HEALTHCARE AT A CROSSROADS:

An Examination of the Proposed Fairview-Sanford Merger

MNA
Minnesota Nurses Association
An Affiliate of National Nurses United

Executive Summary

Minnesotans are increasingly at the whims of large health conglomerates pushing corporate healthcare policies throughout the state. Executives' profit-first approach has slashed staffing levels, closed hospitals and clinics, and put growth above all else. These policies are not driven by a concern for patient care, but with a focus on the bottom line, corporate growth, and lining the pockets of CEOs and other healthcare executives.

This past November, executives at Sanford Health and Fairview Health Services proposed a $11.7 billion merger, which would create a health system that would span ten states and nine countries. While CEOs Bill Gassen and James Hereford have treated their negotiations as a private business matter, the proposed merger has dire implications for the public. Fairview's wealth was created in large part by taxpayers, charitable giving, and the close partnership with the University of Minnesota. But executives have hammered out the details behind closed doors, presenting the deal to regulators, employees, and community members as a fait accompli, instead of giving this merger the public and deliberate consideration it requires.

Our report details the potential consequences of this merger, and why Minnesotans deserve better. While concerns regarding this proposed merger are extensive and explored in detail below, the most pressing regarding the further concentration of healthcare pertains to the fate of workers, patients, and the public interest in Minnesota.

In our review of the impact consolidation has on the workforce, we find that top-down healthcare mergers may exacerbate healthcare workers' exodus from the bedside. Presently, over half of registered nurses are considering leaving the profession – research and surveys show that the restructuring of health systems is associated with decreased job satisfaction and increased burnout, especially emotional exhaustion.

We examine the current academic literature on mergers, and their impact on healthcare costs and quality. We find that research shows "cross-market" mergers – increasingly relevant and difficult to regulate – lead to higher prices for healthcare by as much as 17 percent. Meanwhile, claims that mergers can and will improve the quality of healthcare are not substantiated.

Our analysis of Sanford's previous attempts to grow reveal that their allegiance is not to any one geographic market or community. At least one of Sanford's recent attempts at acquisition earned the attention of the Federal Trade Commission (FTC) over antitrust and anti-competitive concerns.

We evaluate the impact previous mergers and acquisitions had at Fairview and Sanford, finding that closures often followed. Fairview CEO James Hereford instituted major cuts at legacy HealthEast facilities almost immediately after acquiring them, ultimately closing Bethesda and St. Joseph's hospitals during a global pandemic. Surveyed nurses at facilities acquired by Sanford reported drastic reductions in services and specialties, and the elimination of entire service lines. Especially concerning for both systems is the pattern of reducing and outright eliminating areas of mental health within systems when they are most needed in our communities.

Closures to desperately needed service lines came at the same time executive compensation skyrocketed. Since arriving at Fairview in 2017, CEO James Hereford has received more than a 100 percent increase in his total compensation. Over in Sioux Falls, Sanford paid out a $49.5 million golden

parachute to their former CEO after he spread medical misinformation to employees of the massive health system. Meanwhile both Sanford and Fairview rank poorly on the Lown Institute's data-driven evaluation of charity care and community benefit spending. These values are not shared by patients and Minnesotans.

We share concerns expressed by leaders and physicians at the University of Minnesota, who have questioned the impact a merger with Sanford would have on the land grant mission as well as taxpayer-funded research coming under the influence of an out-of-state entity. While Minnesota hospital executives are already driving a profit-focused approach to healthcare, Sanford Health's namesake, T. Denny Sanford, stands apart. Having amassed billions through subprime lending, most notably in the form of high-interest credit cards, Minnesotans need to carefully consider the role Denny Sanford would have in determining the future of our healthcare system.

Given these two systems' track records, we examine the implications a merger could have, especially where it may involve further cuts and closures to facilities and service lines. A merger between these two systems would create one of the largest healthcare providers in the Upper Midwest and could dramatically change the lives of patients, healthcare workers, and their communities.

As of this report, Fairview and Sanford executives have done little to explain the rationale for this merger, to describe how exactly it would benefit patients and communities, or to address concerns raised across the state. Minnesota workers and patients are uniting to fight against the growing influence of corporate healthcare chains, including a merger that would give authority over Minnesota hospitals to executives in Sioux Falls, who are less accountable to our communities. We urge the Attorney General and elected officials to continue to act in the interest of patients, workers, and their communities and to prevent the further entrenchment of corporate healthcare in our state.

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Introduction

For decades, executives have been pushing corporate policies in hospitals across the nation, including here in Minnesota. These policies include understaffing nurses to cut costs, closing "underperforming" hospitals and clinics, and pursuing massive mergers and acquisitions. These policies are not driven by a concern for patient care at the bedside, but with a focus on corporate growth, excess revenues, and millions of dollars in the pockets of hospital CEOs.

Now, during an era of rising healthcare costs, a global pandemic, and a mass exodus of healthcare workers from the bedside, Fairview and Sanford CEOs James Hereford and Bill Gassen are trying to ram through another corporate mega-merger in our healthcare system. Nurses and patients recognize the tragic consequences of these disastrous policies, which is why they rejected the same proposed merger less than ten years ago.

Just as it would have in 2013, a merger between Fairview Health Services and Sanford Health will put corporate profits and CEO compensation ahead of community care by increasing the market power and coffers of Sanford Health. Despite having fewer choices of providers, Minnesotans may end up paying more for services as a result of the merger. Rural patients may hurt the most, forced to travel farther if services are reduced, cut, or hospitals are entirely shuttered, which has happened all too often in the aftermath of corporate mergers.[1] Healthcare workers will be put at a disadvantage too. Thousands will suddenly be employed by Sanford Health, an employer whose priorities became apparent when it paid out its disgraced former CEO a golden parachute of $49.5 million.[2]

At a time of increased scrutiny of corporate mergers in healthcare and other industries, Minnesotans have a second opportunity to protect their healthcare from executives who do little more than pay lip service to community healthcare. Our hospitals need to be controlled locally by patients, workers, and their communities, not by a handful of wealthy healthcare executives out of state.

A Merger Will Push More Healthcare Workers from the Bedside

At a time when over half of nurses are considering leaving the profession,[3] health systems desperately need to improve staffing levels, guarantee workers a voice on the job, and address the moral distress from successive waves of COVID-19, influenzas, and other illnesses such as RSV. Rather than focus resources on attracting and retaining experienced healthcare professionals, a corporate merger may exacerbate these exits. Researchers have found that restructuring is associated with decreased job satisfaction and increased burnout, especially emotional exhaustion.[4] This is not limited to nurses – a survey of 799 physicians by athenahealth revealed that those who went through mergers and

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[1] Carmen Comsti, "Request for Information on Merger Enforcement (Docket No. FTC-2022- 0003)," April 21, 2022, https://www.regulations.gov/comment/FTC-2022-0003-1831.

[2] Jeremy Fugleberg, "Ex-Sanford Health CEO Got $49.5M Payout after Departure Following Unscientific Remarks about COVID-19," *Pioneer Press*, November 16, 2021, https://www.twincities.com/2021/11/16/ex-sanford-health-ceo-got-49-5m-payout-after-departure-following-unscientific-remarks-about-covid-19/.

[3] Grace Dunn et al., "Registered Nursing in Crisis" (Illinois Economic Policy Institute and Project for Middle Class Renewal (PMCR) at the University of Illinois at Urbana-Champaign, June 23, 2022), https://illinoisepi.files.wordpress.com/2022/06/pmcr-ilepi-registered-nurses-in-crisis-final.pdf.

[4] Bonnie M. Jennings, "Restructuring and Mergers," in *Patient Safety and Quality: An Evidence-Based Handbook for Nurses*, ed. Ronda G. Hughes, Advances in Patient Safety (Rockville (MD): Agency for Healthcare Research and Quality (US), 2008), http://www.ncbi.nlm.nih.gov/books/NBK2675/.

acquisitions were more likely to experience burnout and less likely to recommend their organization to friends or family members.[5]

A top-down merger may create uncertainty in the minds of many nurses, especially at Fairview, which is largely seen as the junior partner in the deal. Nurses at Fairview and HealthEast facilities have had to contend with considerable upheaval in the past two decades. More senior nurses may remember when they or their counterparts at the University of Minnesota Medical Center – East Bank lost their union after the teaching hospital was sold to Fairview, who refused to recognize existing union contracts.[6] Nurses at HealthEast were thrust into a period of uncertainty following Fairview's 2017 acquisition.[7] Three years in – and during a global pandemic – Fairview CEO Hereford shut down Bethesda[8] and St. Joseph's[9] hospitals. Sanford nurses in Minnesota have also seen major changes at their facilities, many of which were previously publicly owned.[10]

Healthcare Mergers Result in Higher Prices, Not Better Care

While healthcare executives often tout the efficiencies they plan to achieve, they refuse to address the evidence that corporate mergers lead to higher prices for patients.

