

[Second Reprint]

SENATE, No. 375

STATE OF NEW JERSEY
214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator ROBERT M. GORDON

District 38 (Bergen)

Co-Sponsored by:

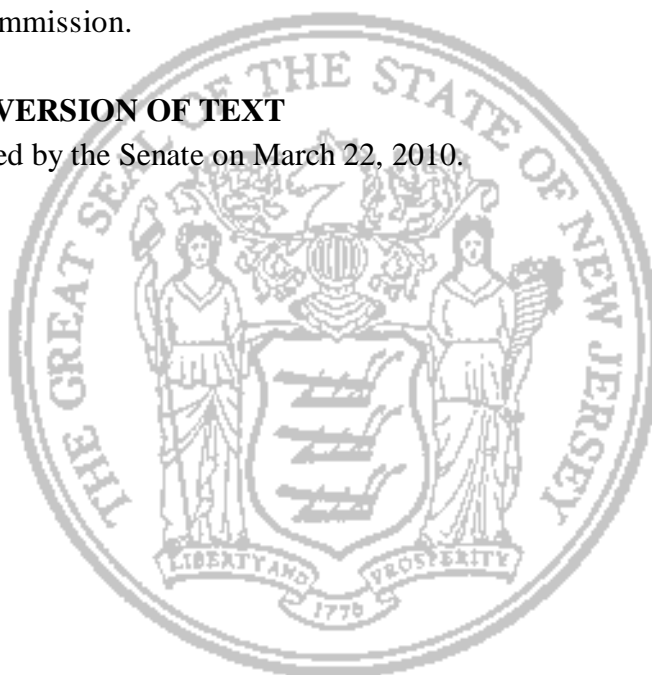
**Senators Cunningham, Turner, Gill, Sweeney, Van Drew, Ruiz and
Greenstein**

SYNOPSIS

Requires additional public participation and health impact study as conditions of conversion of health service corporation to domestic stock insurer; dissolves the Health Service Corporation Conversion Temporary Advisory Commission.

CURRENT VERSION OF TEXT

As amended by the Senate on March 22, 2010.



(Sponsorship Updated As Of: 1/7/2011)

1 AN ACT concerning the conversion of a health service corporation
2 to a domestic stock insurer, and amending P.L.2001, c.131
3 ²[and P.L.2005, c.155]².
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 ²[¹1. Section 1 of P.L.2001, c.131 (C.17:48E-49) is amended to
9 read as follows:

10 1. As used in this act:

11 "Affiliate" or "affiliated" has the meaning set forth in subsection
12 a. of section 1 of P.L.1970, c.22 (C.17:27A-1).

13 "Alternative foundation plan" means the plan submitted to the
14 Attorney General and the commissioner pursuant to section 18 of
15 this act.

16 "Application" means the application for approval of a plan of
17 conversion filed with the commissioner pursuant to section 3 of this
18 act.

19 "Attorney General" means the Attorney General of the State of
20 New Jersey.

21 "Commissioner" means the Commissioner of Banking and
22 Insurance.

23 "Control" has the meaning set forth in subsection c. of section 1
24 of P.L.1970, c.22 (C.17:27A-1).

25 "Conversion" means the process by which a health service
26 corporation converts to a domestic stock insurer in accordance with
27 the provisions of sections 2 through 14 and section 19 of this act.

28 "Converted insurer" means the domestic stock insurer into which
29 a health service corporation converts in accordance with the
30 provisions of sections 2 through 14 and section 19 of this act.

31 "Director" means the Director of the Division of Rate Counsel in
32 the Department of the Public Advocate.

33 "Domestic stock insurer" means a for-profit stock insurer
34 authorized pursuant to Title 17B of the New Jersey Statutes to
35 transact health insurance as defined in N.J.S.17B: 17-4.

36 "Effective time" means the date and time at which the conversion
37 of a health service corporation is effective, as provided in section
38 11 of this act.

39 "Foundation" means the foundation or foundations established
40 under section 18 or 19 of this act.

41 "Foundation plan" means the plan submitted to the Attorney
42 General pursuant to section 19 of this act.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted March 4, 2010.

²Senate floor amendments adopted March 22, 2010.

1 "Health service corporation" means a health service corporation
2 established pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.).

3 "Material change in form" means any action or series of actions
4 that effect a fundamental corporate change which involves a
5 transfer of ownership or control of assets of the health service
6 corporation or a change of the mission or purpose of the health
7 service corporation, including, without limitation, the purchase,
8 lease, exchange, conversion, restructuring, merger, division,
9 consolidation or transfer of control, bulk reinsurance or other
10 disposition or transfer of a substantial amount of business, line of
11 business, assets or operations of the health service corporation,
12 including the transfer, directly or indirectly, of a substantial amount
13 of the health service corporation's business, line of business, assets
14 or operations to one or more nonconforming affiliates. A material
15 change in form by the transfer, directly or indirectly, of a
16 substantial amount of the health service corporation's business, line
17 of business, assets or operations to one or more nonconforming
18 affiliates shall not be deemed to occur so long as, during the most
19 recent four prior consecutive calendar quarters: (1) the aggregate
20 revenues of all nonconforming affiliates do not exceed 50 percent
21 of the aggregate revenues for the health service corporation and all
22 affiliates; (2) the aggregate revenues of all nonconforming affiliates
23 derived from providing individual or group health coverage to
24 residents of New Jersey equal or exceed 50 percent of the aggregate
25 revenues from all nonconforming affiliates; and (3) the aggregate
26 assets of all nonconforming affiliates do not exceed 50 percent of
27 the aggregate assets of the health service corporation and all
28 affiliates.

29 "Nonconforming affiliate" means any affiliate of a health service
30 corporation that: (1) operates on a for-profit basis, or (2) operates
31 on a nonprofit basis and does not have a purpose the same as or
32 substantially similar to that of the health service corporation.

33 "Parent corporation" means a stock corporation incorporated
34 under the laws of this State that is or has been organized for the
35 purpose of acquiring, directly or indirectly, control of the converted
36 insurer pursuant to the plan of conversion.

37 "Petition" means the petition for approval of a foundation plan
38 submitted to the Attorney General pursuant to subsection a. of
39 section 19 of this act.

40 "Plan of conversion" means the written plan of conversion
41 adopted by the health service corporation in compliance with
42 section 2 of this act.

