

# ASSEMBLY, No. 5119

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 10, 2020

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Assemblyman ROBERT D. CLIFTON**

**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

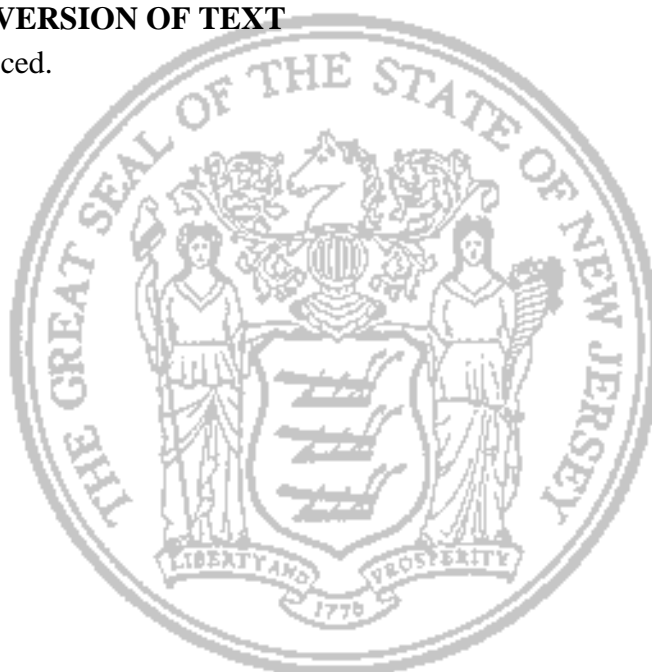
**Assemblywoman Speight, Assemblymen Thomson and Houghtaling**

**SYNOPSIS**

Provides for reorganization of health service corporation.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/14/2020)**

A5119 MCKEON DOWNEY

2

1 AN ACT permitting reorganization of a health service corporation,  
2 supplementing P.L.1985, c.286 (C.17:48E-1 et seq.), and  
3 amending P.L.2001, c.131 and P.L.1970, c.22.

4

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

7

8 1. (New section) The Legislature finds and declares that:

9 a. It is in the interest of the subscribers of the health service  
10 corporation and the State of New Jersey that the health service  
11 corporation be afforded the ability to modernize its corporate  
12 structure, subject to appropriate standards, oversight, and approval,  
13 in order to meet the evolving health care needs of its subscribers,  
14 while continuing its statutory mission, and maintaining its status as  
15 a charitable and benevolent institution as declared in section 41 of  
16 P.L.1985, c.236 (C.17:48E-41).

17 b. Ensuring that the health service corporation statutes provide  
18 the opportunity for the health service corporation to reorganize  
19 itself efficiently and effectively in the form and manner authorized  
20 by P.L. , c. (C. ) (pending before the Legislature as this  
21 bill) will facilitate increased utilization of 21st century technologies  
22 and tools to better address current challenges, improving both the  
23 State's healthcare infrastructure and its readiness to address future  
24 crises such as those resulting from the ongoing COVID-19  
25 pandemic. Such a reorganization, if undertaken, approved, and  
26 completed consistent with the provisions of P.L. , c. (C. )  
27 (pending before the Legislature as this bill), also will promote vital  
28 investments and growth in health services and diversified  
29 businesses for the benefit of its members and the State.

30 c. Current law governing the health service corporation  
31 expressly permits the health service corporation to engage in certain  
32 actions that effectuate a corporate reorganization, subject to certain  
33 conditions, including potential conversion to a for-profit domestic  
34 stock insurer or other actions constituting a material change in its  
35 form, subject to the approval of the Commissioner of Banking and  
36 Insurance in the Commissioner's capacity as regulator of the  
37 business of insurance and the Attorney General in furtherance of the  
38 Attorney General's statutory and common law responsibilities as  
39 protector, supervisor, and enforcer of charitable trusts and  
40 charitable corporations. The current statutes do not, however,  
41 prescribe a clear path for the health service corporation to update  
42 and improve its corporate structure for the benefit of its members  
43 and the State while, at the same time, maintaining its non-profit  
44 status, continuing to adhere to the statutory mission to provide  
45 affordable and accessible health insurance and promote the

**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.**

1 integration of the health care system to meet the needs of its  
2 members, and fulfilling the health care obligations of a health  
3 service corporation as they exist prior to the reorganization.

4 d. Other states have authorized similarly situated nonprofit  
5 health insurance carriers to reorganize their corporate forms while  
6 maintaining their nonprofit legal status and purposes of the entities  
7 for the benefit of their subscribers and respective regional health  
8 care marketplaces.

9 e. Because a reorganization authorized pursuant to P.L. , c.  
10 (C. ) (pending before the Legislature as this bill) does not  
11 constitute a conversion or material change in form as defined  
12 pursuant to P.L.2001, c.131 (C.17:48E-49 et seq.), the currently  
13 existing statutory mission of the health service corporation to  
14 provide affordable and accessible health insurance and promote the  
15 integration of the health care system to meet the needs of its  
16 members shall continue unabated regardless of whether the health  
17 service corporation reorganizes in the manner authorized by  
18 P.L. , c. (C. ) (pending before the Legislature as this bill)  
19 or not.

20 f. It is also in the interest of the subscribers of the health  
21 service corporation and the State of New Jersey that the important  
22 statutory mission of the health service corporation continues to be  
23 upheld following any reorganization pursuant to P.L. , c.  
24 (C. )(pending before the Legislature as this bill); provided,  
25 however, that it is appropriate to expand and modernize that  
26 mission to encourage further innovation as well as improvement  
27 and diversification of services.

28

29 2. (New section) As used in P.L. , c. (C. ) (pending  
30 before the Legislature as this bill):

31 “Assessment” means an initial and a limited duration assessment  
32 made upon the mutual holding company system pursuant to section  
33 13 of P.L. , c. (C. ) (pending before the Legislature as this  
34 bill).

35 “Commissioner” means the Commissioner of Banking and  
36 Insurance.

37 “Control” has the meaning set forth in section 1 of P.L.1970,  
38 c.22 (C.17:27A-1).

39 “Effective time” means the date and time at which the  
40 reorganization into a mutual holding company is effective, as  
41 provided in subsection d. of section 5 of P.L. ,  
42 c. (C. )(pending before the Legislature as this bill).

43 “Health service corporation” means an entity organized pursuant  
44 to P.L.1985, c.236 (C.17:48E-1 et seq.).

45 “Insurance company” means any entity, other than the  
46 reorganized insurer, that engages in the business of insurance.

47 “Intermediate holding company” means an entity of which at  
48 least a majority of the voting shares of the capital stock are at all

1 times owned directly or indirectly through other intermediate  
2 holding companies by a mutual holding company.

3 “Majority of the voting shares of the capital stock” means, with  
4 respect to any entity, shares of the capital stock of that entity which  
5 carry the right to cast a majority of the votes entitled to be cast by  
6 all of the outstanding shares of the capital stock of that entity for  
7 the election of directors.

8 “Member” means the holder of a membership interest in a mutual  
9 holding company, pursuant to the articles of incorporation or  
10 bylaws of that mutual holding company.

11 “Mutual holding company” means a non-insurance, nonprofit  
12 entity without permanent capital stock organized pursuant to the  
13 laws of this State in accordance with the provisions of P.L. , c.  
14 (C. )(pending before the Legislature as this bill) for the  
15 purpose of holding, directly or indirectly, one hundred percent  
16 interest in a reorganized insurer pursuant to a plan of reorganization  
17 as provided in P.L. , c. (C. )(pending before the  
18 Legislature as this bill). A mutual holding company is an insurance  
19 holding company system pursuant to P.L.1970, c.22 (C.17:27A-1 et  
20 seq.), and shall not be qualified as an insurer licensed to issue  
21 insurance policies, insurance contracts or health benefit plans.

22 “Mutual holding company system” means the structure resulting  
23 from the simultaneous formation of a mutual holding company with  
24 a reorganized insurer in connection with the mutualization and  
25 reorganization of a health service corporation.

26 “Mutual insurer” means a domestic mutual insurer into which a  
27 health service corporation transitions in accordance with the  
28 provisions of P.L.1995, c.196 (C.17:48E-45 et seq.).

29 “Non-insurance subsidiary” means any subsidiary of a mutual  
30 holding company system that is not an insurance company or the  
31 reorganized insurer.

32 “Reorganization” means the simultaneous mutualization of a  
33 health service corporation to a domestic mutual insurer and  
34 transformation from a domestic mutual insurer to a mutual holding  
35 company with a reorganized insurer in accordance with the  
36 provisions of P.L. , c. (C. )(pending before the Legislature  
37 as this bill). A reorganization pursuant to P.L. , c.  
38 (C. )(pending before the Legislature as this bill) in which the  
39 mutual holding company remains a charitable and benevolent  
40 institution shall not constitute a material change in form as defined  
41 in section 1 of P.L.2001, c.131 (C.17:48E-49).