While there is a long body of research on the price increases from hospital mergers in general, recent scholarship has focused on a subset of "cross-market" mergers. Unlike traditional mergers, cross-market mergers involve entities that either 1) do not directly compete in the same local market, but sell the same, similar, or complementary services to a common customer or customers or 2) offer different

[5] Jill McKeon, "Healthcare Mergers and Acquisitions Linked to Physician Burnout," *RevCycleIntelligence*, July 8, 2021, https://revcycleintelligence.com/news/healthcare-mergers-and-acquisitions-linked-to-physician-burnout.
[6] Lisa Scott, "Can Marriage of Academic, Community Hospitals Work?," *Modern Healthcare*, March 17, 1997, https://www.modernhealthcare.com/article/19970317/NEWS/703170305/can-marriage-of-academic-community-hospitals-work.
[7] Mark Zdechlik, "Fairview Rescues Struggling HealthEast in Merger," *MPR News*, March 8, 2017, https://www.mprnews.org/story/2017/03/08/fairview-healtheast-merger.
[8] Jeremy Olson, "Fairview Cuts Include Bethesda, St. Joseph's Hospitals; 900 Jobs to Be Lost," *Star Tribune*, October 6, 2020, https://www.startribune.com/fairview-cuts-will-include-two-hospitals-affect-900-jobs/572641022/.
[9] Frederick Melo, "St. Joseph's Hospital Signage Comes Down, Fairview's Center for Community Health Equity Launches," *Pioneer Press*, June 23, 2022, https://www.twincities.com/2022/06/23/st-josephs-hospital-signage-comes-down-fairview-center-for-community-health-and-equity/.
[10] Beth Rickers, "A Pair of Thumbs Up," *Worthington Globe*, November 30, 2007, sec. News, https://www.dglobe.com/news/a-pair-of-thumbs-up; Sanford Health, "Worthington Regional Hospital Enters Ownership Agreement," Sanford Health, January 8, 2008, https://news.sanfordhealth.org/news/worthington-regional-hospital-enters-into-ownership-agreement-with-sanford-health/; Kari Lucin, "Sanford's Jackson Purchase Unopposed," *Daily Globe*, August 18, 2009, https://www.dglobe.com/news/sanfords-jackson-purchase-unopposed; Maura Lerner and Warren Wolfe, "Feud Reveals Troubles of a Country Hospital," *Star Tribune*, January 10, 2010, https://www.startribune.com/feud-reveals-troubles-of-a-country-hospital/81074432/; Anne Williams, "A New Prescription; Clearwater Health Services to Partner with Sanford Health," *Bemidji Pioneer*, March 30, 2011, sec. News, https://www.bemidjipioneer.com/news/a-new-prescription-clearwater-health-services-to-partner-with-sanford-health; Associated Press, "Sanford Buys Medical Center from Minnesota City of Tracy," *The Washington Times*, March 31, 2016, sec. News, https://www.washingtontimes.com/news/2016/mar/31/sanford-buys-medical-center-from-minnesota-city-of/.

services, either in the same or different markets (e.g., a merger of cardiologists and pathologists in a single physician practice).[11]

These types of mergers have become increasingly relevant in recent years. By one measure, over half of hospital mergers and acquisitions in the U.S. between 2009 and 2019 crossed geographic market boundaries, and by 2019, nearly 60 percent of hospital systems were cross-market systems.[12] We have several cross-market systems operating in our state, including Fairview and HealthPartners. Some, such as Catholic Health Initiative (CHI), Essentia, and Mayo Clinic operate across state borders.

Three main studies provide strong empirical evidence that cross-market mergers result in higher prices and that hospitals belonging to cross-market systems have higher prices:[13]

- Using data from 2000-2010, economists Matthew Lewis and Kevin Pflum found that **hospitals acquired by out-of-market systems increased prices by about 17 percent more than unacquired, stand-alone hospitals.** Additionally, they found that out-of-market mergers resulted in a relaxing of competition, where prices at nearby rival hospitals increased around 8 percent in response to price increases by acquired hospitals.[14]
- Using data on hospital mergers from 1996–2012, economists Leemore Dafny, Kate Ho and Robin S. Lee found that **hospitals involved in cross-market mergers had relative price increases of 7 to 10 percent** if the acquisition was in-state. This is notable in that the authors removed "crown jewel" hospitals from their sample and focused on what they referred to as "bystander" hospitals. In doing so, they also found that acquirers raised their own prices, suggesting that such price increases were not the result of significant quality improvements.[15]
- A third study by economist Matt Schmitt found that the increase in multimarket contact (when health systems compete in multiple markets) among hospitals between 2000-2010 was associated with higher prices.[16]

The reason mergers result in higher prices, academics explain, is that they often alter the bargaining relationship between the hospital and the insurer.[17] Economists have identified five main ways in which cross-market mergers can lead to price increases:

1. **Common Customers** – Households may, for example, value hospitals that specialize in cardiac services as well as hospitals that specialize in pediatric services, creating linkages between product markets. This could result in a situation where having access to both services provides

[11] Jaime S. King et al., "Antitrust's Healthcare Conundrum: Cross-Market Mergers and the Rise of System Power," *Hastings Law Journal*, Forthcoming May 2023, https://doi.org/10.2139/ssrn.4037747.
[12] Brent D. Fulton et al., "The Rise of Cross-Market Hospital Systems and Their Market Power in the US," *Health Affairs* 41, no. 11 (November 2022): 1652–60, https://doi.org/10.1377/hlthaff.2022.00337.
[13] King et al., "Antitrust's Healthcare Conundrum."
[14] Matthew S. Lewis and Kevin E. Pflum, "Hospital Systems and Bargaining Power: Evidence from Out-of-Market Acquisitions," *The RAND Journal of Economics* 48, no. 3 (2017): 579–610, https://doi.org/10.1111/1756-2171.12186.
[15] Leemore Dafny, Kate Ho, and Robin S. Lee, "The Price Effects of Cross-Market Mergers: Theory and Evidence from the Hospital Industry," *The RAND Journal of Economics* 50, no. 2 (2019): 286–325, https://doi.org/10.1111/1756-2171.12270.
[16] Matt Schmitt, "Multimarket Contact in the Hospital Industry," *American Economic Journal: Economic Policy* 10, no. 3 (August 1, 2018): 361–87, https://doi.org/10.1257/pol.20170001.
[17] King et al., "Antitrust's Healthcare Conundrum."

greater value than the sum of the individual values of both services. Similarly, employers needing to provide health insurance to their employees across Minnesota could give a hospital system operating in multiple markets leverage when negotiating with an insurer.

2. **Tying** – Hospitals that can link coverage of one facility to coverage of another have tremendous bargaining power with insurers. In a particularly egregious case, Sutter Health in California was sued by the California Attorney General for using its market power to insist on all-or-nothing coverage of its providers and engaging in punitive measures for insurers that did not want to play ball, practices that allegedly led to higher prices for consumers.[18]
3. **Change in Control** – This is the theory that the acquisition of a hospital by a larger system may improve a hospital's bargaining power with insurers by improving negotiations skills, increasing access to information, and changing the relationship between the hospital and the community it serves (though this may be more acute when a nonprofit is acquired by a for-profit).
4. **Hospital Quality Improvements** – By excluding the target hospital from their analysis, Dafny, Ho, and Lee ruled out this mechanism as a reason for their findings. However, an acquiring hospital could theoretically bring improvements to the quality of a hospital they acquire. King et al. theorize that this effect is likely stronger when an individual hospital is acquired, rather than an entire system.
5. **Multimarket Contact** – Given that hospital systems increasingly compete across multiple markets, this is the theory that hospital executives may decide to collude with one another and not compete as much on price as if they were just competing in a single market.

Increased concern about anticompetitive behavior and increasing prices have led California's Attorney General to intervene in multiple high-profile mergers. Following an economic expert's finding that an affiliation between Cedars-Sinai Health System and Huntington Memorial Hospital would result in price increases at one or more hospitals despite their limited patient overlap, Attorney General Xavier Becerra conditionally approved the merger, but imposed conditions including a ten-year prohibition on tying and all-or-nothing contracts, punitive pricing practices, and a five-year price cap.[19]

Moreover, mergers may not bring the quality improvements promised by executives. One 2020 research study published in the *New England Journal of Medicine* found that acquisition was associated with modest declines in patient experiences and no significant changes in 30-day readmission or mortality rates.[20] The study's findings provided no evidence of quality improvement attributable to changes in ownership, and supported previous studies' findings that "increased concentration of the hospital market has been associated with worsening patient experiences."[21] Further, these declines in patient-experience performance were not a continuation of preexisting trends within hospitals and healthcare systems, but rather the outcome of decreased market competition following mergers and consolidation.

Another 2020 study in the journal *Risk Management and Healthcare Policy* found that market competition has direct effects on hospital staffing levels, with increased competition being associated

[18] People of California ex rel Xavier Becerra v. Sutter Health, CGC 18-565398 (Cal. Super. Ct. 2019), https://oag.ca.gov/system/files/attachments/press_releases/Sutter%20Complaint.pdf.
[19] King et al., "Antitrust's Healthcare Conundrum."
[20] Nancy D. Beaulieu et al., "Changes in Quality of Care after Hospital Mergers and Acquisitions," *New England Journal of Medicine* 382, no. 1 (January 2, 2020): 51–59, https://doi.org/10.1056/NEJMsa1901383.
[21] Ibid.

with increased staffing levels of RNs and LPNs.[22] Physician services are also negatively impacted by market concentration and merger activity, as found in a 2018 study published in *Health Services Research*.[23] The study found that an increase in consolidation leads to a statistically and economically significant increase in negative health outcomes.

