

[First Reprint]

**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)**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Co-Sponsored by:**

**Assemblywoman Speight, Assemblymen Thomson, Houghtaling and  
Assemblywoman McKnight**

**SYNOPSIS**

Provides for reorganization of health service corporation.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Financial Institutions and Insurance  
Committee on December 14, 2020, with amendments.

**(Sponsorship Updated As Of: 12/17/2020)**

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

**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:

<sup>1</sup>Assembly AFI committee amendments adopted December 14, 2020.

1 theintegration 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  
10 P.L. , c. (C. ) (pending before the Legislature as this bill)  
11 does not constitute a conversion or material change in form as  
12 defined pursuant to P.L.2001, c.131 (C.17:48E-49 et seq.), the  
13 currently existing statutory mission of the health service corporation  
14 to provide affordable and accessible health insurance and promote  
15 the 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  
24 P.L. , c. (C. ) (pending before the Legislature as this bill);  
25 provided, however, that it is appropriate to expand and modernize  
26 that mission to encourage further innovation as well as  
27 improvement 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  
42 P.L. , 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.

1 “Intermediate holding company” means an entity of which at  
2 least a majority of the voting shares of the capital stock are at all  
3 times owned directly or indirectly through other intermediate  
4 holding companies by a mutual holding company.

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

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

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

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

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

32 “Non-insurance subsidiary” means any subsidiary of a mutual  
33 holding company system that is not an insurance company or the  
34 reorganized insurer.

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

45 “Reorganized insurer” means a stock insurer authorized pursuant  
46 to Title 17B of the New Jersey Statutes to transact health insurance  
47 as defined in N.J.S.17B:17-4 and that, pursuant to a plan of

1 reorganization as provided in P.L. , c. (C. )(pending before  
2 the Legislature as this bill), is a subsidiary of the mutual holding  
3 company system that holds the business of the health service  
4 corporation mutualizing and reorganizing pursuant to  
5 P.L. , c. (C. )(pending before the Legislature as this bill)  
6 that is related to policies directly written and issued by the health  
7 service corporation. All health insurance or risk-bearing  
8 obligations of the health service corporation shall be undertaken by  
9 the reorganized insurer pursuant to subsection c. and e. of section 3  
10 of P.L. , c. (C. )(pending before the Legislature as  
11 this bill).

12

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

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

- 24 (1) provide affordable and accessible health insurance to its  
25 members;  
26 (2) promote the integration of the health care system to meet the  
27 needs of its members; and  
28 (3) promote innovation and delivery of solutions and diversified  
29 services for its members.

30 b. Other than as provided pursuant to P.L. , c. (C. )  
31 (pending before the Legislature as this bill), all property, assets,  
32 rights, liabilities, interest and relations of whatever kind of the  
33 health service corporation, and its subsidiaries, shall be that of the  
34 mutual holding company system. The mutual holding company  
35 shall not be considered a health service corporation.  
36 Notwithstanding anything to the contrary, the provisions of section  
37 41 of P.L.1985, c.236 (C.17:48E-41) shall continue to apply to a  
38 mutual holding company if the mutual holding company continues  
39 to participate in the New Jersey Individual Health Coverage Program  
40 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey  
41 Small Employer Health Benefits Program pursuant to P.L.1992, c.162  
42 (C.17B:27A-17 et seq.). If the mutual holding company does not  
43 participate in the New Jersey Individual Health Coverage Program  
44 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey  
45 Small Employer Health Benefits Program pursuant to P.L.1992, c.162  
46 (C.17B:27A-17 et seq.) the provisions of section 41 of P.L.1985,  
47 c.236 (C.17:48E-41) shall no longer apply<sup>1</sup>.

1 c. The health insurance duties and obligations pursuant to  
2 P.L.1985, c.236 (C.17:48E-1 et seq.) shall continue and remain in  
3 the succeeding reorganized insurer reorganizing pursuant to  
4 P.L. , c. (C. )(pending before the Legislature as this bill),  
5 in each case, except as provided pursuant to P.L. ,  
6 c. (C. )(pending before the Legislature as this bill). Except  
7 as listed below in subsection e. of this section, all references to a  
8 “health service corporation” in P.L.1985, c.236 (C.17:48E-  
9 1 et seq.), shall refer to a “reorganized insurer” established pursuant  
10 to P.L. , c. (C. )(pending before the Legislature as this  
11 bill) and shall not refer to the mutual holding company.

12 d. In addition to the mutual holding company’s qualification  
13 pursuant to section 2 of P.L. , c. (C. )(pending before the  
14 Legislature as this bill), and for avoidance of doubt, the mutual  
15 holding company shall be expressly excluded from insurance  
16 operations and reporting, investment limits, and risk-bearing  
17 provisions of P.L.1985, c.236 (C.17:48E-1 et seq.), including the  
18 following provisions because a mutual holding company is not a  
19 risk-bearer:

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

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

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

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

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

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

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

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

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

5 f. The insurance premium rate tax cap law provided by  
6 subsection a. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall  
7 apply to the companies within the mutual holding company system  
8 that have an insurance premium tax liability, and the exclusion from  
9 the tax cap applicable to a health service corporation pursuant to  
10 subsection b. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall not  
11 apply to the mutual holding company or any entity within the  
12 mutual holding company system, including the reorganized insurer,  
13 that has an insurance premium tax liability.

