

Bill and Sponsors Statement identical to A733

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: Yes

Identical to Assembly Statement for A733

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

ASSEMBLY, No. 733

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Assemblyman LARRY CHATZIDAKIS

District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Subjects HMOs to law regulating insurance holding company systems and revises calculation of health insurance policy reserves.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the regulation of health maintenance organizations
2 and reserve requirements for health insurance policies and amending
3 P.L.1973, c.337, P.L.1970, c.22 and N.J.S.17B:19-5.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read
9 as follows:

10 25. Statutory construction and relationship to other laws.

11 a. Except as otherwise provided in this act, provisions of the
12 insurance law and provisions of hospital or medical service
13 corporation laws shall not be applicable to any health maintenance
14 organization granted a certificate of authority under this act. This
15 provision shall not apply to an insurer or hospital or medical service
16 corporation licensed and regulated pursuant to the insurance laws or
17 the hospital or medical service corporation laws of this State except
18 with respect to its health maintenance organization activities
19 authorized and regulated pursuant to this act. Charges paid by or on
20 behalf of enrollees of a health maintenance organization with respect
21 to health care services shall not be subject to taxation by the State or
22 any of its political subdivisions.

23 b. Solicitation of enrollees by a health maintenance organization
24 granted a certificate of authority, or its representatives, shall not be
25 construed to violate any provision of law relating to solicitation or
26 advertising by health professionals.

27 c. Any health maintenance organization authorized under this act
28 shall not be deemed to be practicing medicine and shall be exempt
29 from the provision of chapter 9 of Title 45, Medicine and Surgery, of
30 the Revised Statutes relating to the practice of medicine.

31 d. No person participating in the arrangements of a health
32 maintenance organization other than the actual provider of health care
33 services or supplies directly to enrollees and their families shall be
34 liable for negligence, misfeasance, nonfeasance or malpractice in
35 connection with the furnishings of such services and supplies.

36 e. A health maintenance organization shall be subject to the
37 provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those
38 relating to merger or acquisition of control.

39 (cf: P.L.1973, c. 337, s.25)

40

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

43 1. Definitions.

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

Matter underlined thus is new matter.

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

4 a. An "affiliate" of, or person "affiliated" with, a specific person,
5 is a person that directly, or indirectly through one or more
6 intermediaries, controls, or is controlled by, or is under common
7 control with, the person specified.

8 b. The term "commissioner" shall mean the Commissioner of
9 Banking and Insurance or his deputies , except that when a health
10 maintenance organization is the subject of an acquisition of control or
11 merger, the commissioner shall consult with the Commissioner of
12 Health and Senior Services on matters relating to quality of, and
13 access to, health care services.

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

34 d. An "insurance holding company system" consists of two or more
35 affiliated persons, one or more of which is an insurer.

36 e. The term "insurer" means any person or persons, corporation,
37 partnership or company authorized by the laws of this State to transact
38 the business of insurance or to operate a health maintenance
39 organization in this State, except that it shall not include agencies,
40 authorities or instrumentalities of the United States, its possessions
41 and territories, the Commonwealth of Puerto Rico, the District of
42 Columbia, or a state or political subdivision of a state.

43 f. A "person" is an individual, a corporation, a partnership, an
44 association, a joint stock company, a trust, an unincorporated
45 organization, any similar entity or any combination of the foregoing
46 acting in concert.

- 1 g. (Deleted by amendment, P.L.1993, c.241.)
2 h. A "subsidiary" of a specified person is an affiliate controlled by
3 such person directly, or indirectly through one or more intermediaries.
4 i. The term "voting security" shall include any security convertible
5 into or evidencing a right to acquire a voting security.
6 j. "Acquisition" means any agreement, arrangement or activity, the
7 consummation of which results in a person acquiring directly or
8 indirectly the control of another person, and includes but is not limited
9 to the acquisition of voting securities, and assets, and bulk reinsurance
10 and mergers.
11 k. "Health maintenance organization" means any person operating
12 under a certificate of authority issued pursuant to P.L.1973, c.337
13 (C.26:2J-1 et seq.).
14 (cf: P.L.1993, c.241, s.1)

15
16 3. N.J.S.17B:19-5 is amended to read as follows:

17 17B:19-5. The commissioner shall annually make or cause to be
18 made or shall annually require the insurer to make calculations of
19 policy and loss reserves for health insurance written by insurers
20 authorized to write health insurance in this State as defined in
21 [section] N.J.S.17B:17-4. The commissioner [may] shall promulgate
22 regulations [providing for] establishing the minimum [reserve]
23 standards [and mortality, morbidity or other contingency bases to be
24 used in connection therewith. All calculations for minimum reserve
25 purposes shall be made on the basis of a rate of interest not exceeding
26 3 1/2 % per annum in the case of policies issued prior to January 1,
27 1973 and, for policies issued on or after that date on the basis of a
28 rate of interest not exceeding the maximum rate of interest specified
29 in section 17B:19-8 for policies of life insurance which are issued in
30 the same year as such health insurance policies, and, if the following
31 specification is relevant, for policies of life insurance containing a
32 maximum guaranteed duration of more than 10 years but not more
33 than 20 years] applicable to the valuation of health insurance reserves.
34 (cf: P.L.1981, c. 285, s.2)

35
36 4. This act shall take effect immediately, except that section 3 shall
37 take effect December 31,1999. The Commissioner of Banking and
38 Insurance may immediately undertake action to promulgate any
39 regulation necessary to implement the provisions of this act.