42 “Reorganized insurer” means a stock insurer authorized pursuant  
43 to Title 17B of the New Jersey Statutes to transact health insurance  
44 as defined in N.J.S.17B:17-4 and that, pursuant to a plan of  
45 reorganization as provided in P.L. , c. (C. )(pending before  
46 the Legislature as this bill), is a subsidiary of the mutual holding  
47 company system that holds the business of the health service  
48 corporation mutualizing and reorganizing pursuant to P.L. , c.

1 (C. ) (pending before the Legislature as this bill) that is  
2 related to policies directly written and issued by the health service  
3 corporation. All health insurance or risk-bearing obligations of the  
4 health service corporation shall be undertaken by the reorganized  
5 insurer pursuant to subsection c. and e. of section 3 of P.L. , c.  
6 (C. ) (pending before the Legislature as this bill).

7  
8 3. (New section) a. A mutual holding company organized  
9 pursuant to P.L. , c. (C. )(pending before the Legislature  
10 as this bill) shall not be established as a company organized for  
11 pecuniary profit and shall retain the designation as a charitable and  
12 benevolent institution pursuant to section 41 of P.L.1985, c.236  
13 (C.17:48E-41). A mutual holding company established pursuant to  
14 the provisions of P.L. , c. (C. )(pending before the  
15 Legislature as this bill) shall retain the health service corporation's  
16 mission while supplementing that mission to promote innovation  
17 and delivery of diversified services.

18 The mission of a mutual holding company shall be to:

19 (1) provide affordable and accessible health insurance to its  
20 members;

21 (2) promote the integration of the health care system to meet the  
22 needs of its members; and

23 (3) promote innovation and delivery of solutions and diversified  
24 services for its members.

25 b. Other than as provided pursuant to P.L. , c. (C. )  
26 (pending before the Legislature as this bill), all property, assets,  
27 rights, liabilities, interest and relations of whatever kind of the  
28 health service corporation, and its subsidiaries, shall be that of the  
29 mutual holding company system. The mutual holding company  
30 shall not be considered a health service corporation.  
31 Notwithstanding anything to the contrary, the provisions of section  
32 41 of P.L.1985, c.236 (C.17:48E-41) shall continue to apply to a  
33 mutual holding company.

34 c. The health insurance duties and obligations pursuant to  
35 P.L.1985, c.236 (C.17:48E-1 et seq.) shall continue and remain in  
36 the succeeding reorganized insurer reorganizing pursuant to  
37 P.L. , c. (C. )(pending before the Legislature as this bill),  
38 in each case, except as provided pursuant to P.L. , c.  
39 (C. )(pending before the Legislature as this bill). Except as  
40 listed below in subsection e. of this section, all references to a  
41 "health service corporation" in P.L.1985, c.236 (C.17:48E-1 et  
42 seq.), shall refer to a "reorganized insurer" established pursuant to  
43 P.L. , c. (C. )(pending before the Legislature as this bill)  
44 and shall not refer to the mutual holding company.

45 d. In addition to the mutual holding company's qualification  
46 pursuant to section 2 of P.L. , c. (C. )(pending before the  
47 Legislature as this bill), and for avoidance of doubt, the mutual  
48 holding company shall be expressly excluded from insurance

1 operations and reporting, investment limits, and risk-bearing  
2 provisions of P.L.1985, c.236 (C.17:48E-1 et seq.), including the  
3 following provisions because a mutual holding company is not a  
4 risk-bearer:

5 (1) Subsection e. of section 1, subsection b. of section 2,  
6 subsection a. of section 3, sections 6 through 9, and section 11 of  
7 P.L.1985, c.236 (C.17:48E-1, C.17:48E-2, C.17:48E-3, C.17:48E-6  
8 through C.17:48E-9, and C.17:48E-11);

9 (2) Section 16 and subsections a. through c. of section 17 of  
10 P.L.1985, c.236 (C.17:48E-16 and C.17:48E-17), section 5 of  
11 P.L.1988, c.71 (C.17:48E-17.1), and section 8 of P.L.1993, c.235  
12 (C.17:48E-17.2);

13 (3) Section 4 of P.L.2017, c.100 (C.17:48E-17.3);

14 (4) Sections 36 and 37 of P.L.1985, c.236 (C.17:48E-36 and  
15 C.17:48E-37); and

16 (5) Sections 31 through 35 of P.L.2014, c.81 (C.17:48E-37.1  
17 through C.17:48E-37.5).

18 e. The reorganized insurer shall engage in risk-bearing  
19 activities, reporting, investments, financial transactions, including  
20 the issuance of dividends or distributions, and insurance trade  
21 practices consistent with laws governing stock insurance companies  
22 organized under Title 17B of the New Jersey Statutes to transact  
23 health insurance as defined in N.J.S.17B:17-4. Notwithstanding the  
24 provisions of subsection c. of this section, the following sections of  
25 P.L.1985, c.236 (C.17:48E-1 et seq.) shall not apply to the  
26 reorganized insurer or any insurance company or risk-bearing entity  
27 within the mutual holding company system:

28 (1) Section 4 of P.L.2017, c.100 (C.17:48E-17.3);

29 (2) Sections 31 through 35 of P.L.2014, c.81 (C.17:48E-37.1  
30 through C.17:48E-37.5), but subject to the solvency rules set forth  
31 pursuant to N.J.S.17B:18-70 et seq.; and

32 (3) Subsection e. of section 1, subsection b. of section 2,  
33 subsection a. of section 3, sections 6 through 9, and section 11 of  
34 P.L.1985, c.236 (C.17:48E-1, C.17:48E-2, C.17:48E-3, C.17:48E-6  
35 through C.17:48E-9, and C.17:48E-11).

36 f. The insurance premium rate tax cap law provided by  
37 subsection a. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall  
38 apply to the companies within the mutual holding company system  
39 that have an insurance premium tax liability, and the exclusion from  
40 the tax cap applicable to a health service corporation pursuant to  
41 subsection b. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall not  
42 apply to the mutual holding company or any entity within the  
43 mutual holding company system, including the reorganized insurer,  
44 that has an insurance premium tax liability.

45 g. A mutual holding company system may pursue businesses,  
46 assets, or operations through one or more of its insurance  
47 subsidiaries and non-insurance subsidiaries without a limit on  
48 aggregate revenues from nonconforming affiliates or such pursuits

1 being considered a material change in form as such term is defined  
2 pursuant to section 1 of P.L.2001, c.131 (C.17:48E-49). The  
3 subsidiaries of the mutual holding company, including the  
4 reorganized insurer, shall be permitted to make dividends or  
5 distributions to the mutual holding company, any subsidiaries  
6 thereof, or both, and shall not be considered a material change in  
7 form as such term is defined pursuant to section 1 of P.L.2001,  
8 c.131 (C.17:48E-49). Dividends and distributions from domestic  
9 insurers, including the reorganized insurer, within the mutual  
10 holding company system shall be subject only to the applicable  
11 provisions of subsection c. of section 4 of P.L.1970, c.22  
12 (C.17:27A-4).

13 h. The continuation of the rights, duties and obligations of a  
14 health service corporation pursuant to this section following  
15 completion of an approved reorganization pursuant to P.L. , c.  
16 (C. ) (pending before the Legislature as this bill) shall be  
17 limited to such rights, duties and obligations pursuant to P.L.1985,  
18 c.236 (C.17:48E-1 et seq.) as of the effective date of P.L. , c.  
19 (C. ) (pending before the Legislature as this bill); amendments  
20 to P.L.1985, c.236 (C.17:48E-1 et seq.) enacted after the effective  
21 date of P.L. , c. (C. ) (pending before the Legislature as  
22 this bill) shall not apply. Notwithstanding the above, the  
23 reorganized insurer shall be subject to the laws applicable to  
24 domestic health insurance companies contained in Title 17B of the  
25 New Jersey Statutes.

26

27 4. (New section) a. A health service corporation organized  
28 pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.) may reorganize to  
29 create a mutual holding company system pursuant to a plan of  
30 reorganization at the same time it applies to transition to a mutual  
31 insurer pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.).  
32 Thereafter, the succeeding mutual holding company system shall be  
33 operated in a manner consistent with sections 1 and 3 of P.L. , c.  
34 (C. ) (pending before the Legislature as this bill).

35 b. The mutual holding company system shall consist of a  
36 mutual holding company and one or more controlled nonprofit or  
37 for-profit subsidiaries, including the reorganized insurer, and shall  
38 be operated for the benefit of its members. The mission of a mutual  
39 holding company shall be as specified in subsection a. of section 3  
40 of P.L. , c. (C. ) (pending before the Legislature as this  
41 bill).

42 c. The mutual holding company and each of its non-insurance  
43 subsidiaries, other than the reorganized insurer and any insurance  
44 company subsidiaries, shall not be:

45 (1) an insurer and therefore shall not be subject to any of the  
46 provisions of N.J.S.17B:18-1 et seq. applicable to stock or mutual  
47 insurers, or to any laws concerning the writing of insurance,  
48 including rules and regulations adopted thereunder, including with

1 respect to governance, stock or other voting or equity interest, the  
2 writing of insurance, any investment limitations directly applicable  
3 to risk-bearing entities engaged in the writing of insurance such as  
4 those pursuant to N.J.S.17B:20-1 et seq., or any capital or surplus  
5 requirements;

6 (2) authorized to transact the business of insurance; or

7 (3) qualified as an insurer.

