

**17:48E-49**  
**LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 2001                      **CHAPTER:** 131

**NJSA:** 17:49E-49                      (Conversion of a health service corporation)

**BILL NO:** S1581                      (Substituted for A2739)

**SPONSOR(S):** Cardinale and Codey

**DATE INTRODUCED:** September 21, 2000

**COMMITTEE:**                      **ASSEMBLY:** Banking and Insurance

**SENATE:** Commerce

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                      **ASSEMBLY:** March 26, 2001                      Re-enacted 6-28-2001

**SENATE:** December 18, 2000                      Re-enacted 6-21-2001

**DATE OF APPROVAL:** June 29, 2001

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Senate Committee Substitute (1R) enacted)  
(Amendments during passage denoted by superscript numbers)

**S1581**

**SPONSORS STATEMENT:** (Begins on page 9 of original bill)                      Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:**                      Yes

**SENATE:**                      Yes

**FLOOR AMENDMENT STATEMENTS:**                      No

**LEGISLATIVE FISCAL ESTIMATE:**                      No

**A2739**

**SPONSORS STATEMENT:** (Begins on page 9 of original bill)                      Yes  
Bill and Sponsors Statement identical to S1581

**COMMITTEE STATEMENT:**                      **ASSEMBLY:**                      Yes

**SENATE:**                      No

**FLOOR AMENDMENT STATEMENTS:**                      No

**LEGISLATIVE FISCAL ESTIMATE:**                      No

**VETO MESSAGE:**                      Yes

(continued)

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No

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No

KBP

P.L. 2001, CHAPTER 131, *approved June 29, 2001*  
Senate Committee Substitute (*First Reprint*) for  
Senate, No. 1581

1 AN ACT concerning the conversion of a health service corporation to  
2 a domestic stock insurer, providing for the establishment of a  
3 charitable foundation and amending P.L.1992, c.161 and P.L.1992,  
4 c.162.

5

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

8

9 1. (New section) As used in this act:

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

12 "Alternative foundation plan" means the plan submitted to the  
13 Attorney General and the commissioner pursuant to section 18 of this  
14 act.

15 "Application" means the application for approval of a plan of  
16 conversion filed with the commissioner pursuant to section 3 of this  
17 act.

18 "Attorney General" means the Attorney General of the State of New  
19 Jersey.

20 "Commissioner" means the Commissioner of Banking and Insurance.

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

23 "Conversion" means the process by which a health service  
24 corporation converts to a domestic stock insurer in accordance with  
25 the provisions of sections 2 through 14 and section 19 of this act.

26 "Converted insurer" means the domestic stock insurer into which a  
27 health service corporation converts in accordance with the provisions  
28 of sections 2 through 14 and section 19 of this act.

29 "Domestic stock insurer" means a for-profit stock insurer authorized  
30 pursuant to Title 17B of the New Jersey Statutes to transact health  
31 insurance as defined in N.J.S.17B: 17-4.

32 "Effective time" means the date and time at which the conversion of  
33 a health service corporation is effective, as provided in section 11 of  
34 this act.

35 "Foundation" means the foundation or foundations established under  
36 section 18 or 19 of this act.

**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:**

**<sup>1</sup> Senate amendments adopted in accordance with Governor's recommendations June 7, 2001.**

1 "Foundation plan" means the plan submitted to the Attorney General  
2 pursuant to section 19 of this act.

3 "Health service corporation" means a health service corporation  
4 established pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.).

5 "Material change in form" means any action or series of actions that  
6 effect a fundamental corporate change which involves a transfer of  
7 ownership or control of assets of the health service corporation or a  
8 change of the mission or purpose of the health service corporation,  
9 including, without limitation, the purchase, lease, exchange,  
10 conversion, restructuring, merger, division, consolidation or transfer  
11 of control, bulk reinsurance or other disposition or transfer of a  
12 substantial amount of business, line of business, assets or operations  
13 of the health service corporation, including the transfer, directly or  
14 indirectly, of a substantial amount of the health service corporation's  
15 business, line of business, assets or operations to one or more  
16 nonconforming affiliates. A material change in form by the transfer,  
17 directly or indirectly, of a substantial amount of the health service  
18 corporation's business, line of business, assets or operations to one or  
19 more nonconforming affiliates shall not be deemed to occur so long as,  
20 during the most recent four prior consecutive calendar quarters: (1)  
21 the aggregate revenues of all nonconforming affiliates do not exceed  
22 50 percent of the aggregate revenues for the health service corporation  
23 and all affiliates; (2) the aggregate revenues of all nonconforming  
24 affiliates derived from providing individual or group health coverage  
25 to residents of New Jersey equal or exceed 50 percent of the aggregate  
26 revenues from all nonconforming affiliates; and (3) the aggregate  
27 assets of all nonconforming affiliates do not exceed 50 percent of the  
28 aggregate assets of the health service corporation and all affiliates.

29 "Nonconforming affiliate" means any affiliate of a health service  
30 corporation that: (1) operates on a for-profit basis, or (2) operates  
31 on a nonprofit basis and does not have a purpose the same as or  
32 substantially similar to that of the health service corporation.

33 "Parent corporation" means a stock corporation incorporated under  
34 the laws of this State that is or has been organized for the purpose of  
35 acquiring, directly or indirectly, control of the converted insurer  
36 pursuant to the plan of conversion.

37 "Petition" means the petition for approval of a foundation plan  
38 submitted to the Attorney General pursuant to subsection a. of section  
39 19 of this act.

40 "Plan of conversion" means the written plan of conversion adopted  
41 by the health service corporation in compliance with section 2 of this  
42 act.

43 "Policy" means an individual or group policy or contract of  
44 insurance, including, without limitation, any certificate, rider,  
45 endorsement, plan or product offering issued by or binding upon the  
46 health service corporation.

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

4  
5 2. (New section) a. A health service corporation may convert to a  
6 domestic stock insurer by complying with the provisions of sections 2  
7 through 14 and section 19 of this act.

8 b. To convert to a domestic stock insurer, the board of directors of  
9 a health service corporation shall adopt a resolution to become a  
10 domestic stock insurer at a meeting of the board by a two-thirds  
11 affirmative vote of the total number of directors of the health service  
12 corporation. A copy of the minutes of the meeting at which that  
13 resolution is adopted shall be filed with the commissioner and with the  
14 Attorney General at least 120 days before the proposed effective time  
15 of the conversion. The resolution shall include a written plan of  
16 conversion to a domestic stock insurer. The plan shall include:

17 (1) The purposes of the conversion and the manner in which the  
18 proposed conversion will occur.

19 (2) The proposed certificate of incorporation of the converted  
20 insurer and any parent corporation.

21 (3) The proposed bylaws of the converted insurer and any parent  
22 corporation. The bylaws of the converted insurer shall provide for the  
23 appointment of officers, and may provide that the officers of the health  
24 service corporation shall serve to the end of the term to which they  
25 were appointed under the bylaws of the health service corporation.

26 (4) A description of any proposed changes in the converted insurer's  
27 mode of operations after conversion.

28 (5) A statement describing the manner in which the plan of  
29 conversion provides for the protection of all existing contractual rights  
30 of subscribers under the policies in effect at the effective time,  
31 including the payment of claims for reimbursement for those services.

32 (6) A statement that the health service corporation's subscribers  
33 shall have no right to receive any assets, surplus, capital or other  
34 distribution, or to receive any stock or other ownership interest in the  
35 converted insurer or parent corporation in connection with the  
36 conversion.

37 (7) A statement that the legal existence of the health service  
38 corporation does not terminate and that the converted insurer is  
39 subject to all of the liabilities, obligations and relations of whatever  
40 kind of the health service corporation and succeeds to all property,  
41 assets, rights, interests and relations of the health service corporation.

42 (8) An explanation of how policies to be offered by the converted  
43 insurer will comply with section 8 of this act.

44 (9) The manner and form in which the fair market value of the  
45 health service corporation will be transferred, without consideration,  
46 to the foundation.

1     3. (New section) a. The health service corporation shall file with  
2 the commissioner an application pursuant to subsection b. of this  
3 section for approval of, and permission to convert pursuant to, a plan  
4 of conversion. Concurrent with the filing of the application with the  
5 commissioner, the health service corporation shall submit a petition to  
6 the Attorney General pursuant to section 19 of this act and submit a  
7 copy of the petition to the commissioner. The health service  
8 corporation shall file a copy of the application with the Attorney  
9 General at the time the health service corporation files the application  
10 with the commissioner.

11     b. The application shall include the following:

12     (1) The plan of conversion and exhibits thereto.

13     (2) A business plan of the converted insurer and any parent  
14 corporation, including five-year financial projections and the number  
15 of shares of capital stock that the converted insurer and any parent  
16 corporation is authorized to issue, together with estimates of the  
17 capital which might be raised by the sales of the capital stock or  
18 securities convertible into capital stock.

19     (3) A certification by the secretary of the health service corporation  
20 that the plan of conversion has been duly adopted by action of not less  
21 than two-thirds of the total number of directors of the board of the  
22 health service corporation. Subscribers of the health service  
23 corporation shall not have the right to vote on or approve the plan of  
24 conversion, any amendments to the health service corporation's  
25 certificate of incorporation or bylaws, or the certificate of  
26 incorporation or bylaws of the converted insurer or parent  
27 corporation, notwithstanding any provision to the contrary in the  
28 certificate of incorporation or bylaws of the health service corporation.

29     (4) The proposed forms of the notice of hearing required by  
30 subsection e. of this section and any other notices required by the plan  
31 of conversion or by the commissioner.

32     (5) Any information provided to the board of directors of the health  
33 service corporation in connection with its review and approval of the  
34 plan of conversion, except materials that are protected by attorney-  
35 client privilege.

36     (6) A comparative premium rate analysis of all the policies of the  
37 health service corporation, comparing actual premium rates for the  
38 three-year period preceding the filing of the plan of conversion and  
39 projected premium rates for the three-year period following the  
40 proposed conversion. The rate analysis shall address the projected  
41 impact, if any, of the proposed conversion upon the cost to subscribers  
42 as well as the projected impact, if any, of the proposed conversion  
43 upon the health service corporation's underwriting profit, investment  
44 income, tax liability and loss and claim reserves, including the effect,  
45 if any, of adverse market or risk selection on reserves.

46     (7) Any conditions, other than approval of the plan of conversion by

1 the commissioner, to be fulfilled on or before the effective time.

2 (8) Any proposed agreement between or among the foundation and  
3 the converted insurer or its parent corporation, if applicable, including,  
4 but not limited to, any agreement relating to the voting or registration  
5 for sale of any capital stock issued to the foundation by the converted  
6 insurer or any parent corporation.

7 (9) Any other additional information that the health service  
8 corporation believes is necessary.

9 (10) Any other additional information that the commissioner in his  
10 sole discretion deems appropriate.

11 c. If required pursuant to section 6 of this act, the plan of  
12 conversion shall include an appraisal of the fair market value, or range  
13 of values, of the aggregate equity of the converted insurer to be  
14 outstanding upon completion of the plan of conversion and, if a range  
15 of values, the methodology for fixing a final value coincident with the  
16 completion of the transactions provided for in the plan of conversion.

17 (1) The appraisal shall enable determinations of value of:

18 (a) the amount of cash or other assets that the foundation will be  
19 entitled to receive, without consideration, under the provisions of the  
20 plan of conversion; and

21 (b) the price of any shares to be issued pursuant to the optional  
22 provisions of a plan of conversion permitted by subsection e. of  
23 section 6 of this act;

24 (2) The appraisal required by this subsection c. shall be prepared by  
25 persons independent of the health service corporation, experienced and  
26 expert in the area of corporate appraisals and acceptable to the  
27 commissioner. The appraisal shall be in a form and content acceptable  
28 to the commissioner and contain a complete and detailed description  
29 of the elements that make up the appraisal, justification for the  
30 methodology employed and sufficient support for the conclusions  
31 reached in the appraisal. The commissioner may also require the  
32 appraisal to include an analysis of fair market value based on actuarial  
33 considerations, as well as other methods for determining fair market  
34 value.

35 (3) To the extent that the appraisal is based on a capitalization of  
36 the pro forma income of the converted insurer, the appraisal shall  
37 indicate the basis for determination of the income to be derived from  
38 any proceeds of the sale of stock and demonstrate the appropriateness  
39 of the earnings-multiple used, including assumptions made regarding  
40 future earnings growth.

41 (4) To the extent that the appraisal is based on the comparison of  
42 the capital stock of the converted insurer with outstanding capital  
43 stock of existing stock entities offering comparable insurance  
44 products, the existing stock entities shall be reasonably comparable to  
45 the converted insurer in terms of factors such as size, market area,  
46 competitive conditions, profit history and expected future earnings.

1 (5) In those instances in which the commissioner determines that the  
2 appraisal is materially deficient or substantially incomplete, the  
3 commissioner may declare the entire application materially deficient or  
4 substantially incomplete and decline to further process or may reject  
5 the application.

6 (6) The health service corporation shall submit to the commissioner  
7 information demonstrating to the satisfaction of the commissioner the  
8 independence and expertise of any person preparing the appraisal or  
9 related materials under this subsection.

10 (7) The appraiser shall not serve as an underwriter or selling agent  
11 under the plan of conversion. With the prior written approval of the  
12 commissioner, an affiliate of the appraiser may act as an underwriter  
13 or selling agent if procedures are followed and representations and  
14 warranties are made to ensure that the appraiser is separate from the  
15 underwriter or selling agent affiliate and the underwriter or selling  
16 agent affiliate does not make recommendations or in any way have an  
17 impact on the appraisal.

18 (8) An appraiser may not receive any other fee except the fee for  
19 services rendered in connection with the appraisal.

20 d. The commissioner in his sole discretion: (1) shall determine,  
21 within 60 days of submission of the application, whether the  
22 application is complete and, if not, shall specify what additional  
23 information is required; and (2) shall further determine when an  
24 application is complete. The commissioner may request additional  
25 information from the health service corporation which the  
26 commissioner determines is necessary to review the application and  
27 plan of conversion. The commissioner may also conduct an  
28 examination under section 37 of P.L.1985, c.236 (C.17:48E-37) to  
29 obtain any information the commissioner determines necessary in  
30 connection with the application or transaction or series of transactions,  
31 that the commissioner determines constitute, or may constitute, a  
32 material change in form. The failure of the health service corporation  
33 to provide the information or cooperate in the examination, in addition  
34 to other applicable penalties, constitutes grounds for denial of the  
35 application.

