

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 4449

(SENATE AUTHORS: WIKLUND)

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OFFICIAL STATUS
Introduction and first reading
Referred to Health and Human Services Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to health; prohibiting certain conversion transactions by nonprofit health
- 1.3 care entities; requiring a nonprofit health care entity to provide notice to the attorney
- 1.4 general before entering into a conversion transaction; authorizing penalties and
- 1.5 remedies; extending a moratorium on certain conversion transactions; amending
- 1.6 Minnesota Statutes 2020, section 317A.811, by adding a subdivision; Laws 2017,
- 1.7 First Special Session chapter 6, article 5, section 11, as amended; proposing coding
- 1.8 for 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. **[62C.045] APPLICATION OF OTHER LAW.**
- 1.11 Sections 62D.046 and 62D.047 apply to health service plan corporations operating under
- 1.12 this chapter.
- 1.13 Sec. 2. **[62D.046] DEFINITIONS.**
- 1.14 Subdivision 1. **Application.** The terms defined in this subdivision apply to this section
- 1.15 and section 62D.047.
- 1.16 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce for a
- 1.17 nonprofit health care entity that is a nonprofit health service plan corporation operating
- 1.18 under chapter 62C or the commissioner of health for a nonprofit health care entity that is a
- 1.19 nonprofit health maintenance organization operating under this chapter.
- 1.20 Subd. 3. **Conversion benefit entity.** "Conversion benefit entity" means a foundation,
- 1.21 corporation, or charitable trust to which the value of any public benefit assets is distributed
- 1.22 in a conversion transaction in accordance with section 62D.047.

2.1 Subd. 4. **Conversion transaction or transaction.** "Conversion transaction" or
2.2 "transaction" means a transaction otherwise permitted by applicable law in which a nonprofit
2.3 health care entity:

2.4 (1) merges, consolidates, converts, or transfers all or a material amount of its assets to
2.5 an entity other than a corporation that is also exempt under United States Code, title 26,
2.6 section 501(c)(3);

2.7 (2) makes a series of separate transfers within a 24-month period that in the aggregate
2.8 constitute a transfer of all or a material amount of the nonprofit health care entity's assets
2.9 to an entity other than a corporation that is also exempt under United States Code, title 26,
2.10 section 501(c)(3); or

2.11 (3) adds or substitutes one or more members that effectively transfers the control of,
2.12 responsibility for, or governance of the nonprofit health care entity to an entity other than
2.13 a corporation that is also exempt under United States Code, title 26, section 501(c)(3).

2.14 Subd. 5. **Corporation.** "Corporation" has the meaning given in section 317A.011,
2.15 subdivision 6, and also includes a nonprofit limited liability company organized under
2.16 section 322C.1101.

2.17 Subd. 6. **Director.** "Director" has the meaning given in section 317A.011, subdivision
2.18 7.

2.19 Subd. 7. **Full and fair value.** "Full and fair value" means the amount that the public
2.20 benefit assets of the nonprofit health care entity would be worth if the assets were equal to
2.21 stock in the nonprofit health care entity, if: (1) the nonprofit health care entity was a for-profit
2.22 corporation; and (2) the nonprofit health care entity had 100 percent of its stock authorized
2.23 by the corporation and available for purchase without transfer restrictions. The valuation
2.24 shall consider market value, investment or earning value, net asset value, goodwill, the
2.25 amount of donations received, and a control premium, if any.

2.26 Subd. 8. **Material amount.** "Material amount" means the lesser of ten percent of a
2.27 nonprofit health care entity's total net admitted assets as of December 31 of the preceding
2.28 year or \$10,000,000.

2.29 Subd. 9. **Member.** "Member" has the meaning given in section 317A.011, subdivision
2.30 12.

2.31 Subd. 10. **Member of the family.** "Member of the family" means a spouse, parent, child,
2.32 spouse of a child, brother, sister, or spouse of a brother or sister.

3.1 Subd. 11. **Nonprofit health care entity.** "Nonprofit health care entity" means a nonprofit
3.2 health service plan corporation operating under chapter 62C, a nonprofit health maintenance
3.3 organization operating under this chapter, a corporation that can effectively exercise control
3.4 over a nonprofit health service plan corporation or a nonprofit health maintenance
3.5 organization, or any other entity that is effectively controlled by a corporation operating a
3.6 nonprofit health service plan corporation or a nonprofit health maintenance organization.

