

ASSEMBLY, No. 1224

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

SYNOPSIS

Clarifies charitable role of health service corporations, revises membership of board of directors, establishes process to determine efficient level of surplus, and requires timely publication of certain information by DOBI.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning health service corporations and the publication
2 of certain health insurance carrier information, amending and
3 supplementing P.L.1985, c.236 and supplementing P.L.1997,
4 c.192 (C.26:2S-1 et seq.).

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

8
9 1. Section 3 of P.L.1985, c.236 (C.17:48E-3) is amended to
10 read as follows:

11 3. a. **[No]** A health service corporation shall not be established
12 as a corporation organized for pecuniary profit. Every health
13 service corporation established pursuant to the provisions of **[this**
14 **act]** P.L.1985, c.236 (C.17:48E-1 et seq.) shall be operated for the
15 benefit of its subscribers and shall have a charitable mission. The
16 charitable mission of the health service corporation shall be to:

17 (1) fulfill its obligation as an insurer of last resort in this State;

18 (2) provide affordable and accessible health insurance to
19 subscribers;

20 (3) assist and support public and private health care initiatives
21 for individuals without health insurance;

22 (4) promote the integration of the health care system that meets
23 the health care needs of the residents of the State of New Jersey;

24 (5) acknowledge its obligation to the residents of this State to
25 make health care coverage available to underserved markets by
26 supporting and supplying community services in connection with
27 the provision of health care; and

28 (6) recognize an ongoing responsibility to contribute to
29 fundamental improvements in the overall health status of all New
30 Jersey residents.

31 A health service corporation shall develop goals, objectives, and
32 strategies for carrying out, in accordance with this section, its
33 statutory mission.

34 b. No person, firm, association or corporation, other than a
35 health service corporation or an insurance company authorized to
36 transact life or health insurance in accordance with Title 17B of the
37 New Jersey Statutes, shall establish, maintain or operate a health
38 service plan. No person, firm, association or corporation, other than
39 a hospital service corporation, a medical service corporation, a
40 dental service corporation to the extent permitted by P.L.1968,
41 c.305 (C.17:48C-1 et seq.), or an insurance company authorized to
42 transact life or health insurance business or the kinds of insurance
43 specified in subsection d. of R.S.17:17-1, shall otherwise contract in
44 this State with persons to pay for or to provide for health services

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

Matter underlined thus is new matter.

1 on the basis of premiums or other valuable considerations to be
2 collected by the person, firm, association or corporation from any
3 persons for the issuance of the contracts. This section shall not be
4 construed as preventing the exercise of any authority or privilege
5 granted to any corporation by a certificate of authority issued by the
6 commissioner pursuant to any law of this State, or as preventing
7 any person, firm, association or corporation from furnishing health
8 services required under any workers' compensation law, or law
9 pertaining to health maintenance organizations, or as otherwise
10 provided by law.

11 c. A health service corporation shall, unless prohibited by the
12 commissioner, offer as an option medical-surgical contracts and
13 dental subscriber contracts which afford subscribers prepaid or
14 postpaid benefits pursuant to which payment is made to
15 participating providers for medical-surgical and dental services
16 rendered by a participating provider network with agreements
17 granting an aggregate differential allowance or discount on charges,
18 as well as a limit on total allowances which may or may not be
19 related to the subscriber's income level, where the aggregate
20 differential or discount on charges and limit on total allowances
21 may be achieved by payment of either the individual provider's
22 actual charge or the health service corporation's allowance on the
23 charge, whichever is less.

24 d. A health service corporation shall maintain an open
25 enrollment period for coverage to persons who are otherwise unable
26 to obtain hospital, medical-surgical, or major medical coverage in
27 accordance with the provisions of P.L.1992, c.161 (C.17B:27A-2 et
28 al.).