36 e. Upon determining that the application is complete and the forms  
37 of notice are adequate, the commissioner shall designate a date for a  
38 public hearing on the plan of conversion. The public hearing may be  
39 held on one or more days, the first commencing within 90 days after  
40 the date on which the commissioner determines the application is  
41 complete, unless the health service corporation requests, and the  
42 commissioner agrees to, a longer period for the purpose of preparing  
43 and distributing the notices required by this subsection. The public  
44 hearing may, if the commissioner and Attorney General so agree, be  
45 conducted jointly as part of the public hearing required under  
46 subsection e. of section 19 of this act. The hearing shall be in the



1 nature of a legislative hearing and shall not constitute or be considered  
2 a contested case under the "Administrative Procedure Act," P.L.1968,  
3 c.410 (C.52:14B-1 et seq.). The health service corporation shall  
4 provide the public with at least 45 days' notice of the hearing, the  
5 notice to be in the form, and provided in the manner, that the  
6 commissioner approves. The health service corporation shall cause  
7 notice of the time and place of the public hearing to be published at  
8 least two times at intervals of not less than one week, the first  
9 publication to be not more than 45 days and the last publication not  
10 less than 15 days prior to the public hearing in at least two newspapers  
11 of general circulation in New Jersey. The notice of the hearing shall  
12 state the purpose thereof and the time and the place where the hearing  
13 will occur. The purpose of the hearing shall be to receive comments  
14 and information for the purpose of aiding the commissioner in making  
15 a decision as to whether to approve the plan of conversion. Persons  
16 wishing to make comments and submit information may submit written  
17 statements to the commissioner prior to the public hearing and may  
18 appear and be heard at the hearing.

19 f. The hearing shall be conducted by the commissioner or, at the  
20 commissioner's discretion, his designee, who shall report to and advise  
21 the commissioner on the matter, in which case the determination or  
22 order issued by the commissioner shall have the same force and effect  
23 as if the commissioner had conducted the hearing personally. The  
24 commissioner's order or determination on the application pursuant to  
25 section 4 of this act shall be issued within 45 days after the closing of  
26 the record of the hearing by the commissioner or his designee, as  
27 applicable. The commissioner shall issue a written decision detailing  
28 the reasons for the approval or disapproval of the plan of conversion.  
29 The commissioner may, for good cause, extend the time within which  
30 he shall issue an order or determination on the application.

31 g. The commissioner may engage the services of advisors and  
32 consultants, which may include, but are not limited to, lawyers,  
33 actuaries, accountants, investment bankers, compensation and  
34 employee benefit plan consultants or any combination thereof, to  
35 advise him on any matters related to the conversion. All reasonable  
36 costs related to the development and examination of, and deliberations  
37 concerning, a plan of conversion and other related matters, including,  
38 but not limited to, those reasonable costs attributable to the use by the  
39 commissioner of advisors and consultants, shall be paid by the health  
40 service corporation that makes the filing or initiates the discussions  
41 about a plan of conversion, both for services prior to the effective time  
42 and for services after the effective time.

43

44 4. (New section) a. The commissioner shall approve the plan of  
45 conversion and issue a certificate of authority to the converted insurer  
46 to transact business in this State as a domestic stock insurer only if the

1 commissioner finds all of the following:

2 (1) The plan of conversion meets the requirements of sections 2 and  
3 3 of this act.

4 (2) Upon conversion, the converted insurer will meet the applicable  
5 standards and conditions under this section, including applicable  
6 minimum capital and surplus requirements.

7 (3) The plan of conversion adequately protects the existing  
8 contractual rights of subscribers.

9 (4) The plan of conversion will promote the best interests of the  
10 health service corporation.

11 (5) The health service corporation has complied with all  
12 requirements of sections 2 and 3 of this act.

13 (6) The plan of conversion is fair and equitable.

14 (7) The plan provides for the enhancement of the operations of the  
15 converted insurer.

16 (8) The plan provides for the transfer at or before the effective time  
17 of the entire fair market value of the health service corporation to the  
18 foundation in accordance with section 6 of this act.

19 (9) The plan is consistent with the foundation plan.

20 (10) The plan does not adversely affect the distribution of the health  
21 service corporation's value to the foundation.

22 (11) The plan is not contrary to law.

23 (12) The plan promotes the public interest.

24 (13) The Attorney General has concurred:

25 (a) with any findings of the commissioner pursuant to paragraph (8)  
26 of this subsection and section 6 of this act; and

27 (b) with the actions of the commissioner under subsection c. of  
28 section 3 of this act.

29 b. The commissioner's order approving or disapproving a plan of  
30 conversion under this section shall be a final agency decision subject  
31 to appeal in accordance with, and within the time periods specified by,  
32 the Rules Governing the Courts of the State of New Jersey.

33

34 5. (New section) The order of the commissioner issued pursuant to  
35 section 4 of this act shall not take effect unless the commissioner  
36 issues a subsequent order finding that:

37 a. the Superior Court has entered an order pursuant to subsection  
38 f. of section 19 of this act approving the establishment of the  
39 foundation; and

40 b. the Superior Court has not imposed any terms or conditions that  
41 are materially inconsistent with the order of the commissioner issued  
42 pursuant to section 4 of this act.

43

44 6. (New section) a. At or before the effective time, the entire fair  
45 market value of the health service corporation, exclusive of any shares  
46 of the converted insurer or any parent corporation issued pursuant to

1 subsection e. of this section, shall be transferred to the foundation,  
2 without consideration, in a manner and form acceptable to the  
3 commissioner. In determining fair market value, consideration shall be  
4 given to value as a going concern, market value, investment or  
5 earnings value, net asset value and a control premium, if any.

6 b. If the foundation receives, at the effective time, 100 percent of  
7 the shares of the outstanding capital stock of the converted insurer or  
8 any parent corporation freely transferable and without restriction, the  
9 foundation is presumed to have acquired the entire fair market value  
10 of the health service corporation and no appraisal shall be required  
11 under subsection c. of section 3 of this act, unless the commissioner  
12 finds that the proposed capital structure of the converted insurer does  
13 not represent the fair market value of the health service corporation.

14 c. (1) If the foundation receives, at the effective time, 100 percent  
15 of shares of the outstanding capital stock of the converted insurer or  
16 any parent corporation and the shares are subject to restrictions the  
17 commissioner determines are necessary and reasonable to maintain the  
18 value of the assets of the converted insurer, the foundation is  
19 presumed to have acquired the entire fair market value of the health  
20 service corporation and, subject to paragraph (2) of this subsection, no  
21 appraisal shall be required under subsection c. of section 3 of this act,  
22 unless the commissioner finds that the proposed capital structure of  
23 the converted insurer does not represent the fair market value of the  
24 health service corporation.

25 (2) In determining whether the restrictions are necessary and  
26 reasonable, the commissioner may require an appraisal of the  
27 diminution in value of the shares as a result of the restrictions, which  
28 appraisal shall take into consideration the increase in value of the  
29 shares on account of any registration rights granted to the foundation  
30 in connection with the shares of capital stock of the converted insurer  
31 or parent corporation.

32 d. If the foundation receives consideration in a form other than as  
33 described in subsections b. and c. of this section, the plan of  
34 conversion shall include an appraisal of the fair market value of the  
35 health service corporation that satisfies the requirements of subsection  
36 c. of section 3 of this act.

37 e. This section does not prohibit the inclusion in the plan of  
38 conversion of provisions under which the converted insurer would  
39 make a simultaneous offering of shares of its authorized but unissued  
40 capital stock for cash to either (1) the public, or (2) its directors,  
41 officers and employees as a group, or both, in each case under terms  
42 and conditions and pursuant to valuation procedures the commissioner  
43 approves and that do not materially dilute the value of the shares  
44 distributed to the foundation. In no event may in excess of five  
45 percent of the aggregate shares of capital stock to be issued by the  
46 converted insurer pursuant to the plan of conversion be offered for

1 purchase by the directors, officers and employees, in the aggregate, of  
2 the health service corporation and the shares shall be offered only on  
3 terms generally available to the public.

4  
5 7. (New section) a. The legal existence of the health service  
6 corporation shall not terminate, and the converted insurer shall be a  
7 continuation of the health service corporation. The conversion shall  
8 only be a change in identity and form of organization. All property,  
9 assets, rights, liabilities, obligations, interests and relations of whatever  
10 kind of the health service corporation, including, but not limited to,  
11 any rights, duties and obligations pursuant to a collective bargaining  
12 agreement, shall continue and remain in the converted insurer. All  
13 actions and legal proceedings to which the health service corporation  
14 was a party prior to conversion shall be unaffected by the conversion.  
15 The subscribers of the health service corporation shall have no right to  
16 receive any assets, surplus, capital or other distribution, or to receive  
17 any stock or other ownership interest in the converted insurer or  
18 parent corporation in connection with the conversion.

19 b. So long as the foundation owns at least 10 percent of the shares  
20 of stock of the converted insurer or the parent corporation issued to  
21 the foundation at the effective time, the converted insurer or its parent  
22 corporation shall not issue any shares of capital stock or other  
23 securities convertible into shares of capital stock of the converted  
24 insurer or the parent corporation without the approval of the  
25 commissioner, who may approve the sale of additional shares of stock  
26 of the converted insurer or its parent corporation if the converted  
27 insurer demonstrates to the commissioner's sole satisfaction that the  
28 sale would not materially dilute the value of the shares distributed to  
29 the foundation and that all shares and other securities sold pursuant to  
30 this subsection b. or subsection e. of section 6 of this act are priced in  
31 a manner consistent with the fair market value of the aggregate equity  
32 of the converted insurer or any parent corporation at the time of the  
33 sale. The sale of capital stock of the converted insurer or its parent  
34 corporation in a firm commitment underwritten public offering shall be  
35 presumed to satisfy the standards set forth in this subsection, as long  
36 as the capital stock is of the same class and series as the stock owned  
37 by the foundation.

38  
39 8. (New section) a. The policies of the health service corporation  
40 shall be converted to policies of the converted insurer without any  
41 further action on the part of the converted insurer.

42 b. Policies of the health service corporation that were issued and  
43 remain in force prior to the effective time shall be deemed to comply  
44 with laws and regulations applicable to a domestic stock insurer.

45 c. Policies of the converted insurer issued on or after the effective  
46 time shall comply with all laws and regulations that apply to a

1 domestic stock insurer; provided, however, that policies issued on and  
2 after the effective time shall, for a period not to exceed six months  
3 from the effective time, be deemed to comply with all laws and  
4 regulations applicable to a domestic stock insurer if the policies  
5 comply with the laws and regulations applicable to a health service  
6 corporation.

7  
8 9. (New section) No director, officer, agent or employee of the  
9 health service corporation shall receive any fee, commission or other  
10 valuable consideration that is contingent upon the plan of conversion  
11 becoming approved or effective or is based upon a director, officer,  
12 agent or employee aiding, promoting or assisting in the approval or  
13 effectuation of the plan of conversion. Subject to the approval of the  
14 commissioner, the health service corporation may provide in its plan  
15 of conversion for employee benefit and compensation arrangements  
16 that are to become effective simultaneously with the plan of  
17 conversion. Except for stock issued to employee benefit plans  
18 generally available to all employees, no member of the board of  
19 directors or officer of the converted insurer or parent corporation may  
20 receive any compensation involving the use of stock of the converted  
21 insurer or parent corporation until after the first anniversary of the  
22 effective time.

23  
24 10. (New section) All applications, reports, plans and other  
25 documents to be filed or submitted under section 3 and section 19 shall  
26 be public records, except for the following documents, which shall be  
27 confidential and not public records:

- 28 a. documents deemed confidential by statute or regulation; and  
29 b. the business plan, the financial projections and any other  
30 information the commissioner and Attorney General jointly determine  
31 could result in harm to the health service corporation, harm to the  
32 converted insurer or parent corporation, or harm to the public interest,  
33 if disclosed.

34 The commissioner and Attorney General shall provide the public  
35 with prompt and reasonable access to public records relating to the  
36 proposed conversion of the health service corporation. The  
37 commissioner and Attorney General shall make the public records  
38 received pursuant to this act available for inspection at no cost to the  
39 public. These public records shall be made available to the public at  
40 least 30 days prior to any public hearing to be held pursuant to this  
41 act.

42  
43 11. (New section) The conversion shall be effective at midnight on  
44 the date provided for in the certificate of incorporation of the  
45 converted insurer or such other time as the commissioner may agree.  
46 On or prior to the effective time of the conversion, the health service

1 corporation shall file with the commissioner a certificate stating that:

2 a. all the conditions set forth in the order of the commissioner issued  
3 pursuant to section 4 of this act have been satisfied;

4 b. the commissioner has issued the order required under section 5  
5 of this act and all the conditions set forth in that order have been  
6 satisfied;

7 c. the board of directors of the health service corporation has not  
8 abandoned or amended the plan of conversion pursuant to section 12  
9 of this act; and

10 d. the foundation has been established in the manner approved by  
11 the Superior Court pursuant to section 19 of this act and at least a  
12 majority of the directors of the foundation have been appointed.

13

14 12. (New section) The health service corporation may, by action of  
15 not less than two-thirds of its board of directors, abandon or amend  
16 the plan of conversion at any time before the effective time. No  
17 amendment made after the public hearing required by subsection e. of  
18 section 3 of this act shall change the plan in any manner which the  
19 commissioner determines is material unless a further public hearing is  
20 held on the plan as amended.

21

22 13. (New section) The directors and officers of the health service  
23 corporation, unless otherwise specified in the plan of conversion, shall  
24 serve as the directors and officers of the converted insurer until new  
25 directors and officers are duly elected pursuant to the articles of  
26 incorporation and bylaws of the converted insurer.

27

28 14. (New section) The Attorney General has the right to participate  
29 in any proceeding before the commissioner under this act and has the  
30 right to receive any documents or other information received by the  
31 commissioner in connection with the proceeding. The Attorney  
32 General is subject to all confidentiality provisions that apply to the  
33 commissioner.

34

35 15. (New section) The commissioner may issue orders as necessary  
36 to effect the conversion and promulgate rules and regulations to  
37 implement the provisions of this act pursuant to the "Administrative  
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

39

40 16. (New section) a. Nothing in this act shall be construed to limit  
41 the existing authority of the Attorney General, except that the  
42 procedures set forth in this act shall be exclusive.

43 b. A health service corporation shall reimburse the Attorney General  
44 and the commissioner for the costs of any advisors and consultants,  
45 which may include, but are not limited to, lawyers, actuaries,  
46 accountants and investment bankers or any combination thereof, to

1 advise either of them in connection with any matter before any court  
2 or any administrative agency relating to any matter under this act.

3  
4 17. (New section) A health service corporation shall satisfy the  
5 requirements of sections 18 and 19 of this act prior to engaging in any  
6 actions that constitutes or may constitute a material change in form.  
7 Any material change in form shall be subject to the prior review of the  
8 Attorney General and commissioner pursuant to the provisions of  
9 sections 18 and 19 of this act. The Attorney General shall review  
10 these material changes in form in furtherance of his common law  
11 responsibilities as protector, supervisor and enforcer of charitable  
12 trusts and charitable corporations.