Fairview and Sanford's Record Should Concern, Not Inspire Minnesotans

Sanford's Volatility and Fixation on Growth

In recent years, Sanford has pursued a growth-at-all-cost strategy that ultimately failed to see the system extend beyond its historic service area centered in the Dakotas and Minnesota. This merger-mania may be driven in part by investment banker Jim Cain, a Sanford trustee since 2015[24] whose day job includes underwriting the health system's bonds[25] and advising hospitals involved in mergers and acquisitions.[26] Cain's vision for a more expansive health system was highlighted by former CEO Krabbenhoft who said the board member helped him think through Sanford's 25-year vision.[27]

In 2016, Sanford executives announced their intention to acquire Bismarck-based Mid Dakota Clinic, which had traditionally partnered with rival CHI.[28] Shortly after, the Federal Trade Commission (FTC) intervened, alleging that the merger would significantly reduce competition and violate antitrust regulation. After two years in court, in which the FTC argued that the proposed deal would grant Sanford at least a 75 to 85 percent share of the market for adult primary care physician services, pediatric services, and obstetrics and gynecology services, Sanford abandoned the deal.[29]

At around the same time the Mid Dakota Clinic acquisition was officially declared dead in 2019, Sanford announced merger discussions with Des Moines-based UnityPoint Health, which operated in Iowa,

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[22] Dong Yeong Shin, Robert Weech-Maldonado, and Jongwha Chang, "The Impact of Market Conditions on RN Staffing in Hospitals: Using Resource Dependence Theory and Information Uncertainty Perspective," *Risk Management and Healthcare Policy* 13 (October 13, 2020): 2103–14, https://doi.org/10.2147/RMHP.S274529.

[23] Thomas Koch, Brett Wendling, and Nathan E. Wilson, "Physician Market Structure, Patient Outcomes, and Spending: An Examination of Medicare Beneficiaries," *Health Services Research* 53, no. 5 (2018): 3549–68, https://doi.org/10.1111/1475-6773.12825.

[24] Sanford Health, "Investment Banker Helps Steward Sanford Health's Resources," Sanford Health, July 22, 2022, https://news.sanfordhealth.org/health-care-leadership/investment-banker-helps-steward-sanford-healths-resources/.

[25] South Dakota Health and Educational Facilities Authority, "Official Statement," November 18, 2021, https://emma.msrb.org/P21518739-P21174498-P21590720.pdf.

[26] KeyCorp, "Healthcare Investment Banking Expertise: Jim Cain," Key.com, n.d., https://www.key.com/businesses-institutions/find-an-expert/jim-cain.html.

[27] Kelby Krabbenhoft, Q&A: Sanford Health CEO Krabbenhoft discusses growth, acquisition of Good Samaritan, interview by Matthew Weinstock, *Modern Healthcare*, January 19, 2019, https://www.modernhealthcare.com/article/20190119/NEWS/190119935/q-a-sanford-health-ceo-krabbenhoft-discusses-growth-acquisition-of-good-samaritan.

[28] Patrick Springer, "Sanford, Mid Dakota Clinic Step Closer to Merger in Bismarck," *Dickinson Press*, June 21, 2017, sec. News, https://www.thedickinsonpress.com/news/sanford-mid-dakota-clinic-step-closer-to-merger-in-bismarck.

[29] Federal Trade Commission, "After Healthcare System Sanford Health Abandons Acquisition of North Dakota Healthcare Provider Mid Dakota Clinic, FTC Dismisses Case from Administrative Trial Process," *Federal Trade Commission*, July 9, 2019, https://www.ftc.gov/news-events/news/press-releases/2019/07/after-healthcare-system-sanford-health-abandons-acquisition-north-dakota-healthcare-provider-mid.

Illinois, and Wisconsin.[30] Plans were quickly squashed by the UnityPoint board,[31] leading some to question whether a difference in culture was to blame.[32] Talks may have also been influenced by Sanford's $20.25 million settlement with the federal government to resolve allegations that a Sanford neurosurgeon received kickbacks for using implantable devices distributed by his company in medically unnecessary procedures.[33]

In 2020, Sanford announced its intention to merge with Intermountain, to leave its long-established headquarters in Sioux Falls, and cede decision making authority to a CEO in Salt Lake City, Utah.[34] While the organizations cited their similarities,[35] they were dissimilar in terms of geographies and culture; Intermountain was founded by The Church of Jesus Christ of Latter-day Saints while Sanford traces its origins back to Lutherans.[36] Talks were ultimately abandoned in the aftermath of long-time Sanford CEO Kelby Krabbenhoft stepping down after spreading medical misinformation about COVID-19.[37]

Sanford's goal in seeking mergers and acquisitions appears to be to grow its geographic footprint. When Sanford was in talks with senior-care operator Evangelical Lutheran Good Samaritan Society in 2018 (the only merger that came to fruition in the past few years), Sanford executives framed the merger in opportunistic terms, with a spokesperson boasting, "[a]s a function of the momentum created with our new relationship with the Evangelical Lutheran Good Samaritan Society, we are in discussions with

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[30] Christopher Snowbeck, "Sanford Health Seeks Iowa Merger to Create $11 Billion Health System," *Star Tribune*, July 9, 2019, https://www.startribune.com/sanford-health-seeks-iowa-merger-to-create-11-billion-health-system/512439812/.

[31] Michael Geheren and Angela Kennecke, "Email Shows What Led to Sanford Health, UnityPoint Merger Talks Breaking Down," *KELOLAND.com*, November 12, 2019, https://www.keloland.com/news/your-money-matters/sanford-health-unitypoint-end-plans-for-merger/.

[32] Michaela Ramm, "Culture Clash Could Be to Blame for UnityPoint, Sanford Health Merger Halt," *The Gazette*, November 25, 2019, https://www.thegazette.com/health-care-medicine/culture-clash-could-be-to-blame-for-unitypoint-sanford-health-merger-halt/.

[33] Alex Kacik, "Sanford Health to Pay $20M to Settle False Claims Act Allegations," *Modern Healthcare*, October 28, 2019, https://www.modernhealthcare.com/legal/sanford-health-pay-20m-settle-false-claims-act-allegations.

[34] Joe Carlson, "Rural Minnesota Provider Sanford Health Merging with System Based in Salt Lake City," *Star Tribune*, October 26, 2020, https://www.startribune.com/rural-minnesota-provider-sanford-health-merging-with-system-based-in-salt-lake-city/572878081/; Tina Reed, "One of the Big Reasons for Intermountain Healthcare, Sanford Health Merger: Their Insurance Plans," *Fierce Healthcare*, October 26, 2020, sec. Finance, https://www.fiercehealthcare.com/hospitals/sanford-health-plans-to-merge-intermountain-healthcare.

[35] Ibid.

[36] Tina Reed, "One of the Big Reasons for Intermountain Healthcare, Sanford Health Merger: Their Insurance Plans," *Fierce Healthcare*, October 26, 2020, sec. Finance, https://www.fiercehealthcare.com/hospitals/sanford-health-plans-to-merge-intermountain-healthcare.

[37] Tina Reed, "Sanford Health, Intermountain Healthcare Merger Discussions Halted," *Fierce Healthcare*, December 7, 2020, https://www.fiercehealthcare.com/hospitals/sanford-health-intermountain-healthcare-merger-discussions-halted; Fugleberg, "Ex-Sanford Health CEO Got $49.5M Payout after Departure Following Unscientific Remarks about COVID-19."

various entities in the Greater Chicago area."[38] Sanford's "aggressive" growth strategy[39] reveals that its presumed focus on rural health and legacy in the Dakotas is always subject to change.

Fairview and Sanford Prioritize Executive Compensation over Community

Recent investigative reporting from journalists at *The New York Times* has exposed how many of the nation's top nonprofits have become "virtually indistinguishable" from for-profit companies.[40] In exchange for receiving enormous tax exemptions, hospitals are required to provide benefits, including free care for the poor, to the communities they serve. Yet, executives at hospital systems have adopted a profits-first approach, including profiting from a staffing crisis[41] that puts patients and healthcare workers at risk and aggressively pursuing bills from indigent patients entitled to free care.[42]

These articles have exposed to the public what many healthcare workers and academics have known for years: that the term "nonprofit" is a misnomer – hospital systems often earn windfall profits, which they spend on executive compensation and shiny infrastructure, investing little in the communities they purport to serve.

Fairview and Sanford are no different. Their executives pick from the same playbook as their counterparts across the country. Last year, the independent, nonprofit Lown Institute listed Fairview as having one of the largest "fair share deficits" of any hospital system in the country, receiving $253 million more in tax breaks than it spent on charity care and community investment.[43] Their findings demonstrate the misplaced priorities of company executives when it comes to their own employees and the communities they claim to serve.

Sanford did not perform much better. Despite making over $367.6 million in operating income in 2021, Sanford executives invested less than 2 percent of their expenses in charity care, a key component of community benefit spending which reflects the dollar value of services provided for which payment was never expected and for which the patient is not pursued. This means that Sanford spends less than for-profits, on average, who do not have the same obligations to provide charity care or other community benefits.[44]

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[38] Christopher Snowbeck, "Sanford Health Continues to Expand Its Reach beyond South Dakota," *Star Tribune*, July 5, 2018, https://www.startribune.com/sanford-health-growing-beyond-the-dakotas/487445181/.

[39] Patrick Anderson, "Growing Pains: Sanford's Aggressive Growth beyond Sioux Falls Not Always an Easy Path," *Argus Leader*, June 28, 2018, https://www.argusleader.com/story/news/business-journal/2018/06/28/sanford-health-aggressive-growth-strategy-beyond-sioux-falls/738536002/.

[40] Jessica Silver-Greenberg and Katie Thomas, "They Were Entitled to Free Care. Hospitals Hounded Them to Pay," *The New York Times*, September 24, 2022, sec. Business, https://www.nytimes.com/2022/09/24/business/nonprofit-hospitals-poor-patients.html.