43 "Policy" means an individual or group policy or contract of
44 insurance, including, without limitation, any certificate, rider,
45 endorsement, plan or product offering issued by or binding upon the
46 health service corporation.

47 "Subscriber" means a person covered by or entitled to benefits
48 under any policy, including, but not limited to, the persons

1 described in subsection k. of section 1 of P.L.1985, c.236
2 (C.17:48E-1).¹
3 (cf: P.L.2001, c.131, s.1)]²

4
5 ¹[1.] ²[2.] ¹1.² Section 3 of P.L.2001, c.131 (C.17:48E-51) is
6 amended to read as follows:

7 3. a. The health service corporation shall file with the
8 commissioner an application pursuant to subsection b. of this
9 section for approval of, and permission to convert pursuant to, a
10 plan of conversion. Concurrent with the filing of the application
11 with the commissioner, the health service corporation shall submit a
12 petition to the Attorney General pursuant to section 19 of this act
13 and submit a copy of the petition to the commissioner. The health
14 service corporation shall file a copy of the application with the
15 Attorney General at the time the health service corporation files the
16 application with the commissioner.

17 b. The application shall include the following:

18 (1) The plan of conversion and exhibits thereto.

19 (2) A business plan of the converted insurer and any parent
20 corporation, including five-year financial projections and the
21 number of shares of capital stock that the converted insurer and any
22 parent corporation is authorized to issue, together with estimates of
23 the capital which might be raised by the sales of the capital stock or
24 securities convertible into capital stock.

25 (3) A certification by the secretary of the health service
26 corporation that the plan of conversion has been duly adopted by
27 action of not less than two-thirds of the total number of directors of
28 the board of the health service corporation. Subscribers of the
29 health service corporation shall not have the right to vote on or
30 approve the plan of conversion, any amendments to the health
31 service corporation's certificate of incorporation or bylaws, or the
32 certificate of incorporation or bylaws of the converted insurer or
33 parent corporation, notwithstanding any provision to the contrary in
34 the certificate of incorporation or bylaws of the health service
35 corporation.

36 (4) The proposed forms of the notice of **[hearing]** hearings
37 required by subsection e. of this section and any other notices
38 required by the plan of conversion or by the commissioner.

39 (5) Any information provided to the board of directors of the
40 health service corporation in connection with its review and
41 approval of the plan of conversion, except materials that are
42 protected by attorney-client privilege.

43 (6) A comparative premium rate analysis of all the policies of
44 the health service corporation, comparing actual premium rates for
45 the three-year period preceding the filing of the plan of conversion
46 and projected premium rates for the three-year period following the
47 proposed conversion. The rate analysis shall address the projected

1 impact, if any, of the proposed conversion upon the cost to
2 subscribers as well as the projected impact, if any, of the proposed
3 conversion upon the health service corporation's underwriting
4 profit, investment income, tax liability and loss and claim reserves,
5 including the effect, if any, of adverse market or risk selection on
6 reserves.

7 (7) Any conditions, other than approval of the plan of
8 conversion by the commissioner, to be fulfilled on or before the
9 effective time.

10 (8) Any proposed agreement between or among the foundation
11 and the converted insurer or its parent corporation, if applicable,
12 including, but not limited to, any agreement relating to the voting or
13 registration for sale of any capital stock issued to the foundation by
14 the converted insurer or any parent corporation.

15 (9) Any other additional information that the health service
16 corporation believes is necessary.

17 (10) Any other additional information that the commissioner in
18 his sole discretion deems appropriate.

19 c. If required pursuant to section 6 of this act, the plan of
20 conversion shall include an appraisal of the fair market value, or
21 range of values, of the aggregate equity of the converted insurer to
22 be outstanding upon completion of the plan of conversion and, if a
23 range of values, the methodology for fixing a final value coincident
24 with the completion of the transactions provided for in the plan of
25 conversion.

26 (1) The appraisal shall enable determinations of value of:

27 (a) the amount of cash or other assets that the foundation will be
28 entitled to receive, without consideration, under the provisions of
29 the plan of conversion; and

30 (b) the price of any shares to be issued pursuant to the optional
31 provisions of a plan of conversion permitted by subsection e. of
32 section 6 of this act;

33 (2) The appraisal required by this subsection c. shall be prepared
34 by persons independent of the health service corporation,
35 experienced and expert in the area of corporate appraisals and
36 acceptable to the commissioner. The appraisal shall be in a form
37 and content acceptable to the commissioner and contain a complete
38 and detailed description of the elements that make up the appraisal,
39 justification for the methodology employed and sufficient support
40 for the conclusions reached in the appraisal. The commissioner
41 may also require the appraisal to include an analysis of fair market
42 value based on actuarial considerations, as well as other methods
43 for determining fair market value.

44 (3) To the extent that the appraisal is based on a capitalization
45 of the pro forma income of the converted insurer, the appraisal shall
46 indicate the basis for determination of the income to be derived
47 from any proceeds of the sale of stock and demonstrate the

1 appropriateness of the earnings-multiple used, including
2 assumptions made regarding future earnings growth.

3 (4) To the extent that the appraisal is based on the comparison
4 of the capital stock of the converted insurer with outstanding capital
5 stock of existing stock entities offering comparable insurance
6 products, the existing stock entities shall be reasonably comparable
7 to the converted insurer in terms of factors such as size, market
8 area, competitive conditions, profit history and expected future
9 earnings.

10 (5) In those instances in which the commissioner determines
11 that the appraisal is materially deficient or substantially incomplete,
12 the commissioner may declare the entire application materially
13 deficient or substantially incomplete and decline to further process
14 or may reject the application.

15 (6) The health service corporation shall submit to the
16 commissioner information demonstrating to the satisfaction of the
17 commissioner the independence and expertise of any person
18 preparing the appraisal or related materials under this subsection.

19 (7) The appraiser shall not serve as an underwriter or selling
20 agent under the plan of conversion. With the prior written approval
21 of the commissioner, an affiliate of the appraiser may act as an
22 underwriter or selling agent if procedures are followed and
23 representations and warranties are made to ensure that the appraiser
24 is separate from the underwriter or selling agent affiliate and the
25 underwriter or selling agent affiliate does not make
26 recommendations or in any way have an impact on the appraisal.