13  
14 18. (New section) a. Except for a conversion pursuant to sections  
15 2 through 14 and section 19 of this act, a health service corporation  
16 shall notify the Attorney General and the commissioner of the health  
17 service corporation's intent to engage in any action that constitutes or  
18 may constitute a material change in form at least 120 days prior to  
19 engaging in that action, or such shorter time expressly specified by  
20 statute or regulation, within which the commissioner is required to  
21 issue an approval or disapproval of the action. Upon the Attorney  
22 General's or commissioner's determination that the action is a material  
23 change in form, notice shall be given to the health service corporation  
24 and the Attorney General or commissioner, as applicable.

25 b. Within 90 days after the Attorney General or commissioner issues  
26 a notice of the determination that the action is a material change in  
27 form, the health service corporation shall submit to the commissioner  
28 and the Attorney General a petition for review of the material change  
29 in form if the health service corporation desires to proceed with the  
30 proposed action. The petition shall include an alternative foundation  
31 plan that contains the provisions set forth in section 19 of this act  
32 applicable under the circumstances, together with any additional  
33 provisions the Attorney General determines are reasonably required to  
34 coordinate the alternative foundation plan with any proceeding  
35 instituted or to be instituted by the commissioner in connection with  
36 the material change in form. The petition and alternative foundation  
37 plan shall be subject to Attorney General review under section 19 of  
38 this act and court approval pursuant to subsection f. of section 19 of  
39 this act. If the health service corporation does not desire to proceed  
40 with the proposed action, the health service corporation shall notify  
41 the commissioner and Attorney General and shall withdraw all filings  
42 and submissions made with the commissioner and Attorney General  
43 and not engage in the proposed action. If the health service  
44 corporation fails to comply with this subsection, the commissioner or  
45 Attorney General may seek appropriate relief in Superior Court.

46 c. An action that has been determined to constitute a material

1 change in form shall not be consummated unless the Superior Court  
2 has issued its approval in accordance with subsection f. of section 19  
3 of this act and the commissioner has issued an order or orders  
4 approving the material change in form and any related transactions,  
5 which, if applicable, may include a determination of the fair market  
6 value arising in connection with the material change in form with the  
7 concurrence of the Attorney General.

8 d. The commissioner may hold proceedings as the commissioner  
9 determines are necessary to permit him to enter an order or orders  
10 approving the material change in form and any related transactions.  
11 If either the commissioner or Attorney General determine that a  
12 valuation of the health service corporation is necessary, the appraisal  
13 shall be conducted in accordance with subsection c. of section 3 of this  
14 act.

15 e. Depending on the nature of the material change in form, the  
16 commissioner and Attorney General may permit or require the health  
17 service corporation, after complying with this section and  
18 consummating the material change in form, to continue to operate as  
19 a health service corporation, partially convert to for-profit form, or  
20 completely convert to for-profit form.

21 f. This section shall not apply to a conversion subject to sections 2  
22 through 14 and section 19 of this act.

23

24 19. (New section) a. (1) A health service corporation shall submit  
25 to the Attorney General a petition for review of a foundation plan at  
26 the same time that it submits a plan of conversion to the commissioner.  
27 The petition shall include the foundation plan and any other  
28 information that the Attorney General requests.

29 (2) Within 60 days of the health service corporation's submission of  
30 the petition to the Attorney General, the Attorney General shall advise  
31 the health service corporation in writing whether the petition is  
32 complete, and, if not, shall specify what additional information is  
33 required.

34 (3) The Attorney General shall, upon receipt of the information  
35 requested, notify the health service corporation in writing of the date  
36 of completion of the petition.

37 b. The Attorney General shall review the petition and may either  
38 support the proposed foundation plan, with or without any specific  
39 modifications, or, if he finds that it is not in the public interest, oppose  
40 the foundation plan in the Superior Court proceeding commenced  
41 pursuant to subsection f. of this section.

42 c. When reviewing the petition, in addition to considering whether  
43 the foundation plan meets the requirements of subsection d. of this  
44 section, the Attorney General shall consider whether:

45 (1) the health service corporation exercised due diligence in  
46 deciding to effectuate the conversion, selecting any other party to the



- 1 conversion or related transactions, and negotiating the terms and  
2 conditions of the conversion;
  - 3 (2) the procedures used by the health service corporation in  
4 approving the conversion, including whether expert assistance was  
5 used, were appropriate;
  - 6 (3) a conflict of interest was disclosed, including, but not limited to,  
7 conflicts of interest related to board members of, employees of, and  
8 experts retained by, the health service corporation or any other parties  
9 to the conversion;
  - 10 (4) any management contract under the conversion or any related  
11 transaction is for reasonable fair value;
  - 12 (5) any proceeds of the conversion will be used solely for purposes  
13 of expanding access to affordable, quality health care for underserved  
14 individuals and promoting fundamental improvements in the health  
15 status of New Jerseyans;
  - 16 (6) the health service corporation established appropriate criteria in  
17 deciding to pursue a conversion and considered the proposed  
18 conversion as the only alternative or as the best alternative in relation  
19 to carrying out its mission and purposes; and
  - 20 (7) officers, directors, board members or senior management of the  
21 health service corporation will receive contracts in any existing, new  
22 or affiliated health service corporation, foundation, the converted  
23 insurer, any parent corporation or any affiliate of any of the foregoing.
- 24 d. The foundation plan shall meet the following requirements:
- 25 (1) The foundation plan shall provide for the establishment of one  
26 or more foundations that will receive the fair market value of the  
27 health service corporation following its conversion to a domestic stock  
28 insurer and that meets the following requirements:
    - 29 (a) The foundation shall be a trust or nonprofit corporation formed  
30 under the laws of this State, but shall not include the health service  
31 corporation or any person controlled by the health service corporation.
    - 32 (b) The foundation shall be a charitable entity that qualifies for  
33 federal income tax exemption under paragraph (3) of subsection (c) of  
34 section 501 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
35 s. 501.
    - 36 (c) The foundation shall have the sole purposes of expanding access  
37 to affordable, quality health care for underserved individuals and  
38 promoting fundamental improvements in the health status of all New  
39 Jerseyans.
    - 40 (d) The foundation, its directors, officers and trustees and the assets  
41 of the foundation, including any stock of the converted insurer or a  
42 parent corporation, shall be independent of any influence or control by  
43 the converted insurer, its parent corporation, any of their subsidiaries  
44 or affiliates, any of their respective directors, officers, trustees or  
45 employees, except with the prior approval of the Attorney General and  
46 the commissioner.

1 (e) The foundation shall not have more than one of its directors  
2 serve as a director of the converted insurer or its parent corporation.

3 (f) The foundation shall not have as a director, officer or senior  
4 management any person who has been a director, officer, agent,  
5 trustee or employee of the health service corporation, the converted  
6 insurer, its parent corporation or any affiliate of any of them during the  
7 three-year period preceding the date of appointment as a director,  
8 officer or senior manager of the foundation.

9 (g) The foundation shall have a board of directors that when  
10 appointed will comply with section 20 of this act.

11 (2) The foundation shall provide the Attorney General with an  
12 annual report which shall include an audited financial statement and a  
13 detailed description of its grant-making and other charitable activities  
14 related to its use of the charitable assets received pursuant to the  
15 conversion. The annual report shall be made available to the public at  
16 both the Attorney General's office and the office of the foundation.  
17 Nothing contained in this act shall affect the obligations of an entity  
18 possessing endowment funds under the "Uniform Management of  
19 Institutional Funds Act," P.L.1975, c.26 (C.15:18-15 et seq.).

20 (3) The governing body of the foundation shall establish or  
21 demonstrate that it has in place, as the case may be, a mechanism to  
22 avoid conflicts of interest, including those associated with grant-  
23 making activities that may benefit the converted insurer, its affiliates,  
24 any person who owns or controls any ownership interest in either the  
25 converted insurer or any of its affiliates, and any director or officer of  
26 the converted insurer or its affiliates.

27 e. The Attorney General shall, during the course of the review of the  
28 foundation plan pursuant to this section, hold at least one public  
29 hearing in which any person may file written comments and exhibits or  
30 appear and make a statement. The public hearing may, if the Attorney  
31 General and the commissioner so agree, be conducted jointly as part  
32 of the public hearing on the conversion required pursuant to  
33 subsection e. of section 3 of this act. The Attorney General may  
34 subpoena additional information or witnesses, including, but not  
35 limited to, information about any transaction that is collateral to the  
36 proposed conversion and any related documents, require and  
37 administer oaths, require sworn statements, take depositions and use  
38 related discovery procedures for purposes of the hearing and at any  
39 time prior to completing the review of the proposed conversion. The  
40 hearing shall be in the nature of a legislative hearing and shall not  
41 constitute or be considered a contested case under the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The public  
43 hearing shall be held no later than 90 days after the date that the  
44 petition is declared complete by the Attorney General. Public notice  
45 of the hearing shall be provided by the health service corporation not  
46 more than 45 days and not less than 15 days prior to the public hearing

1 in at least two newspapers of general circulation in New Jersey.

2 f. Upon completion by the Attorney General of the review of the  
3 petition, the health service corporation shall apply to the Superior  
4 Court for approval of the establishment of the foundation. In that  
5 action, which shall proceed in a summary manner, the Attorney  
6 General shall advise the court as to whether he supports or opposes  
7 the foundation plan, with or without any specific modifications, and  
8 the basis for that position. In considering whether the foundation plan  
9 is in the public interest, the court shall consider whether the  
10 requirements of paragraph (1) of subsection d. of this section have  
11 been satisfied and may consider the criteria established in subsection  
12 c. of this section, as applicable. If the health service corporation fails  
13 to comply with this subsection, the Attorney General may seek  
14 appropriate relief in Superior Court.

15

16 20. (New section) <sup>1</sup>[A foundation established pursuant to this act  
17 shall have a board of directors consisting] a. There is established in,  
18 but not of, the Department of Treasury a Health Service Corporation  
19 Conversion Temporary Advisory Commission. The commission shall  
20 consist<sup>1</sup> of 15 members. Seven members shall be appointed by the  
21 Governor, including two public members, one physician licensed to  
22 practice medicine in New Jersey, one licensed health care provider  
23 other than a physician, one representative of the dental community,  
24 one representative of a community based organization that provides or  
25 assists in providing health care or health care services to New Jersey  
26 residents and one representative of the AFL-CIO. Three members  
27 shall be appointed by the President of the Senate, including one public  
28 member, one representative of the hospital community and one  
29 physician licensed to practice medicine in New Jersey. One public  
30 member shall be appointed by the Minority Leader of the Senate.  
31 Three members shall be appointed by the Speaker of the General  
32 Assembly, including one public member, one representative of the  
33 hospital community and one representative of a community based  
34 organization that provides or assists in providing health care or health  
35 care services to New Jersey residents. One public member shall be  
36 appointed by the Minority Leader of the General Assembly. The  
37 members shall be appointed for a term of three years. A vacancy in  
38 the membership of the <sup>1</sup>[board] commission<sup>1</sup> shall be filled for an  
39 unexpired term in the same manner provided for the original  
40 appointment. Members shall serve without fee or compensation. The  
41 foundation shall commence its activities upon appointment of at least  
42 a majority of its initial board of directors.

43 <sup>1</sup>The commission shall, in anticipation of a conversion as authorized  
44 under this act, examine issues related to access to affordable, quality  
45 health care for underserved individuals and promoting fundamental  
46 improvements in the health status of New Jerseyans, and may review

1 experiences in other states related to the establishment of foundations  
2 in other states resulting from the conversion of health care service  
3 corporations. The commission shall advise the Attorney General and  
4 Commissioner of Banking and Insurance as to its findings on these  
5 issues. The Department of Treasury shall provide the commission with  
6 such assistance as the commission may require in order to perform its  
7 duties under this act. The commission may engage the services of  
8 advisors and consultants in order to assist in the performance of its  
9 duties under this act.

10 b. Members of the advisory commission appointed pursuant to  
11 subsection a. of this section shall serve as the initial board of directors  
12 of a foundation established pursuant to this act until such time as the  
13 terms of their appointments expire. The advisory commission  
14 established pursuant to subsection a. of this section shall expire upon  
15 establishment of a foundation in accordance with this act. A vacancy  
16 in the membership of the board shall be filled for an unexpired term in  
17 the same manner provided for the original appointment. In the event  
18 more than one foundation is established pursuant to this act, the board  
19 of directors of any such additional foundations shall be appointed in  
20 compliance with the requirements of subsection a. of this section.<sup>1</sup>

21

22 21. Section 9 of P.L. 1992, c. 161 (C. 17B:27A-10) is amended to  
23 read as follows:

24 9. a. There is created the New Jersey Individual Health Coverage  
25 Program. All carriers subject to the provisions of this act shall be  
26 members of the program.

27 b. Within 30 days of the effective date of this act, the commissioner  
28 shall give notice to all members of the time and place for the initial  
29 organizational meeting, which shall take place within 60 days of the  
30 effective date. The board shall consist of nine representatives. The  
31 commissioner or his designee shall serve as an ex officio member on  
32 the board. Four members of the board shall be appointed by the  
33 Governor, with the advice and consent of the Senate: one of whom  
34 shall be a representative of an employer, appointed upon the  
35 recommendation of a business trade association, who is a person with  
36 experience in the management or administration of an employee health  
37 benefit plan; one of whom shall be a representative of organized labor,  
38 appointed upon the recommendation of the A.F.L.-C.I.O., who is a  
39 person with experience in the management or administration of an  
40 employee health benefit plan; and two of whom shall be consumers of  
41 a health benefits plan who are reflective of the population in the State.  
42 Four board members who represent carriers shall be elected by the  
43 members, subject to the approval of the commissioner, as follows: to  
44 the extent there is one licensed in this State that is willing to have a  
45 representative serve on the board, a representative from each of the  
46 following entities shall be elected:

1 (1) a health service corporation or a domestic stock insurer which  
2 converted from a health service corporation pursuant to the provisions  
3 of P.L. , c. (C. )(now before the Legislature as this bill) and  
4 is primarily engaged in the business of issuing health benefit plans in  
5 this State;

6 (2) a health maintenance organization;

7 (3) an insurer authorized to write health insurance in this State  
8 subject to Subtitle 3 of Title 17B of the New Jersey Statutes; and

9 (4) a foreign health insurance company authorized to do business  
10 in this State.

11 In approving the selection of the carrier representatives of the  
12 board, the commissioner shall assure that all members of the program  
13 are fairly represented.

14 Initially, two of the Governor's appointees and two of the carrier  
15 representatives shall serve for a term of three years; one of the  
16 Governor's appointees and one of the carrier representatives shall  
17 serve for a term of two years; and one of the Governor's appointees  
18 and one of the carrier representatives shall serve for a term of one  
19 year. Thereafter, all board members shall serve for a term of three  
20 years. Vacancies shall be filled in the same manner as the original  
21 appointments.

22 c. If the initial carrier representatives to the board are not elected  
23 at the organizational meeting, the commissioner shall appoint those  
24 members to the initial board within 15 days of the organizational  
25 meeting.

