federal decision or action related to the proposal.

1.23 Sec. 2. Minnesota Statutes 2014, section 62V.03, subdivision 2, is amended to read:

1.24 Subd. 2. **Application of other law.** (a) MNsure must be reviewed by the legislative  
1.25 auditor under section 3.971. The legislative auditor shall audit the books, accounts, and

2.1 affairs of MNsure once each year or less frequently as the legislative auditor's funds and  
2.2 personnel permit. Upon the audit of the financial accounts and affairs of MNsure, MNsure  
2.3 is liable to the state for the total cost and expenses of the audit, including the salaries paid  
2.4 to the examiners while actually engaged in making the examination. The legislative  
2.5 auditor may bill MNsure either monthly or at the completion of the audit. All collections  
2.6 received for the audits must be deposited in the general fund and are appropriated to  
2.7 the legislative auditor. Pursuant to section 3.97, subdivision 3a, the Legislative Audit  
2.8 Commission is requested to direct the legislative auditor to report by March 1, 2014, to  
2.9 the legislature on any duplication of services that occurs within state government as a  
2.10 result of the creation of MNsure. The legislative auditor may make recommendations on  
2.11 consolidating or eliminating any services deemed duplicative. The board shall reimburse  
2.12 the legislative auditor for any costs incurred in the creation of this report.

2.13 (b) Board members of MNsure are subject to sections 10A.07 and 10A.09. Board  
2.14 members and the personnel of MNsure are subject to section 10A.071.

2.15 (c) All meetings of the board shall comply with the open meeting law in chapter  
2.16 13D, ~~except that:~~

2.17 ~~(1) meetings, or portions of meetings, regarding compensation negotiations with the~~  
2.18 ~~director or managerial staff may be closed in the same manner and according to the same~~  
2.19 ~~procedures identified in section 13D.03;~~

2.20 ~~(2) meetings regarding contract negotiation strategy may be closed in the same~~  
2.21 ~~manner and according to the same procedures identified in section 13D.05, subdivision 3,~~  
2.22 ~~paragraph (c); and~~

2.23 ~~(3) meetings, or portions of meetings, regarding not public data described in section~~  
2.24 ~~62V.06, subdivision 3, and regarding trade secret information as defined in section 13.37,~~  
2.25 ~~subdivision 1, paragraph (b), are closed to the public, but must otherwise comply with~~  
2.26 ~~the procedures identified in chapter 13D.~~

2.27 (d) MNsure and provisions specified under this chapter are exempt from:

2.28 ~~(1) chapter 14, including section 14.386, except as specified in section 62V.05; and~~

2.29 ~~(2) chapters 16B and 16C, with the exception of sections 16C.08, subdivision 2,~~  
2.30 ~~paragraph (b), clauses (1) to (8); 16C.086; 16C.09, paragraph (a), clauses (1) and (3),~~  
2.31 ~~paragraph (b), and paragraph (c); and section 16C.16. However, MNsure, in consultation~~  
2.32 ~~with the commissioner of administration, shall implement policies and procedures to~~  
2.33 ~~establish an open and competitive procurement process for MNsure that, to the extent~~  
2.34 ~~practicable, conforms to the principles and procedures contained in chapters 16B and 16C.~~  
2.35 ~~In addition, MNsure may enter into an agreement with the commissioner of administration~~  
2.36 ~~for other services.~~

3.1 (e) The board and the Web site are exempt from chapter 60K. Any employee of  
 3.2 MNsure who sells, solicits, or negotiates insurance to individuals or small employers must  
 3.3 be licensed as an insurance producer under chapter 60K.

3.4 (f) Section 3.3005 applies to any federal funds received by MNsure.

3.5 ~~(g) MNsure is exempt from the following sections in chapter 16E: 16E.01,~~  
 3.6 ~~subdivision 3, paragraph (b); 16E.03, subdivisions 3 and 4; 16E.04, subdivision 1,~~  
 3.7 ~~subdivision 2, paragraph (c), and subdivision 3, paragraph (b); 16E.0465; 16E.055;~~  
 3.8 ~~16E.145; 16E.15; 16E.16; 16E.17; 16E.18; and 16E.22.~~

3.9 ~~(h)~~ (g) A MNsure decision that requires a vote of the board, other than a decision  
 3.10 that applies only to hiring of employees or other internal management of MNsure, is an  
 3.11 "administrative action" under section 10A.01, subdivision 2.

