

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 4837

(SENATE AUTHORS: WIKLUND)

DATE	D-PG	OFFICIAL STATUS
03/11/2024	12138	Introduction and first reading Referred to Health and Human Services

1.1A bill for an act

1.2relating to health carriers; providing for oversight of health maintenance

1.3organization transactions by the commissioner of health; establishing requirements

1.4for nonprofit health coverage entity conversion transactions; prohibiting certain

1.5conversion transactions; authorizing enforcement; classifying data; amending

1.6Minnesota Statutes 2022, sections 62D.02, by adding subdivisions; 62D.22, by

1.7adding a subdivision; 317A.811, subdivision 1; Minnesota Statutes 2023

1.8Supplement, section 145D.01, subdivision 1; proposing coding for new law in

1.9Minnesota Statutes, chapters 62C; 62D; 145D.

1.10BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11ARTICLE 1

1.12OVERSIGHT OF HEALTH MAINTENANCE ORGANIZATION TRANSACTIONS

1.13Section 1. Minnesota Statutes 2022, section 62D.02, is amended by adding a subdivision

1.14to read:

1.15Subd. 18. **Control.** "Control," including the terms "controlling," "controlled by," and

1.16"under common control with," means the possession, direct or indirect, of the power to

1.17direct or cause the direction of the management and policies of a person, whether through

1.18the ownership of voting securities, by contract other than a commercial contract for goods

1.19or nonmanagement services, or otherwise, unless the power is the result of an official position

1.20with, corporate office held by, or court appointment of the person. Control is presumed to

1.21exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or

1.22holds proxies representing ten percent or more of the voting securities of any other person.

1.23This presumption may be rebutted by a showing made in the manner provided by section

1.2460D.19, subdivision 11, that control does not exist in fact. The commissioner may determine,

1.25after furnishing all persons in interest notice and opportunity to be heard and making specific

2.1 findings of fact to support the determination, that control exists in fact, notwithstanding the
2.2 absence of a presumption to that effect.

2.3 Sec. 2. Minnesota Statutes 2022, section 62D.02, is amended by adding a subdivision to
2.4 read:

2.5 Subd. 19. **Enterprise risk.** "Enterprise risk" means an activity, circumstance, event, or
2.6 series of events involving one or more affiliates of a health maintenance organization that,
2.7 if not remedied promptly, is likely to have a material adverse effect upon the financial
2.8 condition or liquidity of the health maintenance organization or its holding company system
2.9 as a whole. Material adverse effects include but are not limited to anything that would cause
2.10 the health maintenance organization's risk-based capital to fall into company action level
2.11 event in sections 60A.50 to 60A.696 or would cause the health maintenance organization
2.12 to be in hazardous financial condition in accordance with the standards of section 60G.20.

2.13 Sec. 3. Minnesota Statutes 2022, section 62D.02, is amended by adding a subdivision to
2.14 read:

2.15 Subd. 20. **Health maintenance organization holding company system.** "Health
2.16 maintenance organization holding company system" means two or more affiliated persons,
2.17 one or more of which is a health maintenance organization.

2.18 Sec. 4. Minnesota Statutes 2022, section 62D.02, is amended by adding a subdivision to
2.19 read:

2.20 Subd. 21. **Person.** "Person" means an individual, a corporation, a partnership, an
2.21 association, a joint stock company, a trust, an unincorporated organization, any similar
2.22 entity, or any combination of the foregoing acting in concert, but does not include any joint
2.23 venture partnership exclusively engaged in owning, managing, leasing, or developing real
2.24 or tangible personal property.

2.25 Sec. 5. **[62D.31] DISCLOSURE OF MATERIAL TRANSACTIONS.**

2.26 Subdivision 1. **Requirement.** Every health maintenance organization domiciled in this
2.27 state must file a report with the commissioner disclosing material acquisitions and
2.28 dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance
2.29 agreements unless the acquisitions and dispositions of assets or material nonrenewals,
2.30 cancellations, or revisions of ceded reinsurance agreements have been submitted to the

3.1 commissioner for review, approval, or informational purposes pursuant to other provisions
3.2 of law, rule, or other requirements.

3.3 Subd. 2. **Materiality.** No acquisitions or dispositions of assets need be reported pursuant
3.4 to this section if the acquisitions or dispositions are not material. A material acquisition, or
3.5 the aggregate of any series of related acquisitions during any 30-day period, or disposition
3.6 or the aggregate of any series of related dispositions during any 30-day period is one that
3.7 is nonrecurring and not in the ordinary course of business and involves more than five
3.8 percent of the reporting health maintenance organization's total admitted assets as reported
3.9 in the organization's most recent statutory statement filed with the commissioner of
3.10 commerce.

3.11 Subd. 3. **Scope.** (a) Asset acquisitions subject to this section include every purchase,
3.12 lease, exchange, merger, consolidation, succession, or other acquisition other than the
3.13 construction or development of real property by or for the reporting health maintenance
3.14 organization or the acquisition of materials for this purpose.

3.15 (b) Asset dispositions subject to this section include every sale, lease, exchange, merger,
3.16 consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or
3.17 otherwise, abandonment, destruction, or other disposition.

3.18 Subd. 4. **Information to be reported.** The following information is required to be
3.19 disclosed in a report of a material acquisition or disposition of assets:

3.20 (1) date of the transaction;

3.21 (2) manner of acquisition or disposition;

3.22 (3) description of the assets involved;

3.23 (4) nature and amount of the consideration given or received;

3.24 (5) purpose of, or reason for, the transaction;

3.25 (6) manner by which the amount of consideration was determined;

3.26 (7) gain or loss recognized or realized by the health maintenance organization as a result
3.27 of the transaction;

3.28 (8) name of each person from whom the assets were acquired or to whom the assets
3.29 were disposed; and

3.30 (9) any additional information requested by the commissioner.

4.1 Subd. 5. **Date due.** The report required in subdivision 1 is due within 15 days after the
4.2 end of the calendar month in which the transactions occur.

4.3 Subd. 6. **Filing.** One complete copy of the report, including exhibits or other attachments
4.4 filed as part of the report, must be filed with the National Association of Insurance
4.5 Commissioners.

4.6 Subd. 7. **Confidentiality.** Notwithstanding section 62D.23, reports filed with the
4.7 commissioner pursuant to this section must be held as nonpublic data as defined in section
4.8 13.02, are not subject to subpoena, and may not be made public by the commissioner, the
4.9 National Association of Insurance Commissioners, or any other person, except to insurance
4.10 departments of other states, without the prior written consent of the health maintenance
4.11 organization to which the report pertains. The commissioner may publish all or part of a
4.12 report in the manner the commissioner considers appropriate if, after giving the affected
4.13 health maintenance organization notice and an opportunity to be heard, the commissioner
4.14 determines that the interest of policyholders, shareholders, or the public will be served by
4.15 the publication.

4.16 Sec. 6. **[62D.32] ACQUISITION OF CONTROL OF OR MERGER WITH**
4.17 **DOMESTIC HEALTH MAINTENANCE ORGANIZATION.**

4.18 Subdivision 1. **Filing requirements.** (a) No person other than the issuer shall:

4.19 (1) make a tender offer for or a request or invitation for tenders of, or enter into any
4.20 agreement to exchange securities, or seek to acquire, or acquire, in the open market or
4.21 otherwise, any voting security of a domestic health maintenance organization if, after the
4.22 consummation thereof, the person would, directly or indirectly or by conversion or by
4.23 exercise of any right to acquire, be in control of the health maintenance organization;

4.24 (2) enter into an agreement to merge with or otherwise acquire control of a domestic
4.25 health maintenance organization, or any person controlling a domestic health maintenance
4.26 organization; or

4.27 (3) acquire all or substantially all of the assets of a domestic nonprofit health maintenance
4.28 organization through any means unless, at the time the offer, request, or invitation is made
4.29 or the agreement is entered into or before the acquisition of the securities if no offer or
4.30 agreement is involved the person has filed with the commissioner and has sent to the health
4.31 maintenance organization a statement containing the information required by this section
4.32 and the offer, request, invitation, agreement, or acquisition has been approved by the
4.33 commissioner in the manner prescribed in this section.