3.7 Subd. 12. **Officer.** "Officer" has the meaning given in section 317A.011, subdivision
3.8 15.

3.9 Subd. 13. **Public benefit assets.** "Public benefit assets" means the entirety of a nonprofit
3.10 health care entity's assets, whether tangible or intangible, including but not limited to its
3.11 goodwill and anticipated future revenue.

3.12 Subd. 14. **Related organization.** "Related organization" has the meaning given in section
3.13 317A.011, subdivision 18.

3.14 Sec. 3. **[62D.047] NONPROFIT HEALTH CARE ENTITY CONVERSION**
3.15 **TRANSACTIONS; NOTICE.**

3.16 Subdivision 1. **Certain conversion transactions prohibited.** A nonprofit health care
3.17 entity must not enter into a conversion transaction if a person who has been an officer,
3.18 director, or other executive of the nonprofit health care entity or of a related organization,
3.19 or a member of the family of such a person:

3.20 (1) has held or will hold, whether guaranteed or contingent, an ownership stake, stock,
3.21 securities, investment, or other financial interest in an entity to which the nonprofit health
3.22 care entity transfers public benefit assets in connection with the conversion transaction;

3.23 (2) has received or will receive any type of compensation or other financial benefit from
3.24 an entity to which the nonprofit health care entity transfers public benefit assets in connection
3.25 with the conversion transaction;

3.26 (3) has held or will hold, whether guaranteed or contingent, an ownership stake, stock,
3.27 securities, investment, or other financial interest in an entity that has or will have a business
3.28 relationship with an entity to which the nonprofit health care entity transfers public benefit
3.29 assets in connection with the conversion transaction; or

3.30 (4) has received or will receive any type of compensation or other financial benefit from
3.31 an entity that has or will have a business relationship with an entity to which the nonprofit
3.32 health care entity transfers public benefit assets in connection with the conversion transaction.

4.1 Subd. 2. **Attorney general notice.** (a) Before entering into a conversion transaction, a
4.2 nonprofit health care entity must notify the attorney general according to section 317A.811.
4.3 In addition to the elements listed in section 317A.811, subdivision 1, the notice required by
4.4 this subdivision must also include an itemization of the nonprofit health care entity's public
4.5 benefit assets and an independent, third-party valuation of the nonprofit health care entity's
4.6 public benefit assets; a proposed plan to distribute the value of those assets to a conversion
4.7 benefit entity that meets the requirements of subdivision 4; and other information contained
4.8 in forms provided by the attorney general.

4.9 (b) When the nonprofit health care entity provides the attorney general with the notice
4.10 and other information required under this subdivision, the nonprofit health care entity must
4.11 also provide a copy of the notice and other information required under this subdivision to
4.12 the commissioner. If the attorney general requests additional information from a nonprofit
4.13 health care entity in connection with its review of a proposed conversion transaction, the
4.14 nonprofit health care entity must also provide a copy of this information to the commissioner
4.15 when this information is provided to the attorney general.

4.16 Subd. 3. **Nonprofit health care entity requirements.** Before entering into a conversion
4.17 transaction, a nonprofit health care entity must ensure that:

4.18 (1) the proposed transaction complies with chapters 317A and 501B and other applicable
4.19 laws;

4.20 (2) the proposed transaction does not involve or constitute a breach of charitable trust;

4.21 (3) the nonprofit health care entity will receive full and fair value for its public benefit
4.22 assets;

4.23 (4) the value of the public benefit assets to be transferred has not been manipulated in
4.24 a manner that causes or caused the value of the assets to decrease;

4.25 (5) the proceeds of the proposed transaction will be used in a manner consistent with
4.26 the public benefit for which the assets are held by the nonprofit health care entity;

4.27 (6) the proposed transaction will not result in a breach of fiduciary duty; and

4.28 (7) the conversion benefit entity meets the requirements in subdivision 4.

4.29 Subd. 4. **Conversion benefit entity requirements.** A conversion benefit entity must:

4.30 (1) have in place procedures and policies to prohibit conflicts of interest, including but
4.31 not limited to conflicts of interest relating to any grant-making activities that may benefit:

(i) the directors, officers, other executives, or trustees of the conversion benefit entity;
or

(ii) any director, officer, other executive, or trustee of an entity to which the nonprofit health care entity transfers public benefit assets in connection with a conversion transaction;

(2) operate to benefit the health of the people of this state; and

(3) have in place procedures and policies that prohibit:

(i) an officer, director, or other executive of the nonprofit health care entity from serving as an officer, director, other executive, or trustee of the conversion benefit entity for the five-year period following the conversion transaction;

(ii) an officer, director, or other executive of the nonprofit health care entity from directly or indirectly benefiting from the conversion transaction; and

(iii) an officer, director, other executive, or trustee of the conversion benefit entity from directly or indirectly benefiting from the conversion transaction.

