Testimony of Michael Johnson,
Former Blue Shield of California Public Policy Director,
In Support of SF 4837 (Wiklund) / HF 4853 (Bierman)

Chairman Klein and members of the Committee, I write to express my strong support for SF 4837.

I am a former public policy director for Blue Shield of California, which is one of the largest nonprofit health plans in the country. In that role, I came to learn a lot about how nonprofit plans approach their duties as nonprofits—and how some of them seek to evade those duties.

What distinguishes nonprofit HMOs and health plans from for-profit ones is that they are obligated to operate for the benefit of the community, not investors or any other private persons.[1] That is a duty rooted in common law and, when a tax exemption is provided, reinforced as a condition of that exemption. It is the essence of what a nonprofit HMO or health plan is.

However, not all nonprofit HMOs and health plans see it that way. Indeed, the health plan I worked for, Blue Shield of California, has quietly, but officially asserted that it has no legal duty to serve the public good—a position I disagreed with and that led me to leave the organization in 2015. I've spent much of my time since then advocating for increased accountability on the part of nonprofit health plans.

In a variety of other ways, across the country, I have seen health plans fail to fully embrace their duty to benefit the public. This failure has posed an especially significant problem when a nonprofit plan is converted into a for-profit, usually as a result of its acquisition by a for-profit company. It is why Minnesota needs legislation governing nonprofit to for-profit

[1] Some nonprofit health plans may be organized as mutual insurance companies, in which case their duty is to operate for the benefit of their members. Minnesota, however, does not have any nonprofit health plans organized as mutual insurance companies.

conversions of HMOs and health plans. Too often across the country, these transactions appear to have been engineered to enrich individual executives and new private companies, rather than benefit the public.

One egregious case, in 2001, involved a proposal to convert the Blue Cross and Blue Shield plan serving Maryland, Virginia and D.C. into a for-profit in order to sell it to the giant insurance company WellPoint. Under the proposed deal, which was ultimately rejected by regulators, the nonprofits' executives would have received $120 million in bonuses. According to testimony by Wellpoints' CEO, the executives had demanded the bonuses as a condition of agreeing to sell the nonprofit to Wellpoint: "No bonus, no deal."[2]

A more recent example involves the proposed sale of nonprofit Blue Cross and Blue Shield of Louisiana to Elevance, which was put before regulators just last year. As part of that deal, BCBSLA's board members would each be guaranteed payments of at least $1 million for service on a post-acquisition "advisory" board. In addition, four board members would be given exclusive control over a multi-billion-dollar nonprofit entity funded with proceeds from the sale.[3] Following intense criticism of the deal by advocates and legislators, BCBSLA has, at least temporarily, withdrawn its request for regulatory approval.

The problem that arrangements such as these pose is not only that they put assets meant for community benefit at risk of being siphoned off into the pockets of executives. It is that the opportunity for such conduct raises the risk that a conversion that does not benefit the community will be proposed because it benefits the executives involved.

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[2] "For-Profit Non-Conversion And Regulatory Firestorm At CareFirst BlueCross BlueShield," Health Affairs, July/August 2004.
[3] Public Comments of Michael Johnson, Louisiana Department of Insurance, https://ldi.la.gov/docs/default-source/documents/legaldocs/public-comments/public-comment---michael-johnson-8-10-23.pdf?sfvrsn=fba4652_0

There can sometimes be good reasons for a nonprofit health plan or HMO to be sold to a larger for-profit company. A health plan or HMO that is part of a much larger entity may be able to provide products or services that a small nonprofit can't, or it may be able to do it more efficiently. Such improvements, along with the benefits of a conversion foundation established with the proceeds from the sale, may outweigh the benefits of continued operation as a nonprofit. But if the people making that assessment have arranged, as part of the deal, bonuses for themselves or more lucrative jobs with the acquirer, then their assessments can't be trusted.

By foreclosing the opportunity for nonprofit health plan or HMO executives to enrich themselves via conversion transactions Minnesota could make it much more likely that any conversions proposed would be based on an honest assessment of their pros and cons for the community. Strong conversion legislation would also ensure that conversions do not shortchange the public by requiring that funds equal to the value of the nonprofit at the time of the conversion be set aside into a foundation and used to benefit the public.

Legislation that provides clear rules for conversions could also serve to improve the HMO and health plan marketplace. As mentioned above, under certain conditions, conversions may bring improvements that serve the best interests of consumers. However, absent a clear and transparent process for the review of such transactions by the state's regulators, it could prove more difficult to close them. In Louisiana, the lack of a conversion law resulted in a cloud of confusion and dissension over how the proceeds from the sale of BCBSLA should be used, and that, along with BCBLA's missteps, contributed to the derailment of the conversion deal.

In Minnesota, any nonprofit HMO or health plan seeking to convert is subject under existing law to a charitable trust obligation requiring that all of its assets be preserved for public benefit purposes. But absent conversion legislation, exactly how that obligation would be enforced and by whom

would be left unclear. That lack of clarity, in addition to putting charitable assets at risk of being lost to the community, could actually end up impeding conversions that would well serve consumers.

For the protection of Minnesotans, as both health care consumers and as stakeholders of the billions of dollars in nonprofit HMO and health plan assets in this state, I urge you to vote in favor of SB 4837. In its current form, the bill falls short of providing the level of protection that strong conversion legislation in other states does, but it is nonetheless an important, and hopefully just a beginning, step in that direction.