

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 720

(SENATE AUTHORS: DAHMS, Benson, Abeler and Kiffmeyer)

DATE	D-PG	OFFICIAL STATUS
02/06/2017	529	Introduction and first reading Referred to Commerce and Consumer Protection Finance and Policy
02/09/2017	563	Author added Kiffmeyer
03/01/2017	885a	Comm report: To pass as amended and re-refer to Health and Human Services Finance and Policy
03/08/2017		Comm report: To pass as amended and re-refer to Finance

1.1 A bill for an act

1.2 relating to commerce; authorizing the Minnesota premium security plan as a

1.3 state-based reinsurance program administered by the Minnesota Comprehensive

1.4 Health Association; modifying certain provider taxes; imposing a reinsurance tax;

1.5 appropriating money; amending Minnesota Statutes 2016, sections 295.52,

1.6 subdivisions 1, 1a, 3, 4, 4a, by adding a subdivision; 295.58; proposing coding for

1.7 new law in Minnesota Statutes, chapter 62E.

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

1.9 Section 1. 62E.21 DEFINITIONS.

1.10 Subdivision 1. **Application.** For the purposes of sections 62E.21 to 62E.25, the terms

1.11 and phrases defined in this section have the meanings given them.

1.12 Subd. 2. **Affordable Care Act.** "Affordable Care Act" means the Affordable Care Act

1.13 as defined in section 62A.011, subdivision 1a.

1.14 Subd. 3. **Attachment point.** "Attachment point" means the threshold dollar amount for

1.15 claims costs incurred by an eligible health carrier for an enrolled individual's covered benefits

1.16 in a plan year, after which threshold the claims costs for such benefits are eligible for

1.17 Minnesota premium security plan payments.

1.18 Subd. 4. **Board.** "Board" means the board of directors of the Minnesota Comprehensive

1.19 Health Association established under section 62E.10.

1.20 Subd. 5. **Coinsurance rate.** "Coinsurance rate" means the rate, established by the board

1.21 of the Minnesota Comprehensive Health Association, at which the association will reimburse

1.22 the eligible health carrier for claims costs incurred for an enrolled individual's covered

1.23 benefits in a plan year after the attachment point and before the reinsurance cap.

2.1 Subd. 6. **Commissioner.** "Commissioner" means the commissioner of commerce.

2.2 Subd. 7. **Eligible health carrier.** "Eligible health carrier" means:

2.3 (1) an insurance company licensed under chapter 60A to offer, sell, or issue a policy of
2.4 accident and sickness insurance as defined in section 62A.01;

2.5 (2) a nonprofit health service plan corporation operating under chapter 62C; or

2.6 (3) a health maintenance organization operating under chapter 62D

2.7 offering health plans in the individual market and incurring claims costs for an individual
2.8 enrollee's covered benefits in the applicable plan year that exceed the attachment point under
2.9 the Minnesota premium security plan.

2.10 Subd. 8. **Individual market.** "Individual market" has the meaning given in section
2.11 62A.011, subdivision 5.

2.12 Subd. 9. **Minnesota Comprehensive Health Association or association.** "Minnesota
2.13 Comprehensive Health Association" or "association" has the meaning given in section
2.14 62E.02, subdivision 14.

2.15 Subd. 10. **Minnesota premium security plan.** The "Minnesota premium security plan"
2.16 means the state-based reinsurance program authorized under section 62E.23.

2.17 Subd. 11. **Plan year.** "Plan year" means a calendar year for which an eligible health
2.18 carrier provides coverage under a health plan in the individual market.

2.19 Subd. 12. **Reinsurance cap.** "Reinsurance cap" means the threshold dollar amount for
2.20 claims costs incurred by an eligible health carrier for an enrolled individual's covered
2.21 benefits, after which threshold the claims costs for such benefits are no longer eligible for
2.22 Minnesota premium security plan payments, established by the board of the Minnesota
2.23 Comprehensive Health Association.

