

[First Reprint]

SENATE, No. 3218

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:

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District 35 (Bergen and Passaic)

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District 36 (Bergen and Passaic)

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District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Provides for reorganization of health service corporation.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on December 14, 2020,
with amendments.



(Sponsorship Updated As Of: 11/19/2020)

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
27 P.L. , c. (C.)(pending before the Legislature as this bill),
28 also will promote vital investments and growth in health services
29 and diversified businesses for the benefit of its members and the
30 State.

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted December 14, 2020.

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

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

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

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

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

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

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

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

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

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

46 “Insurance company” means any entity, other than the
47 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 P.L. ,
16 c. (C.)(pending before the Legislature as this bill) for the
17 purpose of holding, directly or indirectly, one hundred percent
18 interest in a reorganized insurer pursuant to a plan of reorganization
19 as provided in P.L. , c. (C.)(pending before the
20 Legislature as this bill). A mutual holding company is an insurance
21 holding company system pursuant to P.L.1970, c.22 (C.17:27A-1 et
22 seq.), and shall not be qualified as an insurer licensed to issue
23 insurance policies, insurance contracts or health benefit plans.

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

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

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

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

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

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

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

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

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

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

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

27 b. Other than as provided pursuant to P.L. , c. (C.)
28 (pending before the Legislature as this bill), all property, assets,
29 rights, liabilities, interest and relations of whatever kind of the
30 health service corporation, and its subsidiaries, shall be that of the
31 mutual holding company system. The mutual holding company
32 shall not be considered a health service corporation.
33 Notwithstanding anything to the contrary, the provisions of section
34 41 of P.L.1985, c.236 (C.17:48E-41) shall continue to apply to a
35 mutual holding company if the mutual holding company continues
36 to participate in the New Jersey Individual Health Coverage Program
37 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey
38 Small Employer Health Benefits Program pursuant to P.L.1992, c.162
39 (C.17B:27A-17 et seq.). If the mutual holding company does not
40 participate in the New Jersey Individual Health Coverage Program
41 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey
42 Small Employer Health Benefits Program pursuant to P.L.1992, c.162
43 (C.17B:27A-17 et seq.) the provisions of section 41 of P.L.1985,
44 c.236 (C.17:48E-41) shall no longer apply¹.

45 c. The health insurance duties and obligations pursuant to
46 P.L.1985, c.236 (C.17:48E-1 et seq.) shall continue and remain in
47 the succeeding reorganized insurer reorganizing pursuant to
48 P.L. , c. (C.)(pending before the Legislature as this bill),

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

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

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

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

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

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

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

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

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

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

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

47 f. The insurance premium rate tax cap law provided by
48 subsection a. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall

1 apply to the companies within the mutual holding company system
2 that have an insurance premium tax liability, and the exclusion from
3 the tax cap applicable to a health service corporation pursuant to
4 subsection b. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall not
5 apply to the mutual holding company or any entity within the
6 mutual holding company system, including the reorganized insurer,
7 that has an insurance premium tax liability.

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

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

37
38 4. (New section) a. A health service corporation organized
39 pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.) may reorganize to
40 create a mutual holding company system pursuant to a plan of
41 reorganization at the same time it applies to transition to a mutual
42 insurer pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.).
43 Thereafter, the succeeding mutual holding company system shall be
44 operated in a manner consistent with sections 1 and 3 of
45 P.L. , c. (C.) (pending before the Legislature as this bill).

46 b. The mutual holding company system shall consist of a
47 mutual holding company and one or more controlled nonprofit or
48 for-profit subsidiaries, including the reorganized insurer, and shall

1 be operated for the benefit of its members. The mission of a mutual
2 holding company shall be as specified in subsection a. of section 3
3 of P.L. , c. (C.) (pending before the Legislature as this
4 bill).

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

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

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

18 (3) qualified as an insurer.