26 d. Within 90 days after the appointment of the initial board, the  
27 board shall submit to the commissioner a plan of operation and  
28 thereafter, any amendments to the plan necessary or suitable to assure  
29 the fair, reasonable, and equitable administration of the program. The  
30 commissioner may disapprove the plan of operation, if the  
31 commissioner determines that it is not suitable to assure the fair,  
32 reasonable, and equitable administration of the program, and that it  
33 does not provide for the sharing of program losses on an equitable and  
34 proportionate basis in accordance with the provisions of section 11 of  
35 this act. The plan of operation or amendments thereto shall become  
36 effective unless disapproved in writing by the commissioner within 45  
37 days of receipt by the commissioner.

38 e. If the board fails to submit a suitable plan of operation within 90  
39 days after its appointment, the commissioner shall adopt a temporary  
40 plan of operation pursuant to section 9 of P.L.1993, c.164  
41 (C.17B:27A-16.2). The commissioner shall amend or rescind a  
42 temporary plan adopted under this subsection, at the time a plan of  
43 operation is submitted by the board.

44 f. The plan of operation shall establish procedures for:

45 (1) the handling and accounting of assets and moneys of the  
46 program, and an annual fiscal reporting to the commissioner;

1 (2) collecting assessments from members to provide for sharing  
2 program losses in accordance with the provisions of section 11 of this  
3 act and administrative expenses incurred or estimated to be incurred  
4 during the period for which the assessment is made;

5 (3) approving the coverage, benefit levels, and contract forms for  
6 individual health benefits plans in accordance with the provisions of  
7 section 3 of this act;

8 (4) the imposition of an interest penalty for late payment of an  
9 assessment pursuant to section 11 of this act; and

10 (5) any additional matters at the discretion of the board.

11 g. The board shall appoint an insurance producer licensed to sell  
12 health insurance pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.) to  
13 advise the board on issues related to sales of individual health benefits  
14 plans issued pursuant to this act.

15 (cf: P.L.1999, c.367, s.1)

16  
17 22. Section 13 of P.L.1992, c.162 (C.17B:27A-29) is amended to  
18 read as follows:

19 13. a. Within 60 days of the effective date of this act, the  
20 commissioner shall give notice to all members of the time and place for  
21 the initial organizational meeting, which shall take place within 90 days  
22 of the effective date. The members shall elect the initial board, subject  
23 to the approval of the commissioner. The board shall consist of 10  
24 elected public members and two ex officio members who include the  
25 Commissioner of Health and Senior Services and the commissioner or  
26 their designees. Initially, three of the public members of the board  
27 shall be elected for a three-year term, three shall be elected for a  
28 two-year term, and three shall be elected for a one-year term.  
29 Thereafter, all elected board members shall serve for a term of three  
30 years. The following categories shall be represented among the  
31 elected public members:

32 (1) Three carriers whose principal health insurance business is in  
33 the small employer market;

34 (2) One carrier whose principal health insurance business is in the  
35 large employer market;

36 (3) A health service corporation or a domestic stock insurer which  
37 converted from a health service corporation pursuant to the provisions  
38 of P.L. , c. (C. )(now before the Legislature as this bill) and is  
39 primarily engaged in the business of issuing health benefit plans in this  
40 State;

41 (4) Two health maintenance organizations; and

42 (5) (Deleted by amendment, P.L.1995, c.298).

43 (6) (Deleted by amendment, P.L.1995, c.298).

44 (7) Three persons representing small employers, at least one of  
45 whom represents minority small employers.

46 No carrier shall have more than one representative on the board.

1 The board shall hold an election for the two members added  
2 pursuant to P.L.1995, c.298 within 90 days of the date of enactment  
3 of that act. Initially, one of the two new members shall serve for a  
4 term of one year and one of the two new members shall serve for a  
5 term of two years. Thereafter, the new members shall serve for a term  
6 of three years. The terms of the risk-assuming carrier and reinsuring  
7 carrier shall terminate upon the election of the two new members  
8 added pursuant to P.L.1995, c.298, notwithstanding the provisions of  
9 this section to the contrary.

10 In addition to the 10 elected public members, the board shall include  
11 six public members appointed by the Governor with the advice and  
12 consent of the Senate who shall include:

13 Two insurance producers licensed to sell health insurance pursuant  
14 to P.L.1987, c.293 (C.17:22A-1 et seq.);

15 One representative of organized labor;

16 One physician licensed to practice medicine and surgery in this  
17 State; and

18 Two persons who represent the general public and are not  
19 employees of a health benefits plan provider.

20 The public members shall be appointed for a term of three years,  
21 except that of the members first appointed, two shall be appointed for  
22 a term of one year, two for a term of two years and two for a term of  
23 three years.

24 A vacancy in the membership of the board shall be filled for an  
25 unexpired term in the manner provided for the original election or  
26 appointment, as appropriate.

27 b. If the initial board is not elected at the organizational meeting,  
28 the commissioner shall appoint the public members within 15 days of  
29 the organizational meeting, in accordance with the provisions of  
30 paragraphs (1) through (7) of subsection a. of this section.

31 c. (Deleted by amendment, P.L.1995, c.298).

32 d. All meetings of the board shall be subject to the requirements of  
33 the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

34 e. At least two copies of the minutes of every meeting of the board  
35 shall be delivered forthwith to the commissioner.

36 (cf: P.L.1999, c.367, s.2)

37

38 23. This act shall take effect immediately.

39

40

41

42

43 Provides for the conversion of a health service corporation to a for-  
44 profit health insurer and the establishment of a foundation for the  
45 value of that corporation.

**SENATE, No. 1581**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED SEPTEMBER 21, 2000

**Sponsored by:**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Senator RICHARD J. CODEY**

**District 27 (Essex)**

**SYNOPSIS**

Allows conversion of a nonprofit health service corporation to a domestic stock health service corporation under certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.





1 AN ACT concerning the conversion of a nonprofit health service  
2 corporation to a domestic stock health service corporation.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. As used in this act:

8 "Attorney General" means the Attorney General of the State of  
9 New Jersey.

10 "Commissioner" means the Commissioner of Banking and  
11 Insurance.

12 "Conversion" means the conversion of a health service corporation  
13 to a domestic stock health service corporation in accordance with the  
14 provisions of this act.

15 "Domestic stock health service corporation" means a health service  
16 corporation that converts to a domestic stock corporation pursuant to  
17 this act and which complies, and continues to comply, with the  
18 applicable provisions of N.J.S.17B:18-1 et seq. and N.J.S.17B:19-1 et  
19 seq.

20 "Foundation" means the foundation established under section 9 of  
21 this act.

22 "Successor corporation" means a health service corporation which  
23 has converted to a domestic stock health service corporation in  
24 accordance with the provisions of this act.

25  
26 2. a. A health service corporation which is organized pursuant to  
27 P.L.1985, c.236 (C.17:48E-1 et seq.) may convert to a domestic stock  
28 health service corporation by complying with the provisions of this act.

29 b. The board of directors of a health service corporation shall adopt  
30 a resolution to become a domestic stock health service corporation at  
31 a meeting of the board by a two-thirds affirmative vote of the total  
32 number of directors of the health service corporation. A copy of the  
33 minutes of the meeting at which that resolution is adopted shall be  
34 filed with the commissioner and with the Attorney General at least  
35 120 days before the proposed date of conversion. The resolution shall  
36 include a plan of conversion to a domestic stock health service  
37 corporation. The plan shall include:

38 (1) The purposes of the conversion.

39 (2) The proposed certificate of incorporation of the proposed  
40 successor corporation.

41 (3) The proposed bylaws of the proposed successor corporation.  
42 The bylaws shall provide for the appointment of officers, and may  
43 provide that the officers of the health service corporation shall serve  
44 to the end of the term to which they were appointed under the bylaws  
45 of the health service corporation.

1 (4) A description of any changes in the proposed successor  
2 corporation's mode of operations after conversion.

3 (5) A statement describing the manner in which the plan of  
4 conversion provides for the protection of all existing contractual rights  
5 of the health service corporation's subscribers and policyholders and  
6 to medical, surgical, hospital or dental services or the payment of  
7 claims for reimbursement for those services.

8 (6) A statement that the health service corporation's subscribers  
9 and policyholders shall have no right to receive any assets, surplus,  
10 capital or other distribution, or to receive any stock or other  
11 ownership interest in the successor corporation in connection with the  
12 conversion.

13 (7) A statement that the legal existence of the health service  
14 corporation does not terminate and that the successor corporation is  
15 subject to all of the liabilities, obligations, and relations of whatever  
16 kind of the health service corporation and succeeds to all property,  
17 assets, rights, interests and relations of the health service corporation.

18 (8) Documentation showing that the board of directors of the  
19 health service corporation has approved the plan of conversion. It shall  
20 not be necessary for the subscribers or policyholders of the health  
21 service corporation to vote on or approve the plan of conversion, any  
22 amendments to the health service corporation's certificate of  
23 incorporation or bylaws, or the certificate of incorporation or the  
24 bylaws of the successor corporation, notwithstanding any provision to  
25 the contrary in this section or in the certificate of incorporation or  
26 bylaws of the health service corporation.

27 (9) The business plan of the successor corporation, including, but  
28 not limited to, a comparative premium rate analysis of the successor  
29 corporation's major plans and product offerings that, among other  
30 things, compares actual premium rates for the three-year period before  
31 the filing of the plan for conversion and forecasted premium rates for  
32 a three-year period following the proposed conversion. This rate  
33 analysis shall address the forecasted effect, if any, of the proposed  
34 conversion on the cost to policyholders and subscribers of the  
35 successor corporation and on the successor corporation's underwriting  
36 profit, investment income and loss and claim reserves, including the  
37 effect, if any, of adverse market or risk selection upon these reserves.  
38 The information provided under this paragraph (9) shall be  
39 confidential.

40 (10) Any conditions, other than approval of the plan of conversion  
41 by the commissioner, to be fulfilled by a proposed date upon which the  
42 conversion would become effective.

43 (11) Any proposed agreement between the foundation and the  
44 successor corporation, including, but not limited to, any agreement  
45 relating to the voting or registration for sale of any capital stock to be  
46 issued by the successor corporation to the foundation.

1 c. Within 20 days of receiving a plan of conversion under this  
2 section, the commissioner shall publish a notice in one or more  
3 newspapers of general circulation in the health service corporation's  
4 service area describing the name of the health service corporation, the  
5 nature of the plan filed and the date of receipt of the plan. The notice  
6 shall indicate that the commissioner will solicit public comments and  
7 hold a public hearing on the plan. The public hearings shall be  
8 completed within 60 days of the filing of the plan of conversion. The  
9 written public comment period shall be held open until 10 days after  
10 the last public hearing. For good cause, the commissioner may extend  
11 these deadlines once for a maximum of 30 days. The commissioner  
12 shall provide copies of all written public comments to the Attorney  
13 General.

14 d. All applications, reports, plans and other documents under this  
15 section are public records except as otherwise provided in this act. The  
16 commissioner shall provide the public with prompt and reasonable  
17 access to public records relating to the proposed conversion of the  
18 health service corporation. Access to public records covered by this  
19 section shall be made available for at least 30 days before the end of  
20 the public comment period.

21

22 3. The commissioner shall approve the plan of conversion and  
23 issue a certificate of authority to the successor corporation to transact  
24 business in this State as a domestic stock health service corporation  
25 only if the commissioner finds all of the following:

26 a. The plan of conversion meets the requirements of section 2 of  
27 this act.

28 b. Upon conversion, the successor corporation will meet the  
29 applicable standards and conditions under this section, including  
30 applicable minimum capital and surplus requirements.

31 c. The plan of conversion adequately protects the existing  
32 contractual rights of the health service corporation's policyholders and  
33 subscribers to medical, surgical, hospital or dental services and  
34 payment of claims for reimbursement for those services.

35 d. No director, officer or employee of the health service  
36 corporation shall receive any fee, commission, compensation or other  
37 valuable consideration for aiding, promoting or assisting in the  
38 conversion of the health service corporation, other than compensation  
39 paid to any director, officer or employee of the health service  
40 corporation in the ordinary course of business or any distribution of  
41 the assets, surplus, capital or capital stock of the successor  
42 corporation as part of a conversion.

43 e. The health service corporation has complied with all material  
44 requirements of this section.

45 f. The plan of conversion is fair and equitable and not prejudicial  
46 to the contractual rights of the policyholders and subscribers of the

1 successor corporation.

2 g. The plan of conversion is in the public interest.

3 (1) The plan shall be in the public interest if it provides that  
4 consideration equal to 100% of the fair market value of the health  
5 service corporation will be conveyed or issued to the foundation by the  
6 health service corporation at the time the successor corporation files  
7 its articles of incorporation. If the consideration to be conveyed is all  
8 of the common stock of the successor corporation that is issued and  
9 outstanding at the time of conversion, and there is no other capital  
10 stock of any other type or nature then outstanding, it is conclusively  
11 presumed that the foundation shall possess 100% of the fair market  
12 value of the health service corporation.

13 (2) At any time after the conversion, the successor corporation  
14 may, for its own benefit, issue, in a public offering or a private  
15 placement, additional shares of common stock of the same class and  
16 having the same voting, dividend and other rights as that transferred  
17 to the foundation, subject to the applicable provisions of  
18 N.J.S.17B:18-47 and any voting and registration agreements.

19 h. The plan of conversion contains a proposed voting agreement  
20 and a proposed registration agreement between the foundation and the  
21 successor corporation that meets the requirements of subsection e. of  
22 section 9 of this act.

23 i. The Attorney General has given approval pursuant to subsection  
24 f. of section 9 of this act.

25

26 4. a. After issuance of the certificate of authority as provided in  
27 section 3 of this act, the successor corporation shall remain a health  
28 service corporation subject to P.L.1985, c.236 (C.17:48E-1 et seq.)  
29 except that subsection b. of section 2 of P.L.1985, c.236 (C.17:48E-  
30 2), subsection a. of section 3 of P.L.1985, c.236 (C.17:48E-3),  
31 sections 5 through 9, 11 and 41 of P.L.1985, c.236 (C.17:48E-5,  
32 17:48E-6, 17:48E-7, 17:48E-8, 17:48E-9, 17:48E-11 and 17:48E-41),  
33 subsections a. and b. of section 17 of P.L.1985, c.236 (C.17:48E-17),  
34 section 5 of P.L.1988, c.71 (C.17:48E-17.1), and section 8 of  
35 P.L.1993, c.235 (C.17:48E-17.2) shall not apply.

36 b. The successor corporation shall be subject to the provisions of  
37 chapters 18 and 19 of Title 17B of the New Jersey Statutes, but to no  
38 other provision of Title 17B of the New Jersey Statutes, except as  
39 specifically provided in P.L.1985, c.236 (C.17:48E-1 et seq.).

