

## H.F. No. 402 (as amended by the A-1 Senate Amendment) – Specifying requirements for health care entity transactions

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**Date:** May 9, 2023

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### Overview

**H.F. 402** provides notice and disclosure requirements for certain health care entities engaging in a transfer of control transaction. The bill further authorizes the attorney general to bring an action in district court to enjoin and unwind such transactions in circumstances adverse to the public interest. It clarifies that, in making a determination regarding a transaction’s effect on the public interest, the attorney general and a court must make a rebuttable presumption that it is contrary to the public interest for a transaction to result in academic health care facilities licensed as “M Health Fairview University” to (1) stop being dedicated to the university’s public health care mission, or (2) become owned or controlled, directly or indirectly, in whole or in part, by a for-profit entity or an out-of-state entity. **H.F. 402** prohibits health care entities from entering into a transaction that will substantially lessen competition or tend to create a monopoly or monopsony. It also requires Minnesota nonprofit HMOs and health systems organized as a charitable organization to return an amount equal to the value of any charitable assets the entity received from the state if the entity transfers control to an out-of-state, nonprofit entity or to any for-profit entity. **H.F. 402** extends the state’s moratorium on for-profit health maintenance organizations, and requires the commissioner of health to study and report on the regulation of conversions, mergers, transfers of assets, and other transactions affecting Minnesota health maintenance organizations.

### Summary

**Section 1. (62U.04, subdivision 11 – Restricted uses of the all-payer claims data)** Amends section 62U.04 to permit the commissioner of health to use encounter data and pricing data submitted to the commissioner under the all-payer claims database statute to conduct analyses of the impact of certain health care transactions, subject to notice and review by the attorney general and commissioner of health, on health care costs, market consolidation, and quality.

**Section 2. [145D.01 – Requirements for Certain Health Care Entity Transactions]**

**Subd. 1. Definitions.** Defines key terms for the purposes of this section, including captive professional entity, commissioner, control, health care provider, health care provider group practice, hospital, medical foundation, and transaction.

**Subd. 2. Notice required.** Provides that a health care entity that enters into a transaction where (1) the health care entity has average revenue of at least \$40,000,000 per year, or (2) the transaction will result in an entity projected to have average revenue of at least \$40,000,000 must provide notice to the attorney general and the commissioner of health at least 90 days before the proposed transaction completion date. Requires health care entities subject to the notice requirement to disclose information about the entity and the transaction, including but not limited to the entities involved in the transaction and the entity leadership, the primary and proposed service areas for each location, the transaction terms and related agreements, and plans to close facilities or reduce workforce. Requires health care entities subject to the notice requirement to submit information about the entity and the transaction, including but not limited to the entities' governing documents, expert reports and valuations, federal filings in connection with the transaction, and audited and unaudited financial statements. Authorizes the attorney general to waive any of the notice, waiting period, disclosure, or submission requirements under this subdivision.

**Subd. 3. Prohibited transactions.** Prohibits health care entities 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 health care entities organized as Minnesota nonprofit corporations and Minnesota nonprofit limited liability companies, and their subsidiaries, to ensure the transaction complies with state and federal nonprofit laws, that the entity will receive full and fair value for its public benefit assets (subject to attorney general waiver), that the transaction will not result in a breach of charitable trust or fiduciary duty, and that there are procedures in place to prohibit officers and directors of the entity from benefitting from the transaction.

**Subd. 5. Attorney general enforcement and supplemental authority.** Authorizes the attorney general to bring an action to enjoin or unwind a transaction or seek other equitable relief necessary to protect the public interest if a health care entity or transaction violates this section or is contrary to the public interest. Establishes factors that inform whether a transaction is contrary to the public interest, including but not limited to whether the transaction will harm public health, reduce access to affordable and quality care, reduce delivery of health care to underserved populations, negatively impact medical education or medical research, negatively impact the market for health care services or health insurance services, and will negatively impact wages and collective bargaining units. Requires the attorney general and a court to make a rebuttable presumption that it is contrary to the public interest for a transaction to result in academic health care facilities licensed as "M Health Fairview University" to (1) stop being dedicated to the university's public health care mission, or (2) become owned or controlled, directly or indirectly, in whole or in part, by a for-profit entity or an out-of-state entity. Requires the attorney general to consult with the commissioner of health in determining whether a transaction is contrary to the public interest, and authorizes data sharing between the attorney general and commissioner. Classifies certain data as confidential data on individuals and protected nonpublic data.

**Subd. 6. Supplemental authority of commissioner.** Authorizes the commissioner of health to use data and information submitted under this section, the all-payer claims data statute, and the Minnesota Health Care Cost Information Act of 1984 to analyze the aggregate impact of health care transactions on health care services, health care market consolidation, and health care quality.

Requires the commission to issue periodic public reports on the number, types, and impacts of transactions subject to this section.

**Subd. 7. Classification of data.** Classifies data provided by a health care entity to the attorney general and commissioner of health under this section as protected nonpublic data or confidential data on individuals, as applicable.

**Subd. 8. Relation to other law.** Clarifies that the powers and authority of the attorney general and commissioner of health under this section are in addition to other powers and authority granted in law.

**Effective Date.** Provides that this section is effective the day following final enactment and applies to transaction completed on or after that date, and that any actions or series of actions occurring prior to this section's effective date must be considered in the determination of whether those actions constitute a transaction subject to this section.

**Section 3. [309.715] Charitable Assets; Return to General Fund; Ownership or Control of University of Minnesota Health Care Facilities.** Requires Minnesota nonprofit HMOs and health systems organized as a charitable organization to return an amount equal to the value of any charitable assets the entity received from the state if the entity sells or transfers control to an out-of-state, nonprofit entity or to any for-profit entity.

**Effective Date.** Provides that this section is effective the day following final enactment and applies to transactions completed on or after that date.

**Section 4. (Laws 2017, First Special Session chapter 6, article 5, section 11, as amended by Laws 2019, First Special Session chapter 9, article 8, section 20).** Extends, from July 1, 2023 to July 1, 2026, the state's moratorium against Minnesota nonprofit health service plan corporations and Minnesota nonprofit HMOs merging with, converting to, or transferring a material amount of its assets to an entity other than a Minnesota nonprofit corporation or a Minnesota nonprofit hospital within the same integrated health system as the HMO.

**Effective Date.** Provides that this section is effective the day following final enactment.

**Section 5. Study and Recommendations; Nonprofit Health Maintenance Organization Conversions and Other Transactions.** Requires the commissioner of health to study and develop recommendations on the regulation of conversions, mergers, transfers of assets, and other transactions affecting Minnesota nonprofit HMOs and for-profit HMOs. Preliminary findings must be submitted to the chairs of health and human services by January 15, 2024, and a final report must be submitted by June 30, 2024. Establishes required information for the recommendations, including but not limited to monitoring and regulating the entities, issues related to public benefit assets held by a nonprofit HMO, and establishing a process for the public to learn about and provide input on proposed conversions. Authorizes the commissioner of health to consult with the commissioners of human services and commerce with respect to this section's requirements. Requires the commissioner to seek public comments on the regulation of conversion transactions involving nonprofit HMOs by October 1, 2023.

**Section 6. Appropriations.** Appropriates an unspecified amount in fiscal year 2025 from the general fund to the commissioner of health for purposes of section 145D.01.