STATE OF MINNESOTA
Office of Governor Mark Dayton
130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 12, 2017

The Honorable Michelle Fischbach
President of the Senate
Room 2113, Minnesota Senate Building
St. Paul, Minnesota 55155

Dear Madame President:

I have vetoed and am returning Chapter 45, Senate File 800 the Omnibus Health and Human Services finance bill that establishes the HHS budget for fiscal years 2018 and 2019.

I am vetoing this bill because it is reckless and foolish to cut $505 million from the state's Health and Human Services system at a time when the state has a significant budget surplus and when we are facing serious uncertainty about future federal health care funding. This bill would undermine services for the most vulnerable Minnesotans, including children, families, seniors, people with disabilities, and those who receive care in our state-run facilities. The bill also cuts funding for the Department of Health, the state agency responsible for responding to public health emergencies, at the same time we are facing the worst measles outbreak since 1990.

While I share the Legislature's interest in finding savings and reducing spending in Health and Human Services, I am committed to doing so in a way that is based on fiscal reality and does not hurt the people served by our programs. In fact, my administration has saved more than $1 billion in the Health and Human Services budget over five years by improving efficiency and quality in Medical Assistance. These cost reductions are reflected in the state budget forecast and have resulted in real savings for Minnesota taxpayers. In contrast, your members claim to want to control the state's Health and Human Services spending but have sent me a bill that includes arbitrary cuts to health and human services programs, fictitious savings, and millions of dollars in new spending that are hidden in future budget years.

During the Legislature's committee process, my commissioners and their staff provided detailed comments on the numerous problems with this legislation, and the negative impact it would have on Minnesotans and our state budget. Unfortunately, you and your colleagues have largely disregarded this feedback. In the pages below, I reiterate the concerns about key provisions in this bill that the Commissioners have brought forth to your committee chairs in hearings and in letters throughout the legislative process.

The bill includes the following House provisions that claim to save more than $185 million but are not substantiated with fiscal notes. Including these items in a final budget would be making false promises to the people of Minnesota and would undermine the fiscal health of the state budget in the future, when the savings would not be realized:

Voice: (651) 201-3400 or (800) 657-3717 Fax: (651) 797-1850 MN Relay (800) 627-3529
Website: http://governor.state.mn.us An Equal Opportunity Employer

- Health care eligibility changes: This provision claims to save $140.2 million by implementing more frequent audits of Medical Assistance enrollees' eligibility status. These savings are not expected to materialize because the results of the audits are unknown and the verification process duplicates the periodic data matching program that is in current law and is already reflected in the state budget forecast beginning July 1, 2018.
- Health care delivery system pilot project: This provision requires DHS to establish an incentive program for hospitals to improve health outcomes and withhold two-percent of monthly payments to the health plans until the plans verify that enrolled individuals are eligible for Medical Assistance. The bill claims $45 million in unsubstantiated savings and, when these savings do not materialize, these costs will create a deficiency in our state budget for years to come.

The following items claim another $212 million in savings but are premised on invalid assumptions and do not comply with federal law. Implementation of these provisions will undermine our ability to achieve a balanced budget and it would be fiscally irresponsible to allow them to become law:

- Removal of forecast inflation for Medical Assistance: This provision removes $151 million of expected growth in the cost of care from the state's economic forecast for Medical Assistance without any direction as to how to control the costs or trends. Cost growth is included in the budget forecast to reflect the expected increases in the cost of paying managed care organizations and health care providers for the health care services they deliver to public program enrollees. This provision ignores the expected cost trend for health care for 1.2 million Minnesotans and, in doing so, puts DHS at risk of losing federal funding for the program.
- 50 percent cut to counties' MNCHOICES program: DHS currently pays counties to work with people with disabilities to assess their service needs and preferences. This provision cuts 50 percent of this statewide program but ignores that federal law requires this assessment process. This provision could result in a $61.5 million cut to counties while still expecting them to do the assessments, as required under current law.

At the same time, your bill artificially cuts out medical cost trends for the state's public health care programs, and it also mandates additional automatic growth far beyond the rate of inflation in some of those same programs. By simply adopting clarification language that I included in my budget, which keeps the rate of growth at a more moderate inflationary level, you would avoid new costs of $32 million in FY 2018-19 and $114 million in FY 2020-21.

In addition, two proposals in your bill will increase costs for elderly waiver and disability waiver rates beyond the budget horizon by $66 million in FY 2022-23 and $118 million in FY 2024-25. This is fiscally imprudent and does nothing to control costs of delivering human services.