8 The writing of insurance shall be permitted only through the  
9 reorganized insurer and other insurance company subsidiaries or  
10 investments of the mutual holding company. Nothing herein shall  
11 alter the oversight of the commissioner with respect to the mutual  
12 holding company and its non-insurance subsidiaries provided for  
13 pursuant to applicable laws and rules of this State relating to  
14 insurance holding company systems.

15 d. A mutual holding company shall be a nonprofit entity  
16 incorporated under, and shall conduct its business pursuant to, the  
17 provisions of Title 15A of the New Jersey Statutes, except that in  
18 situations in which the provisions of that title are inconsistent with  
19 the provisions of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill), the provisions of P.L. , c. (C. )  
21 (pending before the Legislature as this bill) shall govern.

22 e. At the effective time, members shall receive membership  
23 interests of the mutual holding company, and thereafter 100 percent  
24 of the membership interests of the mutual holding company shall  
25 continue to be held by members, in each case, in the manner set  
26 forth in the articles of incorporation and bylaws of the mutual  
27 holding company.

28 f. The shares of the capital stock of the reorganized insurer  
29 shall be:

30 (1) issued to the mutual holding company or one or more  
31 intermediate holding companies that are wholly-owned by the  
32 mutual holding company; and

33 (2) at all times owned by the mutual holding company or one or  
34 more intermediate holding companies that are wholly-owned by the  
35 mutual holding company.

36 g. The subsidiaries of a mutual holding company system may  
37 be formed by any of the following means:

38 (1) the formation of one or more subsidiaries;

39 (2) amendment or restatement of the articles of incorporation  
40 and bylaws of one or more companies;

41 (3) transfer of assets and liabilities among two or more  
42 companies; or

43 (4) issuance, acquisition or transfer of capital stock of one or  
44 more companies.

45

46 5. (New section) a. A health service corporation may submit  
47 an application to the commissioner to form a mutual holding  
48 company system. Prior to submission of the application, the board



1 of directors of the health service corporation shall adopt a resolution  
2 proposing to transition to a mutual insurer and form a mutual  
3 holding company system, at a meeting of the board by a two-thirds  
4 affirmative vote of the total number of directors of the health  
5 service corporation. A copy of the minutes of the meeting at which  
6 that resolution is adopted shall be filed with the commissioner. The  
7 resolution shall include a plan to transition to a mutual insurer and  
8 form a mutual holding company system, including proposed articles  
9 of incorporation and bylaws for the mutual holding company and  
10 proposed articles of incorporation, certificates of formation,  
11 restatements of, or amendments to, existing articles of incorporation  
12 or bylaws, and plans of merger or consolidation, with respect to  
13 each entity to be formed, converted or otherwise subject or party to  
14 the transition transactions pursuant to the plan of mutualization and  
15 reorganization.

16 In addition to including information required pursuant to section  
17 2 of P.L.1995, c.196 (C.17:48E-46) for the plan of mutualization,  
18 with respect to the formation of a mutual holding company system  
19 for purposes of this provision, the plan shall include:

20 (1) A description of the structure of the mutual holding  
21 company system consistent with the requirements set forth in P.L.  
22 , c. (C. ) (pending before the Legislature as this bill);

23 (2) A description of the qualifications for members'  
24 membership in, and the rights of members of, the mutual holding  
25 company consistent with the requirements set forth in P.L. , c.  
26 (C. ) (pending before the Legislature as this bill);

27 (3) A description of the transactions, and parties to those  
28 transactions, that will affect the mutualization and reorganization,  
29 including, but not limited to, transfer and assumption of policies,  
30 contracts, assets and liabilities, formation of entities, and the  
31 amendment or restatement of certificates of incorporation or  
32 bylaws. The plan of reorganization may provide for the transfer of  
33 assets of a health service corporation and its subsidiaries to the  
34 mutual holding company or one or more subsidiaries of the mutual  
35 holding company in connection with the formation of the mutual  
36 holding company system;

37 (4) The identity of those persons who shall serve as directors  
38 and officers of the mutual holding company, its intermediate  
39 holding companies, if any, and its subsidiaries, including the  
40 reorganized insurer, as of the effective time of the mutualization  
41 and reorganization. The plan shall specify the members of the board  
42 of directors of the health service corporation who shall serve as  
43 initial directors of the mutual holding company, as provided in  
44 section 15 of P.L. , c. (C. ) (pending before the Legislature  
45 as this bill);

46 (5) Information sufficient to demonstrate that the financial  
47 condition of the reorganized insurer and the insurance company  
48 subsidiaries of the reorganized insurer shall meet solvency

1 requirements pursuant to applicable laws and rules of this State  
2 relating to insurance companies after giving effect to the  
3 mutualization and reorganization;

4 (6) A representation that, following the mutualization and  
5 reorganization, the material terms and conditions of insurance  
6 coverage of:

7 (a) policyholders of policies directly written and issued by the  
8 health service corporation shall remain in full force and effect under  
9 policies transferred to and assumed by the reorganized insurer; and

10 (b) all other policyholders shall remain in full force and effect  
11 under policies transferred to and assumed by insurance company  
12 subsidiaries of the mutual holding company;

13 (7) A representation that, following the mutualization and  
14 reorganization, the material terms and conditions of subordinated  
15 surplus notes and other contractual obligations, other than those  
16 arising pursuant to policies described in paragraph (6) of this  
17 subsection, of the health service corporation and its subsidiaries  
18 shall, subject to the rights of the health service corporation and its  
19 subsidiaries pursuant to applicable law, and to the extent those  
20 obligations are not otherwise satisfied or terminated in accordance  
21 with their terms, remain in effect upon the transfer of those  
22 obligations to, and assumption of those obligations by, the  
23 reorganized insurer or one or more other subsidiaries of the mutual  
24 holding company; and

25 (8) A representation that, following the mutualization and  
26 reorganization, the mutual holding company shall comply with the  
27 employment requirements as provided in section 16 of P.L. , c.  
28 (C. ) (pending before the Legislature as this bill).

29 b. Upon the affirmative vote of the board of directors  
30 complying with subsection a. of this section, the plan to form a  
31 mutual holding company system pursuant to P.L. , c. (C. )  
32 (pending before the Legislature as this bill) shall be filed with the  
33 commissioner for approval. Upon filing the plan to form a mutual  
34 holding company system, the obligations pursuant to section 4 of  
35 P.L.2017, c.100 (C.17:48E-17.3) shall be suspended during the  
36 pendency of the commissioner's review process pursuant to this  
37 subsection; if the commissioner approves the plan to form a mutual  
38 holding company, any obligations arising pursuant to section 4 of  
39 P.L.2017, c.100 (C.17:48E-17.3) shall be deemed satisfied by the  
40 initial assessment pursuant to subsection a. of section 13 of P.L. ,  
41 c. (C. ) (pending before the Legislature as this bill). The  
42 commissioner shall review the plan to mutualize and reorganize in  
43 accordance with the requirements of subsection a. of section 3 of  
44 P.L.1995, c.196 (C.17:48E-47). The public hearing conducted  
45 pursuant to subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-  
46 47) shall also address the plan of reorganization to the mutual  
47 holding company system required by P.L. , c. (C. )  
48 (pending before the Legislature as this bill). Consistent with

1 subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47), the  
2 commissioner shall approve a plan of mutualization and  
3 reorganization unless the commissioner finds the plan:

4 (1) is contrary to law;

5 (2) would be detrimental to the safety or soundness of the  
6 proposed reorganized insurer and insurance company subsidiaries  
7 of the proposed mutual holding company; or

8 (3) prejudices the interests of the policyholders of the health  
9 service corporation or treats them inequitably.

10 The commissioner may engage the services of experts and  
11 consultants to advise on any matters related to the application. The  
12 engagement shall not be subject to Chapter 32 of Title 52 of the  
13 Revised Statutes and all costs related to such engagement for the  
14 examination and deliberations of the application shall be paid by the  
15 health service corporation that makes the filing, both for services  
16 prior to the effective time and for services after the effective time.  
17 At the expiration of 30 days after the public hearing, the  
18 commissioner shall approve or disapprove the plan of mutualization  
19 and reorganization and shall set forth the decision in writing and  
20 shall state the reasons therefor. The commissioner shall inform the  
21 health service corporation of the specific reasons for the disapproval  
22 of any plan of mutualization and reorganization and provide a cure  
23 period of no shorter than 90 days to cure any deficiencies. Any  
24 disapproval shall be subject to judicial review as a final decision of  
25 a State administrative agency.

