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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **402**

01/17/2023 Authored by Bierman, Liebling and Stephenson
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

1.1 A bill for an act
1.2 relating to health; requiring notice, review, and approval for certain health care
1.3 entity transactions; requiring a health system to return charitable assets received
1.4 from the state to the general fund in certain circumstances; amending Minnesota
1.5 Statutes 2022, section 317A.811, by adding a subdivision; proposing coding for
1.6 new law in Minnesota Statutes, chapter 144.

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

1.8 Section 1. [144.557] NOTICE, REVIEW, AND APPROVAL; CERTAIN HEALTH
1.9 CARE ENTITY TRANSACTIONS.

1.10 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
1.11 the meanings given.

1.12 (b) "Affected hospital" means a hospital that is a party to a proposed transaction or is
1.13 owned or substantially controlled by a party to a proposed transaction.

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

1.15 (d) "Health care entity" means a hospital or a health system or other entity that owns or
1.16 exercises substantial control over a hospital.

1.17 (e) "Hospital" means a health care facility licensed as a hospital under sections 144.50
1.18 to 144.56.

1.19 (f) "Transaction" means:

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

1.21 (2) the sale, lease, or transfer of all or substantially all of the property and assets of a
1.22 health care entity to another entity;

2.1 (3) the granting of a security interest in all or substantially all of the property and assets
2.2 of a health care entity to another entity;

2.3 (4) the transfer of all the shares or other ownership interest of the health care entity to
2.4 another entity; or

2.5 (5) an addition or substitution of one or more members of a health care entity's governing
2.6 body that effectively transfers control, responsibility for, or governance of the health care
2.7 entity to another entity.

2.8 Subd. 2. **Notice, review, and approval required.** (a) Except as provided in subdivision
2.9 8, a health care entity shall not enter into a transaction unless:

2.10 (1) the health care entity provides notice of the proposed transaction to the commissioner;

2.11 (2) the commissioner, in consultation with the attorney general, conducts a review of
2.12 the proposed transaction; and

2.13 (3) the commissioner approves the proposed transaction or approves the proposed
2.14 transaction with conditions.

2.15 (b) For purposes of determining whether a proposed transaction is governed by this
2.16 section, the commissioner shall view all mergers; exchanges; sales; leases; transfers of
2.17 property, assets, and shares; and the granting of security interests that occur within a
2.18 24-month window as a single occurrence.

2.19 Subd. 3. **Notice.** (a) A health care entity seeking to enter into a transaction must:

2.20 (1) provide notice of the proposed transaction to the commissioner in a form and manner
2.21 specified by the commissioner and at least 180 days before the date of the proposed
2.22 transaction; and

2.23 (2) within 30 days after providing notice, submit to the commissioner, in a form and
2.24 manner specified by the commissioner, information necessary for the commissioner to
2.25 determine:

2.26 (i) whether the proposed transaction will benefit the public good or improve health
2.27 outcomes for Minnesota residents; and

2.28 (ii) whether any anticompetitive effects of the proposed transaction are outweighed by
2.29 the benefits of the proposed transaction.

2.30 (b) The commissioner must specify the information that a health care entity must submit
2.31 under paragraph (a), clause (2).

3.1 Subd. 4. **Review.** (a) Upon receiving a notice and the information required under
3.2 subdivision 3, the commissioner, in consultation with the attorney general, must conduct a
3.3 review of the proposed transaction. The commissioner may request additional information
3.4 from a health care entity that the commissioner deems necessary to conduct the review, and
3.5 a health care entity from which additional information is requested must promptly provide
3.6 the requested additional information to the commissioner. In conducting a review, the
3.7 commissioner must consider at least the following for any affected hospitals:

3.8 (1) how the proposed transaction will affect timely access by Minnesota residents to
3.9 health care provided at affected hospitals, including access by underserved populations and
3.10 by populations disproportionately impacted by health disparities;

3.11 (2) how the proposed transaction will affect the cost of health care for Minnesota residents
3.12 that is provided at affected hospitals;

3.13 (3) how the proposed transaction will affect the communities in which affected hospitals
3.14 are located;

3.15 (4) the impact of the proposed transaction on other hospitals in the same region as affected
3.16 hospitals; and

3.17 (5) how the proposed transaction will affect health outcomes for Minnesota residents.

