

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03/09/2017	1254	Withdrawn and re-referred to Judiciary and Public Safety Finance and Policy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	1423a	Comm report: To pass as amended and re-refer to Health and Human Services Finance and Policy
03/15/2017	1476a	Comm report: To pass as amended and re-refer to State Government Finance and Policy and Elections Joint rule 2.03, referred to Rules and Administration
03/23/2017	1672	Comm report: Adopt previous comm report Joint rule 2.03 Suspended See SF800

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 care entity 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 317A.

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

1.8 Section 1. Minnesota Statutes 2016, section 317A.811, subdivision 1, is amended to read:

1.9 Subdivision 1. **When required.** (a) Except as provided in subdivision 6, the following

1.10 corporations shall notify the attorney general of their intent to dissolve, merge, or consolidate,

1.11 or to transfer all or substantially all of their assets:

1.12 (1) a corporation that holds assets for a charitable purpose as defined in section 501B.35,

1.13 subdivision 2, which includes a health maintenance organization operating under chapter

1.14 62D and a service plan corporation operating under chapter 62C; or

1.15 (2) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code

1.16 of 1986, or any successor section.

1.17 (b) The notice must include:

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

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

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

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

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

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

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

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

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

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

2.8 Sec. 2. Minnesota Statutes 2016, section 317A.811, is amended by adding a subdivision
2.9 to read:

2.10 Subd. 1a. **Nonprofit health care entity; notice and approval required.** A corporation
2.11 that is a health maintenance organization or a service plan corporation is subject to notice
2.12 and approval requirements for certain transactions under section 317A.814.

2.13 Sec. 3. **[317A.814] NONPROFIT HEALTH CARE ENTITY CONVERSIONS.**

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

2.15 (b) "Commissioner" means the commissioner of commerce if the nonprofit health care
2.16 entity at issue is a service plan corporation operating under chapter 62C, and the
2.17 commissioner of health if the nonprofit health care entity at issue is a health maintenance
2.18 organization operating under chapter 62D.

2.19 (c) "Conversion benefit entity" means a foundation, corporation, limited liability
2.20 company, trust, partnership, or other entity that receives public benefit assets, or their value,
2.21 in connection with a conversion transaction.

2.22 (d) "Conversion transaction" or "transaction" means a transaction in which a nonprofit
2.23 health care entity merges, consolidates, converts, or transfers all or a substantial portion of
2.24 its assets to an entity that is not a nonprofit corporation organized under this chapter that is
2.25 also exempt under United States Code, title 26, section 501(c)(3). The substitution of a new
2.26 corporate member that transfers the control, responsibility for, or governance of a nonprofit
2.27 health care entity is also considered a transaction for purposes of this section.

2.28 (e) "Family member" means a spouse, parent, or child or other legal dependent.

2.29 (f) "Nonprofit health care entity" means a service plan corporation operating under
2.30 chapter 62C and a health maintenance organization operating under chapter 62D.

3.1 (g) "Public benefit assets" means the entirety of a nonprofit health care entity's assets,
3.2 whether tangible or intangible.

3.3 (h) "Related organization" has the meaning given in section 317A.011.

3.4 Subd. 2. **Private inurement.** A nonprofit health care entity must not enter into a
3.5 conversion transaction if a person who has been an officer, director, or other executive of
3.6 the nonprofit health care entity, or of a related organization, or a family member of that
3.7 person:

3.8 (1) has or will receive any compensation or other financial benefit, directly or indirectly,
3.9 in connection with the conversion transaction;

3.10 (2) has held or will hold, regardless of whether guaranteed or contingent, an ownership
3.11 stake, stock, securities, investment, or other financial interest in, or receive any type of
3.12 compensation or other financial benefit from, any entity to which the nonprofit health care
3.13 entity transfers public benefit assets in connection with a conversion transaction; or

3.14 (3) has held or will hold, regardless of whether guaranteed or contingent, an ownership
3.15 stake, stock, securities, investment, or other financial interest in, or receive any type of
3.16 compensation or other financial benefit from, any entity that has or will have a business
3.17 relationship with any entity to which the nonprofit health care entity transfers public benefit
3.18 assets in connection with a conversion transaction.

3.19 Subd. 3. **Attorney general notice and approval required.** (a) Before entering into a
3.20 conversion transaction, the nonprofit health care entity must notify the attorney general as
3.21 specified under section 317A.811, subdivision 1. The notice required by this subdivision
3.22 also must include an itemization of the nonprofit health care entity's public benefit assets
3.23 and the valuation that the entity attributes to those assets, a proposed plan for distribution
3.24 of the value of those assets to a conversion benefit entity that meets the requirements of
3.25 subdivision 5, and other information from the health maintenance organization or the
3.26 proposed conversion benefit entity that the attorney general reasonably considers necessary
3.27 for review of the proposed transaction.