3.12 Sec. 3. Minnesota Statutes 2014, section 62V.04, subdivision 1, is amended to read:

3.13 Subdivision 1. **Board.** MNsure is governed by a board of directors with ~~seven~~ 11  
 3.14 members.

3.15 Sec. 4. Minnesota Statutes 2014, section 62V.04, subdivision 2, is amended to read:

3.16 Subd. 2. **Appointment.** (a) Board membership of MNsure consists of the following:

3.17 (1) ~~three~~ six members appointed by the governor with the advice and consent of  
 3.18 both the senate and the house of representatives acting separately in accordance with  
 3.19 paragraph (d), with one member representing the interests of individual consumers eligible  
 3.20 for individual market coverage, one member representing individual consumers eligible  
 3.21 for public health care program coverage, ~~and~~ one member representing small employers,  
 3.22 one member who is an insurance producer, and two members who are county employees  
 3.23 involved in the administration of public health care programs. Members are appointed to  
 3.24 serve four-year terms following the initial staggered-term lot determination;

3.25 (2) three members appointed by the governor with the advice and consent of both the  
 3.26 senate and the house of representatives acting separately in accordance with paragraph (d)  
 3.27 who have demonstrated expertise, leadership, and innovation in the following areas: one  
 3.28 member representing the areas of health administration, health care finance, health plan  
 3.29 purchasing, and health care delivery systems; one member representing the areas of public  
 3.30 health, health disparities, public health care programs, and the uninsured; and one member  
 3.31 representing health policy issues related to the small group and individual markets.

3.32 Members are appointed to serve four-year terms following the initial staggered-term lot  
 3.33 determination; ~~and~~

3.34 (3) the commissioner of human services or a designee; and

4.1 (4) the chief information officer of MN.IT Services or a designee.

4.2 (b) Section 15.0597 shall apply to all appointments, except for the commissioner.

4.3 (c) The governor shall make appointments to the board that are consistent with  
4.4 federal law and regulations regarding its composition and structure. All board members  
4.5 appointed by the governor must be legal residents of Minnesota.

4.6 (d) Upon appointment by the governor, a board member shall exercise duties of  
4.7 office immediately. If both the house of representatives and the senate vote not to confirm  
4.8 an appointment, the appointment terminates on the day following the vote not to confirm  
4.9 in the second body to vote.

4.10 ~~(e) Initial appointments shall be made by April 30, 2013.~~

4.11 ~~(f)~~ One of the ~~six~~ nine members appointed under paragraph (a), clause (1) or (2),  
4.12 must have experience in representing the needs of vulnerable populations and persons  
4.13 with disabilities.

4.14 ~~(g)~~ (f) Membership on the board must include representation from outside the  
4.15 seven-county metropolitan area, as defined in section 473.121, subdivision 2.

4.16 Sec. 5. Minnesota Statutes 2014, section 62V.04, subdivision 4, is amended to read:

4.17 Subd. 4. **Conflicts of interest.** (a) Within one year prior to or at any time during  
4.18 their appointed term, board members appointed under subdivision 2, paragraph (a),  
4.19 clauses (1) and (2), shall not be employed by, be a member of the board of directors of, or  
4.20 otherwise be a representative of a health carrier, institutional health care provider or other  
4.21 entity providing health care, navigator, ~~insurance producer~~, or other entity in the business  
4.22 of selling items or services of significant value to or through MNsure. For purposes of this  
4.23 paragraph, "health care provider or entity" does not include an academic institution.

4.24 (b) Board members must recuse themselves from discussion of and voting on  
4.25 an official matter if the board member has a conflict of interest. For board members  
4.26 other than an insurance producer or a county employee, a conflict of interest means an  
4.27 association including a financial or personal association that has the potential to bias or  
4.28 have the appearance of biasing a board member's decisions in matters related to MNsure  
4.29 or the conduct of activities under this chapter. The board member who is an insurance  
4.30 producer and the board members who are county employees are subject to section 10A.07.

4.31 (c) No board member shall have a spouse who is an executive of a health carrier.

4.32 (d) No member of the board may currently serve as a lobbyist, as defined under  
4.33 section 10A.01, subdivision 21.

4.34 Sec. 6. [62V.045] EXECUTIVE DIRECTOR.

5.1 The governor shall appoint the executive director of MNsure. The executive director  
5.2 serves in the unclassified service at the pleasure of the governor.