29 e. No health service corporation shall have the power to
30 underwrite life insurance as defined in Title 17B of the New Jersey
31 Statutes directly, but a health service corporation may, at such time
32 as the aggregate special contingent surplus is greater than 0%, own
33 stock in, control, or otherwise become affiliated with a life, health
34 or accident insurance company organized pursuant to Title 17B of
35 the New Jersey Statutes or under the laws of any other state,
36 provided that the company is admitted in this State.

37 f. No health service corporation shall solicit subscribers or
38 enter into any contract with any subscriber until it has received
39 from the commissioner a certificate of authority to do so, but if a
40 health service corporation is established by means of the merger of
41 a medical service corporation into a hospital service corporation,
42 which hospital service corporation possesses a valid certificate of
43 authority issued prior to the effective date of **【this act】** P.L.1985,
44 c.236 (C.17:48E-1 et seq.), the health service corporation thus
45 established need not reapply for a new certificate of authority, but
46 the corporation shall file in the Department of Banking and
47 Insurance any documents relating to the merger, including, but not
48 limited to, information concerning the operation of the health

1 service corporation as set forth in subsection a. of this section,
2 which the commissioner may require.

3 g. Nothing in **【this act】** P.L.1985, c.236 (C.17:48E-1 et seq.)
4 shall be deemed to prohibit a health service corporation from
5 contracting with, or paying commissions to, any duly licensed
6 affiliated or independent insurance producer, to the extent permitted
7 by the laws applicable to those producers.

8 h. A health service corporation shall, on an annual basis, and in
9 a form and manner prescribed by the Department of Banking and
10 Insurance, file with the department information similar to the
11 information required to be filed by a charitable organization in
12 Internal Revenue Service Form 990 and Schedule A (990), which
13 information the department shall post on its website.

14 i. On or before June 30, 2019, and annually thereafter, the
15 commissioner shall report to the Governor, and to the Legislature
16 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on the
17 compliance of a health service corporation with the provisions of
18 P.L. , c. (C.) (pending before the Legislature as this bill).
19 (cf: P.L.1992, c.161, s.18)

20

21 2. Section 6 of P.L.1985, c.236 (C.17:48E-6) shall be amended
22 to read as follows:

23 6. The board of a health service corporation which is formed as
24 the result of a merger between a medical service corporation and a
25 hospital service corporation shall be composed of not more than 15
26 members. Initially, after the merger has been effected, the board
27 shall be constituted as follows:

28 a. Four members of the board shall be public members, who
29 shall be appointed by the Governor with the advice and consent of
30 the Senate. The public members so appointed shall be persons
31 whose background and experience indicate that they are qualified to
32 act in the broad public interest, who may or may not have coverage
33 under a contract or contracts issued by the corporation, its
34 subsidiaries or affiliates, and who, or whose spouses or minor
35 children, are not officers, directors or owners of more than 10% of
36 the stock of a corporation whose aggregate sales to hospitals, other
37 health care facilities or other providers of health care services
38 exceed 5% of its total sales. The remaining **【eleven】** 11 members
39 shall be selected by the board of directors of the health service
40 corporation in accordance with the provisions of its certificate of
41 incorporation and bylaws.

42 b. Of the initial members of the board, as provided for in
43 subsection a. of this section, one public member and three members
44 selected by the board of the health service corporation shall serve
45 for a term of one year; one public member and three members
46 selected by the board of the health service corporation shall serve
47 for a term of two years; and two public members and five members
48 selected by the board of the health service corporation shall serve

1 for a term of three years. Thereafter, all members of the board shall
2 serve for a term of three years, and shall hold office until their
3 successors are appointed or elected and qualified.

4 c. After the constitution of the initial board as provided in
5 subsection b. of this section, and as the initial terms expire as
6 provided for in that **【section】** subsection, the board shall be
7 constituted as follows:

8 (1) Four members shall be public members of the board
9 appointed by the Governor with the advice and consent of the
10 Senate; **【and】**

11 (2) **【Eleven】** Eight members shall be elected by the board of
12 directors, as provided in the bylaws; and

13 (3) Three members shall be elected by qualified voters, pursuant
14 to the process established in section 4 of P.L. , c. (C.)
15 (pending before the Legislature as this bill).

