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P.L. 2020, CHAPTER 145, *approved December 23, 2020*
Assembly, No. 5119 (*First Reprint*)

1 AN ACT permitting reorganization of a health service corporation,
2 supplementing P.L.1985, c.286 (C.17:48E-1 et seq.), and
3 amending P.L.2001, c.131 and P.L.1970, c.22.
4

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

8 1. (New section) The Legislature finds and declares that:

9 a. It is in the interest of the subscribers of the health service
10 corporation and the State of New Jersey that the health service
11 corporation be afforded the ability to modernize its corporate
12 structure, subject to appropriate standards, oversight, and approval,
13 in order to meet the evolving health care needs of its subscribers,
14 while continuing its statutory mission, and maintaining its status as
15 a charitable and benevolent institution as declared in section 41 of
16 P.L.1985, c.236 (C.17:48E-41).

17 b. Ensuring that the health service corporation statutes provide
18 the opportunity for the health service corporation to reorganize
19 itself efficiently and effectively in the form and manner authorized
20 by P.L. , c. (C.) (pending before the Legislature as this
21 bill) will facilitate increased utilization of 21st century technologies
22 and tools to better address current challenges, improving both the
23 State's healthcare infrastructure and its readiness to address future
24 crises such as those resulting from the ongoing COVID-19
25 pandemic. Such a reorganization, if undertaken, approved, and
26 completed consistent with the provisions of P.L. , c. (C.)
27 (pending before the Legislature as this bill), also will promote vital
28 investments and growth in health services and diversified
29 businesses for the benefit of its members and the State.

30 c. Current law governing the health service corporation
31 expressly permits the health service corporation to engage in certain
32 actions that effectuate a corporate reorganization, subject to certain
33 conditions, including potential conversion to a for-profit domestic
34 stock insurer or other actions constituting a material change in its
35 form, subject to the approval of the Commissioner of Banking and
36 Insurance in the Commissioner's capacity as regulator of the
37 business of insurance and the Attorney General in furtherance of the
38 Attorney General's statutory and common law responsibilities as
39 protector, supervisor, and enforcer of charitable trusts and

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:

¹Assembly AFI committee amendments adopted December 14, 2020.

1 charitable corporations. The current statutes do not, however,
2 prescribe a clear path for the health service corporation to update
3 and improve its corporate structure for the benefit of its members
4 and the State while, at the same time, maintaining its non-profit
5 status, continuing to adhere to the statutory mission to provide
6 affordable and accessible health insurance and promote
7 the integration of the health care system to meet the needs of its
8 members, and fulfilling the health care obligations of a health
9 service corporation as they exist prior to the reorganization.

10 d. Other states have authorized similarly situated nonprofit
11 health insurance carriers to reorganize their corporate forms while
12 maintaining their nonprofit legal status and purposes of the entities
13 for the benefit of their subscribers and respective regional health
14 care marketplaces.

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

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

34
35 2. (New section) As used in P.L. , c. (C.) (pending
36 before the Legislature as this bill):

37 “Assessment” means an initial and a limited duration assessment
38 made upon the mutual holding company system pursuant to section
39 13 of P.L. , c. (C.) (pending before the Legislature as this
40 bill).

41 “Commissioner” means the Commissioner of Banking and
42 Insurance.

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

45 “Effective time” means the date and time at which the
46 reorganization into a mutual holding company is effective, as

1 provided in subsection d. of section 5 of
2 P.L. , c. (C.)(pending before the Legislature as this bill).

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

5 “Insurance company” means any entity, other than the
6 reorganized insurer, that engages in the business of insurance.

7 “Intermediate holding company” means an entity of which at
8 least a majority of the voting shares of the capital stock are at all
9 times owned directly or indirectly through other intermediate
10 holding companies by a mutual holding company.

11 “Majority of the voting shares of the capital stock” means, with
12 respect to any entity, shares of the capital stock of that entity which
13 carry the right to cast a majority of the votes entitled to be cast by
14 all of the outstanding shares of the capital stock of that entity for
15 the election of directors.

16 “Member” means the holder of a membership interest in a mutual
17 holding company, pursuant to the articles of incorporation or
18 bylaws of that mutual holding company.

19 “Mutual holding company” means a non-insurance, nonprofit
20 entity without permanent capital stock organized pursuant to the
21 laws of this State in accordance with the provisions of
22 P.L. , c. (C.)(pending before the Legislature as this bill)
23 for the purpose of holding, directly or indirectly, one hundred
24 percent interest in a reorganized insurer pursuant to a plan of
25 reorganization as provided in P.L. , c. (C.)(pending before
26 the Legislature as this bill). A mutual holding company is an
27 insurance holding company system pursuant to P.L.1970, c.22
28 (C.17:27A-1 et seq.), and shall not be qualified as an insurer
29 licensed to issue insurance policies, insurance contracts or health
30 benefit plans.

31 “Mutual holding company system” means the structure resulting
32 from the simultaneous formation of a mutual holding company with
33 a reorganized insurer in connection with the mutualization and
34 reorganization of a health service corporation.

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

38 “Non-insurance subsidiary” means any subsidiary of a mutual
39 holding company system that is not an insurance company or the
40 reorganized insurer.