14 g. A mutual holding company system may pursue businesses,  
15 assets, or operations through one or more of its insurance  
16 subsidiaries and non-insurance subsidiaries without a limit on  
17 aggregate revenues from nonconforming affiliates or such pursuits  
18 being considered a material change in form as such term is defined  
19 pursuant to section 1 of P.L.2001, c.131 (C.17:48E-49). The  
20 subsidiaries of the mutual holding company, including the  
21 reorganized insurer, shall be permitted to make dividends or  
22 distributions to the mutual holding company, any subsidiaries  
23 thereof, or both, and shall not be considered a material change in  
24 form as such term is defined pursuant to section 1 of P.L.2001,  
25 c.131 (C.17:48E-49). Dividends and distributions from domestic  
26 insurers, including the reorganized insurer, within the mutual  
27 holding company system shall be subject only to the applicable  
28 provisions of subsection c. of section 4 of P.L.1970, c.22  
29 (C.17:27A-4).

30 h. The continuation of the rights, duties and obligations of a  
31 health service corporation pursuant to this section following  
32 completion of an approved reorganization pursuant to  
33 P.L. , c. (C. ) (pending before the Legislature as this bill)  
34 shall be limited to such rights, duties and obligations pursuant to  
35 P.L.1985, c.236 (C.17:48E-1 et seq.) as of the effective date of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill);  
37 amendments to P.L.1985, c.236 (C.17:48E-1 et seq.) enacted after  
38 the effective date of P.L. , c. (C. ) (pending before the  
39 Legislature as this bill) shall not apply. Notwithstanding the above,  
40 the reorganized insurer shall be subject to the laws applicable to  
41 domestic health insurance companies contained in Title 17B of the  
42 New Jersey Statutes <sup>1</sup>and P.L.1970, c.22 (C.17:27A-1 et seq.)<sup>1</sup>.

43  
44 4. (New section) a. A health service corporation organized  
45 pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.) may reorganize to  
46 create a mutual holding company system pursuant to a plan of  
47 reorganization at the same time it applies to transition to a mutual

1 insurer pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.).  
2 Thereafter, the succeeding mutual holding company system shall be  
3 operated in a manner consistent with sections 1 and 3 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill).

5 b. The mutual holding company system shall consist of a  
6 mutual holding company and one or more controlled nonprofit or  
7 for-profit subsidiaries, including the reorganized insurer, and shall  
8 be operated for the benefit of its members. The mission of a mutual  
9 holding company shall be as specified in subsection a. of section 3  
10 of P.L. , c. (C. ) (pending before the Legislature as this  
11 bill).

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

15 (1) an insurer and therefore shall not be subject to any of the  
16 provisions of N.J.S.17B:18-1 et seq. applicable to stock or mutual  
17 insurers, or to any laws concerning the writing of insurance,  
18 including rules and regulations adopted thereunder, including with  
19 respect to governance, stock or other voting or equity interest, the  
20 writing of insurance, any investment limitations directly applicable  
21 to risk-bearing entities engaged in the writing of insurance such as  
22 those pursuant to N.J.S.17B:20-1 et seq., or any capital or surplus  
23 requirements;

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

25 (3) qualified as an insurer.

26 The writing of insurance shall be permitted only through the  
27 reorganized insurer and other insurance company subsidiaries or  
28 investments of the mutual holding company. Nothing herein shall  
29 alter the oversight of the commissioner with respect to the mutual  
30 holding company and its non-insurance subsidiaries provided for  
31 pursuant to applicable laws and rules of this State relating to  
32 insurance holding company systems.

33 d. A mutual holding company shall be a nonprofit entity  
34 incorporated under, and shall conduct its business pursuant to, the  
35 provisions of Title 15A of the New Jersey Statutes, except that in  
36 situations in which the provisions of that title are inconsistent with  
37 the provisions of P.L. , c. (C. ) (pending before the  
38 Legislature as this bill), the provisions of  
39 P.L. , c. (C. )(pending before the Legislature as this bill)  
40 shall govern.

41 e. At the effective time, members shall receive membership  
42 interests of the mutual holding company, and thereafter 100 percent  
43 of the membership interests of the mutual holding company shall  
44 continue to be held by members, in each case, in the manner set  
45 forth in the articles of incorporation and bylaws of the mutual  
46 holding company.