16 d. The provisions of subsection c. of this section shall not be
17 construed to preclude the reappointment or reelection of any
18 member appointed or elected pursuant to subsection a. of this
19 section.

20 (cf: P.L.1991, c.208, s.20)

21

22 3. Section 7 of P.L.1985, c.236 (C.17:48E-7) is amended to
23 read as follows:

24 7. The board of directors of a health service corporation which
25 is established in accordance with paragraph (1) of subsection a. of
26 section 2 of P.L.1985, c.236 (C.17:48E-2) shall have four public
27 members appointed by the Governor with the advice and consent of
28 the Senate **【and eleven】** , eight members elected as provided in the
29 bylaws, and three members elected by qualified voters, pursuant to
30 the process established pursuant to section 4 of P.L. , c. (C.)
31 (pending before the Legislature as this bill).

32 (cf: P.L.1991, c.208, s.21)

33

34 4. (New section) a. Within six months of the effective date of
35 this section, a health service corporation shall submit to the
36 commissioner a plan to create a process for three board members of
37 the board of the health service corporation to be elected by qualified
38 voters. The plan shall allow every qualified voter to cast a vote in
39 an election for each of the three subscriber-elected board positions.
40 The election shall not require the physical presence of the qualified
41 voter to vote and shall include a mail-in vote option. The plans
42 shall include a process to phase in the three subscriber-elected
43 board members upon the expiration of the terms of current board
44 members. The plan shall ensure that the subscriber-elected board
45 member positions are filled within three years of the effective date
46 of this section. Upon the commissioner's approval of the plan,
47 which shall be no later than six months after the submission of the
48 plan, the process shall become effective.

1 b. For the purposes of P.L. , c. (C.) (pending before
2 the Legislature as this bill), “qualified voter” means a subscriber
3 who is 18 years of age or more, if an individual, and whose
4 subscription certificate or contract has been in force for at least one
5 year.

6
7 5. (New section) a. The commissioner shall establish a public
8 process to determine an appropriate, efficient surplus range for a
9 health service corporation. The process shall include input from the
10 public including written and verbal testimony, public testimony
11 from health insurance experts determined by the commissioner to
12 be necessary to inform the process, and the opportunity for the
13 health service corporation to respond to such public testimony.
14 Testimony submitted, including the health service corporation
15 response, if provided, shall be made available on the department’s
16 website. The commissioner shall determine, and notify the health
17 service corporation, of the appropriate, efficient surplus range that
18 is established pursuant to this section. Once the public process, and
19 notification to the health service corporation of the commissioner’s
20 determination of the efficient range, is complete, the efficient
21 surplus range shall remain in effect for the purposes of this section;
22 provided, however, the commissioner may, at his discretion initiate
23 a new public process pursuant to this section, if the commissioner
24 deems it necessary to reevaluate the efficient surplus range.

25 b. A health service corporation surplus in excess of the
26 maximum of the range established pursuant to subsection a. of this
27 section shall be deemed inefficient. The commissioner shall, on an
28 annual basis, examine the surplus amount and the health service
29 corporation’s annual regulatory filings for the prior calendar year,
30 to determine whether the surplus is inefficient pursuant to this
31 section.

32 c. (1) If at any time the commissioner determines that a health
33 service corporation surplus is inefficient, the department shall
34 notify the health service corporation and the health service
35 corporation shall, within 30 days of notice from the commissioner,
36 file a report with the commissioner.

37 (2) The report shall either:

38 (a) justify, to the satisfaction of the commissioner and
39 consistent with the range established pursuant to subsection a. of
40 this section, that the current surplus level is appropriate and
41 efficient; or

42 (b) provide a plan to reduce the current surplus level in a
43 manner that results in the surplus being within the efficient surplus
44 range established pursuant to subsection a. of this section. The plan
45 shall include:

46 (i) proposals to benefit to policyholders; and

47 (ii) proposals to improve the overall health status of all New
48 Jersey residents by: expanding access to affordable, quality health

1 care for underserved individuals; responding to emerging health
2 care issues in New Jersey; and promoting fundamental
3 improvements in the health status of all New Jersey residents,
4 including but not limited to substance use disorder treatment and
5 prevention, behavioral healthcare, maternal, child and chronic
6 health services, cancer screening, research and treatment, and
7 improving veterans' access to health care.