40 c. The legal existence of the health service corporation shall not  
41 terminate, and the successor corporation is a continuation of the health  
42 service corporation. The conversion shall only be a change in identity  
43 and form of organization. Except as provided in subsection g. of  
44 section 3 of this act, all property, assets, rights, liabilities, obligations,  
45 interests and relations of whatever kind of the health service  
46 corporation shall continue and remain in the successor health service

1 corporation. All actions and legal proceedings to which the health  
2 service corporation was a party prior to conversion shall be unaffected  
3 by the conversion.

4 d. The successor corporation may merge with a stock insurer  
5 authorized to issue health insurance, as such is defined in  
6 N.J.S.17B:17-4. The resulting corporation shall then no longer be  
7 subject to P.L.1985, c.236 (C.17:48E-1 et seq.), but shall be subject  
8 to the provisions of Title 17B of the New Jersey Statutes. The voting  
9 agreement described in section 9 of this act, if then still in effect, shall  
10 survive the merger.

11

12 5. The commissioner's final decision and order regarding the plan  
13 of conversion shall include findings of fact and conclusions of law.  
14 Findings of fact shall be based upon and supported by substantial  
15 evidence, including evidence submitted with the plan by the health  
16 service corporation and evidence obtained at hearings held by the  
17 commissioner. The failure of the commissioner or the Attorney  
18 General to approve the plan of conversion as submitted within  
19 270 days after submission to the commissioner shall be deemed a  
20 disapproval thereof, subject to review by the Superior Court in a  
21 proceeding in lieu of prerogative writ pursuant to N.J.S.17:48E-43.

22

23 6. The contracts of the health service corporation shall be  
24 converted to contracts of the successor corporation without any  
25 further action on the part of the successor corporation.

26

27 7. The conversion of a health service corporation to a domestic  
28 stock health service corporation shall not cause any individual health  
29 benefits plan issued prior to November 30, 1992 and still in effect on  
30 the effective date of this act to be subject to the provisions of sections  
31 3 through 8 of P.L. 1992, c.161 (C.17B:27A-4 through 17B:27A-9),  
32 except as specified in those sections, or any small employer health  
33 benefits plan issued prior to November 30, 1992 and still in effect on  
34 the effective date of this act to be subject to the provisions of section  
35 3 of P.L.1992, c.162 (C.17B:27A-19).

36

37 8. The informational filing made by the health service corporation  
38 to the New Jersey Individual Health Coverage Program Board shall be  
39 deemed to be the filing of the successor corporation.

40

41 9. a. A foundation shall be created by the health service  
42 corporation to receive the fair market value of the health service  
43 corporation when the health service corporation converts to a  
44 domestic stock health service corporation.

45 b. The charitable purpose of the foundation shall be to promote  
46 the health of the people of New Jersey. The foundation may not

1 establish or operate any entity licensed pursuant to Title 17B of the  
2 New Jersey Statutes, P.L.1979, c.478 (C.17:48D-1 et seq.), P.L.1985,  
3 c.236 (C.17:48E-1 et seq.) or P.L.1973, c.337 (C.26:2J-1 et seq.) that  
4 would compete with the successor corporation or any of its  
5 subsidiaries.

6 c. The board of directors of the foundation shall consist of 15  
7 members appointed by the Governor, including two public members  
8 chosen by the Governor; two public members selected by the Speaker  
9 of the General Assembly; two public members selected by the  
10 President of the Senate; one public member selected by the Minority  
11 Leader of the Senate; one public member selected by the Minority  
12 Leader of the General Assembly; two representatives of the hospital  
13 community selected upon the recommendation of the New Jersey  
14 Hospital Association; two representatives of the medical community  
15 selected upon the recommendation of the New Jersey Medical Society;  
16 two representatives of the dental community selected upon the  
17 recommendation of the New Jersey Dental Association; and a member  
18 selected upon the recommendation of the AFL-CIO. The members  
19 shall be appointed for a term of three years. A vacancy in the  
20 membership of the board shall be filled for an unexpired term in the  
21 same manner provided for the original appointment. Members shall  
22 serve without fee or compensation.

23 d. The foundation and its directors, officers and employees shall be  
24 and remain independent of the successor corporation and its affiliates.  
25 No director, officer or employee of the foundation shall serve as a  
26 director, officer or employee of the successor corporation or any of its  
27 affiliates. No director, officer or employee of the successor  
28 corporation or any of its affiliates shall serve as a director, officer or  
29 employee of the foundation. The provisions of this subsection shall  
30 expire 10 years following the effective date of a conversion pursuant  
31 to this act or the divestment by the foundation of at least 95 percent  
32 of the stock of the successor corporation received pursuant to  
33 subsection g. of section 3 of this act, whichever occurs later.

34 e. The foundation and the successor corporation shall operate  
35 under a voting agreement and a stock registration agreement,  
36 approved by the commissioner and the Attorney General, that provides  
37 at least the following:

38 (1) The foundation shall vote the common stock in the successor  
39 corporation for election of the directors of the successor corporation  
40 nominated by the board of directors of the successor corporation to  
41 the extent provided by the terms of the voting agreement;

42 (2) The voting restrictions shall not apply to any common stock  
43 of the successor corporation sold by the foundation; and

44 (3) The board of directors of the successor corporation shall  
45 determine the timing of any initial public offering of the successor  
46 corporation's common stock, either by the successor corporation or by

1 the foundation, and the foundation shall have demand registration  
2 rights and optional "piggy-back" or "incidental" registration rights in  
3 connection with any offerings of the successor corporation's common  
4 stock by the successor corporation, on the terms and conditions set  
5 forth in a registration rights agreement.

6 The voting agreement may contain additional terms, including  
7 voting and ownership restrictions, with regard to the common stock  
8 of the successor corporation and provisions for the voting or  
9 registration for sale of any common stock to be issued to the  
10 foundation by the successor corporation.

11 f. Before the commissioner approves a plan of conversion  
12 pursuant to section 3 of this act, the Attorney General, on behalf of the  
13 public and charitable interests in this State, shall assure that 100% of  
14 the issued and outstanding stock of the successor corporation shall be  
15 conveyed or issued to the foundation as provided in section 3 of this  
16 act and approve the certificate of incorporation and bylaws of the  
17 foundation and all proposed agreements between the successor  
18 corporation and the foundation, including stock voting or registration  
19 agreements.

20 Within 20 days of receiving a plan of conversion, the Attorney  
21 General shall publish a notice in one or more newspapers of general  
22 circulation in the health service corporation's service area briefly  
23 describing the health service corporation's proposal to transfer to the  
24 foundation the health service corporation's fair market value as  
25 provided under section 3 of this act, the foundation's purposes and all  
26 proposed stock voting or registration agreements. The notice shall  
27 indicate that the Attorney General will solicit public comments and  
28 hold a public hearing on the proposal. The public hearings shall be  
29 completed within 60 days of the filing of the plan of conversion. The  
30 written public comment period shall be held open until 10 days after  
31 the last public hearing. For good cause, the Attorney General may  
32 extend these deadlines once for a maximum of 30 days. The Attorney  
33 General may seek advice on these matters from consultants,  
34 investment bankers, and other professional advisors engaged by the  
35 Attorney General incident to review of the proposal.

36 g. The proposed certificate of incorporation of the foundation  
37 shall provide for all of the following:

38 (1) That the foundation is organized and operated exclusively for  
39 charitable purposes and for the promotion of social welfare;

40 (2) That no part of the net earnings of the foundation shall inure  
41 to the benefit of any private shareholder or individual;

42 (3) That the foundation shall not engage in any political campaign  
43 activity or the making of political contributions;

44 (4) That the foundation shall not pay or incur any amount that, if  
45 paid by an organization classified as a "private foundation" under  
46 section 509(a) of the Internal Revenue Code of 1986 (26 U.S.C. 509

1 (a)), would constitute a "taxable expenditure" as defined by section  
2 4945(d)(1) and (2) of the Internal Revenue Code of 1986 (26 U.S.C.  
3 4945(d)(1) and (2));

4 (5) That the foundation shall not engage in any self-dealing for the  
5 benefit of its directors, officers or employees;

6 (6) Provide for an ongoing community advisory committee to  
7 offer broad public input to the foundation concerning its operations  
8 and activities;

9 (7) Provide that the foundation, after its first three years of  
10 operation, shall pay out the lesser of: (a) "qualifying distributions" of  
11 "distributable amounts," as those terms are defined in section 4942 of  
12 the Internal Revenue Code of 1986 (26 U.S.C. 4942), as if the  
13 foundation were classified as a private foundation subject to the  
14 distribution requirements, but not the taxes imposed, under that  
15 section; or (b) substantially all of its income, less qualifying expenses.  
16 In no event shall the foundation be required to invade its corpus to  
17 meet the distribution requirements under this paragraph (7);

18 (8) That the provisions in the certificate of incorporation that are  
19 either required by subsection f. of this section, or designated by the  
20 Attorney General, cannot be amended without the prior written  
21 approval of the Attorney General.

22 h. Within 120 days of the end of its fiscal year, the foundation  
23 shall provide the Attorney General and the commissioner with its State  
24 and federal tax returns for the preceding fiscal year and advise the  
25 Legislature of its accomplishments during that year and its plans for  
26 the current fiscal year. The tax returns shall be made available for  
27 public inspection.

28

29 10. This act shall take effect immediately.

30

31

32

### STATEMENT

33

34 This bill allows a nonprofit health service corporation to convert  
35 to a domestic stock health service corporation if its plan of conversion  
36 is approved by the Commissioner of Banking and Insurance and 100%  
37 of the fair market value of the health service corporation, in stock of  
38 the corporation, is conveyed to a foundation established pursuant to  
39 the bill to promote the health of the people of New Jersey. The  
40 Attorney General shall assure that 100% of the value of the health  
41 service corporation is transferred to the foundation.

42 The plan of conversion shall adequately protect the existing  
43 contractual rights of the health service corporation's policyholders and  
44 subscribers and payment of claims for reimbursement for health care  
45 services. In addition, the plan of conversion shall be fair and equitable  
46 and not prejudicial to the contractual rights of the policyholders and



1 subscribers of the new domestic stock health service corporation.

2       The foundation created by the health service corporation will have  
3 a board of directors consisting of 15 members appointed by the  
4 Governor: two public members chosen by the Governor; two public  
5 members selected by the Speaker of the General Assembly; two public  
6 members selected by the President of the Senate; one public member  
7 selected by the Minority Leader of the Senate; one public member  
8 selected by the Minority Leader of the General Assembly; two  
9 representatives of the hospital community selected upon the  
10 recommendation of the New Jersey Hospital Association; two  
11 representatives of the medical community selected upon the  
12 recommendation of the New Jersey Medical Society; two  
13 representatives of the dental community selected upon the  
14 recommendation of the New Jersey Dental Association; and a member  
15 selected upon the recommendation of the AFL-CIO.

16       No director, officer or employee of the foundation shall serve as  
17 a director, officer or employee of the new domestic stock health  
18 service corporation and vice versa. The foundation shall be organized  
19 and operated exclusively for charitable purposes and for the promotion  
20 of social welfare and must pay out most of its income to accomplish  
21 these goals.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1581**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 14, 2000

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 1581.

This bill, a Senate Committee Substitute for Senate, No. 1581, allows an existing health service corporation (Horizon Blue Cross/Blue Shield of New Jersey), or any health service corporation formed in the future, to convert from a non-profit health service corporation to a for-profit domestic stock health insurer. As a condition of this conversion, the corporation is required to establish a charitable foundation and contribute to it the fair market value of the health service corporation (most likely 100 percent of the converted insurer's stock issued and outstanding) at the time of the conversion to satisfy the charitable obligations of the converting corporation to the people of the State of New Jersey.

The bill requires the converting health service corporation's board of directors, when it decides to convert, to adopt a resolution by a two-thirds affirmative vote of the total number of directors. This resolution and a plan of conversion must be filed with the Commissioner of Banking and Insurance and with the Attorney General at least 120 days before the proposed conversion date. The plan of conversion must include, among other items: the purpose of the conversion and the manner in which the proposed conversion will occur; the proposed certificate of incorporation; the proposed bylaws of the converted insurer and any parent corporation; a description of any proposed changes in the mode of operations after conversion; a description of how current subscribers will be protected in the conversion; a statement that current subscribers have no right to any assets or stock in the converted insurer or parent corporation; a statement that the legal existence of the health service corporation does not terminate and that the converted insurer is subject to all of the liabilities and obligations of the former corporation and succeeds to all the property and assets of the former corporation; an explanation of how policies to be offered by the converted insurer will comply with current law; and the manner in which the fair market value of the health service corporation will be transferred to the foundation.

The health service corporation must also file with the

commissioner an application for approval of a plan of conversion and, at the same time, file a petition with the Attorney General for review of the foundation plan. The application must include, among other items: the plan of conversion; a business plan of the converted insurer and any parent corporation, including five-year financial projections; information that the board of directors of the health service corporation reviewed in approving the plan of conversion; a comparative premium rate analysis of all policies in the three years prior to filing the plan of conversion and three years after the filing; any conditions to be fulfilled on or before the conversion; any proposed agreement between or among the foundation and the converted insurer or its parent corporation; and any additional information that the health service corporation wants to present or that the commissioner requests.

Upon determining that the application is complete, the commissioner must hold a public hearing within 90 days on the plan of conversion. Notice of the hearing must be made twice in at least two newspapers of general circulation in New Jersey. The commissioner may engage the services of advisors and consultants to advise him on the conversion and those services are to be paid by the converting health service corporation. The public hearing may, if the commissioner and Attorney General agree, be conducted jointly as part of the public hearing on the foundation plan required of the Attorney General.

To approve the plan of conversion and issue a certificate of authority to a converted insurer, the commissioner must find, among other items, that: the converted insurer will meet applicable capital and surplus requirements; the plan adequately protects existing contract rights of subscribers; the plan of conversion is fair and equitable; the plan enhances the operations of the converted insurer; the plan provides for the transfer of the entire fair market value of the health service corporation to the foundation; the plan is consistent with the foundation plan; the plan promotes the public interest; and the Attorney General has concurred. If the foundation receives 100 percent of the shares of the converted insurer or any parent, freely transferable and without restriction at the time of conversion, the foundation is presumed to have acquired the entire fair market value of the health service corporation and no appraisal is required, unless the commissioner finds that the proposed capital structure of the converted insurer does not represent the fair market value. If the foundation receives at the conversion 100 percent of the shares of the outstanding capital stock of the converted insurer or parent corporation and the shares are subject to restrictions the commissioner determines are necessary and reasonable to maintain the value of the assets of the converted insurer, the foundation is presumed to have acquired the entire fair market value of the health service corporation and no appraisal shall be required unless the commissioner finds that the proposed capital structure of the converted insurer does not

represent the fair market value of the health service corporation. In determining whether the restrictions are necessary and reasonable, the commissioner may require an appraisal of the diminution in value of the shares as a result of the restrictions, which appraisal shall take into consideration the increase in value of the shares on account of any registration rights granted to the foundation. If the foundation receives consideration in another form, the plan of conversion must include an appraisal of the fair market value of the health service corporation. The appraisal must be prepared by persons independent of the health service corporation, experienced and expert in the area of corporate appraisals and acceptable to the commissioner. This appraisal may be based on various methodologies, such as value on a going concern, market value, investment or earning value, net asset value or a control premium. The health service corporation may abandon or amend the plan of conversion at any time before the conversion. If the amendment to the plan results in a material change, a public hearing must be held.