40
41
42 STATEMENT

43
44 This bill subjects health maintenance organizations transacting
45 business in New Jersey to New Jersey's law regulating insurance
46 holding company systems. That law currently provides protections

1 against detrimental takeovers of insurance companies by regulating the
2 merger with, and acquisition of, any domestic insurer. Among other
3 provisions, it requires prior approval of such transactions, details
4 specific information that must be disclosed by the acquiring party,
5 requires a public hearing on any proposed merger or acquisition and
6 provides standards for denying such transactions. It also imposes
7 requirements on management agreements and transactions with
8 affiliates. It is the intent of the Legislature that a change of control
9 shall be presumed to have taken place when an entity assumes
10 substantially all the functions of another entity. Applying these
11 statutory requirements to the acquisition of health maintenance
12 organizations will help avoid a reoccurrence of the problems
13 associated with the recent insolvencies of the Health Insurance Plan of
14 New Jersey (HIP) and the American Preferred Provider Plan (APPP).

15 This bill also revises the current method for setting minimum
16 reserve standards for health insurance policies by eliminating the
17 statutory reference to a specific interest rate to be used in calculating
18 the reserves. Instead, the bill authorizes the commissioner to
19 promulgate regulations establishing all aspects of the minimum
20 standards for health insurance reserves, including the interest rates to
21 be used. This change will provide for the development of a more
22 appropriate basis in setting these reserves by allowing for greater
23 flexibility in the interest rate to be used to calculate minimum reserves.
24 In promulgating regulations, the commissioner will be able to
25 recognize variations in products and specify interest rates that reflect
26 the nature of the reserve liability. In addition, the commissioner will
27 be able to establish standards for claim reserves based on the claim
28 incurred date, rather than the policy issue date.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 733

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 1, 2000

The Assembly Banking and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 733.

As amended by the committee, this bill subjects health maintenance organizations transacting business in New Jersey to New Jersey's law regulating insurance holding company systems. That law currently provides protections against detrimental takeovers of insurance companies by regulating the merger with, and acquisition of, any domestic insurer. Among other provisions, it requires prior approval of such transactions, details specific information that must be disclosed by the acquiring party, requires a public hearing on any proposed merger or acquisition and provides standards for denying such transactions. It also imposes requirements on management agreements and transactions with affiliates.

This bill also revises the current method for setting minimum reserve standards for health insurance policies by eliminating the statutory reference to a specific interest rate to be used in calculating the reserves. Instead, the bill authorizes the Commissioner of Banking and Insurance to promulgate regulations establishing all aspects of the minimum standards for health insurance reserves, including the interest rates to be used. This change will provide for the development of a more appropriate basis in setting these reserves by allowing for greater flexibility in the interest rate to be used to calculate minimum reserves. In promulgating regulations, the commissioner will be able to recognize variations in products and specify interest rates that reflect the nature of the reserve liability. In addition, the commissioner will be able to establish standards for claim reserves based on the claim incurred date, rather than the policy issue date.

The committee made technical amendments with respect to the effective date of the bill.

This bill was pre-filed for introduction in the 2000 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE HEALTH COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 733

STATE OF NEW JERSEY

DATED: SEPTEMBER 25, 2000

The Senate Health Committee reports favorably Senate Bill No. 733 (1R).

This bill subjects health maintenance organizations transacting business in New Jersey to State law regulating insurance holding company systems. That law currently provides protections against detrimental takeovers of insurance companies by regulating the merger with, and acquisition of, any domestic insurer. Among other provisions, it requires prior approval of such transactions, details specific information that must be disclosed by the acquiring party, requires a public hearing on any proposed merger or acquisition and provides standards for denying such transactions. It also imposes requirements on management agreements and transactions with affiliates. It is the intent of the sponsor that a change of control shall be presumed to have taken place when an entity assumes substantially all the functions of another entity. Applying these statutory requirements to the acquisition of health maintenance organizations will help avoid a reoccurrence of the problems associated with the recent insolvencies of the Health Insurance Plan of New Jersey (HIP) and the American Preferred Provider Plan (APPP).

This bill also revises the current method for setting minimum reserve standards for health insurance policies by eliminating the statutory reference to a specific interest rate to be used in calculating the reserves. Instead, the bill authorizes the commissioner to promulgate regulations establishing all aspects of the minimum standards for health insurance reserves, including the interest rates to be used. This change will provide for the development of a more appropriate basis in setting these reserves by allowing for greater flexibility in the interest rate to be used to calculate minimum reserves. In promulgating regulations, the commissioner will be able to recognize variations in products and specify interest rates that reflect the nature of the reserve liability. In addition, the commissioner will be able to establish standards for claim reserves based on the claim incurred date, rather than the policy issue date.