8 (3) The commissioner shall review the report, make the report
9 available on the department's website, and provide notice
10 concerning a public comment period within 10 days of receipt of
11 the report. The commissioner shall afford all interested persons an
12 opportunity to comment in writing on the intended action. Written
13 comments shall be submitted to the commissioner within the time
14 established by the commissioner in the notice, which time shall not
15 be less than 20 calendar days from the date of notice and posting on
16 the department's website. The commissioner shall give due
17 consideration to all comments received. Within a reasonable period
18 of time following submission of the comments pursuant to this
19 paragraph, the commissioner shall prepare for public distribution a
20 report listing all parties who provided written submissions
21 concerning the intended action, summarizing the content of the
22 submissions and providing the commissioners' response to the
23 submissions. Based upon the comments submitted from the public,
24 and in consultation with the Department of Health, the
25 commissioner shall make a determination concerning the surplus.
26 The commissioner may:

27 (a) approve the surplus level if it is justified consistent with this
28 section;

29 (b) approve the health service corporation plan to reduce the
30 surplus to an efficient level; or

31 (c) direct the health service corporation to revise the plan to
32 reduce the surplus to an efficient level. If, after 30 days from the
33 date of the end of the public comment period pursuant to this
34 paragraph, the health service corporation and the commissioner do
35 not agree on a revised plan to reduce the surplus, the commissioner
36 shall order the health service corporation to deposit, no later than 60
37 days after the date of the written notification, with the State, in the
38 "New Jersey Quality Health and Wellness Fund" established
39 pursuant to subsection b. of section 6 of P.L. , c. (C.)
40 (pending before the Legislature as this bill), the surplus amount, or
41 portion thereof, determined by the commissioner to be in excess of
42 the efficient range.

43 d. A health service corporation with a previous-year surplus in
44 the efficient range, as established pursuant to subsection a. of this
45 section, shall not include a risk or contingency factor in its filed
46 premium rates unless and until the surplus level is at or below the
47 lower bound of the surplus range.

1 e. In order to implement the provisions of this section, the
2 department may engage and retain attorneys, appraisers,
3 independent actuaries, independent certified public accountants or
4 other professionals or examiners, at the expense of the health
5 service corporation.

6
7 6. (New section) a. If a health service corporation and the
8 Commissioner of Banking and Insurance do not agree, pursuant to
9 paragraph (3) of subsection c. of section 5 of P.L. , c. (C.)
10 (pending before the Legislature as this bill) on a plan to reduce a
11 surplus deemed in excess of the efficient surplus range, the
12 Commissioner of Banking and Insurance shall order the health
13 service corporation to deposit, no later than 60 days after the date of
14 the written notification, with the State, in the “New Jersey Quality
15 Health and Wellness Fund” established pursuant to this section, the
16 surplus amount, or portion thereof, determined to be in excess of
17 the efficient range.

18 b. There is established in the Department of Health a
19 nonlapsing, revolving fund, to be known as the “New Jersey Quality
20 Health and Wellness Fund.” This fund shall consist of monies
21 deposited by a health service corporation pursuant to this section.

22 c. The monies collected in the fund shall be dedicated, and may
23 be appropriated by the Legislature after completion of the process
24 to be administered by the Commissioner of Health pursuant to this
25 subsection.

26 (1) The Commissioner of Health shall solicit and receive
27 testimony concerning the manner in which to allocate the funds in
28 the “New Jersey Quality Health and Wellness Fund” in a manner
29 that benefits the public and is otherwise consistent with the
30 provisions of P.L. , c. (C.) (pending before the Legislature
31 as this bill). The testimony shall include testimony from members
32 of the public and health care experts determined by the
33 commissioner to be necessary to inform the process. Testimony
34 submitted shall be made available on the department’s website.