[41] Rebecca Robbins, Katie Thomas, and Jessica Silver-Greenberg, "How a Sprawling Hospital Chain Ignited Its Own Staffing Crisis," *The New York Times*, December 15, 2022, sec. Business, https://www.nytimes.com/2022/12/15/business/hospital-staffing-ascension.html.

[42] Silver-Greenberg and Thomas, "They Were Entitled to Free Care. Hospitals Hounded Them to Pay."

[43] Lown Institute, "Are Hospitals Earning Their Tax Breaks?," Lown Institute Hospital Index, n.d., https://lownhospitalsindex.org/2022-fair-share-spending/.

[44] Ge Bai et al., "Analysis Suggests Government and Nonprofit Hospitals' Charity Care Is Not Aligned With Their Favorable Tax Treatment," *Health Affairs* 40, no. 4 (April 1, 2021): 629–36, https://doi.org/10.1377/hlthaff.2020.01627.

Lown Institute Rankings		
Category	**Fairview**	**Sanford**
Community Benefit *Measures the extent of hospital investment in community health*	B	C
Charity care spending *Measures spending on charity care as a share of total expenses*	★☆☆☆☆	★★☆☆☆
Other community benefit spending *Measures other community benefit spending as share of total expenses*	★☆☆☆☆	★★☆☆☆

While Sanford and Fairview executives have touted their "lean" approach,[45] there's nothing lean about the executive compensation at these two hospital systems. Since arriving at Fairview in 2017, CEO James Hereford has received more than a 100 percent increase in his total compensation.[46] Earning close to $2.8 million,[47] he earns more than 32 times the salary of the average nurse in the Twin Cities.[48] During the global pandemic, and a time where healthcare has become more expensive, Hereford chose to reward board members and executives rather than reinvest into patient care. While most nonprofits do not compensate their board members,[49] M Health Fairview does. Board members were compensated in 2020[50] and 2021,[51] even after Hereford told frontline workers that they had "given up their board

[45] James Hereford, From Basketball Coach to CEO of a $5.5B Health System: Where James Hereford is Taking Fairview Next, interview by Eric Larsen, *Advisory Board*, October 4, 2017, https://www.advisory.com/Blog/2017/10/Hereford-interview; Jodi Schwan, "Health Systems Learn to Be Lean," *Argus Leader*, May 6, 2014, https://www.argusleader.com/story/news/business-journal/2014/05/07/health-systems-learn-lean/8781179/.

[46] Fairview Health Services, Return of Organization Exempt from Income Tax for the 2017 Calendar Year (filed November 6, 2018), https://projects.propublica.org/nonprofits/organizations/410991680/201833109349300023/full; Fairview Health Services, Return of Organization Exempt from Income Tax for the 2021 Calendar Year (filed October 26, 2022).

[47] Fairview Health Services, Return of Organization Exempt from Income Tax for the 2021 Calendar Year (filed October 26, 2022).

[48] U.S. Bureau of Labor Statistics, May 2021 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, https://www.bls.gov/oes/2021/may/oes_33460.htm.

[49] Economic Research Institute, "Nonprofit Board Members – To Pay or Not to Pay in 2018?" Economic Research Institute (blog), May 8, 2018, https://www.erieri.com/blog/post/nonprofit-board-members-to-pay-or-not-to-pay-in-2018.

[50] Fairview Health Services, Return of Organization Exempt from Income Tax for the 2020 Calendar Year (filed November 1, 2021).

[51] Fairview Health Services, Return of Organization Exempt from Income Tax for the 2021 Calendar Year (filed October 26, 2022).

compensation for the year."[52] This reversal is especially disturbing as it came the same year that Hereford and other executives eliminated 900 jobs.[53]

Over in Sioux Falls, Sanford recently paid out a $49.5 million golden parachute to their former CEO after he spread medical disinformation to employees of the massive health system.[54]

Sanford's Ties to T. Denny Sanford

The origins of what is now Sanford Health reach back to 1893, when residents of Sioux Falls, South Dakota initiated the establishment of a new hospital. This new hospital opened in 1894 as The Seney House, the beginning of what would grow and expand throughout the 20th century into the Sioux Valley Hospitals and Health System.[55] The Sioux Valley Health System was relabeled in 2007, following a $400 million donation to the health system by its namesake Thomas Denny Sanford.[56] T. Denny Sanford was already a known and significant benefactor to the health system, having donated $16 million three years prior to the gift that attached his name to the health system.[57]

Denny Sanford was capable of such largesse due to the billions he amassed as founder and owner of First Premier Bank, an institution that specializes in subprime credit cards.[58] The Federal Deposit Insurance Corporation defines subprime lending as "programs that target borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies."[59] Individuals with low credit ratings are targeted for "last ditch" credit lines such as those offered by Sanford's First Premier Bank as they often face extremely limited options. These types of loans typically involve substantially higher interest rates and significantly less favorable agreement terms for borrowers compared to other lending practices. Consumer advocate groups liken subprime credit cards to predatory payday loans, with a lawyer from the National Consumer Law Center characterizing Denny Sanford's practice as "gouging" vulnerable, low-income consumers.[60]

T. Denny Sanford's First Premier Bank didn't simply dabble in subprime lending practices – they are seen as one of the pioneers of subprime credit cards, with Denny Sanford himself boasting "[w]e were the

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[52] James Hereford to Fairview Employees, "COVID-19 Update: Tackling Unprecedented Challenges," April 27, 2020.
[53] Olson, "Fairview Cuts Include Bethesda, St. Joseph's Hospitals; 900 Jobs to Be Lost."
[54] Fugleberg, "Ex-Sanford Health CEO Got $49.5M Payout after Departure Following Unscientific Remarks about COVID-19."
[55] Sanford Health, "Sanford Health Timeline: Rented House to Regional Network," *Sanford Health*, July 22, 2019, https://news.sanfordhealth.org/company/sanford-health-history-timeline/.
[56] Lindsay Hamilton, "Man Gives Away $400 Million to Hospitals," *ABC News*, February 3, 2007, https://abcnews.go.com/Business/story?id=2847653/.
[57] Sanford Health, "Sanford Health Unifies Health System with New Name Mission Vision Values and Wordmark," *Sanford Health*, July 20, 2010, https://news.sanfordhealth.org/news/sanford-health-unifies-health-system-with-new-name-mission-vision-values-and-wordmark/#:~:text=The%20South%20Dakota%20businessman%20and,transformational%20nature%20of%20his%20gift.
[58] Stu Whitney, "Denny Sanford Lifted Hospital to New Heights, but Distancing Has Now Begun," *Argus Leader*, September 6, 2020, https://www.argusleader.com/story/opinion/2020/09/02/t-denny-sanford-health-system-child-pornography-investigation/5691700002/.
[59] Federal Deposit Insurance Corporation, "FDIC Joint Release – Banking Agencies Issue Guidance on Supervision of Subprime Lending," *FDIC Archive*, January 31, 2001, https://archive.fdic.gov/view/fdic/1952.
[60] Jennifer Bjorhus, "Subprime Credit Business Fueled Sanford's Wealth," *Star Tribune*, April 5, 2013, https://www.startribune.com/subprime-credit-business-fueled-sanford-s-wealth/201714261/?refresh=true.

first, in the unsecured [credit cards].[61] Sanford founded First Premier Bank (parent United National Corporation) in the state of South Dakota, six years after the state repealed its usury laws, eliminating the cap on interest rates and fees and thus paving the way for lenders like Denny Sanford to borrow money with a much higher return for the bank.[62] At one point in First Premier's lending history, they charged some customers a 79.9 percent interest rate.[63]

These practices have garnered attention from more than consumer advocates, including then Attorney General of New York Andrew Cuomo. In 2007, the same year Sioux Valley Health System rebranded after receiving a donation from Denny Sanford, First Premier Bank reached a $4.5 million settlement over accusations the bank was using deceptive and illegal marketing tactics for their credit cards.[64] The Attorney General's investigation found that consumers were offered cards with $2,000 limits, a 9.9 percent fixed interest rate, and no processing fees; First Premier would then instead provide these consumers with a $250-$300 credit line, interest rates that could double without notice, upfront processing fees of nearly $200, and subsequent hidden costs.[65]

Previous Cuts to Services

Fairview has significant experience making cuts to care. In 2017, Fairview acquired HealthEast,[66] a system whose hospitals have long served low-income communities and communities of color in the East Metro.[67] Since buying out these hospitals, Hereford has slowly chipped away at the community service model under the guise of a "bold new vision."[68] Hereford has closed Bethesda[69] and St. Joseph's[70] hospitals less than a year after writing an op-ed in the *Pioneer Press* about an "affordability crisis" in healthcare.[71] Under his leadership, Hereford has also helped bring out-of-state for-profit healthcare

