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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **402**

01/17/2023 Authored by Bierman, Liebling, Stephenson, Noor, Hanson, J., and others
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
02/06/2023 Adoption of Report: Amended and re-referred to the Committee on Health Finance and Policy
03/23/2023 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to health; establishing requirements for certain health care entity
1.3 transactions; changing the expiration date on moratorium conversion transactions;
1.4 requiring a health system to return charitable assets received from the state to the
1.5 general fund in certain circumstances; requiring a study on the regulation of certain
1.6 transactions; requiring a report; appropriating money; amending Laws 2017, First
1.7 Special Session chapter 6, article 5, section 11, as amended; proposing coding for
1.8 new law in Minnesota Statutes, chapter 144.

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

1.10 Section 1. **[144.588] REQUIREMENTS FOR CERTAIN HEALTH CARE ENTITY**
1.11 **TRANSACTIONS.**

1.12 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
1.13 the meanings given.

1.14 (b) "Captive professional entity" means a professional corporation, limited liability
1.15 company, or other entity formed to render professional services in which a beneficial owner
1.16 is a health care provider employed by, controlled by, or subject to the direction of a hospital
1.17 or hospital system.

1.18 (c) "Commissioner" means the commissioner of health.

1.19 (d) "Health care entity" means:

1.20 (1) a hospital;

1.21 (2) a hospital system;

1.22 (3) a captive professional entity;

1.23 (4) a medical foundation;

2.1 (5) a health care provider group practice;

2.2 (6) an entity organized or controlled by an entity listed in clauses (1) to (5); or

2.3 (7) an entity that owns or exercises substantial control over an entity listed in clauses
2.4 (1) to (5).

2.5 (e) "Health care provider" means a physician licensed under chapter 147, a physician
2.6 assistant licensed under chapter 147A, or an advanced practice registered nurse as defined
2.7 in section 148.171, subdivision 3, who provides health care services, including but not
2.8 limited to medical care, consultation, diagnosis, or treatment.

2.9 (f) "Health care provider group practice" means two or more health care providers legally
2.10 organized in a partnership, professional corporation, limited liability company, medical
2.11 foundation, nonprofit corporation, faculty practice plan, or other similar entity:

2.12 (1) in which each health care provider who is a member of the group provides
2.13 substantially the full range of services that a health care provider routinely provides, including
2.14 but not limited to medical care, consultation, diagnosis, and treatment through the joint use
2.15 of shared office space, facilities, equipment, or personnel;

2.16 (2) for which substantially all services of the health care providers who are group
2.17 members are provided through the group and are billed in the name of the group practice
2.18 and amounts so received are treated as receipts of the group; or

2.19 (3) in which the overhead expenses of, and the income from, the group are distributed
2.20 in accordance with methods previously determined by members of the group.

2.21 An entity that otherwise meets the definition of health care provider group practice in this
2.22 paragraph shall be considered a health care provider group practice even if its shareholders,
2.23 partners, or owners include single health care provider professional corporations, limited
2.24 liability companies formed to render professional services, or other entities in which
2.25 beneficial owners are individual health care providers.

2.26 (g) "Hospital" means a health care facility licensed as a hospital under sections 144.50
2.27 to 144.56.

2.28 (h) "Medical foundation" means a nonprofit legal entity through which physicians or
2.29 other health care providers perform research or provide medical services.

2.30 (i) "Transaction" means a single action, or a series of actions within a five-year period,
2.31 that constitutes:

2.32 (1) a merger or exchange of a health care entity with another entity;

3.1 (2) the sale, lease, or transfer of 30 percent or more of the assets of a health care entity
3.2 to another entity;

3.3 (3) the granting of a security interest of 30 percent or more of the property and assets
3.4 of a health care entity to another entity;

3.5 (4) the transfer of 30 percent or more of the shares or other ownership of the health care
3.6 entity to another entity;

3.7 (5) an addition or substitution of one or more members of the health care entity's
3.8 governing body that effectively transfers control of, responsibility for, or governance of the
3.9 health care entity to another entity;

3.10 (6) the creation of a new health care entity; or

3.11 (7) substantial investment of 30 percent or more in a health care entity that results in
3.12 sharing of revenues without a change in ownership or voting shares.

3.13 Subd. 2. **Notice required.** (a) This subdivision applies to all transactions where:

3.14 (1) the health care entity involved in the transaction has average revenue of at least
3.15 \$10,000,000 per year; or

3.16 (2) an entity created by the transaction is projected to have average revenue of at least
3.17 \$10,000,000 per year once the entity is operating at full capacity.