19 The writing of insurance shall be permitted only through the
20 reorganized insurer and other insurance company subsidiaries or
21 investments of the mutual holding company. Nothing herein shall
22 alter the oversight of the commissioner with respect to the mutual
23 holding company and its non-insurance subsidiaries provided for
24 pursuant to applicable laws and rules of this State relating to
25 insurance holding company systems.

26 d. A mutual holding company shall be a nonprofit entity
27 incorporated under, and shall conduct its business pursuant to, the
28 provisions of Title 15A of the New Jersey Statutes, except that in
29 situations in which the provisions of that title are inconsistent with
30 the provisions of P.L. , c. (C.) (pending before the
31 Legislature as this bill), the provisions of P.L. ,
32 c. (C.)(pending before the Legislature as this bill) shall
33 govern.

34 e. At the effective time, members shall receive membership
35 interests of the mutual holding company, and thereafter 100 percent
36 of the membership interests of the mutual holding company shall
37 continue to be held by members, in each case, in the manner set
38 forth in the articles of incorporation and bylaws of the mutual
39 holding company.

40 f. The shares of the capital stock of the reorganized insurer
41 shall be:

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

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

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

- 3 (1) the formation of one or more subsidiaries;
4 (2) amendment or restatement of the articles of incorporation
5 and bylaws of one or more companies;
6 (3) transfer of assets and liabilities among two or more
7 companies; ¹[or]¹
8 (4) issuance, acquisition or transfer of capital stock of one or
9 more companies ¹; or
10 (5) merger or consolidation of two or more companies.

11 h. The mutual holding company shall ensure that any
12 ownership interest in a subsidiary shall be held by the mutual
13 holding company, and that any profits generated by that interest are
14 returned to the mutual holding company¹.

15
16 5. (New section) a. A health service corporation may submit
17 an application to the commissioner to form a mutual holding
18 company system. ¹Upon submission of an application to the
19 commissioner, a health service corporation shall immediately
20 thereafter provide a copy of the application to the Attorney
21 General.¹ Prior to submission of the application, the board of
22 directors of the health service corporation shall adopt a resolution
23 proposing to transition to a mutual insurer and form a mutual
24 holding company system, at a meeting of the board by a two-thirds
25 affirmative vote of the total number of directors of the health
26 service corporation. A copy of the minutes of the meeting at which
27 that resolution is adopted shall be filed with the commissioner. The
28 resolution shall include a plan to transition to a mutual insurer and
29 form a mutual holding company system, including proposed articles
30 of incorporation and bylaws for the mutual holding company and
31 proposed articles of incorporation, certificates of formation,
32 restatements of, or amendments to, existing articles of incorporation
33 or bylaws, and plans of merger or consolidation, with respect to
34 each entity to be formed, converted or otherwise subject or party to
35 the transition transactions pursuant to the plan of mutualization and
36 reorganization.

37 In addition to including information required pursuant to section
38 2 of P.L.1995, c.196 (C.17:48E-46) for the plan of mutualization,
39 with respect to the formation of a mutual holding company system
40 for purposes of this provision, the plan shall include:

- 41 (1) A description of the structure of the mutual holding
42 company system consistent with the requirements set forth in
43 P.L. , c. (C.)(pending before the Legislature as this bill);
44 (2) A description of the qualifications for members'
45 membership in, and the rights of members of, the mutual holding
46 company consistent with the requirements set forth in
47 P.L. , c. (C.)(pending before the Legislature as this bill);

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

11 (4) The identity of those persons who shall serve as directors
12 and officers of the mutual holding company, its intermediate
13 holding companies, if any, and its subsidiaries, including the
14 reorganized insurer, as of the effective time of the mutualization
15 and reorganization. The plan shall specify the members of the board
16 of directors of the health service corporation who shall serve as
17 initial directors of the mutual holding company, as provided in
18 section 15 of P.L. , c. (C.)(pending before the Legislature
19 as this bill);

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

26 (6) A ¹**【representation】** certification¹ that, following the
27 mutualization and reorganization, the material terms and conditions
28 of insurance coverage of:

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

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

35 (7) A ¹**【representation】** certification¹ that, following the
36 mutualization and reorganization, the material terms and conditions
37 of subordinated surplus notes and other contractual obligations,
38 other than those arising pursuant to policies described in paragraph
39 (6) of this subsection, of the health service corporation and its
40 subsidiaries shall, subject to the rights of the health service
41 corporation and its subsidiaries pursuant to applicable law, and to
42 the extent those obligations are not otherwise satisfied or terminated
43 in accordance with their terms, remain in effect upon the transfer of
44 those obligations to, and assumption of those obligations by, the
45 reorganized insurer or one or more other subsidiaries of the mutual
46 holding company; and

47 (8) A ¹**【representation】** certification¹ that, following the
48 mutualization and reorganization, the mutual holding company shall

1 comply with the employment requirements as provided in section
2 16 of P.L. , c. (C.) (pending before the Legislature as this
3 bill).

4 b. Upon the affirmative vote of the board of directors
5 complying with subsection a. of this section, the plan to form a
6 mutual holding company system pursuant to
7 P.L. , c. (C.)(pending before the Legislature as this bill)
8 shall be filed with the commissioner for approval. Upon filing the
9 plan to form a mutual holding company system, the obligations
10 pursuant to section 4 of P.L.2017, c.100 (C.17:48E-17.3) shall be
11 suspended during the pendency of the commissioner's review
12 process pursuant to this subsection; if the commissioner approves
13 the plan to form a mutual holding company, any obligations arising
14 pursuant to section 4 of P.L.2017, c.100 (C.17:48E-17.3) shall be
15 deemed satisfied by the initial assessment pursuant to subsection a.
16 of section 13 of P.L. , c. (C.) (pending before the
17 Legislature as this bill). The commissioner shall review the plan to
18 mutualize and reorganize in accordance with the requirements of
19 subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47). ¹【The
20 public hearing conducted pursuant to subsection a. of section 3 of
21 P.L.1995, c.196 (C.17:48E-47)】 The commissioner shall hold three
22 public hearings on the plan to form a mutual holding company
23 within 90 days after the commissioner determines that the filing is
24 complete, with notice provided by publication in a manner
25 satisfactory to the commissioner. The public hearings¹ shall also
26 address the plan of reorganization to the mutual holding company
27 system required by P.L. , c. (C.)(pending before the
28 Legislature as this bill). Consistent with subsection a. of section 3
29 of P.L.1995, c.196 (C.17:48E-47), the commissioner shall approve a
30 plan of mutualization and reorganization unless the commissioner
31 finds the plan:

32 (1) is contrary to law;

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

36 (3) ¹【prejudices】 does not benefit¹ the interests of the
37 policyholders of the health service corporation or treats them
38 inequitably.

39 The commissioner may engage the services of experts and
40 consultants to advise on any matters related to the application ¹, and
41 if a written study or other expert report is prepared, it shall be made
42 available to the applicant within a reasonable period of time prior to
43 the initial public hearing. The commissioner may also engage the
44 services of a consultant to conduct a health impact study of the
45 effects of the reorganization on the health of the policy holders of
46 the health service corporation, and the general public¹. The
47 engagement shall not be subject to Chapter 32 of Title 52 of the

1 Revised Statutes and all costs related to such engagement for the
2 examination and deliberations of the application shall be paid by the
3 health service corporation that makes the filing, both for services
4 prior to the effective time and for services after the effective time.
5 At the expiration of 30 days after the ¹final¹ public hearing, the
6 commissioner shall approve or disapprove the plan of mutualization
7 and reorganization and shall set forth the decision in writing and
8 shall state the reasons therefor. The commissioner shall inform the
9 health service corporation of the specific reasons for the disapproval
10 of any plan of mutualization and reorganization and provide a cure
11 period of no shorter than 90 days to cure any deficiencies. Any
12 disapproval shall be subject to judicial review as a final decision of
13 a State administrative agency.

