

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:48E-3

(Health service corporations--various amendments to improve competitiveness)

LAWS OF: 1988

CHAPTER: 71

Bill No: A2891

Sponsor(s): Loveys

Date Introduced: April 18, 1988

Committee: Assembly: Insurance

Senate: -----

Amended during passage: Yes Amendments during passage denoted asterisks.

Date of Passage: Assembly: June 20, 1988

Senate: June 30, 1988

Date of Approval: July 21, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping file "N.J.-Insurance, Health-1988" in New Jersey Reference Department.

P.L. 1988, CHAPTER 71, *approved July 21, 1988*
1988 Assembly No. 2891 (*Fourth Reprint*)

AN ACT concerning health service corporations, ⁴[¹amending
P.L. 1945, c. 132,¹]⁴ and amending and supplementing P.L.
1985, c. 236

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

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

3. a. No health service corporation shall be established as a corporation organized for pecuniary profit. Every health service corporation established pursuant to the provisions of this act shall be operated for the benefit of its subscribers.

b. No person, firm, association or corporation, other than a health service corporation or an insurance company authorized to transact life or health insurance in accordance with Title 17B of the New Jersey Statutes, shall establish, maintain or operate a health service plan. No person, firm, association or corporation, other than a hospital service corporation, a medical service corporation, a dental service corporation to the extent permitted by P.L. 1968, c. 305 (C. 17:48C-1 et seq.), or an insurance company authorized to transact life or health insurance business or the kinds of insurance specified in subsection (d) of R.S. 17:17-1, shall otherwise contract in this State with persons to pay for or to provide for health services on the basis of premiums or other valuable considerations to be collected by the person, firm, association or corporation from any persons for the issuance of the contracts. This section shall not be construed as preventing the exercise of any authority or privilege granted to any corporation by a certificate of authority issued by the commissioner pursuant to any law of this State, or as preventing any person, firm, association or corporation from furnishing

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:

¹ Assembly AIN committee amendments adopted May 16, 1988.

² Assembly floor amendments adopted June 2, 1988.

³ Assembly floor amendments adopted June 13, 1988.

⁴ Senate floor amendments adopted June 27, 1988.

health services required under any workers' compensation law, or law pertaining to health maintenance organizations, or as otherwise provided by law.

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

d. A health service corporation shall, unless the commissioner otherwise directs, maintain a continuous open enrollment period, providing coverage to persons who are otherwise unable to obtain hospital, medical-surgical, or major medical coverage.

e. No health service corporation shall have the power[, directly or through a subsidiary or affiliate,] to underwrite life insurance as defined in Title 17B of the New Jersey Statutes directly, but a health service corporation may¹, at such time as the aggregate special contingent surplus is greater than 0%,¹ own stock in, control, or otherwise become affiliated with a life, health or accident insurance company organized pursuant to Title 17B of the New Jersey Statutes or ¹[by] under¹ the laws of any other state¹, provided that the company is admitted in this State¹.

f. No health service corporation shall solicit subscribers or enter into any contract with any subscriber until it has received from the commissioner a certificate of authority to do so, but if a health service corporation is established by means of the merger of a medical service corporation into a hospital service corporation, which hospital service corporation possesses a valid certificate of authority issued prior to the effective date of this act, the health service corporation thus established need not reapply for a new certificate of authority, but the corporation

shall file in the Department of Insurance any documents relating to the merger which the commissioner may require.

g. Nothing in this act shall be deemed to prohibit a health service corporation from contracting with, or paying commissions to, any duly licensed affiliated or independent insurance ¹[agent or broker] producer¹, to the extent permitted by the laws applicable to those ¹[agents or brokers] producers¹.

(cf: P.L. 1985, c. 236, s. 3)