3.18 (b) A health care entity must provide notice to the attorney general and the commissioner
3.19 and comply with this subdivision before entering into a transaction. Notice must be provided
3.20 at least 180 days before the proposed completion date for the transaction.

3.21 (c) As part of the notice required under this subdivision, at least 180 days before the
3.22 proposed completion date of the transaction, a health care entity must affirmatively disclose
3.23 the following to the attorney general and the commissioner:

3.24 (1) the entities involved in the transaction;

3.25 (2) the leadership of the entities involved in the transaction, including all directors, board
3.26 members, and officers;

3.27 (3) the services provided by each entity and the attributed revenue for each entity by
3.28 location;

3.29 (4) the primary service area for each location;

3.30 (5) the proposed service area for each location;

4.1 (6) the current relationships between the entities and the health care providers and
4.2 practices affected, the locations of affected health care providers and practices, the services
4.3 provided by affected health care providers and practices, and the proposed relationships
4.4 between the entities and the health care providers and practices affected;

4.5 (7) the terms of the transaction agreement or agreements;

4.6 (8) the acquisition price;

4.7 (9) markets in which the entities expect postmerger synergies to produce a competitive
4.8 advantage;

4.9 (10) potential areas of expansion, whether in existing markets or new markets;

4.10 (11) plans to close facilities, reduce workforce, or reduce or eliminate services;

4.11 (12) the experts and consultants used to evaluate the transaction;

4.12 (13) the number of full-time equivalent positions at each location before and after the
4.13 transaction by job category, including administrative and contract positions; and

4.14 (14) any other information requested by the attorney general or commissioner.

4.15 (d) As part of the notice required under this subdivision, at least 180 days before the
4.16 proposed completion date of the transaction, a health care entity must affirmatively produce
4.17 the following to the attorney general and the commissioner:

4.18 (1) the current governing documents for all entities involved in the transaction and any
4.19 amendments to these documents;

4.20 (2) the transaction agreement or agreements and all related agreements;

4.21 (3) any collateral agreements related to the principal transaction, including leases,
4.22 management contracts, and service contracts;

4.23 (4) all expert or consultant reports or valuations conducted in evaluating the transaction,
4.24 including any valuation of the assets that are subject to the transaction prepared within three
4.25 years preceding the anticipated transaction completion date and any reports of financial or
4.26 economic analysis conducted in anticipation of the transaction;

4.27 (5) the results of any projections or modeling of health care utilization or financial
4.28 impacts related to the transaction, including but not limited to copies of reports by appraisers,
4.29 accountants, investment bankers, actuaries, and other experts;

4.30 (6) a financial and economic analysis and report prepared by an independent expert or
4.31 consultant on the effects of the transaction;

5.1 (7) an impact analysis report prepared by an independent expert or consultant on the
5.2 effects of the transaction on communities and the workforce, including any changes in
5.3 availability or accessibility of services;

5.4 (8) all documents reflecting the purposes of or restrictions on any related nonprofit
5.5 entity's charitable assets;

5.6 (9) copies of all filings submitted to federal regulators, including any Hart-Scott-Rodino
5.7 filing the entities submitted to the Federal Trade Commission in connection with the
5.8 transaction;

5.9 (10) a certification sworn under oath by each board member and chief executive officer
5.10 for any nonprofit entity involved in the transaction containing the following: an explanation
5.11 of how the completed transaction is in the public interest, addressing the factors in subdivision
5.12 5, paragraph (a); a disclosure of each declarant's compensation and benefits relating to the
5.13 transaction for the three years following the transaction's anticipated completion date; and
5.14 a disclosure of any conflicts of interest;

5.15 (11) audited and unaudited financial statements from all entities involved in the
5.16 transaction and tax filings for all entities involved in the transaction covering the preceding
5.17 five fiscal years; and

5.18 (12) any other information or documents requested by the attorney general or
5.19 commissioner.

5.20 (e) The commissioner may adopt rules to implement this section, and may alter, amend,
5.21 suspend, or repeal any of these rules. The requirements of section 14.125 do not apply to
5.22 the adoption of rules under this paragraph.

5.23 (f) The attorney general may extend the notice and waiting period required under
5.24 paragraph (b) for an additional 90 days by notifying the health care entity in writing of the
5.25 extension.

5.26 (g) The attorney general may waive all or any part of the notice and waiting period
5.27 required under paragraph (b).

5.28 (h) The attorney general or the commissioner may hold public listening sessions or
5.29 forums to obtain input on the transaction from providers or community members who may
5.30 be impacted by the transaction.

5.31 (i) The attorney general or the commissioner may bring an action in district court to
5.32 compel compliance with the notice requirements in this subdivision.