This bill is identical to Senate Bill No. 379 SCA (Sinagra/Matheussen), which the committee also reported favorably on this date.

[First Reprint]

ASSEMBLY, No. 733

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Assemblyman LARRY CHATZIDAKIS

District 8 (Atlantic, Burlington and Camden)

Co-Sponsored by:

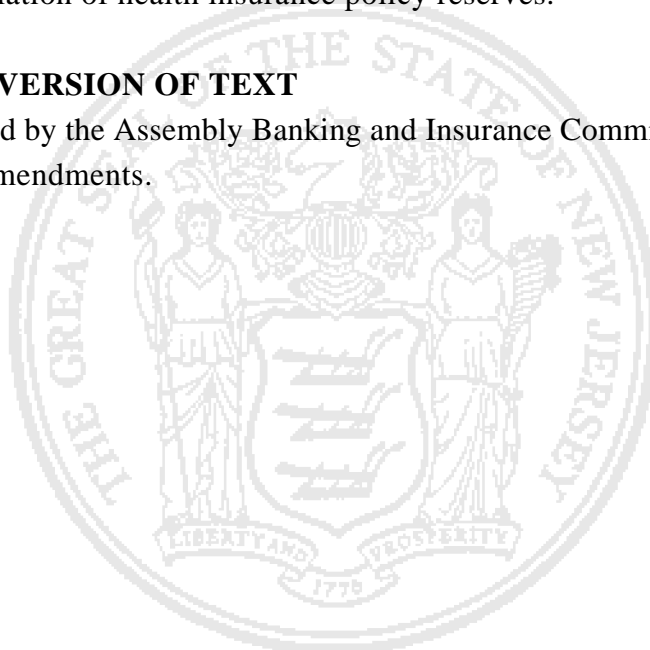
**Assemblyman Gusciora, Senators Sinagra, Matheussen, Bassano, Singer,
Codey, Vitale, Bark, Kavanaugh, Cafiero, Bennett, Allen, Inverso, Bucco,
Robertson, Kosco, Palaia, Martin and Turner**

SYNOPSIS

Subjects HMOs to law regulating insurance holding company systems and revises calculation of health insurance policy reserves.

CURRENT VERSION OF TEXT

As reported by the Assembly Banking and Insurance Committee on June 1, 2000, with amendments.



(Sponsorship Updated As Of: 12/5/2000)

A733 [1R] TALARICO, CHATZIDAKIS

2

1 ANACT concerning the regulation of health maintenance organizations
2 and reserve requirements for health insurance policies and amending
3 P.L.1973, c.337, P.L.1970, c.22 and N.J.S.17B:19-5.

4

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

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9 as follows:

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11 a. Except as otherwise provided in this act, provisions of the
12 insurance law and provisions of hospital or medical service
13 corporation laws shall not be applicable to any health maintenance
14 organization granted a certificate of authority under this act. This
15 provision shall not apply to an insurer or hospital or medical service
16 corporation licensed and regulated pursuant to the insurance laws or
17 the hospital or medical service corporation laws of this State except
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20 behalf of enrollees of a health maintenance organization with respect
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24 granted a certificate of authority, or its representatives, shall not be
25 construed to violate any provision of law relating to solicitation or
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27 c. Any health maintenance organization authorized under this act
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30 the Revised Statutes relating to the practice of medicine.

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32 maintenance organization other than the actual provider of health care
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35 connection with the furnishings of such services and supplies.

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37 provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those
38 relating to merger or acquisition of control.

39 (cf: P.L.1973, c. 337, s.25)

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

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 ABI committee amendments adopted June 1, 2000.

1 1. Definitions.

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

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24 the power to vote, or holds proxies representing, 10% or more of the
25 voting securities of any other person, provided that no such
26 presumption of control shall of itself relieve any person so presumed
27 to have control from any requirement of P.L.1970, c.22 (C.17:27A-1
28 et seq.). This presumption may be rebutted by a showing made in the
29 manner provided by subsection j. of section 3 of P.L.1970, c.22
30 (C.17:27A-3) that control does not exist in fact. The commissioner
31 may determine, after furnishing all persons in interest notice and an
32 opportunity to be heard, and making specific findings of fact to
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36 affiliated persons, one or more of which is an insurer.

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38 partnership or company authorized by the laws of this State to transact
39 the business of insurance or to operate a health maintenance
40 organization in this State, except that it shall not include agencies,
41 authorities or instrumentalities of the United States, its possessions
42 and territories, the Commonwealth of Puerto Rico, the District of
43 Columbia, or a state or political subdivision of a state.

44 f. A "person" is an individual, a corporation, a partnership, an
45 association, a joint stock company, a trust, an unincorporated
46 organization, any similar entity or any combination of the foregoing

1 acting in concert.