1 f. The shares of the capital stock of the reorganized insurer  
2 shall be:

3 (1) issued to the mutual holding company or one or more  
4 intermediate holding companies that are wholly-owned by the  
5 mutual holding company; and

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

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

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

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

14 (3) transfer of assets and liabilities among two or more  
15 companies; <sup>1</sup>[or]<sup>1</sup>

16 (4) issuance, acquisition or transfer of capital stock of one or  
17 more companies <sup>1</sup>; or

18 (5) merger or consolidation of two or more companies.

19 h. The mutual holding company shall ensure that any  
20 ownership interest in a subsidiary shall be held by the mutual  
21 holding company, and that any profits generated by that interest are  
22 returned to the mutual holding company<sup>1</sup>.

23

24 5. (New section) a. A health service corporation may submit  
25 an application to the commissioner to form a mutual holding  
26 company system. <sup>1</sup>Upon submission of an application to the  
27 commissioner, a health service corporation shall immediately  
28 thereafter provide a copy of the application to the Attorney  
29 General.<sup>1</sup> Prior to submission of the application, the board of  
30 directors of the health service corporation shall adopt a resolution  
31 proposing to transition to a mutual insurer and form a mutual  
32 holding company system, at a meeting of the board by a two-thirds  
33 affirmative vote of the total number of directors of the health  
34 service corporation. A copy of the minutes of the meeting at which  
35 that resolution is adopted shall be filed with the commissioner. The  
36 resolution shall include a plan to transition to a mutual insurer and  
37 form a mutual holding company system, including proposed articles  
38 of incorporation and bylaws for the mutual holding company and  
39 proposed articles of incorporation, certificates of formation,  
40 restatements of, or amendments to, existing articles of incorporation  
41 or bylaws, and plans of merger or consolidation, with respect to  
42 each entity to be formed, converted or otherwise subject or party to  
43 the transition transactions pursuant to the plan of mutualization and  
44 reorganization.

45 In addition to including information required pursuant to section  
46 2 of P.L.1995, c.196 (C.17:48E-46) for the plan of mutualization,

- 1 with respect to the formation of a mutual holding company system  
2 for purposes of this provision, the plan shall include:
- 3 (1) A description of the structure of the mutual holding  
4 company system consistent with the requirements set forth in  
5 P.L. , c. (C. )(pending before the Legislature as this bill);
- 6 (2) A description of the qualifications for members'  
7 membership in, and the rights of members of, the mutual holding  
8 company consistent with the requirements set forth in  
9 P.L. , c. (C. )(pending before the Legislature as this bill);
- 10 (3) A description of the transactions, and parties to those  
11 transactions, that will affect the mutualization and reorganization,  
12 including, but not limited to, transfer and assumption of policies,  
13 contracts, assets and liabilities, formation of entities, and the  
14 amendment or restatement of certificates of incorporation or  
15 bylaws. The plan of reorganization may provide for the transfer of  
16 assets of a health service corporation and its subsidiaries to the  
17 mutual holding company or one or more subsidiaries of the mutual  
18 holding company in connection with the formation of the mutual  
19 holding company system;
- 20 (4) The identity of those persons who shall serve as directors  
21 and officers of the mutual holding company, its intermediate  
22 holding companies, if any, and its subsidiaries, including the  
23 reorganized insurer, as of the effective time of the mutualization  
24 and reorganization. The plan shall specify the members of the board  
25 of directors of the health service corporation who shall serve as  
26 initial directors of the mutual holding company, as provided in  
27 section 15 of P.L. , c. (C. )(pending before the Legislature  
28 as this bill);
- 29 (5) Information sufficient to demonstrate that the financial  
30 condition of the reorganized insurer and the insurance company  
31 subsidiaries of the reorganized insurer shall meet solvency  
32 requirements pursuant to applicable laws and rules of this State  
33 relating to insurance companies after giving effect to the  
34 mutualization and reorganization;
- 35 (6) A <sup>1</sup>**【representation】** certification<sup>1</sup> that, following the  
36 mutualization and reorganization, the material terms and conditions  
37 of insurance coverage of:
- 38 (a) policyholders of policies directly written and issued by the  
39 health service corporation shall remain in full force and effect under  
40 policies transferred to and assumed by the reorganized insurer; and
- 41 (b) all other policyholders shall remain in full force and effect  
42 under policies transferred to and assumed by insurance company  
43 subsidiaries of the mutual holding company;
- 44 (7) A <sup>1</sup>**【representation】** certification<sup>1</sup> that, following the  
45 mutualization and reorganization, the material terms and conditions  
46 of subordinated surplus notes and other contractual obligations,  
47 other than those arising pursuant to policies described in paragraph

1 (6) of this subsection, of the health service corporation and its  
2 subsidiaries shall, subject to the rights of the health service  
3 corporation and its subsidiaries pursuant to applicable law, and to  
4 the extent those obligations are not otherwise satisfied or terminated  
5 in accordance with their terms, remain in effect upon the transfer of  
6 those obligations to, and assumption of those obligations by, the  
7 reorganized insurer or one or more other subsidiaries of the mutual  
8 holding company; and

9 (8) A <sup>1</sup>**【representation】** certification<sup>1</sup> that, following the  
10 mutualization and reorganization, the mutual holding company shall  
11 comply with the employment requirements as provided in section  
12 16 of P.L. , c. (C. ) (pending before the Legislature as  
13 this bill).