6.1 Subd. 3. **Prohibited transactions.** No health care entity may enter into a transaction
6.2 that will:

6.3 (1) substantially lessen competition; or

6.4 (2) tend to create a monopoly or monopsony.

6.5 Subd. 4. **Additional requirements for nonprofit health care entities.** A health care
6.6 entity that is incorporated under chapter 317A or organized under section 322C.1101, or
6.7 that is a subsidiary of any such entity, must, before entering into a transaction, ensure that:

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

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

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

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

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

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

6.17 (7) there are procedures and policies in place to prohibit any officer, director, trustee,
6.18 or other executive of the nonprofit health care entity from directly or indirectly benefiting
6.19 from the transaction.

6.20 Subd. 5. **Attorney general enforcement and supplemental authority.** (a) The attorney
6.21 general may bring an action in district court to enjoin or unwind a transaction or seek other
6.22 equitable relief necessary to protect the public interest if a health care entity or transaction
6.23 violates this section, if the transaction is contrary to the public interest, or if both a health
6.24 care entity and transaction violate this section and the transaction is contrary to the public
6.25 interest. Factors informing whether a transaction is contrary to the public interest include
6.26 but are not limited to whether the transaction:

6.27 (1) will harm public health;

6.28 (2) will reduce the affected community's continued access to affordable and quality care
6.29 and to the range of services historically provided by the entities or will prevent members
6.30 in the affected community from receiving a comparable or better patient experience;

7.1 (3) will have a detrimental impact on competing health care options within primary and
7.2 dispersed service areas;

7.3 (4) will reduce delivery of health care to disadvantaged, uninsured, underinsured, and
7.4 underserved populations and to populations enrolled in public health care programs;

7.5 (5) will have a substantial negative impact on medical education and teaching programs,
7.6 health care workforce training, or medical research;

7.7 (6) will have a negative impact on the market for health care services, health insurance
7.8 services, or skilled health care workers;

7.9 (7) will increase health care costs for patients; or

7.10 (8) will adversely impact provider cost trends and containment of total health care
7.11 spending.

7.12 (b) The attorney general may enforce this section under section 8.31.

7.13 (c) Failure of the entities involved in a transaction to provide timely information as
7.14 required by the attorney general or the commissioner shall be an independent and sufficient
7.15 ground for a court to enjoin the transaction or provide other equitable relief, provided the
7.16 attorney general notified the entities of the inadequacy of the information provided and
7.17 provided the entities with a reasonable opportunity to remedy the inadequacy.

7.18 (d) The attorney general shall consult with the commissioner to determine whether a
7.19 transaction is contrary to the public interest. Any information exchanged between the attorney
7.20 general and the commissioner according to this subdivision is confidential data on individuals
7.21 as defined in section 13.02, subdivision 3, or protected nonpublic data as defined in section
7.22 13.02, subdivision 13. The commissioner may share with the attorney general, according
7.23 to section 13.05, subdivision 9, any not public data, as defined in section 13.02, subdivision
7.24 8a, held by the Department of Health to aid in the investigation and review of the transaction,
7.25 and the attorney general must maintain this data with the same classification according to
7.26 section 13.03, subdivision 4, paragraph (d).

7.27 Subd. 6. **Supplemental authority of commissioner.** (a) Notwithstanding any law to
7.28 the contrary, the commissioner may use data or information submitted under this section
7.29 and sections 62U.04 and 144.695 to 144.703 to conduct analyses of the aggregate impact
7.30 of health care transactions on access to or the cost of health care services, health care market
7.31 consolidation, and health care quality.

8.1 (b) The commissioner shall issue periodic public reports on the number and types of
8.2 transactions subject to this section and on the aggregate impact of transactions on health
8.3 care cost, quality, and competition in Minnesota.

8.4 Subd. 7. **Relation to other law.** (a) The powers and authority under this section are in
8.5 addition to, and do not affect or limit, all other rights, powers, and authority of the attorney
8.6 general or the commissioner under chapter 8, 309, 317A, 325D, 501B, or other law.

8.7 (b) Nothing in this section shall suspend any obligation imposed under chapter 8, 309,
8.8 317A, 325D, 501B, or other law on the entities involved in a transaction.

8.9 **EFFECTIVE DATE.** This section is effective the day following final enactment and
8.10 applies to transactions completed on or after that date. In determining whether a transaction
8.11 was completed on or after the effective date, any actions or series of actions necessary to
8.12 the completion of the transaction that occurred prior to the effective date must be considered.