(b) For purposes of this section, a controlling person of a domestic health maintenance organization seeking to divest the controlling person's controlling interest in the domestic health maintenance organization in any manner shall file with the commissioner, with a copy to the health maintenance organization, a confidential notice of the controlling person's proposed divestiture at least 30 days before the cessation of control. The commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in a health maintenance organization is required to file for and obtain approval of the transaction.

(c) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which must contain the information in section 62D.33, subdivision 3, paragraph (b). A failure to file the notification may be subject to penalties specified in section 62D.33, subdivision 5.

(d) For purposes of this section, a domestic health maintenance organization includes a person controlling a domestic health maintenance organization unless the person as determined by the commissioner is either directly or through the controlling person's affiliates primarily engaged in business other than the business of insurance. For purposes of this section, person does not include any securities broker holding, in the usual and customary broker's function, less than 20 percent of the voting securities of a health maintenance organization or of any person that controls a health maintenance organization.

(e) The statement filed with the commissioner pursuant to subdivisions 1 and 2 must remain confidential until the transaction is approved by the commissioner, except that all attachments filed with the statement remain confidential after the approval unless the commissioner, in the commissioner's discretion, determines that confidential treatment of any of this information will interfere with enforcement of this section.

Subd. 2. Content of statement. (a) The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subdivision 1 is to be effected, hereinafter called "acquiring party"; and

(i) if the person is an individual, the principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or

(ii) if the person is not an individual, a report of the nature of its business operations during the past five years or for a lesser period as the person and any predecessors have

6.1 been in existence; an informative description of the business intended to be done by the
6.2 person and the person's subsidiaries; and a list of all individuals who are or who have been
6.3 selected to become directors or executive officers of the person, or who perform or will
6.4 perform functions appropriate to the positions. The list must include for each individual the
6.5 information required by clause (1);

6.6 (2) the source, nature, and amount of the consideration used or to be used in effecting
6.7 the merger or other acquisition of control, a description of any transaction in which funds
6.8 were or are to be obtained for this purpose, including any pledge of the health maintenance
6.9 organization's stock or the stock of any of its subsidiaries or controlling affiliates and the
6.10 identity of persons furnishing the consideration, provided that where a source of the
6.11 consideration is a loan made in the lender's ordinary course of business, the identity of the
6.12 lender shall remain confidential if the person filing the statement requests;

6.13 (3) fully audited financial information on the earnings and financial condition of each
6.14 acquiring party for the preceding five fiscal years of each acquiring party, or for a lesser
6.15 period as the acquiring party and any predecessors have been in existence, and similar
6.16 unaudited information as of a date not earlier than 90 days before the filing of the statement;

6.17 (4) any plans or proposals that each acquiring party may have to liquidate the health
6.18 maintenance organization, to sell its assets or merge or consolidate it with any person, or
6.19 to make any other material change in its business or corporate structure or management;

6.20 (5) the number of shares of any security referred to in subdivision 1 that each acquiring
6.21 party proposes to acquire; the terms of the offer, request, invitation, agreement, or acquisition
6.22 referred to in subdivision 1; and a statement of the method by which the fairness of the
6.23 proposal was arrived at;

6.24 (6) the amount of each class of any security referred to in subdivision 1 that is beneficially
6.25 owned or concerning which there is a right to acquire beneficial ownership by each acquiring
6.26 party;

6.27 (7) a full description of any contracts, arrangements, or understandings with respect to
6.28 any security referred to in subdivision 1 in which any acquiring party is involved, including
6.29 but not limited to transfer of any of the securities, joint ventures, loan or option arrangements,
6.30 puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division
6.31 of losses or profits, or the giving or withholding of proxies. The description must identify
6.32 all persons who have entered into contracts, arrangements, or understandings;

6.33 (8) a description of the purchase of any security referred to in subdivision 1 during the
6.34 12 calendar months preceding the filing of the statement by any acquiring party including

7.1 the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid
7.2 for the security;

7.3 (9) a description of any recommendations to purchase any security referred to in
7.4 subdivision 1 made during the 12 calendar months preceding the filing of the statement by
7.5 any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring
7.6 party;

7.7 (10) copies of all tender offers for, requests for, or invitations for tenders of, exchange
7.8 offers for, and agreements to acquire or exchange any securities referred to in subdivision
7.9 1 and, if distributed, of additional soliciting material relating to them;

7.10 (11) the term of any agreement, contract, or understanding made with or proposed to be
7.11 made with any broker-dealer as to solicitation of securities referred to in subdivision 1 for
7.12 tender, and the amount of any fees, commissions, or other compensation to be paid to
7.13 broker-dealers with regard to it;

7.14 (12) an agreement by the person required to file the statement referred to in subdivision
7.15 1 that the person will provide the annual report specified in section 60D.19, subdivision
7.16 11a, for so long as control exists;

7.17 (13) a consent by the person required to file the statement referred to in subdivision 1
7.18 that the person and all subsidiaries within the person's control in the health maintenance
7.19 organization holding company system shall provide information to the commissioner upon
7.20 request as necessary to evaluate enterprise risk to the health maintenance organization;

7.21 (14) information regarding the proposed conversion benefit entity if required under
7.22 section 145D.33; and

7.23 (15) additional information the commissioner may prescribe as necessary or appropriate
7.24 for the protection of policyholders of the health maintenance organization or in the public
7.25 interest.

7.26 (b) If the person required to file the statement referred to in subdivision 1 is a partnership,
7.27 limited partnership, syndicate, or other group, the commissioner may require that the
7.28 information in clauses (1) to (15) must be given with respect to each partner of the partnership
7.29 or limited partnership, each member of the syndicate or group, and each person who controls
7.30 the partner or member. If a partner, member, or person is a corporation, or the person required
7.31 to file the statement referred to in subdivision 1 is a corporation, the commissioner may
7.32 require that the information in clauses (1) to (15) must be given with respect to the
7.33 corporation, each officer and director of the corporation, and each person who is directly

or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

(c) If any material change occurs in the facts in the statement filed with the commissioner and sent to the health maintenance organization pursuant to this section, an amendment specifying the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the health maintenance organization within two business days after the person learns of the change.

Subd. 3. **Alternative filing materials.** If any offer, request, invitation, agreement, or acquisition referred to in subdivision 1 is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement under subdivision 1 may utilize these documents in furnishing the information called for by that statement.

Subd. 4. **Approval by commissioner; hearings.** (a) The commissioner shall approve any merger or other acquisition of control under subdivision 1 unless, after a public hearing, the commissioner finds that:

(1) after the change of control, the domestic health maintenance organization in subdivision 1 is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed, unless the domestic health maintenance organization is in rehabilitation or other court-ordered supervision and the acquiring party commits to a plan that would enable the domestic health maintenance organization to satisfy the requirements for the issuance of a license within a reasonable amount of time;

(2) the effect of the merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly therein in applying the competitive standard in this subdivision in which case:

(i) the informational requirements of section 62D.33, subdivision 3, paragraph (b), and the standards of section 62D.33, subdivision 4, paragraph (c), shall apply;

(ii) the merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by section 62D.33, subdivision 4, paragraph (c), exist; and

(iii) the commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

9.1 (3) the financial condition of any acquiring party may jeopardize the financial stability
9.2 of the health maintenance organization or prejudice the interest of its policyholders;

9.3 (4) the plans or proposals that the acquiring party has to liquidate the health maintenance
9.4 organization, sell its assets, or consolidate or merge it with any person, or to make any other
9.5 material change in its business or corporate structure or management, are unfair and
9.6 unreasonable to policyholders of the health maintenance organization and not in the public
9.7 interest;

9.8 (5) the competence, experience, and integrity of those persons who would control the
9.9 operation of the health maintenance organization are such that it would not be in the interest
9.10 of policyholders of the health maintenance organization and of the public to permit the
9.11 merger or other acquisition of control;

9.12 (6) the acquisition is likely to be hazardous or prejudicial to the insurance buying public;
9.13 or

9.14 (7) if applicable, information regarding the plan to transfer assets to a conversion benefit
9.15 entity under sections 145D.30 to 145D.37 and data related to the conversion transaction
9.16 pursuant to section 145D.36.

