

1.1 moves to amend H.F. No. 533 as follows:

1.2 Pages 2 to 6, delete sections 2 to 7 and insert:

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

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

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

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

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

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

1.19 Subd. 4. **Conversion transaction or transaction.** "Conversion transaction" or
1.20 "transaction" means a transaction otherwise permitted by applicable law in which a nonprofit
1.21 health care entity:

2.1 (1) merges, consolidates, converts, or transfers all or a material amount of its assets to
2.2 any entity except a corporation that is also exempt under United States Code, title 26, section
2.3 501(c)(3);

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

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

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

2.14 Subd. 6. **Director.** "Director" has the meaning given in section 317A.011, subdivision
2.15 7.

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

2.18 Subd. 8. **Key employee.** "Key employee" means a person, regardless of title, who:

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

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

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

2.26 Subd. 9. **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. 10. **Member.** "Member" has the meaning given in section 317A.011, subdivision
2.30 12.

2.31 Subd. 11. **Nonprofit health care entity.** "Nonprofit health care entity" means a nonprofit
2.32 health service plan corporation operating under chapter 62C, a nonprofit health maintenance

3.1 organization operating under chapter 62D, a corporation that can effectively exercise control
3.2 over a nonprofit health service plan corporation or a nonprofit health maintenance
3.3 organization, or any other entity that is effectively controlled by a corporation operating a
3.4 nonprofit health service plan corporation or a nonprofit health maintenance organization.

3.5 Subd. 12. **Officer.** "Officer" has the meaning given in section 317A.011, subdivision
3.6 15.

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

3.10 Subd. 14. **Related organization.** "Related organization" has the meaning given in section
3.11 317A.011, subdivision 18.

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

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

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

3.20 (2) 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 (3) 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 a conversion transaction;

3.26 (4) 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 (5) 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 required. (a) Before entering into a conversion
4.2 transaction, a nonprofit health care entity must notify the attorney general according to
4.3 section 317A.811. In addition to the elements listed in section 317A.811, subdivision 1, the
4.4 notice required by this subdivision must also include an itemization of the nonprofit health
4.5 care entity's public benefit assets and the valuation the nonprofit health care entity attributes
4.6 to those assets; a proposed plan for the distribution of the value of those assets to a conversion
4.7 benefit entity that meets the requirements of subdivision 4; and other information from the
4.8 nonprofit health care entity or the proposed conversion benefit entity that the attorney general
4.9 reasonably considers necessary to review the proposed conversion transaction under
4.10 subdivision 3.

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

4.18 Subd. 3. Review elements. (a) The attorney general may approve, conditionally approve,
4.19 or disapprove a proposed conversion transaction under this section. In determining whether
4.20 to approve, conditionally approve, or disapprove a proposed transaction, the attorney general,
4.21 in consultation with the commissioner, shall consider any factors the attorney general
4.22 considers relevant in evaluating whether the proposed transaction is in the public interest,
4.23 including whether:

4.24 (1) the proposed transaction complies with chapter 317A and 501B and other applicable
4.25 laws;

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

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

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

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

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

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

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

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

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

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

5.15 (9) the attorney general and the commissioner have been provided with sufficient
5.16 information by the nonprofit health care entity to adequately evaluate the proposed transaction
5.17 and its effects on the public and enrollees, provided the attorney general or commissioner
5.18 has notified the nonprofit health care entity or the proposed conversion benefit entity if the
5.19 information provided is insufficient and has provided the nonprofit health care entity or
5.20 proposed conversion benefit entity with a reasonable opportunity to remedy that insufficiency.

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

5.25 (c) In making a decision whether to approve, conditionally approve, or disapprove a
5.26 transaction, the attorney general must consult with the commissioner.

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

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

5.30 (2) have in place procedures and policies to prohibit conflicts of interest, including but
5.31 not limited to prohibiting conflicts of interest relating to any grantmaking activities that
5.32 may benefit:

- 6.1 (i) the directors, officers, or key employees of the conversion benefit entity;
- 6.2 (ii) any entity to which the nonprofit health care entity transfers public benefit assets in
6.3 connection with a conversion transaction; or
- 6.4 (iii) any directors, officers, or key employees of an entity to which the nonprofit health
6.5 care entity transfers public benefit assets in connection with a conversion transaction.
- 6.6 (b) A conversion benefit entity shall not make grants or payments or otherwise provide
6.7 financial benefit to an entity to which a nonprofit health care entity transfers public benefit
6.8 assets as part of a conversion transaction, or to a related organization of such an entity.
- 6.9 (c) No person who has been an officer, director, or key employee of an entity that has
6.10 received public benefit assets in connection with a conversion transaction may serve as an
6.11 officer, director, or key employee of the conversion benefit entity.
- 6.12 (d) The charitable purpose and grantmaking functions of the conversion benefit entity
6.13 must be dedicated to meeting the health care needs of the people of this state.
- 6.14 Subd. 5. **Public comment.** Before issuing a decision under subdivision 6, the attorney
6.15 general shall solicit public comments regarding the proposed conversion transaction. The
6.16 attorney general shall hold one or more public meetings to obtain public comments and
6.17 shall solicit written and electronic comments from the public. Notice of public meetings
6.18 must be published in a qualified newspaper of general circulation in this state at least seven
6.19 days before the meeting.
- 6.20 Subd. 6. **Approval required; period for approval or disapproval; extension.** (a)
6.21 Notwithstanding the time periods in section 15.99 or 317A.811, a nonprofit health care
6.22 entity shall not enter into a conversion transaction until:
- 6.23 (1) 150 days after the entity has given written notice to the attorney general, unless the
6.24 attorney general waives all or a part of the waiting period; and
- 6.25 (2) the nonprofit health care entity obtains approval of the transaction from the attorney
6.26 general, or obtains conditional approval from the attorney general and satisfies the required
6.27 conditions.
- 6.28 (b) During the waiting period, the attorney general shall decide whether to approve,
6.29 conditionally approve, or disapprove the conversion transaction and shall notify the nonprofit
6.30 health care entity in writing of its decision. If the transaction is disapproved, the notice must
6.31 include the reasons for the decision. If the transaction is conditionally approved, the notice
6.32 must specify the conditions that must be met and the reasons for these conditions. The

7.1 attorney general may extend the waiting period for an additional 90 days by notifying the
7.2 nonprofit health care entity of the extension in writing.

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

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

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

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

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

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

7.32 Subd. 10. **Penalties; remedies.** The attorney general is authorized to bring an action to
7.33 unwind a conversion transaction entered into in violation of this section and to recover the
7.34 amount of any financial benefit received or held in violation of subdivision 1. In addition

8.1 to this recovery, the officers, directors, and key employees of each entity that is a party to,
8.2 and who materially participated in, the transaction entered into in violation of this section,
8.3 may be subject to a civil penalty of up to the greater of the entirety of any financial benefit
8.4 each officer, director, or key employee derived from the transaction or \$1,000,000, as
8.5 determined by the court. The attorney general is authorized to enforce this section under
8.6 section 8.31.

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

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

8.14 Subd. 12. **Data classification.** Data provided by a nonprofit health care entity to the
8.15 attorney general, commissioner of commerce, or commissioner of health as part of a review
8.16 conducted under this section is classified as nonpublic data as defined in section 13.02,
8.17 subdivision 9, except that the attorney general, the commissioner of commerce, or the
8.18 commissioner of health may make this data available to a person or agency or the public as
8.19 part of soliciting and receiving input on a proposed conversion transaction, to aid the law
8.20 enforcement process, or to promote the public health.

8.21 Sec. 5. Minnesota Statutes 2018, section 62D.12, is amended by adding a subdivision to
8.22 read:

8.23 Subd. 8a. **Net earnings.** All net earnings of a nonprofit health maintenance organization
8.24 shall be devoted to the nonprofit purposes of the health maintenance organization in providing
8.25 comprehensive health care. A nonprofit health maintenance organization shall not provide
8.26 for the payment, whether directly or indirectly, of any part of its net earnings to any person
8.27 as a dividend or rebate, except that the health maintenance organization may make payments
8.28 to providers or other persons based on the efficient provision of services or as incentives to
8.29 provide quality care. The commissioner of health shall, pursuant to this chapter, revoke the
8.30 certificate of authority of any nonprofit health maintenance organization in violation of this
8.31 subdivision.

9.1 Sec. 6. Minnesota Statutes 2018, section 317A.811, is amended by adding a subdivision
9.2 to read:

9.3 Subd. 1a. **Nonprofit health care entity; notice and approval required.** In addition to
9.4 the requirements of subdivision 1, a nonprofit health care entity as defined in section
9.5 62D.046, subdivision 11, is subject to the notice and approval requirements for certain
9.6 transactions under sections 62D.046 and 62D.047."

9.7 Page 8, line 8, delete "8" and insert "7"

9.8 Renumber the sections in sequence and correct the internal references

9.9 Amend the title accordingly