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

3 h. A "subsidiary" of a specified person is an affiliate controlled by
4 such person directly, or indirectly through one or more intermediaries.

5 i. The term "voting security" shall include any security convertible
6 into or evidencing a right to acquire a voting security.

7 j. "Acquisition" means any agreement, arrangement or activity, the
8 consummation of which results in a person acquiring directly or
9 indirectly the control of another person, and includes but is not limited
10 to the acquisition of voting securities, and assets, and bulk reinsurance
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12 k. "Health maintenance organization" means any person operating
13 under a certificate of authority issued pursuant to P.L.1973, c.337
14 (C.26:2J-1 et seq.).

15 (cf: P.L.1993, c.241, s.1)

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17 3. N.J.S.17B:19-5 is amended to read as follows:

18 17B:19-5. The commissioner shall annually make or cause to be
19 made or shall annually require the insurer to make calculations of
20 policy and loss reserves for health insurance written by insurers
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27 3 1/2 % per annum in the case of policies issued prior to January 1,
28 1973 and, for policies issued on or after that date on the basis of a
29 rate of interest not exceeding the maximum rate of interest specified
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31 the same year as such health insurance policies, and, if the following
32 specification is relevant, for policies of life insurance containing a
33 maximum guaranteed duration of more than 10 years but not more
34 than 20 years] applicable to the valuation of health insurance reserves.
35 (cf: P.L.1981, c.285, s.2)

36

37 4. This act shall take effect immediately, except that section 3 shall
38 take effect ¹[December 31,1999] January 1, 2001¹. The
39 Commissioner of Banking and Insurance may immediately undertake
40 action to promulgate any regulation necessary to implement the
41 provisions of this act.

SENATE, No. 379

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator JACK SINAGRA

District 18 (Middlesex)

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Co-Sponsored by:

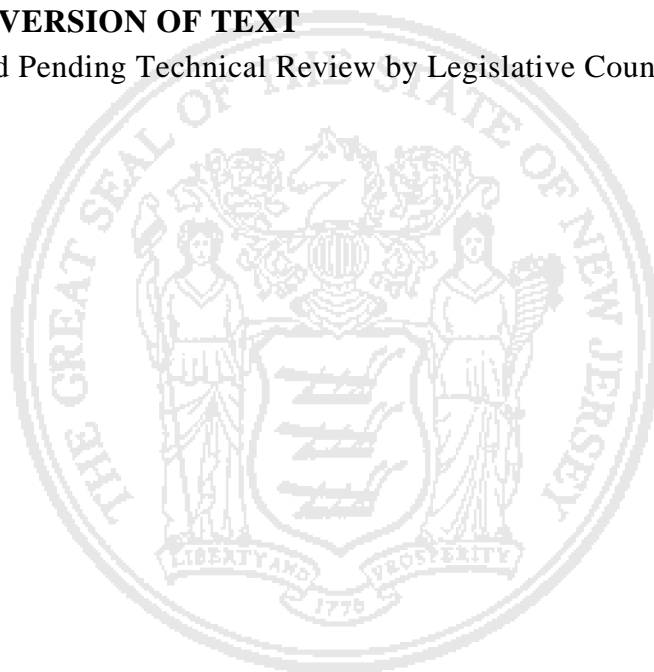
Senators Bassano, Singer, Codey and Vitale

SYNOPSIS

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26 purposes shall be made on the basis of a rate of interest not exceeding
27 3 1/2 % per annum in the case of policies issued prior to January 1,
28 1973 and, for policies issued on or after that date on the basis of a
29 rate of interest not exceeding the maximum rate of interest specified
30 in section 17B:19-8 for policies of life insurance which are issued in
31 the same year as such health insurance policies, and, if the following
32 specification is relevant, for policies of life insurance containing a
33 maximum guaranteed duration of more than 10 years but not more
34 than 20 years] applicable to the valuation of health insurance reserves.
35 (cf: P.L.1981, c.285, s.2)

36

37 4. This act shall take effect immediately, except that section 3 shall
38 take effect December 31,1999. The Commissioner of Banking and
39 Insurance may immediately undertake action to promulgate any
40 regulation necessary to implement the provisions of this act.

41

42

43

STATEMENT

44

45 This bill subjects health maintenance organizations transacting
46 business in New Jersey to New Jersey's law regulating insurance

1 holding company systems. That law currently provides protections
2 against detrimental takeovers of insurance companies by regulating the
3 merger with, and acquisition of, any domestic insurer. Among other
4 provisions, it requires prior approval of such transactions, details
5 specific information that must be disclosed by the acquiring party,
6 requires a public hearing on any proposed merger or acquisition and
7 provides standards for denying such transactions. It also imposes
8 requirements on management agreements and transactions with
9 affiliates. It is the intent of the Legislature that a change of control
10 shall be presumed to have taken place when an entity assumes
11 substantially all the functions of another entity. Applying these
12 statutory requirements to the acquisition of health maintenance
13 organizations will help avoid a reoccurrence of the problems
14 associated with the recent insolvencies of the Health Insurance Plan of
15 New Jersey (HIP) and the American Preferred Provider Plan (APPP).