26 c. A plan of mutualization and reorganization may be amended,  
27 terminated, or approved consistent with P.L. , c. (C. )  
28 (pending before the Legislature as this bill). A plan of  
29 mutualization and reorganization adopted by the board of directors  
30 of the applicant may be:

31 (1) Amended by the board of directors of the applicant in  
32 response to the comments or recommendations of the commissioner  
33 at any time; or

34 (2) Terminated by the board of directors of the applicant at any  
35 time. An applicant that has terminated a plan to form a mutual  
36 holding company system shall be deemed to have also terminated  
37 the application to transition to a mutual insurer.

38 d. An approved plan of mutualization and reorganization shall  
39 be effective at the effective time specified in the plan of  
40 reorganization, or such other time subsequently requested by the  
41 applicant and agreed to by the commissioner.

42

43 6. (New section) A mutual holding company system shall be  
44 considered an insurance holding company system and subject to  
45 P.L.1970, c.22 (C.17:27A-1 et seq.). Notwithstanding the  
46 foregoing, solely with regard to the transactions set forth in the  
47 application to form a mutual holding company system filed pursuant  
48 to section 5 of P.L. , c. (C. )(pending before the

1 Legislature as this bill), a mutual holding company system shall not  
2 be required to seek separate approval for an acquisition of  
3 controlling stock, ownership interest, assets or control, or for a  
4 share exchange, organization, or reorganization of insurance  
5 companies within the mutual holding company system, or other  
6 transactions set forth in the application to form a mutual holding  
7 company system. Thereafter, any future transactions not approved  
8 as part of the application to form a mutual holding company system,  
9 shall be subject to the applicable requirements of P.L.1970, c.22  
10 (C.17:27A-1 et seq.). As an insurance holding company system  
11 subject to P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner  
12 shall have the power to order production of any records, books, or  
13 other information and papers in the possession of a mutual holding  
14 company system as are reasonably necessary to ascertain the  
15 financial condition of the mutual holding company system or to  
16 determine compliance with P.L. , c. (C. ) (pending before  
17 the Legislature as this bill).

18

19 7. (New section)a. A mutual holding company or a non-  
20 insurance subsidiary may, alone or together, make any lawful  
21 investments including directly or indirectly acquiring or otherwise  
22 holding the stock or other ownership interests of any nonprofit or  
23 for-profit entities.

24 b. Insurance company subsidiaries and the reorganized insurer  
25 may make investments, including investments in non-insurance  
26 entities subject to investment and asset limitations pursuant to  
27 applicable laws and rules relating to insurance companies.

28

29 8. (New section) Neither the adoption nor the implementation  
30 of a plan of mutualization and reorganization shall be deemed to  
31 give rise to any obligation by or on behalf of any entity in the  
32 mutual holding company system or any predecessor entity to make  
33 any distribution or payment to any member or policyholder, or to  
34 any other person, fund, or entity of any nature whatsoever, in  
35 connection with the ownership, control, benefits, policies, purpose,  
36 or nature of any entity in the mutual holding company system, any  
37 predecessor entity or otherwise.

38

39 9. (New section) a. Membership in a mutual holding company  
40 shall be determined in accordance with the mutual holding  
41 company's articles of incorporation and bylaws and may be based  
42 upon:

43 (1) the amount of health insurance policies in force with the  
44 reorganized insurer;

45 (2) the amount of the health insurance premiums paid to the  
46 reorganized insurer; or

47 (3) other reasonable factors.

1 A mutual holding company may also consider the amount of  
2 premiums paid to, or policies in force under, affiliated insurance  
3 companies operating under the same brand licensee program as the  
4 reorganized insurer and permit entities holding administrative  
5 services agreements with the mutual holding company to be  
6 members of the mutual holding company. The mutual holding  
7 company may provide in its bylaws the basis for the number of  
8 votes those entities will have as members of the mutual holding  
9 company.

10 b. Members of a mutual holding company shall be entitled to  
11 vote for the election of directors of the mutual holding company in  
12 accordance with the mutual holding company's bylaws. Directors  
13 of the mutual holding company shall be elected from nominees  
14 selected by the nominating and governance committee of the board  
15 of directors of the mutual holding company, or a comparably  
16 authorized committee, except for public directors serving in  
17 accordance with section 15 of P.L. , c. (C. )(pending  
18 before the Legislature as this bill).

19 c. No member of a mutual holding company shall transfer  
20 membership or any right arising therefrom.

21 d. Except as specified in subsection b. of this section, a  
22 membership interest in a mutual holding company shall not be  
23 deemed to give rise to any other rights, including any ownership  
24 interests in, or ownership rights with respect to, the assets of any  
25 entity in the mutual holding company system or any predecessor  
26 entity, and shall not be deemed to give rise to any entitlement to  
27 receive payment of any dividend or other distribution in connection  
28 with the ownership, control, benefits, policies, purpose or nature of  
29 any entity in the mutual holding company system or any  
30 predecessor entity.

31 e. A member of a mutual holding company is not personally  
32 liable for the acts, debts, liabilities or obligations of the mutual  
33 holding company solely because of the member's membership  
34 status.

35 f. No assessments shall be imposed upon the members of a  
36 mutual holding company by the directors or members, or because of  
37 any liability, act, debt or obligation of the mutual holding company  
38 or of any company owned or controlled by the mutual holding  
39 company.

40 g. A membership interest in a mutual holding company shall  
41 not constitute a security pursuant to the laws of this state.

42

43 10. (New section) Upon any voluntary dissolution of a mutual  
44 holding company in accordance with N.J.S.15A:12-2, 15A:12-3,  
45 15A:12-4, 15A:12-5, 15A:12-6, 15A:12-7, or section 19 of  
46 P.L.1992, c.65 (C.17B:32-49), the mutual holding company shall  
47 adopt a plan of dissolution in accordance with N.J.S.15A:12-8. The  
48 plan shall provide that any assets of the mutual holding company

1 remaining after the discharge of all liabilities and obligations, if  
2 any, shall be distributed in accordance with N.J.S.15A:12-8.

3

4 11. (New section) a. A mutual holding company shall file with  
5 the commissioner an annual statement pursuant to applicable laws  
6 of this State.

7 b. The mutual holding company shall, on an annual basis, and  
8 in a form and manner prescribed by the Department of Banking and  
9 Insurance, file with the department information relating to the  
10 mutual holding company's operations, including but not limited to  
11 the following: the mutual holding company's mission, activities,  
12 revenues, expenses, assets, liabilities, and total compensation  
13 provided to officers, directors, trustees and the five other highest  
14 compensated employees who are not an officer, director or trustee,  
15 which information shall be posted on the department's website.

16 c. The commissioner shall report to the Governor, and to the  
17 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),  
18 on the compliance of the mutual holding company with the  
19 provisions of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill).

21

22 12. (New section) All information, documents and copies of  
23 information and documents obtained by or disclosed to the  
24 commissioner, the Department of Banking and Insurance, or any  
25 other person in the course of preparing, filing or processing an  
26 application to reorganize pursuant to P.L. , c. (C. )  
27 (pending before the Legislature as this bill), including the annual  
28 statement required pursuant to section 11 of P.L. , c. (C. )  
29 (pending before the Legislature as this bill), other than information  
30 or documents distributed to policyholders in connection with the  
31 plan of reorganization or election of directors, shall be subject to  
32 the confidentiality requirements set forth in section 6 of P.L.1970,  
33 c.22 (C.17:27A-6).

34

35 13. (New section) a. Following regulatory approval pursuant to  
36 section 5 of P.L. , c. (C. ) (pending before the Legislature  
37 as this bill) and the establishment of a mutual holding company, the  
38 mutual holding company, through itself or any of its affiliates, shall  
39 pay an initial assessment to the State Treasury in the amount of  
40 \$600,000,000 by June 1, 2022 if the effective time precedes June 1,  
41 2022. If the effective time is later than June 1, 2022, the initial  
42 assessment shall be due by June 1 of the calendar year following the  
43 effective time. The initial assessment shall be a one-time,  
44 nonrecurring State business tax on the reorganized insurer.

45 b. Following the initial assessment, and subject to subsections  
46 c. and d. of this section, the mutual holding company, through itself  
47 or any of its affiliates, shall pay a limited duration business tax by  
48 June 1 of each calendar year beginning with the calendar year

1 following the initial assessment, and for a period of seventeen  
2 years. The total assessment, including both the initial and annual  
3 assessments, shall not exceed \$1,250,000,000. The annual  
4 assessments represent a limited duration state business tax on the  
5 reorganized insurer's business payable by the mutual holding  
6 company or any of its affiliates, and shall be based on the following  
7 schedule with earned premiums defined consistent with 45 C.F.R.,  
8 158.130:

9 (1) For annual assessment 1, 20 percent of the reorganized  
10 insurer's earned premiums for the calendar year preceding that  
11 assessment, with the assessment not to exceed \$100,000,000.

12 (2) For annual assessments 2 through 11, 5 percent of the  
13 reorganized insurer's earned premiums for the calendar year  
14 preceding a given year's assessment, with each year's assessment  
15 not to exceed \$25,000,000.

16 (3) For annual assessments 12 through 17, 10 percent of the  
17 reorganized insurer's earned premiums for the calendar year  
18 preceding a given year's assessment, with each year's assessment  
19 not to exceed \$50,000,000.