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[61] Ibid.
[62] *Chapter 54-3 Interest and Usury*, South Dakota Legislature, https://sdlegislature.gov/Statutes/Codified_Laws/2072181.
[63] Bjorhus, "Subprime Credit Business Fueled Sanford's Wealth."
[64] Associated Press, "First Premier Bank to Pay Penalty," *The New York Times*, August 16, 2007, https://www.nytimes.com/2007/08/16/business/16bank.html.
[65] Ibid.
[66] Zdechlik, "Fairview Rescues Struggling HealthEast in Merger."
[67] Fairview Health Services, "2021 Community Health Needs Assessment Report: Bethesda Hospital," n.d., https://stcr-prd-cd.fairview.org/-/media/Files/Local-Health-Needs/Read-full-reports/2021-CHNA-Report-Bethesda-Hospital2125.pdf?_ga=2.266109903.1124601112.1663949233-1817923240.1650646946; Fairview Health Services, "2021 Community Health Needs Assessment Report: St. John's Hospital," n.d., https://stcr-prd-cd.fairview.org/-/media/Files/Local-Health-Needs/Read-full-reports/2021-CHNA-Report-St-Johns-Hospital2125.pdf?_ga=2.199544430.1124601112.1663949233-1817923240.1650646946; Fairview Health Services, "2021 Community Health Needs Assessment Report: St. Joseph's Hospital," n.d., https://stcr-prd-cd.fairview.org/-/media/Files/Local-Health-Needs/Read-full-reports/2021-CHNA-Report-St-Josephs-Hospital2125.pdf?_ga=2.199544430.1124601112.1663949233-1817923240.1650646946.
[68] Fairview Health Services, "Creating a Healthier, More Equitable Future in St. Paul and the East Metro," Fairview Health Services, n.d., https://www.fairview.org/east-metro.
[69] Olson, "Fairview Cuts Include Bethesda, St. Joseph's Hospitals; 900 Jobs to Be Lost."
[70] Melo, "St. Joseph's Hospital Signage Comes down, Fairview's Center for Community Health Equity Launches."
[71] James Hereford, "James Hereford: We're Reckoning with the Affordability Crisis in Healthcare," *Pioneer Press*, December 22, 2019, sec. Opinion, https://www.twincities.com/2019/12/22/james-hereford-were-reckoning-with-the-affordability-crisis-in-healthcare/.

companies to Minnesota through joint ventures with AccentCare[72] and Acadia Healthcare,[73] a company with a spotted track record.[74] Acadia Healthcare will have 85 percent ownership in their new venture with M Health Fairview,[75] a clear move towards a profit-first approach to healthcare.

While Sanford touts its investments in Minnesota, nurses tell a different story. An overwhelming majority of nurses at Sanford owned and operated facilities surveyed by MNA reported that healthcare services and specialties offered became worse during their time there. At the same time, they revealed that their staffing levels worsened and access to decisionmakers, who could make a difference for patients, decreased.

Surveyed nurses elaborated on reductions and eliminations to services and specialties they have seen at their facilities once Sanford became involved. These include:

- Elimination of mental health services
- Elimination of home health services
- Elimination of Cardiac Critical Care Unit
- Elimination of cardiac rehabilitation services
- Elimination of in-home physical and occupational therapy
- Elimination of Intensive Care Unit (ICU)
- Elimination of wound care services
- Elimination of ostomy services
- Elimination of Respiratory Therapy services
- Elimination of outpatient services (including MRIs, mammograms, surgeries, and ultrasound)
- Drastic reduction in surgery cases

As a consequence of Sanford purchasing their hospital, one nurse stated that they lost many providers from the local clinic who admitted most of the patients and cared for patients in the ICU. Now, they report, "We no longer have a true ICU." Another nurse reported that losing nurses, providers, and specialists has impacted the hospital's offerings, using the example of losing wound care/ostomy services and with it, many patients. Decisions being made a hundred miles away was also brought up as an issue – one nurse expressed that the larger the system got, the less autonomy their hospital had. They stated that decisionmakers in Fargo decide whether they get certain surgery supplies, even if they are considered chargeable items.

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[72] Carrigan Miller, "Fairview Plans Sale of Home Health and Hospice Business with Nearly 1,000 Employees," *Minneapolis / St. Paul Business Journal*, September 3, 2020, https://www.bizjournals.com/twincities/news/2020/09/03/fairview-plans-sale-accentcare-home-hospice.html.

[73] Mark Reilly, "Minnesota Health Department OKs Fairview Plan for Psychiatric Hospital at St. Paul's Bethesda," *Minneapolis / St. Paul Business Journal*, September 13, 2022, https://www.bizjournals.com/twincities/news/2022/09/13/minnesota-health-department-oks-plan-bethesda.html.

[74] Chelsea Schafter and Ami Tillemans to Office of Commissioner Jan Malcolm, "Public Interest Review," June 27, 2022, https://www.health.state.mn.us/data/economics/moratorium/fairviewacadia/docs/mnaletter.pdf.

[75] Trudi Trysla, "Fairview Health Services and Acadia Healthcare Provide the Enclosed Responses to Your Additional Requests for Information on the Proposed Inpatient Mental Health Hospital," Minnesota Department of Health, February 16, 2022, https://www.health.state.mn.us/data/economics/moratorium/fairviewacadia/docs/fwacadiareponses.pdf.

These dual trends in consolidation of Sanford decisionmakers and healthcare services offered by the system in population centers raise critical questions and concerns about care access in non-metropolitan areas. From Sanford's public-facing remarks on the matter, their remedy to healthcare access disparities appears to be the increased use of telemedicine. On August 22, 2022, Sanford Health hosted a national Summit on the Future of Rural Health Care at its event center in Sioux Falls. In a press release ahead of the event, members of the industry panel arranged for the event issued statements highlighting expanded virtual care offerings as their proposed means of addressing issues of rural access.[76] This summit took place on the heels of Denny Sanford donating $350 million for a virtual care initiative.[77] Speaking about the creation of a new telemedicine facility Sanford broke ground on following this donation, president of virtual care, Brad Schipper, said "[t]his will be the way we deliver healthcare in the future. It won't replace all the traditional avenues that we're used to, but it will sure become much more mainstream."[78] Sanford Health's rhetoric and capital allotments both point towards a future for rural healthcare involving much less brick and mortar, meaning an increased reliance on virtual care and potentially long drives to population centers with increasingly consolidated care and services.

One area where both the Fairview and Sanford systems have made cuts is in the area of mental health. Between 2016 and 2020, M Health Fairview decreased mental health beds system-wide by nearly 15 percent, opposed a proposal at a non-Fairview site to increase mental health beds in the Metro,[79] and proposed a mental health hospital to replace Bethesda that the Minnesota Department of Health noted had an "unusually lean staffing plan."[80]

In response to MNA's survey, nurses identified cuts to mental health services offered by Sanford, including one who described it as "the largest negative impact I've seen with Sanford as a whole." Back in 2010, Sanford's hospital in Worthington closed its behavioral health unit and transitioned behavioral health services to Avera Marshall Regional Health Center. While outpatient services were set to continue to be offered in Worthington, outpatient services would be housed at the Marshall hospital.[81] The decision had rippling effects, as months later, a listening session held by then Minnesota Senator Yvonne Prettner Solon revealed that area patients were not being properly served.[82] Local residents working in the mental healthcare and disabilities fields stated that the closest facilities were in Marshall or Sioux Falls, both over an hour away. A school psychologist expressed concern that children "end up

[76] Sanford Health, "Sanford to Convene Summit on the Future of Rural Health Care," *Sanford Health*, August 22, 2022, https://news.sanfordhealth.org/news-release/sanford-to-convene-summit-on-the-future-of-rural-health-care/.
[77] Ibid.
[78] Dominik Dausch, "Sanford Virtual Care Center Groundbreaking Underscores Need for Rural Health Investment," *Argus Leader*, August 24, 2022, https://www.argusleader.com/story/news/2022/08/23/sanford-health-takes-next-steps-telemedicine-virtual-care/7876270001/.
[79] Chelsea Schafter and Ami Tillemans to Office of Commissioner Jan Malcolm, "Public Interest Review," June 27, 2022, https://www.health.state.mn.us/data/economics/moratorium/fairviewacadia/docs/mnaletter.pdf.
[80] Minnesota Department of Health, "Public Interest Review: Evaluation of a Proposed Inpatient Mental Health Hospital in Saint Paul, Minnesota," November 30, 2022, https://www.health.state.mn.us/data/economics/moratorium/fairviewacadia/docs/fvwacadappendixc.pdf.
[81] Beth Rickers, "SRHW to Close Mental Health Unit," *Worthington Globe*, March 30, 2010, sec. News, https://www.dglobe.com/news/srhw-to-close-mental-health-unit.
[82] Justine Wettschreck, "Prettner Discusses Mental Health Issues with Area Experts," *The Daily Globe*, October 13, 2010, sec. State and Regional News, https://www.dglobe.com/news/prettner-discusses-mental-health-issues-with-area-experts.

being released to their parents instead of receiving the care they need," with another telling Prettner Solon that the Marshall facility does not take juvenile patients.[83] Access is also constrained by long waiting lists to see a psychologist for the first time, attendees asserted, meaning that an appointment could be months away.[84]