2.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.25 Sec. 2. **[62E.22] DUTIES OF COMMISSIONER.**

2.26 In the implementation and operation of the Minnesota premium security plan, established
2.27 under section 62E.23, the commissioner shall require eligible health carriers to calculate
2.28 the premium amount the eligible health carrier would have charged for the applicable plan
2.29 year had the Minnesota premium security plan not been established and to submit this
2.30 information as part of the rate filing.

2.31 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.1 Sec. 3. **[62E.23] MINNESOTA PREMIUM SECURITY PLAN.**

3.2 **Subdivision 1. The Minnesota premium security plan as state-based reinsurance.**

3.3 The association is Minnesota's reinsurance entity to administer the state-based reinsurance
3.4 program referred to as the Minnesota premium security plan. The Minnesota premium
3.5 security plan shall be designed to protect consumers by mitigating the impact of high-risk
3.6 individuals on rates in the individual market.

3.7 **Subd. 2. Minnesota premium security plan parameters.** (a) The board shall propose
3.8 to the commissioner the Minnesota premium security plan payment parameters for the next
3.9 plan year by January 15 of the calendar year prior to the applicable plan year. In developing
3.10 the proposed payment parameters, the board shall consider the anticipated impact on
3.11 premiums. The commissioner shall approve the payment parameters no later than 14 calendar
3.12 days following the board proposal. In developing the proposed payment parameters for plan
3.13 year 2019 and after, the board may develop methods to account for variations in costs within
3.14 the Minnesota premium security plan.

3.15 (b) For plan year 2018, the Minnesota premium security plan parameters, including the
3.16 attachment point, reinsurance cap, and coinsurance rate, shall be established within the
3.17 parameters of the appropriated funds as follows:

3.18 (1) the attachment point is set at \$45,000;

3.19 (2) the reinsurance cap is set at \$250,000; and

3.20 (3) the coinsurance rate is set at 80 percent.

3.21 (c) All eligible health carriers receiving Minnesota premium security plan payments
3.22 must apply the Minnesota premium security plan's parameters established under paragraph
3.23 (a) or (b), as applicable, when calculating reinsurance payments.

3.24 **Subd. 3. Payments under Minnesota premium security plan.** (a) Each Minnesota
3.25 premium security plan payment must be calculated with respect to an eligible health carrier's
3.26 incurred claims costs for an individual enrollee's covered benefits in the applicable plan
3.27 year. If such claims costs do not exceed the attachment point, payment will be zero dollars.
3.28 If such claims costs exceed the attachment point, payment will be calculated as the product
3.29 of the coinsurance rate multiplied by the lesser of:

3.30 (1) such claims costs minus the attachment point; or

3.31 (2) the reinsurance cap minus the attachment point.

4.1 (b) The board must ensure that the payments made to eligible health carriers must not
4.2 exceed the eligible health carrier's total paid amount for any eligible claim. For purposes
4.3 of this paragraph, "total paid amount of an eligible claim" means the amount paid by the
4.4 eligible health carrier based upon the allowed amount less any deductible, coinsurance, or
4.5 co-payment, as of the time the data is submitted or made accessible under subdivision 4,
4.6 paragraph (b), clause (1).

4.7 Subd. 4. **Requests for Minnesota premium security plan payments.** (a) An eligible
4.8 health carrier may make a request for payment when the eligible health carrier's claims costs
4.9 for an enrollee meet the criteria for payment under subdivision 3 and the requirements of
4.10 this subdivision.

4.11 (b)(1) To be eligible for Minnesota premium security plan payments, an eligible health
4.12 carrier must provide to the association access to the data within the dedicated data
4.13 environment established by the eligible health carrier under the federal Risk Adjustment
4.14 Program. Eligible health carriers must submit an attestation to the board asserting entity
4.15 compliance with the dedicated data environments, data requirements, establishment and
4.16 usage of masked enrollee identification numbers, and data submission deadlines; and

4.17 (2) an eligible health carrier must provide the required access under clause (1) for the
4.18 applicable plan year by April 30 of the year following the end of the applicable plan year.

