

1.1 ..... moves to amend H.F. No. 572, the first engrossment, as follows:

1.2 Page 1, after line 7, insert:

1.3 "ARTICLE 1  
1.4 LOSS RATIO STANDARDS"

1.5 Page 4, after line 4, insert:

1.6 "ARTICLE 1  
1.7 CONVERSION TRANSACTIONS

1.8 Section 1. FINDINGS.

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

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

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

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

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

1.19 (5) it is in the best interest of the public to ensure that the public interest is fully protected  
1.20 whenever the assets or operations of a nonprofit health care entity are transferred, directly  
1.21 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 **EFFECTIVE DATE.** This section is effective July 1, 2019.

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

2.5 Sections 62D.046 to 62D.047 and Laws 2017, First Special Session chapter 6, article 5,  
2.6 section 11, as amended by section 7 of this act, apply to service plan corporations operating  
2.7 under this chapter.

2.8 **EFFECTIVE DATE.** This section is effective July 1, 2019.

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

2.11 Subdivision 1. **Application.** The definitions in this section apply to this section and  
2.12 section 62D.047.

2.13 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce for a  
2.14 nonprofit health care entity that is a nonprofit health service plan corporation operating  
2.15 under chapter 62C, or the commissioner of health for a nonprofit health care entity that is  
2.16 a nonprofit health maintenance organization operating under this chapter.

2.17 Subd. 3. **Conversion benefit entity.** "Conversion benefit entity" means a foundation,  
2.18 corporation, limited liability company, trust, partnership, or other entity that receives, in  
2.19 connection with a conversion transaction, the value of any public benefit assets, in accordance  
2.20 with section 62D.047, subdivision 7.

2.21 Subd. 4. **Conversion transaction or transaction.** "Conversion transaction" or  
2.22 "transaction" means a transaction otherwise permitted by applicable law in which a nonprofit  
2.23 health care entity:

2.24 (1) merges, consolidates, converts, or transfers all or a material amount of its assets to  
2.25 any entity except a corporation that is also exempt under United States Code, title 26, section  
2.26 501(c)(3);

2.27 (2) makes a series of separate transfers within a 24-month period that in the aggregate  
2.28 constitute a transfer of all or a material amount of the nonprofit health care entity's assets  
2.29 to any entity except a corporation that is also exempt under United States Code, title 26,  
2.30 section 501(c)(3); or

3.1 (3) adds or substitutes one or more members that effectively transfers the control,  
3.2 responsibility for, or governance of the nonprofit health care entity to any entity except a  
3.3 corporation that is also exempt under United States Code, title 26, section 501(c)(3).

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

3.7 Subd. 6. **Director.** "Director" has the meaning given in section 317A.011, subdivision  
3.8 7.

3.9 Subd. 7. **Family member.** "Family member" means a spouse, parent, child, spouse of  
3.10 a child, brother, sister, or spouse of a brother or sister.

3.11 Subd. 8. **Full and fair value.** "Full and fair value" means the amount that the public  
3.12 benefit assets of the nonprofit health care entity would be worth if the assets were equal to  
3.13 stock in the nonprofit health care entity, if the nonprofit health care entity was a for-profit  
3.14 corporation, and if the nonprofit health care entity had 100 percent of its stock authorized  
3.15 by the corporation and available for purchase without transfer restrictions. The valuation  
3.16 shall consider market value, investment or earning value, net asset value, goodwill, the  
3.17 amount of donations received, and a control premium, if any.

3.18 Subd. 9. **Key employee.** "Key employee" means a person, regardless of title, who:

3.19 (1) has responsibilities, power, or influence over an organization similar to those of an  
3.20 officer or director;

3.21 (2) manages a discrete segment or activity of the organization that represents ten percent  
3.22 or more of the activities, assets, income, or expenses of the organization, as compared to  
3.23 the organization as a whole; or

3.24 (3) has or shares authority to control or determine ten percent or more of the organization's  
3.25 capital expenditures, operating budget, or compensation for employees.

