



April 17, 2023

Chair John Marty  
Senate Finance Committee  
3235 Minnesota Senate Building  
95 University Ave. W  
St. Paul, MN 55155

Dear Chair Marty and committee members:

On behalf of Minnesota Farmers Union (MFU), I write to share our organization's support for the provisions in Article 4, section 50 in Chair Wiklund's omnibus health and human services finance bill (SF2995), which will provide the Minnesota Attorney General with additional tools for reviewing and approving hospital mergers in Minnesota.

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 the language in Article 4, Section 50 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.<sup>i</sup> The amount spent on hospital care increased by over 26% between 2016 and 2020 and hospital mergers are part of the story.<sup>ii</sup> 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.<sup>iii</sup>

Rural Minnesota has been heavily impacted by this consolidation as it has one of the most highly concentrated hospital markets in the entire country.<sup>iv</sup> 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.<sup>v</sup> 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.<sup>vi</sup>

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, 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.<sup>vii</sup> 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.<sup>viii</sup> 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.<sup>ix</sup>

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.<sup>x</sup>

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. The language in Article 4, Section 50 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 from Article 4, Section 50. 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.<sup>xi</sup>

Since 1997 Rhode Island's Hospital Conversions Act has provided the Attorney General and Department of Health strong authority to block hospital mergers that are not in the public interest of the state's residents.<sup>xii</sup> This law has allowed Rhode Island to protect competition. The state has one of the most competitive hospital markets in the country.

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, which can leave enforcers pleading with CEOs to turn over information before a merger is finalized.

The language in this omnibus bill 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, these hospital merger provisions 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.

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](mailto: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

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

<sup>ii</sup> Ibid.

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

<sup>iv</sup> <https://sourceonhealthcare.org/market-consolidation/>

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

<sup>vi</sup> <https://www.ahip.org/news/articles/hospital-acquisition-of-physician-practices-drives-up-cost>

<sup>vii</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4037747](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4037747)

<sup>viii</sup> <https://doi.org/10.1377/hlthaff.2022.00337>

<sup>ix</sup> <https://doi.org/10.1111/1756-2171.12186>

<sup>x</sup> [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)

<sup>xi</sup> <https://sourceonhealthcare.org/market-consolidation/>

<sup>xii</sup> <http://webserver.rilin.state.ri.us/Statutes/title23/23-17.14/index.htm>