9.17 (b) The following apply to the public hearing referred to in paragraph (a).

9.18 (1) The hearing must be held within 30 days after the statement required by subdivision
9.19 1 is filed or within 60 days after the statement is filed in the case of a conversion transaction
9.20 under section 145D.32.

9.21 (2) The commissioner must give at least 20 days' notice of the hearing to the person
9.22 filing the statement.

9.23 (3) If the commissioner determines the information provided is insufficient to review
9.24 the proposed transaction, the commissioner shall inform the filing party within 30 days.
9.25 The hearing timeline shall begin when the commissioner sends the person filing the statement
9.26 a notice of complete submission.

9.27 (4) Not less than seven days' notice of the public hearing shall be given by the person
9.28 filing the statement to the health maintenance organization and to other persons designated
9.29 by the commissioner.

9.30 (5) At the hearing, the person filing the statement, the health maintenance organization,
9.31 any person to whom notice of hearing was sent, and any other person whose interest may
9.32 be affected by the statement may present evidence, examine and cross-examine witnesses,
9.33 and offer oral and written arguments, and may conduct discovery proceedings in the same

manner as is presently allowed in district courts of this state. All discovery proceedings must be concluded not later than three days before the start of the public hearing.

(6) The commissioner shall make a determination within 30 days after the conclusion of the hearing.

(c) If the proposed acquisition of control requires the approval of more than one commissioner, the public hearing in paragraph (b) may be held on a consolidated basis upon request of the person filing the statement under subdivision 1. The person shall file the statement under subdivision 1 with the National Association of Insurance Commissioners (NAIC) within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten days of the receipt of the statement under subdivision 1. A hearing conducted on a consolidated basis must be public and must be held within the United States before the commissioners of the states in which the health maintenance organizations are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend the hearing in person or virtually. For purposes of this paragraph, the term "commissioner" when used in reference to an official from a state other than Minnesota means the state official charged with the responsibility of supervising the business associated with the transaction in that state.

(d) In connection with a change of control of a domestic health maintenance organization, any determination by the commissioner that the person acquiring control of the health maintenance organization shall be required to maintain or restore the capital of the health maintenance organization to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to subdivision 1.

(e) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

Subd. 5. **Exemptions.** This section does not apply to any offer, request, invitation, agreement, or acquisition that the commissioner by order exempts from this section as (1) not having been made or entered into for the purpose of changing or influencing control, and not having the effect of changing or influencing the control, of a domestic health maintenance organization, or (2) otherwise not comprehended within the purposes of this section.

11.1 Subd. 6. **Violations.** The following are violations of this section:

11.2 (1) the failure to file any statement, amendment, or other material required to be filed
11.3 pursuant to subdivision 1 or 2; or

11.4 (2) the effectuation or any attempt to effectuate an acquisition of control of, divestiture
11.5 of, or merger with a domestic health maintenance organization unless the commissioner
11.6 has approved it.

11.7 Subd. 7. **Jurisdiction; consent to service of process.** The courts of this state have
11.8 jurisdiction over every person not resident, domiciled, or authorized to do business in this
11.9 state who files a statement with the commissioner under this section, and jurisdiction over
11.10 all actions involving the person arising out of violations of this section, and the person is
11.11 deemed to have performed acts equivalent to and constituting an appointment by the person
11.12 of the commissioner to be the person's true and lawful attorney upon whom may be served
11.13 all lawful process in any action, suit, or proceeding arising out of violations of this section.
11.14 Copies of all lawful process shall be served on the commissioner.

11.15 Sec. 7. **[62D.33] ACQUISITION INVOLVING HEALTH MAINTENANCE**
11.16 **ORGANIZATIONS NOT OTHERWISE COVERED.**

11.17 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
11.18 the meanings given.

11.19 (b) "Acquisition" means an agreement, arrangement, or activity the consummation of
11.20 which results in a person acquiring directly or indirectly the control of another person, and
11.21 includes but is not limited to the acquisition of voting securities, the acquisition of assets,
11.22 bulk reinsurance, and mergers.

11.23 (c) "Involved health maintenance organization" includes a health maintenance
11.24 organization that either acquires or is acquired, is affiliated with an acquirer or acquired, or
11.25 is the result of a merger.

11.26 Subd. 2. **Scope.** (a) Except as exempted in paragraph (b), this section applies to any
11.27 acquisition in which there is a change in control of a health maintenance organization
11.28 authorized to do business in this state.

11.29 (b) This section does not apply to:

11.30 (1) a purchase of securities solely for investment purposes so long as the securities are
11.31 not used by voting or otherwise to cause or attempt to cause the substantial lessening of
11.32 competition in any insurance market in this state. If a purchase of securities results in a

12.1 presumption of control under section 62D.02, subdivision 18, it is not solely for investment
12.2 purposes unless the commissioner of the health maintenance organization's state of domicile
12.3 accepts a disclaimer of control or affirmatively finds that control does not exist and the
12.4 disclaimer action or affirmative finding is communicated by the domiciliary commissioner
12.5 to the commissioner of this state;

12.6 (2) the acquisition of a person by another person when both persons are neither directly
12.7 nor through affiliates primarily engaged in the business of insurance, if preacquisition
12.8 notification is filed with the commissioner in accordance with subdivision 3, paragraph (a),
12.9 30 days before the proposed effective date of the acquisition. The preacquisition notification
12.10 is not required for exclusion from this section if the acquisition would otherwise be excluded
12.11 from this section by any other clause of this paragraph;

12.12 (3) the acquisition of already affiliated persons;

12.13 (4) an acquisition if, as an immediate result of the acquisition:

12.14 (i) in no market would the combined market share of the involved health maintenance
12.15 organizations exceed five percent of the total market;

12.16 (ii) there would be no increase in any market share; or

12.17 (iii) in no market would the combined market share of the involved health maintenance
12.18 organizations exceed 12 percent of the total market and the market share increases by more
12.19 than two percent of the total market.

12.20 For the purpose of this clause, "market" means a direct written insurance premium in this
12.21 state for a line of business as contained in the annual statement required to be filed by health
12.22 maintenance organizations licensed to do business in this state; and

12.23 (5) an acquisition of a health maintenance organization whose domiciliary commissioner
12.24 affirmatively finds that the health maintenance organization is in failing condition; there is
12.25 a lack of feasible alternative to improving the condition; the public benefits of improving
12.26 the health maintenance organization's condition through the acquisition exceed the public
12.27 benefits that would arise from not lessening competition; and the findings are communicated
12.28 by the domiciliary commissioner to the commissioner of this state.

12.29 Subd. 3. **Preacquisition notification; waiting period.** (a) An acquisition covered by
12.30 subdivision 2 may be subject to an order pursuant to subdivision 4 unless the acquiring
12.31 person files a preacquisition notification and the waiting period has expired. The acquired
12.32 person may file a preacquisition notification. The commissioner shall give confidential

13.1 treatment to information submitted under this section in the same manner as provided in
13.2 section 60D.22.

13.3 (b) The preacquisition notification must be in the form and contain the information as
13.4 prescribed by the National Association of Insurance Commissioners relating to those markets
13.5 that, under subdivision 2, paragraph (b), clause (5), cause the acquisition not to be exempted
13.6 from this section. The commissioner may require the additional material and information
13.7 as the commissioner deems necessary to determine whether the proposed acquisition, if
13.8 consummated, would violate the competitive standard of subdivision 4. The required
13.9 information may include an opinion of an economist on the competitive impact of the
13.10 acquisition in this state accompanied by a summary of the education and experience of the
13.11 person indicating the person's ability to render an informed opinion.