27 (8) An appraiser may not receive any other fee except the fee for
28 services rendered in connection with the appraisal.

29 d. The commissioner in his sole discretion: (1) shall determine,
30 within 60 days of submission of the application, whether the
31 application is complete and, if not, shall specify what additional
32 information is required; and (2) shall further determine when an
33 application is complete. The commissioner may request additional
34 information from the health service corporation which the
35 commissioner determines is necessary to review the application and
36 plan of conversion. The commissioner may also conduct an
37 examination under section 37 of P.L.1985, c.236 (C.17:48E-37) to
38 obtain any information the commissioner determines necessary in
39 connection with the application or transaction or series of
40 transactions, that the commissioner determines constitute, or may
41 constitute, a material change in form. The failure of the health
42 service corporation to provide the information or cooperate in the
43 examination, in addition to other applicable penalties, constitutes
44 grounds for denial of the application.

45 e. (1) Upon determining that the application is complete and
46 the forms of notice are adequate, the commissioner shall designate
47 【a date】 dates for 【a】 at least four public 【hearing】 hearings on the
48 plan of conversion, with at least one hearing each in the northern

1 and southern regions of the State, and at least two in the central
2 region of the State. Additionally, at least two public hearings shall
3 be held before the commissioner has received and made public the
4 health impact study prepared for the commissioner pursuant to the
5 provisions of subsection g. of this section, and at least one public
6 hearing shall be held after the commissioner's receipt and public
7 release of all written reports obtained from his advisors and
8 consultants, including the health impact study, focusing exclusively
9 on these written reports, but with an emphasis on the health impact
10 study. The public **[hearing]** hearings may be held on one or more
11 days, the first commencing within 90 days after the date on which
12 the commissioner determines the application is complete, unless the
13 health service corporation requests, and the commissioner agrees to,
14 a longer period for the purpose of preparing and distributing the
15 notices required by this subsection. The public **[hearing]** hearings
16 may, if the commissioner and Attorney General so agree, be
17 conducted jointly as part of the public **[hearing]** hearings required
18 under subsection e. of section 19 of this act.

19 **[The]** (2) Each hearing shall be in the nature of a legislative
20 hearing and shall not constitute or be considered a contested case
21 under the "Administrative Procedure Act," P.L.1968, c.410
22 (C.52:14B-1 et seq.). The health service corporation shall provide
23 the public with at least **[45]** 75 days' notice of the **[hearing]**
24 schedule of hearings, the notice to be in the form, and provided in
25 the manner, that the commissioner approves. The health service
26 corporation shall cause notice of the time and place of **[the]** each
27 public hearing to be published at least two times at intervals of not
28 less than one week, the first publication to be not more than **[45]**
29 75 days and the last publication not less than 15 days prior to the
30 first scheduled public hearing in at least two newspapers of general
31 circulation in New Jersey. The notice of the **[hearing]** hearings
32 shall state the purpose thereof and the time and the place where
33 **[the]** each hearing will occur. The purpose of the **[hearing]**
34 hearings shall be to receive comments and information for the
35 purpose of aiding the commissioner in making a decision as to
36 whether to approve the plan of conversion. Persons wishing to
37 make comments and submit information may submit written
38 statements to the commissioner prior to **[the]** any public hearing
39 and may appear and be heard at **[the]** any hearing.

40 ²**[**(3) Notwithstanding the nature of the public hearings as
41 legislative hearings, the 'Public Advocate, through] Director of'
42 the Division of Rate Counsel in the Department of the Public
43 Advocate '[,]' shall act as an intervenor at each hearing, in
44 representation of and to protect the public interest as defined in
45 section 12 of P.L.2005, c.155 (C.52:27EE-12) ', by assessing the
46 impact of the conversion on accessible, available, affordable, and

1 quality health care for underserved and vulnerable individuals,
2 including children, seniors, low income or disabled individuals and
3 individuals with chronic illnesses, as well as the overall impact of
4 the conversion on the health care needs of all New Jerseyans¹ .

5 (a) As an intervenor for the public interest, the ¹['Public
6 Advocate] director¹ shall ¹['participate in the review of the plan of
7 conversion] assess the impact of the conversion on underserved and
8 vulnerable individuals, as well as the overall impact on the health
9 care needs of all New Jerseyans,¹ by first ¹['.]¹ independently
10 reviewing the plan ¹'of conversion' and any additional information
11 obtained by the commissioner pursuant to subsection d. of this
12 section, as well as any information provided to the commissioner by
13 any advisor or consultant whose services the commissioner engages
14 pursuant to subsection g. of this section, and only thereafter by
15 requesting and accessing additional information directly from the
16 health service corporation or other sources, for use at the public
17 hearings ¹['., and for aiding the commissioner in making the decision
18 as to whether to approve the plan of conversion]¹ . The ¹['Public
19 Advocate] director¹ may request access to information that has
20 been designated as confidential and not a public record pursuant to
21 section 10 of P.L.2001, c.131 (C.17:48E-58), subject to an executed
22 non-disclosure agreement.

23 (b) As an intervenor for the public interest, the ¹['Public
24 Advocate] director¹ shall have the duty to consult with, and provide
25 periodic updates to, representatives of interested organizations to
26 the proposed plan of conversion, that are advocating for the health
27 care interests of underserved ¹'and vulnerable' individuals, ¹['or the
28 health care interests of current subscribers of the health service
29 corporation, or the interests of hospitals, physicians, or other health
30 care providers in the State,]¹ or the promotion of fundamental
31 improvements in the health status of all New Jerseyans. The
32 ¹['Public Advocate] director¹ may require that interested
33 organizations advocating for identical or substantially similar
34 individuals or interests designate one representative for those
35 individuals or interests with whom the ¹['Public Advocate] director¹
36 shall consult and provide updates.

