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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 533

01/31/2019 Authored by Schultz, Liebling, Halverson, Moran, Loeffler and others
The bill was read for the first time and referred to the Committee on Commerce

1.1 A bill for an act
1.2 relating to health; requiring attorney general review and approval of conversion
1.3 transactions by nonprofit health care entities; requiring all net earnings of a
1.4 nonprofit health maintenance organization to be used for nonprofit purposes;
1.5 extending a moratorium on conversion transactions; amending Minnesota Statutes
1.6 2018, sections 62D.12, by adding a subdivision; 317A.811, subdivision 1; Laws
1.7 2017, First Special Session chapter 6, article 5, section 11; proposing coding for
1.8 new law in Minnesota Statutes, chapters 62C; 62D.

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

1.10 Section 1. FINDINGS.

1.11 The Legislature of the state of Minnesota finds and declares that:

1.12 (1) nonprofit health care entities hold their assets in trust, and those assets are irrevocably
1.13 dedicated, as a condition of their tax-exempt status, to the specific charitable purpose set
1.14 forth in the articles of incorporation of the entities;

1.15 (2) the public is the beneficiary of that trust;

1.16 (3) nonprofit health care entities have a substantial and beneficial effect on the quality
1.17 of life of the people of Minnesota;

1.18 (4) transfers of assets by nonprofit health care entities to for-profit entities directly affect
1.19 the charitable uses of those assets and may adversely affect the public as the beneficiary of
1.20 the charitable assets;

1.21 (5) it is in the best interest of the public to ensure that the public interest is fully protected
1.22 whenever the assets or operations of a nonprofit health care entity are transferred, directly
1.23 or indirectly, from a charitable trust to a for-profit or mutual benefit entity; and

2.1 (6) the attorney general's approval of any transfers of assets or operations by a nonprofit
2.2 health care entity is necessary to ensure the protection of these trusts.

2.3 **Sec. 2. [62C.045] APPLICATION OF OTHER LAWS.**

2.4 Sections 62D.045 to 62D.47 and Laws 2017, First Special Session chapter 6, article 5,
2.5 section 11, as amended by section 8 of this act, apply to health service plan corporations
2.6 operating under this chapter.

2.7 **Sec. 3. [62D.046] NONPROFIT HEALTH CARE ENTITY CONVERSIONS;**
2.8 **DEFINITIONS.**

2.9 Subdivision 1. **Application.** The definitions in this section apply to sections 62D.045
2.10 to 62D.47.

2.11 Subd. 2. **Authorized person.** "Authorized person" means a person who:

2.12 (1) controls, is controlled by, or is under common control with, a for-profit entity. Control
2.13 in this clause may be exercised directly or indirectly through one or more intermediaries;

2.14 (2) has entered into an agreement or contract, including a nonbinding letter of intent, to
2.15 acquire or be acquired by a nonprofit health care entity through merger or consolidation;
2.16 or

2.17 (3) is an officer, director, agent, or managing employee of an entity described in clause
2.18 (1) or (2).

2.19 Subd. 3. **Conversion transaction or transaction.** "Conversion transaction" or
2.20 "transaction" means any agreement or transaction by a nonprofit health care entity to sell,
2.21 transfer, lease, exchange, option, convey, or otherwise directly or indirectly dispose of all
2.22 of its assets; a material amount of its assets; or control, responsibility, or governance of its
2.23 assets, to a for-profit entity, including one that results from or is created in connection with
2.24 the transaction or agreement.

2.25 Subd. 4. **For-profit entity.** "For-profit entity" means an entity that is not a nonprofit
2.26 corporation organized under chapter 317A and is also not exempt under United States Code,
2.27 title 26, section 501(c)(3). "For-profit entity" includes an entity that results from or is created
2.28 in connection with a conversion transaction.

2.29 Subd. 5. **Nonprofit health care entity.** "Nonprofit health care entity" means a nonprofit
2.30 health service plan corporation operating under chapter 62C or a nonprofit health maintenance
2.31 organization operating under this chapter.