14 b. Upon the affirmative vote of the board of directors  
15 complying with subsection a. of this section, the plan to form a  
16 mutual holding company system pursuant to P.L. , c. (C. )  
17 (pending before the Legislature as this bill) shall be filed with the  
18 commissioner for approval. Upon filing the plan to form a mutual  
19 holding company system, the obligations pursuant to section 4 of  
20 P.L.2017, c.100 (C.17:48E-17.3) shall be suspended during the  
21 pendency of the commissioner's review process pursuant to this  
22 subsection; if the commissioner approves the plan to form a mutual  
23 holding company, any obligations arising pursuant to section 4 of  
24 P.L.2017, c.100 (C.17:48E-17.3) shall be deemed satisfied by the  
25 initial assessment pursuant to subsection a. of section 13 of  
26 P.L. , c. (C. ) (pending before the Legislature as this bill).  
27 The commissioner shall review the plan to mutualize and reorganize  
28 in accordance with the requirements of subsection a. of section 3 of  
29 P.L.1995, c.196 (C.17:48E-47). <sup>1</sup>**【The public hearing conducted**  
30 **pursuant to subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-**  
31 **47)】** The commissioner shall hold three public hearings on the plan  
32 to form a mutual holding company within 90 days after the  
33 commissioner determines that the filing is complete, with notice  
34 provided by publication in a manner satisfactory to the  
35 commissioner. The public hearings<sup>1</sup> shall also address the plan of  
36 reorganization to the mutual holding company system required by  
37 P.L. , c. (C. )(pending before the Legislature as this bill).  
38 Consistent with subsection a. of section 3 of P.L.1995, c.196  
39 (C.17:48E-47), the commissioner shall approve a plan of  
40 mutualization and reorganization unless the commissioner finds the  
41 plan:

42 (1) is contrary to law;

43 (2) would be detrimental to the safety or soundness of the  
44 proposed reorganized insurer and insurance company subsidiaries  
45 of the proposed mutual holding company; or

1 (3) ~~1~~prejudices does not benefit<sup>1</sup> the interests of the  
2 policyholders of the health service corporation or treats them  
3 inequitably.

4 The commissioner may engage the services of experts and  
5 consultants to advise on any matters related to the application <sup>1</sup>, and  
6 if a written study or other expert report is prepared, it shall be made  
7 available to the applicant within a reasonable period of time prior to  
8 the initial public hearing. The commissioner may also engage the  
9 services of a consultant to conduct a health impact study of the  
10 effects of the reorganization on the health of the policy holders of  
11 the health service corporation, and the general public<sup>1</sup>. 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 <sup>1</sup>final<sup>1</sup> 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.). <sup>1</sup>The commissioner shall  
46 possess supervisory powers with respect to the insurance holding  
47 company system which shall include the authority to monitor the

1 mutual holding company systems financial health, enterprise risk,  
2 and examine its operations pursuant to P.L.1070, c.22 (C.17:27A-  
3 1 et seq.).<sup>1</sup> Notwithstanding the foregoing, solely with regard to the  
4 transactions set forth in the application to form a mutual holding  
5 company system filed pursuant to section 5 of  
6 P.L. , c. (C. ) (pending before the Legislature as this bill),  
7 a mutual holding company system shall not be required to seek  
8 separate approval for an acquisition of controlling stock, ownership  
9 interest, assets or control, or for a <sup>1</sup>merger or consolidation,<sup>1</sup> share  
10 exchange, organization, or reorganization of insurance companies  
11 within the mutual holding company system, or other transactions set  
12 forth in the application to form a mutual holding company system.  
13 Thereafter, any future transactions not approved as part of the  
14 application to form a mutual holding company system, shall be  
15 subject to the applicable requirements of P.L.1970, c.22 (C.17:27A-  
16 1 et seq.). As an insurance holding company system subject to  
17 P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner shall have  
18 the power to order production of any records, books, or other  
19 information and papers in the possession of a mutual holding  
20 company system as are reasonably necessary to ascertain the  
21 financial condition of the mutual holding company system or to  
22 determine compliance with P.L. , c. (C. )(pending before  
23 the Legislature as this bill).

24

25 7. (New section)a. A mutual holding company or a non-  
26 insurance subsidiary may, alone or together, make any lawful  
27 investments including directly or indirectly acquiring or otherwise  
28 holding the stock or other ownership interests of any nonprofit or  
29 for-profit entities.

30 b. Insurance company subsidiaries and the reorganized insurer  
31 may make investments, including investments in non-insurance  
32 entities subject to investment and asset limitations pursuant to  
33 applicable laws and rules relating to insurance companies.