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

3.29 Subd. 11. **Member.** "Member" has the meaning given in section 317A.011, subdivision  
3.30 12.

3.31 Subd. 12. **Nonprofit health care entity.** "Nonprofit health care entity" means a nonprofit  
3.32 health service plan corporation operating under chapter 62C, a nonprofit health maintenance

4.1 organization operating under chapter 62D, a corporation that can effectively exercise control  
4.2 over a nonprofit health service plan corporation or a nonprofit health maintenance  
4.3 organization, or any other entity that is effectively controlled by a corporation operating a  
4.4 nonprofit health service plan corporation or a nonprofit health maintenance organization.

4.5 Subd. 13. **Officer.** "Officer" has the meaning given in section 317A.011, subdivision  
4.6 15.

4.7 Subd. 14. **Public benefit assets.** "Public benefit assets" means the entirety of a nonprofit  
4.8 health care entity's assets, whether tangible or intangible, including but not limited to its  
4.9 goodwill and anticipated future revenue.

4.10 Subd. 15. **Related organization.** "Related organization" has the meaning given in section  
4.11 317A.011, subdivision 18.

4.12 **EFFECTIVE DATE.** This section is effective July 1, 2019.

4.13 Sec. 4. **[62D.047] NONPROFIT HEALTH CARE ENTITY CONVERSION**  
4.14 **TRANSACTIONS; REVIEW, NOTICE, APPROVAL.**

4.15 Subdivision 1. **Certain conversion transactions prohibited.** A nonprofit health care  
4.16 entity shall not enter into a conversion transaction if a person who has been an officer,  
4.17 director, or key employee of the nonprofit health care entity or of a related organization, or  
4.18 a family member of such a person:

4.19 (1) has received or will receive any type of compensation or other financial benefit,  
4.20 directly or indirectly, in connection with the conversion transaction;

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

4.24 (3) has received or will receive any type of compensation or other financial benefit from  
4.25 an entity to which the nonprofit health care entity transfers public benefit assets in connection  
4.26 with a conversion transaction;

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

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

5.4 Subd. 2. **Attorney general notice required.** (a) Before entering into a conversion  
5.5 transaction, a nonprofit health care entity must notify the attorney general according to  
5.6 section 317A.811. In addition to the elements listed in section 317A.811, subdivision 1, the  
5.7 notice required by this subdivision must also include an itemization of the nonprofit health  
5.8 care entity's public benefit assets and the valuation the nonprofit health care entity attributes  
5.9 to those assets; a proposed plan for the distribution of the value of those assets to a conversion  
5.10 benefit entity that meets the requirements of subdivision 4; and other information from the  
5.11 nonprofit health care entity or the proposed conversion benefit entity that the attorney general  
5.12 reasonably considers necessary to review the proposed conversion transaction under  
5.13 subdivision 3.

5.14 (b) At the time the nonprofit health care entity provides the attorney general with the  
5.15 notice and other information required under this subdivision, the nonprofit health care entity  
5.16 must also provide a copy of the notice and other information required under this subdivision  
5.17 to the commissioner. If the attorney general requests additional information from a nonprofit  
5.18 health care entity in connection with its review of a proposed conversion transaction, the  
5.19 nonprofit health care entity must also provide a copy of this information to the commissioner,  
5.20 at the time this information is provided to the attorney general.

5.21 Subd. 3. **Review elements.** (a) The attorney general may approve, conditionally approve,  
5.22 or disapprove a proposed conversion transaction under this section. In determining whether  
5.23 to approve, conditionally approve, or disapprove a proposed transaction, the attorney general,  
5.24 in consultation with the commissioner, shall consider any factors the attorney general  
5.25 considers relevant in evaluating whether the proposed transaction is in the public interest,  
5.26 including whether:

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

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

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

5.32 (4) the value of the public benefit assets to be transferred has been manipulated in a  
5.33 manner that causes or has caused the value of the assets to decrease;

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

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

6.5 (i) conflicts of interest exist related to payments to or benefits conferred upon officers,  
6.6 directors, or key employees of the nonprofit health care entity or a related organization;

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

6.10 (iii) the nonprofit health care entity's directors considered all reasonably viable  
6.11 alternatives, including any competing offers for its public benefit assets, or alternative  
6.12 transactions;

6.13 (7) the transaction will result in financial benefit to a person, including owners, directors,  
6.14 officers, or key employees of the nonprofit health care entity or of the entity to which the  
6.15 nonprofit health care entity proposes to transfer public benefit assets;