20 c. The mutual holding company shall not pay any portion of  
21 the annual assessment for a given calendar year if the mutual  
22 holding company's system-wide health risk-based capital  
23 authorized control level would fall below 550 percent based on the  
24 standards for risk based capital for health organizations as adopted  
25 by the National Association of Insurance Commissioners following  
26 the payment as applied against the prior calendar year's risk based  
27 capital, or if in the opinion of any nationally recognized statistical  
28 rating organization, the group credit rating of the mutual holding  
29 company would not be considered investment grade.

30 d. (1) If the mutual holding company does not pay the annual  
31 assessment for a given calendar year pursuant to subsection c. of  
32 this section, the annual assessment that was not paid shall be  
33 deferred to the subsequent calendar year, which shall be the deferral  
34 date for the deferred annual assessment, with all subsequent annual  
35 assessments pursuant to subsection b. of this section also deferred  
36 by another calendar year so that no two annual assessments are due  
37 in the same calendar year. If an annual assessment is deferred, that  
38 annual assessment shall not be required by law to be paid until the  
39 deferral date.

40 (2) Notwithstanding the provisions of paragraph (1) of this  
41 subsection to the contrary, the assessment years pursuant to  
42 subsection b. of this section shall not be extended beyond, and the  
43 payment obligation pursuant to this section shall cease to exist after,  
44 the date that is 20 years from the effective time.

45 e. The initial assessment is a one-time business tax imposed on  
46 the mutual holding company system and the annual assessment is a  
47 limited duration business tax imposed on the mutual holding  
48 company system based on the reorganized insurer's business. The

1 assessment of additional taxes, penalties and interest shall be as  
2 provided by the “State Uniform Tax Procedure Law,” R.S.54:48-1  
3 et seq.; provided that no interest shall accrue or penalty shall be  
4 levied on a deferred annual assessment.

5  
6 14. (New section) A mutual holding company formed pursuant  
7 to P.L. , c. (C. ) (pending before the Legislature as this  
8 bill) shall not convert to a for-profit stock holding company. The  
9 provisions of P.L.2001, c.131 (C.17:48E-49 et seq.) providing for  
10 conversion of a health service corporation to a domestic stock  
11 insurer shall not apply to a mutual holding company formed  
12 pursuant to P.L. , c. (C. ) (pending before the Legislature  
13 as this bill).

14  
15 15. (New section) a. The board of the mutual holding company  
16 shall be constituted of 22 directors as follows:

17 (1) 13 directors shall be elected, as provided in the bylaws, one  
18 of whom shall be the chair;

19 (2) 5 directors shall be public directors appointed by the  
20 Governor with the advice and consent of the Senate;

21 (3) 2 directors shall be public directors appointed by the Senate  
22 President; and

23 (4) 2 directors shall be public directors appointed by the Speaker  
24 of the General Assembly.

25 b. Upon the effective time, the term of office of the public  
26 directors of the reorganized insurer shall expire. The initial board  
27 of directors of the mutual holding company shall be:

28 (1) the elected directors of the reorganized insurer supplemented  
29 by additional elected directors nominated and elected by the mutual  
30 holding company’s board after the effective time for a total number  
31 of elected directors specified in paragraph (1) of subsection a. of  
32 this section;

33 (2) 5 public directors appointed by the Governor with the advice  
34 and consent of the Senate within 30 days after the effective time;

35 (3) 2 public directors named by the Senate President within 30  
36 days after the effective time; and

37 (4) 2 public directors named by the Speaker of the General  
38 Assembly within 30 days after the effective time.

39 c. Each elected director shall have a term of three years with up  
40 to two successive three-year terms following the initial term for up  
41 to a total of three successive terms, and as provided for in the  
42 bylaws, with such other term and term limits specifically applying  
43 to the individual directors. The chief executive officer or president  
44 of the mutual holding company shall be an elected director at all  
45 times and shall not be subject to any term limit or election pursuant  
46 to section 9 of P.L. , c. (C. )(pending before the  
47 Legislature as this bill). The board of directors or the members, as  
48 provided by the bylaws, shall elect a chair, who shall be a member



1 of the board elected pursuant to paragraph (1) of subsection a. of  
2 this section. Each director elected pursuant to paragraph (1) of  
3 subsection a. of this section shall meet the statutory and regulatory  
4 qualifications for the mutual holding company system's businesses  
5 and be free from conflicts of interest that would prohibit the person  
6 from materially executing the person's duties as a director. Each  
7 public director shall serve at the pleasure of the appointing  
8 authority.

9 d. There shall be a transitional period of 18 months following  
10 the effective time before elected directors of the mutual holding  
11 company are subject to election by its members pursuant to section  
12 9 of P.L. , c. (C. )(pending before the Legislature as this  
13 bill). The first election shall occur at the first annual meeting  
14 following the transitional period, and in accordance with the mutual  
15 holding company's bylaws.

16  
17 16. (New section) a. Upon the formation of a mutual holding  
18 company, the total number of full-time employees that were  
19 employed within a mutual holding company system shall be  
20 maintained for a transition period of 24 months following that  
21 formation based on the full-time employee count of the health  
22 service corporation as of September 30, 2019, except as provided in  
23 subsection b. of this section.

24 b. This section shall not:

25 (1) supersede the terms of any collective bargaining agreement;  
26 or

27 (2) require a mutual holding company system to replace  
28 headcount lost due to voluntary attrition or terminations for cause,  
29 including for performance, or replace any loss of headcount  
30 attributable to a decline in enrollment, market share, or loss of a  
31 major account.

32 c. This section shall expire following the transition period of  
33 24 months following the formation of a mutual holding company.

34  
35 17. Section 1 of P.L.2001, c.131 (C.17:48E-49) is amended to  
36 read as follows:

37 1. As used in this act:

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

40 "Alternative foundation plan" means the plan submitted to the  
41 Attorney General and the commissioner pursuant to section 18 of  
42 this act.

43 "Application" means the application for approval of a plan of  
44 conversion filed with the commissioner pursuant to section 3 of this  
45 act.

46 "Attorney General" means the Attorney General of the State of  
47 New Jersey.

1 “Commissioner” means the Commissioner of Banking and  
2 Insurance.

3 “Control” has the meaning set forth in subsection c. of section 1  
4 of P.L.1970, c. 22 (C.17:27A-1).

5 “Conversion” means the process by which a health service  
6 corporation converts to a domestic stock insurer in accordance with  
7 the provisions of sections 2 through 14 and section 19 of this act.

8 “Converted insurer” means the domestic stock insurer into which a  
9 health service corporation converts in accordance with the  
10 provisions of sections 2 through 14 and section 19 of this act.

11 “Domestic stock insurer” means a for-profit stock insurer  
12 authorized pursuant to Title 17B of the New Jersey Statutes to  
13 transact health insurance as defined in N.J.S.17B: 17-4.

14 “Effective time” means the date and time at which the conversion  
15 of a health service corporation is effective, as provided in section 11  
16 of this act.

17 “Foundation” means the foundation or foundations established  
18 under section 18 or 19 of this act.

19 “Foundation plan” means the plan submitted to the Attorney  
20 General pursuant to section 19 of this act.

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

23 “Material change in form” means any action or series of actions  
24 that effect a fundamental corporate change which involves a  
25 transfer of ownership or control of assets of the health service  
26 corporation or a change of the mission or purpose of the health  
27 service corporation, including, without limitation, the purchase,  
28 lease, exchange, conversion, restructuring, merger, division,  
29 consolidation or transfer of control, bulk reinsurance or other  
30 disposition or transfer of a substantial amount of business, line of  
31 business, assets or operations of the health service corporation,  
32 including the transfer, directly or indirectly, of a substantial amount  
33 of the health service corporation's business, line of business, assets  
34 or operations to one or more nonconforming affiliates. A material  
35 change in form by the transfer, directly or indirectly, of a  
36 substantial amount of the health service corporation's business, line  
37 of business, assets or operations to one or more nonconforming  
38 affiliates shall not be deemed to occur so long as, during the most  
39 recent four prior consecutive calendar quarters: (1) the aggregate  
40 revenues of all nonconforming affiliates do not exceed 50 percent  
41 of the aggregate revenues for the health service corporation and all  
42 affiliates; (2) the aggregate revenues of all nonconforming affiliates  
43 derived from providing individual or group health coverage to  
44 residents of New Jersey equal or exceed 50 percent of the aggregate  
45 revenues from all nonconforming affiliates; and (3) the aggregate  
46 assets of all nonconforming affiliates do not exceed 50 percent of  
47 the aggregate assets of the health service corporation and all  
48 affiliates. Notwithstanding the above, a reorganization approved by

1 the commissioner pursuant to section 5 of P.L. , c. (C. )  
2 (pending before the Legislature as this bill), whereby the mutual  
3 holding company is a charitable and benevolent institution as  
4 provided in section 41 of P.L.1985, c.236 (C.17:48E-41), shall not  
5 constitute a material change in form for purposes of P.L.2001, c.131  
6 (C.17:48E-49 et seq.).