The bill requires the establishment of a charitable foundation or foundations by the health service corporation, to receive the fair market value of the health service corporation, when it converts to a domestic stock health insurer. A health service corporation must submit a petition to the Attorney General for approval of a foundation plan at the same time that it submits a plan of conversion to the commissioner. The Attorney General must hold a public hearing on the foundation plan. The Attorney General may engage the services of advisors and consultants to advise him on the conversion and the cost of those services are to be paid by the converting health service corporation. The funds of the foundation must be used solely for purposes of expanding access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of residents of this State. The foundation or foundations must be a trust or nonprofit corporation and a charitable entity. Numerous provisions in the bill prohibit conflicts of interest by and between the foundation and the converted insurer. Upon the completion of the Attorney General's review of the petition, the health service corporation must apply to the Superior Court for approval of the foundation plan and the Attorney General shall advise the court on whether he supports or opposes the foundation plan. The plan of conversion is not effective unless the Superior Court has approved the foundation plan.

So long as the foundation owns at least 10 percent of the shares of stock of the converted insurer or parent corporation issued to the foundation, any sale of shares of capital stock of the converted insurer by the insurer must be approved by the commissioner to ensure that the sale does not materially dilute the value of the shares distributed to the foundation.

The bill provides that the board of directors of the foundation shall consist of 15 members. Seven members are to be appointed by the

Governor, including two public members, one physician, one licensed health care provider other than a physician, one representative of the dental community, one representative of a community based organization that provides health care services and one representative of the AFL-CIO. Three members are to be appointed by the President of the Senate, including one public member, one representative of the hospital community and one physician. One public member shall be appointed by the Minority Leader of the Senate. Three members are to be appointed by the Speaker of the General Assembly, including one public member, one representative of the hospital community and one representative of a community based organization that provides health care services. One public member shall be appointed by the Minority Leader of the General Assembly. The members shall be appointed for a term of three years.

Finally, the bill (section 18 in particular) provides for the regulation of "creeping conversion." "Creeping conversion" occurs when the health service corporation has a material change in form, which is any action that effects a fundamental corporate change involving a transfer of ownership or control of assets of the health service corporation or a change of mission or purpose of the health service corporation. A material change in form has not occurred if: (1) the aggregate revenues of all nonconforming affiliates (affiliates which are for-profit or don't have the same purpose as the health service corporation) do not exceed 50 percent of the aggregate revenues for the health service corporation and all affiliates; (2) the aggregate revenues of all nonconforming affiliates derived from providing individual or group health coverage to residents of New Jersey equal or exceed 50% of the aggregate revenues from all nonconforming affiliates; and (3) the aggregate assets of all nonconforming affiliates do not exceed 50% of the aggregate assets of the health service corporation and all affiliates.

A health service corporation must notify the Attorney General and the commissioner of the health service corporation's intent to engage in any action that constitutes a material change in form at least 120 days prior to engaging in that action. If determined to be a material change in form (eg. a "creeping conversion"), the health service corporation must submit a petition, which contains an alternative foundation plan, for review of the material change in form. For the material change in form to occur, it must be approved by the commissioner and the alternative foundation plan must be approved by the Attorney General and the court.

# ASSEMBLY BANKING AND INSURANCE COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1581**

# **STATE OF NEW JERSEY**

DATED: JANUARY 18, 2001

The Assembly Banking and Insurance Committee reports favorably the SCS for Senate Bill No. 1581.

This bill, a SCS for Senate Bill No. 1581, allows an existing health service corporation (Horizon Blue Cross/Blue Shield of New Jersey), or any health service corporation formed in the future, to convert from a non-profit health service corporation to a for-profit domestic stock health insurer. As a condition of this conversion, the corporation is required to establish a charitable foundation and contribute to it the fair market value of the health service corporation (most likely 100 percent of the converted insurer's stock issued and outstanding) at the time of the conversion to satisfy the charitable obligations of the converting corporation to the people of the State of New Jersey.

The bill requires the converting health service corporation's board of directors, when it decides to convert, to adopt a resolution by a two-thirds affirmative vote of the total number of directors. This resolution and a plan of conversion must be filed with the Commissioner of Banking and Insurance and with the Attorney General at least 120 days before the proposed conversion date. The plan of conversion must include, among other items: the purpose of the conversion and the manner in which the proposed conversion will occur; the proposed certificate of incorporation; the proposed bylaws of the converted insurer and any parent corporation; a description of any proposed changes in the mode of operations after conversion; a description of how current subscribers will be protected in the conversion; a statement that current subscribers have no right to any assets or stock in the converted insurer or parent corporation; a statement that the legal existence of the health service corporation does not terminate and that the converted insurer is subject to all of the liabilities and obligations of the former corporation and succeeds to all the property and assets of the former corporation; an explanation of how policies to be offered by the converted insurer will comply with current law; and the manner in which the fair market value of the health service corporation will be transferred to the foundation.

The health service corporation must also file with the commissioner an application for approval of a plan of conversion and, at the same time, file a petition with the Attorney General for review of the foundation plan. The application must include, among other items: the plan of conversion; a business plan of the converted insurer and any parent corporation, including five-year financial projections; information that the board of directors of the health service corporation reviewed in approving the plan of conversion; a comparative premium rate analysis of all policies in the three years prior to filing the plan of conversion and three years after the filing; any conditions to be fulfilled on or before the conversion; any proposed agreement between or among the foundation and the converted insurer or its parent corporation; and any additional information that the health service corporation wants to present or that the commissioner requests.

Within 90 days of determining that the application is complete, the commissioner must hold a public hearing on the plan of conversion. Notice of the hearing must be made twice in at least two newspapers of general circulation in New Jersey. The commissioner may engage the services of advisors and consultants to advise him on the conversion and those services are to be paid by the converting health service corporation. The public hearing may, if the commissioner and Attorney General agree, be conducted jointly as part of the public hearing on the foundation plan required of the Attorney General.

To approve the plan of conversion and issue a certificate of authority to a converted insurer, the commissioner must find, among other items, that: the converted insurer will meet applicable capital and surplus requirements; the plan adequately protects existing contract rights of subscribers; the plan of conversion is fair and equitable; the plan enhances the operations of the converted insurer; the plan provides for the transfer of the entire fair market value of the health service corporation to the foundation; the plan is consistent with the foundation plan; the plan promotes the public interest; and the Attorney General has concurred. If the foundation receives 100 percent of the shares of the converted insurer or any parent, freely transferable and without restriction at the time of conversion, the foundation is presumed to have acquired the entire fair market value of the health service corporation and no appraisal is required, unless the commissioner finds that the proposed capital structure of the converted insurer does not represent the fair market value. If the foundation receives at the conversion 100 percent of the shares of the outstanding capital stock of the converted insurer or parent corporation and the shares are subject to restrictions the commissioner determines are necessary and reasonable to maintain the value of the assets of the converted insurer, the foundation is presumed to have acquired the entire fair market value of the health service corporation and no appraisal shall be required unless the commissioner finds that the proposed capital structure of the converted insurer does not

represent the fair market value of the health service corporation. In determining whether the restrictions are necessary and reasonable, the commissioner may require an appraisal of the diminution in value of the shares as a result of the restrictions, which appraisal shall take into consideration the increase in value of the shares on account of any registration rights granted to the foundation. If the foundation receives consideration in another form, the plan of conversion must include an appraisal of the fair market value of the health service corporation. The appraisal must be prepared by persons independent of the health service corporation, experienced and expert in the area of corporate appraisals and acceptable to the commissioner. This appraisal may be based on various methodologies, such as value on a going concern, market value, investment or earning value, net asset value or a control premium. The health service corporation may abandon or amend the plan of conversion at any time before the conversion. If the amendment to the plan results in a material change, a public hearing must be held.

The bill requires the establishment of a charitable foundation or foundations by the health service corporation, to receive the fair market value of the health service corporation, when it converts to a domestic stock health insurer. A health service corporation must submit a petition to the Attorney General for approval of a foundation plan at the same time that it submits a plan of conversion to the commissioner. The Attorney General must hold a public hearing on the foundation plan. The Attorney General may engage the services of advisors and consultants to advise him on the conversion and the cost of those services are to be paid by the converting health service corporation. The funds of the foundation must be used solely for purposes of expanding access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of residents of this State. The foundation or foundations must be a trust or nonprofit corporation and a charitable entity. Numerous provisions in the bill prohibit conflicts of interest by and between the foundation and the converted insurer. Upon the completion of the Attorney General's review of the petition, the health service corporation must apply to the Superior Court for approval of the foundation plan and the Attorney General shall advise the court on whether he supports or opposes the foundation plan. The plan of conversion is not effective unless the Superior Court has approved the foundation plan.

So long as the foundation owns at least 10 percent of the shares of stock of the converted insurer or parent corporation issued to the foundation, any sale of shares of capital stock of the converted insurer by the insurer must be approved by the commissioner to ensure that the sale does not materially dilute the value of the shares distributed to the foundation.

The bill provides that the board of directors of the foundation shall consist of 15 members. Seven members are to be appointed by the



Governor, including two public members, one physician, one licensed health care provider other than a physician, one representative of the dental community, one representative of a community based organization that provides health care services and one representative of the AFL-CIO. Three members are to be appointed by the President of the Senate, including one public member, one representative of the hospital community and one physician. One public member shall be appointed by the Minority Leader of the Senate. Three members are to be appointed by the Speaker of the General Assembly, including one public member, one representative of the hospital community and one representative of a community based organization that provides health care services. One public member shall be appointed by the Minority Leader of the General Assembly. The members shall be appointed for a term of three years.

Finally, the bill (section 18 in particular) provides for the regulation of "creeping conversion." "Creeping conversion" occurs when the health service corporation has a material change in form, which is any action that effects a fundamental corporate change involving a transfer of ownership or control of assets of the health service corporation or a change of mission or purpose of the health service corporation. A material change in form has not occurred if: (1) the aggregate revenues of all nonconforming affiliates (affiliates which are for-profit or don't have the same purpose as the health service corporation) do not exceed 50 percent of the aggregate revenues for the health service corporation and all affiliates; (2) the aggregate revenues of all nonconforming affiliates derived from providing individual or group health coverage to residents of New Jersey equal or exceed 50% of the aggregate revenues from all nonconforming affiliates; and (3) the aggregate assets of all nonconforming affiliates do not exceed 50% of the aggregate assets of the health service corporation and all affiliates.

A health service corporation must notify the Attorney General and the commissioner of the health service corporation's intent to engage in any action that constitutes a material change in form at least 120 days prior to engaging in that action. If determined to be a material change in form (eg. a "creeping conversion"), the health service corporation must submit a petition, which contains an alternative foundation plan, for review of the material change in form. For the material change in form to occur, it must be approved by the commissioner and the alternative foundation plan must be approved by the Attorney General and the court.

As reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2739.

# ASSEMBLY, No. 2739

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED SEPTEMBER 25, 2000

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Co-Sponsored by:**

**Assemblyman Caraballo**

**SYNOPSIS**

Allows conversion of a nonprofit health service corporation to a domestic stock health service corporation under certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the conversion of a nonprofit health service  
2 corporation to a domestic stock health service corporation.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. As used in this act:

8 "Attorney General" means the Attorney General of the State of  
9 New Jersey.

10 "Commissioner" means the Commissioner of Banking and  
11 Insurance.

12 "Conversion" means the conversion of a health service corporation  
13 to a domestic stock health service corporation in accordance with the  
14 provisions of this act.

15 "Domestic stock health service corporation" means a health service  
16 corporation that converts to a domestic stock corporation pursuant to  
17 this act and which complies, and continues to comply, with the  
18 applicable provisions of N.J.S. 17B:18-1 et seq. and N.J.S. 17B:19-1  
19 et seq.

20 "Foundation" means the foundation established under section 9 of  
21 this act.

22 "Successor corporation" means a health service corporation which  
23 has converted to a domestic stock health service corporation in  
24 accordance with the provisions of this act.

25  
26 2. a. A health service corporation which is organized pursuant to  
27 P.L.1985, c.236 (C.17:48E-1 et seq.) may convert to a domestic stock  
28 health service corporation by complying with the provisions of this act.

29 b. The board of directors of a health service corporation shall adopt  
30 a resolution to become a domestic stock health service corporation at  
31 a meeting of the board by a two-thirds affirmative vote of the total  
32 number of directors of the health service corporation. A copy of the  
33 minutes of the meeting at which that resolution is adopted shall be  
34 filed with the commissioner and with the Attorney General at least 120  
35 days before the proposed date of conversion. The resolution shall  
36 include a plan of conversion to a domestic stock health service  
37 corporation. The plan shall include:

38 (1) The purposes of the conversion.

39 (2) The proposed certificate of incorporation of the proposed  
40 successor corporation.

41 (3) The proposed bylaws of the proposed successor corporation.  
42 The bylaws shall provide for the appointment of officers, and may  
43 provide that the officers of the health service corporation shall serve  
44 to the end of the term to which they were appointed under the bylaws  
45 of the health service corporation.

1 (4) A description of any changes in the proposed successor  
2 corporation's mode of operations after conversion.

3 (5) A statement describing the manner in which the plan of  
4 conversion provides for the protection of all existing contractual rights  
5 of the health service corporation's subscribers and policyholders and  
6 to medical, surgical, hospital or dental services or the payment of  
7 claims for reimbursement for those services.

8 (6) A statement that the health service corporation's subscribers  
9 and policyholders shall have no right to receive any assets, surplus,  
10 capital or other distribution, or to receive any stock or other  
11 ownership interest in the successor corporation in connection with the  
12 conversion.

13 (7) A statement that the legal existence of the health service  
14 corporation does not terminate and that the successor corporation is  
15 subject to all of the liabilities, obligations, and relations of whatever  
16 kind of the health service corporation and succeeds to all property,  
17 assets, rights, interests and relations of the health service corporation.

18 (8) Documentation showing that the board of directors of the health  
19 service corporation has approved the plan of conversion. It shall not  
20 be necessary for the subscribers or policyholders of the health service  
21 corporation to vote on or approve the plan of conversion, any  
22 amendments to the health service corporation's certificate of  
23 incorporation or bylaws, or the certificate of incorporation or the  
24 bylaws of the successor corporation, notwithstanding any provision to  
25 the contrary in this section or in the certificate of incorporation or  
26 bylaws of the health service corporation.