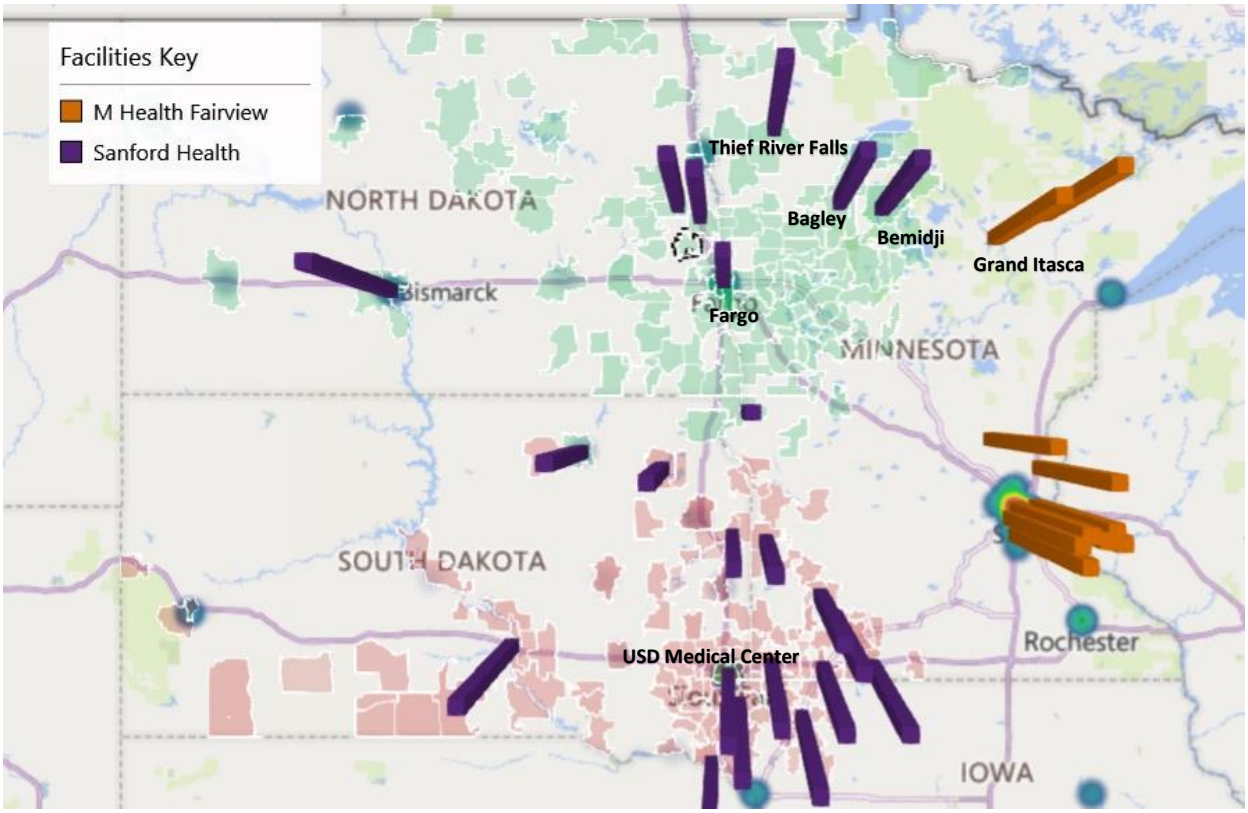
In Minnesota, Sanford is not a major provider of inpatient mental health beds. According to 2020 data from the Minnesota Department of Health, Sanford facilities offer only 28 inpatient mental health (psychiatric) beds throughout the State and do not offer any inpatient chemical dependency beds.[85] That Fairview, "the largest provider of mental health and addiction care in the Upper Midwest,"[86] may lose autonomy, as expressed by many nurses, with decisions being made in Fargo or Sioux Falls, is extremely concerning given Sanford's limited existing mental health footprint in Minnesota.

Do Overlaps in Service Foreshadow Future Cuts?

Data from the Centers for Medicare & Medicaid Services on patient origin by hospital illustrate the pull Sanford's largest facilities have across across state lines.[87] As seen in Fig. 1, patients from Northern Minnesota travel more than an hour to the Sanford Medical Center in Fargo, while patients from Southern Minnesota make the trip to receive care in Sioux Falls. That patients are traveling to Fargo and USD from areas where Sanford has other hospitals (e.g., Bagley, Bemidji) is evidence of a "feeder" model. Instead of fully resourcing local hospitals, this corporate approach strips community hospitals of all but the most basic services; patients requiring more specialized treatment are referred to the larger (and often more expensive) metropolitan hospitals.

[83] Ibid.
[84] Ibid.
[85] Statistics gathered from Minnesota Department of Health's data set, "Mental Health and Chemical Dependency," available at https://www.health.state.mn.us/data/economics/hccis/data/stndrdrpts.html.
[86] Laura Reed to Stefan Gildemeister, "MDH Public Hearing Follow Up Letter," June 20, 2022, https://www.health.state.mn.us/data/economics/moratorium/fairviewacadia/docs/fvwappletter.pdf#page=2.
[87] See Centers for Medicare & Medicaid Services' data set, "Hospital Service Area," available at https://data.cms.gov/provider-summary-by-type-of-service/medicare-inpatient-hospitals/hospital-service-area.

Fig. 1



MNA is concerned that hospital executives running a combined system will seek additional service closures or even plan to shutter entire hospitals given Sanford's pull on residents to its flagship Fargo and Sioux Falls facilities, and the overlap in services and patient populations in both systems' local hospitals.

Fig. 2 shows the service areas of Sanford Health Bemidji (in purple) and Fairview – Grand Itasca (in blue) while Fig. 3 shows maps Sanford Health Bemidji (in purple) and Fairview – Range (in orange). For reference, Sanford Health Bemidji and Fairview – Grand Itasca are 75 miles away, which is approximately 1 hour and 20 minutes by car, while Sanford Health Bemidji and Fairview – Range are 107 miles away, which is an approximately 2-hour drive.

As shown on Fig. 2 and Fig. 3, these Fairview and Sanford facilities pull from patients who reside within the same or neighboring zip codes. Whether patients *currently* choose to seek care at one health system's hospital versus another may be a function of their insurance network, preferences, services offered, and/or geography. Under a merged system, several of these factors would be dramatically different and could push a patient towards one facility or another: 1) Sanford could use its leverage to tie facilities together when negotiating with insurers to ensure multiple (or all of its) facilities are included in network; 2) Sanford could seek to remove or consolidate services in existing facilities; 3) Sanford could force doctors to move locations. In the end, the result may end up burdening rural patients, who now need to spend more time in transit to receive care.

Fig. 2

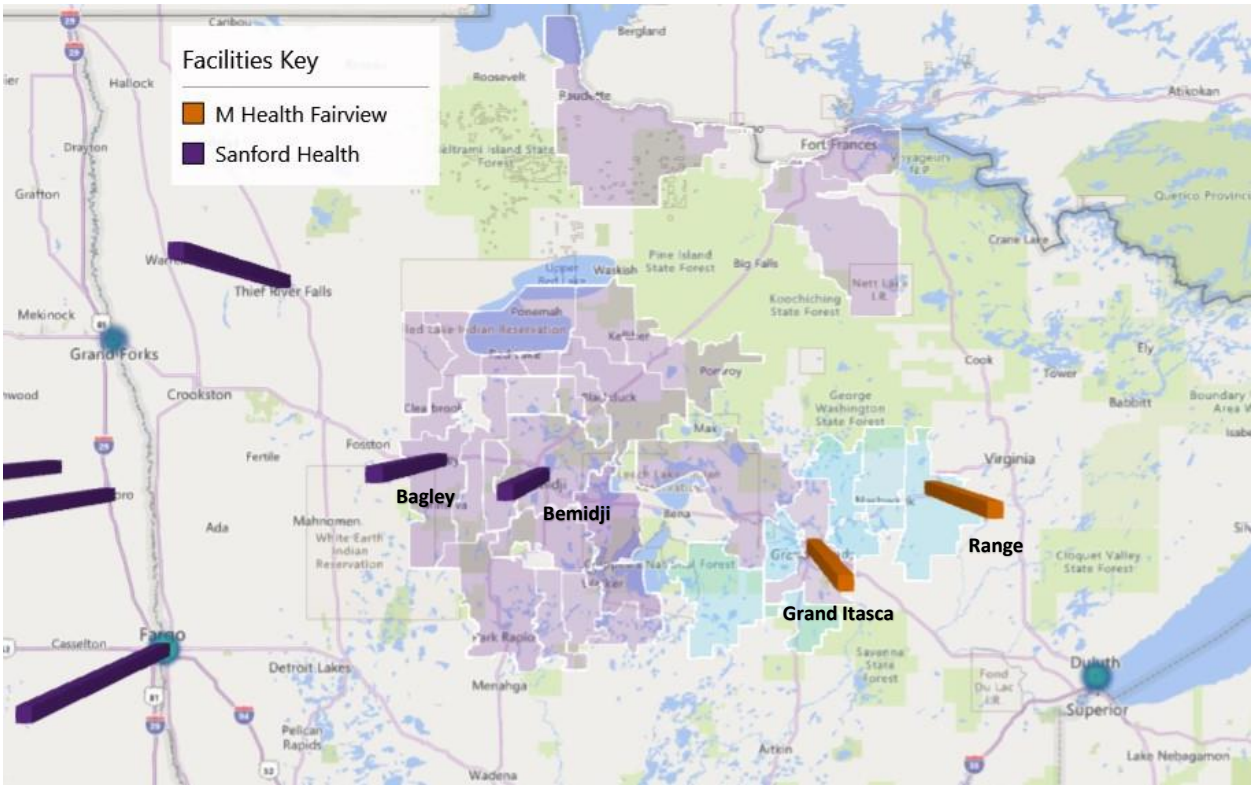
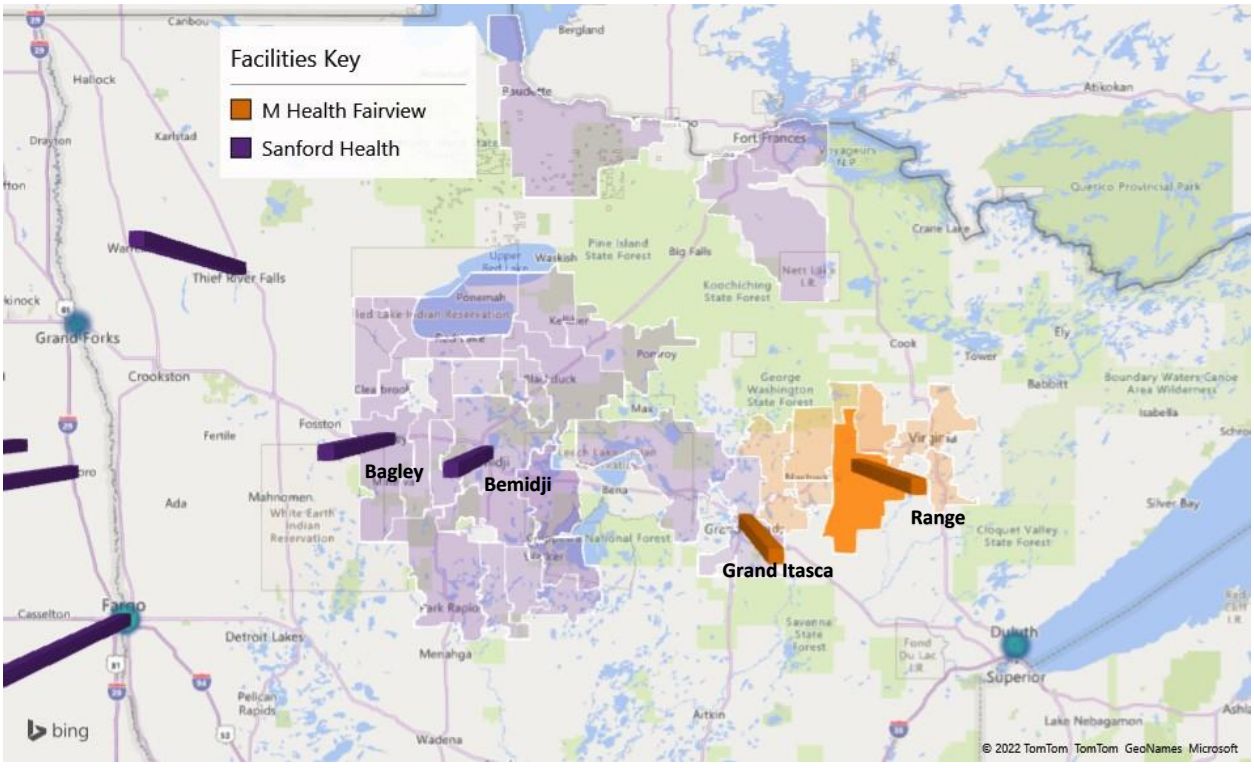