Subd. 5. **Waiting period.** (a) Subject to paragraphs (b) and (c), a nonprofit health care entity must not enter into a conversion transaction until 90 days after the nonprofit health care entity has given written notice to the attorney general as required in subdivision 2.

(b) The attorney general may waive all or part of the waiting period or may extend the waiting period for an additional 90 days by notifying the nonprofit health care entity of the extension in writing.

(c) The time periods specified in this subdivision shall be suspended while an investigation into the conversion transaction is pending or while a request from the attorney general for additional information is outstanding.

Subd. 6. **Penalties; remedies.** (a) Upon application by the attorney general, the district court is vested with jurisdiction to restrain, enjoin, and redress violations of this section. The court may make any necessary order or judgment, including but not limited to injunctions, restitution, appointment of a receiver for the corporation or the corporation's assets, unwinding of the conversion transaction, and awards of reasonable attorney fees and costs of investigation and litigation. The court may also award to the state civil penalties of up to \$100,000 for each violation of this section against the individual officers, directors, or other executives and up to \$1,000,000 against the corporations or entities who are parties to or materially participated in the transaction that violates this section. In ordering injunctive relief, the attorney general must not be required to establish irreparable harm but must

6.1 instead establish that a violation of this section occurred or that the requested order promotes
6.2 the public interest.

6.3 (b) The attorney general has the powers in sections 8.31, 501B.40, and 501B.41 to
6.4 supervise and investigate corporations under this section and to bring proceedings to secure
6.5 compliance. Nothing in this subdivision shall limit the powers, remedies, or responsibilities
6.6 of the attorney general under chapter 8, 317A, 501B, or any other chapter.

6.7 (c) Failure of the attorney general to take action with respect to a transaction under this
6.8 section does not constitute approval of the transaction or waiver, nor shall such failure
6.9 prevent the attorney general from taking action in the same, similar, or subsequent
6.10 circumstances.

6.11 Subd. 7. **Relation to other law.** (a) This section is in addition to and does not affect or
6.12 limit any power, remedy, or responsibility of a health maintenance organization, a service
6.13 plan corporation, a conversion benefit entity, the attorney general, the commissioner of
6.14 health, or the commissioner of commerce under this chapter or chapter 8, 62C, 317A, 501B,
6.15 or other law.

6.16 (b) Nothing in this section authorizes a nonprofit health care entity to enter into a
6.17 conversion transaction not otherwise permitted under chapter 317A or 501B or other law.

6.18 Sec. 4. Minnesota Statutes 2020, section 317A.811, is amended by adding a subdivision
6.19 to read:

6.20 Subd. 1a. **Nonprofit health care entity; notice.** In addition to the requirements of
6.21 subdivision 1, a nonprofit health care entity as defined in section 62D.046, subdivision 11,
6.22 is subject to the notice requirements for certain transactions in section 62D.047.

6.23 Sec. 5. Laws 2017, First Special Session chapter 6, article 5, section 11, as amended by
6.24 Laws 2019, First Special Session chapter 9, article 8, section 20, is amended to read:

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

6.26 (a) Notwithstanding Laws 2017, chapter 2, article 2, a nonprofit health service plan
6.27 corporation operating under Minnesota Statutes, chapter 62C, or a nonprofit health
6.28 maintenance organization operating under Minnesota Statutes, chapter 62D, as of January
6.29 1, 2017, may only merge or consolidate with; convert; or transfer, as part of a single
6.30 transaction or a series of transactions within a 24-month period, all or a material amount of
6.31 its assets to an entity that is a corporation organized under Minnesota Statutes, chapter
6.32 317A; or to a Minnesota nonprofit hospital within the same integrated health system as the

7.1 health maintenance organization. For purposes of this section, "material amount" means
7.2 the lesser of ten percent of such an entity's total admitted net assets as of December 31 of
7.3 the previous year, or \$50,000,000.

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

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

7.11 (d) This section expires July 1, ~~2023~~ 2033.

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