3.1 Sec. 4. **[62D.047] NONPROFIT HEALTH CARE ENTITY CONVERSION**
3.2 **TRANSACTIONS.**

3.3 Subdivision 1. Attorney general notice and approval. A nonprofit health care entity
3.4 shall not execute a conversion transaction unless the attorney general approves or
3.5 conditionally approves the transaction. Before executing a conversion transaction, the
3.6 nonprofit health care entity must notify the attorney general as specified under section
3.7 317A.811, subdivision 1. In addition to the elements listed in section 317A.811, subdivision
3.8 1, paragraph (b), the notice required by this subdivision must also include any other
3.9 information from the nonprofit health care entity that the attorney general reasonably
3.10 considers necessary to review the proposed conversion transaction. If the attorney general
3.11 approves a conversion transaction, the approval may include conditions and recommendations
3.12 regarding the nonprofit health care entity's charitable assets.

3.13 Subd. 2. Review elements. (a) The attorney general shall review a proposed conversion
3.14 transaction to determine whether the charitable assets of the nonprofit health care entity are
3.15 adequately protected. The attorney general shall not approve a conversion transaction unless
3.16 the attorney general determines that the nonprofit health care entity has taken necessary and
3.17 appropriate steps to safeguard the value of its charitable assets.

3.18 (b) In determining whether the nonprofit health care entity's charitable assets have been
3.19 adequately protected, the attorney general shall consider whether:

3.20 (1) the conversion transaction is permitted under chapters 317A and 501B and under
3.21 Internal Revenue Service rules or policies governing the disposition of charitable assets;

3.22 (2) the nonprofit health care entity exercised due diligence in deciding to sell or transfer
3.23 all or substantially all of its assets; in selecting the purchaser; and in negotiating the terms
3.24 and conditions of the conversion transaction;

3.25 (3) the procedure used by the nonprofit health care entity in making its decision was fair
3.26 and objective, and whether appropriate independent expert assistance was used;

3.27 (4) any authorized person of a party to the conversion transaction is not in full compliance
3.28 with any federal, state, or local laws or requirements in every jurisdiction in which the
3.29 nonprofit health care entity operates or is licensed to operate;

3.30 (5) any authorized person of a party to the conversion transaction:

3.31 (i) has been convicted of violating any federal or state law, including laws relating to
3.32 the delivery of health care services, reimbursement for health care services, employment,
3.33 or the environment; or

4.1 (ii) has been charged with, is currently under investigation, or has entered into a settlement
4.2 agreement in connection with the violation of any federal or state law;

4.3 (6) the for-profit entity is financially sound and has the financial and management
4.4 capacity to operate the nonprofit health care entity, a department or division of the nonprofit
4.5 health care entity, or any entity resulting from the conversion transaction;

4.6 (7) the for-profit entity has disclosed all potential conflicts of interest, including conflicts
4.7 of interest related to:

4.8 (i) an officer, director, board member, executive, or member of the medical staff of the
4.9 nonprofit health care entity;

4.10 (ii) experts retained by the nonprofit health care entity; or

4.11 (iii) parties to the conversion transaction;

4.12 (8) the conversion transaction will result in pecuniary gain to any director, officer, or
4.13 member of the nonprofit health care entity or for-profit entity;

4.14 (9) the nonprofit health care entity will receive reasonably fair value for its assets, and
4.15 whether the market value of those assets has been manipulated by the actions of the nonprofit
4.16 health care entity or receiving entity in a manner that causes or has caused the value of the
4.17 assets to decrease;

4.18 (10) charitable funds are placed at unreasonable short-term or long-term risk;

4.19 (11) any management contract under the conversion transaction is for reasonably fair
4.20 value;

4.21 (12) the charitable assets have been placed in a charitable trust controlled independently
4.22 of the for-profit entity or other parties to the conversion transaction, and used for appropriate
4.23 charitable purposes consistent with the nonprofit health care entity's purposes or operation
4.24 in the affected community; and

4.25 (13) a right of first refusal has been retained by the nonprofit health care entity to permit
4.26 repurchase of the assets by a successor entity organized under chapter 317A and exempt
4.27 under United States Code, title 26, section 501(c)(3), if the for-profit entity that results from
4.28 the conversion transaction is proposed for sale, conversion, or merger.