2. Section 16 of P.L. 1985, c. 236 (C. 17:48E-16) is amended to read as follows:

16. a. A health service corporation of this State may, (1) with the participation of any other corporation licensed pursuant to Title 17 of the Revised Statutes, Title 17B of the New Jersey Statutes, or P.L. 1973, c. 337 (C. 26:2J-1 et seq.), or licensed pursuant to similar statutes of other states, ¹[including a licensed stock or mutual life, health or accident insurance company or a hospital, medical, or health service corporation,]¹ jointly issue individual or group contracts for health care and other benefits, including complete employee welfare and other employee benefit programs, or (2) with the participation of any other corporation, jointly enter into contracts to provide or receive services in connection with the providing of health care or conducting the business of insurance in accordance with the provisions of this act or as permitted by the commissioner. The commissioner may establish any ¹policy¹ nonforfeiture requirements [or reserve requirements] ¹or reserve requirements¹ as he deems necessary. Agreements between a health service corporation and other corporations pursuant to this section may provide for experience rating, if the experience rating is done on an equitable basis between the health service corporation and the other corporations; or for a sharing [, except with respect to life insurance as defined in N.J.S. 17B:17-3,] of the premiums, claims, and expenses by the participating corporations; or subject to regulation by the commissioner, for acceptance or ceding of the whole or portions of ¹[life, health or accident insurance]¹ risks on a reinsurance basis, except that ¹[, other than life or accident reinsurance,]¹ a health service corporation may not accept risks on a reinsurance basis which it may not accept on a primary basis pursuant to its powers as a health service corporation [, and may

not, under any circumstances, act as a reinsurer of life insurance] ¹and may not, under any circumstances, act as a reinsurer of life insurance¹. Agreements made pursuant to this section shall be filed with and approved by the commissioner before becoming effective.

b. In the case of any joint venture for the sale of insurance with other than an insurer or hospital, [or] medical, or health service corporation licensed to do business in this or any other state, the other partner or partners in the venture shall be licensed to sell insurance as ¹[agents] producers¹ pursuant to [Title 17B of the New Jersey Statutes] P.L. 1987, c. 293 (C. 17:22A-1 et seq.).

(cf: P.L. 1985, c. 236, s. 16)

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

17. a. No health service corporation shall during any one year disburse more than 10% of the aggregate amount of the payments received from subscribers during that year as expenditures for the soliciting of subscribers, except that during the first year after the issuance of a certificate of authority a health service corporation may so disburse not more than 20% of that amount and during the second year, not more than 15%.

b. No health service corporation shall, during any one year, disburse a sum greater than 20% of the payments received from subscribers during that year as administrative expenses. The term "administrative expenses," as used in this section, shall include all expenditures for nonprofessional services and in general all expenses not directly connected with the furnishing of services or benefits, but not including expenses of soliciting subscribers.

c. The funds of any health service corporation may be invested to the same extent now or hereafter permitted by law for the investment of funds of domestic life insurance companies, including investments ¹as provided in subsection e. of section 3 of P.L. 1985, c. 236 (C. 17:48E-3)¹ in life, health or accident insurance companies or other for-profit subsidiaries such as insurance agencies, suppliers of administrative services only, or any other subsidiaries permitted pursuant to N.J.S. 17B:20-4, and for the purpose of engaging in any aspect of its business directly

or through one or more subsidiaries or affiliates, [except that a health service corporation may not invest in a subsidiary authorized to insure risks which the health service corporation may not insure directly pursuant to its powers as a health service corporation] including life, health or accident insurance companies.

d. A health service corporation may not directly supply administrative services only, but may supply administrative services through a subsidiary or affiliate, except that no health service corporation may directly or indirectly, through a subsidiary or affiliate or otherwise, make available any provider differential under an agreement to supply administrative services only.

e. [Every health service corporation, after the first full calendar year of doing business as a health service corporation, shall accumulate and maintain a special contingent surplus over and above its reserves and liabilities at the rate of 2% annually of its net premium income until that surplus is not less than \$1,250,000.00. Thereafter, for any subsequent calendar year, the special contingent surplus shall be maintained at an amount not less than 2 1/2% of the net premium income received during that year, as determined by reference to the statement of financial condition filed pursuant to section 36 of this act. The commissioner may increase the amount of special contingent surplus which shall be maintained pursuant to this subsection to an amount not exceeding 5% of the net premium income received during the preceding year. This special contingent surplus shall be contributed by each of the following two categories:

(1) Community rated, excluding open enrollment and conversion groups; and

(2) Experience rated subscribers, in the ratio that the net premium income of each category bears to the total net premium income of the health service corporation and by contributions from the category that gives rise to a diminution of the surplus required to be maintained under this section. Whenever it appears that the special contingent surplus has deviated from the amount required to be maintained by more than 2% of the aggregate amount of the net premium income received during that year, the commissioner shall approve and promulgate a plan reasonably

calculated to return the special contingent surplus to the amount required to be maintained, within two years from the date of implementation of the plan specified above. Approval and promulgation of the plan by the commissioner shall not abrogate the responsibilities of corporate officers with regard to the reporting of financial condition pursuant to section 36 of this act.] (Deleted by amendment, P. L., c....)

f. [Nothing in subsection e. of this section or any other provision of this act shall be construed to limit the authority of the commissioner to require compliance with statutory capital, surplus or reserve requirements for a subsidiary or affiliate of a health service corporation, or for any reinsurance activities to be undertaken by a health service corporation.] (Deleted by amendment, P.L., c....)