5.3 Sec. 7. Minnesota Statutes 2014, section 62V.05, subdivision 1, is amended to read:

5.4 Subdivision 1. **General.** (a) The board shall operate MNsure according to this  
5.5 chapter and applicable state and federal law.

5.6 (b) The board has the power to:

5.7 (1) employ personnel, subject to the power of the governor to appoint the executive  
5.8 director, and delegate administrative, operational, and other responsibilities to the director  
5.9 and other personnel as deemed appropriate by the board. This authority is subject to  
5.10 chapters 43A and 179A. The director and managerial staff of MNsure shall serve in the  
5.11 unclassified service and shall be governed by a compensation plan prepared by the board,  
5.12 submitted to the commissioner of management and budget for review and comment within  
5.13 14 days of its receipt, and approved by the Legislative Coordinating Commission and the  
5.14 legislature under section 3.855, except that section 15A.0815, subdivision 5, paragraph  
5.15 (e), shall not apply. The director of MNsure shall not receive a salary increase on or  
5.16 after July 1, 2015, unless the increase is approved under the process specified in section  
5.17 15A.0815, subdivision 5;

5.18 (2) establish the budget of MNsure;

5.19 (3) seek and accept money, grants, loans, donations, materials, services, or  
5.20 advertising revenue from government agencies, philanthropic organizations, and public  
5.21 and private sources to fund the operation of MNsure. No health carrier or insurance  
5.22 producer shall advertise on MNsure;

5.23 (4) contract for the receipt and provision of goods and services;

5.24 (5) enter into information-sharing agreements with federal and state agencies and  
5.25 other entities, provided the agreements include adequate protections with respect to  
5.26 the confidentiality and integrity of the information to be shared, and comply with all  
5.27 applicable state and federal laws, regulations, and rules, including the requirements of  
5.28 section 62V.06; and

5.29 (6) exercise all powers reasonably necessary to implement and administer the  
5.30 requirements of this chapter and the Affordable Care Act, Public Law 111-148.

5.31 (c) The board shall establish policies and procedures to gather public comment and  
5.32 provide public notice in the State Register.

5.33 (d) Within 180 days of enactment, the board shall establish bylaws, policies, and  
5.34 procedures governing the operations of MNsure in accordance with this chapter.

6.1 Sec. 8. Minnesota Statutes 2014, section 62V.05, subdivision 4, is amended to read:

6.2 Subd. 4. **Navigator; in-person assisters; call center.** (a) The board shall  
6.3 establish policies and procedures for the ongoing operation of a navigator program,  
6.4 in-person assister program, call center, and customer service provisions for MNsure to be  
6.5 implemented beginning January 1, 2015.

6.6 (b) Until the implementation of the policies and procedures described in paragraph  
6.7 (a), the following shall be in effect:

6.8 (1) the navigator program shall be met by section 256.962;

6.9 (2) entities eligible to be navigators, including entities defined in Code of Federal  
6.10 Regulations, title 45, part 155.210 (c)(2), may serve as in-person assisters;

6.11 (3) the board shall establish requirements and compensation for the navigator  
6.12 program and the in-person assister program by April 30, 2013. Compensation for  
6.13 navigators and in-person assisters must take into account any other compensation received  
6.14 by the navigator or in-person assister for conducting the same or similar services; and

6.15 (4) call center operations shall utilize existing state resources and personnel,  
6.16 including referrals to counties for medical assistance.

6.17 (c) The board shall establish a toll-free number for MNsure and may hire and  
6.18 contract for additional resources as deemed necessary.

6.19 (d) The navigator program and in-person assister program must meet the  
6.20 requirements of section 1311(i) of the Affordable Care Act, Public Law 111-148. In  
6.21 establishing training standards for the navigators and in-person assisters, the board must  
6.22 ensure that all entities and individuals carrying out navigator and in-person assister  
6.23 functions have training in the needs of underserved and vulnerable populations; eligibility  
6.24 and enrollment rules and procedures; the range of available public health care programs  
6.25 and qualified health plan options offered through MNsure; and privacy and security  
6.26 standards. For calendar year 2014, the commissioner of human services shall ensure that  
6.27 the navigator program under section 256.962 provides application assistance for both  
6.28 qualified health plans offered through MNsure and public health care programs.