16 This bill also revises the current method for setting minimum
17 reserve standards for health insurance policies by eliminating the
18 statutory reference to a specific interest rate to be used in calculating
19 the reserves. Instead, the bill authorizes the commissioner to
20 promulgate regulations establishing all aspects of the minimum
21 standards for health insurance reserves, including the interest rates to
22 be used. This change will provide for the development of a more
23 appropriate basis in setting these reserves by allowing for greater
24 flexibility in the interest rate to be used to calculate minimum reserves.
25 In promulgating regulations, the commissioner will be able to
26 recognize variations in products and specify interest rates that reflect
27 the nature of the reserve liability. In addition, the commissioner will
28 be able to establish standards for claim reserves based on the claim
29 incurred date, rather than the policy issue date.

[First Reprint]

SENATE, No. 379

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator JACK SINAGRA

District 18 (Middlesex)

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Co-Sponsored by:

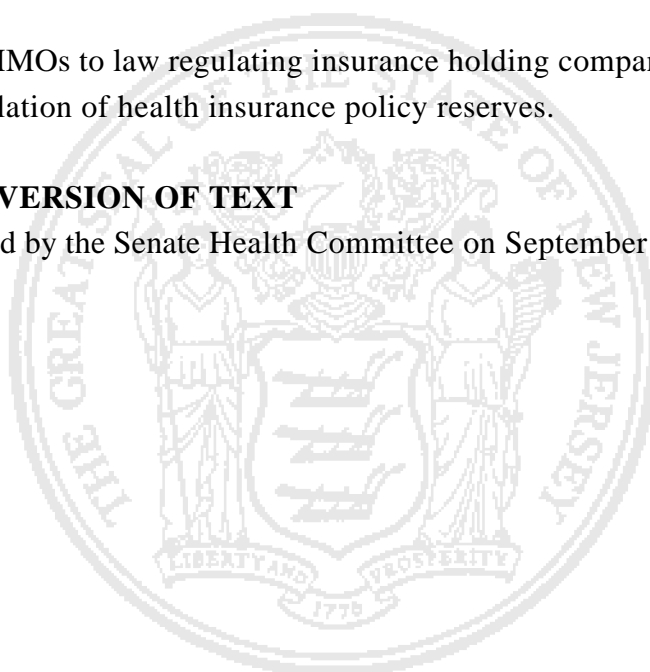
**Senators Bassano, Singer, Codey, Vitale, Bark, Kavanaugh, Cafiero,
Bennett, Allen, Inverso, Bucco, Robertson, Kosco, Palaia, Martin and
Turner**

SYNOPSIS

Subjects HMOs to law regulating insurance holding company systems and revises calculation of health insurance policy reserves.

CURRENT VERSION OF TEXT

As reported by the Senate Health Committee on September 25, 2000, with amendments.



(Sponsorship Updated As Of: 12/5/2000)

1 ANACT concerning the regulation of health maintenance organizations
2 and reserve requirements for health insurance policies and amending
3 P.L.1973, c.337, P.L.1970, c.22 and N.J.S.17B:19-5.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read
9 as follows:

10 25. Statutory construction and relationship to other laws.

11 a. Except as otherwise provided in this act, provisions of the
12 insurance law and provisions of hospital or medical service
13 corporation laws shall not be applicable to any health maintenance
14 organization granted a certificate of authority under this act. This
15 provision shall not apply to an insurer or hospital or medical service
16 corporation licensed and regulated pursuant to the insurance laws or
17 the hospital or medical service corporation laws of this State except
18 with respect to its health maintenance organization activities
19 authorized and regulated pursuant to this act. Charges paid by or on
20 behalf of enrollees of a health maintenance organization with respect
21 to health care services shall not be subject to taxation by the State or
22 any of its political subdivisions.

23 b. Solicitation of enrollees by a health maintenance organization
24 granted a certificate of authority, or its representatives, shall not be
25 construed to violate any provision of law relating to solicitation or
26 advertising by health professionals.

27 c. Any health maintenance organization authorized under this act
28 shall not be deemed to be practicing medicine and shall be exempt
29 from the provision of chapter 9 of Title 45, Medicine and Surgery, of
30 the Revised Statutes relating to the practice of medicine.

31 d. No person participating in the arrangements of a health
32 maintenance organization other than the actual provider of health care
33 services or supplies directly to enrollees and their families shall be
34 liable for negligence, misfeasance, nonfeasance or malpractice in
35 connection with the furnishings of such services and supplies.

36 e. A health maintenance organization shall be subject to the
37 provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those
38 relating to merger or acquisition of control.

39 (cf: P.L.1973, c.337, s.25)

40

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted September 25, 2000.

1 1. Definitions.

