

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 1533

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DATE	D-PG	OFFICIAL STATUS
02/13/2023	792	Introduction and first reading
		Referred to Judiciary and Public Safety
03/16/2023	1958	Author added Marty

1.1 A bill for an act

1.2 relating to nonprofit corporations; regulating executive compensation of hospitals

1.3 and affiliated medical entities; proposing coding for new law in Minnesota Statutes,

1.4 chapter 317A.

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

1.6 Section 1. **[317A.911] NONPROFIT HOSPITALS AND AFFILIATED MEDICAL**

1.7 **ENTITIES EXECUTIVE COMPENSATION.**

1.8 Subdivision 1. **Definitions.** The terms defined in this section have the meanings given

1.9 them.

1.10 (a) "Board of directors" has the meaning given in section 317A.011, subdivision 4.

1.11 (b) "Nonprofit corporation" means a corporation governed by this chapter.

1.12 (c) "Nonprofit hospital or affiliated medical entity" means any of the following:

1.13 (1) a hospital, as defined in section 144.50, subdivision 2;

1.14 (2) a hospital group, which means any group of two or more hospitals described in clause

1.15 (1) or any person, corporation, partnership, limited liability company, trust, or other entity

1.16 that owns, operates, or controls, in whole or in part, a hospital group;

1.17 (3) a hospital-affiliated medical foundation, which means a medical foundation that is

1.18 directly or indirectly controlled or owned by, or controlled or owned by the same person or

1.19 entity as, a hospital, hospital group, hospital-affiliated physicians group, or nonprofit

1.20 corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group,

1.21 or hospital-affiliated physicians group; and

2.1 (4) a hospital-affiliated physicians group, which means any physicians group or medical
2.2 group that is directly or indirectly controlled or owned by, or controlled or owned by the
2.3 same person or entity as, a hospital, hospital group, hospital-affiliated medical foundation,
2.4 or a nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital,
2.5 hospital group, or hospital-affiliated medical foundation.

2.6 Subd. 2. General. (a) The board of directors of a nonprofit corporation that owns,
2.7 operates, or controls, in whole or in part, a nonprofit hospital or affiliated medical entity
2.8 must ensure that:

2.9 (1) a person whose primary duties at or for the nonprofit hospital or affiliated medical
2.10 entity are executive, managerial, or administrative does not receive total annual compensation
2.11 from any source for work performed or services provided at or for the nonprofit hospital or
2.12 affiliated medical entity that exceeds the annual salary and expense allowance of the President
2.13 of the United States as set forth in United States Code, title 3, section 102;

2.14 (2) the total value of the compensation or payments authorized or paid under a severance
2.15 or similar postservice or postemployment arrangement for any person who formerly had
2.16 primary duties at the nonprofit hospital or affiliated medical entity that were executive,
2.17 managerial, or administrative does not exceed the annual salary and expense allowance of
2.18 the President of the United States as set forth in United States Code, title 3, section 102;
2.19 and

2.20 (3) the nonprofit hospital or affiliated medical entity contributes no more than a pro rata
2.21 share of the maximums specified in clauses (1) and (2) toward total annual compensation
2.22 or severance payments to any person whose primary duties at or for the nonprofit hospital
2.23 or affiliated medical entity are or were executive, managerial, or administrative.

2.24 (b) The compensation limits established by this section apply irrespective of whether
2.25 the person exercising executive, managerial, or administrative authority is or was an employee
2.26 of the nonprofit hospital or medical entity or the nonprofit corporation that owns, operates,
2.27 or controls, in whole or in part, the nonprofit hospital or affiliated medical entity. The limits
2.28 under this section apply to any person who exercises or exercised this authority even if the
2.29 arrangements for the authority or for compensation or both are pursuant to a contract or
2.30 subcontract.

2.31 (c) Compensation for work performed or services provided at or for a nonprofit hospital
2.32 or affiliated medical entity counts toward the limits set forth in paragraph (a) even if made
2.33 by a separate entity, including by any for-profit or unincorporated entity.

3.1 (d) Compensation by a separate entity that purports to be not for work performed or
3.2 services provided at or for a covered hospital or medical entity but that is disproportionate
3.3 to the compensation's purported purpose so as to evade the limitations in paragraph (a)
3.4 constitutes a violation of this section.

3.5 (e) "Total annual compensation" includes all remuneration paid, earned, or accrued in
3.6 the course of a fiscal year for work performed or services provided, including the cash value
3.7 of all remuneration, including benefits, in any medium other than cash. Total annual
3.8 compensation includes but is not limited to wages; salary; paid time off; bonuses; incentive
3.9 payments; lump-sum cash payments; the fair market value of below market rate loans or
3.10 loan forgiveness; housing payments; payments for transportation, travel, meals, or other
3.11 expenses in excess of actual documented expenses incurred in the performance of duties;
3.12 the cash value of housing, automobiles, parking, or similar benefits; scholarships or
3.13 fellowships; the cash value of stock options or awards; payments or contributions for
3.14 insurance or to a section 125 cafeteria plan or equivalent arrangement, to a health savings
3.15 account, or for severance or its equivalent; and deferred compensation earned or accrued,
3.16 even if not yet vested nor paid.

