ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5119

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2020

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 5119.

As amended, this bill provides for the reorganization of a health service corporation.

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

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

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

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

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

Other than as otherwise provided, the bill provides that all property, assets, rights, liabilities, interest and relations of whatever kind of the health service corporation, and its subsidiaries, will be that of the mutual holding company system. The mutual holding company is no longer considered a health service corporation. Notwithstanding anything to the contrary, the provisions of current law that exempt health service corporations from taxes other than taxes on real estate and equipment and taxes on premiums continue to apply to a mutual holding company if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program. If the mutual holding company does not continue to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program, then the mutual holding company shall no longer be exempt from those taxes.

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

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

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

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

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

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

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

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

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

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

(3) qualified as an insurer.

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

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

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

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

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

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

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

(1) the formation of one or more subsidiaries;

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

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

(4) issuance, acquisition or transfer of capital stock of one or more companies; or

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

The bill provides that the mutual holding company is to ensure that any ownership interest in a subsidiary is held by the mutual holding

company and any profits generated by that interest are returned to the mutual holding company.

The bill provides that a health service corporation may submit an application to the commissioner to form a mutual holding company system. Upon submission of an application to the commissioner, a health service corporation shall immediately thereafter provide a copy of the application to the Attorney General. Prior to submission of the application, the board of directors of the health service corporation shall adopt a resolution proposing to transition to a mutual insurer and form a mutual holding company system, at a meeting of the board by a two-thirds affirmative vote of the total number of directors of the health service corporation. A copy of the minutes of the meeting at which that resolution is adopted shall be filed with the commissioner. The resolution shall include a plan to transition to a mutual insurer and form a mutual holding company system, including proposed articles of incorporation and bylaws for the mutual holding company and proposed articles of incorporation, certificates of formation, restatements of, or amendments to, existing articles of incorporation or bylaws, and plans of merger or consolidation, with respect to each entity to be formed, converted or otherwise subject or party to the transition transactions pursuant to the plan of mutualization and reorganization.

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

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

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

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

(4) The identity of those persons who shall serve as directors and officers of the mutual holding company, its intermediate holding companies, if any, and its subsidiaries, including the reorganized insurer, as of the effective time of the mutualization and reorganization. The plan shall specify the members of the board of

directors of the health service corporation who shall serve as initial directors of the mutual holding company;

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

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

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

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

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

The bill requires the commissioner to review the plan to mutualize and reorganize in accordance with the requirements of current law and the bill, including requirements for three public hearings.

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

(1) is contrary to law;

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

(3) does not benefit the interests of the policyholders of the health service corporation or treats them inequitably.

The bill provides that the commissioner may engage the services of experts and consultants to advise on any matters related to the application, and if a written study or other expert report is prepared, it is to be made available to the applicant within a reasonable period of time prior to the initial public hearing. Pursuant to the bill, the commissioner may also engage the services of a consultant to conduct a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation, and the general public. The engagement shall not be subject to Chapter 32 of Title 52 of the Revised Statutes and all costs related to such engagement for the examination and deliberations of the application shall be paid by the health service corporation that makes the filing, both for services prior to the effective time and for services after the effective time. At the expiration of 30 days after the final public hearing, the commissioner shall approve or disapprove the plan of mutualization and reorganization and shall set forth the decision in writing and shall state the reasons therefor. The commissioner shall inform the health service corporation of the specific reasons for the disapproval of any plan of mutualization and reorganization and provide a cure period of no shorter than 90 days to cure any deficiencies. Any disapproval shall be subject to judicial review as a final decision of a State administrative agency.

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

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

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

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

The bill provides that a mutual holding company system is considered an insurance holding company system and subject to the current law governing insurance holding company systems, with certain exceptions. In addition, the bill provides that the commissioner possesses supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and exam its operations pursuant to P.L. 1970, c.22 (C.17:27A-1 et seq.).

The bill allows a mutual holding company or a non-insurance subsidiary to make any lawful investments including directly or

indirectly acquiring or otherwise holding the stock or other ownership interests of any nonprofit or for-profit entities. Insurance company subsidiaries and the reorganized insurer may make investments, including investments in non-insurance entities subject to investment and asset limitations pursuant to applicable laws and rules relating to insurance companies.

The bill requires the mutual holding company and its non-insurance and insurance company subsidiaries to continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services.

The bill provides that the application submitted pursuant to the bill be a public record, except for certain confidential documents which shall not be public records. The commissioner is to provide the public with prompt and reasonable access to public records relating to the proposed reorganization of the health service corporation.

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

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

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

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

(3) other reasonable factors.

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

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

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

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

Upon any voluntary dissolution of a mutual holding company in accordance with current law, the mutual holding company shall adopt a plan of dissolution. The plan shall provide for distribution of any assets of the mutual holding company remaining after the discharge of all liabilities and obligations.

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

Following approval of a transition pursuant to the bill, and the establishment of a mutual holding company, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay an initial assessment to the State Treasury in the amount of $600,000,000 by June 1, 2022 if the effective time precedes June 1, 2022. If the effective time is later than June 1, 2022, the initial assessment shall be due by June 1 of the calendar year following the effective time. The initial assessment shall be a one-time, nonrecurring State business tax on the mutual holding company and its affiliates.