34 <sup>1</sup>c. The mutual holding company and its non-insurance and  
35 insurance company subsidiaries shall continue to operate a diverse  
36 supplier program that promotes and invests in the utilization of  
37 minority-owned and women-owned businesses in the procurement  
38 of goods and services, including professional services. The mutual  
39 holding company shall include in its annual filing pursuant to  
40 subsection b. of section 11 of P.L. , c. (C. ) (pending  
41 before the Legislature as this bill) information on this subsection.<sup>1</sup>

42

43 8. (New section) Neither the adoption nor the implementation  
44 of a plan of mutualization and reorganization shall be deemed to  
45 give rise to any obligation by or on behalf of any entity in the  
46 mutual holding company system or any predecessor entity to make  
47 any distribution or payment to any member or policyholder, or to  
48 any other person, fund, or entity of any nature whatsoever, in

1 connection with the ownership, control, benefits, policies, purpose,  
2 or nature of any entity in the mutual holding company system, any  
3 predecessor entity or otherwise.

4

5 9. (New section) a. Membership in a mutual holding company  
6 shall be determined in accordance with the mutual holding  
7 company's articles of incorporation and bylaws and may be based  
8 upon:

9 (1) the amount of health insurance policies in force with the  
10 reorganized insurer;

11 (2) the amount of the health insurance premiums paid to the  
12 reorganized insurer; or

13 (3) other reasonable factors.

14 A mutual holding company may also consider the amount of  
15 premiums paid to, or policies in force under, affiliated insurance  
16 companies operating under the same brand licensee program as the  
17 reorganized insurer and permit entities holding administrative  
18 services agreements with the mutual holding company to be  
19 members of the mutual holding company. The mutual holding  
20 company may provide in its bylaws the basis for the number of  
21 votes those entities will have as members of the mutual holding  
22 company.

23 b. Members of a mutual holding company shall be entitled to  
24 vote for the election of directors of the mutual holding company in  
25 accordance with the mutual holding company's bylaws. Directors  
26 of the mutual holding company shall be elected from nominees  
27 selected by the nominating and governance committee of the board  
28 of directors of the mutual holding company, or a comparably  
29 authorized committee, except for public directors serving in  
30 accordance with section 15 of P.L. , c. (C. )(pending  
31 before the Legislature as this bill).

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

34 d. Except as specified in subsection b. of this section, a  
35 membership interest in a mutual holding company shall not be  
36 deemed to give rise to any other rights, including any ownership  
37 interests in, or ownership rights with respect to, the assets of any  
38 entity in the mutual holding company system or any predecessor  
39 entity, and shall not be deemed to give rise to any entitlement to  
40 receive payment of any dividend or other distribution in connection  
41 with the ownership, control, benefits, policies, purpose or nature of  
42 any entity in the mutual holding company system or any  
43 predecessor entity.

44 e. A member of a mutual holding company is not personally  
45 liable for the acts, debts, liabilities or obligations of the mutual  
46 holding company solely because of the member's membership  
47 status.

1 f. No assessments shall be imposed upon the members of a  
2 mutual holding company by the directors or members, or because of  
3 any liability, act, debt or obligation of the mutual holding company  
4 or of any company owned or controlled by the mutual holding  
5 company.

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

8  
9 10. (New section) Upon any voluntary dissolution of a mutual  
10 holding company in accordance with N.J.S.15A:12-2, 15A:12-3,  
11 15A:12-4, 15A:12-5, 15A:12-6, 15A:12-7, or section 19 of  
12 P.L.1992, c.65 (C.17B:32-49), the mutual holding company shall  
13 adopt a plan of dissolution in accordance with N.J.S.15A:12-8. The  
14 plan shall provide that any assets of the mutual holding company  
15 remaining after the discharge of all liabilities and obligations, if  
16 any, shall be distributed in accordance with N.J.S.15A:12-8.

17  
18 11. (New section) a. A mutual holding company shall file with  
19 the commissioner an annual statement pursuant to applicable laws  
20 of this State.

21 b. The mutual holding company shall, on an annual basis, and  
22 in a form and manner prescribed by the Department of Banking and  
23 Insurance, file with the department information relating to the  
24 mutual holding company's operations, including but not limited to  
25 the following: the mutual holding company's mission, activities,  
26 revenues, expenses, assets, liabilities, and total compensation  
27 provided to officers, directors, trustees and the five other highest  
28 compensated employees who are not an officer, director or trustee,  
29 which information shall be posted on the department's website.