13.12 (c) The waiting period required begins on the date of the commissioner's receipt of a
13.13 preacquisition notification and ends on the earlier of the 30th day after the date of its receipt,
13.14 or termination of the waiting period by the commissioner. Before the end of the waiting
13.15 period, the commissioner on a onetime basis may require the submission of additional
13.16 needed information relevant to the proposed acquisition, in which event the waiting period
13.17 shall end on the earlier of the 30th day after receipt of the additional information by the
13.18 commissioner or termination of the waiting period by the commissioner.

13.19 Subd. 4. **Competitive standard.** (a) The commissioner may enter an order under
13.20 subdivision 5 with respect to an acquisition if there is substantial evidence that the effect
13.21 of the acquisition may be substantially to lessen competition in any line of insurance in this
13.22 state or tend to create a monopoly therein or if the health maintenance organization fails to
13.23 file adequate information in compliance with subdivision 3.

13.24 (b) In determining whether a proposed acquisition would violate the competitive standard
13.25 of paragraph (a), the commissioner shall consider the following:

13.26 (1) any acquisition covered under subdivision 2 involving two or more health maintenance
13.27 organizations competing in the same market is prima facie evidence of violation of the
13.28 competitive standards:

13.29 (i) if the market is highly concentrated and the involved health maintenance organizations
13.30 possess the following shares of the market:

13.31	<u>HEALTH MAINTENANCE</u>	<u>HEALTH MAINTENANCE</u>
13.32	<u>ORGANIZATION A</u>	<u>ORGANIZATION B</u>
13.33	<u>4 percent</u>	<u>4 percent or more</u>

14.1	<u>10 percent</u>	<u>2 percent or more</u>
14.2	<u>15 percent</u>	<u>1 percent or more; or</u>

14.3 (ii) if the market is not highly concentrated and the involved health maintenance
 14.4 organizations possess the following shares of the market:

14.5	<u>HEALTH MAINTENANCE</u>	<u>HEALTH MAINTENANCE</u>
14.6	<u>ORGANIZATION A</u>	<u>ORGANIZATION B</u>
14.7	<u>5 percent</u>	<u>5 percent or more</u>
14.8	<u>10 percent</u>	<u>4 percent or more</u>
14.9	<u>15 percent</u>	<u>3 percent or more</u>
14.10	<u>19 percent</u>	<u>1 percent or more</u>

14.11 A highly concentrated market is one in which the share of the four largest health
 14.12 maintenance organizations is 75 percent or more of the market. Percentages not shown in
 14.13 the tables are interpolated proportionately to the percentages that are shown. If more than
 14.14 two health maintenance organizations are involved, exceeding the total of the two columns
 14.15 in the table is prima facie evidence of violation of the competitive standard in paragraph
 14.16 (a). For the purpose of this clause, the health maintenance organization with the largest
 14.17 share of the market shall be deemed to be health maintenance organization A.

14.18 (2) There is a significant trend toward increased concentration when the aggregate market
 14.19 share of any grouping of the largest health maintenance organizations in the market, from
 14.20 the two largest to the eight largest, has increased by seven percent or more of the market
 14.21 over a period of time extending from any base year five to ten years prior to the acquisition
 14.22 up to the time of the acquisition. Any acquisition or merger covered under subdivision 2
 14.23 involving two or more health maintenance organizations competing in the same market is
 14.24 prima facie evidence of a violation of the competitive standard in clause (1) if:

14.25 (i) there is a significant trend toward increased concentration in the market;

14.26 (ii) one of the health maintenance organizations involved is one of the health maintenance
 14.27 organizations in a grouping of large health maintenance organizations showing the requisite
 14.28 increase in the market share; and

14.29 (iii) another involved health maintenance organization's market is two percent or more.

14.30 (3) For purposes of this paragraph:

14.31 (i) "Health maintenance organization" includes any company or group of companies
 14.32 under common management, ownership, or control.

(ii) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, the line being that used in the annual statement required to be filed by health maintenance organizations doing business in this state, and the relevant geographical market is assumed to be this state.

(iii) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under paragraph (b), clauses (1) and (2), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraph (b), clauses (1) and (2), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include but are not limited to: market shares; volatility of ranking of market leaders; number of competitors; concentration; trend of concentration in the industry; and ease of entry and exit into the market.

(c) An order may not be entered under subdivision 5 if:

(1) the acquisition will yield substantial economies of scale or economies in resource utilization that cannot feasibly be achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits which would arise from not lessening competition; or

(2) the acquisition will substantially increase the availability of health care coverage and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

Subd. 5. Orders and penalties. (a) If an acquisition violates the standards of this section, the commissioner may enter an order:

(1) requiring an involved health maintenance organization to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(2) denying the application of an acquired or acquiring health maintenance organization for a certificate of authority in this state.

(b) The order must not be entered unless there is a hearing, the notice of the hearing is issued before the end of the waiting period and not less than 15 days before the hearing, and the hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order must be accompanied by a written decision of the commissioner's findings of fact and conclusions of law.

(c) An order entered under this subdivision shall not become final earlier than 30 days after the order is issued, during which time the involved health maintenance organization may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(d) An order under this subdivision does not apply if the acquisition is not consummated.

(e) Any person who violates a cease and desist order of the commissioner and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to any one or more of:

(1) a monetary penalty of not more than \$10,000 for every day of violation; and

(2) suspension or revocation of the person's license.

(f) Any health maintenance organization or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with the filing requirement is subject to a fine of not more than \$50,000.

Sec. 8. [62D.34] STANDARDS AND MANAGEMENT OF A HEALTH MAINTENANCE ORGANIZATION HOLDING COMPANY SYSTEM.

Subdivision 1. Transactions within a health maintenance organization holding company system. (a) Transactions within a health maintenance organization holding company system to which a health maintenance organization subject to regulation by the commissioner is a party are subject to the following standards:

(1) the terms shall be fair and reasonable;

(2) agreements for cost-sharing services and management shall include the provisions required by rule issued by the commissioner;

(3) charges or fees for services performed shall be reasonable;

17.1 (4) expenses incurred and payment received shall be allocated to the health maintenance
17.2 organization in conformity with customary insurance accounting practices consistently
17.3 applied;

17.4 (5) the books, accounts, and records of each party to all such transactions shall be so
17.5 maintained as to clearly and accurately disclose the nature and details of the transactions,
17.6 including this accounting information as is necessary to support the reasonableness of the
17.7 charges or fees to the respective parties; and

17.8 (6) the health maintenance organization's surplus as regards policyholders following
17.9 any dividends or distributions to shareholder affiliates shall be reasonable in relation to the
17.10 health maintenance organization's outstanding liabilities and adequate to its financial needs.

17.11 (b) The following transactions involving a domestic health maintenance organization
17.12 and any person in its health maintenance organization holding company system, including
17.13 amendments or modifications of affiliate agreements previously filed pursuant to this section,
17.14 which are subject to any materiality standards contained in clauses (1) to (7), may not be
17.15 entered into unless the health maintenance organization has notified the commissioner in
17.16 writing of its intention to enter into the transaction at least 30 days prior thereto, or a shorter
17.17 period the commissioner permits, and the commissioner has not disapproved the transaction
17.18 within this period. The notice for amendments or modifications must include the reasons
17.19 for the change and the financial impact on the domestic health maintenance organization.
17.20 Informal notice must be reported, within 30 days after a termination of a previously filed
17.21 agreement, to the commissioner for determination of the type of filing required, if any:

17.22 (1) sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments
17.23 provided the transactions are equal to or exceed the lesser of three percent of the health
17.24 maintenance organization's admitted assets, or 25 percent of surplus as regards policyholders;
17.25 each as of the 31st day of December next preceding;