Following the initial assessment, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay a limited duration business tax by June 1 of each calendar year beginning with the calendar year following the initial assessment, and for a period of seventeen years. The total assessment, including both the initial and annual assessments, shall not exceed $1,250,000,000. The annual assessments represent a limited duration state business tax on the mutual holding company and its affiliates business payable by the mutual holding company or any affiliates benefiting from the establishment of a mutual holding company, and shall be based on the following schedule with earned premiums defined consistent with 45 CFR 158.130:

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

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

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

The bill provides that the mutual holding company shall not pay any portion of the annual assessment for a given calendar year if the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent based on the standards for risk based capital for health organizations as adopted by the National Association of Insurance Commissioners following the payment as applied against the prior calendar year's risk based capital, or if in the opinion of any nationally recognized statistical rating organization, the group credit rating of the mutual holding company would not be considered investment grade. The commissioner is to determine that the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent before payments are to be deferred pursuant to the bill. Neither the insurance company subsidiaries nor the reorganized insurer are to make dividends or distributions to the mutual holding company or any subsidiaries thereof until such time as the annual assessment deferred pursuant to the bill is satisfied.

If the mutual holding company does not pay the annual assessment for a given calendar year, the annual assessment that was not paid shall be deferred to the subsequent calendar year, which shall be the deferral date for the deferred annual assessment, with all subsequent annual assessments also deferred by another calendar year so that no two annual assessments are due in the same calendar year. If an annual assessment is deferred, that annual assessment shall not be required by law to be paid until the deferral date.

Notwithstanding the provisions of the bill to the contrary, the assessment years shall not be extended beyond, and the payment obligation shall cease to exist after, the date that is 25 years from the effective time.

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

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

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

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

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

Upon the effective time of the conversion to a mutual holding company system, the term of office of the public directors of the reorganized insurer shall not immediately expire but rather be temporarily continued with each such director continuing in holdover

status until such time as the appointing authority reappoints or renames such director or appoints or names another director. The initial board of directors of the mutual holding company shall be:

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

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

(3) 2 public directors named by the Senate President; and

(4) 2 public directors named by the Speaker of the General Assembly.

The bill provides that each elected director shall have a term of three years with up to two successive three-year terms following the initial term for up to a total of three successive terms, and as provided for in the bylaws, with such other term and term limits specifically applying to the individual directors. The chief executive officer or president of the mutual holding company shall be an elected director at all times and shall not be subject to any term limit or election. Each director shall meet the statutory and regulatory qualifications for the mutual holding company system's businesses and be free from conflicts of interest that would prohibit the person from materially executing the person's duties as a director. Each public director shall have a term of three years with up to two successive three-year terms following the initial term, for a total of up to three successive terms. Upon the effective time, the terms of office of the public directors of the reorganized insurer shall continue until their respective successors are appointed and qualified. No period during which a public director holds over shall be deemed to be an extension of the public director's term of office for the purpose of determining the date on which a successor's term expires.

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

The bill provides that, to the extent practicable, the mutual holding company is to make best efforts to reflect the racial, ethnic, and gender diversity of the communities that it serves throughout the organization, including the board of directors and executive leadership, to achieve its mission.

Upon the formation of a mutual holding company, the total number of full-time employees that were employed within a mutual holding company system shall be maintained for a transition period of 36 months following that formation based on the full-time employee

count of the health service corporation as of September 30, 2019, with certain exceptions.

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

As amended and reported, this bill is identical to Senate Bill No. 3218, as amended and reported by the Senate Commerce Committee on December 14, 2020.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that the provisions of current law that exempt health service corporations from taxes other than taxes on real estate and equipment and taxes on premiums continue to apply to a mutual holding company if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program or the New Jersey Small Employer Health Benefits Program;

(2) clarify that the provisions of the Insurance Holding Company System Act (C.17:27A-1 et seq.) apply to the reorganized insurer;

(3) add the merger or consolidation of two or more companies to the means by which the subsidiaries of a mutual holding company system may be formed;

(4) require the mutual holding company to ensure that any ownership interest in a subsidiary be held by the mutual holding company and any profits generated by that interest be returned to the mutual holding company;

(5) provide that, upon submission of an application to the commissioner, a health service corporation must provide a copy of the application to the Attorney General;

(6) provide that the commissioner is to hold three public hearings on the plan to form a mutual holding company within 90 days after the commissioner determines that the filing is complete, with notice provided by publication in a manner satisfactory to the commissioner;

(7) provide that the commissioner is to approve of a plan of mutualization and organization unless the commissioner finds the plan, among certain other requirements, does not benefit the interests of the policyholders of the health service corporation or treats them inequitably;

(8) permit the commissioner to engage the services of a consultant to conduct a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation and the general public;

(9) provide that if a written study or other expert report is prepared, it shall be made available to the health service corporation applying for reorganization, within a reasonable period of time prior to the initial public hearing;

(10) provide that commissioner shall possess supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and exam its operations pursuant to P.L. 1970, c.22 (C.17:27A-1 et seq.);

(11) require the mutual holding company and its non-insurance and insurance company subsidiaries to continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services;

(12) provide that the application submitted pursuant to the bill be a public record, except for certain confidential documents;

(13) provide that the commissioner is to determine that the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent before the deferment of the annual assessment for a given calendar year;

(14) extend the date beyond which the assessment years may not be extended to 25 years from the effective time from 20 years from the effective time;

(15) provide that, to the extent practicable, the mutual holding company is to make best efforts to reflect the racial, ethnic, and gender diversity of the communities that it serves throughout the organization, including the board of directors and executive leadership, to achieve its mission;

(16) make certain changes for federal tax filing purposes;

(17) extend certain employment protection provisions for a period of 36 months following the formation of the mutual holding company from 24 months following the formation of the mutual holding company; and

(18) make certain changes concerning the appointment of public directors.