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

35  
36 <sup>1</sup>[12. (New section) All information, documents and copies of  
37 information and documents obtained by or disclosed to the  
38 commissioner, the Department of Banking and Insurance, or any  
39 other person in the course of preparing, filing or processing an  
40 application to reorganize pursuant to P.L. , c. (C. )  
41 (pending before the Legislature as this bill), including the annual  
42 statement required pursuant to section 11 of P.L. , c. (C. )  
43 (pending before the Legislature as this bill), other than information  
44 or documents distributed to policyholders in connection with the  
45 plan of reorganization or election of directors, shall be subject to  
46 the confidentiality requirements set forth in section 6 of P.L.1970,  
47 c.22 (C.17:27A-6).]<sup>1</sup>

1 <sup>1</sup>12. (New section) a. The application submitted pursuant to

2 section 5 of P.L. , c. (C. )(pending before the Legislature as

3 this bill) shall be a public record, except for the following

4 documents, which shall be confidential and not public records:

5 (1) documents deemed confidential by statute or regulation;

6 (2) the business plan, capitalization plan, financial projections,

7 and market competitive data; and

8 (3) any other information the commissioner determines could

9 result in harm to the health service corporation, mutual holding

10 company, reorganized insurer or other insurance entity within the

11 mutual holding company system, or the public interest, if disclosed.

12 b. The commissioner shall provide the public with prompt and

13 reasonable access to public records relating to the proposed

14 reorganization of the health service corporation. The commissioner

15 shall make the public records received pursuant to

16 P.L. , c. (C. )(pending before the Legislature as this bill)

17 available for inspection at no cost to the public. These public

18 records shall be made available to the public in connection with the

19 public hearing to be held pursuant to P.L. , c. (C. )(pending

20 before the Legislature as this bill).<sup>1</sup>

21

22 13. (New section) a. Following regulatory approval pursuant to

23 section 5 of P.L. , c. (C. )(pending before the Legislature

24 as this bill) and the establishment of a mutual holding company, the

25 mutual holding company, <sup>1</sup>【through itself or any of its affiliates】 or

26 any affiliates benefiting from the establishment of a mutual holding

27 company<sup>1</sup>, shall pay an initial assessment to the State Treasury in

28 the amount of \$600,000,000 by June 1, 2022 if the effective time

29 precedes June 1, 2022. If the effective time is later than June 1,

30 2022, the initial assessment shall be due by June 1 of the calendar

31 year following the effective time. The initial assessment shall be a

32 one-time, nonrecurring State business tax on the <sup>1</sup>【reorganized

33 insurer】 mutual holding company and its affiliates<sup>1</sup>.

34 b. Following the initial assessment, and subject to subsections

35 c. and d. of this section, the mutual holding company, <sup>1</sup>【through

36 itself or any of its affiliates】 or any affiliates benefiting from the

37 establishment of a mutual holding company<sup>1</sup>, shall pay a limited

38 duration business tax by June 1 of each calendar year beginning

39 with the calendar year following the initial assessment, and for a

40 period of seventeen years. The total assessment, including both the

41 initial and annual assessments, shall not exceed \$1,250,000,000.

42 The annual assessments represent a limited duration state business

43 tax on the <sup>1</sup>【reorganized insurer's】 mutual holding company and its

44 affiliates<sup>1</sup> business payable by the mutual holding company or any

45 <sup>1</sup>【of its】<sup>1</sup> affiliates <sup>1</sup>benefiting from the establishment of a mutual



1 holding company<sup>1</sup>, and shall be based on the following schedule  
2 with earned premiums defined consistent with 45 C.F.R, 158.130:

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

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

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

14 c. The mutual holding company shall not pay any portion of  
15 the annual assessment for a given calendar year if the mutual  
16 holding company's system-wide health risk-based capital  
17 authorized control level would fall below 550 percent based on the  
18 standards for risk based capital for health organizations as adopted  
19 by the National Association of Insurance Commissioners following  
20 the payment as applied against the prior calendar year's risk based  
21 capital, or if in the opinion of any nationally recognized statistical  
22 rating organization, the group credit rating of the mutual holding  
23 company would not be considered investment grade. <sup>1</sup>The  
24 commissioner shall determine that the mutual holding company's  
25 system-wide health risk-based capital authorized control level  
26 would fall below 550 percent before payments shall be deferred  
27 pursuant to this subsection and paragraph (1) of subsection d. of this  
28 section. Neither the insurance company subsidiaries nor the  
29 reorganized insurer shall make dividends or distributions to the  
30 mutual holding company or any subsidiaries thereof until such time  
31 as the annual assessment deferred pursuant to paragraph (1) of  
32 subsection d. of this section is satisfied.<sup>1</sup>

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

43 (2) Notwithstanding the provisions of paragraph (1) of this  
44 subsection to the contrary, the assessment years pursuant to  
45 subsection b. of this section shall not be extended beyond, and the  
46 payment obligation pursuant to this section shall cease to exist after,  
47 the date that is <sup>1</sup>**[20]** 25<sup>1</sup> years from the effective time.

1 e. The initial assessment is a one-time business tax imposed on  
2 the mutual holding company system and the annual assessment is a  
3 limited duration business tax imposed on the mutual holding  
4 company system based on the reorganized insurer's business. The  
5 assessment of additional taxes, penalties and interest shall be as  
6 provided by the "State Uniform Tax Procedure Law," R.S.54:48-1  
7 et seq.; provided that no interest shall accrue or penalty shall be  
8 levied on a deferred annual assessment.

