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State of Minnesota
ST. PAUL, MN 55155

LORI SWANSON
ATTORNEY GENERAL

March 7, 2017

The Honorable Mark Dayton
Governor, State of Minnesota
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Representative Kurt Daudt
Speaker, Minnesota House of Representatives
463 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Paul Gazelka
Majority Leader, Minnesota Senate
95 University Avenue W.
Minnesota Senate Bldg., Room 3113
St. Paul, MN 55155

The Honorable Michelle Benson
Chair, Health & HS Finance & Policy Comm.
Minnesota Senate
95 University Avenue W.
Minnesota Senate Bldg., Room 3109
St. Paul, MN 55155

The Honorable Thomas M. Bakk
Minority Leader, Minnesota Senate
95 University Avenue W.
Minnesota Senate Bldg., Room 2221
St. Paul, MN 55155

The Honorable Melissa Hortman
Minority Leader, Minnesota House of Representatives
267 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

**Re: Nonprofit Health Plan Conversions and SF 1472**

Dear Governor Dayton and Legislative Leaders:

As you know, Minnesota law previously required health maintenance organizations (HMOs) operating in this state to be nonprofit organizations. *See* 1973 Minn. Laws ch. 670 (codified as amended at Minn. Stat. ch. 62D). A law was enacted in January to allow HMOs in Minnesota to operate as for-profit corporations. *See* 2017 Minn. Laws ch. 2 §§ 4-9. This has raised a number of questions and concerns about the disposition of a Minnesota-based nonprofit health plan's assets in the event it converts[1] to a for-profit corporation.

[1] A "conversion" is an umbrella term for a transaction in which a nonprofit entity changes its status or disposes of its assets to a for-profit entity. It can occur, if permitted by applicable law, through a merger, asset sale/transfer, joint venture, "drop down conversion" (i.e., creating a for-profit subsidiary to which nonprofit assets are transferred), or "conversion in-place" (i.e., rewriting articles of incorporation to remove nonprofit requirement and add for-profit purpose).

There are no existing laws in place in Minnesota to prevent a nonprofit health plan from selling its assets to a for-profit corporation. Moreover, stronger laws are needed to safeguard nonprofit assets for the benefit of the public in the event of such a transaction. By taking legislative action this session to adopt a comprehensive conversion law, Minnesota can prevent the experience of other states where nonprofit executives received millions of dollars in bonuses and financial incentives for presiding over for-profit conversions that left taxpayers insufficiently compensated for the value of the nonprofit assets.

## I. MINNESOTA'S NONPROFIT HEALTH PLANS GREW OVER THE DECADES THROUGH BILLIONS OF DOLLARS IN BENEFITS FROM MINNESOTA TAXPAYERS.

From 1973 until January 2017, Minnesota law required HMOs in Minnesota to be nonprofit organizations. *See* 1973 Minn. Laws ch. 670. Taxpayers subsidize these nonprofit HMOs by granting them exemptions from various forms of taxation. The state's nonprofit health plans also received billions of dollars for administering the state's Medicaid managed care contracts. For example, from 2002 to 2011, the State paid nonprofit health plans more than $21 billion to administer Medicaid managed care contracts.[2] These contracts were reportedly worth nearly $5 billion in 2015 alone.[3]

As of December 31, 2015,[4] the major nonprofit health plans reported assets of $6.8 billion and reserves of $2.5 billion. According to their consolidated financial statements, as of year-end 2015, HealthPartners had $1.67 billion in assets and $938 million in reserves, and Medica Health Plan had $897 million in assets and $504 million in reserves. Another nonprofit health plan—Blue Cross Blue Shield of Minnesota and its affiliates[5]—had $4.24 billion in total assets and $1.11 billion in reserves as of year-end 2015.

Consistent with their nonprofit status, Minnesota's nonprofit health plans have long acknowledged that their purpose is to further *public*—not private—interests. Blue Cross Blue Shield of Minnesota has described its purpose under Minnesota law as "to promote a wider and

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[2] *See* Minnesota Department of Human Services, *Actuarial Review of Medicaid Managed Care Rate Setting*, Appx. 5 (March 28, 2013) (providing 2002 to 2010 figures); Minnesota Department of Human Services, *Annual Report of Managed Care in Minnesota's Health Care Programs* at 4 (January 2013) (providing 2011 figure).