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

5 a. An "affiliate" of, or person "affiliated" with, a specific person,
6 is a person that directly, or indirectly through one or more
7 intermediaries, controls, or is controlled by, or is under common
8 control with, the person specified.

9 b. The term "commissioner" shall mean the Commissioner of
10 Banking and Insurance or his deputies , except that when a health
11 maintenance organization is the subject of an acquisition of control or
12 merger, the commissioner shall consult with the Commissioner of
13 Health and Senior Services on matters relating to quality of, and
14 access to, health care services.

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

35 d. An "insurance holding company system" consists of two or more
36 affiliated persons, one or more of which is an insurer.

37 e. The term "insurer" means any person or persons, corporation,
38 partnership or company authorized by the laws of this State to transact
39 the business of insurance or to operate a health maintenance
40 organization in this State, except that it shall not include agencies,
41 authorities or instrumentalities of the United States, its possessions
42 and territories, the Commonwealth of Puerto Rico, the District of
43 Columbia, or a state or political subdivision of a state.

44 f. A "person" is an individual, a corporation, a partnership, an
45 association, a joint stock company, a trust, an unincorporated
46 organization, any similar entity or any combination of the foregoing

1 acting in concert.

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

3 h. A "subsidiary" of a specified person is an affiliate controlled by
4 such person directly, or indirectly through one or more intermediaries.

5 i. The term "voting security" shall include any security convertible
6 into or evidencing a right to acquire a voting security.

7 j. "Acquisition" means any agreement, arrangement or activity, the
8 consummation of which results in a person acquiring directly or
9 indirectly the control of another person, and includes but is not limited
10 to the acquisition of voting securities, and assets, and bulk reinsurance
11 and mergers.

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

15 (cf: P.L.1993, c.241, s.1)

16

17 3. N.J.S.17B:19-5 is amended to read as follows:

18 17B:19-5. The commissioner shall annually make or cause to be
19 made or shall annually require the insurer to make calculations of
20 policy and loss reserves for health insurance written by insurers
21 authorized to write health insurance in this State as defined in
22 [section] N.J.S.17B:17-4. The commissioner [may] shall promulgate
23 regulations [providing for] establishing the minimum [reserve]
24 standards [and mortality, morbidity or other contingency bases to be
25 used in connection therewith. All calculations for minimum reserve
26 purposes shall be made on the basis of a rate of interest not exceeding
27 3 1/2 % per annum in the case of policies issued prior to January 1,
28 1973 and, for policies issued on or after that date on the basis of a
29 rate of interest not exceeding the maximum rate of interest specified
30 in section 17B:19-8 for policies of life insurance which are issued in
31 the same year as such health insurance policies, and, if the following
32 specification is relevant, for policies of life insurance containing a
33 maximum guaranteed duration of more than 10 years but not more
34 than 20 years] applicable to the valuation of health insurance reserves.
35 (cf: P.L.1981, c.285, s.2)

36

37 4. This act shall take effect immediately, except that section 3 shall
38 take effect ¹[December 31,1999] January 1, 2001 . ¹The
39 Commissioner of Banking and Insurance may immediately undertake
40 action to promulgate any regulation necessary to implement the
41 provisions of this act.

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE, No. 379

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 25, 2000

The Senate Health Committee reports favorably and with committee amendments Senate Bill No. 379.

As amended by committee, this bill subjects health maintenance organizations transacting business in New Jersey to State law regulating insurance holding company systems. That law currently provides protections against detrimental takeovers of insurance companies by regulating the merger with, and acquisition of, any domestic insurer. Among other provisions, it requires prior approval of such transactions, details specific information that must be disclosed by the acquiring party, requires a public hearing on any proposed merger or acquisition and provides standards for denying such transactions. It also imposes requirements on management agreements and transactions with affiliates. It is the intent of the sponsor that a change of control shall be presumed to have taken place when an entity assumes substantially all the functions of another entity. Applying these statutory requirements to the acquisition of health maintenance organizations will help avoid a reoccurrence of the problems associated with the recent insolvencies of the Health Insurance Plan of New Jersey (HIP) and the American Preferred Provider Plan (APPP).

This bill also revises the current method for setting minimum reserve standards for health insurance policies by eliminating the statutory reference to a specific interest rate to be used in calculating the reserves. Instead, the bill authorizes the commissioner to promulgate regulations establishing all aspects of the minimum standards for health insurance reserves, including the interest rates to be used. This change will provide for the development of a more appropriate basis in setting these reserves by allowing for greater flexibility in the interest rate to be used to calculate minimum reserves. In promulgating regulations, the commissioner will be able to recognize variations in products and specify interest rates that reflect the nature of the reserve liability. In addition, the commissioner will be able to establish standards for claim reserves based on the claim incurred date, rather than the policy issue date.

The committee amended the bill to change the effective date of section 3 of the bill from December 31, 1999 to January 1, 2001. As amended, this bill is identical to Assembly Bill No. 733(1R) (Talarico/Chatzidakis), which the committee also reported favorably on this date.

