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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 2334

03/13/2017 Authored by Murphy, E., The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

1.1 A bill for an act
1.2 relating to health; providing for attorney general review and approval of conversions
1.3 by nonprofit health maintenance organizations and nonprofit health service plan
1.4 corporations; specifying notice and review requirements; establishing standards
1.5 for distribution of certain assets; amending Minnesota Statutes 2016, section
1.6 317A.811, subdivision 1, by adding a subdivision; proposing coding for new law
1.7 in Minnesota Statutes, chapter 62D.

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

1.9 Section 1. 62D.046 NONPROFIT HEALTH CARE ENTITY CONVERSIONS.

1.10 Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

1.11 (b) "Commissioner" means the commissioner of commerce if the nonprofit health care
1.12 entity at issue is a service plan corporation operating under chapter 62C, or the commissioner
1.13 of health if the nonprofit health care entity at issue is a health maintenance organization
1.14 operating under this chapter.

1.15 (c) "Conversion benefit entity" means any foundation, corporation, limited liability
1.16 company, trust, partnership, or other entity that receives public benefit assets, or their value,
1.17 in connection with a conversion transaction.

1.18 (d) "Conversion transaction" or "transaction" means a transaction in which a nonprofit
1.19 health care entity merges, consolidates, converts, or transfers all or a substantial portion of
1.20 its assets to an entity that is not a nonprofit corporation organized under chapter 317A that
1.21 is also exempt under United States Code, title 26, section 501(c)(3). The substitution of a
1.22 new corporate member or members that transfers the control of, responsibility for, or
1.23 governance of a nonprofit health care entity shall also be deemed a conversion transaction
1.24 or transaction for the purposes of this section.

2.1 (e) "Family member" means a spouse, parent, or child or other dependent.

2.2 (f) "Nonprofit health care entity" means a service plan corporation operating under
2.3 chapter 62C or a health maintenance organization operating under this chapter.

2.4 (g) "Public benefit assets" means the entirety of a nonprofit health care entity's assets,
2.5 whether tangible or intangible, and including but not limited to its goodwill, intellectual
2.6 property, and membership base.

2.7 (h) "Related organization" has the meaning given in section 317A.011, subdivision 18.

2.8 Subd. 2. **Private inurement.** A nonprofit health care entity is prohibited from entering
2.9 into a conversion transaction if a person who has been an officer, director, or other executive
2.10 of the nonprofit health care entity, or of a related organization, or a family member of such
2.11 a person:

2.12 (1) has received or will receive any compensation or other financial benefit, directly or
2.13 indirectly, in connection with the conversion transaction;

2.14 (2) has held or will hold, regardless of whether guaranteed or contingent, any ownership
2.15 stake, stock, securities, investment, or other financial interest in, or has received or will
2.16 receive any type of compensation or other financial benefit from, any entity to which the
2.17 nonprofit health care entity transfers public benefit assets in connection with a conversion
2.18 transaction; or

2.19 (3) has held or will hold, regardless of whether guaranteed or contingent, any ownership
2.20 stake, stock, securities, investment, or other financial interest in, or has received or will
2.21 receive any type of compensation or other financial benefit from, any entity that has or will
2.22 have a business relationship with any entity to which the nonprofit health care entity transfers
2.23 public benefit assets in connection with a conversion transaction.

2.24 Subd. 3. **Attorney general notice and approval required.** (a) Before entering into a
2.25 conversion transaction, a nonprofit health care entity must notify the attorney general as
2.26 specified under section 317A.811, subdivision 1. The attorney general shall have the
2.27 discretion to approve, conditionally approve, or not approve a conversion transaction under
2.28 this section after considering any factors that the attorney general deems relevant, including
2.29 but not limited to the list of factors in subdivision 4. If the transaction is not approved, the
2.30 notice denying approval must include the reasons for the decision.

2.31 (b) The notice required by this subdivision must include an itemization of the nonprofit
2.32 health care entity's public benefit assets and the valuation that the entity attributes to those
2.33 assets, a proposed plan for distribution of the value of those assets to a conversion benefit

3.1 entity that meets the requirements of subdivision 5, and other information the attorney
3.2 general reasonably considers necessary from the nonprofit health care entity or any other
3.3 entity to which the nonprofit health care entity intends to transfer public benefit assets in
3.4 connection with a conversion transaction.

3.5 (c) The attorney general may also review a proposed conversion transaction pursuant
3.6 to the authority granted by section 317A.813 or other law.