14 c. A plan of mutualization and reorganization may be amended,
15 terminated, or approved consistent with
16 P.L. , c. (C.)(pending before the Legislature as this bill).
17 A plan of mutualization and reorganization adopted by the board of
18 directors of the applicant may be:

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

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

26 d. An approved plan of mutualization and reorganization shall
27 be effective at the effective time specified in the plan of
28 reorganization, or such other time subsequently requested by the
29 applicant and agreed to by the commissioner.

30

31 6. (New section) A mutual holding company system shall be
32 considered an insurance holding company system and subject to
33 P.L.1970, c.22 (C.17:27A-1 et seq.). ¹The commissioner shall
34 possess supervisory powers with respect to the insurance holding
35 company system which shall include the authority to monitor the
36 mutual holding company systems financial health, enterprise risk,
37 and examine its operations pursuant to P.L.1070, c.22 (C.17:27A-
38 1 et seq.).¹ Notwithstanding the foregoing, solely with regard to the
39 transactions set forth in the application to form a mutual holding
40 company system filed pursuant to section 5
41 of P.L. , c. (C.)(pending before the Legislature as this
42 bill), a mutual holding company system shall not be required to seek
43 separate approval for an acquisition of controlling stock, ownership
44 interest, assets or control, or for a ¹merger or consolidation,¹ share
45 exchange, organization, or reorganization of insurance companies
46 within the mutual holding company system, or other transactions set
47 forth in the application to form a mutual holding company system.
48 Thereafter, any future transactions not approved as part of the

1 application to form a mutual holding company system, shall be
2 subject to the applicable requirements of P.L.1970, c.22 (C.17:27A-
3 1 et seq.). As an insurance holding company system subject to
4 P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner shall have
5 the power to order production of any records, books, or other
6 information and papers in the possession of a mutual holding
7 company system as are reasonably necessary to ascertain the
8 financial condition of the mutual holding company system or to
9 determine compliance with P.L. , c. (C.)(pending before
10 the Legislature as this bill).

11

12 7. (New section)a. A mutual holding company or a non-
13 insurance subsidiary may, alone or together, make any lawful
14 investments including directly or indirectly acquiring or otherwise
15 holding the stock or other ownership interests of any nonprofit or
16 for-profit entities.

17 b. Insurance company subsidiaries and the reorganized insurer
18 may make investments, including investments in non-insurance
19 entities subject to investment and asset limitations pursuant to
20 applicable laws and rules relating to insurance companies.

21 ¹c. The mutual holding company and its non-insurance and
22 insurance company subsidiaries shall continue to operate a diverse
23 supplier program that promotes and invests in the utilization of
24 minority-owned and women-owned businesses in the procurement
25 of goods and services, including professional services. The mutual
26 holding company shall include in its annual filing pursuant to
27 subsection b. of section 11 of P.L. , c. (C.) (pending
28 before the Legislature as this bill) information on this subsection.¹

29

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

39

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

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

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

48 (3) other reasonable factors.

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

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

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

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

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

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

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

42

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

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

3

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

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

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

21

22 ¹12. (New section) All information, documents and copies of
23 information and documents obtained by or disclosed to the
24 commissioner, the Department of Banking and Insurance, or any
25 other person in the course of preparing, filing or processing an
26 application to reorganize pursuant to P.L. ,
27 c. (C.)(pending before the Legislature as this bill), including
28 the annual statement required pursuant to section 11 of P.L. ,
29 c. (C.)(pending before the Legislature as this bill), other
30 than information or documents distributed to policyholders in
31 connection with the plan of reorganization or election of directors,
32 shall be subject to the confidentiality requirements set forth in
33 section 6 of P.L.1970, c.22 (C.17:27A-6).¹

34

35 ¹12. (New section) a. The application submitted pursuant to
36 section 5 of P.L. , c. (C.)(pending before the Legislature as
37 this bill) shall be a public record, except for the following
38 documents, which shall be confidential and not public records:

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

40 (2) the business plan, capitalization plan, financial projections,
41 and market competitive data; and

42 (3) any other information the commissioner determines could
43 result in harm to the health service corporation, mutual holding
44 company, reorganized insurer or other insurance entity within the
45 mutual holding company system, or the public interest, if disclosed.