¹[g. A health service corporation may make loans, including subordinated surplus loans, to other health or life insurance companies of this or other states or to companies or organizations of this or other states which establish, maintain or operate a nonprofit health service plan, or supply services in connection with the providing of health care.]¹

(cf: P.L. 1985, c. 236, s. 17)

4. Section 26 of P.L. 1985, c. 236 (C. 17:48E-26) is amended to read as follows:

26. a. A group contract, covering at least [50] two employees or members, may provide for the adjustment of the rate of premium [at the end of the first year or any subsequent year] of insurance [thereunder] based on [the] past or projected experience [thereunder, both past and contemplated], and may include those claim costs and utilization trend factors which the health service corporation deems necessary in its discretion. No health service corporation shall use any form of experience rating plan until it shall have filed with the commissioner the formulas to be used and the classes or groups to which they are to apply. The commissioner may disapprove the formulas or classes at any time if he finds that the rates produced thereby are excessive, inadequate or unfairly discriminatory or that the formulas or classes are such as to prejudice the interests of persons who are eligible for coverage under contracts with the health service corporation which are not subject to experience rating.

b. [Except for those rating formulas applicable to groups the employees or members of which are located in more than one state and which are underwritten in participation with other corporations of other states, no rating formula shall be approved by the commissioner, unless it provides that the experience rated groups will be assessed a reasonable community charge.] ¹Except for those rating formulas applicable to groups the employees or members of which are located in more than one state and which are underwritten in participation with other corporations of other states, no rating formula shall be approved by the commissioner, unless it provides that the experience rated groups will be assessed a reasonable charge for all individual contracts. This assessment will continue to apply as long as any reduced payment rate calculated and approved for the purpose of this subsection applies to the corporation pursuant to the provisions of subparagraph (2) of subsection b. of section 18 of P.L. 1971, c. 136 (C. 26:2H-18).¹ A rating formula may provide for the allowance of an equitable discount in the event that the policyholder agrees to perform certain administrative and record keeping functions in connection with the routine maintenance of the group account.

c. [Nothing in this section shall preclude a health service corporation from incorporating in the rating formulas those claim cost and utilization trend factors which it deems necessary in its discretion, so long as the rates produced are self-supporting and the formulas for classes do not prejudice the interests of persons who are eligible for coverage under contracts with the health service corporation which are not subject to experience rating.]

¹[A health service corporation shall file notice of any change in its rates for coverage under individual or group contracts which are not experience rated, along with supporting information as the commissioner deems necessary, at least 60 days prior to the rates becoming effective. Unless the rates are disapproved by the commissioner on or before the day the rates are to become effective, they shall be deemed to be approved. In his discretion, the commissioner may waive the 60 day period, or any portion thereof. The commissioner shall disapprove the rate increase only if he finds that the rates are not reasonably related to the benefits provided and are not reasonably related to surplus

amounts established pursuant to the provisions of section 5 of this amendatory and supplementary act.]

Nothing in this section shall preclude a health service corporation from incorporating in the rating formulas those claim cost and utilization trend factors which it deems necessary in its discretion, so long as the rates produced are self-supporting and the formulas for classes do not prejudice the interests of persons who are eligible for coverage under contracts with the health service corporation which are not subject to experience rating.¹