3.7 (d) A copy of the notice and other information required under this subdivision must be
3.8 given to the commissioner.

3.9 (e) The attorney general shall assess the entity proposing to receive the public benefit
3.10 assets of the nonprofit health care entity for costs related to reviewing the proposed
3.11 conversion transaction, for which the entity shall promptly reimburse the attorney general.
3.12 Such costs may include but are not limited to costs associated with the attorney general's
3.13 retention of actuarial, valuation, or other experts and consultants that the attorney general
3.14 deems necessary to review a proposed transaction, and any administrative costs. Funds
3.15 received by the attorney general under this subdivision are appropriated to the attorney
3.16 general and shall be deposited into an appropriate account.

3.17 Subd. 4. **Review elements.** (a) In making a decision whether to approve, conditionally
3.18 approve, or not approve a proposed transaction, the attorney general, in consultation with
3.19 the commissioner, shall consider all relevant factors, including but not limited to whether:

3.20 (1) the proposed transaction complies with chapters 317A and 501B, and other applicable
3.21 charities and nonprofit laws;

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

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

3.25 (4) the full and fair value of the public benefit assets to be transferred has been
3.26 manipulated in a manner that causes, or already has caused, the value of the assets to
3.27 decrease;

3.28 (5) the proceeds of the proposed transaction will be used consistent with the public
3.29 benefit for which the assets are held by the nonprofit health care entity;

3.30 (6) the proposed transaction will result in a breach of fiduciary duty, as determined by
3.31 the attorney general, including but not limited to whether:

4.1 (i) the nonprofit health care entity's board of directors exercised reasonable care and due
4.2 diligence in deciding to pursue the transaction, in selecting the entity with which to pursue
4.3 the transaction, and in negotiating the terms and conditions of the transaction;

4.4 (ii) conflicts of interest exist related to payments to or benefits conferred upon officers,
4.5 directors, board members, and executives of the nonprofit health care entity or a related
4.6 organization; and

4.7 (iii) the nonprofit health care entity's board of directors considered all reasonably viable
4.8 alternatives, including any competing offers for its public benefit assets or alternative
4.9 transactions;

4.10 (7) the proposed transaction will result in private inurement to any person or entity,
4.11 including but not limited to owners, stakeholders, or any directors, officers, or key staff of
4.12 the nonprofit health care entity or an entity to which the nonprofit health care entity proposes
4.13 to transfer public benefit assets;

4.14 (8) the conversion transaction meets the requirements of subdivision 2;

4.15 (9) the conversion benefit entity meets the requirements of subdivision 5;

4.16 (10) the public input received about the proposed transaction is favorable or unfavorable;

4.17 (11) the proposed transaction is likely to affect the availability, accessibility, and
4.18 affordability of health care services to the public; and

4.19 (12) the attorney general and the commissioner have been provided with sufficient
4.20 information by the nonprofit health care entity to adequately evaluate the proposed transaction
4.21 and the effects on the public, provided the attorney general or the commissioner has notified
4.22 the nonprofit health care entity or the successor entity of any inadequacy of the information
4.23 provided and has provided the nonprofit health care entity or successor entity a reasonable
4.24 opportunity to remedy that inadequacy.

4.25 (b) The attorney general must consult with the commissioner in making a decision
4.26 whether to approve, conditionally approve, or not approve a proposed transaction.

4.27 (c) Prior to issuing any written decision under this section, the attorney general may
4.28 solicit public input, including holding public hearings, on the proposed transaction. If a
4.29 hearing is held, the attorney general shall provide at least seven days' notice of the time and
4.30 place of the hearing through appropriate means.

5.1 Subd. 5. Conversion benefit entity requirements. (a) A conversion benefit entity must
5.2 be an existing or new domestic nonprofit corporation organized under chapter 317A and
5.3 also must be exempt under United States Code, title 26, section 501(c)(3).

5.4 (b) The conversion benefit entity must be completely independent of any influence or
5.5 control by:

5.6 (1) the nonprofit health care entity and related organizations;

5.7 (2) all entities to which the nonprofit health care entity transfers any public benefit assets
5.8 in connection with a conversion transaction; and

5.9 (3) all directors, officers, and other executives of the entities and organizations specified
5.10 in clauses (1) and (2).

5.11 (c) The conversion benefit entity must have in place procedures and policies to prohibit
5.12 conflicts of interest including but not limited to prohibiting conflicts of interests relating to
5.13 any grant-making activities that may benefit:

5.14 (1) the directors, officers, or other executives of the conversion benefit entity;

5.15 (2) any entity to which the nonprofit health care entity transfers any public benefit assets
5.16 in connection with a conversion transaction; or

5.17 (3) any directors, officers, or other executives of any entity to which the nonprofit health
5.18 care entity transfers any public benefit assets in connection with a conversion transaction.