46 b. The commissioner shall provide the public with prompt and
47 reasonable access to public records relating to the proposed
48 reorganization of the health service corporation. The commissioner

1 shall make the public records received pursuant to
2 P.L. , c. (C.)(pending before the Legislature as this bill)
3 available for inspection at no cost to the public. These public
4 records shall be made available to the public in connection with the
5 public hearing to be held pursuant to P.L. , c. (C.)(pending
6 before the Legislature as this bill).¹

7
8 13. (New section) a. Following regulatory approval pursuant to
9 section 5 of P.L. , c. (C.)(pending before the Legislature
10 as this bill) and the establishment of a mutual holding company, the
11 mutual holding company, ¹**【through itself or any of its affiliates】** or
12 any affiliates benefiting from the establishment of a mutual holding
13 company¹, shall pay an initial assessment to the State Treasury in
14 the amount of \$600,000,000 by June 1, 2022 if the effective time
15 precedes June 1, 2022. If the effective time is later than June 1,
16 2022, the initial assessment shall be due by June 1 of the calendar
17 year following the effective time. The initial assessment shall be a
18 one-time, nonrecurring State business tax on the ¹**【reorganized**
19 **insurer】** mutual holding company and its affiliates¹.

20 b. Following the initial assessment, and subject to subsections
21 c. and d. of this section, the mutual holding company, ¹**【through**
22 **itself or any of its affiliates】** or any affiliates benefiting from the
23 establishment of a mutual holding company¹, shall pay a limited
24 duration business tax by June 1 of each calendar year beginning
25 with the calendar year following the initial assessment, and for a
26 period of seventeen years. The total assessment, including both the
27 initial and annual assessments, shall not exceed \$1,250,000,000.
28 The annual assessments represent a limited duration state business
29 tax on the ¹**【reorganized insurer's】** mutual holding company and its
30 affiliates¹ business payable by the mutual holding company or any
31 ¹**【of its】**¹ affiliates ¹benefiting from the establishment of a mutual
32 holding company¹, and shall be based on the following schedule
33 with earned premiums defined consistent with 45 C.F.R, 158.130:

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

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

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

45 c. The mutual holding company shall not pay any portion of
46 the annual assessment for a given calendar year if the mutual
47 holding company's system-wide health risk-based capital

1 authorized control level would fall below 550 percent based on the
2 standards for risk based capital for health organizations as adopted
3 by the National Association of Insurance Commissioners following
4 the payment as applied against the prior calendar year's risk based
5 capital, or if in the opinion of any nationally recognized statistical
6 rating organization, the group credit rating of the mutual holding
7 company would not be considered investment grade. ¹The
8 commissioner shall determine that the mutual holding company's
9 system-wide health risk-based capital authorized control level
10 would fall below 550 percent before payments shall be deferred
11 pursuant to this subsection and paragraph (1) of subsection d. of this
12 section. Neither the insurance company subsidiaries nor the
13 reorganized insurer shall make dividends or distributions to the
14 mutual holding company or any subsidiaries thereof until such time
15 as the annual assessment deferred pursuant to paragraph (1) of
16 subsection d. of this section is satisfied.¹

17 d. (1) If the mutual holding company does not pay the annual
18 assessment for a given calendar year pursuant to subsection c. of
19 this section, the annual assessment that was not paid shall be
20 deferred to the subsequent calendar year, which shall be the deferral
21 date for the deferred annual assessment, with all subsequent annual
22 assessments pursuant to subsection b. of this section also deferred
23 by another calendar year so that no two annual assessments are due
24 in the same calendar year. If an annual assessment is deferred, that
25 annual assessment shall not be required by law to be paid until the
26 deferral date.

