

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 359

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OFFICIAL STATUS
Introduction and first reading
Referred to Health and Human Services Finance and 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; specifying notice and review
1.4 requirements; establishing standards for distribution of certain assets; amending
1.5 Minnesota Statutes 2018, sections 62C.04, by adding a subdivision; 317A.811,
1.6 subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 62D.

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

1.8 Section 1. Minnesota Statutes 2018, section 62C.04, is amended by adding a subdivision
1.9 to read:

1.10 Subd. 5. **Service plan corporation conversions.** A service plan corporation that intends
1.11 to dissolve, merge, or consolidate, or to transfer all or a substantial portion of its assets to
1.12 an entity that is not a corporation organized under chapter 317A, or that is not exempt under
1.13 United States Code, title 26, section 501(c)(3), must notify the attorney general in accordance
1.14 with section 317A.811 and comply with section 62D.31.

1.15 Sec. 2. **[62D.31] NONPROFIT HEALTH CARE ENTITY CONVERSIONS.**

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

1.17 (b) "Commissioner" means the commissioner of commerce if the nonprofit health care
1.18 entity is operating under chapter 62C or the commissioner of health if the nonprofit health
1.19 care entity is operating under this chapter.

1.20 (c) "Conversion benefit entity" means an entity that meets the requirements of subdivision
1.21 7 and that directly or indirectly receives public benefit assets, or the value of such assets,
1.22 in connection with a conversion transaction.

2.1 (d) "Conversion transaction" or "transaction" means a transaction in which a nonprofit
2.2 health care entity merges, consolidates, converts, or transfers all or a substantial portion of
2.3 its assets to an entity that is not a corporation organized under chapter 317A, or that is not
2.4 exempt under United States Code, title 26, section 501(c)(3). The substitution of a new
2.5 corporate member that transfers the control, responsibility for, or governance of a nonprofit
2.6 health care entity is also considered a transaction for purposes of this section.

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

2.8 (f) "Key employee" means a person, regardless of title, who:

2.9 (1) has responsibilities, powers, or influence over the nonprofit health care entity similar
2.10 to those of an officer or director;

2.11 (2) manages a discrete segment or activity of the entity that represents ten percent or
2.12 more of the activities, assets, income, or expenses of the entity, as compared to the entity
2.13 as a whole; or

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

2.16 (g) "Nonprofit health care entity" means a nonprofit health service plan corporation
2.17 operating under chapter 62C or a nonprofit health maintenance organization operating under
2.18 this chapter.

2.19 (h) "Public benefit assets" means the entirety of a nonprofit health care entity's assets,
2.20 whether tangible or intangible.

2.21 (i) "Related organization" has the meaning given in section 317A.011.

2.22 Subd. 2. **Attorney general notice required.** (a) Before entering into a conversion
2.23 transaction, a nonprofit health care entity must notify the attorney general as specified under
2.24 section 317A.811, subdivision 1. The notice required under this subdivision must also
2.25 include an itemization of the nonprofit health care entity's public benefit assets and the
2.26 valuation that the entity attributes to those assets, a proposed plan for distribution of the
2.27 value of those assets to a conversion benefit entity that meets the requirements of subdivision
2.28 7, and other information from the nonprofit health care entity or the proposed conversion
2.29 benefit entity that the attorney general reasonably considers necessary for review of the
2.30 proposed transaction.

2.31 (b) A copy of the notice and other information required under this subdivision must be
2.32 given to the commissioner.

3.1 Subd. 3. Review elements. (a) The attorney general may approve, conditionally approve,
3.2 or not approve a conversion transaction under this section. In making a decision whether
3.3 to approve, conditionally approve, or not approve a transaction, the attorney general, in
3.4 consultation with the commissioner, shall consider any factors the attorney general considers
3.5 relevant, including whether:

3.6 (1) the proposed transaction complies with this section, chapters 317A and 501B, and
3.7 other applicable law;

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

3.9 (3) the nonprofit health care entity receives full and fair value for its public benefit assets;

3.10 (4) the full and fair value of the public benefit assets to be transferred has been
3.11 manipulated in a manner that causes or has caused the value of the assets to decrease;

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

3.14 (6) the proposed transaction results in a breach of fiduciary duty, as determined by the
3.15 attorney general, including whether:

3.16 (i) conflicts of interest exist related to payments to or benefits conferred upon officers,
3.17 directors, board members, or key employees of the nonprofit health care entity or a related
3.18 organization;