4.19 (c) An eligible health carrier must make requests for payment according to the
4.20 requirements established by the board.

4.21 (d) An eligible health carrier must maintain documents and records, whether paper,
4.22 electronic, or in other media, sufficient to substantiate the requests for Minnesota premium
4.23 security plan payments made pursuant to this section for a period of at least ten years and
4.24 must make those documents and records available upon request from the state or its designee
4.25 for purposes of verification, investigation, audit, or other review of Minnesota premium
4.26 security plan payment requests.

4.27 (e) The association or its designee may audit an eligible health carrier to assess the health
4.28 carrier's compliance with the requirements of this section. The eligible health carrier must
4.29 ensure that its relevant contracts, subcontractors, or agents cooperate with any audit under
4.30 this section. If an audit results in a proposed finding of material weakness or significant
4.31 deficiency with respect to compliance with any requirement under this section, the eligible
4.32 health carrier may provide a response to the draft audit report within 30 calendar days.
4.33 Within 30 calendar days of the issuance of the final audit report, the eligible health carrier
4.34 must complete the following:

5.1 (1) provide a written corrective action plan to the association for approval if the final
 5.2 audit results in a finding of material weakness or significant deficiency with respect to
 5.3 compliance with any requirement under this section;

5.4 (2) implement that plan; and

5.5 (3) provide to the association written documentation of the corrective actions once taken.

5.6 Subd. 5. **Notification of Minnesota premium security plan payments.** (a) For each
 5.7 applicable plan year, the association must notify eligible health carriers annually of Minnesota
 5.8 premium security plan payments, if applicable, to be made for the applicable plan year no
 5.9 later than June 30 of the year following the applicable plan year.

5.10 (b) An eligible health carrier may follow the appeals procedure under section 62E.10,
 5.11 subdivision 2a.

5.12 (c) For each applicable plan year, the board must provide to each eligible health carrier
 5.13 the calculation of total Minnesota premium security plan payment requests on a quarterly
 5.14 basis during the applicable plan year.

5.15 Subd. 6. **Disbursement of Minnesota premium security plan payments.** The
 5.16 association must:

5.17 (1) collect or access data required to determine Minnesota premium security plan
 5.18 payments from an eligible health carrier according to the data requirements under subdivision
 5.19 5; and

5.20 (2) make Minnesota premium security plan payments to the eligible health carrier after
 5.21 receiving a valid claim for payment from that eligible health carrier by August 15 of the
 5.22 year following the applicable plan year.

5.23 Subd. 7. **Data.** Government data of the association under this section are private data
 5.24 on individuals or nonpublic data as defined in section 13.02, subdivision 9 or 12.

5.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.26 Sec. 4. **[62E.24] ACCOUNTING, REPORTING, AND AUDITING.**

5.27 Subdivision 1. **Accounting requirements.** For each plan year, the board must ensure
 5.28 that it keeps an accounting of:

5.29 (1) all claims for Minnesota premium security plan payments received from eligible
 5.30 health carriers;

5.31 (2) all Minnesota premium security plan payments made to eligible health carriers;

- 6.1 (3) all administrative expenses incurred for the Minnesota premium security plan; and
6.2 (4) all assessments made for security plan costs.

6.3 Subd. 2. **Summary report.** The board must submit to the commissioner and make public
6.4 a report on the Minnesota premium security plan operations for each plan year by November
6.5 1 following the applicable year or 60 calendar days following the last disbursement of
6.6 Minnesota premium security plan payments for the applicable plan year.