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

18  
19 15. (New section) a. The board of the mutual holding company  
20 shall be constituted of 22 directors as follows:

21 (1) 13 directors shall be elected, as provided in the bylaws, one  
22 of whom shall be the chair;

23 (2) 5 directors shall be public directors appointed by the  
24 Governor with the advice and consent of the Senate;

25 (3) 2 directors shall be public directors appointed by the Senate  
26 President; and

27 (4) 2 directors shall be public directors appointed by the Speaker  
28 of the General Assembly.

29 b. Upon the effective time, the term of office of the public  
30 directors of the reorganized insurer shall <sup>1</sup>not immediately<sup>1</sup> expire  
31 <sup>1</sup>but rather shall be temporarily continued and each such director  
32 shall continue in holdover status until such time as the appointing  
33 authority reappoints or renames such director or appoints or names  
34 another director<sup>1</sup>. The initial board of directors of the mutual  
35 holding company shall be:

36 (1) the elected directors of the reorganized insurer supplemented  
37 by additional elected directors nominated and elected by the mutual  
38 holding company's board after the effective time for a total number  
39 of elected directors specified in paragraph (1) of subsection a. of  
40 this section;

41 (2) 5 public directors appointed by the Governor with the advice  
42 and consent of the Senate <sup>1</sup>【within 30 days after the effective  
43 time】<sup>1</sup>;

44 (3) 2 public directors named by the Senate President <sup>1</sup>【within 30  
45 days after the effective time】<sup>1</sup>; and

1 (4) 2 public directors named by the Speaker of the General  
2 Assembly <sup>1</sup>【within 30 days after the effective time】<sup>1</sup>.

3 c. Each elected director shall have a term of three years with up  
4 to two successive three-year terms following the initial term for up  
5 to a total of three successive terms, and as provided for in the  
6 bylaws, with such other term and term limits specifically applying  
7 to the individual directors. The chief executive officer or president  
8 of the mutual holding company shall be an elected director at all  
9 times and shall not be subject to any term limit or election pursuant  
10 to section 9 of P.L. , c. (C. )(pending before the  
11 Legislature as this bill). The board of directors <sup>1</sup>【or the members】<sup>1</sup>,  
12 as provided by the bylaws, shall elect a chair, who shall be a  
13 member of the board elected pursuant to paragraph (1) of subsection  
14 a. of this section. Each director elected pursuant to paragraph (1) of  
15 subsection a. of this section shall meet the statutory and regulatory  
16 qualifications for the mutual holding company system's businesses  
17 and be free from conflicts of interest that would prohibit the person  
18 from materially executing the person's duties as a director. Each  
19 public director shall <sup>1</sup>【serve at the pleasure of the appointing  
20 authority】 have a term of three years with up to two successive  
21 three-year terms following the initial term, for a total of up to three  
22 successive terms. Upon the effective time, the terms of office of the  
23 public directors of the reorganized insurer shall continue until their  
24 respective successors are appointed and qualified. No period during  
25 which a public director holds over shall be deemed to be an  
26 extension of the public director's term of office for the purpose of  
27 determining the date on which a successor's term expires<sup>1</sup>.

28 d. There shall be a transitional period of 18 months following  
29 the effective time before elected directors of the mutual holding  
30 company are subject to election by its members pursuant to section  
31 9 of P.L. , c. (C. )(pending before the Legislature as this  
32 bill). The first election shall occur at the first annual meeting  
33 following the transitional period, and in accordance with the mutual  
34 holding company's bylaws.

35 <sup>1</sup>e. To the extent practicable, the mutual holding company shall  
36 make best efforts to reflect the racial, ethnic, and gender diversity  
37 of the communities that it serves throughout the organization,  
38 including the board of directors and executive leadership, to achieve  
39 its mission.<sup>1</sup>

40  
41 16. (New section) a. Upon the formation of a mutual holding  
42 company, the total number of full-time employees that were  
43 employed within a mutual holding company system shall be  
44 maintained for a transition period of <sup>1</sup>【24】 36<sup>1</sup> months following  
45 that formation based on the full-time employee count of the health

1 service corporation as of September 30, 2019, except as provided in  
2 subsection b. of this section.

3 b. This section shall not:

4 (1) supersede the terms of any collective bargaining  
5 agreement; or

6 (2) require a mutual holding company system to replace  
7 headcount lost due to voluntary attrition or terminations for cause,  
8 including for performance, or replace any loss of headcount  
9 attributable to a decline in enrollment, market share, or loss of a  
10 major account.

11 c. This section shall expire following the transition period of  
12 <sup>1</sup>[24] <sup>1</sup>36 months following the formation of a mutual holding  
13 company.