4.29 Subd. 3. **Public notice and public comment.** Before approving, approving with
4.30 conditions, or disapproving a conversion transaction, the attorney general:

4.31 (1) shall publish a notice of the conversion transaction in a newspaper of general
4.32 circulation in the area affected by the conversion transaction;

5.1 (2) may solicit comments from the public regarding the conversion transaction; and

5.2 (3) shall hold a public hearing to receive public testimony regarding the conversion
5.3 transaction, if a public hearing is requested by any interested person. If no public hearing
5.4 is requested by an interested person, the attorney general may hold a public hearing to
5.5 receive public testimony. If a public hearing is held, the attorney general shall ensure that
5.6 notice of the hearing is published at least ten days prior to the date of the hearing.

5.7 Subd. 4. **Independent expert.** The attorney general shall use an independent expert to
5.8 assess the value of the nonprofit health care entity's charitable assets.

5.9 Subd. 5. **Timing; form.** The attorney general shall approve, approve with conditions,
5.10 or disapprove a conversion transaction within 60 days after receiving notice of the proposed
5.11 conversion transaction under subdivision 1. The attorney general's decision must be provided
5.12 to the nonprofit health care entity in writing.

5.13 Subd. 6. **Costs.** The attorney general shall assess the for-profit entity for the reasonable
5.14 costs related to the attorney general's review of the conversion transaction under this section
5.15 and the cost of using an independent expert to assess the value of the nonprofit health care
5.16 entity's charitable assets. The attorney general's reasonable costs may include further expert
5.17 review of the conversion transaction, steps to educate the public about the conversion
5.18 transaction, and obtaining public comments.

5.19 Subd. 7. **Judicial review.** If aggrieved by the attorney general's decision under subdivision
5.20 1, any party to the conversion transaction may seek judicial review of the decision.

5.21 Subd. 8. **Injunctive relief; fines.** The attorney general may:

5.22 (1) seek injunctive relief in a court of competent jurisdiction to prevent or restrain a
5.23 violation of this section; or

5.24 (2) seek against any person who willfully executes a conversion transaction without
5.25 obtaining the attorney general's approval or conditional approval, or who deviates from any
5.26 provision of the attorney general's approval or conditional approval of the conversion
5.27 transaction, a fine of at least \$2,500 and up to \$10,000 per day of violation.

5.28 Sec. 5. **[62D.048] CHARITABLE TRUST.**

5.29 Subdivision 1. **Establishment of a charitable trust.** If the attorney general determines
5.30 that the charitable assets of a nonprofit health care entity have not been placed in a charitable
5.31 trust controlled independently of the for-profit entity and other parties to the conversion
5.32 transaction and used for appropriate charitable purposes consistent with the nonprofit health

6.1 care entity's purpose or operation in the affected community, the attorney general shall
 6.2 ensure that a charitable trust is established for the nonprofit health care entity's charitable
 6.3 assets.

6.4 Subd. 2. **Governance of charitable trust reviewed by attorney general.** The attorney
 6.5 general shall review the governance of a charitable trust established for the assets of a
 6.6 nonprofit health care entity subject to a conversion transaction and shall ensure that:

6.7 (1) the governance of the charitable trust is broadly based in the community historically
 6.8 served by the nonprofit health care entity;

6.9 (2) participation on the charitable trust's board by persons involved in negotiating the
 6.10 conversion transaction is limited, by restricting the number of these persons on the board
 6.11 or the length of their terms on the board; and

6.12 (3) the charitable activities of the charitable trust are not used to satisfy any charitable
 6.13 obligations of the for-profit entity.