3.18 (b) As part of a review, the commissioner may hold one or more public hearings in the
3.19 areas affected by the proposed transaction, and may accept public comments.

3.20 Subd. 5. **Contracts.** The commissioner may contract for any professional or technical
3.21 services needed to conduct a review under this section.

3.22 Subd. 6. **Determination.** (a) Following a review of the proposed transaction, the
3.23 commissioner must approve the proposed transaction, disapprove the proposed transaction,
3.24 or approve the proposed transaction with conditions. A proposed transaction may be approved
3.25 or approved with conditions only if the commissioner determines that, according to criteria
3.26 established by the commissioner:

3.27 (1) the transaction will benefit the public good or improve health outcomes for Minnesota
3.28 residents; and

3.29 (2) any anticompetitive effects of the proposed transaction are outweighed by the benefits
3.30 of the proposed transaction.

3.31 (b) The commissioner must notify the parties to the proposed transaction in writing of
3.32 the commissioner's determination. If the proposed transaction is disapproved, the notice

4.1 must include the reasons for the disapproval. If the proposed transaction is approved with
4.2 conditions, the notice must specify the conditions that must be met and the reasons for these
4.3 conditions.

4.4 (c) A proposed transaction that is disapproved by the commissioner shall not proceed.

4.5 Subd. 7. **Challenge to disapproval or conditional approval.** If the commissioner
4.6 disapproves a proposed transaction or approves a proposed transaction with conditions, a
4.7 party to the proposed transaction may bring an action in district court to challenge the
4.8 disapproval or any condition of an approval with conditions. To prevail in an action brought
4.9 under this subdivision, a party challenging the disapproval or condition must establish that
4.10 the disapproval or the condition being challenged is arbitrary and capricious and unnecessary
4.11 to protect the public good.

4.12 Subd. 8. **Exception.** The commissioner may grant a waiver of the review and approval
4.13 required in this section if the commissioner determines that a proposed transaction is urgently
4.14 needed to preserve access to health care and to protect the interests of patients and the public.
4.15 A health care entity seeking a waiver must apply to the commissioner in a time and manner
4.16 specified by the commissioner, and the commissioner must notify all parties to the proposed
4.17 transaction of a decision on the waiver application within 30 days after receiving the waiver
4.18 application.

4.19 Subd. 9. **Transaction fee.** A health care entity that is a party to a proposed transaction
4.20 that is reviewed by the commissioner must pay a transaction fee to the commissioner to
4.21 reimburse the commissioner for the commissioner's costs of conducting the review and
4.22 making a determination, or for the commissioner's costs of reviewing and making a decision
4.23 on a waiver application. The commissioner may assign fee amounts to each health care
4.24 entity participating in a single proposed transaction. A fee paid under this subdivision shall
4.25 be deposited in the special revenue fund in the state treasury and is appropriated to the
4.26 commissioner to administer this section.

4.27 Subd. 10. **Enforcement.** The commissioner may bring an action in district court to enjoin
4.28 or unwind a transaction entered into in violation of this section. This remedy is in addition
4.29 to any other remedy available in other law.

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

5.1 Sec. 2. Minnesota Statutes 2022, section 317A.811, is amended by adding a subdivision
5.2 to read:

5.3 Subd. 1a. **Nonprofit health care entities; notice, review, and approval.** (a) In addition
5.4 to the requirements of subdivision 1, a health care entity that is organized as a nonprofit
5.5 corporation under this chapter must comply with the notice, review, and approval
5.6 requirements for certain transactions under section 144.557.

5.7 (b) For purposes of this subdivision, "health care entity" has the meaning given in section
5.8 144.557, subdivision 1, paragraph (d).

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

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

5.11 If a health system that is organized as a charitable organization, and that includes M
5.12 Health Fairview University of Minnesota Medical Center, sells or transfers control to an
5.13 out-of-state nonprofit entity or to any for-profit entity, the health system must return to the
5.14 general fund any charitable assets the health system received from the state.