7 “Nonconforming affiliate” means any affiliate of a health service  
8 corporation that: (1) operates on a for-profit basis, or (2) operates  
9 on a nonprofit basis and does not have a purpose the same as or  
10 substantially similar to that of the health service corporation.

11 “Parent corporation” means a stock corporation incorporated  
12 under the laws of this State that is or has been organized for the  
13 purpose of acquiring, directly or indirectly, control of the converted  
14 insurer pursuant to the plan of conversion.

15 “Petition” means the petition for approval of a foundation plan  
16 submitted to the Attorney General pursuant to subsection a. of  
17 section 19 of this act.

18 “Plan of conversion” means the written plan of conversion  
19 adopted by the health service corporation in compliance with  
20 section 2 of this act.

21 “Policy” means an individual or group policy or contract of  
22 insurance, including, without limitation, any certificate, rider,  
23 endorsement, plan or product offering issued by or binding upon the  
24 health service corporation.

25 “Subscriber” means a person covered by or entitled to benefits  
26 under any policy, including, but not limited to, the persons  
27 described in subsection k. of section 1 of P.L.1985, c. 236  
28 (C.17:48E-1).

29 (cf: P.L.2001, c.131, s.1)

30

31 18. Section 1 of P.L.1970, c. 22 (C.17:27A-1) is amended to  
32 read as follows:

33 1. Definitions.

34 As used in P.L.1970, c. 22 (C.17:27A-1 et seq.), the following  
35 terms shall have the respective meanings hereinafter set forth,  
36 unless the context shall otherwise require:

37 a. An “affiliate” of, or person “affiliated” with, a specific  
38 person, is a person that directly, or indirectly through one or more  
39 intermediaries, controls, or is controlled by, or is under common  
40 control with, the person specified.

41 b. The term “commissioner” shall mean the Commissioner of  
42 Banking and Insurance or the commissioner's deputies.

43 c. The term “control” (including the terms “controlling,”  
44 “controlled by” and “under common control with”) means the  
45 possession, direct or indirect, of the power to direct or cause the  
46 direction of the management and policies of a person, whether  
47 through the ownership of voting securities, by contract other than a  
48 commercial contract for goods or nonmanagement services, or

1 otherwise, unless the power is the result of an official position with  
2 or corporate office held by the person. Control shall be presumed to  
3 exist if any person, directly or indirectly, owns, controls, holds with  
4 the power to vote, or holds proxies representing, 10% or more of the  
5 voting securities of any other person, provided that no such  
6 presumption of control shall of itself relieve any person so  
7 presumed to have control from any requirement of P.L.1970, c. 22  
8 (C.17:27A-1 et seq.). This presumption may be rebutted by a  
9 showing made in the manner provided by subsection j. of section 3  
10 of P.L.1970, c. 22 (C.17:27A3) that control does not exist in fact.  
11 The commissioner may determine, after furnishing all persons in  
12 interest notice and an opportunity to be heard, and making specific  
13 findings of fact to support such determination, that control exists in  
14 fact, notwithstanding the absence of a presumption to that effect.

15 d. An “insurance holding company system” consists of two or  
16 more affiliated persons, one or more of which is an insurer. A  
17 mutual holding company system resulting from a mutualization and  
18 reorganization of a health service corporation pursuant to section 5  
19 of P.L. , c. (C. )(pending before the Legislature as this  
20 bill), shall be an insurance holding company system pursuant to  
21 P.L.1970, c. 22 (C.17:27A-1 et seq.).

22 e. The term “insurer” means any person or persons,  
23 corporation, partnership or company authorized by the laws of this  
24 State to transact the business of insurance or to operate a health  
25 maintenance organization in this State, except that it shall not  
26 include agencies, authorities or instrumentalities of the United  
27 States, its possessions and territories, the Commonwealth of Puerto  
28 Rico, the District of Columbia, or a state or political subdivision of  
29 a state.

30 f. A “person” is an individual, a corporation, a limited liability  
31 company, partnership, an association, a joint stock company, a trust,  
32 an unincorporated organization, any similar entity or any  
33 combination of the foregoing acting in concert.

34 g. (Deleted by amendment, P.L.1993, c. 241).

35 h. A “subsidiary” of a specified person is an affiliate controlled  
36 by such person directly, or indirectly through one or more  
37 intermediaries.

38 i. The term “voting security” shall include any security  
39 convertible into or evidencing a right to acquire a voting security.

40 j. “Acquisition” means any agreement, arrangement or  
41 activity, the consummation of which results in a person acquiring  
42 directly or indirectly the control of another person, and includes but  
43 is not limited to the acquisition of voting securities, and assets, and  
44 bulk reinsurance and mergers.

45 k. “Health maintenance organization” means any person  
46 operating under a certificate of authority issued pursuant to  
47 P.L.1973, c. 337 (C.26:2J-1 et seq.).

1       1. “Enterprise risk” means any activity, circumstance, event or  
2 series of events involving one or more affiliates of an insurer that, if  
3 not remedied promptly, is likely to have a material adverse effect  
4 upon the financial condition or liquidity of the insurer or its  
5 insurance holding company system as a whole, including, but not  
6 limited to, anything that would cause the insurer's Risk-Based  
7 Capital to fall into company action level as set forth in  
8 administrative rules adopted by the commissioner which reflect the  
9 standards set forth in the Risk-Based Capital For Insurers Model  
10 Act adopted by the National Association of Insurance  
11 Commissioners or would cause the insurer to be in hazardous  
12 financial condition as defined in administrative rules adopted by the  
13 commissioner which reflect the standards set forth in the Model  
14 Regulation adopted by the National Association of Insurance  
15 Commissioners to define standards and the commissioner's  
16 authority over companies deemed to be in a hazardous financial  
17 condition.

18 (cf: P.L.2014, c.81, s.1)

19

20       19. (New section) a. The provisions of P.L.     , c. (C.     )  
21 (pending before the Legislature as this bill) shall be severable; and  
22 if any phrase, clause, sentence, or provision is deemed  
23 unenforceable, the remaining provisions of P.L.     , c. (C.     )  
24 (pending before the Legislature as this bill) shall be enforceable.

25       b. The provisions of P.L.     , c. (C.     ) (pending before the  
26 Legislature as this bill) shall be liberally construed to effectuate its  
27 purposes.

28

29       20. This act shall take effect immediately.

30

31

32

### STATEMENT

33

34       This bill provides for the reorganization of a health service  
35 corporation.

36       The bill provides that a mutual holding company organized  
37 pursuant to the bill may not be established as a company organized  
38 for pecuniary profit and retains the designation as a charitable and  
39 benevolent institution pursuant to current law. A mutual holding  
40 company established pursuant to the bill retains the health service  
41 corporation's mission while supplementing that mission to promote  
42 innovation and delivery of diversified services.

43       The bill provides that mission of the mutual holding company is  
44 to:

45       (1) provide affordable and accessible health insurance to its  
46 members;

47       (2) promote the integration of the health care system to meet the  
48 needs of its members; and

1 (3) promote innovation and delivery of solutions and diversified  
2 services for its members.

3 Other than as otherwise provided, the bill provides that all  
4 property, assets, rights, liabilities, interest and relations of whatever  
5 kind of the health service corporation, and its subsidiaries, will be  
6 that of the mutual holding company system. The mutual holding  
7 company is no longer considered a health service corporation.  
8 Notwithstanding anything to the contrary, the provisions of current  
9 that exempt health service corporations from taxes other than taxes  
10 on real estate and equipment and taxes on premiums continue to  
11 apply to a mutual holding company.

12 Under the bill, certain health insurance duties and obligations  
13 pursuant to current law continue and remain in the succeeding  
14 reorganized insurer.

15 The mutual holding company is excluded from certain insurance  
16 operations and reporting, investment limits, and risk-bearing  
17 provisions of the health service corporation law, because the mutual  
18 holding company is not a risk-bearer:

19 The bill provides that the reorganized insurer shall engage in  
20 risk-bearing activities, reporting, investments, financial  
21 transactions, including the issuance of dividends or distributions,  
22 and insurance trade practices consistent with laws governing stock  
23 insurance companies organized under Title 17B of the New Jersey  
24 Statutes to transact health insurance. The bill also provides that  
25 certain provisions of the health service corporation law do not apply  
26 to the reorganized insurer or any insurance company or risk-bearing  
27 entity within the mutual holding company system.

28 The bill provides that the insurance premium rate tax cap law  
29 provided pursuant to current law shall apply to the companies  
30 within the mutual holding company system that have an insurance  
31 premium tax liability, and the exclusion from the tax cap applicable  
32 to a health service corporation shall not apply to the mutual holding  
33 company or any entity within the mutual holding company system,  
34 including the reorganized insurer, that has an insurance premium  
35 tax liability.