37 (c) Status as an intervenor shall provide the ¹['Public Advocate]
38 director¹ standing to appeal the commissioner's decision as to
39 whether to approve the plan of conversion consistent with the
40 provisions of subsection b. of section 4 of P.L.2001, c.131
41 (C.17:48E-52).]²

42 f. Each ¹['The] hearing shall be conducted by the commissioner
43 or, at the commissioner's discretion, his designee, who shall report
44 to and advise the commissioner on the matter, in which case the
45 determination or order issued by the commissioner shall have the
46 same force and effect as if the commissioner had conducted ¹['the]

1 each hearing personally. The commissioner's order or determination
2 on the application pursuant to section 4 of this act shall be issued
3 within 45 days after the closing of the record of the last scheduled
4 hearing by the commissioner or his designee, as applicable. The
5 commissioner shall issue a written decision detailing the reasons for
6 the approval or disapproval of the plan of conversion. The
7 commissioner may, for good cause, extend the time within which he
8 shall issue an order or determination on the application.

9 g. (1) The commissioner shall engage the services of a
10 consultant to prepare a health impact study examining the direct and
11 indirect health impact of the proposed conversion, which shall be
12 completed for the commissioner and released to the public prior to
13 conducting the final one or more public hearings as required by
14 subsection e. of this section, and shall be used by the commissioner
15 in making the final decision on the approval or disapproval of the
16 plan of conversion pursuant to subsection f. of this section and
17 section 4 of P.L.2001, c.131 (C.17:48E-52). The health impact
18 study shall incorporate information and testimony presented at any
19 public hearings already conducted and as otherwise obtained by the
20 consultant, under the direction of the commissioner. The study
21 shall examine all of the factors required to be considered by the
22 commissioner in making the final decision on the approval or
23 disapproval of the plan of conversion pursuant to subsection f. of
24 this section and section 4 of P.L.2001, c.131 (C.17:48E-52), and
25 shall additionally include, but not be limited to:

26 (a) assessing the impact of the conversion on the health care
27 needs of subscribers;

28 (b) analyzing the business plan and comparative premium rate
29 analysis submitted with the application pursuant to paragraphs (2)
30 and (6) of subsection b. of this section, to determine whether the
31 business plan and projections set forth in the rate analysis
32 adequately address concerns of the health care costs of subscribers;

33 (c) assessing the impact of the conversion on accessible,
34 available, affordable, and quality health care for underserved and
35 vulnerable individuals, including children, seniors, low income or
36 disabled individuals, and individuals with chronic illnesses;

37 (d) assessing the impact of the conversion on particular health
38 insurance markets;

39 (e) assessing the impact of the conversion on provider contracts,
40 current provider networks, and the development of additional
41 provider networks;

42 (f) assessing the impact of the conversion on provider
43 compensation; ²['and']²

44 (g) assessing the impact of the conversion on claims processing
45 and payment ¹['; and

1 (h) assessing the impact of the conversion on the health care
 2 needs of all New Jerseyans and the promotion of the
 3 public interest]^{1 2}; and

4 (h) assessing the impact of the conversion on the health care
 5 needs of all New Jerseyans and the promotion of the public
 6 interest².

7 (2) The commissioner may additionally engage the services of
 8 other advisors and consultants, which may include, but are not
 9 limited to, lawyers, actuaries, accountants, investment bankers,
 10 compensation and employee benefit plan consultants or any
 11 combination thereof, to advise him on any matters related to the
 12 conversion. Any consultant engaged by the commissioner shall be
 13 subject to all applicable statutes, regulations, and rules of
 14 professional conduct governing conflicts of interest.

15 (3) ²[(a)]² All reasonable costs related to the development
 16 and examination of, and deliberations concerning, a plan of
 17 conversion and other related matters, including, but not limited to,
 18 those reasonable costs attributable to the consultant's completion of
 19 the health impact study and the use by the commissioner of other
 20 advisors and consultants, shall be '[paid by] submitted by the
 21 commissioner to' the health service corporation that makes the
 22 filing or initiates the discussions about a plan of conversion 'and
 23 paid by that health service corporation', both for services prior to
 24 the effective time 'of the conversion' and for services after the
 25 effective time. '[However, with]

26 ²[(b) With¹ respect to the '[Public Advocate] Director of the
 27 Division of Rate Counsel' as intervenor, 'the director shall
 28 coordinate with the commissioner, to the extent possible,
 29 concerning the assessment of the plan of conversion as described in
 30 subsection e. of this section and other related matters, and' the
 31 health service corporation shall only pay for those reasonable costs
 32 directly and solely attributable to the '[Public Advocate] director'
 33 that are not duplicative of any costs attributable to the
 34 commissioner '[, and] . These costs, submitted by the director to
 35 the health service corporation,' shall total no more than \$350,000,
 36 which total amount includes any amount attributable to the '[Public
 37 Advocate] director' as intervenor regarding the foundation plan
 38 petition pursuant to section 19 of P.L.2001, c.131 (C.17:48E-67).]²
 39 (cf: P.L.2001, c.131, s.3)

40
 41 '[2.] ²[(3.1)] 2.² Section 4 of P.L.2001, c.131 (C.17:48E-52) is
 42 amended to read as follows:

43 4. a. The commissioner shall approve the plan of conversion
 44 and issue a certificate of authority to the converted insurer to
 45 transact business in this State as a domestic stock insurer only if the
 46 commissioner finds, using the health impact study required to be

1 completed pursuant to subsection g. of section 3 of P.L.2001, c.131
 2 (C.17:48E-51) and information otherwise obtained pursuant to
 3 P.L.2001, c.131 (C.17:48E-49 et al.), all of the following:

4 (1) The plan of conversion meets the requirements of sections 2
 5 and 3 of this act.

6 (2) Upon conversion, the converted insurer will meet the
 7 applicable standards and conditions under this section, including
 8 applicable minimum capital and surplus requirements.

9 (3) The plan of conversion adequately protects the existing
 10 contractual rights of subscribers.

11 (4) The plan of conversion will promote the best interests of the
 12 health service corporation.

13 (5) The health service corporation has complied with all
 14 requirements of sections 2 and 3 of this act.

15 (6) The plan of conversion is fair and equitable.

16 (7) The plan provides for the enhancement of the operations of
 17 the converted insurer.

18 (8) The plan provides for the transfer at or before the effective
 19 time of the entire fair market value of the health service corporation
 20 to the foundation in accordance with section 6 of this act.

21 (9) The plan is consistent with the foundation plan.

22 (10) The plan does not adversely affect the distribution of the
 23 health service corporation's value to the foundation.

24 (11) The plan is not contrary to law.

25 (12) The plan promotes the public interest.