[3] *See* Christopher Snowbeck, *Minnesota officials tout $650 million in HMO savings*, Star Tribune (July 28, 2015).

[4] The Minnesota Department of Commerce has more recent, nonpublic quarterly financial statistics, and the health plans must file their public financial statements for the year ending December 31, 2016, on or about April 1, 2017.

[5] HMOs are organized under Chapter 62D of the Minnesota Statutes. Blue Cross operates both Blue Plus—an HMO organized under Chapter 62D—and BCBSM, Inc., d/b/a Blue Cross Blue Shield of Minnesota, which is a nonprofit health service plan corporation organized under Chapter 62C.

more economical availability of health care services for the people of Minnesota"[6] and that its "mandate [is] to advance the public health."[7] HealthPartners has similarly stated that its "purpose [is] to promote the availability of affordable health care services" and "to advance the public health within the State of Minnesota."[8] Medica has likewise described its public interest purpose as "to promote a wider and more economical availability of health care services for the people of Minnesota and to advance the public health within the State."[9]

In light of their nonprofit status, their public health purpose, and the benefits conferred upon them by Minnesotans, Minnesota taxpayers have a significant stake in the assets of these nonprofit health plans.

## II. IN OTHER STATES THAT LACKED STRONG CONVERSION LAWS, NONPROFIT HEALTH PLAN EXECUTIVES REAPED MILLIONS OF DOLLARS IN BONUSES AND PAYMENTS FOR PRESIDING OVER CONVERSIONS TO FOR-PROFIT CORPORATIONS THAT LEFT THE PUBLIC INSUFFICIENTLY COMPENSATED.

There are numerous examples from other states that lacked strong conversion laws of HMO executives profiting from a conversion to the detriment of taxpayers, to whom insufficient consideration was paid for the value of the conversion of nonprofit assets to a for-profit corporation.

For example, the management of Blue Cross of **Ohio** accepted an offer to sell the nonprofit health plan to for-profit Columbia/HCA. Four executives of Blue Cross were scheduled to receive $19 million in payouts as part of the transaction, $3 million was to be paid to seven former directors, and $3.5 million was to be paid to the general counsel.[10] The sale made no provision to ensure the public would receive the benefits of the proceeds of the sale.

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[6] *State by Humphrey & Blue Cross Blue Shield of Minnesota v. Philip Morris, Inc., et al.*, Court File No. C1-94-8565, Amended Complaint ¶ 8f (2nd Jud. Dist. 1996).

[7] *State by Humphrey & Blue Cross Blue Shield of Minnesota v. Philip Morris, Inc., et al.*, App. Court File No. C1-95-1324, Respondent's Brief at 8 (Minn. 1995).

[8] *Group Health Plans, Inc. et al. v. Philip Morris Inc. et al.*, Court File No. 98-1036 (PAM/JGL), Plaintiff Group Health Plan, Inc. and HealthPartners, Inc. Second Amended Complaint ¶ 19 (D.Minn. 1998).

[9] *Group Health Plans, Inc. et al. v. Philip Morris Inc. et al.*, Court File No. 98-1036 (PAM/JGL), Medica's Second Amended Complaint ¶ 8f (D.Minn. 1998).

[10] *See* James J. Fishman, *Checkpoints on the Conversion Highway*, 23 J. Corp. L. 701, 717-18 (1997-98) (stating that a "fundamental problem with conversions is that directors of the nonprofit" may "be promised stock or already be substantial shareholders of the for-profit venture" or the "acquiring corporation may offer bonuses, salaries, or 'golden parachutes'" to them).

One commentator noted that the transaction was "the moral equivalent of grand larceny" because the health plan's "executives are taking money for divesting assets that belong to [the public]."[11]

In the three years preceding a public stock offering for **Indiana** Blue Cross, its executives purchased stock options that totaled 985,000 shares in the successor for-profit company. The executives paid $261,000 for the shares. Soon after the initial public stock offering, the value of the executives' stock holdings went up by 10,000%, to more than $29 million.[12]

When Blue Cross and Blue Shield of **Georgia** converted to a for-profit corporation, the public received nothing.[13] Blue Cross of Georgia was then sold to the for-profit WellPoint Health Network, and the executives and employees received $28 million in bonuses, with the CEO alone raking in over $3 million.[14]

## III. SOME STATES HAVE AVOIDED THESE CONTROVERSIES BY ENACTING COMPREHENSIVE CONVERSION LAWS TO SAFEGUARD NONPROFIT ASSETS FOR THE BENEFIT OF TAXPAYERS.