6.7 Subd. 3. **Audits.** The commissioner or designee may conduct a financial or programmatic
6.8 audit of the Minnesota premium security plan to assess its compliance with the requirements.
6.9 The board must ensure that it and any relevant contractors, subcontractors, or agents
6.10 cooperate with any audit. The Minnesota premium security plan is subject to audit by the
6.11 legislative auditor.

6.12 Subd. 4. **Independent external audit.** The board must engage an independent qualified
6.13 auditing entity to perform a financial and programmatic audit for each plan year of the
6.14 Minnesota premium security plan in accordance with generally accepted auditing standards.
6.15 The board must:

6.16 (1) provide to the commissioner the results of the audit, in the manner and time frame
6.17 to be specified by the commissioner;

6.18 (2) identify to the commissioner any material weakness or significant deficiency identified
6.19 in the audit, and address in writing to the commissioner how the board intends to correct
6.20 any such material weakness or significant deficiency; and

6.21 (3) make public the results of the audit, including any material weakness or significant
6.22 deficiency and how the board intends to correct the material weakness or significant
6.23 deficiency.

6.24 Subd. 5. **Action on audit findings.** If an audit results in a finding of material weakness
6.25 or significant deficiency with respect to compliance with any requirement under this section,
6.26 the commissioner of commerce must ensure the board:

6.27 (1) within 60 calendar days of the issuance of the final audit report, provides a written
6.28 corrective action plan to the commissioner for approval;

6.29 (2) implements that plan; and

6.30 (3) provides to the commissioner written documentation of the corrective actions once
6.31 taken.

6.32 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.1 Sec. 5. [62E.25] FUNDING OF MINNESOTA PREMIUM SECURITY PLAN.

7.2 (a) The reinsurance fund account is created in the special revenue fund of the state
 7.3 treasury. Funds in the account are appropriated to the commissioner of commerce as fiscal
 7.4 agent for the association for the Minnesota premium security plan. Notwithstanding section
 7.5 11A.20, all investment income and all investment losses attributable to the investment of
 7.6 the reinsurance account not currently needed shall be credited to the reinsurance fund
 7.7 account.

7.8 (b) The association shall fund the Minnesota premium security plan using the following
 7.9 sources, in the following order:

7.10 (1) any federal funds available, whether through grants or otherwise;

7.11 (2) monetary reserves of the association; and

7.12 (3) the reinsurance tax imposed by section 295.52, subdivision 9.

7.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.14 Sec. 6. Minnesota Statutes 2016, section 295.52, subdivision 1, is amended to read:

7.15 Subdivision 1. **Hospital tax.** A tax is imposed on each hospital equal to ~~two~~ one percent
 7.16 of its gross revenues.

7.17 **EFFECTIVE DATE.** This section is effective for the tax year beginning January 1,
 7.18 2018.

7.19 Sec. 7. Minnesota Statutes 2016, section 295.52, subdivision 1a, is amended to read:

7.20 Subd. 1a. **Surgical center tax.** A tax is imposed on each surgical center equal to ~~two~~
 7.21 one percent of its gross revenues.

7.22 **EFFECTIVE DATE.** This section is effective for the tax year beginning January 1,
 7.23 2018.

7.24 Sec. 8. Minnesota Statutes 2016, section 295.52, subdivision 3, is amended to read:

7.25 Subd. 3. **Wholesale drug distributor tax.** A tax is imposed on each wholesale drug
 7.26 distributor equal to ~~two~~ one percent of its gross revenues.

7.27 **EFFECTIVE DATE.** This section is effective for the tax year beginning January 1,
 7.28 2018.

8.1 Sec. 9. Minnesota Statutes 2016, section 295.52, subdivision 4, is amended to read:

8.2 Subd. 4. **Use tax; legend drugs.** (a) A person that receives legend drugs for resale or
8.3 use in Minnesota, other than from a wholesale drug distributor that is subject to tax under
8.4 subdivision 3 or 9, is subject to a tax equal to the price paid for the legend drugs multiplied
8.5 by the tax percentage specified in this section. Liability for the tax is incurred when legend
8.6 drugs are received or delivered in Minnesota by the person.