17.26 (2) loans or extensions of credit to any person who is not an affiliate, where the health
17.27 maintenance organization makes the loans or extensions of credit with the agreement or
17.28 understanding that the proceeds of the transactions, in whole or in substantial part, are to
17.29 be used to make loans or extensions of credit to, to purchase assets of, or to make investments
17.30 in, any affiliate of the health maintenance organization making such loans or extensions of
17.31 credit provided the transactions are equal to or exceed the lesser of three percent of the
17.32 health maintenance organization's admitted assets or 25 percent of surplus as regards
17.33 policyholders; each as of the 31st day of December next preceding;

(3) reinsurance agreements or modifications to those agreements, including agreements in which the reinsurance premium or a change in the health maintenance organization's liabilities, or the projected reinsurance premium or a change in the health maintenance organization's liabilities in any of the next three years, equals or exceeds five percent of the health maintenance organization's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from a health maintenance organization to a nonaffiliate, if an agreement or understanding exists between the health maintenance organization and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the health maintenance organization;

(4) all management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements;

(5) guarantees when made by a domestic health maintenance organization; provided that a guarantee that is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent of the health maintenance organization's admitted assets or ten percent of surplus as regards policyholders as of the 31st day of December next preceding. All guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;

(6) direct or indirect acquisitions or investments in a person that controls the health maintenance organization or in an affiliate of the health maintenance organization in an amount which, together with its present holdings in the investments, exceeds 2-1/2 percent of the health maintenance organization's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 60D.16, or in nonsubsidiary insurance affiliates that are subject to the provisions of sections 60D.15 to 60D.29, are exempt from this requirement; and

(7) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the health maintenance organization's policyholders.

Nothing contained in this section authorizes or permits any transactions that, in the case of a health maintenance organization not a member of the same health maintenance organization holding company system, would be otherwise contrary to law.

(c) A domestic health maintenance organization may not enter into transactions which are part of a plan or series of like transactions with persons within the health maintenance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner

19.1 determines that the separate transactions were entered into over any 12-month period for
19.2 the purpose, the commissioner may exercise the authority under section 62D.17.

19.3 (d) The commissioner, in reviewing transactions pursuant to paragraph (b), shall consider
19.4 whether the transactions comply with the standards in paragraph (a) and whether they
19.5 adversely affect the interests of policyholders.

19.6 (e) The commissioner shall be notified within 30 days of any investment of the domestic
19.7 health maintenance organization in any one corporation if the total investment in the
19.8 corporation by the insurance holding company system exceeds ten percent of the corporation's
19.9 voting securities.

19.10 Subd. 2. **Dividends and other distributions.** (a) Subject to the limitations and
19.11 requirements of this subdivision, the board of directors of any domestic health maintenance
19.12 organization within a health maintenance organization holding company system may
19.13 authorize and cause the health maintenance organization to declare and pay any dividend
19.14 or distribution to its shareholders as the directors deem prudent from the earned surplus of
19.15 the health maintenance organization. A health maintenance organization's earned surplus,
19.16 also known as unassigned funds, shall be determined in accordance with the accounting
19.17 procedures and practices governing preparation of its annual statement. Dividends that are
19.18 paid from sources other than a health maintenance organization's earned surplus as of the
19.19 end of the immediately preceding quarter for which the health maintenance organization
19.20 has filed a quarterly or annual statement as appropriate, or are extraordinary dividends or
19.21 distributions may be paid only as provided in paragraphs (d) to (f).

19.22 (b) The health maintenance organization shall notify the commissioner within five
19.23 business days following declaration of a dividend declared pursuant to paragraph (a) and
19.24 at least ten days prior to its payment. The commissioner shall promptly consider the
19.25 notification filed pursuant to this paragraph, taking into consideration the factors described
19.26 in subdivision 4.

19.27 (c) The commissioner shall review at least annually the dividends paid by a health
19.28 maintenance organization pursuant to paragraph (a) for the purpose of determining if the
19.29 dividends are reasonable based upon: (1) the adequacy of the level of surplus as regards
19.30 policyholders remaining after the dividend payments; and (2) the quality of the health
19.31 maintenance organization's earnings and extent to which the reported earnings include
19.32 extraordinary items, such as surplus relief reinsurance transactions and reserve
19.33 destrengthening.

(d) No domestic health maintenance organization shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until: (1) 30 days after the commissioner has received notice of the declaration of it and has not within the period disapproved the payment; or (2) the commissioner has approved the payment within the 30-day period.

(e) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of: (1) ten percent of the health maintenance organization's surplus as regards policyholders on December 31 of the preceding year; or (2) the net income, not including realized capital gains, for the 12-month period ending on December 31 of the preceding year, but does not include pro rata distributions of any class of the health maintenance organization's own securities.

(f) Notwithstanding any other provision of law, a health maintenance organization may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until: (1) the commissioner has approved the payment of the dividend or distribution; or (2) the commissioner has not disapproved the payment within the 30-day period under this section.

(g) For purposes of state law, dividends paid to a health maintenance organization's parent company from a health maintenance organization, which is a member of a health maintenance organization holding company system, are not considered income to the parent company.

Sec. 9. **REVISOR INSTRUCTION.**

In Minnesota Statutes, chapter 62D, the revisor of statutes shall change "sections 62D.01 to 62D.30" to "this chapter." In Minnesota Statutes, section 145B.02, subdivision 7, the revisor of statutes shall change "sections 62D.01 to 62D.30" to "chapter 62D."

ARTICLE 2

NONPROFIT HEALTH COVERAGE ENTITY CONVERSION TRANSACTIONS

Section 1. **[145D.30] DEFINITIONS.**

Subdivision 1. **Application.** For purposes of sections 145D.30 to 145D.37, the following terms have the meanings given unless the context clearly indicates otherwise.

21.1 Subd. 2. **Commissioner** "Commissioner" means the commissioner of commerce for a
21.2 nonprofit health coverage entity that is a nonprofit health service plan corporation operating
21.3 under chapter 62C or the commissioner of health for a nonprofit health coverage entity that
21.4 is a nonprofit health maintenance organization operating under chapter 62D.

21.5 Subd. 3. **Control.** "Control," including the terms "controlling," "controlled by," and
21.6 "under common control with," means the possession, direct or indirect, of the power to
21.7 direct or cause the direction of the management and policies of a nonprofit health coverage
21.8 entity, whether through the ownership of voting securities, through membership in an entity
21.9 formed under chapter 317A, by contract other than a commercial contract for goods or
21.10 nonmanagement services, or otherwise, unless the power is the result of an official position
21.11 with, corporate office held by, or court appointment of the person. Control is presumed to
21.12 exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or
21.13 holds proxies representing 40 percent or more of the voting securities of any other person
21.14 or if any person, directly or indirectly, constitutes 40 percent or more of the membership
21.15 of an entity formed under chapter 317A. The attorney general may determine that control
21.16 exists in fact, notwithstanding the absence of a presumption to that effect.

21.17 Subd. 4. **Conversion benefit entity.** "Conversion benefit entity" means a foundation,
21.18 corporation, limited liability company, trust, partnership, or other entity that receives, in
21.19 connection with a conversion transaction, the value of any public benefit asset in accordance
21.20 with section 145D.32, subdivision 5.

21.21 Subd. 5. **Conversion transaction.** "Conversion transaction" means a transaction otherwise
21.22 permitted under applicable law in which a nonprofit health coverage entity:

21.23 (1) merges, consolidates, converts, or transfers all or substantially all of its assets to any
21.24 entity except a corporation that is exempt under United States Code, title 26, section
21.25 501(c)(3);

21.26 (2) makes a series of separate transfers within a 60-month period that in the aggregate
21.27 constitute a transfer of all or substantially all of the nonprofit health coverage entity's assets
21.28 to any entity except a corporation that is exempt under United States Code, title 26, section
21.29 501(c)(3); or

21.30 (3) adds or substitutes one or more directors or officers that effectively transfer the
21.31 control of, responsibility for, or governance of the nonprofit health coverage entity to any
21.32 entity except a corporation that is exempt under United States Code, title 26, section
21.33 501(c)(3).