26 (13) The Attorney General has concurred:

27 (a) with any findings of the commissioner pursuant to paragraph
 28 (8) of this subsection and section 6 of this act; and

29 (b) with the actions of the commissioner under subsection c. of
 30 section 3 of this act.

31 b. The commissioner's order approving or disapproving a plan
 32 of conversion under this section shall be a final agency decision
 33 subject to appeal in accordance with, and within the time periods
 34 specified by, the Rules Governing the Courts of the State of New
 35 Jersey.

36 (cf: P.L.2001, c.131, s.4)

37
 38 ¹[3.] ²[4.1] ³3. ² Section 19 of P.L.2001, c.131 (C.17:48E-67)
 39 is amended to read as follows:

40 19. a. (1) A health service corporation shall submit to the
 41 Attorney General a petition for review of a foundation plan at the
 42 same time that it submits a plan of conversion to the commissioner.
 43 The petition shall include the foundation plan and any other
 44 information that the Attorney General requests.

45 (2) Within 60 days of the health service corporation's
 46 submission of the petition to the Attorney General, the Attorney
 47 General shall advise the health service corporation in writing

1 whether the petition is complete, and, if not, shall specify what
2 additional information is required.

3 (3) The Attorney General shall, upon receipt of the information
4 requested, notify the health service corporation in writing of the
5 date of completion of the petition.

6 b. The Attorney General ²~~[, and the~~ ¹~~Public Advocate,~~
7 ~~through]~~ ~~Director of~~ ¹ ~~the Division of Rate Counsel in the~~
8 ~~Department of the Public Advocate, acting as an intervenor as set~~
9 ~~forth in subsection g. of this section,]~~ ² shall review the petition and
10 may either support the proposed foundation plan, with or without
11 any specific modifications, or, if ~~[he]~~ ~~the Attorney General~~ ²~~[or the~~
12 ~~'Public Advocate']~~ ~~director~~ ¹ ² finds that it is not in the public
13 interest, oppose the foundation plan in the Superior Court
14 proceeding commenced pursuant to subsection f. of this section.

15 c. When reviewing the petition, in addition to considering
16 whether the foundation plan meets the requirements of subsection d.
17 of this section, the Attorney General shall consider whether:

18 (1) the health service corporation exercised due diligence in
19 deciding to effectuate the conversion, selecting any other party to
20 the conversion or related transactions, and negotiating the terms and
21 conditions of the conversion;

22 (2) the procedures used by the health service corporation in
23 approving the conversion, including whether expert assistance was
24 used, were appropriate;

25 (3) a conflict of interest was disclosed, including, but not
26 limited to, conflicts of interest related to board members of,
27 employees of, and experts retained by, the health service
28 corporation or any other parties to the conversion;

29 (4) any management contract under the conversion or any
30 related transaction is for reasonable fair value;

31 (5) ~~(a)~~ any proceeds of the conversion will be used solely for
32 purposes of expanding access to affordable, quality health care for
33 underserved ¹~~and vulnerable~~ individuals and ~~similarly~~ promoting
34 fundamental improvements in the health status of New Jerseyans
35 ~~through accessible, available, affordable, and quality health care,~~
36 ~~including public health~~ ¹~~and disease prevention~~ ¹ related activities;
37 ~~and~~

38 ~~(b) any proceeds will not be used to replace any current~~
39 ~~government appropriations and any other spending on health care;~~

40 (6) the health service corporation established appropriate criteria
41 in deciding to pursue a conversion and considered the proposed
42 conversion as the only alternative or as the best alternative in
43 relation to carrying out its mission and purposes; and

44 (7) officers, directors, board members or senior management of
45 the health service corporation will receive contracts in any existing,
46 new or affiliated health service corporation, foundation, the

1 converted insurer, any parent corporation or any affiliate of any of
2 the foregoing.

3 d. The foundation plan ¹['], subject to review by the Attorney
4 General and the Public Advocate,'] ²reviewed by the Attorney
5 General² shall meet the following requirements:

6 (1) The foundation plan shall provide for the establishment of
7 one or more foundations that will receive the fair market value of
8 the health service corporation following its conversion to a
9 domestic stock insurer and that meets the following requirements:

10 (a) The foundation shall be a trust or nonprofit corporation
11 formed under the laws of this State, but shall not include the health
12 service corporation or any person controlled by the health service
13 corporation.

14 (b) The foundation shall be a charitable entity that qualifies for
15 federal income tax exemption under [paragraph (3) of subsection
16 (c) of] section 501(c)(3) of the federal Internal Revenue Code [of
17 1986,] (26 U.S.C. s.501(c)(3)).

18 (c) The foundation shall have the sole purposes of expanding
19 access to affordable, quality health care for underserved ¹and
20 vulnerable¹ individuals and similarly promoting fundamental
21 improvements in the health status of all New Jerseyans through
22 accessible, available, affordable, and quality health care, including
23 public health ¹and disease prevention¹ related activities.

24 (d) The foundation, its directors, officers and trustees and the
25 assets of the foundation, including any stock of the converted
26 insurer or a parent corporation, shall be independent of any
27 influence or control by the converted insurer, its parent corporation,
28 any of their subsidiaries or affiliates, any of their respective
29 directors, officers, trustees or employees, except with the prior
30 approval of the Attorney General and the commissioner.

31 (e) The foundation shall not have more than one of its directors
32 serve as a director of the converted insurer or its parent corporation.

33 (f) The foundation shall not have as a director, officer or senior
34 management any person who has been a director, officer, agent,
35 trustee or employee of the health service corporation, the converted
36 insurer, its parent corporation or any affiliate of any of them during
37 the three-year period preceding the date of appointment as a
38 director, officer or senior manager of the foundation.

39 (g) The foundation shall have a board of directors that when
40 appointed will comply with section 20 of this act.

41 (2) The foundation shall provide the Attorney General with an
42 annual report which shall include an audited financial statement and
43 a detailed description of its grant-making and other charitable
44 activities related to its use of the charitable assets received pursuant
45 to the conversion. The annual report shall be made available to the
46 public at both the Attorney General's office and the office of the
47 foundation. Nothing contained in this act shall affect the

1 obligations of an entity possessing endowment funds under the
 2 ¹["Uniform Management of Institutional Funds Act," P.L.1975,
 3 c.26 (C.15:18-15 et seq.)] "Uniform Prudent Management of
 4 Institutional Funds Act," P.L.2009, c.64 (C.15:18-25 et seq.)¹.