While the bill takes credit for savings that are fiscally irresponsible or will not materialize, the bill does not contain legitimate program changes that I proposed in my budget that would improve services for Minnesotans while saving more than $27 million in real dollars for the state budget. The bill also fails to fund current agency operations and makes arbitrary, across-the-board cuts to critical services at DHS and MDH. This deliberate underfunding of agency operations will negatively impact services across the state, including the most vulnerable Minnesotans:

- DHS operations: The bill does not fund my operating request of $44.4 million, without which DHS will need to eliminate over 300 full-time equivalents (FTEs) across the agency, including a reduction of 210 FTEs in our Direct Care and Treatment programs that serve more than 12,000 Minnesotans annually. Instead, you include an 8.5 percent reduction to DHS operations that would result in a cut of $19.7 million and would impact an additional 87 positions, including staff who are responsible for investigating allegations of fraud and abuse, and licensing child care and adult day care facilities. The bill also eliminates $20 million in state funding for health care program eligibility systems, which results in a loss of $14 million in federal matching funds. This cut will significantly impact our ability to operate the main eligibility system and make it more difficult for DHS and counties to enroll people in public health programs. The cuts and underfunding of agency operations will impact the care DHS provides to Minnesotans, as well as the counties, tribes, and providers who partner with the agency to provide services statewide.
- MDH operations: The bill does not include my proposed fee increases or my operating adjustment of $6.5 million to maintain current services but instead cuts MDH operations by $7.9 million across all funds. Altogether, this represents a reduction of approximately 70 positions agency-wide that will impact services such as maltreatment investigations, services for sexually exploited youth, laboratory testing for infectious disease, and will reduce the agency's capacity to issue licenses to health professionals across the state.

The bill also cuts the base funding for the Statewide Health Improvement Program (SHIP) and Family Planning Special Projects (FPSP). FPSP program was established on a bipartisan basis in 1978 and, in FY 2016 alone, provided family planning services to 30,000 people statewide. These critical services reduce the risk of unwanted pregnancies and are a major factor in the reduction of Minnesota's teen pregnancy rate, which has dropped 66 percent since the 1990's. The 18 percent cut to FPSP in the TANF Fund will undermine our ability to continue this progress.

I am also troubled that the bill invests in a tobacco QuitLine by cutting almost 17 percent of the Statewide Health Improvement Partnership (SHIP) in future biennia. While the QuitLine treatment service is valuable, financing it at the expense of local community prevention grants is short-sighted and unnecessary.

Overall, I am also concerned that this bill does not include many of the critical investments that I proposed in my budget. My proposals aim to improve the health and well-being of children, support independence for people with disabilities, and provide quality care for Minnesotans in our state-run facilities, many of whom cannot be served elsewhere.

Unfortunately, the legislation before me largely disregards these priorities, including the key elements below that are unfunded or underfunded in this bill:

- Direct Care and Treatment: During the past year Speaker Daudt and legislators have visited the Minnesota Security Hospital (MSH) in Saint Peter, a statewide resource that cares for some of the most difficult mental health patients in the state. There has been bipartisan agreement that serious understaffing at the facility is creating an environment that is not therapeutic and is unsafe for clients and staff. Despite this common understanding, this bill contains none of the $22.8 million I have requested to improve the care and safety at MSH. The bill also fails to fund the long-term financial needs for Minnesota State Operated Community Services, which serve 400 Minnesotans with developmental disabilities in 116 group homes across the state.
- Child Care Assistance Program (CCAP) improvements: My budget proposes $58 million in new investments to improve child care services for 30,000 families and increase child care provider rates for the 4,100 providers who care for children on CCAP statewide. These changes will make the CCAP program work better for kids, families and providers statewide. These investments and policy changes are also required in order for Minnesota to maintain federal funding from the Child Care Development Block Grant that was reauthorized by Congress in 2015 with bipartisan support.
- Self-directed home care workforce: My budget also invests $48 million to increase wages and benefits for the dedicated Minnesotans who provide direct care for seniors and people with disabilities in their homes across the state. This proposal supports Minnesotans with disabilities to live independently in our communities and begins to address the home care workforce shortage that is currently straining families and workers.
- Child welfare and foster care: In 2015, the Legislature considered the recommendations of the Governor's Task Force on the Protection of Children and took the first steps in making significant improvements to our ability to identify and respond to child abuse. These changes, along with other factors, have resulted in a 25% increase in children reported to the child protection system, which has increased demand for foster care, putting serious stress on state and county workers who are trying to respond effectively to the needs of these children. While I am pleased that last year the Legislature created a Legislative Task Force to continue improvements in child protection, I am dismayed that this Task Force has not yet met this year, and that this bill did not include meaningful new funding for the most vulnerable children in our state. My budget invests $19.6 million to continue to improve the child protection system while also providing funds to support foster families who want to adopt children under age 6.
- Systems modernization: My budget proposes a $9 million investment to improve the IT system that counties, tribes and DHS rely on to provide services to Minnesotans in every county. While we have made progress in updating some IT systems, we continue to have outdated IT infrastructure for many programs. This outdated technology is usually at the root of audit findings that recommend that DHS make IT systems improvement. Furthermore, without this state investment, we risk losing up to 90 percent federal funds that are time-limited and are crucial if we are to make the necessary advances in our system in the future.

