

Subject Nonprofit health care entity conversion transactions

Authors Schultz and others

Analyst Elisabeth Klarqvist

Date March 5, 2019

Overview

This bill provides that before a nonprofit health maintenance organization (HMO) or a nonprofit health service plan corporation merges, consolidates, converts, or transfers all or a material amount of its assets to an entity that is not a tax-exempt nonprofit corporation, that transaction must be reviewed and approved by the attorney general, and the HMO or service plan corporation must transfer the value of its public benefit assets to a conversion benefit entity. It also prohibits a nonprofit HMO from using its net earnings for any purpose other than providing comprehensive health care, and extends the moratorium on HMO or service plan corporation conversion transactions to June 30, 2029.

Summary

Section	Description
1	<p>Findings.</p> <p>Establishes legislative findings regarding nonprofit health care entities and their assets, and states that it is necessary for the attorney general to approve a nonprofit health care entity's transfer of assets to ensure the public interest is protected.</p>
2	<p>Application of other laws.</p> <p>Adds § 62C.045. Provides that the sections in chapter 62D governing nonprofit health care entity conversion transactions, and the section extending the moratorium on conversion transactions until July 1, 2029, apply to health service plan corporations governed by chapter 62C.</p>
3	<p>Nonprofit health care entity conversions; definitions.</p> <p>Adds § 62D.046. Defines terms for sections governing nonprofit health care entity conversion transactions: commissioner, conversion benefit entity, conversion transaction or transaction, corporation, director, family member, key employee, material amount, member, nonprofit health care entity, officer, public benefit assets, and related organization.</p>

Section	Description
	<p>Subd. 3. Conversion benefit entity. Defines conversion benefit entity as an entity that receives the value of a nonprofit health care entity's public benefit assets, in connection with a conversion transaction.</p>
	<p>Subd. 4. Conversion transaction or transaction. Defines conversion transaction or transaction as a transaction in which a nonprofit health care entity merges, consolidates, converts, or transfers (singly or in a series of separate transfers) all or a material amount of the nonprofit health care entity's assets to an entity that is not a tax-exempt nonprofit corporation, or in which the nonprofit health care entity adds or substitutes officers, directors, or members in a way that transfers control or governance of the nonprofit health care entity to an entity that is not a tax-exempt nonprofit corporation.</p>
	<p>Subd. 9. Material amount. Defines material amount to mean the lesser of 10% of a nonprofit health care entity's total admitted net assets as of the end of the preceding calendar year, or \$10,000,000.</p>
	<p>Subd. 11. Nonprofit health care entity. Defines nonprofit health care entity to mean a nonprofit health service plan corporation, a nonprofit health maintenance organization, a nonprofit corporation that can exercise control over a nonprofit health service plan corporation or a nonprofit HMO, or an entity controlled by a corporation operating a nonprofit health service plan corporation or a nonprofit HMO.</p>
	<p>Subd. 13. Public benefit assets. Defines public benefit assets as the entirety of a nonprofit health care entity's tangible or intangible assets, including its goodwill and anticipated future revenue.</p>
4	<p>Nonprofit health care entity conversion transactions; review, notice, approval. Adds § 62D.047. Prohibits certain conversion transactions, requires the attorney general to receive notice of a conversion transaction and to review the transaction, requires attorney general approval of conversion transactions, and requires a nonprofit health care entity to transfer the value of its public benefit assets to one or more conversion benefit entities as part of the transaction.</p> <p>Subd. 1. Certain conversion transactions prohibited. Prohibits a nonprofit health care entity from entering into a conversion transaction if a person who was an officer, director, or key employee of the nonprofit health care entity or of a related organization, or a family member, has received or will receive or has held or will hold one of the listed types of compensation, financial benefit, or financial interest in connection with the conversion transaction.</p> <p>Subd. 2. Attorney general notice required. Requires a nonprofit health care entity to notify the attorney general as required in section 317A.811 before entering into a conversion transaction. Lists additional information the nonprofit health care entity must provide to the attorney general with the notice. Also</p>