22.1 Subd. 6. **Corporation.** "Corporation" has the meaning given in section 317A.011,
22.2 subdivision 6, and also includes a nonprofit limited liability company organized under
22.3 section 322C.1101.

22.4 Subd. 7. **Director.** "Director" has the meaning given in section 317A.011, subdivision
22.5 7.

22.6 Subd. 8. **Family member.** "Family member" means a spouse, parent, child, spouse of
22.7 a child, brother, sister, or spouse of a brother or sister.

22.8 Subd. 9. **Full and fair value.** "Full and fair value" means at least the amount that the
22.9 public benefit assets of the nonprofit health coverage entity would be worth if the assets
22.10 were equal to stock in the nonprofit health coverage entity, if the nonprofit health coverage
22.11 entity was a for-profit corporation and if the nonprofit health coverage entity had 100 percent
22.12 of its stock authorized by the corporation and available for purchase without transfer
22.13 restrictions. The valuation shall consider market value, investment or earning value, net
22.14 asset value, goodwill, amount of donations received, and control premium, if any.

22.15 Subd. 10. **Key employee.** "Key employee" means an individual, regardless of title, who:

22.16 (1) has responsibilities, power, or influence over an organization similar to those of an
22.17 officer or director;

22.18 (2) manages a discrete segment or activity of the organization that represents ten percent
22.19 or more of the activities, assets, income, or expenses of the organization, as compared to
22.20 the organization as a whole; or

22.21 (3) has or shares authority to control or determine ten percent or more of the organization's
22.22 capital expenditures, operating budget, or compensation for employees.

22.23 Subd. 11. **Nonprofit health coverage entity.** "Nonprofit health coverage entity" means
22.24 a nonprofit health service plan corporation operating under chapter 62C or a nonprofit health
22.25 maintenance organization operating under chapter 62D.

22.26 Subd. 12. **Officer.** "Officer" has the meaning given in section 317A.011, subdivision
22.27 15.

22.28 Subd. 13. **Public benefit assets.** "Public benefit assets" means the entirety of a nonprofit
22.29 health coverage entity's assets, whether tangible or intangible, including but not limited to
22.30 its goodwill and anticipated future revenue.

22.31 Subd. 14. **Related organization.** "Related organization" has the meaning given in section
22.32 317A.011, subdivision 18.

23.1 **Sec. 2. [145D.31] CERTAIN CONVERSION TRANSACTIONS PROHIBITED.**

23.2 A nonprofit health coverage entity must not enter into a conversion transaction if:

23.3 (1) doing so would result in less than the full and fair market value of all public benefit
23.4 assets remaining dedicated to the public benefit; or

23.5 (2) an individual who has been an officer, director, or other executive of the nonprofit
23.6 health coverage entity or of a related organization, or a family member of such an individual:

23.7 (i) has held or will hold, whether guaranteed or contingent, an ownership stake, stock,
23.8 securities, investment, or other financial interest in an entity to which the nonprofit health
23.9 coverage entity transfers public benefit assets in connection with the conversion transaction;

23.10 (ii) has received or will receive any type of compensation or other financial benefit from
23.11 an entity to which the nonprofit health coverage entity transfers public benefit assets in
23.12 connection with the conversion transaction;

23.13 (iii) has held or will hold, whether guaranteed or contingent, an ownership stake, stock,
23.14 securities, investment, or other financial interest in an entity that has or will have a business
23.15 relationship with an entity to which the nonprofit health coverage entity transfers public
23.16 benefit assets in connection with the conversion transaction; or

23.17 (iv) has received or will receive any type of compensation or other financial benefit from
23.18 an entity that has or will have a business relationship with an entity to which the nonprofit
23.19 health coverage entity transfers public benefit assets in connection with the conversion
23.20 transaction.

23.21 **Sec. 3. [145D.32] REQUIREMENTS FOR NONPROFIT HEALTH COVERAGE**
23.22 **ENTITY CONVERSION TRANSACTIONS.**

23.23 Subdivision 1. **Notice.** (a) Before entering into a conversion transaction, a nonprofit
23.24 health coverage entity must notify the attorney general according to section 317A.811. In
23.25 addition to the elements listed in section 317A.811, subdivision 1, the notice required by
23.26 this subdivision must also include: (1) an itemization of the nonprofit health coverage entity's
23.27 public benefit assets and an independent third-party valuation of the nonprofit health coverage
23.28 entity's public benefit assets; (2) a proposed plan to distribute the value of those public
23.29 benefit assets to a conversion benefit entity that meets the requirements of section 145D.33;
23.30 and (3) other information contained in forms provided by the attorney general.

23.31 (b) When the nonprofit health coverage entity provides the attorney general with the
23.32 notice and other information required under paragraph (a), the nonprofit health coverage

24.1 entity must also provide a copy of this notice and other information to the applicable
24.2 commissioner.

24.3 Subd. 2. **Nonprofit health coverage entity requirements.** Before entering into a
24.4 conversion transaction, a nonprofit health coverage entity must ensure that:

24.5 (1) the proposed conversion transaction complies with chapters 317A and 501B and
24.6 other applicable laws;

24.7 (2) the proposed conversion transaction does not involve or constitute a breach of
24.8 charitable trust;

24.9 (3) the nonprofit health coverage entity shall receive full and fair value for its public
24.10 benefit assets;

24.11 (4) the value of the public benefit assets to be transferred has not been manipulated in
24.12 a manner that causes or caused the value of the assets to decrease;

24.13 (5) the proceeds of the proposed conversion transaction shall be used in a manner
24.14 consistent with the public benefit for which the assets are held by the nonprofit health
24.15 coverage entity;

24.16 (6) the proposed conversion transaction shall not result in a breach of fiduciary duty;
24.17 and

24.18 (7) the conversion benefit entity that receives the value of the nonprofit health coverage
24.19 entity's public benefit assets meets the requirements in section 145D.33.

24.20 Subd. 3. **Listening sessions and public comment.** The attorney general or the
24.21 commissioner may hold public listening sessions or forums and may solicit public comments
24.22 regarding the proposed conversion transaction, including on the formation of a conversion
24.23 benefit entity under section 145D.33.

24.24 Subd. 4. **Waiting period.** (a) Subject to paragraphs (b) and (c), a nonprofit health
24.25 coverage entity must not enter into a conversion transaction until 90 days after the nonprofit
24.26 health coverage entity has given written notice as required in subdivision 1.

24.27 (b) The attorney general may waive all or part of the waiting period or may extend the
24.28 waiting period for an additional 90 days by notifying the nonprofit health coverage entity
24.29 of the extension in writing.

24.30 (c) The time periods specified in this subdivision shall be suspended while an
24.31 investigation into the conversion transaction is pending or while a request from the attorney
24.32 general for additional information is outstanding.

25.1 Subd. 5. **Transfer of value of assets required.** As part of a conversion transaction for
25.2 which notice is provided under subdivision 1, the nonprofit health coverage entity must
25.3 transfer the entirety of the full and fair value of its public benefit assets to one or more
25.4 conversion benefit entities that meet the requirements in section 145D.33.

25.5 Subd. 6. **Funds restricted for a particular purpose.** Nothing in this section relieves a
25.6 nonprofit health coverage entity from complying with requirements for funds that are
25.7 restricted for a particular purpose. Funds restricted for a particular purpose must continue
25.8 to be used in accordance with the purpose for which they were restricted under sections
25.9 317A.671 and 501B.31. A nonprofit health coverage entity may not convert assets that
25.10 would conflict with their restricted purpose.