This bill was prefiled for introduction in the 2000-2001 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

P.L. 2001, CHAPTER 2, *approved January 16, 2001*
Assembly, No. 733 (*First Reprint*)

1 **ANACT** concerning the regulation of health maintenance organizations
2 and reserve requirements for health insurance policies and amending
3 P.L.1973, c.337, P.L.1970, c.22 and N.J.S.17B:19-5.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read
9 as follows:

10 25. Statutory construction and relationship to other laws.

11 a. Except as otherwise provided in this act, provisions of the
12 insurance law and provisions of hospital or medical service
13 corporation laws shall not be applicable to any health maintenance
14 organization granted a certificate of authority under this act. This
15 provision shall not apply to an insurer or hospital or medical service
16 corporation licensed and regulated pursuant to the insurance laws or
17 the hospital or medical service corporation laws of this State except
18 with respect to its health maintenance organization activities
19 authorized and regulated pursuant to this act. Charges paid by or on
20 behalf of enrollees of a health maintenance organization with respect
21 to health care services shall not be subject to taxation by the State or
22 any of its political subdivisions.

23 b. Solicitation of enrollees by a health maintenance organization
24 granted a certificate of authority, or its representatives, shall not be
25 construed to violate any provision of law relating to solicitation or
26 advertising by health professionals.

27 c. Any health maintenance organization authorized under this act
28 shall not be deemed to be practicing medicine and shall be exempt
29 from the provision of chapter 9 of Title 45, Medicine and Surgery, of
30 the Revised Statutes relating to the practice of medicine.

31 d. No person participating in the arrangements of a health
32 maintenance organization other than the actual provider of health care
33 services or supplies directly to enrollees and their families shall be
34 liable for negligence, misfeasance, nonfeasance or malpractice in
35 connection with the furnishings of such services and supplies.

36 e. A health maintenance organization shall be subject to the
37 provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those
38 relating to merger or acquisition of control.

39 (cf: P.L.1973, c. 337, s.25)

40

41 2. Section 1 of P.L.1970, c.22 (C.17:27A-1) is amended to read as

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 ABI committee amendments adopted June 1, 2000.

1 follows:

2 1. Definitions.

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

6 a. An "affiliate" of, or person "affiliated" with, a specific person,
7 is a person that directly, or indirectly through one or more
8 intermediaries, controls, or is controlled by, or is under common
9 control with, the person specified.

10 b. The term "commissioner" shall mean the Commissioner of
11 Banking and Insurance or his deputies, except that when a health
12 maintenance organization is the subject of an acquisition of control or
13 merger, the commissioner shall consult with the Commissioner of
14 Health and Senior Services on matters relating to quality of, and
15 access to, health care services.

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

36 d. An "insurance holding company system" consists of two or more
37 affiliated persons, one or more of which is an insurer.

38 e. The term "insurer" means any person or persons, corporation,
39 partnership or company authorized by the laws of this State to transact
40 the business of insurance or to operate a health maintenance
41 organization in this State, except that it shall not include agencies,
42 authorities or instrumentalities of the United States, its possessions
43 and territories, the Commonwealth of Puerto Rico, the District of
44 Columbia, or a state or political subdivision of a state.

45 f. A "person" is an individual, a corporation, a partnership, an
46 association, a joint stock company, a trust, an unincorporated
47 organization, any similar entity or any combination of the foregoing

1 acting in concert.

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

3 h. A "subsidiary" of a specified person is an affiliate controlled by
4 such person directly, or indirectly through one or more intermediaries.

5 i. The term "voting security" shall include any security convertible
6 into or evidencing a right to acquire a voting security.

7 j. "Acquisition" means any agreement, arrangement or activity, the
8 consummation of which results in a person acquiring directly or
9 indirectly the control of another person, and includes but is not limited
10 to the acquisition of voting securities, and assets, and bulk reinsurance
11 and mergers.

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

15 (cf: P.L.1993, c.241, s.1)

16

17 3. N.J.S.17B:19-5 is amended to read as follows:

18 17B:19-5. The commissioner shall annually make or cause to be
19 made or shall annually require the insurer to make calculations of
20 policy and loss reserves for health insurance written by insurers
21 authorized to write health insurance in this State as defined in
22 [section] N.J.S.17B:17-4. The commissioner [may] shall promulgate
23 regulations [providing for] establishing the minimum [reserve]
24 standards [and mortality, morbidity or other contingency bases to be
25 used in connection therewith. All calculations for minimum reserve
26 purposes shall be made on the basis of a rate of interest not exceeding
27 3 1/2 % per annum in the case of policies issued prior to January 1,
28 1973 and, for policies issued on or after that date on the basis of a
29 rate of interest not exceeding the maximum rate of interest specified
30 in section 17B:19-8 for policies of life insurance which are issued in
31 the same year as such health insurance policies, and, if the following
32 specification is relevant, for policies of life insurance containing a
33 maximum guaranteed duration of more than 10 years but not more
34 than 20 years] applicable to the valuation of health insurance reserves.
35 (cf: P.L.1981, c.285, s.2)

36

37 4. This act shall take effect immediately, except that section 3 shall
38 take effect ¹[December 31,1999] January 1, 2001¹. The
39 Commissioner of Banking and Insurance may immediately undertake
40 action to promulgate any regulation necessary to implement the
41 provisions of this act.

