

Subject Health care entity transactions

Authors Bierman

Analyst Elisabeth Klarqvist

Date March 16, 2023

## Overview

This bill establishes notice and review requirements for health care entities seeking to enter into a transaction and authorizes the attorney general to seek relief if a health care entity or transaction violates the new section or is contrary to the public interest. It also extends the moratorium on conversion transactions by nonprofit service plan corporations and nonprofit health maintenance organizations to July 1, 2026; requires the return of certain charitable assets to the general fund in certain circumstances; and requires the commissioner of health to study and develop recommendations on the regulation of transactions involving nonprofit and for-profit health maintenance organizations.

## Summary

Section	Description
---------	-------------

1	<b>Requirements for certain health care entity transactions.</b>
---	--

Adds § 144.588.

**Subd. 1. Definitions.** Defines terms for this section: captive professional entity, commissioner, health care entity, health care provider, health care provider group practice, hospital, medical foundation, and transaction.

**Subd. 2. Notice required.** Para. (a) provides the notice requirements in this subdivision apply to a transaction in which the health care entity involved in the transaction has average revenue of at least \$10,000,000 per year, or an entity created by the transaction is projected to have average revenue of at least \$10,000,000 per year.

Para. (b) requires a health care entity, at least 180 days before the proposed completion date of a transaction, to provide notice to the attorney general and the commissioner of health and comply with this subdivision.

Section	Description
---------	-------------

Para. (c) requires a health care entity to affirmatively disclose the following, 180 days before the proposed completion date of the transaction: the entities involved in the transaction, the leadership of these entities, the services provided and attributed revenue for each entity, existing and proposed primary service areas for each location, certain information about the relationships between the entities and the affected health care providers and practices, the terms of the transaction agreement, the acquisition price, markets with expected post-merger synergies, potential areas of expansion, plans to close facilities or reduce workforce, experts used to evaluate the transaction, the numbers of positions at each location before and after the transaction, and any other information requested by the attorney general or commissioner.

Para. (d) requires a health care entity to affirmative produce the following, 180 days before the proposed completion date of the transaction: current governing documents for all involved entities, the transaction agreement, any collateral agreements, expert or consultant reports or valuations, results of any projections or modeling, a financial and economic analysis prepared by an independent expert, an impact analysis prepared by an independent expert, documents related to charitable assets, copies of filings submitted to federal regulators, certifications by each board member and CEO, financial statements and tax filings, and any other information or documents requested by the attorney general or commissioner.

Para. (e) allows the commissioner to adopt rules to implement this section.

Paras. (f) and (g) allow the attorney general to extend or waive the notice and waiting period.

Para. (h) allows public listening sessions to be held.

Para. (i) allows the attorney general or commissioner to bring an action in district court to compel compliance with this subdivision.

**Subd. 3. Prohibited transactions.** Prohibits a health care entity from entering into a transaction that will substantially lessen competition or tend to create a monopoly or monopsony.

**Subd. 4. Additional requirements for nonprofit health care entities.** Requires a nonprofit health care entity, or a subsidiary of a nonprofit health care entity, to ensure the following before entering into a transaction: the transaction complies with chapter 317A (nonprofit corporations) and 501B (charitable trusts), the transaction does not constitute a breach of charitable trust, the nonprofit entity will receive full and fair value for its public benefit assets, the value of the public benefit assets has not been manipulated, the transaction proceeds will be used

Section	Description
---------	-------------

for the public benefit, the transaction will not result in a breach of fiduciary duty, and executives will not benefit from the transaction.

**Subd. 5. Attorney general enforcement and supplemental authority.** Allows the attorney general to bring an action in court to enjoin or unwind a transaction or seek other relief if a health care entity or transaction violates this section, if the transaction is contrary to the public interest, or both. Lists factors informing whether a transaction is contrary to the public interest. Allows the attorney general to enforce this section under section 8.31 (this section includes attorney general authority to investigate violations of law, seek injunctive relief, and impose civil penalties). States that a court may enjoin a transaction or provide other relief if the entities involved in the transaction do not provide information required by the attorney general or commissioner. Requires the attorney general to consult with the commissioner to determine whether a transaction is contrary to the public interest, allows sharing of data, and classifies data shared.

**Subd. 6. Supplemental authority of commissioner.** Allows the commissioner to use data submitted under this section or under other law to analyze the impact of health care transactions on health care access, market consolidation, and health care quality. Requires the commissioner to issue periodic reports on transactions subject to this section and their impacts on health care cost, quality, and competition.

**Subd. 7. Relation to other law.** Provides the powers and authority under this section are in addition to the rights, powers, and authority in other law, and provides nothing in this section suspends obligations imposed by other laws on entities involved in a transaction.

This section is effective the day following final enactment and applies to transactions completed on or after that date.

2 **Moratorium on conversion transactions.**

Amends Laws 2017, 1<sup>st</sup> spec. sess. ch. 6, art. 5, § 11, as amended. Extends the expiration of the moratorium on conversion transactions by a nonprofit service plan corporation or nonprofit health maintenance organizations to July 1, 2026. (In current law the moratorium expires July 1, 2023.) This section is effective the day following final enactment.

3 **Return of charitable assets.**

Requires a health system that includes M Health Fairview University of Minnesota Medical Center to return to the general fund any charitable assets the health system received from the state, if the health system sells or transfers control to an out-of-state nonprofit entity or to a for-profit entity. This section is effective the day

<b>Section</b>	<b>Description</b>
	following final enactment and applies to transactions completed on or after that date.
<b>4</b>	<b>Study and recommendations; nonprofit health maintenance organization conversions and other transactions.</b> Requires the commissioner of health to study and make recommendations on the regulation of conversions, mergers, transfers of assets, and other transactions affecting nonprofit and for-profit health maintenance organizations. Lists elements the recommendations must address. In conducting the study, allows the commissioner to use data the commissioner already holds from health maintenance organizations or health carriers, and to collect additional data from health maintenance organizations and related companies. Classifies data collected by the commissioner. Requires the commissioner to seek public comments on the regulation of conversion transactions. Allows the commissioner to use existing enforcement authority if a health maintenance organization fails to comply with a request for information. Requires preliminary findings to be submitted to certain members of certain legislative committees by January 15, 2024, and a final report to be submitted to the legislature by June 30, 2024.
<b>5</b>	<b>Appropriations.</b> Makes blank appropriations in fiscal years 2024 and 2025 from the general fund to the commissioner of health for the commissioner’s costs related to section 144.588.



*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](http://www.house.mn/hrd) | 651-296-6753 | 155 State Office Building | St. Paul, MN 55155