36 The bill provides that a mutual holding company system may  
37 pursue businesses, assets, or operations through one or more of its  
38 insurance subsidiaries and non-insurance subsidiaries without a  
39 limit on aggregate revenues from nonconforming affiliates or those  
40 pursuits being considered a material change in form. The  
41 subsidiaries of the mutual holding company, including the  
42 reorganized insurer, may make dividends or distributions to the  
43 mutual holding company, any subsidiaries thereof, or both, and not  
44 be considered a material change in form. Dividends and  
45 distributions from domestic insurers, including the reorganized  
46 insurer, within the mutual holding company system are subject only  
47 to certain applicable provisions of current law.

1 The bill provides that a health service corporation may  
2 reorganize to create a mutual holding company system pursuant to a  
3 plan of reorganization at the same time it applies to transition to a  
4 mutual insurer. Thereafter, the succeeding mutual holding company  
5 system shall be operated in a manner consistent with the provisions  
6 of the bill.

7 The bill requires the mutual holding company system to consist  
8 of a mutual holding company and one or more controlled nonprofit  
9 or for-profit subsidiaries, including the reorganized insurer, and to  
10 be operated for the benefit of its members.

11 The bill provides that the mutual holding company and each of  
12 its non-insurance subsidiaries, other than the reorganized insurer  
13 and any insurance company subsidiaries, shall not be:

14 (1) an insurer and therefore shall not be subject to any of the  
15 provisions of current law applicable to stock or mutual insurers, or  
16 to any laws concerning the writing of insurance, including rules and  
17 regulations adopted thereunder, including with respect to  
18 governance, stock or other voting or equity interest, the writing of  
19 insurance, any investment limitations directly applicable to risk-  
20 bearing entities engaged in the writing of insurance, or any capital  
21 or surplus requirements;

22 (2) authorized to transact the business of insurance; or

23 (3) qualified as an insurer.

24 The bill provides that the writing of insurance is permitted only  
25 through the reorganized insurer and other insurance company  
26 subsidiaries or investments of the mutual holding company.  
27 Nothing in the bill alters the oversight of the commissioner with  
28 respect to the mutual holding company and its non-insurance  
29 subsidiaries provided for under applicable laws and rules of this  
30 State relating to insurance holding company systems.

31 The bill requires a mutual holding company to be a nonprofit  
32 entity incorporated under, and to conduct its business pursuant to,  
33 the provisions of Title 15A of the New Jersey Statutes, except that  
34 in situations in which the provisions of that title are inconsistent  
35 with the provisions of the bill, the provisions of the bill shall  
36 govern.

37 The bill provides that, at the effective time, members shall  
38 receive membership interests of the mutual holding company, and  
39 thereafter 100 percent of the membership interests of the mutual  
40 holding company shall continue to be held by members, in each  
41 case, in the manner set forth in the articles of incorporation and  
42 bylaws of the mutual holding company.

43 The bill requires the shares of the capital stock of the  
44 reorganized insurer to be:

45 (1) issued to the mutual holding company or one or more  
46 intermediate holding companies that are wholly-owned by the  
47 mutual holding company; and

1 (2) at all times owned by the mutual holding company or one or  
2 more intermediate holding companies that are wholly-owned by the  
3 mutual holding company.

4 The subsidiaries of a mutual holding company system may be  
5 formed by any of the following means:

6 (1) the formation of one or more subsidiaries;

7 (2) amendment or restatement of the articles of incorporation  
8 and bylaws of one or more companies;

9 (3) transfer of assets and liabilities among two or more  
10 companies; or

11 (4) issuance, acquisition or transfer of capital stock of one or  
12 more companies.

13 The bill provides that a health service corporation may submit an  
14 application to the commissioner to form a mutual holding company  
15 system. Prior to submission of the application, the board of  
16 directors of the health service corporation shall adopt a resolution  
17 proposing to transition to a mutual insurer and form a mutual  
18 holding company system, at a meeting of the board by a two-thirds  
19 affirmative vote of the total number of directors of the health  
20 service corporation. A copy of the minutes of the meeting at which  
21 that resolution is adopted shall be filed with the commissioner. The  
22 resolution shall include a plan to transition to a mutual insurer and  
23 form a mutual holding company system, including proposed articles  
24 of incorporation and bylaws for the mutual holding company and  
25 proposed articles of incorporation, certificates of formation,  
26 restatements of, or amendments to, existing articles of incorporation  
27 or bylaws, and plans of merger or consolidation, with respect to  
28 each entity to be formed, converted or otherwise subject or party to  
29 the transition transactions pursuant to the plan of mutualization and  
30 reorganization.

31 The bill provides that, in addition to including information  
32 required pursuant to current law for the plan of mutualization, with  
33 respect to the formation of a mutual holding company system for  
34 purposes of this provision, the plan shall include:

35 (1) A description of the structure of the mutual holding  
36 company system consistent with the requirements set forth in the  
37 bill;

38 (2) A description of the qualifications for members'  
39 membership in, and the rights of members of, the mutual holding  
40 company consistent with the requirements set forth in the bill;

41 (3) A description of the transactions, and parties to those  
42 transactions, that will affect the mutualization and reorganization,  
43 including, but not limited to, transfer and assumption of policies,  
44 contracts, assets and liabilities, formation of entities, and the  
45 amendment or restatement of certificates of incorporation or  
46 bylaws. The plan of reorganization may provide for the transfer of  
47 assets of a health service corporation and its subsidiaries to the  
48 mutual holding company or one or more subsidiaries of the mutual



1 holding company in connection with the formation of the mutual  
2 holding company system;

3 (4) The identity of those persons who shall serve as directors  
4 and officers of the mutual holding company, its intermediate  
5 holding companies, if any, and its subsidiaries, including the  
6 reorganized insurer, as of the effective time of the mutualization  
7 and reorganization. The plan shall specify the members of the board  
8 of directors of the health service corporation who shall serve as  
9 initial directors of the mutual holding company;

10 (5) Information sufficient to demonstrate that the financial  
11 condition of the reorganized insurer and the insurance company  
12 subsidiaries of the reorganized insurer will meet solvency  
13 requirements pursuant to applicable laws and rules of this State  
14 relating to insurance companies after giving effect to the  
15 mutualization and reorganization;

16 (6) A representation that, following the mutualization and  
17 reorganization, policies shall remain in full force and effect under  
18 policies transferred to and assumed by insurance company  
19 subsidiaries of the mutual holding company;

20 (7) A representation that, following the mutualization and  
21 reorganization, the material terms and conditions of subordinated  
22 surplus notes and other contractual obligations, with certain  
23 exceptions, of the health service corporation and its subsidiaries  
24 shall, subject to the rights of the health service corporation and its  
25 subsidiaries under applicable law, and to the extent those  
26 obligations are not otherwise satisfied or terminated in accordance  
27 with their terms, remain in effect upon the transfer of those  
28 obligations to, and assumption of those obligations by, the  
29 reorganized insurer or one or more other subsidiaries of the mutual  
30 holding company; and

31 (8) A representation that, following the mutualization and  
32 reorganization, the mutual holding company shall comply with the  
33 employment requirements as provided in the bill.

34 The bill provides that, upon the affirmative vote of the board of  
35 directors complying with the requirements of the bill, the plan to  
36 form a mutual holding company system shall be filed with the  
37 commissioner for approval. Upon filing the plan to form a mutual  
38 holding company system, the obligations pursuant to current law  
39 shall be suspended during the pendency of the commissioner's  
40 review process. If the commissioner approves the plan to form a  
41 mutual holding company, certain obligations arising pursuant to  
42 current law shall be deemed satisfied by the initial assessment  
43 required by the bill.

44 The bill requires the commissioner to review the plan to  
45 mutualize and reorganize in accordance with the requirements of  
46 current law and the bill, including requirements for a public  
47 hearing.

1 The bill requires the commissioner to approve a plan of  
2 mutualization and reorganization unless the commissioner finds the  
3 plan:

4 (1) is contrary to law;

5 (2) would be detrimental to the safety or soundness of the  
6 proposed reorganized insurer and insurance company subsidiaries  
7 of the proposed mutual holding company; or

8 (3) prejudices the interests of the policyholders of the health  
9 service corporation or treats them inequitably.

10 The bill provides that the commissioner may engage the services  
11 of experts and consultants to advise on any matters related to the  
12 application. The engagement shall not be subject to Chapter 32 of  
13 Title 52 of the Revised Statutes and all costs related to such  
14 engagement for the examination and deliberations of the application  
15 shall be paid by the health service corporation that makes the filing,  
16 both for services prior to the effective time and for services after the  
17 effective time. At the expiration of 30 days after the public hearing,  
18 the commissioner shall approve or disapprove the plan of  
19 mutualization and reorganization and shall set forth the decision in  
20 writing and shall state the reasons therefor. The commissioner shall  
21 inform the health service corporation of the specific reasons for the  
22 disapproval of any plan of mutualization and reorganization and  
23 provide a cure period of no shorter than 90 days to cure any  
24 deficiencies. Any disapproval shall be subject to judicial review as  
25 a final decision of a State administrative agency.