25.11 Sec. 4. **[145D.33] CONVERSION BENEFIT ENTITY REQUIREMENTS.**

25.12 Subdivision 1. **Requirements.** In order to receive the value of a nonprofit health coverage
25.13 entity's public benefit assets as part of a conversion transaction, a conversion benefit entity
25.14 must:

25.15 (1) be: (i) an existing or new domestic, nonprofit corporation operating under chapter
25.16 317A, a nonprofit limited liability company operating under chapter 322C, or a wholly
25.17 owned subsidiary thereof; and (ii) exempt under United States Code, title 26, section
25.18 501(c)(3);

25.19 (2) have in place procedures and policies to prohibit conflicts of interest, including but
25.20 not limited to conflicts of interest relating to any grant-making activities that may benefit:

25.21 (i) the officers, directors, or key employees of the conversion benefit entity;

25.22 (ii) any entity to which the nonprofit health coverage entity transfers public benefit assets
25.23 in connection with a conversion transaction; or

25.24 (iii) any officers, directors, or key employees of an entity to which the nonprofit health
25.25 coverage entity transfers public benefit assets in connection with a conversion transaction;

25.26 (3) operate to benefit the health of the people in this state;

25.27 (4) have in place procedures and policies that prohibit:

25.28 (i) an officer, director, or key employee of the nonprofit health coverage entity from
25.29 serving as an officer, director, or key employee of the conversion benefit entity for the
25.30 five-year period following the conversion transaction;

(ii) an officer, director, or key employee of the nonprofit health coverage entity or of the conversion benefit entity from directly or indirectly benefitting from the conversion transaction; and

(iii) elected or appointed public officials from serving as an officer, director, or key employee of the conversion benefit entity;

(5) not make grants or payments or otherwise provide financial benefit to an entity to which a nonprofit health coverage entity transfers public benefit assets as part of a conversion transaction or to a related organization of the entity to which the nonprofit health coverage entity transfers public benefit assets as part of a conversion transaction; and

(6) not have as an officer director, or key employee any individual who has been an officer, director, or key employee of an entity that receives public benefit assets as part of a conversion transaction.

Subd. 2. **Review and approval.** The commissioner must review and approve a conversion benefit entity before the conversion benefit entity receives the value of public benefit assets from a nonprofit health coverage entity. In order to be approved under this subdivision, the conversion benefit entity's governance must be broadly based in the community served by the nonprofit health coverage entity and must be independent of the entity to which the nonprofit health coverage entity transfers public benefit assets as part of the conversion transaction. As part of the review of the conversion benefit entity's governance, the commissioner may hold a public hearing. The public hearing, if held by the commissioner of health, may be held concurrently with the hearing authorized under section 62D.31. If the commissioner finds it necessary, a portion of the value of the public benefit assets must be used to develop a community-based plan for use by the conversion benefit entity.

Subd. 3. **Community advisory committee.** The commissioner must establish a community advisory committee for a conversion benefit entity receiving the value of public benefit assets. The members of the community advisory committee must be selected to represent the diversity of the community previously served by the nonprofit health coverage entity. The community advisory committee must:

(1) provide a slate of three nominees for each vacancy on the governing board of the conversion benefit entity, from which the remaining board members must select new members to the board;

(2) provide the conversion benefit entity's governing board with guidance on the health needs of the community previously served by the nonprofit health coverage entity; and

27.1 (3) promote dialogue and information sharing between the conversion benefit entity and
27.2 the community previously served by the nonprofit health coverage entity.

27.3 **Sec. 5. [145D.34] ENFORCEMENT AND REMEDIES.**

27.4 Subdivision 1. **Investigation.** The attorney general has the powers in section 8.31.
27.5 Nothing in this subdivision limits the powers, remedies, or responsibilities of the attorney
27.6 general under this chapter; chapter 8, 309, 317A, or 501B; or any other chapter. For purposes
27.7 of this section, an approval by the commissioner for regulatory purposes does not impair
27.8 or inform the attorney general's authority.

27.9 Subd. 2. **Enforcement and penalties.** (a) The attorney general may bring an action in
27.10 district court to enjoin or unwind a conversion transaction or seek other equitable relief
27.11 necessary to protect the public interest if:

27.12 (1) a nonprofit health coverage entity or conversion transaction violates sections 145D.30
27.13 to 145D.33; or

27.14 (2) the conversion transaction is contrary to the public interest.

27.15 In seeking injunctive relief, the attorney general must not be required to establish irreparable
27.16 harm but must instead establish that a violation of sections 145D.30 to 145D.33 occurred
27.17 or that the requested order promotes the public interest.

27.18 (b) Factors informing whether a conversion transaction is contrary to the public interest
27.19 include but are not limited to whether:

27.20 (1) the conversion transaction shall result in increased health care costs for patients; and

27.21 (2) the conversion transaction shall adversely impact provider cost trends and containment
27.22 of total health care spending.

27.23 (c) The attorney general may enforce sections 145D.30 to 145D.33 under section 8.31.

27.24 (d) Failure of the entities involved in a conversion transaction to provide timely
27.25 information as required by the attorney general or the commissioner shall be an independent
27.26 and sufficient ground for a court to enjoin or unwind the transaction or provide other equitable
27.27 relief, provided the attorney general notifies the entities of the inadequacy of the information
27.28 provided and provides the entities with a reasonable opportunity to remedy the inadequacy.

27.29 (e) An officer, director, or other executive found to have violated sections 145D.30 to
27.30 145D.33 shall be subject to a civil penalty of up to \$100,000 for each violation. A corporation
27.31 or other entity which is a party to or materially participated in a conversion transaction
27.32 found to have violated sections 145D.30 to 145D.33 shall be subject to a civil penalty of

28.1 up to \$1,000,000. A court may also award reasonable attorney fees and costs of investigation
28.2 and litigation.

28.3 Subd. 3. **Commissioner of health; data and research.** The commissioner of health
28.4 must provide the attorney general, upon request, with data and research on broader market
28.5 trends, impacts on prices and outcomes, public health and population health considerations,
28.6 and health care access, for the attorney general to use when evaluating whether a conversion
28.7 transaction is contrary to public interest. The commissioner may share with the attorney
28.8 general, according to section 13.05, subdivision 9, any not public data, as defined in section
28.9 13.02, subdivision 8a, held by the commissioner to aid in the investigation and review of
28.10 the conversion transaction, and the attorney general must maintain this data with the same
28.11 classification according to section 13.03, subdivision 4, paragraph (c).

28.12 Subd. 4. **Failure to take action.** Failure by the attorney general to take action with
28.13 respect to a conversion transaction under this section does not constitute approval of the
28.14 conversion transaction or waiver, nor shall failure prevent the attorney general from taking
28.15 action in the same, similar, or subsequent circumstances.

28.16 **Sec. 6. [145D.36] DATA PRACTICES.**

28.17 Section 13.65 applies to data provided by a nonprofit health coverage entity or the
28.18 commissioner to the attorney general under sections 145D.30 to 145D.33 and to data provided
28.19 by a nonprofit health coverage entity to the commissioner under sections 145D.30 to 145D.33.
28.20 The attorney general or the commissioner may make any data classified as confidential or
28.21 protected nonpublic under this section accessible to any civil or criminal law enforcement
28.22 agency if the attorney general or commissioner determines that the access aids the law
28.23 enforcement process.

28.24 **Sec. 7. [145D.36] COMMISSIONER OF HEALTH; REPORTS AND ANALYSIS.**

28.25 Notwithstanding any law to the contrary, the commissioner may use data or information
28.26 submitted under sections 60A.135 to 60A.137, 60A.17, 60D.18, 60D.20, 62D.31 to 62D.35,
28.27 and 145D.32 to conduct analyses of the aggregate impact of transactions within nonprofit
28.28 health coverage entities and organizations which include nonprofit health coverage entities
28.29 or their affiliates on access to or the cost of health care services, health care market
28.30 consolidation, and health care quality. The commissioner must issue periodic public reports
28.31 on the number and types of conversion transactions subject to sections 145D.30 to 145D.35
28.32 and on the aggregate impact of conversion transactions on health care costs, quality, and
28.33 competition in Minnesota.