5 (3) The governing body of the foundation shall establish or
 6 demonstrate that it has in place, as the case may be, a mechanism to
 7 avoid conflicts of interest, including those associated with grant-
 8 making activities that may benefit the converted insurer, its
 9 affiliates, any person who owns or controls any ownership interest
 10 in either the converted insurer or any of its affiliates, and any
 11 director or officer of the converted insurer or its affiliates.

12 e. The Attorney General shall, during the course of the review
 13 of the foundation plan pursuant to this section, hold at least **[one]**
 14 four public **[hearing]** hearings, with at least one hearing each in the
 15 northern and southern regions of the State, and at least two in the
 16 central region of the State, in which any person may file written
 17 comments and exhibits or appear and make a statement. The public
 18 **[hearing]** hearings may, if the Attorney General and the
 19 commissioner so agree, be conducted jointly as part of the public
 20 **[hearing]** hearings on the conversion required pursuant to
 21 subsection e. of section 3 of this act. The Attorney General ²[or the
 22 ¹**[Public Advocate]** Director of the Division of Rate Counsel¹]²
 23 may subpoena additional information or witnesses, including, but
 24 not limited to, information about any transaction that is collateral to
 25 the proposed conversion and any related documents, require and
 26 administer oaths, require sworn statements, take depositions and use
 27 related discovery procedures for purposes of the **[hearing]** hearings
 28 and at any time prior to completing the review of the proposed
 29 conversion ²[: however, the Attorney General shall make available,
 30 and the ¹**[Public Advocate]** director¹ shall review, any additional
 31 information subpoenaed or otherwise obtained by the Attorney
 32 General before exercising the ¹**[Public Advocate's]** director's¹
 33 additional investigative authority provided by this subsection]².
 34 **[The]** Each hearing shall be in the nature of a legislative hearing
 35 and shall not constitute or be considered a contested case under the
 36 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 37 seq.). The first public hearing shall be held no later than 90 days
 38 after the date that the petition is declared complete by the Attorney
 39 General. Public notice of **[the]** each hearing shall be provided by
 40 the health service corporation not more than **[45]** 75 days and not
 41 less than 15 days prior to the first scheduled public hearing in at
 42 least two newspapers of general circulation in New Jersey.

43 f. Upon completion by the Attorney General of the review of
 44 the petition, ²[and completion by the ¹**[Public Advocate]** Director
 45 of the Division of Rate Counsel, acting as an intervenor as set forth
 46 in subsection g. of this section,¹ of the review of the petition ¹.¹ no

1 later than one month next following the completion of the Attorney
2 General's review,]² the health service corporation shall apply to the
3 Superior Court for approval of the establishment of the foundation.
4 In that action, which shall proceed in a summary manner, the
5 Attorney General ²[and the '【Public Advocate】 director']² shall
6 advise the court as to whether [he] ²[that party] the Attorney
7 General² supports or opposes the foundation plan, with or without
8 any specific modifications, and the basis for that position. In
9 considering whether the foundation plan is in the public interest, the
10 court shall consider whether the requirements of paragraph (1) of
11 subsection d. of this section have been satisfied and may consider
12 the criteria established in subsection c. of this section, as applicable.
13 If the health service corporation fails to comply with this
14 subsection, the Attorney General ²[or the '【Public Advocate】
15 director']² may seek appropriate relief in Superior Court.

16 ²[g. In addition to the Attorney General, the '【Public Advocate
17 shall, through】 Director of' the Division of Rate Counsel in the
18 Department of the Public Advocate '【,】 shall' act as an intervenor
19 in representation of and to protect the public interest as defined in
20 section 12 of P.L.2005, c.155 (C.52:27EE-12), '【and participate in
21 the review of the foundation plan petition as set forth in this
22 section】 by assessing the impact of the foundation plan on
23 accessible, available, affordable, and quality health care for
24 underserved and vulnerable individuals, including children, seniors,
25 low income or disabled individuals and individuals with chronic
26 illnesses, as well as the overall impact of the foundation plan on the
27 health care needs of all New Jerseyans,'] by first independently
28 reviewing the foundation plan petition and any additional
29 information obtained by the Attorney General pursuant to
30 subsection e. of this section, section 14 of P.L.2001, c.131
31 (C.17:48E-62), as well as any information provided to the Attorney
32 General by any advisor or consultant whose services the Attorney
33 General engages pursuant to section 16 of P.L.2001, c.131
34 (C.17:48E-64), and only thereafter by requesting and accessing
35 further information and witnesses directly as permitted by
36 subsection e. of this section, for use at the public hearings and the
37 Superior Court proceeding seeking approval of the foundation plan.

38 (1) As an intervenor for the public interest, the '【Public
39 Advocate】 director' may request access to information that has
40 been designated as confidential and not a public record pursuant to
41 section 10 of P.L.2001, c.131 (C.17:48E-58), subject to an executed
42 non-disclosure agreement.

43 (2) As an intervenor for the public interest, the '【Public
44 Advocate】 director' shall have the duty to consult with, and provide
45 periodic updates to, representatives of interested organizations to
46 the foundation plan petition, that are advocating for the health care

1 interests of underserved 'and vulnerable' individuals, '[or the
 2 health care interests of current subscribers of the health service
 3 corporation, or the interests of hospitals, physicians, or other health
 4 care providers in the State,]' or the promotion of fundamental
 5 improvements in the health status of all New Jerseyans. The
 6 '[Public Advocate] director' may require that interested
 7 organizations advocating for identical or substantially similar
 8 individuals or interests designate one representative for those
 9 individuals or interests with whom the '[Public Advocate] director'
 10 shall consult and provide updates.