27 (2) Notwithstanding the provisions of paragraph (1) of this
28 subsection to the contrary, the assessment years pursuant to
29 subsection b. of this section shall not be extended beyond, and the
30 payment obligation pursuant to this section shall cease to exist after,
31 the date that is ¹~~20~~ 25¹ years from the effective time.

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

40

41 14. (New section) A mutual holding company formed pursuant
42 to P.L. , c. (C.)(pending before the Legislature as this
43 bill) shall not convert to a for-profit stock holding company. The
44 provisions of P.L.2001, c.131 (C.17:48E-49 et seq.) providing for
45 conversion of a health service corporation to a domestic stock
46 insurer shall not apply to a mutual holding company formed
47 pursuant to P.L. , c. (C.)(pending before the Legislature
48 as this bill).

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

3 (1) 13 directors shall be elected, as provided in the bylaws, one
4 of whom shall be the chair;

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

7 (3) 2 directors shall be public directors appointed by the Senate
8 President; and

9 (4) 2 directors shall be public directors appointed by the Speaker
10 of the General Assembly.

11 b. Upon the effective time, the term of office of the public
12 directors of the reorganized insurer shall not immediately¹ expire
13 but rather shall be temporarily continued and each such director
14 shall continue in holdover status until such time as the appointing
15 authority reappoints or renames such director or appoints or names
16 another director¹. The initial board of directors of the mutual
17 holding company shall be:

18 (1) the elected directors of the reorganized insurer supplemented
19 by additional elected directors nominated and elected by the mutual
20 holding company's board after the effective time for a total number
21 of elected directors specified in paragraph (1) of subsection a. of
22 this section;

23 (2) 5 public directors appointed by the Governor with the advice
24 and consent of the Senate ¹**within 30 days after the effective**
25 **time**¹;

26 (3) 2 public directors named by the Senate President ¹**within 30**
27 **days after the effective time**¹; and

28 (4) 2 public directors named by the Speaker of the General
29 Assembly ¹**within 30 days after the effective time**¹.

30 c. Each elected director shall have a term of three years with up
31 to two successive three-year terms following the initial term for up
32 to a total of three successive terms, and as provided for in the
33 bylaws, with such other term and term limits specifically applying
34 to the individual directors. The chief executive officer or president
35 of the mutual holding company shall be an elected director at all
36 times and shall not be subject to any term limit or election pursuant
37 to section 9 of P.L. , c. (C.)(pending before the
38 Legislature as this bill). The board of directors ¹**or the members**¹,
39 as provided by the bylaws, shall elect a chair, who shall be a
40 member of the board elected pursuant to paragraph (1) of subsection
41 a. of this section. Each director elected pursuant to paragraph (1) of
42 subsection a. of this section shall meet the statutory and regulatory
43 qualifications for the mutual holding company system's businesses
44 and be free from conflicts of interest that would prohibit the person
45 from materially executing the person's duties as a director. Each
46 public director shall ¹**serve at the pleasure of the appointing**
47 **authority** have a term of three years with up to two successive

1 three-year terms following the initial term, for a total of up to three
2 successive terms. Upon the effective time, the terms of office of the
3 public directors of the reorganized insurer shall continue until their
4 respective successors are appointed and qualified. No period during
5 which a public director holds over shall be deemed to be an
6 extension of the public director's term of office for the purpose of
7 determining the date on which a successor's term expires¹.

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

15 ¹e. To the extent practicable, the mutual holding company shall
16 make best efforts to reflect the racial, ethnic, and gender diversity
17 of the communities that it serves throughout the organization,
18 including the board of directors and executive leadership, to achieve
19 its mission.¹

20
21 16. (New section) a. Upon the formation of a mutual holding
22 company, the total number of full-time employees that were
23 employed within a mutual holding company system shall be
24 maintained for a transition period of ¹[24] ¹36 months following
25 that formation based on the full-time employee count of the health
26 service corporation as of September 30, 2019, except as provided in
27 subsection b. of this section.