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

3.30 Subd. 4. **Review elements.** (a) The attorney general may approve, conditionally approve,
3.31 or not approve a conversion transaction under this section. In making a decision whether
3.32 to approve, conditionally approve, or not approve a proposed transaction, the attorney

4.1 general, in consultation with the commissioner, shall consider any factors the attorney
4.2 general considers relevant, including whether:

4.3 (1) the proposed transaction complies with this chapter and chapter 501B and other
4.4 applicable laws;

4.5 (2) the proposed transaction involves or constitutes a breach of charitable trust;

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

4.8 (4) the full and fair value of the public benefit assets to be transferred has been
4.9 manipulated in a manner that causes or has caused the value of the assets to decrease;

4.10 (5) the proceeds of the proposed transaction will be used consistent with the public
4.11 benefit for which the assets are held by the nonprofit health care entity;

4.12 (6) the proposed transaction will result in a breach of fiduciary duty, as determined by
4.13 the attorney general, including whether:

4.14 (i) conflicts of interest exist related to payments to or benefits conferred upon officers,
4.15 directors, board members, and executives of the nonprofit health care entity or a related
4.16 organization;

4.17 (ii) the nonprofit health care entity's board of directors exercised reasonable care and
4.18 due diligence in deciding to pursue the transaction, in selecting the entity with which to
4.19 pursue the transaction, and in negotiating the terms and conditions of the transaction; and

4.20 (iii) the nonprofit health care entity's board of directors considered all reasonably viable
4.21 alternatives, including any competing offers for its public benefit assets, or alternative
4.22 transactions;

4.23 (7) the transaction will result in private inurement to any person, including owners,
4.24 stakeholders, or directors, officers, or key staff of the nonprofit health care entity or entity
4.25 to which the nonprofit health care entity proposes to transfer public benefit assets;

4.26 (8) the conversion benefit entity meets the requirements of subdivision 5; and

4.27 (9) the attorney general and the commissioner have been provided with sufficient
4.28 information by the nonprofit health care entity to adequately evaluate the proposed transaction
4.29 and the effects on the public, provided the attorney general or the commissioner has notified
4.30 the nonprofit health care entity or the proposed conversion benefit entity of any inadequacy
4.31 of the information and has provided a reasonable opportunity to remedy that inadequacy.

5.1 In addition, the attorney general shall consider the public comments received regarding
5.2 the proposed conversion transaction and the proposed transaction's likely effect on the
5.3 availability, accessibility, and affordability of health care services to the public.

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

5.6 Subd. 5. **Conversion benefit entity requirements.** (a) A conversion benefit entity must
5.7 be an existing or new domestic nonprofit corporation organized under this chapter and also
5.8 be exempt under United States Code, title 26, section 501(c)(3).

5.9 (b) The conversion benefit entity must be completely independent of any influence or
5.10 control by the nonprofit health care entity and related organizations, all entities to which
5.11 the nonprofit health care entity transfers any public benefit assets in connection with a
5.12 conversion transaction, and the directors, officers, and other executives of those organizations
5.13 or entities.

5.14 (c) The conversion benefit entity must have in place procedures and policies to prohibit
5.15 conflicts of interest, including but not limited to prohibiting conflicts of interests relating
5.16 to any grant-making activities that may benefit:

5.17 (1) the directors, officers, or other executives of the conversion benefit entity;

5.18 (2) any entity to which the nonprofit health care entity transfers any public benefit assets
5.19 in connection with a conversion transaction; or

5.20 (3) any directors, officers, or other executives of any entity to which the nonprofit health
5.21 care entity transfers any public benefit assets in connection with a conversion transaction.

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

5.24 Subd. 6. **Public comment.** Before issuing a decision under subdivision 7, the attorney
5.25 general may solicit public comment regarding the proposed conversion transaction. The
5.26 attorney general may hold one or more public meetings or solicit written or electronic
5.27 correspondence. If a meeting is held, notice of the meeting must be published in a qualified
5.28 newspaper of general circulation in this state at least seven days before the meeting.

5.29 Subd. 7. **Period for approval or disapproval; extension.** (a) Within 150 days of
5.30 receiving notice of a proposed transaction, the attorney general shall notify the nonprofit
5.31 health care entity in writing of its decision to approve, conditionally approve, or disapprove
5.32 the transaction. If the transaction is not approved, the notice must include the reason for the
5.33 decision. If the transaction is conditionally approved, the notice must specify the conditions

6.1 that must be met. The attorney general may extend this period for an additional 90 days if
6.2 necessary to obtain additional information.

6.3 (b) The time periods under this subdivision are suspended during the time when a request
6.4 from the attorney general for additional information is outstanding.

6.5 Subd. 8. **Transfer of value of assets required.** If a proposed conversion transaction is
6.6 approved or conditionally approved by the attorney general, the nonprofit health care entity
6.7 shall transfer the entirety of the full and fair value of its public benefit assets to one or more
6.8 conversion benefit entities as part of the transaction.

6.9 Subd. 9. **Annual report by conversion benefit entity.** A conversion benefit entity must
6.10 submit an annual report to the attorney general that contains a detailed description of its
6.11 charitable activities related to the use of the public benefit assets received under a transaction
6.12 that is approved under this section.

6.13 Subd. 10. **Penalties; remedies.** A conversion transaction entered into in violation of
6.14 this section is null and void. The attorney general is authorized to bring an action to unwind
6.15 a conversion transaction entered into in violation of this section and to recover the amount
6.16 of any private inurement received or held in violation of subdivision 2. In addition to this
6.17 recovery, the officers, directors, and other executives of each entity that is a party to and
6.18 materially participated in a conversion transaction entered into in violation of this section
6.19 may be subject to a civil penalty of up to the greater of either the entirety of any financial
6.20 benefit each one derived from the transaction, or \$1,000,000, as determined by the court.
6.21 The attorney general is authorized to enforce this section pursuant to section 8.31.

6.22 Subd. 11. **Relation to other law.** (a) This section is in addition to, and does not affect
6.23 or limit any power, remedy, or responsibility of a health maintenance organization, service
6.24 plan corporation, a conversion benefit entity, the attorney general, or the commissioner
6.25 under this chapter, chapter 62C, 62D, 501B, or other law.

6.26 (b) Nothing in this section authorizes a nonprofit health care entity to enter into a
6.27 conversion transaction not otherwise permitted under this chapter.