5.19 (d) The charitable purpose and grant-making functions of the conversion benefit entity
5.20 must be dedicated exclusively to meeting the health care needs of the people of this state.

5.21 Subd. 6. Period for approval or disapproval; extension. (a) Within 150 days of
5.22 receiving notice of a proposed transaction, the attorney general shall notify the nonprofit
5.23 health care entity in writing of its decision to approve, conditionally approve, or not approve
5.24 the transaction. The attorney general may extend this period for an additional 90 days if
5.25 necessary to obtain additional information.

5.26 (b) The time periods established by this subdivision are suspended while any requests
5.27 for information by the attorney general to the nonprofit health care entity or any entity to
5.28 which the nonprofit health care entity intends to transfer any public benefit assets are
5.29 outstanding.

5.30 Subd. 7. Transfer of value of assets required. If a proposed conversion transaction is
5.31 approved or conditionally approved by the attorney general, the nonprofit health care entity

6.1 shall transfer the entirety of the full and fair value of its public benefit assets to one or more
 6.2 conversion benefit entities as part of the transaction.

6.3 Subd. 8. **Annual report by conversion benefit entity.** A conversion benefit entity must
 6.4 submit an annual report to the attorney general that contains a detailed description of its
 6.5 charitable activities related to the use of the public benefit assets received under a transaction
 6.6 that is approved under this section.

6.7 Subd. 9. **Penalties; remedies.** A conversion transaction entered into in violation of this
 6.8 section is null and void. The attorney general is authorized to bring an action to unwind a
 6.9 conversion transaction entered into in violation of this section. The officers, directors, and
 6.10 other executives of each entity that are party to a conversion transaction entered into in
 6.11 violation of this section may be subject to a civil penalty of up to the entirety of any financial
 6.12 benefit each one derived from the transaction or \$1,000,000, whichever is greater, as
 6.13 determined by the court. The attorney general is authorized to enforce this section pursuant
 6.14 to section 8.31.

6.15 Subd. 10. **Relation to other law.** (a) This section is in addition to, and does not affect
 6.16 or limit, any power, remedy, or responsibility of a health maintenance organization, a service
 6.17 plan corporation, a conversion benefit entity, the attorney general, or the commissioner
 6.18 under this chapter, chapters 62C, 317A, and 501B, or other law.

6.19 (b) Nothing in this section authorizes a nonprofit health care entity to enter into a
 6.20 conversion transaction not otherwise permitted under chapter 317A.

6.21 Sec. 2. Minnesota Statutes 2016, section 317A.811, subdivision 1, is amended to read:

6.22 Subdivision 1. **When required.** (a) Except as provided in subdivision 6, the following
 6.23 corporations shall notify the attorney general of their intent to dissolve, merge, or consolidate,
 6.24 or to transfer all or substantially all of their assets:

6.25 (1) a corporation that holds assets for a charitable purpose as defined in section 501B.35,
 6.26 subdivision 2, including a health maintenance organization operating under chapter 62D
 6.27 and a service plan corporation operating under chapter 62C; or

6.28 (2) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code
 6.29 of 1986, or any successor section.

6.30 (b) The notice must include:

6.31 (1) the purpose of the corporation that is giving the notice;

6.32 (2) a list of assets owned or held by the corporation for charitable purposes;

7.1 (3) a description of restricted assets and purposes for which the assets were received;

7.2 (4) a description of debts, obligations, and liabilities of the corporation;

7.3 (5) a description of tangible assets being converted to cash and the manner in which
7.4 they will be sold;

7.5 (6) anticipated expenses of the transaction, including attorney fees;

7.6 (7) a list of persons to whom assets will be transferred, if known;

7.7 (8) the purposes of persons receiving the assets; and

7.8 (9) the terms, conditions, or restrictions, if any, to be imposed on the transferred assets.

7.9 The notice must be signed on behalf of the corporation by an authorized person.

7.10 Sec. 3. Minnesota Statutes 2016, section 317A.811, is amended by adding a subdivision
7.11 to read:

7.12 Subd. 1a. **Nonprofit health care entity; notice and approval required.** A corporation
7.13 that is a health maintenance organization or a service plan corporation is subject to notice
7.14 and approval requirements for certain transactions under section 62D.046.