28 b. This section shall not:

29 (1) supersede the terms of any collective bargaining agreement;
30 or

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

36 c. This section shall expire following the transition period of
37 ¹[24] ¹36 months following the formation of a mutual holding
38 company.

39
40 17. Section 1 of P.L.2001, c.131 (C.17:48E-49) is amended to
41 read as follows:

42 1. As used in this act:

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

45 "Alternative foundation plan" means the plan submitted to the
46 Attorney General and the commissioner pursuant to section 18 of
47 this act.

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

4 “Attorney General” means the Attorney General of the State of
5 New Jersey.

6 “Commissioner” means the Commissioner of Banking and
7 Insurance.

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

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

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

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

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

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

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

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

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

1 residents of New Jersey equal or exceed 50 percent of the aggregate
2 revenues from all nonconforming affiliates; and (3) the aggregate
3 assets of all nonconforming affiliates do not exceed 50 percent of
4 the aggregate assets of the health service corporation and all
5 affiliates. Notwithstanding the above, a reorganization approved by
6 the commissioner pursuant to section 5 of P.L. _____, c. (C. _____)
7 (pending before the Legislature as this bill), whereby the mutual
8 holding company is a charitable and benevolent institution as
9 provided in section 41 of P.L.1985, c.236 (C.17:48E-41), shall not
10 constitute a material change in form for purposes of P.L.2001, c.131
11 (C.17:48E-49 et seq.).

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

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

20 “Petition” means the petition for approval of a foundation plan
21 submitted to the Attorney General pursuant to subsection a. of
22 section 19 of this act.

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

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

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

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

35
36 18. Section 1 of P.L.1970, c.22 (C.17:27A-1) is amended to read
37 as follows:

38 1. Definitions.

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

42 a. An “affiliate” of, or person “affiliated” with, a specific
43 person, is a person that directly, or indirectly through one or more
44 intermediaries, controls, or is controlled by, or is under common
45 control with, the person specified.

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

1 c. The term “control” (including the terms “controlling,”
2 “controlled by” and “under common control with”) means the
3 possession, direct or indirect, of the power to direct or cause the
4 direction of the management and policies of a person, whether
5 through the ownership of voting securities, by contract other than a
6 commercial contract for goods or nonmanagement services, or
7 otherwise, unless the power is the result of an official position with
8 or corporate office held by the person. Control shall be presumed to
9 exist if any person, directly or indirectly, owns, controls, holds with
10 the power to vote, or holds proxies representing, 10% or more of the
11 voting securities of any other person, provided that no such
12 presumption of control shall of itself relieve any person so
13 presumed to have control from any requirement of P.L.1970, c.22
14 (C.17:27A-1 et seq.). This presumption may be rebutted by a
15 showing made in the manner provided by subsection j. of section 3
16 of P.L.1970, c.22 (C.17:27A3) that control does not exist in fact.
17 The commissioner may determine, after furnishing all persons in
18 interest notice and an opportunity to be heard, and making specific
19 findings of fact to support such determination, that control exists in
20 fact, notwithstanding the absence of a presumption to that effect.

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

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

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

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

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

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

46 j. “Acquisition” means any agreement, arrangement or
47 activity, the consummation of which results in a person acquiring
48 directly or indirectly the control of another person, and includes but

1 is not limited to the acquisition of voting securities, and assets, and
2 bulk reinsurance and mergers.

3 k. "Health maintenance organization" means any person
4 operating under a certificate of authority issued pursuant to
5 P.L.1973, c.337 (C.26:2J-1 et seq.).

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

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

24

25 19. (New section) a. The provisions of P.L. , c. (C.)
26 (pending before the Legislature as this bill) shall be severable; and
27 if any phrase, clause, sentence, or provision is deemed
28 unenforceable, the remaining provisions of P.L. , c. (C.)
29 (pending before the Legislature as this bill) shall be enforceable.

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

33

34 20. This act shall take effect immediately.