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

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

3.25 (7) the transaction results in private financial benefit to any person prohibited under
3.26 subdivision 6 or any financial benefit to any person prohibited under any other applicable
3.27 law, including owners, stakeholders, directors, officers, or key employees of the nonprofit
3.28 health care entity or entity to which the nonprofit health care entity proposes to transfer
3.29 public benefit assets;

3.30 (8) the conversion benefit entity meets the requirements of subdivision 7; and

3.31 (9) the attorney general and commissioner have been provided with sufficient information
3.32 by the nonprofit health care entity to adequately evaluate the proposed transaction and the

4.1 effects on the public, provided the attorney general has notified the nonprofit health care
4.2 entity or the proposed conversion benefit entity of any inadequacy of the information and
4.3 has provided a reasonable opportunity to remedy that inadequacy.

4.4 (b) In addition, the attorney general shall consider any public comments received
4.5 regarding the proposed conversion transaction and the proposed transaction's likely effect
4.6 on the availability, accessibility, and affordability of health care services to the public.

4.7 (c) The attorney general must consult with the commissioner in making a decision
4.8 whether to approve or disapprove a transaction.

4.9 Subd. 4. **Period for approval or disapproval; extension.** (a) Within 150 days of
4.10 receiving notice of a proposed transaction, the attorney general shall notify the nonprofit
4.11 health care entity in writing of its decision to approve, conditionally approve, or disapprove
4.12 the transaction. If the transaction is not approved, the notice must include the reason for the
4.13 decision. If the transaction is conditionally approved, the notice must specify the conditions
4.14 that must be met. The attorney general may extend this period for an additional 90 days if
4.15 necessary to obtain additional information.

4.16 (b) The time periods under this subdivision are suspended during the time when a request
4.17 from the attorney general for additional information is outstanding.

4.18 Subd. 5. **Transfer of assets.** If a proposed conversion transaction is approved or
4.19 conditionally approved by the attorney general, the nonprofit health care entity shall transfer
4.20 the entirety of the full and fair value of its public benefit assets to one or more conversion
4.21 benefit entities as part of the transaction.

4.22 Subd. 6. **Private financial benefit.** (a) A nonprofit health care entity must not enter into
4.23 a conversion transaction if a person who has been an officer, director, or key employee of
4.24 the nonprofit health care entity or conversion benefit entity, or of a related organization, or
4.25 a family member of such a person:

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

4.28 (2) has held or will hold, regardless of whether guaranteed or contingent, an ownership
4.29 stake, stock, securities, investment, or other financial interest in, or receive any type of
4.30 compensation or other financial benefit from, any entity to which the nonprofit health care
4.31 entity transfers assets in connection with a conversion transaction; or

4.32 (3) has held or will hold, regardless of whether guaranteed or contingent, an ownership
4.33 stake, stock, securities, investment, or other financial interest in, or receive any type of

5.1 compensation or other financial benefit from, any entity that has or will have a business
5.2 relationship with any entity to which the nonprofit health care entity transfers assets in
5.3 connection with a conversion transaction.

5.4 (b) This subdivision does not prohibit routine increases in compensation or other financial
5.5 benefit that is not made in connection with a conversion transaction and is undertaken as
5.6 part of the ordinary course of business of the nonprofit health care entity or conversion
5.7 benefit entity.

5.8 Subd. 7. **Conversion benefit entity requirements.** (a) A conversion benefit entity must
5.9 be an existing or new domestic nonprofit corporation organized under chapter 317A, and
5.10 must be exempt under United States Code, title 26, section 501(c)(3).

5.11 (b) The conversion benefit entity must be completely independent of any influence or
5.12 control by the nonprofit health care entity and related organizations, all entities to which
5.13 the nonprofit health care entity transfers any public benefit assets in connection with a
5.14 conversion transaction, and the directors, officers, and key employees of those organizations
5.15 or entities.

5.16 (c) The conversion benefit entity must have in place procedures and policies to prohibit
5.17 conflicts of interest, including prohibiting conflicts of interests relating to grant-making
5.18 activities that may benefit:

5.19 (1) the directors, officers, or key employees of the conversion benefit entity;

5.20 (2) an entity to which the nonprofit health care entity transfers public benefit assets in
5.21 connection with a conversion transaction; or

5.22 (3) the directors, officers, or key employees of an entity to which the nonprofit health
5.23 care entity transfers public benefit assets in connection with a conversion transaction.