Some states have avoided these types of "golden parachutes" to nonprofit health plan officers and directors—and safeguarded nonprofit assets for the benefit of the public—by enacting comprehensive conversion laws. California and Massachusetts are examples of comprehensive statutory schemes that regulate such conversions. *See generally* California Corporations Code § 5914 *et seq.*; Massachusetts General Laws ch. 180 § 8A. Under California's conversion law, when Blue Cross of **California** converted from a nonprofit health plan to a for-profit health plan, it was required to relinquish all of its assets—$3 billion—to two new charitable foundations whose mission was to further public health in California.[15]

Minnesota does not have a conversion law,[16] even though state law permits nonprofit assets to be sold to for-profit corporations in certain circumstances. For example, the Minnesota

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[11] Ruth Simon & Paul Lim, *How the New Blue Cross May Bite You*, Money (January 1997).

[12] *Id.*

[13] Julie Silas, Eleanor Hamburger, Charles W.F. Bell, and Margo Hunter, *Blue Cross Conversions: Consumer Efforts to Protect the Public's Interests*, Nyam Health Policy Symposium, vol. 74 no. 2 at 256, 271 (Winter 1997).

[14] Andy Miller, *Blue Turns to Green, Wellpoint Health Networks Acquires Georgia Insurer for $500 Million*, Atlanta Journal and Constitution, July 10, 1998.

[15] Julie Silas, Eleanor Hamburger, Charles W.F. Bell, and Margo Hunter, *Blue Cross Conversions: Consumer Efforts to Protect the Public's Interests*, Nyam Health Policy Symposium, vol. 74 no. 2 at 256, 267 (Winter 1997).

[16] Another bill pending in the Legislature that amends the Minnesota Nonprofit Corporations Act, Minn. Stat. ch. 317A, by adding a section on conversions is not relevant to the safeguarding of nonprofit assets in the event a

(Footnote Continued on Next Page)

Nonprofit Corporation Act, Minn. Stat. ch. 317A ("Nonprofit Act")—under which Minnesota's nonprofit health plans are organized—allows a nonprofit to sell or transfer all or substantially all of its assets to a for-profit corporation.[17] *See* Minn. Stat. § 317A.601, subd. 2.

## III. SF1472 Must Be Substantially Modified to Protect for the Benefit of the Public the Billions of Assets Held by Minnesota Nonprofit Health Plans.

SF1472 as written proposes to enact a new statutory section 62D.046, which contains certain review procedures relating to nonprofit HMO conversions. The bill does not, however, prohibit the conversion of a nonprofit HMO to a for-profit corporation, nor does it contain provisions to adequately protect nonprofit assets for the benefit of the public in the event of such a conversion.

SF 1472 contemplates that a new "public benefit entity" will be created to hold assets (which were formerly held by the nonprofit HMO) for the benefit of the public in the event of a conversion of a nonprofit HMO to a for-profit HMO. The bill further contemplates that the Attorney General's Office will review, and must approve or disapprove, conversion transactions. As presently drafted, the bill does not provide for the protections or tools necessary to safeguard the billions in nonprofit assets that Minnesota health plans hold in trust for the benefit of the public health in the event of a conversion.

It is imperative that SF 1472 be substantially modified—or another bill introduced—to establish a comprehensive conversion law that prevents the dissipation of nonprofit assets in the event of a nonprofit health plan conversion to a for-profit corporation. At a minimum, the law should have the elements contained in the enclosed redlined draft of SF 1472, and should address the following:

- **Valuation and Definition of Assets to be Safeguarded.** One of the most significant issues in nonprofit conversions is the manner in which the value of the nonprofit's assets are determined and thereafter safeguarded for the benefit of taxpayers. The under-valuation of assets is frequently a significant problem in conversion transactions. For example, "Greater **Delaware** Valley Health Care was valued at $100,000 in 1984, yet the

(Footnote Continued from Previous Page)
nonprofit HMO converts to a for-profit entity. HF13 (1st Engrossment), which amends the Nonprofit Act, has already been passed by the House, been substituted for SF91 in the Senate, and is awaiting passage by the Senate. Among other things, HF13 proposes to add the ability for nonprofits to "convert in place" (e.g., rewrite their articles of incorporation) if they meet certain conditions. *See* HF13 lines 5.16-11.19. HF13 does not authorize a nonprofit corporation—including nonprofit HMOs—to "convert in place" to a for-profit company, however. *See id.* 6.9-6.16.