11 (3) 'The director shall coordinate with the Attorney General, to
 12 the extent possible, concerning the director's duties as intervenor
 13 under this section with respect to the assessment of the foundation
 14 plan and related matters.' All reasonable costs related to the
 15 '[review of the foundation plan petition] assessment' and related
 16 matters by the '[Public Advocate] director' , that are directly and
 17 solely attributable to the '[Public Advocate] director' and not
 18 duplicative of any costs attributable to the Attorney General
 19 pursuant to subsection b. of section 16 of P.L.2001, c.131
 20 (C.17:48E-64) or otherwise pursuant to P.L.2001, c.131 (C.17:48E-
 21 49 et al.), including in connection with any matter before any court
 22 or any administrative agency in which the health service
 23 corporation that files the petition is a party, shall be paid by that
 24 health service corporation, both for services prior to the effective
 25 time of the foundation plan and for services after the effective time;
 26 except that '[the] these' reasonable costs '[of the Public Advocate
 27 paid by] , as submitted by the director to' the health service
 28 corporation pursuant to this paragraph, combined with the
 29 reasonable costs of the '[Public Advocate] director as intervenor,'
 30 paid by the health service corporation concerning the plan of
 31 conversion pursuant to subsection g. of section 3 of P.L.2001, c.131
 32 (C.17:48E-51), shall be no more than \$350,000.]'²

33 (cf: P.L.2001, c.131, s.19)

34
 35 ²'[5.] 4.' Section 20 of P.L.2001, c.131 (C.17:48E-68) is
 36 amended to read as follows:

37 20. a. (1) There is established in, but not of, the Department of
 38 the Treasury a Health Service Corporation Conversion Temporary
 39 Advisory Commission. The advisory commission shall consist of
 40 15 members. Seven members shall be appointed by the Governor,
 41 including two public members, one physician licensed to practice
 42 medicine in New Jersey, one licensed health care provider other
 43 than a physician, one representative of the dental community, one
 44 representative of a community based organization that provides or
 45 assists in providing health care or health care services to New
 46 Jersey residents and one representative of the AFL-CIO. Three

1 members shall be appointed by the President of the Senate,
2 including one public member, one representative of the hospital
3 community and one physician licensed to practice medicine in New
4 Jersey. One public member shall be appointed by the Minority
5 Leader of the Senate. Three members shall be appointed by the
6 Speaker of the General Assembly, including one public member,
7 one representative of the hospital community and one representative
8 of a community based organization that provides or assists in
9 providing health care or health care services to New Jersey
10 residents. One public member shall be appointed by the Minority
11 Leader of the General Assembly. A vacancy in the membership of
12 the advisory commission shall be filled in the same manner
13 provided for the original appointment. Members shall serve without
14 fee or compensation. The advisory commission shall commence its
15 activities upon appointment of at least a majority of its initial
16 members.

17 The advisory commission shall, in anticipation of a conversion of
18 a health service corporation as authorized under this act, examine
19 issues related to access to affordable, quality health care for
20 underserved individuals and promoting fundamental improvements
21 in the health status of New Jerseyans, and may review experiences
22 in other states related to the establishment of foundations in
23 connection with the conversion of non-profit health insurers similar
24 to health care service corporations licensed to do business in New
25 Jersey. The advisory commission shall advise the Attorney General
26 and Commissioner of Banking and Insurance as to its findings on
27 these issues. The Department of the Treasury shall provide the
28 advisory commission with such assistance as the advisory
29 commission may require in order to perform its duties under this
30 act. The advisory commission may engage the services of advisors
31 and consultants in order to assist in the performance of its duties
32 under this act.

33 (2) On the effective date of P.L. , c. (pending before the
34 Legislature as this bill), the Health Service Corporation Conversion
35 Temporary Advisory Commission established by this subsection
36 shall be dissolved, and the terms of all members of this advisory
37 commission shall expire.

38 b. **【Upon the creation of a】** (1) Any foundation provided for in
39 the foundation plan submitted to the Attorney General and approved
40 by a court of competent jurisdiction pursuant to section 19 of
41 P.L.2001, c.131 (C.17:48E-67) 【and the approval of the foundation
42 by a court of competent jurisdiction, the advisory commission
43 created pursuant to subsection a. of this section shall be dissolved.
44 The foundation】 shall have a board of directors consisting of 15
45 members. Seven members shall be appointed by the Governor,
46 including 【two】 one public 【members】 member, one physician
47 licensed to practice medicine in New Jersey, one dentist licensed to

1 practice dentistry in New Jersey, one nurse licensed **【health care**
2 **provider other than a physician】** to engage in the practice of nursing
3 in New Jersey, 【one representative of the dental community】 one
4 public health policy educator from an accredited public or private
5 institution of higher education located in New Jersey, one
6 representative of a community based organization that provides or
7 assists in providing health care or health care services to New
8 Jersey residents, and one representative of the 【AFL-CIO】 labor
9 community who represents employees in New Jersey. Three
10 members shall be appointed by the President of the Senate,
11 including one public member, one representative of the hospital
12 community, and one physician licensed to practice medicine in New
13 Jersey. One public member shall be appointed by the Minority
14 Leader of the Senate. Three members shall be appointed by the
15 Speaker of the General Assembly, including one public member,
16 one representative of the hospital community, and one
17 representative of a community based organization that provides or
18 assists in providing health care or health care services to New
19 Jersey residents. One public member shall be appointed by the
20 Minority Leader of the General Assembly. 【Initially, the members
21 of the advisory commission shall constitute the board of the
22 foundation, and shall serve for a term of three years. Thereafter,
23 the】

24 (2) The members of the board of the foundation shall be
25 appointed for a term of 【three】 four years; except that, with respect
26 to the initial appointments to the foundation board made in
27 accordance with paragraph (1) of this subsection: the Governor
28 shall appoint one public member, one physician and one public
29 health policy educator for a term of four years, one dentist and one
30 nurse for a term of three years, and one representative of a
31 community based organization and one representative of the labor
32 community for a term of two years; the President of the Senate shall
33 appoint one physician for a term of four years, one representative of
34 the hospital community for a term of three years, and one public
35 member for a term of two years; the Minority Leader of the Senate
36 shall appoint one public member for a term of three years; the
37 Speaker of the General Assembly shall appoint one representative
38 of a community based organization for a term of four years, one
39 representative of the hospital community for a term of three years,
40 and one public member for a term of two years; and the Minority
41 Leader of the General Assembly shall appoint one public member
42 for a term of three years. The terms shall commence upon both the
43 creation of the foundation pursuant to section 19 of P.L.2001, c.131
44 (C.17:48E-67) and approval of the foundation by the court of
45 competent jurisdiction pursuant to that section. Each member shall
46 hold office until reappointed or a successor is appointed and
47 qualified. A vacancy in the membership of the board shall be filled

1 for an unexpired term in the same manner provided for the original
2 appointment. Members shall serve without fee or compensation.