8.7 (b) A tax imposed under this subdivision does not apply to purchases by an individual
8.8 for personal consumption.

8.9 Sec. 10. Minnesota Statutes 2016, section 295.52, subdivision 4a, is amended to read:

8.10 Subd. 4a. **Tax collection.** A wholesale drug distributor with nexus in Minnesota, who
8.11 is not subject to tax under subdivision 3 or 9, on all or a particular transaction is required
8.12 to collect the tax imposed under subdivision 4, from the purchaser of the drugs and give the
8.13 purchaser a receipt for the tax paid. The tax collected shall be remitted to the commissioner
8.14 in the manner prescribed by section 295.55, subdivision 3.

8.15 Sec. 11. Minnesota Statutes 2016, section 295.52, is amended by adding a subdivision to
8.16 read:

8.17 Subd. 9. **Reinsurance tax.** (a) A tax is imposed on each hospital equal to one percent
8.18 of its gross revenues.

8.19 (b) A tax is imposed on each surgical center equal to one percent of its gross revenues.

8.20 (c) A tax is imposed on each wholesale drug distributor equal to one percent of its gross
8.21 revenues.

8.22 (d) This subdivision expires January 1, 2020.

8.23 **EFFECTIVE DATE.** This section is effective for the tax year beginning January 1,
8.24 2018.

8.25 Sec. 12. Minnesota Statutes 2016, section 295.58, is amended to read:

8.26 **295.58 DEPOSIT OF REVENUES AND PAYMENT OF REFUNDS.**

8.27 (a) The commissioner shall deposit all revenues, including penalties and interest, derived
8.28 from the taxes imposed by sections 295.50 to 295.57, except the tax imposed by section
8.29 295.52, subdivision 9, and from the insurance premiums tax imposed by section 297I.05,
8.30 subdivision 5, on health maintenance organizations, community integrated service networks,

9.1 and nonprofit health service plan corporations in the health care access fund. There is
9.2 annually appropriated from the health care access fund to the commissioner of revenue the
9.3 amount necessary to make refunds under this chapter.

9.4 (b) The commissioner shall deposit all revenues, including penalties and interest, from
9.5 the tax imposed by section 295.52, subdivision 9, in the reinsurance fund account created
9.6 under section 62E.25.

9.7 **EFFECTIVE DATE.** This section is effective for the tax year beginning January 1,
9.8 2018.

9.9 Sec. 13. **STATE INNOVATION WAIVER.**

9.10 Subdivision 1. **Authority to submit a waiver application.** The commissioner of
9.11 commerce shall apply to the United States Secretary of Health and Human Services under
9.12 United States Code, title 42, section 18052, for a waiver of applicable provisions of the
9.13 Affordable Care Act with respect to health insurance coverage in the state for a plan year
9.14 beginning on or after January 1, 2018, for the sole purpose of implementing the Minnesota
9.15 premium security plan in a manner that maximizes federal funding for Minnesota. The
9.16 commissioner shall implement a state plan for meeting the waiver requirements in a manner
9.17 consistent with state and federal law, and as approved by the United States Secretary of
9.18 Health and Human Services.

9.19 Subd. 2. **Consultation.** In developing the waiver application, the commissioner shall
9.20 consult with the Department of Human Services and MNsure.

9.21 Subd. 3. **Application deadline.** The commissioner shall submit the application waiver
9.22 to the appropriate federal agency on or before July 5, 2017. The commissioner shall follow
9.23 all application instructions. The commissioner shall complete the draft application for public
9.24 review and comment by June 1, 2017.

9.25 Subd. 4. **Appropriation.** \$155,000 in fiscal year 2018 is appropriated to the commissioner
9.26 of commerce to prepare and submit a state innovation waiver.

9.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.