Facilities Key
M Health Fairview
Sanford Health
Bagley
Bemidji
Range
Grand Itasca
Grand Forks
Crookston
Thief River Falls
Fargo
Detroit Lakes
Duluth
Superior
Virginia

Fig. 3


Facilities Key
M Health Fairview
Sanford Health
Bagley
Bemidji
Range
Grand Itasca
Grand Forks
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Fargo
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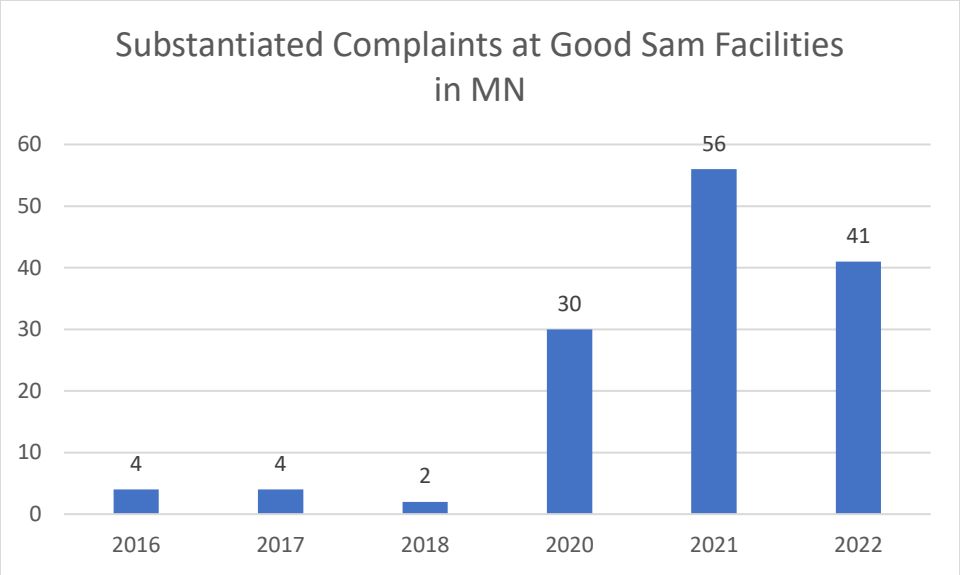
© 2022 TomTom TomTom GeoNames Microsoft

Long-Term Care

One way to examine a healthcare organization's record is to look to how it treats its most vulnerable patients. As operators of long-term care facilities, both Fairview and Sanford's practices deserve scrutiny, with consideration of how a combined system may operate.

Between 2020 and 2022, the Minnesota Department of Health identified 144 substantiated complaints at Sanford-owned and Sanford-managed facilities. 18 percent were related to quality of care; 26 percent were related to safety, including falls, elopement, and other injuries; and 11 percent were related to medication errors or issues.[88] As a result of these complaints, and others, Sanford-owned and managed facilities were fined at least $208,000 in recent years by the Centers for Medicare and Medicaid Services (CMS), with an additional $173,184 in suspended penalties.[89]

In 2019, Sanford merged with Evangelical Lutheran Good Samaritan Society ("Good Sam") which operated 200-plus post-acute, skilled-nursing, hospice, assisted-living, rehabilitation and home-health facilities across several states, including Minnesota.[90] Prior to its merger, Good Sam had relatively few substantiated complaints; following its partnership with Sanford, complaints skyrocketed.



Many nurses expressed their frustration over the merger between Good Sam and Sanford, viewing the changes – Sanford's home health division closed and was turned over to Good Sam – as a net negative to both staff and patients. Potentially related, nurses identified cuts to home health physical and occupational therapy.

Fairview's own record in their area is better compared to Sanford but is nowhere near spotless. Between 2020 and 2022, MDH identified 51 substantiated provider complaints from Fairview's hospice

[88] Available at https://www.health.state.mn.us/facilities/regulation/directory/provcompselect.html.
[89] Compiled from ProPublica Nursing Home Inspect, available at https://projects.propublica.org/nursing-homes/.
[90] Alex Kacik, "Sanford Health and Good Samaritan Close Merger," *Modern Healthcare*, January 2, 2019, https://www.modernhealthcare.com/article/20190102/NEWS/190109991/sanford-health-and-good-samaritan-close-merger; Evangelical Lutheran Good Samaritan Society, "Locations," Good Samaritan Society, n.d., https://www.good-sam.com/locations.

and home care facilities, long-term senior care facilities and senior housing.[91] 16 percent were related to quality of care; 16 percent to abuse or rough treatment; and nearly 13 percent involved infection control.[92] As a result of these complaints, and others, Fairview-owned and managed facilities were fined at least $33,181 in recent years by CMS, with an additional $35,000 in suspended penalties.[93]

Both Fairview and Sanford's pattern of violations deserve examination by federal and state regulatory agencies. Objections from Sanford nurses who have experienced changes in home health under management at Good Sam should make clear that a merger between two companies which repeatedly put profits before patients will not be in the best interests of the elderly and other vulnerable Minnesotans.

Corporate Healthcare and Taxpayer-Funded Medical Center Don't Mix

University Partnerships

While the University of Minnesota's partnership with Fairview has been far from perfect, it could spell disaster for academic medicine under a partnership with Sanford.

Under Hereford's leadership, the health system has paid tens of millions each year under their agreement with the University of Minnesota to rebrand as M Health Fairview.[94] Despite this partnership, University officials and Fairview executives are at odds over the future.[95]

Under its land-grant mission, the University of Minnesota educates the state's clinicians, conducts research to discover new cures and treatments, and works with providers to bring doctors directly to patients.[96] Almost immediately after Fairview and Sanford made their merger announcement, the University of Minnesota expressed concern that big questions were left unanswered:[97]

- "How a combination would respect the University's land grant mission and critical role in the healthcare provided to patients at our flagship campus facilities and around the state;
- Fairview's and Sanford's commitment to respecting the independence of our faculty in the vision outlined for a combined organization, and;
- How these plans address Fairview's financial challenges."

In his public testimony on January 10, 2023, University of Minnesota Medical School Dean, Dr. Jakub Tolar, called for the Attorney General to prevent the merger "until Fairview and Sanford work with the university [to] address and resolve how we will continue to use all of our public resources in service to

[91] Available at https://www.health.state.mn.us/facilities/regulation/directory/provcompselect.html.
[92] Ibid.
[93] Compiled from ProPublica Nursing Home Inspect, available at https://projects.propublica.org/nursing-homes/.
[94] University of Minnesota, "University of Minnesota, U of M Physicians and Fairview Enhance M Health Agreement," University of Minnesota, June 18, 2018, https://twin-cities.umn.edu/news-events/university-minnesota-u-m-physicians-and-fairview-enhance-m-health-agreement.
[95] Christopher Snowbeck, "Sanford-Fairview Delaying Merger until May 31 Following Pressure from State Officials," *Star Tribune*, February 10, 2023, https://www.startribune.com/university-of-minnesota-regents-chair-blasts-fairview-sanford-health-timeline-hospital-minneapolis/600250651/.
[96] Josh Skluzacek, "Fairview, Sanford Health Announce Plan to Merge," *KSTP.com Eyewitness News*, November 15, 2022, https://kstp.com/kstp-news/local-news/fairview-sanford-health-announce-plan-to-merge/.
[97] Ibid.