5.24 (d) The charitable purpose and grant-making functions of the conversion benefit entity
5.25 must be dedicated to meeting the health care needs of residents of this state.

5.26 Subd. 8. **Public comment.** Before issuing a decision under subdivision 3, the attorney
5.27 general may solicit public comment regarding the proposed conversion transaction. The
5.28 attorney general may hold one or more public meetings or solicit written or electronic
5.29 correspondence. If a meeting is held, notice of the meeting must be published in a qualified
5.30 newspaper of general circulation in this state at least seven days before the meeting.

5.31 Subd. 9. **Assessment of costs.** (a) The nonprofit health care entity or the conversion
5.32 benefit entity must reimburse the attorney general or a state agency for all reasonable and
5.33 actual costs incurred by the attorney general or a state agency in reviewing a proposed

6.1 conversion transaction and exercising enforcement remedies under subdivision 11, including
6.2 attorney fees at the billing rate used by the attorney general for state agencies and the costs
6.3 for retention of actuarial, valuation, or other experts or consultants, and administrative costs.

6.4 (b) The attorney general or state agency must provide the nonprofit health care entity
6.5 or the conversion benefit entity with a statement of costs incurred. The nonprofit health care
6.6 entity or the conversion benefit entity must remit the statement total to the attorney general
6.7 or state agency within 30 days of the statement date. The nonprofit health care entity
6.8 conversion account is created in the special revenue fund of the state treasury. The attorney
6.9 general or state agency receiving an amount from the nonprofit health care entity or the
6.10 conversion benefit entity shall deposit the amounts in the nonprofit health care entity
6.11 conversion account in the special revenue fund. Amounts deposited in the nonprofit health
6.12 care entity conversion account by the attorney general are appropriated to the attorney
6.13 general for costs paid or incurred under this section. Amounts deposited in the nonprofit
6.14 health care entity conversion account by a state agency are appropriated to the commissioner
6.15 of the state agency for costs paid or incurred by the agency under this section.

6.16 Subd. 10. **Annual report by conversion benefit entity.** A conversion benefit entity
6.17 must submit an annual report to the attorney general that contains a detailed description of
6.18 its charitable activities related to the use of the public benefit assets received under a
6.19 transaction that is approved under this section.

6.20 Subd. 11. **Penalties; remedies.** (a) A conversion transaction entered into in violation
6.21 of this section is null and void. The attorney general is authorized to bring an action to
6.22 unwind a conversion transaction entered into in violation of this section and to recover the
6.23 amount of any private financial benefit received or held in violation of subdivision 6. In
6.24 addition to this recovery, the officers, directors, and key employees of each entity that is a
6.25 party to and materially participated in a conversion transaction entered into in violation of
6.26 this section may be subject to a civil penalty of up to the greater of either the entirety of any
6.27 financial benefit each one derived from the transaction, or \$1,000,000, as determined by
6.28 the court.

6.29 (b) The attorney general is authorized to enforce this section pursuant to section 8.31.

6.30 Subd. 12. **Relation to other law.** (a) This section is in addition to, and does not affect
6.31 or limit any power, remedy, or responsibility of a health maintenance organization, nonprofit
6.32 health service plan corporation, a conversion benefit entity, the attorney general, or the
6.33 commissioner under this chapter, chapter 62C, 317A, 501B, or other law.

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

7.3 Sec. 3. Minnesota Statutes 2018, section 317A.811, subdivision 1, is amended to read:

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

7.7 (1) a corporation that holds assets for a charitable purpose as defined in section 501B.35,
 7.8 subdivision 2; ~~or~~

7.9 (2) a nonprofit health maintenance organization operating under chapter 62D;

7.10 (3) a nonprofit health service plan corporation operating under chapter 62C; or

7.11 ~~(2)~~ (4) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code
 7.12 of 1986, or any successor section.

7.13 (b) The notice must include:

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

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

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

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

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

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

7.21 (7) a list of persons to whom assets will be transferred, if known, or the name of the
 7.22 converted organization;

7.23 (8) the purposes of persons receiving the assets or of the converted organization; and

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

7.26 (c) A corporation that is a nonprofit health maintenance organization or a nonprofit
 7.27 health service plan corporation is subject to additional notice requirements governing
 7.28 nonprofit health care entity conversions under section 62D.31.

7.29 (d) The notice must be signed on behalf of the corporation by an authorized person.

8.1 Sec. 4. **EFFECTIVE DATE.**

8.2 Sections 1 to 3 are effective July 1, 2019.