6.16 (8) the conversion benefit entity meets the requirements in subdivision 4; and

6.17 (9) the attorney general and the commissioner have been provided with sufficient  
6.18 information by the nonprofit health care entity to adequately evaluate the proposed transaction  
6.19 and its effects on the public and enrollees, provided the attorney general or commissioner  
6.20 has notified the nonprofit health care entity or the proposed conversion benefit entity if the  
6.21 information provided is insufficient and has provided the nonprofit health care entity or  
6.22 proposed conversion benefit entity with a reasonable opportunity to remedy that insufficiency.

6.23 (b) In addition to the elements in paragraph (a), the attorney general shall also consider  
6.24 public comments received under subdivision 5 regarding the proposed conversion transaction  
6.25 and the proposed transaction's likely effect on the availability, accessibility, and affordability  
6.26 of health care services to the public.

6.27 (c) In deciding whether to approve, conditionally approve, or disapprove a transaction,  
6.28 the attorney general must consult with the commissioner.

6.29 Subd. 4. **Conversion benefit entity requirements.** (a) A conversion benefit entity shall:

6.30 (1) be an existing or new, domestic, nonprofit corporation operating under chapter 317A  
6.31 and exempt under United States Code, title 26, section 501(c)(3);

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

7.3 (i) the directors, officers, or key employees of the conversion benefit entity;

7.4 (ii) any entity to which the nonprofit health care entity transfers public benefit assets in  
7.5 connection with a conversion transaction; or

7.6 (iii) any directors, officers, or key employees of an entity to which the nonprofit health  
7.7 care entity transfers public benefit assets in connection with a conversion transaction;

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

7.9 (4) have in place procedures and policies that prohibit:

7.10 (i) an officer, director, or key employee of the nonprofit health care entity from serving  
7.11 as an officer, director, or key employee of the conversion benefit entity for the five-year  
7.12 period following the conversion transaction;

7.13 (ii) an officer, director, or key employee of the nonprofit health care entity or of the  
7.14 conversion benefit entity from directly or indirectly benefitting from the conversion  
7.15 transaction; and

7.16 (iii) elected or appointed public officials from serving as an officer, director, or key  
7.17 employee of the conversion benefit entity.

7.18 (b) A conversion benefit entity shall not make grants or payments or otherwise provide  
7.19 financial benefit to an entity to which a nonprofit health care entity transfers public benefit  
7.20 assets as part of a conversion transaction, or to a related organization of the entity to which  
7.21 the nonprofit health care entity transfers public benefit assets as part of a conversion  
7.22 transaction.

7.23 (c) No person who has been an officer, director, or key employee of an entity that has  
7.24 received public benefit assets in connection with a conversion transaction may serve as an  
7.25 officer, director, or key employee of the conversion benefit entity.

7.26 (d) The attorney general must review and approve the governance structure of a  
7.27 conversion benefit entity before the conversion benefit entity receives the value of public  
7.28 benefit assets from a nonprofit health care entity. In order to be approved by the attorney  
7.29 general under this paragraph, the conversion benefit entity's governance must be broadly  
7.30 based in the community served by the nonprofit health care entity and must be independent  
7.31 of the entity to which the nonprofit health care entity transfers public benefit assets as part  
7.32 of the conversion transaction. As part of the review of the conversion benefit entity's

8.1 governance, the attorney general shall hold a public hearing. If the attorney general finds  
8.2 it necessary, a portion of the value of the public benefit assets shall be used to develop a  
8.3 community-based plan for use by the conversion benefit entity.

8.4 (e) The attorney general shall establish a community advisory committee for a conversion  
8.5 benefit entity receiving the value of public benefit assets. The members of the community  
8.6 advisory committee must be selected to represent the diversity of the community previously  
8.7 served by the nonprofit health care entity. The community advisory committee shall:

8.8 (1) provide a slate of three nominees for each vacancy on the governing board of the  
8.9 conversion benefit entity, from which the remaining board members shall select new members  
8.10 to the board;

8.11 (2) provide the governing board with guidance on the health needs of the community  
8.12 previously served by the nonprofit health care entity; and

8.13 (3) promote dialogue and information sharing between the conversion benefit entity and  
8.14 the community previously served by the nonprofit health care entity.