35 (2) Once the process established pursuant to paragraph (1) of
36 this subsection is completed, the Commissioner of Health shall
37 make recommendations to the Legislature, based upon the
38 testimony submitted, concerning the manner in which to appropriate
39 the funds.

40 d. The Commissioner of Banking and Insurance shall suspend,
41 and may revoke, the certificate of authority of a health service
42 corporation until the time that the entire surplus amount, or portion
43 thereof, determined to be in excess of the efficient range is
44 deposited in the fund.

45
46 7. (New section) The Department of Banking and Insurance
47 shall publish on its website the annual financial statement of each

1 carrier required to file with the department within 30 days of the
2 receipt of that statement.

3

4 8. Sections 1 and 7 of this act shall take effect immediately and
5 sections 2 through 6 shall take effect on February 1, 2018.

6

7

8

STATEMENT

9

10 This bill makes various revisions to the regulation of health
11 service corporations. The bill clarifies the charitable role of health
12 service corporations, revises the membership of the board of
13 directors of health service corporations, establishes a process to
14 determine an efficient level of surplus, and directs the reduction of
15 surplus that is in excess of an efficient range.

16 Specifically, the bill provides that a health service corporation
17 shall have a charitable mission to:

18 (1) fulfill its obligation as an insurer of last resort in this State;

19 (2) provide affordable and accessible health insurance to
20 subscribers;

21 (3) assist and support public and private health care initiatives
22 for individuals without health insurance;

23 (4) promote the integration of the health care system that meets
24 the health care needs of the residents of the State of New Jersey;

25 (5) acknowledge its obligation to the residents of this State to
26 make health care coverage available to underserved markets by
27 supporting and supplying community services in connection with
28 the provision of health care; and

29 (6) recognize an ongoing responsibility to contribute to
30 fundamental improvements in the overall health status of all New
31 Jersey residents.

32 Additionally, a health service corporation is directed to develop
33 goals, objectives, and strategies for carrying out, in accordance with
34 this bill, its statutory mission.

35 The bill also requires a health service corporation to file on an
36 annual basis, and in a form and manner prescribed by the
37 Department of Banking and Insurance, information similar to the
38 information required to be filed by a charitable organization in
39 Internal Revenue Service Form 990 and Schedule A (990), which
40 information the department shall post on its website. This form
41 allows the IRS and the general public to evaluate a nonprofit's
42 operations; it includes information on the nonprofit's mission,
43 programs, and finances.

44 The bill directs, on or before June 30, 2019, and annually
45 thereafter, the commissioner to report to the Governor, and to the
46 Legislature on the compliance of a health service corporation with
47 the provisions of the bill.

1 The bill also provides for three members of a health service
2 corporation board of directors to be elected by its qualified voters.
3 Qualified voters are health service corporation subscribers who are
4 18 years of age or more, if an individual, and whose subscription
5 certificate or contract has been in force for at least one year.

6 Regarding a health service corporation's surplus, the bill requires
7 the commissioner to establish a public process to determine an
8 appropriate, efficient surplus range. The bill requires a public
9 process, including input from experts, members of the public, and
10 the health service corporation, to be established to determine an
11 efficient and appropriate range of surplus for a health service
12 corporation. Once the public process, and notification to the health
13 service corporation of the commissioner's determination of the
14 efficient range, is complete, the efficient surplus range shall remain
15 in effect, provided, however, the commissioner may, at his
16 discretion initiate a new public process, if the commissioner deems
17 it necessary to reevaluate the efficient surplus range.

18 The bill requires the commissioner to examine the surplus
19 amount and the health service corporation's annual regulatory
20 filings for the prior calendar year on an annual basis to determine
21 whether the surplus is inefficient. If a surplus falls above the
22 established efficient range and the health service corporation cannot
23 justify the excess, the health service corporation must provide a
24 plan to reduce the surplus level in a manner that results in the
25 surplus being within the efficient surplus range.

