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February 1, 2023

Chair Zack Stephenson
Commerce Finance & Policy Committee
449 State Office Building
100 Rev Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

Dear Chair Stephenson and committee members:

On behalf of Minnesota Farmers Union (MFU), I write to share our organization's support for Representative Bierman's delete-all amendment to HF402, which gives Minnesota clear authority to review and approve hospital mergers in our state.

MFU is a grassroots organization that has represented Minnesota's family farmers, ranchers and rural communities since 1918 and at our most recent annual convention our members voted to make access to affordable healthcare our top priority for this year. Critical to realizing that vision is addressing the extreme concentration of healthcare, particularly in rural communities, and the DE amendment to HF402 does that.

Various states across the country have recognized the importance of addressing the unique challenges of hospital consolidation and established authority similar to that of the DE amendment to HF402. The Source on Healthcare Price & Competition, a project of the University of California Law School, San Francisco, reports that 13 states have merger review and approval processes for healthcare transactions, while a handful of other states have more limited approval.ⁱ Minnesota, however, only has the limited notice requirements under Minn. Stat. § 317A.811.

In addition to nonprofit/charities law, hospital mergers might also touch antitrust law. Unfortunately, cross market mergers, like the proposed merger of Sanford Health and M Health Fairview involving hospitals operating in different geographic markets, have gone largely unchallenged by antitrust authorities.ⁱⁱ This lax enforcement combined with legal doctrines that have narrowed the applicability of antitrust law have allowed cross-market hospital mergers to escape scrutiny, leading to a wave of healthcare mergers in recent years.ⁱⁱⁱ Rep. Bierman's legislation will create an additional tool for addressing cross-market mergers.

It is estimated that as of 2019 nearly 60% of hospital systems were cross-market systems.^{iv} These powerful organizations have increased healthcare costs. A study in the RAND Journal of Economics found that hospitals acquired by out-of-market systems increased prices by about 17% more than unacquired, stand-alone hospitals as well as driving up prices at nearby rivals.^v While legal theories might not view cross-market mergers as problematic, the real-world impacts suggest they are.

The DE Amendment to HF402 also addresses concerns that have been raised about the speed of a merger like Sanford-Fairview by requiring health systems to provide notice at least 180 days before a merger is completed. This will give the Minnesota Department of Health and the Minnesota

Attorney General the time necessary to complete a thorough investigation and analysis of the possible impacts a transaction would have on Minnesota's healthcare system.

Finally, it is important to note that even a more active Federal Trade Commission, a key antitrust regulator, is limited in its ability to address mergers among non-profit entities, leaving a gap in efforts to address healthcare consolidation.^{vi} It is key that Minnesota have additional tools to prevent the further monopolization of our healthcare system.

MFU looks forward to working with Rep. Bierman and committee members to ensure this legislation is as strong as it can be. If you have any questions, please contact our Government Relations Director, Stu Lourey, at stu@mfu.org or (320) 232-2047 (C). Thank you for considering the needs and perspectives of Minnesota's farm families.

Sincerely,

A handwritten signature in black ink that reads "Gary Wertish". The signature is written in a cursive, slightly slanted style.

Gary Wertish
President, Minnesota Farmers Union

ⁱ <https://sourceonhealthcare.org/market-consolidation/>

ⁱⁱ <https://www.commonwealthfund.org/blog/2021/federal-antitrust-tools-are-inadequate-prevent-anticompetitive-health-care-consolidation>

ⁱⁱⁱ <https://www.openmarketsinstitute.org/learn/hospitals-monopoly?rq=hospital>

^{iv} <https://doi.org/10.1377/hlthaff.2022.00337>

^v <https://doi.org/10.1111/1756-2171.12186>

^{vi} [https://www.ftc.gov/system/files/documents/public_statements/1520570/slaughter - hospital_speech_5-14-19.pdf](https://www.ftc.gov/system/files/documents/public_statements/1520570/slaughter_-_hospital_speech_5-14-19.pdf)