- Dental services: DHS was recently put on notice by the federal Centers for Medicare and Medicaid Services (CMS) that Minnesota children enrolled in Medical Assistance are not receiving sufficient dental care due to low provider payment rates and insufficient participation from dentists. My budget includes a 54 percent increase in Medical Assistance dental rates to begin to address these serious access issues.

- Vulnerable adult abuse reporting and investigations: In 2013, the Legislature created the Minnesota Adult Abuse Reporting Center (MAARC) to simplify and centralize the process of reporting potential abuse of vulnerable adults. In the first year of operation, MAARC received 51,000 reports of possible maltreatment of a vulnerable adult in nursing homes, assisted living and other settings that care for seniors and people with disabilities. This represented a nearly 40 percent increase in reports of abuse which substantially increases the need for investigators to follow up on complaints. Although your bill includes a $1.2 million investment in MDH for investigations of maltreatment in nursing homes and other licensed facilities, I have recommended in my supplemental budget that $4.6 million is needed to improve the timeliness of these investigations. I have also proposed an additional $2.5 million to increase resources and improve the technology at the MAARC itself.
- Improved oversight of child care and home care services: This bill does not include my requests to increase funding for improved oversight of child care and home and community based services (HCBS) providers. Forty other states inspect child care programs annually but Minnesota is not even meeting the minimum requirement for biennial inspections. In HCBS, current resources allow us to inspect programs once every four years, which is wholly inadequate oversight of services for very vulnerable people being served in their homes and communities.

One of the most troubling policies in the bill is the elimination of MNsure, our state-based health insurance exchange. Repealing MNsure at this time is a foolish decision that will cost the state more money when the organization is functioning well and we do not have clarity about how Congress may change the current federal law in the near future. Moving to the federal exchange would also seriously undermine our ability to administer MinnesotaCare, which provides affordable coverage to 100,000 Minnesotans, the majority of whom live in Greater Minnesota.

I am also concerned that the bill includes policy provisions that would prevent state agencies from working efficiently to submit and implement federal waivers that are commonly needed to implement and improve health and human services programs. The bill includes a House provision that would require state agencies to receive legislative approval before submitting federal waiver applications. This is an onerous step that micromanages the executive branch and impedes our ability to serve Minnesotans. Under current law, state agencies must first have direction from the legislature in order to develop and submit a federal waiver. Requiring agencies to return to the legislature for a second review and approval of waivers before submitting waivers to the federal government will inevitably delay program implementation and improvements. Specifically, this provision would inhibit the ability of the Department of Commerce to receive the federal waiver required to implement the recently enacted state reinsurance program.

I am also opposed to policy provisions in this bill that undermine the consumer protections in health insurance. The bill removes the right of an insurance customer to continue coverage after making a late payment. In March, the Legislature provided the health plans with a $542 million reinsurance program with no guarantees for consumers. I am concerned that the policy changes now presented in this bill would also make it easier for these same companies to end consumer coverage.

In Senate File 1, the Legislature allowed for-profit HMOs to sell insurance in Minnesota, for the first time. However, the legislation included no guardrails to guide the process when a non-profit HMO converts to a for-profit entity. The Senate HHS budget included strong protections to ensure that non-profit assets were maintained for public benefit in these cases. However, these protections were gutted in the final bill and the bill before me now would allow CEOs to receive unlimited payout packages and provide minimal protection for public assets when a company converts to a for-profit corporation. Since Minnesota is the last state to allow for-profit HMOs, I am hopeful that we can learn from the experiences of 49 states that have gone through this process before us and ensure that non-profit assets are protected for the public good.

The bill also repeals the Radon Licensure Program that helps protect Minnesotans from radon gas, the second leading cause of lung cancer. Minnesota has one the highest concentrations of radon in the country and this program assures that both radon testers and mitigators are trained and that abatement installations are conducted according to national standards. The program helps protect public health and provides a level of consumer protection that is needed in this emerging industry.

Despite our differences outlined in this letter, we must continue to move forward and find common ground on a final HHS budget. As I have said before, compromise requires us to agree to items that we don't agree with. I am returning this bill to you with the goal of reaching agreement on a balanced solution that is based on sound fiscal management and will keep Minnesota on a path of improving health and human services in our state.

Sincerely,

Mark Dayton

Mark Dayton
Governor

cc: Senator Michelle L. Fischbach, President of the Senate
Senator Paul E. Gazelka, Majority Leader
Senator Thomas M. Bakk, Minority Leader
Senator Michelle Benson
Representative Melissa Hortman, Minority Leader
Representative Matt Dean
The Honorable Steve Simon, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Patrick Murphy, Chief Clerk of the House of Representatives
Mr. Paul Marinac, Revisor of Statutes