26 The plan to reduce the surplus must include:

27 (1) proposals to benefit to policyholders; and

28 (2) proposals to improve the overall health status of all New
29 Jersey residents by: expanding access to affordable, quality health
30 care for underserved individuals; responding to emerging health
31 care issues in New Jersey; and promoting fundamental
32 improvements in the health status of all New Jersey residents,
33 including but not limited to substance use disorder treatment and
34 prevention, behavioral healthcare, maternal, child and chronic
35 health services, cancer screening, research and treatment, and
36 improving veterans' access to health care.

37 The commissioner is directed to review the plan, make the plan
38 available on the department's website, and provide notice
39 concerning a public comment period within 10 days of receipt of
40 the report. The public is permitted an additional 20 day period to
41 comment on the proposal and, based upon the comments submitted
42 from the public, and in consultation with the Department of Health,
43 the commissioner must make a determination concerning the
44 surplus. The commissioner may:

45 (1) approve the surplus level if it is justified consistent with the
46 bill's requirements;

47 (2) approve the health service corporation plan to reduce the
48 surplus to an efficient level; or

1 (3) direct the health service corporation to revise the plan to
2 reduce the surplus to an efficient level.

3 If, after 30 days from the date of the end of the public comment
4 period, the health service corporation and the commissioner do not
5 agree on a revised plan to reduce the surplus, the commissioner is
6 directed to order the health service corporation to deposit, no later
7 than 60 days after the date of the written notification, with the State,
8 in a newly created “New Jersey Quality Health and Wellness Fund,”
9 the surplus amount, or portion thereof, determined to be in excess
10 of the efficient range.

11 The bill also establishes, in the Department of Health, a
12 nonlapsing, revolving fund, to be known as the “New Jersey Quality
13 Health and Wellness Fund.” This fund shall consist of monies that
14 may be deposited by a health service corporation if it is directed to
15 do so by the Commissioner of Banking and Insurance after failing
16 to otherwise agree on a method of reducing the surplus deemed in
17 excess of the efficient range. The monies collected in the fund shall
18 be dedicated, and may be appropriated by the Legislature after
19 completion of the public process to be administered by the
20 Commissioner of Health concerning allocation of the funds in the
21 “New Jersey Quality Health and Wellness Fund” in a manner that
22 benefits the public and is otherwise consistent with this bill.

23 The public process to determine the manner in which to allocate
24 any funds in the “New Jersey Quality Health and Wellness Fund”
25 shall include testimony from members of the public and health care
26 experts determined by the commissioner to be necessary to inform
27 the process. Testimony submitted shall be made available on the
28 department’s website. Once the public process is completed, the
29 Commissioner of Health shall make recommendations to the
30 Legislature, based upon the testimony submitted, concerning the
31 manner in which to appropriate the funds. The Commissioner of
32 Banking and Insurance shall suspend, and may revoke, the
33 certificate of authority of a health service corporation until the time
34 that the entire surplus amount, or portion thereof, determined to be
35 in excess of the efficient range is deposited in the fund.

36 The bill also prohibits a health service corporation with a
37 previous-year surplus in the efficient range from including a risk or
38 contingency factor in its filed premium rates unless and until the
39 surplus level is at or below the lower bound of the surplus range.

40 Finally, the bill also supplements the “Health Care Quality Act”
41 to require the Department of Banking and Insurance to publish on
42 its website the annual financial statement of each carrier, as defined
43 in that act, within 30 days of the receipt of that statement.

44 The provisions of the bill that define the charitable mission of
45 the health service corporation, require the filing of the Form 990,
46 and require DOBI to post the financial statement of carriers, take
47 effect immediately. The remaining provisions of the bill
48 concerning the revisions to a health service corporation’s board of

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- 1 directors and the process of establishing an efficient surplus, and
- 2 reducing excess surplus, take effect on February 1, 2018.