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March 28, 2023

Chair Ginny Klevorn
State and Local Government Finance and Policy Committee
581 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Chair Klevorn and committee members:

On behalf of Minnesota Farmers Union (MFU), I write to share our organization's support for HF402, which will provide the Minnesota Attorney General with additional tools for reviewing and approving hospital mergers in Minnesota. We are grateful for Representative Bierman's leadership on this important topic.

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 among hospitals in rural communities, and HF402 does that.

Minnesota spent over \$60 billion on healthcare in 2020, with \$20.1 billion spent on hospital care, the largest share of healthcare spending in the state.ⁱ The amount spent on hospital care increased by over 26% between 2016 and 2020 and hospital mergers are part of the story.ⁱⁱ A wide body of research has established that hospital mergers lead to higher prices, as does provider consolidation more generally, whether horizontal or vertical consolidation.ⁱⁱⁱ

Rural Minnesota has been heavily impacted by this consolidation as it has one of the most highly concentrated hospital markets in the entire country.^{iv} A 2019 study in Health Affairs found that highly concentrated hospital markets lead to higher health insurance costs on the individual market, which disproportionately impacts independent business owners like family farmers.^v In addition to higher costs, hospital concentration leads to closed hospitals or reduced services. Hospital systems are also increasingly buying up independent physician practices, which further erodes the choices patients have.^{vi}

Despite the issues healthcare concentration creates for Minnesotans, mergers continue. Part of the challenge is that antitrust law and enforcement are not adequate to address the monopolization of healthcare. Decades of lax enforcement and legal doctrines narrowing the applicability of antitrust law, have left these protections buried under a mountain of bad case law that limits the effectiveness of antitrust lawsuits.

Cross-market mergers like the proposed merger of Sanford Health and Fairview Health Services, which involve hospitals operating in different geographic markets, have been particularly problematic. Despite a successful track record in the 1990s of preventing more traditional hospital mergers, the FTC and other enforcers have not challenged a single cross-market merger in federal

court.^{vii} As a result, it is estimated that as of 2019 nearly 70% of hospital systems were cross-market systems, exacerbating the challenge of reigning in healthcare costs.^{viii} 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.^{ix}

Enforcement of antitrust is further strained by federal exemptions such as the exemption in the FTC's enforcement authority that prohibits the agency from enforcing antitrust laws against the anticompetitive practices of non-profit entities like the ones that are predominant in Minnesota's healthcare system.^x

While legal theories might not view cross-market mergers as problematic, the real-world impacts demonstrate they are. This legislation will address the shortcomings in antitrust enforcement, particularly in the case of cross-market mergers. HF402 establishes clear enforcement authority for the Attorney General, allowing the office to enjoin or unwind mergers and acquisitions that fail to protect the public interest.

This language will address the unrealistically high standards for successfully challenging healthcare mergers under traditional antitrust law by spelling out a broad array of potential factors that could be contrary to the public interest including limiting access to affordable and quality care, reducing delivery to underserved populations, increasing costs for patients or negatively impacting the market for skilled health care workers. This bill also prohibits any transaction that would substantially lessen competition or tend to create a monopoly or monopsony (monopoly power of a buyer).

Various states across the country have recognized the importance of addressing the unique challenges of hospital consolidation and established authority similar to the provisions in 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.^{xi}

Minnesota is also hampered by limited pre-merger notification requirements under Minn. Stat. § 317A.811 within the Nonprofit Corporation law and the general investigative authority the Attorney General has under Minn. Stat. § 8.31. Attorney General Ellison detailed for the Commerce Committee how the speed of the proposed merger between Sanford and Fairview has comprised his office's ability to properly review the potential impacts of the transaction. Under existing law, he is left pleading with CEOs to turn over information before a merger is finalized.

HF402 will rectify that problem by creating a robust pre-merger notification system for potential hospital mergers with clear timelines and a comprehensive list of information health systems would be required to turn over. This will ensure the Attorney General has the time and information necessary to complete a thorough investigation and analysis of the possible impacts a transaction would have on Minnesota's healthcare system.

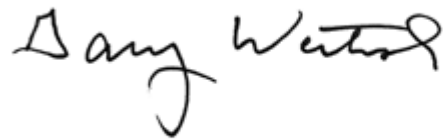
Given the entities and providers covered by this law, HF402 will also improve the Attorney General's ability to address certain types of vertical consolidation in healthcare, such as the rising number of physician practices being acquired by large health systems.

While this legislation is a major step forward and will create strong antimonopoly protections for healthcare in Minnesota, MFU would encourage legislators to consider several important additions

to this legislation. The Attorney General and Department of Health should be required (“shall” instead of “may”) to provide opportunities for public input under Subd. 2. The factors that inform whether a transaction is contrary to the public interest should include consideration of the impacts a merger could have on wages, working conditions and collective bargaining agreements for healthcare workers.

MFU looks forward to working with this committee 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,



Gary Wertish
President, Minnesota Farmers Union

ⁱ <https://www.health.state.mn.us/data/economics/docs/2020spendingrpt.pdf>

ⁱⁱ *Ibid.*

ⁱⁱⁱ <https://www.kff.org/health-costs/issue-brief/what-we-know-about-provider-consolidation/>

^{iv} <https://sourceonhealthcare.org/market-consolidation/>

^v <https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.05491>

^{vi} [http://www.physiciansadvocacyinstitute.org/Portals/0/assets/docs/Hospital-Driven-Consolidation_Web.pdf?ver=2019-10-11-093623-](http://www.physiciansadvocacyinstitute.org/Portals/0/assets/docs/Hospital-Driven-Consolidation_Web.pdf?ver=2019-10-11-093623-523#:~:text=Over%20the%20period%20between%20July,growing%20from%2094%2C700%20to%20168%2C000.&text=Growth%20occurred%20in%20every%20region%20of%20the%20nation.)

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^{vii} https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4037747

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

^{ix} <https://doi.org/10.1111/1756-2171.12186>

^x [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)

^{xi} <https://sourceonhealthcare.org/market-consolidation/>