d. [For experience rated groups of 50 to 99 employees or members, the commissioner shall have the authority to determine that rates charged depart from community rates in such a way as to assure continuity of rating principles with the community rated and experience rated groups of 100 or more.] Notwithstanding the provisions of subsection c. of this section, a health service corporation may ¹[, without the approval of the commissioner,]¹ increase rates for hospitalization benefits under all individual or group contracts issued by the corporation which are not experience rated at any time following an increase in hospital payment rates by the Hospital Rate Setting Commission established pursuant to section 5 of P.L. 1978, c. 83 (C. 26:2H-4.1). The ¹[hospitalization benefit] contract¹ rate increases permitted pursuant to this subsection shall ¹[be of an equivalent actuarial value to] reflect¹ the increases in hospital payment rates ¹which are not reflected or anticipated in the contract rates for the increases and which are not offset by savings in other benefit provisions under the contract. Beginning 180 days following the effective date of this act and at the end of every calendar quarter thereafter, a health service corporation shall file notice with the commissioner, in a form approved by the commissioner, of any proposed change in its rates for coverage under individual contracts issued by the corporation. Unless the rates are disapproved by the commissioner on or before the day the rates are to become effective, which shall be no later than 20 days following the filing, they shall be deemed to be approved. In his discretion, the commissioner may waive the 20 day period, or any portion thereof. [Within 30 days of the effective date of an increase in rates permitted pursuant to this subsection, the health service corporation shall make an informational filing with the

commissioner which shall contain the amount of the increase in the corporation's rates which have been taken pursuant to this subsection.]¹

(cf: P.L. 1985, c. 236, s. 26)

5. (New section) a. Every health service corporation shall ¹[, after its first full calendar year of doing business as a health service corporation,]¹ accumulate and maintain during each ¹[subsequent]¹ calendar year two separate special contingent surplus accounts, ¹[one for its group contracts and]¹ one for its individual contracts ¹and one for its other activities¹.

b. ¹[The special contingent surplus accounts, over and above reserves and liabilities, required pursuant to subsection a. of this section shall be maintained in amounts of not less than 5% of the earned premium for group contracts and for individual contracts, respectively. For the purposes of this subsection, "earned premium" shall mean the earned premium for the preceding calendar year as stated in the statement of financial condition filed pursuant to section 36 of P.L. 1985, c. 236 (C. 17:48E-36).] Every health service corporation shall accumulate and maintain a special contingent surplus for each account over and above its reserves and liabilities at the rate of 2% annually of its net premium income until that surplus is not less than \$1,250,000.00 in each account. The special contingent surplus in each account shall be accumulated to and maintained at an amount not less than 2 1/2% of the net premium income received during that year, as determined by reference to the statement of financial condition filed pursuant to section 36 of P.L. 1985, c. 236 (C. 17:48E-36). The commissioner may increase the amount of special contingent surplus which shall be maintained pursuant to this subsection to an amount not exceeding 5% of the net premium income received during the preceding year. No method of accumulation as herein provided shall be deemed to supersede any provision of subsection c. of this section.¹ In the case of any health service corporation which was created by the merger of a medical service corporation established pursuant to P.L. 1940, c. 74 (C. 17:48A-1 et seq.) and a hospital service corporation created pursuant to P.L. 1938, c. 366 (C. 17:48-1 et seq.), in calculating the proportional allocation of any deficit or surplus between group and individual contracts at the time the separate

surplus accounts are created, the corporation shall allocate based on its determination of the proportional contributions of individual and group business to any surplus or deficit during the period between January 1 of the calendar year in which the health service corporation commenced doing business as a health service corporation until the effective date of this amendatory and supplementary act. The assumptions upon which the allocations are based shall be certified as reasonable by an independent actuary.

c. Every health service corporation established as of the effective date of this amendatory and supplementary act shall file a plan with the commissioner for meeting the surplus amount requirements established by subsection b. of this section and which establishes a time period within which the corporation will meet those requirements. ¹The time period established in the plan shall not exceed four years.¹ The plan shall be subject to the approval of the commissioner, who shall approve it within 60 days after it has been filed if he believes it to be reasonable. If the commissioner does not approve a plan filed under this subsection within 60 days of its submission, he shall issue findings and conclusions with respect to the reasonableness of the plan. ¹[Notwithstanding the foregoing, in no event shall the health service corporation be required to accumulate the surplus funds provided for in subsection a. of this section prior to three years after the effective date of this amendatory and supplementary act, except that neither of the separate surplus accounts shall be in a deficit or negative position three years following the effective date of this amendatory and supplementary act. In any event, both of the separate surplus accounts shall meet the requirements of subsection b. of this section no later than six years following the effective date of this act. For the duration of the time period established pursuant to the plan, whenever it appears that the special contingent surplus required by subsection a. of this section for either individual or group contracts is in a deficit or negative position below that which is set forth in the plan, the health service corporation shall be required, without regard to any other rate increase provided for or required by law or any rate increase which may have previously been taken pursuant to this subsection, to increase its rates for the group or