[17] When a nonprofit corporation dissolves, substantially changes the use or purposes for which it will use its assets, or consolidates or transfers its assets, however, the assets "may not be diverted from the uses and purposes for which the assets have been received and held." Minn. Stat. § 317A.671. Minnesota does not allow a Minnesota nonprofit to *merge* into a for-profit company. *See* Minn. Stat. § 317A.601, subd. 1.

new for-profit was worth $20 million in 1986. Group Health Plan of Greater St. Louis was valued at $4 million in 1985, but the for-profit was worth $40 million in 1986. In each case, the public lost millions of dollars in charitable assets because state regulators failed to ascertain the nonprofit's fair market value."[18].

I should note that, prior to converting, health plans in other states have aggressively pushed legislation that narrowly defines the class of assets for which they must compensate the public in an attempt to make it easier and cheaper to convert to a for-profit company.[19]

SF 1472 only requires a narrow subset of assets to be transferred to a public benefit entity upon a conversion. *See* SF1472 at lines 1.9-2.4.[20] The bill so narrowly defines "public benefit assets" that a significant portion—if not the vast majority—of an HMO's assets may fail to meet this definition.

SF1472 should be changed to protect the *entirety* of a nonprofit HMO's assets in the event of a conversion. Anything less shortchanges the Minnesota public, potentially to the tune of billions of dollars.[21]

- **The Conversion Benefit Entity**. Other states have protected nonprofit assets for the benefit of the public by requiring that the value of those assets be transferred into a new nonprofit organization to promote the public health. SF 1472 should be modified to clearly specify that a nonprofit health plan must transfer the value of its assets to a conversion benefit entity if the conversion is approved, and that the conversion benefit entity must be a Minnesota nonprofit corporation that is required to use its assets exclusively to meet the health care needs of Minnesota residents.

- **Elimination of Executive Self-Interest**. As noted above, health plan executives in other states have often promoted for-profit conversions as a means of personal self-enrichment

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[18] *See* Judith Bell, *Saving Their Assets: How to Stop Plunder at Blue Cross and Other Nonprofits*, The American Prospect (May-June 1996).

[19] *Id.*

[20] As drafted, Senate File 1472 defines "public benefit assets" to mean only the health plan's net earnings that were required to be devoted to the nonprofit purposes of the HMO, excess reserves and assets that represent the benefits of its tax or nonprofit status, and other assets identified as dedicated to a charitable purpose. Such a narrow definition of assets could, for example, exclude some—or even all—of Minnesota HMOs' $2.5 billion in reserves if they were to successfully argue that these reserves are not a "benefit" of their nonprofit status.

[21] *See generally* Theresa McMahon, *Fair Value? The Conversion of Nonprofit HMOs*, 30 U.S.F. L. Rev. 355, 391-92 (Winter 1996) (discussing how the "limited and erroneous interpretation of fair value lies at the heart of the undervaluation problem" with nonprofit HMO conversions).

without properly safeguarding the nonprofit assets for the public good. To prevent the abuses seen in other states, the bill should be modified to prohibit conversions driven by or that result in the financial self-dealings of the executives and directors of the nonprofit health plan.

- **Inclusion of Nonprofit Health Service Plan Corporations.** As drafted, the bill only covers nonprofit HMOs that operate under chapter 62D. It should be modified to encompass nonprofit health service plan corporations that operate under chapter 62C (i.e. Blue Cross).

- **Promotion of the Public Interest.** The bill should be modified to provide standards that more clearly prevent conversions that are not determined to be in the public interest.

