

Protecting Our Healthcare Assets

Nonprofit HMO Conversion Protections HF4853(Bierman)/ SF4837(Wiklund)

An “HMO conversion” is the transfer of all or a substantial portion of a nonprofit HMO or health service plan corporation’s business or assets to a for-profit. This most commonly happens when a nonprofit is purchased by a for-profit.

Background

We must regulate HMO conversions now, or risk losing billions of public-benefit assets. In 2017, Minnesota’s long-time requirement that HMOs be nonprofit was hastily removed in a midnight deal, but our laws were not updated to address this new reality. A bill to regulate conversions passed the House but was replaced in conference with a temporary moratorium on conversions. That placeholder has been extended twice, and is again set to expire in 2026.

Minnesota’s nonprofit health plans have over \$5.8 billion in capital alone and are worth more.

- A moratorium is a short line of statute, all too easy to repeal or let sunset - just like the law requiring HMOs to be nonprofit.
- If Minnesota’s temporary conversion moratorium ends before regulations are in place, these public benefit assets are at risk of being converted into private gain, depriving Minnesotans of vital resources to meet their healthcare needs.
- A recent MDH report identifies gaps in our current oversight of HMO transactions, even with the moratorium.
- **Seven years is already too long to wait to protect public-benefit assets.**

What happens when nonprofits convert without strong regulations in place?

- **Assets are strategically undervalued for private gain:** In California, Inland Health Care valued its charitable assets at \$663,000 at the time of conversion, but by the next year the resulting for-profit was valued at \$37.5 million. Pacific Care Health Systems valued its charitable assets at \$360,000 at the time of conversion, and was valued at 125 times that much, over \$43 million, just one year later.
- **Individuals profit off charitable assets:** When the nonprofit Blue Cross of Georgia converted to a for-profit, the Georgia public received nothing. Shortly after converting, Blue Cross sold itself to a for-profit insurer and the company’s executives and employees received \$28 million in bonuses.
- **The public loses:** BCBS Mutual of Ohio proposed to sell most of its assets to a for-profit for \$300 million. Its chairman, chief counsel and outside counsel were to receive over \$25 million in payouts. The controversy inspired conversion legislation, but not strong enough, and far less than the full value was directed to a foundation that was not independent of the for-profit insurance company.

“public-benefit assets —the reserves, property and other items of value accumulated by a nonprofit entity that has pledged to operate for public benefit.”

When public-benefit assets are protected, the public benefits.

- In 1996, California's strong HMO conversion law ensured that when Blue Cross of California converted from a nonprofit, *all* its \$3.2 billion in public-benefit assets were transferred to two new grantmaking health foundations. Its for-profit buyer initially offered only \$100 million to a charitable foundation. Both foundations that were established through public-benefit assets, the California Health Care Foundation and the California Endowment, continue to serve the state today.
- Thanks to strong regulation in Maryland, that state's insurance commissioner was able in 2001 to block the conversion of its Blue Cross Blue Shield plan, CareFirst, which would have resulted in \$120 million in bonus payments to the plan's executives. Regulators determined that those payments were the executives' principal motivation for proposing the conversion.

Key features of Minnesota's HMO Conversion Regulation Act

- **100% of nonprofit health plan assets recognized as public benefit assets.** Nonprofit HMOs financial reserves, property, brands and other valuables have been accumulated by entities pledged to operate for public benefit. *None of the assets of a nonprofit health plan belong to any investor, executive or other private person, so they can't be sold or transferred for private gain.*
- **Full and fair value of the public benefit assets preserved for public benefit.** The assets must be valued by independent experts according to established standards, not distorted for personal gain, and protected in a foundation to advance the healthcare interests of Minnesotans.
- **The Attorney General can enjoin and unwind nonprofit conversions that violate the law.** The Attorney General is the state's protector of charitable assets, and needs to receive adequate notice of proposed conversions to protect charitable assets.
- **The public has the opportunity to learn about and weigh in on any proposed conversion.** Too often these kinds of deals take place behind closed doors. Public hearings and input help level the playing field and gather input from the communities affected by the loss of a nonprofit.
- **Independence and community representation in the governance of the community benefit entity (CBE) that receives the assets from a conversion** to ensure community health needs are met.
- **Updates Minnesota statutes to ensure that HMO financial transactions are properly regulated and that we have sufficient sightlines to properly protect the public interest.** The Minnesota Department of Health (MDH) is the regulator of Minnesota's HMOs, but they do not currently receive the same information about financial transactions as the Department of Commerce does from health insurers. MDH needs the right tools to be able to fairly regulate both nonprofit and for profit HMOs.