Minnesota," stating that because the flagship medical center was part of the deal, "[this] is not a private transaction but a public question for the future for public academic medicine in Minnesota."[98]

That the University has not been party to the merger talks and, as Dr. Tolar claimed, could not provide assurances regarding the University's public purpose[99] speaks to the disturbing dynamics at play. Dr. Tolar is one of three University-appointed representatives on Fairview's board, and according to reporting, spoke with Sanford board member Brent Teiken prior to the announcement. Sanford CEO Krabbenhoft wrote the Sanford board that the call between Dr. Tolar and Teikin "validated how much sway the university currently has over Fairview affairs and how necessary it will be to resolve that before we move forward with a merger."[100] While these close ties may have informed Sanford's decision to pursue a merger with Intermountain instead of Fairview back in 2020, it appears that Sanford and Fairview did little to assuage the University this time around. In fact, it prompted the University to announce its intention to purchase back the University of Minnesota Medical Center,[101] framing it as the way to safeguard research and medical education in the state.

Concerns about Sanford's commitment to research and medical education are warranted. While the University of Minnesota's Medical School is ranked #43 in terms of research and #3 in terms of primary care by U.S. News & World Report,[102] the University of South Dakota Sanford School of Medicine and the University of North Dakota Medical School are unranked in both of these critical areas.[103] One of the University of Minnesota's goals is to improve its Blue Ridge Rankings,[104] which compiles the National Institutes of Health (NIH) funding by medical school.[105] In 2022, the University of Minnesota ranked 21st in the country out of 144 schools, with $341,147,370 in funding – in contrast, the University of South Dakota is ranked 109th, receiving just $8,590,597.[106] The University of North Dakota stands in between at #98, with $18,053,063 in funding.[107]

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[98] Christopher Snowbeck, "If University of Minnesota Opposes Sanford-Fairview Merger, It Could Repurchase Teaching Hospital, Execs Say," *Star Tribune*, January 10, 2023, https://www.startribune.com/minnesota-attorney-general-to-hold-first-public-meeting-tuesday-on-sanford-fairview-merger/600242221/.
[99] Ibid.
[100] Jonathan Ellis, "Sanford, Fairview's Decade of Flirtation," *The Dakota Scout*, November 17, 2022.
[101] Christopher Snowbeck, "University of Minnesota Wants Teaching Hospital Back as Part of Expansion Plan," *Star Tribune*, January 12, 2023, https://www.startribune.com/university-of-minnesota-wants-ownership-of-hospital-as-part-of-plan-for-new-medical-center/600242872/.
[102] U.S. News & World Report, "University of Minnesota," U.S. News & World Report, n.d., https://www.usnews.com/best-graduate-schools/top-medical-schools/university-of-minnesota-twin-cities-04054.
[103] U.S. News & World Report, "University of South Dakota (Sanford)," U.S. News & World Report, n.d., https://www.usnews.com/best-graduate-schools/top-medical-schools/university-of-south-dakota-04105; U.S. News & World Report, "University of North Dakota," U.S. News & World Report, n.d., https://www.usnews.com/best-graduate-schools/top-medical-schools/university-of-north-dakota-04085.
[104] Office of the Executive Vice President and Provost, "2021 University Performance and Accountability Report," Report (University of Minnesota, February 2022), http://conservancy.umn.edu/handle/11299/226291.
[105] Blue Ridge Institute for Medical Research, "BRIMR Rankings of NIH Funding in 2022," Blue Ridge Institute for Medical Research, n.d., https://brimr.org/brimr-rankings-of-nih-funding-in-2022/.
[106] Funding gathered from Blue Ridge Institute for Medical Research's data set, "Medical Schools & Their Depts," available at https://brimr.org/brimr-rankings-of-nih-funding-in-2022/.
[107] Ibid.

As the University of Minnesota trains roughly 70 percent of the state's physicians,[108] there is reason to be worried that the ranking may fall under a partnership with Sanford if executives are more concerned with profits than academic medicine.

Finally, there is the issue of finances and who controls them. Given Sanford's relationships with University of South Dakota and University of North Dakota, executives in Sioux Falls may not want to be willing to provide the same financial support to the University of Minnesota Medical Center and University of Minnesota Physicians, which was approximately $83 million in 2022.[109] Unless the University purchases back the medical center, it will have little leverage after the M Health Agreement expires in 2026 to negotiate a good deal. If that happens, important research and services that benefit Minnesotans may be at risk.

T. Denny Sanford's Interest in Research

T. Denny Sanford has certainly made his mark in healthcare, donating more than a billion to Sanford Health and other institutions that adopted his name.[110] While donations like these have been a boon to health systems and centers throughout the country, they come at a cost when organizations, governed by existing boards of directors, are suddenly beholden to donors who hold the purse strings.

In 2007, Sanford donated $400 million to Sioux Valley Hospital (now Sanford Health), which established a network of clinics around the globe and created a research center with the stated goal of curing a major disease, which became Type 1 diabetes.[111] At the time, the announcement that Sanford would search for a cure was critiqued by Gary Schwitzer, director of the University of Minnesota health journalism program, who told *MPR News*: "When a private entity enters into a research project with goals like these, I think these are vital questions for us to ask and for us to drop back and have the broader discussion … What's the national research agenda? Where are the dollars coming from? Should we care about that?"[112]

Similar questions arise with more recent philanthropy, such as with his gifts to UC San Diego for stem cell research and regenerative medicine,[113] which he said in 2008 "may be a significant part, if not the major (driver) of medicine in the future."[114] Given this type of research is banned in South Dakota,[115] T. Denny Sanford may try to use his weight to push his own research priorities if Sanford Health takes over Fairview's partnership with the University. Similarly, his $350 million donation to build a virtual care center and create "innovation, education and research initiatives to advance digital health care solutions

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[108] Snowbeck, "University of Minnesota Wants Teaching Hospital Back as Part of Expansion Plan."
[109] Snowbeck, "Proposed Sanford-Fairview Merger Raises Financial Questions in Minnesota."
[110] Stu Whitney and Jonathan Ellis, "T. Denny Sanford's Electronic Device Center of Child Pornography Investigation," *Argus Leader*, August 28, 2020, https://www.argusleader.com/story/news/2020/08/29/t-denny-sanfords-electronic-device-center-child-pornography-investigation/4977312002/.
[111] Ibid.
[112] Cara Hetland, "Sanford Health Announces It Will Focus Research Effort on Juvenile Diabetes," *MPR News*, June 6, 2008, https://www.mprnews.org/story/2008/06/06/sanfordcure.
[113] Scott LaFee and Jade Griffin, "$150 Million Gift Takes Stem Cell Research to New Heights," University of California - San Diego, September 6, 2022, https://today.ucsd.edu/story/150-million-gift-takes-stem-cell-research-to-new-heights.
[114] Associated Press, "S.D. Banker Supports Stem Cell Research," *CBS News*, September 17, 2008, https://www.cbsnews.com/news/sd-banker-supports-stem-cell-research/.
[115] Ibid.

for the future"[116] may indicate an interest in programs that shift the burden of care to patients and their family members.[117]

There is reason to believe that T. Denny Sanford may use his influence to push his priorities. When Sanford executives were in talks to merge with Utah-based Intermountain, Denny Sanford sent an aggressive email blasting the deal: "It was my intent to donate several billion dollars to Sanford Health but mergers can be very costly to the acquired entity, the communities, and the people therein!"[118] Ultimately, the deal fell apart and Sanford has continued to heavily subsidize the Sioux Falls-based health system. While any nonprofit health system would be hard pressed to turn their back on outside funding, a careful review of this proposed merger must consider the role T. Denny Sanford could play in determining major healthcare research in the State.

Conclusion

A decade ago, Minnesotans united against healthcare executives to reject a corporate merger that would benefit a select few. What Minnesotans knew then, and know now, is that mergers make our hospitals less accountable and less connected to communities, resulting in higher costs for patients, reductions in services, and increased burnout for healthcare workers. While this merger is driven by private greed, public money and public services are at risk. This deal would see nearly $5 billion in assets,[119] created by Minnesotans through tax breaks, property and monetary donations,[120] transferred to unaccountable executives in Sioux Falls. We urge the Attorney General and elected officials to continue to act in the interest of patients, workers, and their communities and prevent the further entrenchment of corporate healthcare in Minnesota.

[116] Sonya Swink, "Sanford Health Receives $350 Million to Support Virtual Health in Rural Areas," *Argus Leader*, September 8, 2021, https://www.argusleader.com/story/news/business-journal/2021/09/08/sanford-health-t-denny-sanford-donation/5770066001/.
[117] National Nurses United, "Medicare's Hospital At Home Program Is Dangerous for Patients," September 2022, https://www.nationalnursesunited.org/sites/default/files/nnu/documents/0922_Medicare_HospitalAtHome_Report.pdf.
[118] Ellis, "Sanford, Fairview's Decade of Flirtation."
[119] Fairview Health Services, "Continuing Disclosure Statement for the Nine Months Ended September 30, 2022," 2022, https://emma.msrb.org/P21644472-P21265699-P21692197.pdf.
[120] Elizabeth Stawicki, "Attorney General Questions Proposed Fairview-Sanford Merger," *MPR News*, April 8, 2013, https://www.mprnews.org/story/2013/04/08/attorney-general-questions-proposed-fairview-sanford-merger.