26 The bill provides that a plan of mutualization and reorganization  
27 may be amended, terminated, or approved. A plan of mutualization  
28 and reorganization adopted by the board of directors of the  
29 applicant may be:

30 (1) Amended by the board of directors of the applicant in  
31 response to the comments or recommendations of the commissioner  
32 at any time; or

33 (2) Terminated by the board of directors of the applicant at any  
34 time. An applicant that has terminated a plan to form a mutual  
35 holding company system shall be deemed to have also terminated  
36 the application to transition to a mutual insurer.

37 The bill provides that an approved plan of mutualization and  
38 reorganization is effective at the effective time specified in the plan  
39 of reorganization, or such other time subsequently requested by the  
40 applicant and agreed to by the commissioner.

41 The bill provides that a mutual holding company system is  
42 considered an insurance holding company system and subject to the  
43 current law governing insurance holding company systems, with  
44 certain exceptions.

45 The bill allows a mutual holding company or a non-insurance  
46 subsidiary to make any lawful investments including directly or  
47 indirectly acquiring or otherwise holding the stock or other  
48 ownership interests of any nonprofit or for-profit entities. Insurance

1 company subsidiaries and the reorganized insurer may make  
2 investments, including investments in non-insurance entities subject  
3 to investment and asset limitations pursuant to applicable laws and  
4 rules relating to insurance companies.

5 Neither the adoption nor the implementation of a plan of  
6 mutualization and reorganization pursuant to the bill is deemed to  
7 give rise to any obligation by or on behalf of any entity in the  
8 mutual holding company system or any predecessor entity to make  
9 any distribution or payment to any member or policyholder, or to  
10 any other person, fund, or entity of any nature whatsoever, in  
11 connection with the ownership, control, benefits, policies, purpose,  
12 or nature of any entity in the mutual holding company system, any  
13 predecessor entity or otherwise.

14 Under the bill, membership in a mutual holding company is to be  
15 determined in accordance with the mutual holding company's  
16 articles of incorporation and bylaws and may be based upon:

17 (1) the amount of health insurance policies in force with the  
18 reorganized insurer;

19 (2) the amount of the health insurance premiums paid to the  
20 reorganized insurer; or

21 (3) other reasonable factors.

22 A mutual holding company may also consider the amount of  
23 premiums paid to, or policies in force under, affiliated insurance  
24 companies operating under the same brand licensee program as the  
25 reorganized insurer and permit entities holding administrative  
26 services agreements with the mutual holding company to be  
27 members of the mutual holding company. The mutual holding  
28 company may provide in its bylaws the basis for the number of  
29 votes those entities will have as members of the mutual holding  
30 company.

31 A mutual holding company formed pursuant to the bill may not  
32 convert to a for-profit stock holding company. The provisions of  
33 current law providing for conversion of a health service  
34 corporation to a domestic stock insurer do not apply to a mutual  
35 holding company formed pursuant to the bill.

36 The bill provides that members of a mutual holding company  
37 shall be entitled to vote for the election of directors of the mutual  
38 holding company in accordance with the mutual holding company's  
39 bylaws. Directors of the mutual holding company shall be elected  
40 from nominees selected by the nominating and governance  
41 committee of the board of directors of the mutual holding company,  
42 or a comparably authorized committee, except for public directors  
43 serving in accordance with the provisions of the bill.

44 The bill prohibits a member of a mutual holding company from  
45 transferring membership or any right arising therefrom.

46 Upon any voluntary dissolution of a mutual holding company in  
47 accordance with current law, the mutual holding company shall  
48 adopt a plan of dissolution. The plan shall provide for distribution

1 of any assets of the mutual holding company remaining after the  
2 discharge of all liabilities and obligations.

3 The bill requires a mutual holding company to file with the  
4 commissioner an annual statement pursuant to applicable laws of  
5 this State.

6 Following approval of a transition pursuant to the bill, and the  
7 establishment of a mutual holding company, the mutual holding  
8 company, through itself or any of its affiliates, shall pay an initial  
9 assessment to the State Treasury in the amount of \$600,000,000 by  
10 June 1, 2022 if the effective time precedes June 1, 2022. If the  
11 effective time is later than June 1, 2022, the initial assessment shall  
12 be due by June 1 of the calendar year following the effective time.  
13 The initial assessment shall be a one-time, nonrecurring State  
14 business tax on the reorganized insurer.

15 Following the initial assessment, the mutual holding company,  
16 through itself or any of its affiliates, shall pay a limited duration  
17 business tax by June 1 of each calendar year beginning with the  
18 calendar year following the initial assessment, and for a period of  
19 seventeen years. The total assessment, including both the initial  
20 and annual assessments, shall not exceed \$1,250,000,000. The  
21 annual assessments represent a limited duration state business tax  
22 on the reorganized insurer's business payable by the mutual holding  
23 company or any of its affiliates, and shall be based on the following  
24 schedule with earned premiums defined consistent with 45 CFR  
25 158.130:

26 (1) For annual assessment 1, 20 percent of the reorganized  
27 insurer's earned premiums for the calendar year preceding that  
28 assessment, with the assessment not to exceed \$100,000,000.

29 (2) For annual assessments 2 through 11, 5 percent of the  
30 reorganized insurer's earned premiums for the calendar year  
31 preceding a given year's assessment, with each year's assessment  
32 not to exceed \$25,000,000.

33 (3) For annual assessments 12 through 17, 10 percent of the  
34 reorganized insurer's earned premiums for the calendar year  
35 preceding a given year's assessment, with each year's assessment  
36 not to exceed \$50,000,000.

37 The bill provides that the mutual holding company shall not pay  
38 any portion of the annual assessment for a given calendar year if the  
39 mutual holding company's system-wide health risk-based capital  
40 authorized control level would fall below 550 percent based on the  
41 standards for risk based capital for health organizations as adopted  
42 by the National Association of Insurance Commissioners following  
43 the payment as applied against the prior calendar year's risk based  
44 capital, or if in the opinion of any nationally recognized statistical  
45 rating organization, the group credit rating of the mutual holding  
46 company would not be considered investment grade.

47 If the mutual holding company does not pay the annual  
48 assessment for a given calendar year, the annual assessment that

1 was not paid shall be deferred to the subsequent calendar year,  
2 which shall be the deferral date for the deferred annual assessment,  
3 with all subsequent annual assessments also deferred by another  
4 calendar year so that no two annual assessments are due in the same  
5 calendar year. If an annual assessment is deferred, that annual  
6 assessment shall not be required by law to be paid until the deferral  
7 date.

8 Notwithstanding the provisions of the bill to the contrary, the  
9 assessment years shall not be extended beyond, and the payment  
10 obligation shall cease to exist after, the date that is 20 years from  
11 the effective time.

12 The bill provides that the board of the mutual holding company  
13 shall be constituted of 22 directors as follows:

14 (1) 13 directors shall be elected, as provided in the bylaws, one  
15 of whom shall be the chair;

16 (2) 5 directors shall be public directors appointed by the  
17 Governor with the advice and consent of the Senate;

18 (3) 2 directors shall be public directors appointed by the Senate  
19 President; and

20 (4) 2 directors shall be public directors appointed by the Speaker  
21 of the General Assembly.

22 Upon the effective time of the conversion to a mutual holding  
23 company system, the term of office of the public directors of the  
24 reorganized insurer shall expire. The initial board of directors of  
25 the mutual holding company shall be:

26 (1) the elected directors of the reorganized insurer supplemented  
27 by additional elected directors nominated and elected by the mutual  
28 holding company's board after the effective time for a total number  
29 of elected directors specified in the bill;

30 (2) 5 public directors appointed by the Governor with the advice  
31 and consent of the Senate within 30 days after the effective time;

32 (3) 2 public directors named by the Senate President within 30  
33 days after the effective time; and

34 (4) 2 public directors named by the Speaker of the General  
35 Assembly within 30 days after the effective time.

36 The bill provides that each elected director shall have a term of  
37 three years with up to two successive three-year terms following the  
38 initial term for up to a total of three successive terms, and as  
39 provided for in the bylaws, with such other term and term limits  
40 specifically applying to the individual directors. The chief  
41 executive officer or president of the mutual holding company shall  
42 be an elected director at all times and shall not be subject to any  
43 term limit or election. Each director shall meet the statutory and  
44 regulatory qualifications for the mutual holding company system's  
45 businesses and be free from conflicts of interest that would prohibit  
46 the person from materially executing the person's duties as a  
47 director. Each public director shall serve at the pleasure of the  
48 appointing authority.

1       The bill provides that there shall be a transitional period of 18  
2 months following the effective time before elected directors of the  
3 mutual holding company are subject to election by its members.  
4 The first election shall occur at the first annual meeting following  
5 the transitional period, and in accordance with the mutual holding  
6 company's bylaws.

7       Upon the formation of a mutual holding company, the total  
8 number of full-time employees that were employed within a mutual  
9 holding company system shall be maintained for a transition period  
10 of 24 months following that formation based on the full-time  
11 employee count of the health service corporation as of September  
12 30, 2019, with certain exceptions.

13       The employment requirements of the bill do not supersede the  
14 terms of any collective bargaining agreement or require a mutual  
15 holding company system to replace headcount lost due to various  
16 causes.