6.14 Sec. 6. Minnesota Statutes 2018, section 62D.12, is amended by adding a subdivision to
 6.15 read:

6.16 Subd. 8a. **Net earnings.** All net earnings of a nonprofit health maintenance organization
 6.17 shall be devoted to the nonprofit purposes of the health maintenance organization in providing
 6.18 comprehensive health care. No nonprofit health maintenance organization shall provide for
 6.19 the payment, whether directly or indirectly, of any part of its net earnings, to any person as
 6.20 a dividend or rebate; provided, however, that nonprofit health maintenance organizations
 6.21 may make payments to providers or other persons based upon the efficient provision of
 6.22 services or as incentives to provide quality care. The commissioner of health shall, pursuant
 6.23 to sections 62D.01 to 62D.30, revoke the certificate of authority of any nonprofit health
 6.24 maintenance organization in violation of this subdivision.

6.25 Sec. 7. Minnesota Statutes 2018, section 317A.811, subdivision 1, is amended to read:

6.26 Subdivision 1. **When required.** (a) Except as provided in subdivision 6, the following
 6.27 corporations shall notify the attorney general of their intent to dissolve, merge, consolidate,
 6.28 or convert, or to transfer all or substantially all of their assets:

6.29 (1) a corporation that holds assets for a charitable purpose as defined in section 501B.35,
 6.30 subdivision 2; ~~or~~

6.31 (2) a nonprofit health service plan corporation operating under chapter 62C;

7.1 (3) a nonprofit health maintenance organization operating under chapter 62D; or

7.2 ~~(2)~~ (4) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code
7.3 of 1986, or any successor section.

7.4 (b) The notice must include:

7.5 (1) the purpose of the corporation that is giving the notice;

7.6 (2) a list of assets owned or held by the corporation for charitable purposes;

7.7 (3) a description of restricted assets and purposes for which the assets were received;

7.8 (4) a description of debts, obligations, and liabilities of the corporation;

7.9 (5) a description of tangible assets being converted to cash and the manner in which
7.10 they will be sold;

7.11 (6) anticipated expenses of the transaction, including attorney fees;

7.12 (7) a list of persons to whom assets will be transferred, if known, or the name of the
7.13 converted organization;

7.14 (8) the purposes of persons receiving the assets or of the converted organization; and

7.15 (9) the terms, conditions, or restrictions, if any, to be imposed on the transferred or
7.16 converted assets.

7.17 The notice must be signed on behalf of the corporation by an authorized person.

7.18 Sec. 8. Laws 2017, First Special Session chapter 6, article 5, section 11, is amended to
7.19 read:

7.20 **Sec. 11. MORATORIUM ON CONVERSION TRANSACTIONS.**

7.21 (a) Notwithstanding Laws 2017, chapter 2, article 2, a nonprofit health service plan
7.22 corporation operating under Minnesota Statutes, chapter 62C, or health maintenance
7.23 organization operating under Minnesota Statutes, chapter 62D, as of January 1, 2017, may
7.24 only merge or consolidate with; or convert, or transfer all or a substantial portion of its
7.25 assets to an entity that is a corporation organized under Minnesota Statutes, chapter 317A.

7.26 (b) Paragraph (a) does not apply if the service plan corporation or health maintenance
7.27 organization files an intent to dissolve due to insolvency of the corporation in accordance
7.28 with Minnesota Statutes, chapter 317A, or insolvency proceedings are commenced under
7.29 Minnesota Statutes, chapter 60B.

8.1 (c) Nothing in this section shall be construed to authorize a health maintenance
8.2 organization or a nonprofit health service plan corporation to engage in any transaction or
8.3 activities not otherwise permitted under state law.

8.4 (d) This section expires July 1, ~~2019~~ 2029.

8.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.6 Sec. 9. **REVISOR INSTRUCTION.**

8.7 The revisor of statutes shall codify Laws 2017, First Special Session chapter 6, article
8.8 5, section 11, as amended by section 8 of this act, in Minnesota Statutes, chapter 62D.