Minnesota Hospital Association

161 Saint Anthony Ave., Ste. 915
Saint Paul, MN 55103-2382
www.mnhospitals.org

March 17, 2023

Chair Murphy and members of the Senate State and Local Government and Veterans Committee,

On behalf of the Minnesota Hospital Association (MHA) and our statewide membership, we would like to respectfully raise our questions and concerns regarding the administrative review and approval processes for health care transactions outlined in SF 1681 (Wiklund).

As we reflect on Minnesota's pandemic experience since the first confirmed COVID-19 case in March 2020, we have seen the sacrifices that health care organizations made to follow their primary mission of serving patients and communities. We are incredibly proud of the public-private partnership with various state agencies as hospitals and health systems embraced innovation and continuously adjusted our organizational services. Minnesotans trusted in the high-quality care that hospitals and health systems provided. We are concerned this bill reflects that something has suddenly changed in that level of trust in our health care organizations. Given our current workforce, finance, and discharge challenges, our hospitals and health systems need more flexibility and support from the legislature, not less.

MHA believes that the current robust review and oversight processes and procedures in place for health care entity transactions have been working very effectively for many years. As you know, these include federal and state antitrust laws, authorities provided to the Minnesota Attorney General, the robust licensing laws, and the transparent public interest review processes enforced by the Minnesota Department of Health. These significant regulatory procedures have ensured appropriate oversight of health care entity transactions and allowed health care entities in Minnesota to meet the needs of our patients, families, and communities while making necessary organizational changes to fulfill their mission. We question the need for this extensive additional oversight given the current robust processes already in place and working well.

MHA has questions regarding many of the new, wide-ranging administrative oversight procedures outlined in this bill, including the volume of sensitive information required to be provided, the expansive discretion granted to the Attorney General, and the lack of timeline or sunset on the authority of the Attorney General to unwind a completed transaction. The scope of the authority outlined in SF 1681 is so broad it could potentially inundate MDH and the Attorney General's office with frequent organizational changes that must now enter a lengthy process and be approved. For example:

- **Scope of Transactions Being Reviewed:** SF 1681 would require MDH and the Attorney General to review a broad variety of common and routine transactions, including hospital acquisition or investment in a physician group, the granting of a "security interest" that comes along with a bond financing or routine bank loans, or an internal reorganization that creates a new entity.

- **Sensitivity of Materials Required to be Submitted:** SF 1681 provides a substantial list of documents and other information that hospitals and others would be required to provide MDH, including the underlying transaction agreements (with detailed payment information) as well as valuation reports, revenue projections, and other confidential materials developed as part of the transaction process. This classification of this data under the Minnesota Data Practices Act is not expressly addressed in the legislation.

- **Ambiguity of Standards of Evaluation:** MHA also has concerns with ambiguity in the SF 1681 as to the standards to be used by MDH in evaluating a potential transaction and the authority provided to the Attorney General's Office to bring an action to enjoin a transaction it deems to be "contrary to the public interest." While the language does offer some criteria for that analysis, little in the bill would offer any kind of objective standard to be anticipated in the application process or evaluated upon any kind of appeal.

- **Notice Requirement Excessive:** The 180-day review timeline is wholly inconsistent with customary process for administering many of the transactions potentially subject to the proposed review. For example, the federal Hart-Scott-Rodino Act fillings generally provide a 30-day review period for federal antitrust regulators. The extended notice period in SF 1681 will create unnecessary delays and increase costs, potentially impacting care of patients and communities in Minnesota.

- **Lookback Window Undefined:** SF 1681 does not limit MDH and the Attorney General's timeline to enjoin or unwind a transaction. Therefore, it is possible that a transaction could be completed in compliance with the proposed review process and, at any point in the future, the Attorney General could bring an action in district court to unwind the transaction. This would not only be incredibly disruptive to organizational management and patient care, but it could also be catastrophically expensive.

Finally, and most importantly, health care delivery has always been ever-changing as hospitals and health systems continually adapt their services and care delivery to innovate and meet patient needs and the changing needs of their communities. It is important to note that denying a health care entity transaction could result in essential health care services being eliminated from a community in our state. Adaptability and flexibility are hallmark characteristics of health care organizations, and these have become of utmost importance as hospitals and health care systems try to survive the long-lasting effects of the pandemic. MHA is concerned that SF 1681 will limit the ability of our state's hospitals and health systems to make the timely and nimble organizational adjustments needed to stay viable to serve their patients and communities.

We look forward to working with committee members and strive to keep Minnesota as one of the best states in the country in which to receive and provide health care.

Sincerely,

Mary Krinkie
Vice President of Government Relations
mkrinkie@mnhospitals.org
Cell: (612) 963-6335

Danny Ackert
Director of State Government Relations
dackert@mnhospitals.org
Cell: (616) 901-7500