8.13 Sec. 2. Laws 2017, First Special Session chapter 6, article 5, section 11, as amended by
8.14 Laws 2019, First Special Session chapter 9, article 8, section 20, is amended to read:

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

8.16 (a) Notwithstanding Laws 2017, chapter 2, article 2, a nonprofit health service plan
8.17 corporation operating under Minnesota Statutes, chapter 62C, or a nonprofit health
8.18 maintenance organization operating under Minnesota Statutes, chapter 62D, as of January
8.19 1, 2017, may only merge or consolidate with; convert; or transfer, as part of a single
8.20 transaction or a series of transactions within a 24-month period, all or a material amount of
8.21 its assets to an entity that is a corporation organized under Minnesota Statutes, chapter
8.22 317A; or to a Minnesota nonprofit hospital within the same integrated health system as the
8.23 health maintenance organization. For purposes of this section, "material amount" means
8.24 the lesser of ten percent of such an entity's total admitted net assets as of December 31 of
8.25 the previous year, or \$50,000,000.

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

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

9.1 (d) This section expires July 1, ~~2023~~ 2026.

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

9.3 **Sec. 3. RETURN OF CHARITABLE ASSETS.**

9.4 If a health system that is organized as a charitable organization, including M Health
9.5 Fairview University of Minnesota Medical Center, sells or transfers control to an out-of-state
9.6 nonprofit entity or to any for-profit entity, the health system must return to the general fund
9.7 any charitable assets the health system received from the state.

9.8 **EFFECTIVE DATE.** This section is effective the day following final enactment and
9.9 applies to transactions completed on or after that date.

9.10 **Sec. 4. STUDY AND RECOMMENDATIONS; NONPROFIT HEALTH**
9.11 **MAINTENANCE ORGANIZATION CONVERSIONS AND OTHER**
9.12 **TRANSACTIONS.**

9.13 (a) The commissioner of health shall study and develop recommendations on the
9.14 regulation of conversions, mergers, transfers of assets, and other transactions affecting
9.15 Minnesota-domiciled nonprofit health maintenance organizations and for-profit health
9.16 maintenance organizations. The recommendations must address, at a minimum:

9.17 (1) monitoring and regulation of Minnesota-domiciled for-profit health maintenance
9.18 organizations;

9.19 (2) issues related to public benefit assets held by a nonprofit health maintenance
9.20 organization, including identifying the portion of the organization's assets that are considered
9.21 public benefit assets to be protected, establishing a fair and independent process to value
9.22 the assets, and how public benefit assets should be stewarded for the public good;

9.23 (3) designating a state agency or executive branch office with authority to review and
9.24 approve or deny a nonprofit health maintenance organization's plan to convert to a for-profit
9.25 organization; and

9.26 (4) establishing a process for the public to learn about and provide input on a nonprofit
9.27 health maintenance organization's proposed conversion to a for-profit organization.

9.28 (b) To fulfill the requirements under this section, the commissioner:

9.29 (1) may consult with the commissioners of human services and commerce;

9.30 (2) may enter into one or more contracts for professional or technical services;

10.1 (3) notwithstanding any law to the contrary, may use data submitted under Minnesota
10.2 Statutes, sections 62U.04 and 144.695 to 144.703, and other data held by the commissioner
10.3 for purposes of regulating health maintenance organizations or already submitted to the
10.4 commissioner by health carriers; and

10.5 (4) may collect from health maintenance organizations and their parent or affiliated
10.6 companies financial data and other information, including nonpublic data and trade secret
10.7 data, that are deemed necessary by the commissioner to conduct the study and develop the
10.8 recommendations under this section. Health maintenance organizations must provide the
10.9 commissioner with any information requested by the commissioner under this clause, in
10.10 the form and manner specified by the commissioner. Any data collected by the commissioner
10.11 under this clause is classified as confidential data on individuals as defined in Minnesota
10.12 Statutes, section 13.02, subdivision 3, or protected nonpublic data as defined in Minnesota
10.13 Statutes, section 13.02, subdivision 13.

10.14 (c) No later than October 1, 2023, the commissioner must seek public comments on the
10.15 regulation of conversion transactions involving nonprofit health maintenance organizations.

10.16 (d) The commissioner may use the enforcement authority in Minnesota Statutes, section
10.17 62D.17, if a health maintenance organization fails to comply with a request for information
10.18 under paragraph (b), clause (4).

10.19 (e) The commissioner shall submit preliminary findings from this study to the chairs
10.20 and ranking minority members of the legislative committees with jurisdiction over health
10.21 and human services by January 15, 2024, and shall submit a final report and recommendations
10.22 to the legislature by June 30, 2024.

10.23 **Sec. 5. APPROPRIATIONS.**

10.24 \$..... in fiscal year 2024 and \$..... in fiscal year 2025 are appropriated from the general
10.25 fund to the commissioner of health for purposes of Minnesota Statutes, section 144.588.