- **Adequate Tools to Review Transactions.** The bill assigns the responsibility for reviewing and approving or disapproving nonprofit conversions to the Attorney General's Office. Other states that have successfully regulated conversions for the benefit of the public have given the attorney general's office adequate tools and funding to review the transactions, including the authority to retain actuarial and valuation experts at the converting entity's expense to properly value the assets to be transferred as part of the conversion. Conversion transactions include highly-regulated financial organizations, billions of dollars in revenue and assets, numerous entities that operate under a common holding company, and hundreds of thousands of policyholders. It is important that this Office be granted the authority to retain financial experts to assist in the review of the transactions. The cost of this review should be borne by the organization that seeks to convert, rather than Minnesota taxpayers. Moreover, given the magnitude and complexity of any transaction, the time provided to review a conversion should be extended to 150 days (and extendable for another 90 days for good cause). To prevent applicants from delaying providing requested information in an effort to "run out the clock," this time period should be tolled while the health plan or its successor for-profit is responding to requests for information about the conversion.

- **Public Input.** The bill should be modified to provide opportunities for the public to provide input on the proposed conversion.

- **Technical Changes.** Various technical changes should be made to clarify certain provisions and to remove or modify imprecise or superfluous language in others.

This Office stands ready to work with the Legislature and the Administration to craft appropriate language to safeguard nonprofit assets for the benefit of the public in the event of a conversion of a nonprofit health plan to a for-profit corporation. To facilitate this, I enclose a redlined markup of SF 1472 that incorporates the discussion points listed above. If you have any questions or would like the assistance of this Office, please contact me or Assistant Attorney General Ben Velzen, the manager of our Charities Division, at (651) 757-1235. Mr. Velzen

plans to testify on SF 1472, and we welcome the opportunity to work with you or your designees on the legislation.

I thank you for your attention to this matter.

Sincerely,

LORI SWANSON
Attorney General

Enclosure (redlined markup of SF 1472)

cc: Members, Minnesota House Health and Human Services Reform Committee
Members, Minnesota House Health and Human Services Finance Committee
Members, Minnesota Senate Health and Human Services Finance and Policy Committee
Members, Minnesota Senate Human Services Reform Finance and Policy Committee
Legislative Authors, Senate File 1 and House File 1
The Honorable Ed Ehlinger, Commissioner of Health
The Honorable Mike Rothman, Commissioner of Commerce
Assistant Attorney General Ben Velzen

A bill for an act

relating to health; providing for attorney general review and approval of conversions by nonprofit health maintenance organizations and service plan corporations; specifying notice and review requirements; establishing standards for distribution of certain assets; amending Minnesota Statutes 2016, section 317A.811, subdivision 1, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 62D.

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

Section 1. **[62D.046] NONPROFIT HEALTH ~~MAINTENANCE ORGANIZATION~~CARE ENTITY CONVERSIONS.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Commissioner" means the commissioner of commerce if the nonprofit health care entity at issue is a service plan corporation operating under chapter 62C, and the commissioner of health if the nonprofit health care entity at issue is health maintenance organization operating under chapter 62D.

(c) "Conversion benefit entity" means any foundation, ~~nonprofit~~ corporation, limited liability company, trust, partnership, or other entity that receives public benefit assets, or their value, ~~pursuant to a public benefit assets distribution plan~~ in connection with a conversion transaction ~~under this section~~.

(d~~e~~) ~~"Nonprofit health maintenance organization c~~"Conversion transaction" or "transaction" means a transaction in which a nonprofit health care entity ~~health maintenance organization~~ merges, consolidates, converts, or transfers all or a substantial portion ~~ly all~~ of its assets to an entity that is not a nonprofit corporation organized under chapter 317A that is also exempt under ~~or an organization operating according to~~ United States Code, title 26, section 501(c)(3). The substitution of a new corporate member or members that transfers the control, responsibility for, or governance of a nonprofit health care entity shall also be deemed a "conversion transaction" and "transaction" for the purposes of this section.

(e) "Family member" means a spouse, parent, or child or other dependent.

(f) "Nonprofit health care entity" means a service plan corporation operating under chapter 62C and a health maintenance organization operating under chapter 62D.

(g~~d~~) "Public benefit assets" means the entirety of a nonprofit health care entity's assets, whether tangible or intangible, and including but not limited to its goodwill, intellectual property, and membership base.~~:~~

(h) "Related organization" has the definition given the term by section 317A.011.