27 (9) The business plan of the successor corporation, including, but  
28 not limited to, a comparative premium rate analysis of the successor  
29 corporation's major plans and product offerings that, among other  
30 things, compares actual premium rates for the three-year period before  
31 the filing of the plan for conversion and forecasted premium rates for  
32 a three-year period following the proposed conversion. This rate  
33 analysis shall address the forecasted effect, if any, of the proposed  
34 conversion on the cost to policyholders and subscribers of the  
35 successor corporation and on the successor corporation's underwriting  
36 profit, investment income and loss and claim reserves, including the  
37 effect, if any, of adverse market or risk selection upon these reserves.  
38 The information provided under this paragraph (9) shall be  
39 confidential.

40 (10) Any conditions, other than approval of the plan of conversion  
41 by the commissioner, to be fulfilled by a proposed date upon which the  
42 conversion would become effective.

43 (11) Any proposed agreement between the foundation and the  
44 successor corporation, including, but not limited to, any agreement  
45 relating to the voting or registration for sale of any capital stock to be  
46 issued by the successor corporation to the foundation.

1 c. Within 20 days of receiving a plan of conversion under this  
2 section, the commissioner shall publish a notice in one or more  
3 newspapers of general circulation in the health service corporation's  
4 service area describing the name of the health service corporation, the  
5 nature of the plan filed and the date of receipt of the plan. The notice  
6 shall indicate that the commissioner will solicit public comments and  
7 hold a public hearing on the plan. The public hearings shall be  
8 completed within 60 days of the filing of the plan of conversion. The  
9 written public comment period shall be held open until 10 days after  
10 the last public hearing. For good cause, the commissioner may extend  
11 these deadlines once for a maximum of 30 days. The commissioner  
12 shall provide copies of all written public comments to the Attorney  
13 General.

14 d. All applications, reports, plans and other documents under this  
15 section are public records except as otherwise provided in this act. The  
16 commissioner shall provide the public with prompt and reasonable  
17 access to public records relating to the proposed conversion of the  
18 health service corporation. Access to public records covered by this  
19 section shall be made available for at least 30 days before the end of  
20 the public comment period.

21

22 3. The commissioner shall approve the plan of conversion and issue  
23 a certificate of authority to the successor corporation to transact  
24 business in this State as a domestic stock health service corporation  
25 only if the commissioner finds all of the following:

26 a. The plan of conversion meets the requirements of section 2 of  
27 this act.

28 b. Upon conversion, the successor corporation will meet the  
29 applicable standards and conditions under this section, including  
30 applicable minimum capital and surplus requirements.

31 c. The plan of conversion adequately protects the existing  
32 contractual rights of the health service corporation's policyholders and  
33 subscribers to medical, surgical, hospital or dental services and  
34 payment of claims for reimbursement for those services.

35 d. No director, officer or employee of the health service  
36 corporation shall receive any fee, commission, compensation or other  
37 valuable consideration for aiding, promoting or assisting in the  
38 conversion of the health service corporation, other than compensation  
39 paid to any director, officer or employee of the health service  
40 corporation in the ordinary course of business or any distribution of  
41 the assets, surplus, capital or capital stock of the successor  
42 corporation as part of a conversion.

43 e. The health service corporation has complied with all material  
44 requirements of this section.

45 f. The plan of conversion is fair and equitable and not prejudicial  
46 to the contractual rights of the policyholders and subscribers of the

1 successor corporation.

2 g. The plan of conversion is in the public interest.

3 (1) The plan shall be in the public interest if it provides that  
4 consideration equal to 100% of the fair market value of the health  
5 service corporation will be conveyed or issued to the foundation by the  
6 health service corporation at the time the successor corporation files  
7 its articles of incorporation. If the consideration to be conveyed is all  
8 of the common stock of the successor corporation that is issued and  
9 outstanding at the time of conversion, and there is no other capital  
10 stock of any other type or nature then outstanding, it is conclusively  
11 presumed that the foundation shall possess 100% of the fair market  
12 value of the health service corporation.

13 (2) At any time after the conversion, the successor corporation  
14 may, for its own benefit, issue, in a public offering or a private  
15 placement, additional shares of common stock of the same class and  
16 having the same voting, dividend and other rights as that transferred  
17 to the foundation, subject to the applicable provisions of N.J.S.  
18 17B:18-47 and any voting and registration agreements.

19 h. The plan of conversion contains a proposed voting agreement  
20 and a proposed registration agreement between the foundation and the  
21 successor corporation that meets the requirements of subsection e. of  
22 section 9 of this act.

23 i. The Attorney General has given approval pursuant to subsection  
24 f. of section 9 of this act.

25

26 4. a. After issuance of the certificate of authority as provided in  
27 section 3 of this act, the successor corporation shall remain a health  
28 service corporation subject to P.L.1985, c.236 (C.17:48E-1 et seq.)  
29 except that subsection b. of section 2 of P.L.1985, c.236 (C.17:48E-  
30 2), subsection a. of section 3 of P.L.1985, c.236 (C.17:48E-3),  
31 sections 5 through 9, 11 and 41 of P.L.1985, c.236 (C.17:48E-5,  
32 17:48E-6, 17:48E-7, 17:48E-8, 17:48E-9, 17:48E-11 and 17:48E-41),  
33 subsections a. and b. of section 17 of P.L.1985, c.236 (C.17:48E-17),  
34 section 5 of P.L.1988, c.71 (C.17:48E-17.1), and section 8 of  
35 P.L.1993, c.235 (C.17:48E-17.2) shall not apply.

36 b. The successor corporation shall be subject to the provisions of  
37 chapters 18 and 19 of Title 17B of the New Jersey Statutes, but to no  
38 other provision of Title 17B of the New Jersey Statutes, except as  
39 specifically provided in P.L.1985, c.236 (C.17:48E-1 et seq.).

40 c. The legal existence of the health service corporation shall not  
41 terminate, and the successor corporation is a continuation of the health  
42 service corporation. The conversion shall only be a change in identity  
43 and form of organization. Except as provided in subsection g. of  
44 section 3 of this act, all property, assets, rights, liabilities,

1 obligations, interests and relations of whatever kind of the health  
2 service corporation shall continue and remain in the successor health  
3 service corporation. All actions and legal proceedings to which the  
4 health service corporation was a party prior to conversion shall be  
5 unaffected by the conversion.

6 d. The successor corporation may merge with a stock insurer  
7 authorized to issue health insurance, as such is defined in N.J.S.  
8 17B:17-4. The resulting corporation shall then no longer be subject to  
9 P.L.1985, c.236 (C.17:48E-1 et seq.), but shall be subject to the  
10 provisions of Title 17B of the New Jersey Statutes. The voting  
11 agreement described in section 9 of this act, if then still in effect, shall  
12 survive the merger.

13

14 5. The commissioner's final decision and order regarding the plan  
15 of conversion shall include findings of fact and conclusions of law.  
16 Findings of fact shall be based upon and supported by substantial  
17 evidence, including evidence submitted with the plan by the health  
18 service corporation and evidence obtained at hearings held by the  
19 commissioner. The failure of the commissioner or the Attorney  
20 General to approve the plan of conversion as submitted within 270  
21 days after submission to the commissioner shall be deemed a  
22 disapproval thereof, subject to review by the Superior Court in a  
23 proceeding in lieu of prerogative writ pursuant to N.J.S. 17:48E-43.

24

25 6. The contracts of the health service corporation shall be  
26 converted to contracts of the successor corporation without any  
27 further action on the part of the successor corporation.

28

29 7. The conversion of a health service corporation to a domestic  
30 stock health service corporation shall not cause any individual health  
31 benefits plan issued prior to November 30, 1992 and still in effect on  
32 the effective date of this act to be subject to the provisions of sections  
33 3 through 8 of P.L.1992, c.161 (C.17B:27A-4 through 17B:27A-9),  
34 except as specified in those sections, or any small employer health  
35 benefits plan issued prior to November 30, 1992 and still in effect on  
36 the effective date of this act to be subject to the provisions of section  
37 3 of P.L.1992, c.162 (C. 17B:27A-19).

38

39 8. The informational filing made by the health service corporation  
40 to the New Jersey Individual Health Coverage Program Board shall be  
41 deemed to be the filing of the successor corporation.

42

43 9. a. A foundation shall be created by the health service  
44 corporation to receive the fair market value of the health service  
45 corporation when the health service corporation converts to a  
46 domestic stock health service corporation.

1       b. The charitable purpose of the foundation shall be to promote  
2 the health of the people of New Jersey. The foundation may not  
3 establish or operate any entity licensed pursuant to Title 17B of the  
4 New Jersey Statutes, P.L.1979, c.478 (C.17:48D-1 et seq.), P.L.1985,  
5 c.236 (C.17:48E-1 et seq.) or P.L.1973, c.337 (C.26:2J-1 et seq.) that  
6 would compete with the successor corporation or any of its  
7 subsidiaries.

8       c. The board of directors of the foundation shall consist of 15  
9 members appointed by the Governor, including two public members  
10 chosen by the Governor; two public members selected by the Speaker  
11 of the General Assembly; two public members selected by the  
12 President of the Senate; one public member selected by the Minority  
13 Leader of the Senate; one public member selected by the Minority  
14 Leader of the General Assembly; two representatives of the hospital  
15 community selected upon the recommendation of the New Jersey  
16 Hospital Association; two representatives of the medical community  
17 selected upon the recommendation of the New Jersey Medical Society;  
18 two representatives of the dental community selected upon the  
19 recommendation of the New Jersey Dental Association; and a member  
20 selected upon the recommendation of the AFL-CIO. The members  
21 shall be appointed for a term of three years. A vacancy in the  
22 membership of the board shall be filled for an unexpired term in the  
23 same manner provided for the original appointment. Members shall  
24 serve without fee or compensation.

25       d. The foundation and its directors, officers and employees shall be  
26 and remain independent of the successor corporation and its affiliates.  
27 No director, officer or employee of the foundation shall serve as a  
28 director, officer or employee of the successor corporation or any of its  
29 affiliates. No director, officer or employee of the successor  
30 corporation or any of its affiliates shall serve as a director, officer or  
31 employee of the foundation. The provisions of this subsection shall  
32 expire 10 years following the effective date of a conversion pursuant  
33 to this act or the divestment by the foundation of at least 95 percent  
34 of the stock of the successor corporation received pursuant to  
35 subsection g. of section 3 of this act, whichever occurs later.

36       e. The foundation and the successor corporation shall operate  
37 under a voting agreement and a stock registration agreement,  
38 approved by the commissioner and the Attorney General, that provides  
39 at least the following:

40       (1) The foundation shall vote the common stock in the successor  
41 corporation for election of the directors of the successor corporation  
42 nominated by the board of directors of the successor corporation to  
43 the extent provided by the terms of the voting agreement;

44       (2) The voting restrictions shall not apply to any common stock of  
45 the successor corporation sold by the foundation; and

46       (3) The board of directors of the successor corporation shall



1 determine the timing of any initial public offering of the successor  
2 corporation's common stock, either by the successor corporation or by  
3 the foundation, and the foundation shall have demand registration  
4 rights and optional "piggy-back" or "incidental" registration rights in  
5 connection with any offerings of the successor corporation's common  
6 stock by the successor corporation, on the terms and conditions set  
7 forth in a registration rights agreement.

8 The voting agreement may contain additional terms, including  
9 voting and ownership restrictions, with regard to the common stock  
10 of the successor corporation and provisions for the voting or  
11 registration for sale of any common stock to be issued to the  
12 foundation by the successor corporation.

13 f. Before the commissioner approves a plan of conversion  
14 pursuant to section 3 of this act, the Attorney General, on behalf of the  
15 public and charitable interests in this State, shall assure that 100% of  
16 the issued and outstanding stock of the successor corporation shall be  
17 conveyed or issued to the foundation as provided in section 3 of this  
18 act and approve the certificate of incorporation and bylaws of the  
19 foundation and all proposed agreements between the successor  
20 corporation and the foundation, including stock voting or registration  
21 agreements.

22 Within 20 days of receiving a plan of conversion, the Attorney  
23 General shall publish a notice in one or more newspapers of general  
24 circulation in the health service corporation's service area briefly  
25 describing the health service corporation's proposal to transfer to the  
26 foundation the health service corporation's fair market value as  
27 provided under section 3 of this act, the foundation's purposes and all  
28 proposed stock voting or registration agreements. The notice shall  
29 indicate that the Attorney General will solicit public comments and  
30 hold a public hearing on the proposal. The public hearings shall be  
31 completed within 60 days of the filing of the plan of conversion. The  
32 written public comment period shall be held open until 10 days after  
33 the last public hearing. For good cause, the Attorney General may  
34 extend these deadlines once for a maximum of 30 days. The Attorney  
35 General may seek advice on these matters from consultants,  
36 investment bankers, and other professional advisors engaged by the  
37 Attorney General incident to review of the proposal.

38 g. The proposed certificate of incorporation of the foundation shall  
39 provide for all of the following:

40 (1) That the foundation is organized and operated exclusively for  
41 charitable purposes and for the promotion of social welfare;

42 (2) That no part of the net earnings of the foundation shall inure  
43 to the benefit of any private shareholder or individual;

44 (3) That the foundation shall not engage in any political campaign  
45 activity or the making of political contributions;

46 (4) That the foundation shall not pay or incur any amount that, if

1 paid by an organization classified as a "private foundation" under  
2 section 509(a) of the Internal Revenue Code of 1986 (26 U.S.C. 509  
3 (a)), would constitute a "taxable expenditure" as defined by section  
4 4945(d)(1) and (2) of the Internal Revenue Code of 1986 (26 U.S.C.  
5 4945(d)(1) and (2));

6 (5) That the foundation shall not engage in any self-dealing for the  
7 benefit of its directors, officers or employees;

8 (6) Provide for an ongoing community advisory committee to  
9 offer broad public input to the foundation concerning its operations  
10 and activities;

11 (7) Provide that the foundation, after its first three years of  
12 operation, shall pay out the lesser of: (a) "qualifying distributions" of  
13 "distributable amounts," as those terms are defined in section 4942 of  
14 the Internal Revenue Code of 1986 (26 U.S.C. 4942), as if the  
15 foundation were classified as a private foundation subject to the  
16 distribution requirements, but not the taxes imposed, under that  
17 section; or (b) substantially all of its income, less qualifying expenses.  
18 In no event shall the foundation be required to invade its corpus to  
19 meet the distribution requirements under this paragraph (7);

20 (8) That the provisions in the certificate of incorporation that are  
21 either required by subsection f. of this section, or designated by the  
22 Attorney General, cannot be amended without the prior written  
23 approval of the Attorney General.

24 h. Within 120 days of the end of its fiscal year, the foundation  
25 shall provide the Attorney General and the commissioner with its State  
26 and federal tax returns for the preceding fiscal year and advise the  
27 Legislature of its accomplishments during that year and its plans for  
28 the current fiscal year. The tax returns shall be made available for  
29 public inspection.

30

31 10. This act shall take effect immediately.