individual contracts, as the case may be, without the approval of the commissioner, to rates which are sufficient to cause the amount of the special contingent surplus to meet the requirements of the plan within one year of the increase. In no case shall the health service corporation be required to augment or contribute to the surplus account allocable to individual contracts with any monies from the surplus account of group contracts, or from any other source other than net earnings from individual contracts, nor to augment or contribute to the surplus account allocable to group contracts with any monies from the surplus account of individual contracts or from any other source other than net earnings from group contracts. For the purposes of this amendatory and supplementary act, "net earnings" are premium income plus investment income which is attributable to those premiums, less claims expense, administrative expense, claims processing expense, and the expense of soliciting subscribers.]¹

¹[d. If at any time a special contingent surplus account which is required to be established by this section for individual contracts or for group contracts exceeds 25% of the respective earned premium of the individual or group contracts, as the case may be, the commissioner may act to modify rate increases before they take effect so that the respective contingent surplus account will not, as a result of the rate increase, exceed 25% of the earned premium attributable to the individual or group account, as the case may be. In the event that any special contingent surplus account exceeds 25% of the earned premium attributable to the individual or group account, as the case may be, the commissioner may order any amount in excess of 25% returned to group or individual subscribers.]¹

¹[e.] d. [In any case, other than that provided for in subsection c. of this section, whenever] Whenever¹ the special contingent surplus for either group contracts or individual contracts is an amount which is less than ¹2 1/2% to¹ 5% of the earned premium of the group or individual business, as the case may be, ¹at the discretion of the commissioner,¹ the health service corporation shall, without regard to any other rate increase provided for or required by law or any rate increase which may have previously been taken pursuant to this subsection, and ¹[without] with¹ the

approval of the commissioner, commence within 90 days the implementation of rate increases for the group or individual contracts, as the case may be, which increases shall be sufficient to cause the amount of the special contingent surplus to equal an amount which is not less than 5% of the earned premium of the group or individual business within one year of the increase.

¹[f.] ⁴[e.]¹ In no event shall the health service corporation be required to augment the surplus account allocable to individual contracts with any monies from the surplus account of group contracts, or from any corporate assets or any other source other than net earnings from individual contracts, nor shall it be required to augment the surplus account allocable to group contracts with any monies from the surplus account of individual contracts or from any corporate assets or any other source other than net earnings from group contracts ¹, except that beginning with the effective date of this amendatory and supplementary act and until the special contingent surplus account which is applicable to individual contracts has reached the statutorily prescribed amount or no longer than six years following the effective date of this amendatory and supplementary act, whichever is earlier, in the event that the statutory reserves of either the group or individual surplus accounts are in a deficit position, as determined by the commissioner, a loan from the account which is not in a deficit position shall be made to the account which has a deficit¹.]⁴

¹[g.] ⁴[f.]¹ e.⁴ Nothing in this section nor in P.L. 1985, c. 236 (C. 17:48E-1 et seq.) shall abrogate the responsibilities of corporate officers with regard to the reporting of financial condition pursuant to section 36 of P.L. 1985, c. 236 (C. 17:48E-36), nor shall any provision of this amendatory and supplementary act or P.L. 1985, c. 236 (C. 17:48E-1 et seq.) be construed to limit the authority of the commissioner to require compliance with statutory capital, surplus or reserve requirements for a subsidiary or affiliate of a health service corporation, or for any reinsurance activities to be undertaken by a health service corporation.

6. Section 27 of P.L. 1985, c. 236 (C. 17:48E-27) is amended to read as follows:

27. No health service corporation shall issue individual ¹[or

group]¹ contracts ¹[which are not experience rated]¹ [until it has filed with the commissioner a full schedule of rates which are to apply to those contracts. The commissioner may disapprove the schedule at any time if he finds that the] ¹[using] until it has filed with the commissioner, pursuant to the provisions of this act, a full schedule of rates which are to apply to those contracts. The commissioner may disapprove the rates applicable to group or individual contracts at any time if he finds that the¹ rates ¹[which]¹ are excessive, inadequate or unfairly discriminatory [, and it shall be unlawful for any corporation to effect any contract according to those rates thereafter] ¹, and it shall be unlawful for any corporation to effect any contract according to those rates thereafter¹.