8.15 **Subd. 5. Hearing; public comment; maintenance of record.** (a) Before issuing a  
8.16 decision under subdivision 6, the attorney general shall hold one or more hearings and solicit  
8.17 public comments regarding the proposed conversion transaction. No later than 45 days after  
8.18 the attorney general receives notice of a proposed conversion transaction, the attorney  
8.19 general shall hold at least one public hearing in the area served by the nonprofit health care  
8.20 entity, and shall hold as many hearings as necessary in various parts of the state to ensure  
8.21 that each community in the nonprofit health care entity's service area has an opportunity to  
8.22 provide comments on the conversion transaction. Any person may appear and speak at the  
8.23 hearing, file written comments, or file exhibits for the hearing. At least 14 days before the  
8.24 hearing, the attorney general shall provide written notice of the hearing through posting on  
8.25 the attorney general's website, publication in one or more newspapers of general circulation,  
8.26 and notice by means of a public listserv or through other means to all persons who request  
8.27 notice from the attorney general of such hearings. A public hearing is not required if the  
8.28 waiting period under subdivision 6 is waived or is shorter than 45 days in duration. The  
8.29 attorney general may also solicit public comments through other means.

8.30 (b) The attorney general shall develop and maintain a summary of written and oral public  
8.31 comments made at a hearing and otherwise received by the attorney general, shall record  
8.32 all questions posed during the public hearing or received by the attorney general, and shall  
8.33 require answers from the appropriate parties. The summary materials, questions, and answers

9.1 shall be maintained on the attorney general's website, and the attorney general must provide  
9.2 a copy of these materials at no cost to any person who requests them.

9.3 Subd. 6. **Approval required; period for approval or disapproval; extension.** (a)  
9.4 Notwithstanding the time periods in section 15.99 or 317A.811, a nonprofit health care  
9.5 entity shall not enter into a conversion transaction until:

9.6 (1) 150 days after the entity has given written notice to the attorney general, unless the  
9.7 attorney general waives all or a part of the waiting period. The attorney general shall establish  
9.8 guidelines for when the attorney general may waive all or part of the waiting period, and  
9.9 must provide public notice if the attorney general waives all or part of the waiting period;  
9.10 and

9.11 (2) the nonprofit health care entity obtains approval of the transaction from the attorney  
9.12 general, or obtains conditional approval from the attorney general and satisfies the required  
9.13 conditions.

9.14 (b) During the waiting period, the attorney general shall decide whether to approve,  
9.15 conditionally approve, or disapprove the conversion transaction and shall notify the nonprofit  
9.16 health care entity in writing of its decision. If the transaction is disapproved, the notice must  
9.17 include the reasons for the decision. If the transaction is conditionally approved, the notice  
9.18 must specify the conditions that must be met and the reasons for these conditions. The  
9.19 attorney general may extend the waiting period for an additional 90 days by notifying the  
9.20 nonprofit health care entity of the extension in writing.

9.21 (c) The time periods under this subdivision shall be suspended while a request from the  
9.22 attorney general for additional information is outstanding.

9.23 Subd. 7. **Transfer of value of assets required.** If a proposed conversion transaction is  
9.24 approved or conditionally approved by the attorney general, the nonprofit health care entity  
9.25 shall transfer the entirety of the full and fair value of its public benefit assets to one or more  
9.26 conversion benefit entities as part of the transaction.

9.27 Subd. 8. **Assessment of costs.** (a) The nonprofit health care entity must reimburse the  
9.28 attorney general or a state agency for all reasonable and actual costs incurred by the attorney  
9.29 general or the state agency in reviewing the proposed conversion transaction and in exercising  
9.30 enforcement remedies under this section. Costs incurred may include attorney fees at the  
9.31 rate at which the attorney general bills state agencies; costs for retaining actuarial, valuation,  
9.32 or other experts and consultants; and administrative costs. In order to receive reimbursement  
9.33 under this subdivision, the attorney general or state agency must provide the nonprofit health  
9.34 care entity with a statement of costs incurred.