32

33

34

#### STATEMENT

35

36 This bill allows a nonprofit health service corporation to convert  
37 to a domestic stock health service corporation if its plan of conversion  
38 is approved by the Commissioner of Banking and Insurance and 100%  
39 of the fair market value of the health service corporation, in stock of  
40 the corporation, is conveyed to a foundation established pursuant to  
41 the bill to promote the health of the people of New Jersey. The  
42 Attorney General shall assure that 100% of the value of the health  
43 service corporation is transferred to the foundation.

44 The plan of conversion shall adequately protect the existing  
45 contractual rights of the health service corporation's policyholders and  
46 subscribers and payment of claims for reimbursement for health care

1 services. In addition, the plan of conversion shall be fair and equitable  
2 and not prejudicial to the contractual rights of the policyholders and  
3 subscribers of the new domestic stock health service corporation.

4 The foundation created by the health service corporation will have  
5 a board of directors consisting of 15 members appointed by the  
6 Governor: two public members chosen by the Governor; two public  
7 members selected by the Speaker of the General Assembly; two public  
8 members selected by the President of the Senate; one public member  
9 selected by the Minority Leader of the Senate; one public member  
10 selected by the Minority Leader of the General Assembly; two  
11 representatives of the hospital community selected upon the  
12 recommendation of the New Jersey Hospital Association; two  
13 representatives of the medical community selected upon the  
14 recommendation of the New Jersey Medical Society; two  
15 representatives of the dental community selected upon the  
16 recommendation of the New Jersey Dental Association; and a member  
17 selected upon the recommendation of the AFL-CIO.

18 No director, officer or employee of the foundation shall serve as  
19 a director, officer or employee of the new domestic stock health  
20 service corporation and vice versa. The foundation shall be organized  
21 and operated exclusively for charitable purposes and for the promotion  
22 of social welfare and must pay out most of its income to accomplish  
23 these goals.

# ASSEMBLY BANKING AND INSURANCE COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2739**

# **STATE OF NEW JERSEY**

DATED: JANUARY 18, 2001

The Assembly Banking and Insurance Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2739.

This bill, an Assembly Committee Substitute for Assembly Bill No. 2739, allows a health service corporation (Horizon Blue Cross/Blue Shield of New Jersey), or any health service corporation formed in the future, to convert from a non-profit health service corporation to a for-profit domestic stock health insurer. As a condition of this conversion, the corporation is required to establish a charitable foundation and contribute to it the fair market value of the health service corporation (most likely 100 percent of the converted insurer's stock issued and outstanding) at the time of the conversion to satisfy the charitable obligations of the converting corporation to the people of the State of New Jersey.

The bill requires the converting health service corporation's board of directors, when it decides to convert, to adopt a resolution by a two-thirds affirmative vote of the total number of directors. This resolution and a plan of conversion must be filed with the Commissioner of Banking and Insurance and with the Attorney General at least 120 days before the proposed conversion date. The plan of conversion must include, among other items: the purpose of the conversion and the manner in which the proposed conversion will occur; the proposed certificate of incorporation; the proposed bylaws of the converted insurer and any parent corporation; a description of any proposed changes in the mode of operations after conversion; a description of how current subscribers will be protected in the conversion; a statement that current subscribers have no right to any assets or stock in the converted insurer or parent corporation; a statement that the legal existence of the health service corporation does not terminate and that the converted insurer is subject to all of the liabilities and obligations of the former corporation and succeeds to all the property and assets of the former corporation; an explanation of how policies to be offered by the converted insurer will comply with current law; and the manner in which the fair market value of the health service corporation will be transferred to the foundation.

The health service corporation must also file with the

commissioner an application for approval of a plan of conversion and, at the same time, file a petition with the Attorney General for review of the foundation plan. The application must include, among other items: the plan of conversion; a business plan of the converted insurer and any parent corporation including five-year financial projections; information that the board of directors of the health service corporation reviewed in approving the plan of conversion; a comparative premium rate analysis of all policies in the three years prior to filing the plan of conversion and three years after the filing; any conditions to be fulfilled on or before the conversion; any proposed agreement between or among the foundation and the converted insurer or its parent corporation; and any additional information that the health service corporation wants to present or that the commissioner requests.

Within 90 days of determining that the application is complete, the commissioner must hold a public hearing on the plan of conversion. Notice of the hearing must be made twice in at least two newspapers of general circulation in New Jersey. The commissioner may engage the services of advisors and consultants to advise him on the conversion and those services are to be paid by the converting health service corporation. The public hearing may, if the commissioner and Attorney General agree, be conducted jointly as part of the public hearing on the foundation plan required of the Attorney General.

To approve the plan of conversion and issue a certificate of authority to a converted insurer, the commissioner must find, among other items, that: the converted insurer will meet applicable capital and surplus requirements; the plan adequately protects existing contract rights of subscribers; the plan of conversion is fair and equitable; the plan enhances the operations of the converted insurer; the plan provides for the transfer of the entire fair market value of the health service corporation to the foundation; the plan is consistent with the foundation plan; the plan promotes the public interest; and the Attorney General has concurred. If the foundation receives 100 percent of the shares of the converted insurer or any parent, freely transferable and without restriction at the time of conversion, the foundation is presumed to have acquired the entire fair market value of the health service corporation and no appraisal is required, unless the commissioner finds that the proposed capital structure of the converted insurer does not represent the fair market value. If the foundation receives at the conversion 100 percent of the shares of the outstanding capital stock of the converted insurer or parent corporation and the shares are subject to restrictions the commissioner determines are necessary and reasonable to maintain the value of the assets of the converted insurer, the foundation is presumed to have acquired the entire fair market value of the health service corporation and no appraisal shall be required unless the commissioner finds that the proposed capital structure of the converted insurer does not represent the fair market value of the health service corporation. In

determining whether the restrictions are necessary and reasonable, the commissioner may require an appraisal of the diminution in value of the shares as a result of the restrictions, which appraisal shall take into consideration the increase in value of the shares on account of any registration rights granted to the foundation. If the foundation receives consideration in another form, the plan of conversion must include an appraisal of the fair market value of the health service corporation. The appraisal must be prepared by persons independent of the health service corporation, experienced and expert in the area of corporate appraisals and acceptable to the commissioner. This appraisal may be based on various methodologies, such as value on a going concern, market value, investment or earning value, net asset value or a control premium. The health service corporation may abandon or amend the plan of conversion at any time before the conversion. If the amendment to the plan results in a material change, a public hearing must be held.

The bill requires the establishment of a charitable foundation or foundations by the health service corporation, to receive the fair market value of the health service corporation, when it converts to a domestic stock health insurer. A health service corporation must submit a petition to the Attorney General for approval of a foundation plan at the same time that it submits a plan of conversion to the commissioner. The Attorney General must hold a public hearing on the foundation plan. The Attorney General may engage the services of advisors and consultants to advise him on the conversion and the cost of those services are to be paid by the converting health service corporation. The funds of the foundation must be used solely for purposes of expanding access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of residents of this State. The foundation or foundations must be a trust or nonprofit corporation and a charitable entity. Numerous provisions in the bill prohibit conflicts of interest by and between the foundation and the converted insurer. Upon the completion of the Attorney General's review of the petition, the health service corporation must apply to the Superior Court for approval of the foundation plan and the Attorney General shall advise the court on whether he supports or opposes the foundation plan. The plan of conversion is not effective unless the Superior Court has approved the foundation plan.

So long as the foundation owns at least 10 percent of the shares of stock of the converted insurer or parent corporation issued to the foundation, any sale of shares of capital stock of the converted insurer by the insurer must be approved by the commissioner to ensure that the sale does not materially dilute the value of the shares distributed to the foundation.

The bill provides that the board of directors of the foundation shall consist of 15 members. Seven member are to be appointed by the Governor including two public members, one physician, one licensed

health care provider other than a physician, one representative of the dental community, one representative of a community based organization that provides health care services and one representative of the AFL-CIO. Three members are to be appointed by the President of the Senate, including one public member, one representative of the hospital community and one physician. One public member shall be appointed by the Minority Leader of the Senate. Three members are to be appointed by the Speaker of the General Assembly, including one public member, one representative of the hospital community and one representative of a community based organization that provides health care services. One public member shall be appointed by the Minority Leader of the General Assembly. The members shall be appointed for a term of three years.

Finally, the bill (section 18 in particular) provides for the regulation of "creeping conversion." "Creeping conversion" occurs when the health service corporation has a material change in form, which is any action that effects a fundamental corporate change involving a transfer of ownership or control of assets of the health service corporation or a change of mission or purpose of the health service corporation. A material change in form has not occurred if: (1) the aggregate revenues of all nonconforming affiliates (affiliates which are for-profit or don't have the same purpose as the health service corporation) do not exceed 50 percent of the aggregate revenues for the health service corporation and all affiliates; (2) the aggregate revenues of all nonconforming affiliates derived from providing individual or group health coverage to residents of New Jersey equal or exceed 50 percent of the aggregate revenues from all nonconforming affiliates; and (3) the aggregate assets of all nonconforming affiliates do not exceed 50 percent of the aggregate assets of the health service corporation and all affiliates.

A health service corporation must notify the Attorney General and the commissioner of the health service corporation's intent to engage in any action that constitutes a material change in form at least 120 days prior to engaging in that action. If determined to be a material change in form (e.g., a "creeping conversion"), the health service corporation must submit a petition, which contains an alternative foundation plan, for review of the material change in form. For the material change in form to occur, it must be approved by the commissioner and the alternative foundation plan must be approved by the Attorney General and the court.

As reported by the committee, this bill is identical to the Senate Committee Substitute for Senate Bill No. 1581.

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1581**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill No. 1581 with my recommendations for reconsideration.

A. Summary of Bill

This bill allows an existing health service corporation, or any health service corporation formed in the future, to convert from a non-profit health service corporation to a for-profit domestic stock health insurer. As a condition of this conversion, the corporation is required to establish a charitable foundation and contribute to it the fair market value of the health service corporation at the time of the conversion to satisfy the charitable obligations of the converting corporation to the people of the State of New Jersey.

The bill requires the converting health service corporation's board of directors, when it decides to convert, to adopt a resolution by a two-thirds affirmative vote of the total number of directors. The health service corporation must also file with the commissioner an application for approval of a plan of conversion and, at the same time, file a petition with the Attorney General for review of the foundation plan. Within 90 days of determining that the application is complete, the commissioner must hold a public hearing on the plan of conversion.

In addition, the bill requires the establishment of a charitable foundation or foundations by the health service corporation, to receive the fair market value of the health service corporation. The bill provides that the board of directors of the foundation shall consist of 15 members.

B. Recommended Action

I support this bill and the intent of the sponsors in establishing a reasonable compromise that adequately protects the public while, at the same time, allows a health service corporation the flexibility to structure its business operations and the timing of conversion process. However, I believe one additional safeguard is necessary to protect



the public interest. Specifically, I believe that the legislation should establish a commission to serve in an advisory capacity to the Attorney General and the Commissioner of the Department of Banking and Insurance prior to the submission of a conversion plan filed pursuant to this legislation.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 1581 and recommend that it be amended as follows:

Page 18, Section 20, Lines 9-10: After “(New Section)” insert ”a.” delete ”A foundation established pursuant to this act shall have a board of directors consisting” insert “There is established in, but not of, the Department of Treasury a Health Service Corporation Conversion Temporary Advisory Commission. The commission shall consist”\_

Page 18, Section 20, Line 28: Delete “board” insert “commission”

Page 18, Section 20, Line 33: Insert ” The commission shall, in anticipation of a conversion as authorized under this act, examine issues related to access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of New Jerseyans, and may review experiences in other states related to the establishment of foundations in other states resulting from the conversion of health care service corporations. The commission shall advise the Attorney General and Commissioner of Banking and Insurance as to its findings on these issues. The Department of Treasury shall provide the commission with such assistance as the commission may require in order to perform its duties under this act. The commission may engage the services of advisors and consultants in order to assist in the performance of its duties under this act.

b. Members of the advisory commission appointed pursuant to subsection a. of this section shall serve as the initial board of directors of a foundation established pursuant to this act until such time as the terms of their appointments expire. The advisory commission established pursuant to subsection a. of this section shall expire upon establishment of a foundation in accordance with this act. A vacancy in the membership of the board shall be filled for an unexpired term in the same manner provided for the original appointment. In the event more than one foundation is established pursuant to this act, the board of directors of any such additional

foundations shall be appointed in compliance with the requirements of subsection a. of this section.”

Respectfully,

/s/ Donald T. DiFrancesco

Acting Governor

[seal]

Attest:

/s/ James A. Harkness

Chief Counsel to the Governor

*Office of the Governor*  
**NEWS RELEASE**

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RELEASE: June 29 , 2001

**Acting Governor Donald T. DiFrancesco signed the following legislation today:**

S-2450, sponsored by Senators Peter Inverso (R-Mercer/Middlesex) and John Matheussen (R-Camden/Gloucester) and Assemblymembers Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and Joseph Azzolina (R-Middlesex/Monmouth), increases the retirement benefits under the Teachers' Pension and Annuity Fund (TPAF) and The Public Employees' Retirement System (PERS) for service, deferred and early retirement by changing the formula from 1/70 to 1/64 to final compensation for each year of Class A service and from 1/60 to 1/55 of final compensation for each year of Class B service.

The bill also increases the retirement benefit for TPAF and PERS veteran members with 35 or more years of service and reduces the age qualification from 60 to 55.

The bill also provides for a reduction in TPAF member contributions.

S-2465, sponsored by Assemblyman Joseph Malone (R-Burlington/Monmouth/Ocean) and Senator Walter Kavanaugh (R-Morris/Somerset), requires providers of goods and services to the State and its agencies or to casino licensees, and any subcontractor under those State and casino contracts, to register their businesses with the Division of Revenue.

S-1581, sponsored by Senators Gerald Cardinale (R-Bergen) and Richard Codey (R-Essex) and Assemblymen Kip Bateman (R-Morris/Somerset) and Joseph Doria (D-Hudson), allows an existing health service corporation, or any health corporation formed in the future, to convert from a non-profit health service to a for-profit domestic stock health insurer. As a condition of this conversion, the corporation is required to establish a charitable foundation and contribute to it the fair market value of the health service corporation at the time of the conversion to satisfy the charitable obligations of the converting corporation to the people of the State of New Jersey.

S-2298, sponsored by Senators Martha Bark (R-Atlantic/Burlington/Camden) and Bernard Kenny (D-Hudson) and Assemblymembers Paul DiGaetano (R-Bergen/Essex/Passaic) and Joseph Doria (D-Hudson), increases the membership of the Board of Public Utilities (BPU) from three to five members, no more than three of whom are to be of the same political party.

A-3045, sponsored by Senator Anthony Bucco (R-Morris) and Assemblyman Guy Gregg (R-Sussex/Hunterdon/Morris), closes a gap in the administration of the taxes imposed on the owners of limited partnerships and limited liability companies.