(cf: P.L. 1985, c. 236, s. 27)

¹⁷. (New section) A health service corporation shall file notice of any change in its rates for coverage under individual contracts which are not experience rated, along with supporting information as the commissioner deems necessary, at least 45 days prior to the rates becoming effective. Unless the rates are disapproved by the commissioner on or before the day the rates are to become effective, they shall be deemed to be approved. In his discretion, the commissioner may waive the 45 day period, or any portion thereof.¹

¹⁸. (New section) a. There is created a Study Commission to Study Health Service Corporations. The commission shall be comprised of thirteen members, five of whom shall be appointed by the Governor and one of whom shall be a representative of a health service corporation and shall be appointed by the board of that corporation. The Commissioner of Insurance, the Commissioner of Health, and the Public Advocate or their designees shall be members of the board ex officio, as shall the Chairman of the Senate Labor, Industry and Professions Committee and the Chairman of the Assembly Insurance Committee. One member shall be appointed by the President of the Senate, upon the recommendation of the Chairman of the Senate Labor, Industry and Professions Committee and one member shall be appointed by the Speaker of the General Assembly, upon the recommendation of the Chairman of the Assembly Insurance Committee. Of the members to be appointed

by the Governor, two shall represent the commercial health insurance industry, and three shall represent the business community. The commission shall be formed and shall meet within 30 days of the effective date of this act. The Chairman of the Senate Labor, Industry and Professions Committee and the Chairman of the Assembly Insurance Committee shall be co-chairmen of the commission.

b. The study commission shall examine long-range issues affecting health service corporations, including the future need for community-rated contracts for individuals, the future corporate structure of health service corporations, including the question of maintaining their present nonprofit status, the reason for the continuing financial losses of health service corporations, the status of subsidiaries of health service corporations, including health maintenance organizations, and other issues as the commission may deem appropriate.

c. The study commission shall study the question of insuring high risk individuals and the feasibility of providing alternative means of coverage for them, and shall submit recommendations to the Legislature within six months of the effective date of this act. The commission shall consider, as options, (1) the creation of a fund made up from the proceeds of a surcharge on employers who are subject to the "unemployment compensation law," R.S. 43:21-1 et seq., for the purpose of subsidizing the insuring of high-risk individuals; and (2) the creation of a program to insure high risk individuals through the payment by all insurers of a surcharge on the hospital payment rates established by the Hospital Rate Setting Commission pursuant to the provisions of P.L. 1978, c. 83 (C. 26:2H-4.1 et seq.), as a subsidy to supplement the premium income generated by that class of risk.

d. The study commission shall report its findings and recommendations to the Governor and to the Legislature with respect to matters other than those provided for in subsection c. of this section no later than one year following the effective date of this act.¹

⁴[19. Section 41 of P.L. 1985, c. 236 (C. 17:48E-41) is amended to read as follows:

41. A health service corporation subject to the provisions of this act is hereby declared to be a charitable and benevolent

institution and all of its funds shall be exempt from every State, county, district, municipal and school tax other than taxes on real estate and equipment, except that:

a. Following the effective date of this 1988 amendatory and supplementary act, any life, health, or accident insurance company organized pursuant to Title 17B of the New Jersey Statutes or by the laws of any other state in which a health service corporation owns stock, controls, or otherwise becomes affiliated with, shall be subject to tax on income derived from its life insurance business in the same manner prescribed by P.L. 1945, c. 132 (C. 54:18A-1 et seq.) for other corporations, individuals, partnerships, and unincorporated associations transacting an insurance business in the State; and

b. Any health service corporation which issues experience rated contracts for health care benefits shall, (1) at the end of the third year following the effective date of 1988 amendatory and supplementary act, be subject to tax on income derived from its experience rated contracts; and (2) at the end of the sixth year following the effective date of that 1988 amendatory and supplementary act, be subject to tax on income derived from its non-experience rated contracts, in the manner prescribed by P.L. 1945, c. 132 (C. 54:18A-1 et seq.) for other corporations, individuals, partnerships, and unincorporated associations transacting an insurance business in this State.¹

(cf: P.L. 1985, c. 236, s. 41)]⁴

⁴[¹10. Section 16 of P.L. 1945, c. 132 (C. 54:18A-9) is amended to read as follows:

16. a. This act shall not apply to any fraternal beneficiary society. For the purposes of this act, "insurance company" shall include a corporation, and any person, partnership or unincorporated association required as an insurer to procure from the Commissioner of Insurance the certificate prescribed by section 1 of an act entitled "An act to regulate the transaction of the business of insurance by individuals, partnerships and unincorporated associations in this State" approved July 11, 1939 (P.L. 1939, c. 188; C. 17:49-1), or under any other statute now in force or hereafter enacted, engaging in any kind or kinds of business specified in R.S. 17:17-1, subject to the insurance laws of this State; provided, however, that no company or society,

which by its act or certificate of incorporation has for its object the assistance of sick, needy or disabled members, the defraying of funeral expenses of deceased members and the provision for the wants of the surviving spouses and families of members after death, shall be deemed an insurance company within the purview of this act.

b. For the purposes of P.L. 1945, c. 132 (C. 54:18A- 1 et seq.), "insurance company" shall include, (1) at the end of the third year following the effective date of ²[P.L. , c. (C.) (now pending in the Legislature as Assembly Bill 2891 of 1988)] this 1988 amendatory and supplementary act², a health service corporation established pursuant to the provisions of P.L. 1985, c. 236 (C. 17:48E-1 et seq.), with respect to its experience rated health insurance, and (2) at the end of the sixth year following the effective date of this act, such health service corporation with respect to its non-experience rated health insurance. An "insurance company" shall also include any life, accident, or health insurance company in which a health service corporation owns stock, controls, or otherwise becomes affiliated with, as provided in section 41 of P.L. 1985, c. 236 (C. 17:48E-41).¹ (cf: P.L. 1985, c. 515, s. 14)]⁴

⁴[²11.] 9.⁴ (New section) The Commissioner of Insurance shall conduct a management and fiscal analysis of any health service corporation established pursuant to the provisions of P.L. 1985, c. 236 (C. 17:48E-1 et seq.) which is operating in this State on the effective date of this 1988 amendatory and supplementary act. ³The commissioner shall coordinate the management and fiscal analysis with outside interested parties to assure absolute objectivity.³ The commissioner shall report his findings along with any recommendations to the Senate Labor, Industry and Professions Committee and the Assembly Insurance Committee within 120 days of the effective date of this act.²

¹[7.] ²[11.1] ⁴[12.2] 10.⁴ This act shall take effect immediately.

INSURANCE

Insurance - Health

Modifies powers of health service corporations.

1 excessive, inadequate or unfairly discriminatory [, and it shall be
2 unlawful for any corporation to effect any contract according to
3 those rates thereafter].

(cf: P.L. 1985, c. 236, s. 27.)

5 7. This act shall take effect immediately.

7

STATEMENT

9

11 This bill modifies the law regarding health service
12 corporations. It would permit health service corporations to be
13 more competitive in terms of the products which they offer.

14 The bill would permit health service corporations to own stock
15 in or affiliate themselves with life insurance companies. It would
16 permit experience rating for all group contracts, including those
17 which have two to forty-nine members. It eliminates the prior
18 approval system of rate regulation and substitutes a "file and use
19 system." It would also permit rates to be raised if hospitalization
20 benefit rates are increased by the Hospital Rate Setting
21 Commission.

22 The bill also provides for the establishment of a plan for
23 bringing a health service corporation's surplus up to adequate
24 levels, and provides for the separation of reserves which are
25 allocable to group and individual accounts, respectively.

25

27

INSURANCE Insurance - Health

29

Modifies powers of health service corporations.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2891

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 16, 1988

This bill, as amended by the Assembly Insurance Committee, makes a number of changes in the law governing health service corporations. Its purpose is to make health service corporations more competitive as providers of service benefits. Traditionally, the role of the health service corporation has been to provide health insurance to all who seek to purchase it, regardless of the state of their health. This activity, which has resulted in the corporation's insuring a number of high risk individuals, has been subsidized by the corporation's non high risk insureds, which has tended to make the cost of the corporation's products less competitive than those offered by the commercial insurers.

The bill would give health service corporations the authority to own stock in, control, or otherwise become affiliated with a life, health, or accident insurance company organized pursuant to Title 17B of the New Jersey Statutes. The Assembly Insurance Committee has amended this provision to permit such an affiliation only after its aggregate special contingent surplus is greater than zero, which would be the time at which it overcomes its present deficit. The Assembly Insurance Committee has also amended the bill to eliminate the provisions which would have permitted the corporation to reinsure life insurance and make loans to other health or life insurance companies.

