

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 1472

(SENATE AUTHORS: BENSON)

DATE	D-PG	OFFICIAL STATUS
02/27/2017	789	Introduction and first reading
		Referred to Health and Human Services Finance and Policy
03/09/2017	1254	Withdrawn and re-referred to Judiciary and Public Safety Finance and Policy
03/14/2017		Comm report: To pass as amended and re-refer to Health and Human Services Finance and Policy

1.1 A bill for an act

1.2 relating to health; providing for attorney general review and approval of conversions

1.3 by nonprofit health maintenance organizations; specifying notice and review

1.4 requirements; establishing standards for distribution of certain assets; amending

1.5 Minnesota Statutes 2016, section 317A.811, subdivision 1, by adding a subdivision;

1.6 proposing coding for new law in Minnesota Statutes, chapter 62D.

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

1.8 Section 1. **[62D.046] NONPROFIT HEALTH MAINTENANCE ORGANIZATION**

1.9 **CONVERSIONS.**

1.10 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

1.11 (b) "Conversion benefit entity" means a foundation, nonprofit corporation, trust, or other

1.12 entity that receives public benefit assets pursuant to a public benefit assets distribution plan

1.13 under this section.

1.14 (c) "Nonprofit health maintenance organization conversion transaction" or "transaction"

1.15 means a transaction in which a health maintenance organization merges, consolidates,

1.16 converts, or transfers all or substantially all of its assets to an entity that is not a nonprofit

1.17 corporation under chapter 317A or an organization operating according to United States

1.18 Code, title 26, section 501(c)(3).

1.19 (d) "Public benefit assets" means:

1.20 (1) assets that represent net earnings that were required to be devoted to the nonprofit

1.21 purposes of the health maintenance organization according to Minnesota Statutes 2016,

1.22 section 62D.12;

2.1 (2) excess reserves and other assets that represent the benefits to the health maintenance
2.2 organization of its tax status and other benefits associated with its organization as a nonprofit
2.3 corporation; and

2.4 (3) other assets that are identified as dedicated for a charitable or public purpose.

2.5 Subd. 2. **Attorney general notice and approval required.** (a) Before entering into a
2.6 nonprofit health maintenance organization conversion transaction, the health maintenance
2.7 organization must notify the attorney general as specified under section 317A.811,
2.8 subdivision 1, and the transaction must be approved by the attorney general under this
2.9 section. In addition, the notice must include an itemization of assets the corporation has
2.10 identified as public benefit assets, a proposed plan for distribution of those assets to a
2.11 conversion benefit entity that meets the requirements of subdivision 4, and other information
2.12 the attorney general reasonably considers necessary for review of the proposed transaction.

2.13 (b) A copy of the notice and other information required under this subdivision must be
2.14 given to the commissioner.

2.15 Subd. 3. **Review elements.** (a) In making a decision whether to approve or disapprove
2.16 a proposed transaction, the attorney general, in consultation with the commissioner, shall
2.17 consider whether:

2.18 (1) the health maintenance organization will receive full and fair market value for its
2.19 public benefit assets;

2.20 (2) the fair market value of the public benefit assets to be transferred has been manipulated
2.21 by the actions of the parties in a manner that causes the fair market value of the assets to
2.22 decrease;

2.23 (3) the proceeds of the proposed transaction will be used consistent with the public
2.24 benefit for which the assets are held by the health maintenance organization;

2.25 (4) the proposed transaction will result in a breach of fiduciary duty, as determined by
2.26 the attorney general, including conflicts of interest related to payments or benefits to officers,
2.27 directors, board members, and executives;

2.28 (5) the transaction will result in private inurement to any person;

2.29 (6) the conversion benefit entity meets the requirements of subdivision 4; and

2.30 (7) the attorney general and the commissioner have been provided with sufficient
2.31 information by the health maintenance organization to adequately evaluate the proposed
2.32 transaction and the effects on the public, provided the attorney general or the commissioner

3.1 has notified the health maintenance organization or the acquiring entity of any inadequacy
3.2 of the information and has provided a reasonable opportunity to remedy that inadequacy.

3.3 (b) The attorney general must consult with the commissioner in making a decision
3.4 whether to approve or disapprove a transaction.

3.5 Subd. 4. **Conversion entity requirements.** (a) A conversion benefit entity must be an
3.6 existing or new charitable organization operating according to United States Code, title 26,
3.7 section 501(c)(3).

3.8 (b) The conversion entity must be independent of any influence or control by the health
3.9 maintenance organization or its directors, officers, subsidiaries, or affiliates and must have
3.10 in place procedures and policies to prohibit conflicts of interest, including grant-making
3.11 activities that may benefit the organization or those persons.

3.12 (c) The charitable purpose and grant-making functions of the conversion benefit entity
3.13 must be dedicated to meeting the health care needs of the people of this state.

3.14 Subd. 5. **Period for approval or disapproval; extension.** Within 90 days of receiving
3.15 notice of a proposed transaction, the attorney general shall notify the health maintenance
3.16 organization in writing of its decision to approve or disapprove the transaction. If the
3.17 transaction is not approved, the notice must include the reason for the decision. The attorney
3.18 general may extend this period for an additional 60 days if necessary to obtain additional
3.19 information.

3.20 Subd. 6. **Annual report by conversion benefit entity.** A conversion benefit entity must
3.21 submit an annual report to the attorney general that contains a detailed description of its
3.22 charitable activities related to the use of the public benefit assets received under a transaction
3.23 that is approved under this section.

3.24 Subd. 7. **Relation to other law.** This section does not affect any power or responsibility
3.25 of a health maintenance organization, a conversion benefit entity, the attorney general, or
3.26 the commissioner under this chapter, chapter 317A, 501B, or other law.

3.27 Sec. 2. Minnesota Statutes 2016, section 317A.811, subdivision 1, is amended to read:

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

4.1 (1) a corporation that holds assets for a charitable purpose as defined in section 501B.35,
4.2 subdivision 2, which includes a health maintenance organization operating under chapter
4.3 62D; or

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

4.6 (b) The notice must include:

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

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

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

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

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

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

4.14 (7) a list of persons to whom assets will be transferred, if known;

4.15 (8) the purposes of persons receiving the assets; and

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

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

4.18 Sec. 3. Minnesota Statutes 2016, section 317A.811, is amended by adding a subdivision
4.19 to read:

4.20 Subd. 1a. **Health maintenance organizations; notice and approval required.** A
4.21 corporation that is a health maintenance organization is subject to notice and approval
4.22 requirements for certain transactions under section 62D.046.