10.1 (b) The nonprofit health care entity must remit the total amount listed on the statement  
10.2 to the attorney general or state agency within 30 days after the statement date, unless the  
10.3 entity disputes some or all of the submitted costs. The nonprofit health care entity may  
10.4 dispute the submitted costs by bringing an action in district court to have the court determine  
10.5 the amount of the reasonable and actual costs that must be remitted.

10.6 (c) Money remitted to the attorney general or state agency under this subdivision shall  
10.7 be deposited in the general fund in the state treasury and is appropriated to the attorney  
10.8 general or state agency, as applicable, to reimburse the attorney general or state agency for  
10.9 costs paid or incurred under this section.

10.10 Subd. 9. **Challenge to disapproval or conditional approval.** If the attorney general  
10.11 disapproves or conditionally approves a conversion transaction, a nonprofit health care  
10.12 entity may bring an action in district court to challenge the disapproval, or any condition  
10.13 of a conditional approval, as applicable. To prevail in such an action, the nonprofit health  
10.14 care entity must clearly establish that the disapproval, or each condition being challenged,  
10.15 as applicable, is arbitrary and capricious and unnecessary to protect the public interest.

10.16 Subd. 10. **Penalties; remedies.** The attorney general is authorized to bring an action to  
10.17 unwind a conversion transaction entered into in violation of this section and to recover the  
10.18 amount of any financial benefit received or held in violation of subdivision 1. In addition  
10.19 to this recovery, the officers, directors, and key employees of each entity that is a party to,  
10.20 and who materially participated in, the transaction entered into in violation of this section,  
10.21 may be subject to a civil penalty of up to the greater of the entirety of any financial benefit  
10.22 each officer, director, or key employee derived from the transaction or \$1,000,000, as  
10.23 determined by the court. The attorney general is authorized to enforce this section under  
10.24 section 8.31.

10.25 Subd. 11. **Relation to other law.** (a) This section is in addition to, and does not affect  
10.26 or limit any power, remedy, or responsibility of a health maintenance organization, a service  
10.27 plan corporation, a conversion benefit entity, the attorney general, the commissioner of  
10.28 commerce, or commissioner of health under this chapter, chapter 62C, 317A, or 501B, or  
10.29 other law.

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

10.32 **EFFECTIVE DATE.** This section is effective July 1, 2019.

11.1 Sec. 5. Minnesota Statutes 2018, section 317A.811, is amended by adding a subdivision  
11.2 to read:

11.3 Subd. 1a. **Nonprofit health care entity; notice and approval required.** In addition to  
11.4 the requirements of subdivision 1, a nonprofit health care entity as defined in section  
11.5 62D.046, subdivision 12, is subject to the notice and approval requirements for certain  
11.6 transactions under sections 62D.046 and 62D.047.

11.7 **EFFECTIVE DATE.** This section is effective July 1, 2019.

11.8 Sec. 6. Laws 2017, First Special Session chapter 6, article 5, section 11, is amended to  
11.9 read:

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

11.11 (a) Notwithstanding Laws 2017, chapter 2, article 2, a nonprofit ~~health~~ service plan  
11.12 corporation operating under Minnesota Statutes, chapter 62C, ~~or~~; a nonprofit health  
11.13 maintenance organization operating under Minnesota Statutes, chapter 62D, as of January  
11.14 1, 2017; or a direct or indirect parent, subsidiary, or other affiliate of such an entity, may  
11.15 only merge or consolidate with; or convert, or transfer all or a ~~substantial portion~~ material  
11.16 amount of its assets to an entity that is a corporation organized under Minnesota Statutes,  
11.17 chapter 317A. For purposes of this section, "material amount" means the lesser of ten percent  
11.18 of such an entity's total net admitted assets as of December 31 of the preceding year, or  
11.19 \$10,000,000.

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

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

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

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

11.29 Sec. 7. **REVISOR INSTRUCTION.**

11.30 The revisor of statutes shall codify Laws 2017, First Special Session chapter 6, article  
11.31 5, section 11, as amended by this act, in Minnesota Statutes, chapter 62D.

- 12.1 **EFFECTIVE DATE.** This section is effective July 1, 2019."
- 12.2 Renumber the sections in sequence and correct the internal references
- 12.3 Amend the title accordingly