

New Minnesota Health Care Transaction Oversight Law Imposes Additional Requirements on Nonprofit Health Care Entities

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On May 26, 2023, the Governor of Minnesota signed into law Minnesota bill [HF 402](#) to increase government oversight of health care transactions that occur in Minnesota or involve Minnesota-based health care entities. A general overview of the new law's oversight provisions can be found in a [previous Dorsey Health Law blog post](#). The new law also contains provisions specific to nonprofit health care organizations, including additional transaction requirements and extension of the moratorium on certain conversion transactions. Given the prevalence of nonprofit health care organizations in Minnesota, we expect this new legislation to materially impact both payors and providers in the State. This blog post summarizes those provisions, all of which have already gone into effect.

Additional Transaction Requirements for Nonprofit Health Care Entities

In addition to the general notice requirements now effective under this new law and summarized in our previous post, HF 402 imposes further requirements on (1)

nonprofit health care entities that are either incorporated under the Minnesota Nonprofit Corporation Act or organized as a Minnesota nonprofit limited liability company, and (2) the subsidiaries of such nonprofit entities, regardless of their incorporation or organizational status. These entities are now required to ensure the following before proceeding with a transaction:

- The transaction complies with the Minnesota Nonprofit Corporation Act, the charitable trusts statutes, and other applicable laws;
- The transaction does not involve or constitute a breach of charitable trust;
- The transferring nonprofit entity will receive the full and fair value for its public benefit assets, unless the discount between the full and fair value of the assets and the value



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received for the assets will further the nonprofit purposes of the entity or is in the public interest;

- The value of the public benefit assets to be transferred has not been manipulated in a manner that causes or has caused the value of the assets to decrease;
- The proceeds of the transaction will be used in a manner consistent with the public benefit for which the assets are held by the nonprofit health care entity;
- The transaction will not result in a breach of fiduciary duty; and
- There are procedures and policies in place to prohibit any officer, director, trustee, or other executive of the nonprofit health care entity from directly or indirectly benefiting from the transaction.

Currently, it is not entirely clear how or to what extent these additional transaction requirements for nonprofit health care entities will be reviewed in conjunction with the general notice requirements for health care entities.

Moratorium on Conversion Transactions

A moratorium on conversion transactions involving nonprofit health plan entities operating under the Minnesota Nonprofit Health Service Plan Corporations Act or Health Maintenance Act that was set to expire July 2023 has been extended through July 2026. The moratorium was initially enacted in response to concerns of some lawmakers that nonprofit assets could be transferred to for-profit carriers in a merger or acquisition. These nonprofit health plan entities “may only merge or consolidate with; convert; or transfer, as part of a single transaction or a series of transactions within a 24-month period, all or a material amount of its assets to” an entity that is incorporated under the Minnesota Nonprofit Corporation Act; “or to a Minnesota nonprofit hospital within the same integrated health system as the health maintenance organization.” A “material amount” is defined as the “lesser of ten percent of an entity’s total admitted net assets as of December 31 of the previous year, or \$50,000,000.”

The moratorium does not apply if the nonprofit health plan entity files an intent to dissolve due to insolvency of the corporation or if insolvency proceedings are commenced.

Related Study and Recommendations

HF 402 requires that the Minnesota commissioner of health study and develop recommendations on the regulation of conversions, mergers, transfers of assets, and other transactions primarily affecting Minnesota-domiciled nonprofit health maintenance organizations (HMOs). These recommendations must address the following:



- Monitoring and regulation of Minnesota-domiciled for-profit HMOs;
- Issues related to public benefit assets held by a nonprofit HMO, including identifying the portion of the organization's assets that are considered public benefit assets to be protected, establishing a fair and independent process to value the assets, and determining how public benefit assets should be stewarded for the public good;
- Providing a state agency or executive branch office with authority to review and approve or disapprove a nonprofit HMO's plan to convert to a for-profit organization;
- Establishing a process for the public to learn about and provide input on a nonprofit HMO's proposed conversion to a for-profit organization; and
- Issues, including statutory language and regulatory implementation, related to a potential statutory requirement that nonprofit HMOs licensed under Minnesota Statutes chapter 62D, and health systems organized as a charitable organization, upon the sale or transfer of control to an out-of-state or for-profit entity, return to the state's general fund an amount equal to the value of any charitable assets the HMO or health system received from the state.

The commissioner is required to seek public comment on the regulation of conversion transactions involving nonprofit HMOs no later than October 1, 2023. A final recommendations report must be submitted to the appropriate legislative committees by June 30, 2024.

If you have any questions regarding HF 402 and how your organization or transaction may be impacted, please contact the authors or your regular Dorsey attorney.

Summer Associate Lindsey VerMurlen provided substantial assistance researching and drafting this blog post.