3 (3) The foundation shall commence its activities upon the
4 appointment of at least a majority of its initial board of directors.

5 (4) In the event more than one foundation is established
6 pursuant to this act, the board of directors of any such additional
7 foundations shall be appointed in compliance with the requirements
8 of this subsection.¹

9 (cf: P.L.2001, c.387, s.1)

10

11 ²[¹[4.] 6.¹ Section 48 of P.L.2005, c.155 (C.52:27EE-48) shall
12 be amended to read as follows:

13 48. Division of Rate Counsel; jurisdiction.

14 The Division of the Rate Counsel shall have the authority to
15 conduct investigations, initiate studies, conduct research, present
16 comments and testimony before governmental bodies, issue reports,
17 and produce and disseminate consumer guides on any matters that
18 fall within the Rate Counsel's jurisdiction. The Rate Counsel shall
19 also have the authority to represent the public interest as set forth
20 below.

21 a. Utilities. The Division of Rate Counsel may represent and
22 protect the public interest as defined in section 12 of this act in
23 proceedings before and appeals from any State department,
24 commission, authority, council, agency, or board charged with the
25 regulation or control of any business, industry, or utility regarding a
26 requirement that the business, industry, or utility provide a service
27 or regarding the fixing of a rate, toll, fare, or charge for a product or
28 service. The Division of Rate Counsel may initiate any such
29 proceedings when the director determines that a discontinuance or
30 change in a required service or a rate, toll, fare, or charge for a
31 product or service is in the public interest.

32 b. Insurance; limited jurisdiction. The Department of the
33 Public Advocate shall represent and protect the public interest with
34 respect to insurance matters through the Division of Rate Counsel,
35 which may represent and protect the public interest as defined in
36 section 12 of this act in significant proceedings that pertain solely to
37 prior approval rate increases for personal lines property casualty
38 coverages or Medicare supplemental coverages. The Division of
39 Rate Counsel shall have no jurisdiction or authority to participate or
40 intervene in (1) expedited prior approval rate filings made by an
41 insurer or affiliated group of insurers pursuant to section 34 of
42 P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409
43 (C.17:36-5.35), or (2) prior approval rate filings of seven percent or
44 less, or (3) rule or form filings for any other form of insurance.

45 In determining, in his or her discretion, whether a proceeding is
46 significant, the Director of the Division of Rate Counsel shall
47 consider the following factors:

1 (1) the overall dollar impact of the requested increase,
2 considering the filer's market share and the magnitude of the
3 requested rate change;

4 (2) whether the increase, if granted, will increase the filer's rates
5 significantly above market norms;

6 (3) whether the filer is advancing a significantly different
7 alternate ratemaking methodology to the standard methodology
8 established pursuant to section 8 of P.L.1988, c.119 (C.17:29A-
9 36.2);

10 (4) whether the insurer is experiencing financial difficulties at
11 its present rate level, as evidenced by the filing of rehabilitation
12 proceedings, recent downgrading by insurance rating services, or
13 significant losses reported on the filer's public financial statement.

14 Upon the effective date of this act, the Director of the Division
15 of Rate Counsel in the Department of the Public Advocate shall, in
16 addition to the powers set forth in this act, have the express
17 authority to intervene in public hearings pursuant to section 66 of
18 P.L.1998, c.21 (C.17:29A-46.8).

19 c. Health insurance; health service corporation conversion.
20 The '[Department of the Public Advocate, through the]' Division
21 of Rate Counsel '[,]' shall represent and protect the public interest
22 with respect to the conversion of a health service corporation to a
23 domestic stock insurer by serving as an intervenor in that process as
24 set forth under the provisions of P.L.2001, c.131 (C.17:48E-49 et
25 al.).

26 (cf: P.L.2005, c.155, s.48)]²

27
28 ²[¹[5.] 7.¹ Section 53 of P.L.2005, c.155 (C.52:27EE-53) is
29 amended to read as follows:

30 53. Division of Rate Counsel; payment of expenses of division;
31 annual insurance assessment.

32 a. Annual insurance assessment. The Director of the Division
33 of Budget and Accounting in the Department of the Treasury shall,
34 on or before August 15 in each year, ascertain and certify to the
35 Commissioner of Banking and Insurance by category the total
36 amount of expenses incurred by the State in connection with the
37 administration of the special functions of the Division of Rate
38 Counsel in the Department of the Public Advocate relative to the
39 expenses of the Division of Rate Counsel in connection with the
40 administration of insurance rate cases during the preceding fiscal
41 year. The Department of Banking and Insurance shall make a
42 separate special assessment on lines of insurance subject to the
43 jurisdiction of the Rate Counsel pursuant to subsection b. of section
44 48 of this act, on an annual basis, in accordance with the formula
45 set forth in P.L.1995 c.156 (C.17:1C-19 et seq.).

46 b. Calculation of annual insurance assessment. (1) The annual
47 assessment shall be no more than a specified aggregate amount

1 adjusted annually for inflation, which shall be calculated and
2 applied separately from the maximum total assessment set forth in
3 section 13 of P.L.1995, c.156 (C.17:1C-31). The amount collected
4 for expenses pursuant subsection a. of this section, shall not exceed
5 the amount appropriated by the Legislature for those expenses.

6 (2) The calculation of the annual insurance assessment provided
7 in subsection a. of this section shall not include any assessment for
8 expenses incurred by the ¹ [Department of the Public Advocate,
9 through the] ¹ Division of Rate Counsel ¹ [.,] ¹ with respect to its
10 jurisdiction concerning the conversion of a health service
11 corporation to a domestic stock insurer pursuant to subsection c. of
12 section 48 of P.L.2005, c.155 (C.52:27EE-48).
13 (cf: P.L.2005, c.155, s.53)]²

14
15 ¹ [6.] ² [8.] ¹ 5. ² ¹ [This] Section ² [5] ⁴ of this act shall take
16 effect immediately, and the remainder of this ¹ act shall ¹ also ¹ take
17 effect immediately ¹ [.,] ¹ and ¹ [shall] ¹ apply to any conversion
18 application and foundation petition filed on or after the effective
19 date, and any conversion application and foundation petition filed,
20 but not deemed complete, on or before the effective date.