42

43

44

45 Subjects HMOs to law regulating insurance holding company systems
46 and revises calculation of health insurance policy reserves.

CHAPTER 2

AN ACT concerning the regulation of health maintenance organizations and reserve requirements for health insurance policies and amending P.L.1973, c.337, P.L.1970, c.22 and N.J.S.17B:19-5.

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

1. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read as follows:

C.26:2J-25 Statutory construction and relationship to other laws.

25. Statutory construction and relationship to other laws.

a. Except as otherwise provided in this act, provisions of the insurance law and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this act. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this State except with respect to its health maintenance organization activities authorized and regulated pursuant to this act. Charges paid by or on behalf of enrollees of a health maintenance organization with respect to health care services shall not be subject to taxation by the State or any of its political subdivisions.

b. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

c. Any health maintenance organization authorized under this act shall not be deemed to be practicing medicine and shall be exempt from the provision of chapter 9 of Title 45, Medicine and Surgery, of the Revised Statutes relating to the practice of medicine.

d. No person participating in the arrangements of a health maintenance organization other than the actual provider of health care services or supplies directly to enrollees and their families shall be liable for negligence, misfeasance, nonfeasance or malpractice in connection with the furnishings of such services and supplies.

e. A health maintenance organization shall be subject to the provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those relating to merger or acquisition of control.

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

C.17:27A-1 Definitions.

1. Definitions.

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

a. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

b. The term "commissioner" shall mean the Commissioner of Banking and Insurance or his deputies, except that when a health maintenance organization is the subject of an acquisition of control or merger, the commissioner shall consult with the Commissioner of Health and Senior Services on matters relating to quality of, and access to, health care services.

c. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of P.L.1970, c.22 (C.17:27A-1 et seq.). This presumption may be rebutted by a showing made in the manner provided by subsection j. of section 3 of P.L.1970, c.22 (C.17:27A-3) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and an

opportunity to be heard, and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

d. An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

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

f. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

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

h. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

i. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

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

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

3. N.J.S.17B:19-5 is amended to read as follows:

Calculations of policy and loss reserves for health insurance.

17B:19-5. The commissioner shall annually make or cause to be made or shall annually require the insurer to make calculations of policy and loss reserves for health insurance written by insurers authorized to write health insurance in this State as defined in N.J.S.17B:17-4. The commissioner shall promulgate regulations establishing the minimum standards applicable to the valuation of health insurance reserves.

4. This act shall take effect immediately, except that section 3 shall take effect January 1, 2001. The Commissioner of Banking and Insurance may immediately undertake action to promulgate any regulation necessary to implement the provisions of this act.

Approved January 16, 2001.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
Steffanie Bell
609-777-2600

RELEASE: January 16, 2001

Gov. Christie Whitman today signed the following legislation:

A-1438, sponsored by Assemblymen Moran (R-Atlantic/Burlington/Ocean) and Connors (R-Atlantic/Burlington/Ocean) and Senators DiGaetano (R-Bergen/Essex/Passaic) and Crecco (R-Essex/Passaic), increases by 5 percent the pension allowance payable to certain previously retired members of the Consolidated Police and Fireman's Pension Fund (CPFPF), the Police and Fireman's Retirement System (PFRS), and to certain past and prospective law enforcement officer (LEO) retirants under the Public Employee's Retirement System (PERS). To be eligible for the increase a retiree must have rendered at least 25 years of creditable service under the system.

A-1484, sponsored by Assembly Members Heck (R-Bergen) and O'Toole (R-Essex/Union) and Senators Bark (R-Atlantic/Burlington/Camden) and Adler (D-Camden), revises the administrative rule-making process.

A-2274, sponsored by Assembly Member Collins (R-Salem/Cumberland/Gloucester), allows the transfer of certain service credit between the Public Employees' Retirement System and the Teachers' Pension and Annuity Fund.

A-733, sponsored by Assembly Members Talarico (R-Bergen) and Chatzidakis (R-Atlantic/Burlington/Camden) and Senators Sinagra (R-Middlesex) and Matheussen (R-Camden/Gloucester), subjects health maintenance organizations to the law regulating insurance holding company systems and revises the calculation of health insurance policy reserves.

A-764, sponsored by Assembly Members Previte (D-Camden) and Holzapfel (R-Monmouth/Ocean) and Senators Allen (R-Burlington/Camden) and Bennett (R-Monmouth), disqualifies a person adjudicated delinquent as a juvenile from obtaining either a handgun purchase permit or a firearms purchaser identification card in certain cases.