3.17 (f) The total value of a severance or similar postemployment or postservice compensation
3.18 arrangement or severance payments includes the fair market value of all cash remuneration
3.19 as well as the fair market value of all remuneration, including benefits, paid in any medium
3.20 other than cash, as defined in paragraph (e).

3.21 (g) Any compensation paid for work performed or services provided by a person whose
3.22 primary duties are or were executive, managerial, or administrative must be included in
3.23 determining the total compensation subject to the limit set forth in paragraph (a), even if
3.24 that person also performs or performed other duties.

3.25 (h) This subdivision does not impose limits on the compensation of medical or health
3.26 care professionals for whom at least 50 percent of the medical or health care professional's
3.27 duties involve or involved the provision of medical services, research, direct patient care,
3.28 or other nonmanagerial, nonexecutive, and nonadministrative services.

3.29 **Subd. 3. Reporting.** (a) Within three months of the close of each fiscal year, the board
3.30 of directors of a nonprofit corporation that owns, operates, or controls, in whole or in part,
3.31 a nonprofit hospital or affiliated medical entity must submit a report to the attorney general
3.32 that contains the following information:

3.33 (1) names, positions or titles, and total annual compensation of the ten persons whose
3.34 primary duties are executive, managerial, or administrative at or for the nonprofit hospital

4.1 or affiliated medical entity who received the greatest total annual compensation in that fiscal
4.2 year, and the sources of the compensation. The information provided must include a detailed
4.3 breakdown of all wage and nonwage compensation;

4.4 (2) names, former positions or titles, and compensation paid pursuant to a severance or
4.5 similar postemployment arrangement to the five persons who receive the greatest severance
4.6 or similar postemployment payment in that fiscal year and formerly had primary duties at
4.7 or for the nonprofit hospital or affiliated medical entity that were executive, managerial, or
4.8 administrative, and the sources of the compensation. The information provided must include
4.9 a detailed breakdown of all wage and nonwage compensation; and

4.10 (3) the identity of all entities that provided compensation, in any form, to the persons
4.11 identified in clauses (1) and (2), and the amount of the compensation.

4.12 (b) The board of directors submitting the report pursuant to paragraph (a) must approve
4.13 the report before submission to the attorney general. Each director has a duty to act in good
4.14 faith and with reasonable care and inquiry in approving the annual report and in ensuring
4.15 that the corporation complies with the requirements of this section.

4.16 (c) The report submitted pursuant to paragraph (a) must state that the report was approved
4.17 by the board of directors and set forth the date of the approval, and must be attested to under
4.18 penalty of perjury by an authorized representative of the nonprofit hospital or affiliated
4.19 medical group addressed by the report.

4.20 (d) The report submitted pursuant to paragraph (a) must be submitted on the form or in
4.21 the format required by the attorney general.

4.22 (e) The report submitted pursuant to paragraph (a) must be posted on a publicly available
4.23 website and made available to any member of the public upon request.

4.24 (f) The attorney general is authorized and directed to establish and assess fees that must
4.25 be submitted with each report pursuant to paragraph (a) to cover the costs of implementing
4.26 and enforcing this subdivision.

4.27 Subd. 4. **Penalties.** (a) In addition to any other enforcement actions available under law
4.28 and notwithstanding any other provision of law, the attorney general or any state taxpayer
4.29 may bring or intervene in a civil action for a violation of this section for the civil penalties
4.30 authorized by section 8.31, subdivisions 3 and 3a, any other authorized civil fines or penalties,
4.31 and appropriate equitable relief.

4.32 (b) Appropriate equitable relief may include but is not limited to the following:

5.1 (1) revocation of tax-exempt status under section 290.05, subdivision 2, and revocation
5.2 of nonprofit corporate status. In the event a nonprofit corporation seeks to change the
5.3 nonprofit corporation's status to a for-profit corporation as a result of the revocation, the
5.4 nonprofit corporation is required to distribute all of the nonprofit corporation's charitable
5.5 assets in accordance with the charitable purposes with the approval of the attorney general
5.6 and in compliance with section 317A.735; and

5.7 (2) a civil penalty not exceeding \$500,000. Each instance in which the annual limitations
5.8 established by subdivision 1 are exceeded for any single individual constitutes a separate
5.9 violation for purposes of this paragraph, so that multiple violations may occur and multiple
5.10 finances may be imposed if more than one individual receives excessive compensation in a
5.11 particular year or if a single individual receives excessive compensation in more than one
5.12 year.

5.13 (c) Notwithstanding any other provision of law or any provision in a nonprofit
5.14 corporation's charter or bylaws, the attorney general may, to promote the purposes of this
5.15 section, investigate the affairs of and examine the books, accounts, records, and files of a
5.16 nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital or
5.17 affiliated medical entity for the purposes of promoting compliance with this section.

5.18 (d) The attorney general has the powers in sections 8.31, 501B.40, and 501B.41 to
5.19 supervise and investigate nonprofit hospitals and affiliated medical entities under this chapter
5.20 and bring proceedings to secure compliance with this section.

5.21 (e) All penalties paid to the attorney general pursuant to this section must be deposited
5.22 in the general fund in accordance with section 8.31, subdivision 3.