Section	Description
	<p>requires the nonprofit health care entity to provide the notice and information to the commissioner, along with any other information provided to the attorney general at the attorney general's request.</p> <p>Subd. 3. Review elements. Allows the attorney general to approve, conditionally approve, or disapprove a proposed conversion transaction. Requires the attorney general to consider all relevant factors in evaluating whether the proposed transaction is in the public interest, and lists factors to be considered. Also requires the attorney general to consider public comments received and to consult with the appropriate commissioner before making a decision.</p> <p>Subd. 4. Conversion benefit entity requirements. Paragraph (a) requires a conversion benefit entity to be an existing or new domestic, tax-exempt nonprofit corporation operating under chapter 317A, and to have in place policies to prohibit conflicts of interest, including conflicts of interest related to grantmaking activities that may benefit the listed individuals or entities.</p> <p>Paragraph (b) prohibits a conversion benefit entity from making grants or payments or providing financial benefit to an entity that receives public benefit assets or a related organization.</p> <p>Paragraph (c) prohibits any person who has been an officer, director, or key employee or an entity receiving public benefit assets from serving as an officer, director, or key employee of the conversion benefit entity.</p> <p>Paragraph (d) requires the charitable purpose and grantmaking functions of the conversion benefit entity to be dedicated to meeting the health care needs of people in the state.</p> <p>Subd. 5. Public comment. Before issuing a decision, requires the attorney general to solicit public comments regarding the conversion transaction by holding one or more public meetings and by soliciting written and electronic comments from the public. Establishes a notice requirement for public meetings.</p> <p>Subd. 6. Approval required; period for approval or disapproval; extension. Paragraph (a) prohibits a nonprofit health care entity from entering into a conversion transaction until (1) 150 days after providing notice to the attorney general, unless all or part of this waiting period is waived; and (2) the attorney general approves the transaction, or conditionally approves the transaction and the conditions are satisfied.</p> <p>Paragraph (b) requires the attorney general to approve, conditionally approve, or disapprove the conversion transaction during the waiting period, requires the attorney general to provide notice of the decision to the nonprofit health care entity, and allows the attorney general to extend the waiting period.</p>

Section	Description
	<p>Paragraph (c) suspends the waiting period while a request for additional information is pending.</p>
	<p>Subd. 7. Transfer of value of assets required. If a proposed conversion transaction is approved or conditionally approved, requires the nonprofit health care entity to transfer the full and fair value of its public benefit assets to one or more conversion benefit entities as part of the transaction.</p>
	<p>Subd. 8. Assessment of costs. Requires the nonprofit health care entity to reimburse the attorney general or a state agency for costs incurred by the attorney general or state agency in reviewing the proposed conversion transaction and exercising enforcement remedies. Specifies what is included in costs, requires submission of a statement of costs, and establishes requirements for the nonprofit health care entity to pay or dispute the costs. Deposits payments made by the nonprofit health care entity into the general fund, and appropriates this money to the attorney general or state agency for costs paid or incurred.</p>
	<p>Subd. 9. Challenge to disapproval or conditional approval. Allows a nonprofit health care entity to bring an action in district court to challenge the attorney general's disapproval or conditional approval, and to prevail, requires the nonprofit health care entity to establish that the decision was arbitrary and capricious and unnecessary to protect the public health.</p>
	<p>Subd. 10. Penalties; remedies. Allows the attorney general to bring an action to unwind a conversion transaction that violates subdivision 1, establishes civil penalties, and allows the attorney general to enforce this section under section 8.31.</p>
	<p>Subd. 11. Relation to other law. Provides that this section does not affect or limit a power, remedy, or responsibility of an HMO, service plan corporation, conversion benefit entity, the attorney general, the commissioner of commerce, or the commissioner of health under other law. Also states that this section does not allow a nonprofit health care entity to enter into a conversion transaction prohibited under other law.</p>
	<p>Subd. 12. Data classification. Classifies data provided by a nonprofit health care entity to the attorney general, commissioner of commerce, or commissioner of health as nonpublic data, but allows this data to be made available to the public to receive input on the conversion transaction, to aid in law enforcement, or to promote the public health.</p>
5	<p>Net earnings. Adds subd. 8a to § 62D.12. Requires all net earnings of a nonprofit HMO to be devoted to providing comprehensive health care, and prohibits payment of net earnings as a dividend or rebate. Requires the commissioner of health to revoke an HMO's certificate</p>

Section	Description
	of authority for a violation of this subdivision. (Language very similar to this language was previously found in section 62D.12, subdivision 9, and was repealed in 2017.)
6	Nonprofit health care entity; notice and approval required. Adds subd. 1a to § 317A.811. Adds language to a section requiring notice to the attorney general and a waiting period when a nonprofit corporation intends to dissolve, merge, consolidate, convert, or transfer all or substantially all of its assets. This new subdivision requires a nonprofit health care entity to also comply with sections 62D.046 and 62D.047 for certain transactions.
7	Moratorium on conversion transactions. Amends Laws 2017 first special session chapter 6, article 5, section 11. Extends the existing moratorium on conversion transactions for nonprofit health service plan corporations and health maintenance organizations from June 30, 2019, to June 30, 2029. Makes this section effective the day following final enactment.
8	Revisor instruction. Directs the revisor to codify the moratorium on conversion transactions section in chapter 62D (the chapter governing HMOs).



**MN HOUSE
RESEARCH**

Minnesota House Research Department provides nonpartisan legislative, legal, and information services to the Minnesota House of Representatives. This document can be made available in alternative formats.

www.house.mn/hrd | 651-296-6753 | 600 State Office Building | St. Paul, MN 55155