6.29 (e) The board must ensure that any information provided by navigators, in-person  
6.30 assisters, the call center, or other customer assistance portals be accessible to persons  
6.31 with disabilities and that information provided on public health care programs include  
6.32 information on other coverage options available to persons with disabilities.

6.33 (f) Any person who serves as a navigator shall be subject to background checks.  
6.34 Prior to employment as a navigator, the person must submit a completed criminal history  
6.35 records check consent form, a full set of classifiable fingerprints, and the required fees  
6.36 for submission to the Bureau of Criminal Apprehension. The bureau must conduct a

7.1 Minnesota criminal history records check and the superintendent is authorized to exchange  
 7.2 the fingerprints with the Federal Bureau of Investigation to obtain the applicant's national  
 7.3 criminal history record information. The bureau shall return the results of the Minnesota  
 7.4 and federal criminal history records check to the board.

7.5 Sec. 9. Minnesota Statutes 2014, section 62V.05, subdivision 5, is amended to read:

7.6 Subd. 5. **Health carrier and health plan requirements; participation.** (a)  
 7.7 Beginning January 1, 2015, the board may establish certification requirements for health  
 7.8 carriers and health plans to be offered through MNsure that satisfy federal requirements  
 7.9 under section 1311(c)(1) of the Affordable Care Act, Public Law 111-148.

7.10 (b) Paragraph (a) does not apply if by June 1, 2013, the legislature enacts regulatory  
 7.11 requirements that:

7.12 (1) apply uniformly to all health carriers and health plans in the individual market;  
 7.13 (2) apply uniformly to all health carriers and health plans in the small group market;  
 7.14 and

7.15 (3) satisfy minimum federal certification requirements under section 1311(c)(1) of  
 7.16 the Affordable Care Act, Public Law 111-148.

7.17 (c) In accordance with section 1311(e) of the Affordable Care Act, Public Law  
 7.18 111-148, the board shall establish policies and procedures for certification ~~and selection~~  
 7.19 of health plans to be offered as qualified health plans through MNsure. The board shall  
 7.20 certify ~~and select~~ a health plan as a qualified health plan to be offered through MNsure, if:

7.21 (1) the health plan meets the minimum certification requirements established in  
 7.22 paragraph (a) or the market regulatory requirements in paragraph (b);

7.23 (2) the board determines that making the health plan available through MNsure is in  
 7.24 the interest of qualified individuals and qualified employers;

7.25 (3) the health carrier applying to offer the health plan through MNsure also applies  
 7.26 to offer health plans at each actuarial value level and service area that the health carrier  
 7.27 currently offers in the individual and small group markets; and

7.28 (4) the health carrier does not apply to offer health plans in the individual and  
 7.29 small group markets through MNsure under a separate license of a parent organization  
 7.30 or holding company under section 60D.15, that is different from what the health carrier  
 7.31 offers in the individual and small group markets outside MNsure.

7.32 (d) In determining the interests of qualified individuals and employers under  
 7.33 paragraph (c), clause (2), the board may not exclude a health plan for any reason specified  
 7.34 under section 1311(e)(1)(B) of the Affordable Care Act, Public Law 111-148. ~~The board~~  
 7.35 ~~may consider:~~

- 8.1 ~~(1) affordability;~~  
8.2 ~~(2) quality and value of health plans;~~  
8.3 ~~(3) promotion of prevention and wellness;~~  
8.4 ~~(4) promotion of initiatives to reduce health disparities;~~  
8.5 ~~(5) market stability and adverse selection;~~  
8.6 ~~(6) meaningful choices and access;~~  
8.7 ~~(7) alignment and coordination with state agency and private sector purchasing~~  
8.8 ~~strategies and payment reform efforts; and~~  
8.9 ~~(8) other criteria that the board determines appropriate.~~

8.10 ~~(e) For qualified health plans offered through MNsure on or after January 1, 2015,~~  
8.11 ~~the board shall establish policies and procedures under paragraphs (c) and (d) for selection~~  
8.12 ~~of health plans to be offered as qualified health plans through MNsure by February 1~~  
8.13 ~~of each year, beginning February 1, 2014. The board shall consistently and uniformly~~  
8.14 ~~apply all policies and procedures and any requirements, standards, or criteria to all health~~  
8.15 ~~carriers and health plans. For any policies, procedures, requirements, standards, or criteria~~  
8.16 ~~that are defined as rules under section 14.02, subdivision 4, the board may use the process~~  
8.17 ~~described in subdivision 9.~~

8.18 ~~(f) For 2014, (e)~~ The board shall not have the power to select health carriers and  
8.19 health plans for participation in MNsure. The board shall permit all health plans that meet  
8.20 the certification requirements under section 1311(c)(1) of the Affordable Care Act, Public  
8.21 Law 111-148, to be offered through MNsure.