~~(1) assets that represent net earnings that were required to be devoted to the nonprofit purposes of the health maintenance organization according to Minnesota Statutes 2016, section 62D.12;~~

~~(2) excess reserves and other assets that represent the benefits to the health maintenance organization of its tax status and other benefits associated with its organization as a nonprofit corporation; and~~

~~(3) other assets that are identified as dedicated for a charitable or public purpose.~~

Subd. 2. **Private Inurement**. A nonprofit health care entity is prohibited from entering into a conversion transaction if a person who has been an officer, director, or other executive of the nonprofit health care entity, or of a related organization, or a family member of such a person, (a) has or will receive any compensation or other financial benefit, directly or indirectly, in connection with the conversion transaction; (b) has held or will hold, regardless of whether guaranteed or contingent, any ownership stake, stock, securities, investment, or other financial interest in, or receive any type of compensation or other financial benefit from, any entity to which the nonprofit health care entity transfers public benefit assets in connection with a conversion transaction; or (c) has held or will hold, regardless of whether guaranteed or contingent, any ownership stake, stock, securities, investment, or other financial interest in, or receive any type of compensation or other financial benefit from, any entity that has or will have a business relationship with any entity to which the nonprofit health care entity transfers public benefit assets in connection with a conversion transaction.

Subd. ~~3~~2. **Attorney general notice and approval required.** (a) Before entering into a ~~nonprofit health maintenance organization~~ conversion transaction, ~~the health maintenance organization~~ a nonprofit health care entity must notify the attorney general as specified under section 317A.811, subdivision 1. ~~, and the transaction must be approved by t~~The attorney general shall have the discretion to approve, conditionally approve, or not approve a conversion transaction under this section ~~,~~after considering any factors that the attorney general deems relevant, including but not limited to the list of factors described in subdivision 4. If the transaction is not approved, the notice denying approval must include the reasons for the decision.

(b) ~~In addition, t~~The notice required by this subdivision must include an itemization of the nonprofit health care entity's public benefit assets and the valuation that the entity attributes to those assets ~~the corporation has identified as public benefit assets~~, a proposed plan for distribution of the value of those assets to a conversion benefit entity that meets the requirements of subdivision 54, and other information the attorney general reasonably considers necessary from the nonprofit health care entity or any other entity to which such entity intends to transfer public benefit assets in connection with a conversion transaction~~for review of the proposed transaction~~. The attorney general may also review a proposed conversion transactions pursuant to the authority granted it by section 317A.813 or other law.

(~~bc~~) A copy of the notice and other information required under this subdivision must be given to the commissioner.

(d) The attorney general shall assess the entity proposing to receive the public benefit assets of the nonprofit health care entity the costs related to reviewing the proposed conversion transaction, for which the entity shall promptly reimburse the attorney general. Such costs may include but are not limited to those associated with the attorney general's retention of actuarial, valuation, or other experts and consultants that the attorney general deems necessary to review a proposed transaction, and any administrative costs. Funds received by the attorney general under this subpart are appropriated to the attorney general and shall be deposited into an appropriate account.

Subd. ~~43~~. **Review elements.** (a) In making a decision whether to approve, conditionally approve, or disapprove a proposed transaction, the attorney general, in consultation with the commissioner, shall consider all relevant factors, including but not limited to whether:

(1) the proposed transaction complies with chapters 501B, 317A, and other applicable charities and nonprofit laws;

(2) the proposed transaction involves or constitutes a breach of charitable trust;

(3) the ~~health maintenance organization~~ nonprofit health care entity will receive full and fair ~~market~~ value for its public benefit assets;

(~~42~~) the full and fair ~~market~~ value of the public benefit assets to be transferred has been manipulated ~~by the actions of the parties~~ in a manner that causes, or already has caused, the ~~fair market~~ value of the assets to decrease;

(~~53~~) the proceeds of the proposed transaction will be used consistent with the public benefit for which the assets are held by the ~~health maintenance organization~~nonprofit health care entity;

(64) the proposed transaction will result in a breach of fiduciary duty, as determined by the attorney general, including but not limited to whether:

(i) the nonprofit health care entity's board of directors exercised reasonable care and due diligence in deciding to pursue the transaction, in selecting the entity with which to pursue the transaction, and in negotiating the terms and conditions of the transaction;

(ii) conflicts of interest exist related to payments to or benefits conferred ~~to~~upon officers, directors, board members, and executives of the nonprofit health care entity or a related organization; and

(iii) the nonprofit health care entity's board of directors considered all reasonably viable