29.1 Sec. 8. [145D.37] RELATION TO OTHER LAW.

29.2 (a) Sections 145D.30 to 145D.36 are in addition to and do not affect or limit any power,
29.3 remedy, or responsibility of a health maintenance organization, a service plan corporation,
29.4 a conversion benefit entity, the attorney general, the commissioner of health, or the
29.5 commissioner of commerce under this chapter; chapter 8, 62C, 62D, 309, 317A, or 501B;
29.6 or other law.

29.7 (b) Nothing in sections 145D.03 to 145D.36 authorizes a nonprofit health coverage entity
29.8 to enter into a conversion transaction not otherwise permitted under chapter 317A or 501B
29.9 or other law.

29.10 **ARTICLE 3**
29.11 **OTHER PROVISIONS**

29.12 Section 1. [62C.045] APPLICATION OF OTHER LAW.

29.13 Sections 145D.30 to 145D.37 apply to service plan corporations operating under this
29.14 chapter.

29.15 Sec. 2. Minnesota Statutes 2022, section 62D.22, is amended by adding a subdivision to
29.16 read:

29.17 Subd. 5a. **Application of other law.** Sections 145D.30 to 145D.37 apply to nonprofit
29.18 health maintenance organizations operating under this chapter.

29.19 Sec. 3. Minnesota Statutes 2023 Supplement, section 145D.01, subdivision 1, is amended
29.20 to read:

29.21 Subdivision 1. **Definitions.** (a) For purposes of this ~~chapter~~ section and section 145D.02,
29.22 the following terms have the meanings given.

29.23 (b) "Captive professional entity" means a professional corporation, limited liability
29.24 company, or other entity formed to render professional services in which a beneficial owner
29.25 is a health care provider employed by, controlled by, or subject to the direction of a hospital
29.26 or hospital system.

29.27 (c) "Commissioner" means the commissioner of health.

29.28 (d) "Control," including the terms "controlling," "controlled by," and "under common
29.29 control with," means the possession, direct or indirect, of the power to direct or cause the
29.30 direction of the management and policies of a health care entity, whether through the

ownership of voting securities, membership in an entity formed under chapter 317A, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with, corporate office held by, or court appointment of, the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 40 percent or more of the voting securities of any other person, or if any person, directly or indirectly, constitutes 40 percent or more of the membership of an entity formed under chapter 317A. The attorney general may determine that control exists in fact, notwithstanding the absence of a presumption to that effect.

(e) "Health care entity" means:

(1) a hospital;

(2) a hospital system;

(3) a captive professional entity;

(4) a medical foundation;

(5) a health care provider group practice;

(6) an entity organized or controlled by an entity listed in clauses (1) to (5); or

(7) an entity that owns or exercises control over an entity listed in clauses (1) to (5).

(f) "Health care provider" means a physician licensed under chapter 147, a physician assistant licensed under chapter 147A, or an advanced practice registered nurse as defined in section 148.171, subdivision 3, who provides health care services, including but not limited to medical care, consultation, diagnosis, or treatment.

(g) "Health care provider group practice" means two or more health care providers legally organized in a partnership, professional corporation, limited liability company, medical foundation, nonprofit corporation, faculty practice plan, or other similar entity:

(1) in which each health care provider who is a member of the group provides services that a health care provider routinely provides, including but not limited to medical care, consultation, diagnosis, and treatment, through the joint use of shared office space, facilities, equipment, or personnel;

(2) for which substantially all services of the health care providers who are group members are provided through the group and are billed in the name of the group practice and amounts so received are treated as receipts of the group; or

(3) in which the overhead expenses of, and the income from, the group are distributed in accordance with methods previously determined by members of the group.

An entity that otherwise meets the definition of health care provider group practice in this paragraph shall be considered a health care provider group practice even if its shareholders, partners, members, or owners include a professional corporation, limited liability company, or other entity in which any beneficial owner is a health care provider and that is formed to render professional services.

(h) "Hospital" means a health care facility licensed as a hospital under sections 144.50 to 144.56.

(i) "Medical foundation" means a nonprofit legal entity through which health care providers perform research or provide medical services.

(j) "Transaction" means a single action, or a series of actions within a five-year period, which occurs in part within the state of Minnesota or involves a health care entity formed or licensed in Minnesota, that constitutes:

(1) a merger or exchange of a health care entity with another entity;

(2) the sale, lease, or transfer of 40 percent or more of the assets of a health care entity to another entity;

(3) the granting of a security interest of 40 percent or more of the property and assets of a health care entity to another entity;

(4) the transfer of 40 percent or more of the shares or other ownership of a health care entity to another entity;

(5) an addition, removal, withdrawal, substitution, or other modification of one or more members of the health care entity's governing body that transfers control, responsibility for, or governance of the health care entity to another entity;

(6) the creation of a new health care entity;

(7) an agreement or series of agreements that results in the sharing of 40 percent or more of the health care entity's revenues with another entity, including affiliates of such other entity;

(8) an addition, removal, withdrawal, substitution, or other modification of the members of a health care entity formed under chapter 317A that results in a change of 40 percent or more of the membership of the health care entity; or

32.1 (9) any other transfer of control of a health care entity to, or acquisition of control of a
32.2 health care entity by, another entity.

32.3 (k) A transaction as defined in paragraph (j) does not include:

32.4 (1) an action or series of actions that meets one or more of the criteria set forth in
32.5 paragraph (j), clauses (1) to (9), if, immediately prior to all such actions, the health care
32.6 entity directly, or indirectly through one or more intermediaries, controls, is controlled by,
32.7 or is under common control with, all other parties to the action or series of actions;

32.8 (2) a mortgage or other secured loan for business improvement purposes entered into
32.9 by a health care entity that does not directly affect delivery of health care or governance of
32.10 the health care entity;

32.11 (3) a clinical affiliation of health care entities formed solely for the purpose of
32.12 collaborating on clinical trials or providing graduate medical education;

32.13 (4) the mere offer of employment to, or hiring of, a health care provider by a health care
32.14 entity;

32.15 (5) contracts between a health care entity and a health care provider primarily for clinical
32.16 services; or

32.17 (6) a single action or series of actions within a five-year period involving only entities
32.18 that operate solely as a nursing home licensed under chapter 144A; a boarding care home
32.19 licensed under sections 144.50 to 144.56; a supervised living facility licensed under sections
32.20 144.50 to 144.56; an assisted living facility licensed under chapter 144G; a foster care setting
32.21 licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, for a physical location that
32.22 is not the primary residence of the license holder; a community residential setting as defined
32.23 in section 245D.02, subdivision 4a; or a home care provider licensed under sections 144A.471
32.24 to 144A.483.

32.25 Sec. 4. Minnesota Statutes 2022, section 317A.811, subdivision 1, is amended to read:

32.26 Subdivision 1. **When required.** (a) Except as provided in subdivision 6, the following
32.27 corporations shall notify the attorney general of their intent to dissolve, merge, consolidate,
32.28 or convert, or to transfer all or substantially all of their assets:

32.29 (1) a corporation that holds assets for a charitable purpose as defined in section 501B.35,
32.30 subdivision 2; ~~or~~

32.31 (2) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code
32.32 of 1986, or any successor section; or

- 33.1 (3) a nonprofit health coverage entity defined in section 145D.30.
- 33.2 (b) The notice must include:
- 33.3 (1) the purpose of the corporation that is giving the notice;
- 33.4 (2) a list of assets owned or held by the corporation for charitable purposes;
- 33.5 (3) a description of restricted assets and purposes for which the assets were received;
- 33.6 (4) a description of debts, obligations, and liabilities of the corporation;
- 33.7 (5) a description of tangible assets being converted to cash and the manner in which
- 33.8 they will be sold;
- 33.9 (6) anticipated expenses of the transaction, including attorney fees;
- 33.10 (7) a list of persons to whom assets will be transferred, if known, or the name of the
- 33.11 converted organization;
- 33.12 (8) the purposes of persons receiving the assets or of the converted organization; and
- 33.13 (9) the terms, conditions, or restrictions, if any, to be imposed on the transferred or
- 33.14 converted assets.
- 33.15 The notice must be signed on behalf of the corporation by an authorized person.