8.22 ~~(g) (f)~~ Under this subdivision, the board shall have the power to verify that health  
8.23 carriers and health plans are properly certified to be eligible for participation in MNsure.

8.24 ~~(h) (g)~~ The board has the authority to decertify health carriers and health plans that  
8.25 fail to maintain compliance with section 1311(c)(1) of the Affordable Care Act, Public  
8.26 Law 111-148.

8.27 ~~(i) (h)~~ For qualified health plans offered through MNsure beginning January 1,  
8.28 2015, health carriers must use the most current addendum for Indian health care providers  
8.29 approved by the Centers for Medicare and Medicaid Services and the tribes as part of their  
8.30 contracts with Indian health care providers. MNsure shall comply with all future changes  
8.31 in federal law with regard to health coverage for the tribes.

8.32 **EFFECTIVE DATE.** This section is effective July 1, 2015.

8.33 Sec. 10. Minnesota Statutes 2014, section 62V.11, subdivision 2, is amended to read:

8.34 Subd. 2. **Membership; meetings; compensation.** (a) The Legislative Oversight  
8.35 Committee shall consist of five members of the senate, three members appointed by



9.1 the majority leader of the senate, and two members appointed by the minority leader of  
9.2 the senate; and five members of the house of representatives, three members appointed  
9.3 by the speaker of the house, and two members appointed by the minority leader of the  
9.4 house of representatives.

9.5 (b) Appointed legislative members serve at the pleasure of the appointing authority  
9.6 and shall continue to serve until their successors are appointed.

9.7 (c) The first meeting of the committee shall be convened by the chair of the  
9.8 Legislative Coordinating Commission. Members shall elect a chair at the first meeting.  
9.9 The chair must convene at least one meeting annually each quarter of the year, and may  
9.10 convene other meetings as deemed necessary.

9.11 Sec. 11. Minnesota Statutes 2014, section 62V.11, is amended by adding a subdivision  
9.12 to read:

9.13 Subd. 5. Reports to the commission. (a) The board shall submit an enrollment  
9.14 report to the commission on a monthly basis. The report must include:

9.15 (1) total enrollment numbers;

9.16 (2) the number of commercial plans selected;

9.17 (3) the percentage of the commercial plans for which the first month's premium  
9.18 has been paid; and

9.19 (4) the average number of days between a consumer's submission of an application  
9.20 and transmittal to the health carrier chosen.

9.21 (b) At each of the commission's quarterly meetings, the board shall present the  
9.22 following information:

9.23 (1) at the first quarterly meeting, a progress report on the most recent MNsure  
9.24 open enrollment period and a progress report on technology upgrades and any proposed  
9.25 schedule for future technology upgrades;

9.26 (2) at the second quarterly meeting, the annual budget for MNsure, as required by  
9.27 subdivision 4;

9.28 (3) at the third quarterly meeting, a hearing in conjunction with the Department of  
9.29 Human Services regarding any backlog created by qualifying life events for enrollees in  
9.30 public or private health plans through MNsure; and

9.31 (4) at the fourth quarterly meeting, a hearing in conjunction with the Department of  
9.32 Commerce on the release of premium rates and in conjunction with the Department of  
9.33 Human Services on reimbursement of MNsure for public program enrollment.

9.34 Sec. 12. TRANSITION.

10.1           (a) The commissioner of management and budget must assign the positions of  
10.2 managerial employees of MNsure, other than the director, to salary ranges and salaries in  
10.3 the managerial plan, effective the first payroll period beginning on or after July 1, 2015.

10.4           (b) Of the four additional members of the board appointed under section 3, one shall  
10.5 have an initial term of two years, two shall have an initial term of three years, and one  
10.6 shall have an initial term of four years, determined by lot by the secretary of state.

10.7           (c) Board members must be appointed by the governor within 30 days of final  
10.8 enactment of these sections.

10.9           Sec. 13. **EFFECTIVE DATE.**

10.10          Sections 1 to 12 are effective July 1, 2015.