14

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

17 1. As used in this act:

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

20 “Alternative foundation plan” means the plan submitted to the  
21 Attorney General and the commissioner pursuant to section 18 of  
22 this act.

23 “Application” means the application for approval of a plan of  
24 conversion filed with the commissioner pursuant to section 3 of this  
25 act.

26 “Attorney General” means the Attorney General of the State of  
27 New Jersey.

28 “Commissioner” means the Commissioner of Banking and  
29 Insurance.

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

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

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

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

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

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

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

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. Notwithstanding the above, a reorganization approved by  
29 the commissioner pursuant to section 5 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)  
30 (pending before the Legislature as this bill), whereby the mutual  
31 holding company is a charitable and benevolent institution as  
32 provided in section 41 of P.L.1985, c.236 (C.17:48E-41), shall not  
33 constitute a material change in form for purposes of P.L.2001, c.131  
34 (C.17:48E-49 et seq.).

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

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

43       “Petition” means the petition for approval of a foundation plan  
44 submitted to the Attorney General pursuant to subsection a. of  
45 section 19 of this act.

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

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

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

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

13

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

16       1. Definitions.

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

20       a. An “affiliate” of, or person “affiliated” with, a specific  
21 person, is a person that directly, or indirectly through one or more  
22 intermediaries, controls, or is controlled by, or is under common  
23 control with, the person specified.

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

26       c. The term “control” (including the terms “controlling,”  
27 “controlled by” and “under common control with”) means the  
28 possession, direct or indirect, of the power to direct or cause the  
29 direction of the management and policies of a person, whether  
30 through the ownership of voting securities, by contract other than a  
31 commercial contract for goods or nonmanagement services, or  
32 otherwise, unless the power is the result of an official position with  
33 or corporate office held by the person. Control shall be presumed to  
34 exist if any person, directly or indirectly, owns, controls, holds with  
35 the power to vote, or holds proxies representing, 10% or more of the  
36 voting securities of any other person, provided that no such  
37 presumption of control shall of itself relieve any person so  
38 presumed to have control from any requirement of P.L.1970, c. 22  
39 (C.17:27A-1 et seq.). This presumption may be rebutted by a  
40 showing made in the manner provided by subsection j. of section 3  
41 of P.L.1970, c. 22 (C.17:27A3) that control does not exist in fact.  
42 The commissioner may determine, after furnishing all persons in  
43 interest notice and an opportunity to be heard, and making specific  
44 findings of fact to support such determination, that control exists in  
45 fact, notwithstanding the absence of a presumption to that effect.

46       d. An “insurance holding company system” consists of two or  
47 more affiliated persons, one or more of which is an insurer. A

1 mutual holding company system resulting from a mutualization and  
2 reorganization of a health service corporation pursuant to section 5  
3 of P.L. , c. (C. )(pending before the Legislature as this  
4 bill), shall be an insurance holding company system pursuant to  
5 P.L.1970, c. 22 (C.17:27A-1 et seq.).

6 e. The term “insurer” means any person or persons,  
7 corporation, partnership or company authorized by the laws of this  
8 State to transact the business of insurance or to operate a health  
9 maintenance organization in this State, except that it shall not  
10 include agencies, authorities or instrumentalities of the United  
11 States, its possessions and territories, the Commonwealth of Puerto  
12 Rico, the District of Columbia, or a state or political subdivision of  
13 a state.

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

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

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

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

24 j. “Acquisition” means any agreement, arrangement or  
25 activity, the consummation of which results in a person acquiring  
26 directly or indirectly the control of another person, and includes but  
27 is not limited to the acquisition of voting securities, and assets, and  
28 bulk reinsurance and mergers.

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

32 l. “Enterprise risk” means any activity, circumstance, event or  
33 series of events involving one or more affiliates of an insurer that, if  
34 not remedied promptly, is likely to have a material adverse effect  
35 upon the financial condition or liquidity of the insurer or its  
36 insurance holding company system as a whole, including, but not  
37 limited to, anything that would cause the insurer's Risk-Based  
38 Capital to fall into company action level as set forth in  
39 administrative rules adopted by the commissioner which reflect the  
40 standards set forth in the Risk-Based Capital For Insurers Model  
41 Act adopted by the National Association of Insurance  
42 Commissioners or would cause the insurer to be in hazardous  
43 financial condition as defined in administrative rules adopted by the  
44 commissioner which reflect the standards set forth in the Model  
45 Regulation adopted by the National Association of Insurance  
46 Commissioners to define standards and the commissioner's

1 authority over companies deemed to be in a hazardous  
2 financial condition.

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

4

5 19. (New section) a. The provisions of P.L. , c. (C. )  
6 (pending before the Legislature as this bill) shall be severable; and  
7 if any phrase, clause, sentence, or provision is deemed  
8 unenforceable, the remaining provisions of P.L. , c. (C. )  
9 (pending before the Legislature as this bill) shall be enforceable.

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

13

14 20. This act shall take effect immediately.