The bill provides for experience rating of small groups of 2 to 49 people. At present, these groups are community rated, which means that their loss experience is combined with the loss experience of others to establish their rate. Experience rating these small groups is designed to make the corporation more competitive with respect to this class of business. This means that the rates for small groups would no longer be subject to the prior approval of the commissioner and that they will be based on the loss experience of the group. For a

time, a subsidy will continue to exist between the group business and the individual business. The committee has added language to clarify the fact that the assessment on group business will continue to apply as long as any reduced hospital payment rate applies to the corporation.

The committee has also reinserted the language of the existing law which provides that a health service corporation may, in its ratemaking, apply claim costs and utilization trend factors as it sees fit, as long as the rates produced thereby are self-supporting and the formulas for classes do not prejudice the interests of persons who are eligible for coverage under contracts which are not experience rated.

The bill establishes a procedure for the corporation to adjust its rates at any time that the Hospital Rate Setting Commission increases payment rates. As drafted, the bill would have permitted the corporation to merely make an informational filing with the Commissioner of Insurance when it made a rate adjustment. The Assembly Insurance Committee has amended this provision to establish a file and use procedure, which would require the corporation to make a rate filing with the commissioner, which would be deemed to be approved if he did not act to deny it within 20 days.

The Assembly Insurance Committee has also amended the provisions of section 5 of the bill which deal with the corporation's surplus. It has reinserted language which would require a surplus of not less than \$1,250,000.00 in each of the experience and non-experience rated contingent surplus accounts. The corporation would be required to accumulate and maintain a special contingent surplus in each account of not less than 2½% of the net premium income received during that year. The commissioner would be given the authority to increase the amount of special contingent surplus which is required to be maintained to an amount not to exceed 5% of the net premium income received during the preceding year. The committee has also added language to this provision to clarify the fact that it is not intended that these surplus requirements would supercede any requirement under subsection c. of this section, which provides for the establishment of a plan by the corporation to accumulate surplus to eliminate its present deficit.

The committee has added a provision to the bill which would require that the time period within which the corporation must eliminate its deficit not exceed four years. The committee's

amendments also delete the provision which would have permitted the corporation to take automatic rate increases until the surplus has been eliminated.

As originally drafted, the bill would have ended the subsidy of the individual contracts by the group contracts. This was accomplished by creating a "wall" between the surplus accounts of the group contracts and individual contracts. This would force both types of contracts to be subject to a rate structure which was self-supporting. The Assembly Insurance Committee has added language to the bill which provides that loans between the respective surplus accounts may take place until the special contingent surplus account which is applicable to individual contracts has reached the statutorily prescribed amount, or no longer than six years following the effective date of the act, whichever is earlier.

The committee has added a new section which creates a 45 day file and use rate approval system, which would provide that the corporation's ordinary rate filings are automatically approved if not disapproved by the commissioner during the 45 day period.

The committee amendments create a study commission to study the corporate and financial structure of the corporation. The commission is also to study the question of insuring high risk individuals, and report back to the Legislature on this question within six months. The commission's general report to the Governor and Legislature is to be made at the end of twelve months.

Finally, the Assembly Insurance Committee amendments provide for the taxation of health service corporations under the insurance premium tax provisions of P.L. 1945, c. 132. The corporation would be taxed immediately upon any life insurance which was issued by an affiliate. It would be taxed on its experience rated health care contracts at the end of the third year following the effective date of the act and at the end of the sixth year following the effective date of the act.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

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Release: THURS., JULY 21, 1988

Governor Thomas H. Kean today signed legislation amending the law concerning health service corporations (Blue Cross/Blue Shield) to make them more competitive and improve their financial stability.

A-2891, sponsored by Assemblyman Ralph Loveys, R-Morris and Senator Raymond Lesniak, D-Union, allows for "experience" rating of small group policies as opposed to the current system of "community" rating. This change will enhance Blue Cross/Blue Shield's competitiveness with commercial insurers.

This bill also gives health service corporations the authority to become affiliated with life, health, or accident insurance companies.

The amended law needed to combat Blue Cross/Blue Shield's current deficit of approximately \$200 million.

The legislation is effective immediately.

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