41 “Reorganization” means the simultaneous mutualization of a
42 health service corporation to a domestic mutual insurer and
43 transformation from a domestic mutual insurer to a mutual holding
44 company with a reorganized insurer in accordance with the
45 provisions of P.L. , c. (C.)(pending before the Legislature
46 as this bill). A reorganization pursuant to
47 P.L. , c. (C.)(pending before the Legislature as this bill)

1 in which the mutual holding company remains a charitable and
2 benevolent institution shall not constitute a material change in form
3 as defined in section 1 of P.L.2001, c.131 (C.17:48E-49).

4 “Reorganized insurer” means a stock insurer authorized pursuant
5 to Title 17B of the New Jersey Statutes to transact health insurance
6 as defined in N.J.S.17B:17-4 and that, pursuant to a plan of
7 reorganization as provided in P.L. , c. (C.)(pending before
8 the Legislature as this bill), is a subsidiary of the mutual holding
9 company system that holds the business of the health service
10 corporation mutualizing and reorganizing pursuant to
11 P.L. , c. (C.)(pending before the Legislature as this bill)
12 that is related to policies directly written and issued by the health
13 service corporation. All health insurance or risk-bearing
14 obligations of the health service corporation shall be undertaken by
15 the reorganized insurer pursuant to subsection c. and e. of section 3
16 of P.L. , c. (C.) (pending before the Legislature as
17 this bill).

18

19 3. (New section) a. A mutual holding company organized
20 pursuant to P.L. , c. (C.)(pending before the Legislature
21 as this bill) shall not be established as a company organized for
22 pecuniary profit and shall retain the designation as a charitable and
23 benevolent institution pursuant to section 41 of P.L.1985, c.236
24 (C.17:48E-41). A mutual holding company established pursuant to
25 the provisions of P.L. , c. (C.)(pending before the
26 Legislature as this bill) shall retain the health service corporation’s
27 mission while supplementing that mission to promote innovation
28 and delivery of diversified services.

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

30 (1) provide affordable and accessible health insurance to its
31 members;

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

34 (3) promote innovation and delivery of solutions and diversified
35 services for its members.

36 b. Other than as provided pursuant to P.L. , c. (C.)
37 (pending before the Legislature as this bill), all property, assets,
38 rights, liabilities, interest and relations of whatever kind of the
39 health service corporation, and its subsidiaries, shall be that of the
40 mutual holding company system. The mutual holding company
41 shall not be considered a health service corporation.
42 Notwithstanding anything to the contrary, the provisions of section
43 41 of P.L.1985, c.236 (C.17:48E-41) shall continue to apply to a
44 mutual holding company if the mutual holding company continues
45 to participate in the New Jersey Individual Health Coverage Program
46 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey
47 Small Employer Health Benefits Program pursuant to P.L.1992, c.162

1 (C.17B:27A-17 et seq.). If the mutual holding company does not
2 participate in the New Jersey Individual Health Coverage Program
3 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey
4 Small Employer Health Benefits Program pursuant to P.L.1992, c.162
5 (C.17B:27A-17 et seq.) the provisions of section 41 of P.L.1985,
6 c.236 (C.17:48E-41) shall no longer apply¹.

7 c. The health insurance duties and obligations pursuant to
8 P.L.1985, c.236 (C.17:48E-1 et seq.) shall continue and remain in
9 the succeeding reorganized insurer reorganizing pursuant to
10 P.L. , c. (C.)(pending before the Legislature as this bill),
11 in each case, except as provided pursuant to P.L. ,
12 c. (C.)(pending before the Legislature as this bill). Except
13 as listed below in subsection e. of this section, all references to a
14 “health service corporation” in P.L.1985, c.236 (C.17:48E-
15 1 et seq.), shall refer to a “reorganized insurer” established pursuant
16 to P.L. , c. (C.)(pending before the Legislature as this
17 bill) and shall not refer to the mutual holding company.

18 d. In addition to the mutual holding company’s qualification
19 pursuant to section 2 of P.L. , c. (C.)(pending before the
20 Legislature as this bill), and for avoidance of doubt, the mutual
21 holding company shall be expressly excluded from insurance
22 operations and reporting, investment limits, and risk-bearing
23 provisions of P.L.1985, c.236 (C.17:48E-1 et seq.), including the
24 following provisions because a mutual holding company is not a
25 risk-bearer:

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

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

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

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

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

39 e. The reorganized insurer shall engage in risk-bearing
40 activities, reporting, investments, financial transactions, including
41 the issuance of dividends or distributions, and insurance trade
42 practices consistent with laws governing stock insurance companies
43 organized under Title 17B of the New Jersey Statutes to transact
44 health insurance as defined in N.J.S.17B:17-4. Notwithstanding the
45 provisions of subsection c. of this section, the following sections of
46 P.L.1985, c.236 (C.17:48E-1 et seq.) shall not apply to the

1 reorganized insurer or any insurance company or risk-bearing entity
2 within the mutual holding company system:

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

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

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

11 f. The insurance premium rate tax cap law provided by
12 subsection a. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall
13 apply to the companies within the mutual holding company system
14 that have an insurance premium tax liability, and the exclusion from
15 the tax cap applicable to a health service corporation pursuant to
16 subsection b. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall not
17 apply to the mutual holding company or any entity within the
18 mutual holding company system, including the reorganized insurer,
19 that has an insurance premium tax liability.

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

36 h. The continuation of the rights, duties and obligations of a
37 health service corporation pursuant to this section following
38 completion of an approved reorganization pursuant to
39 P.L. , c. (C.) (pending before the Legislature as this bill)
40 shall be limited to such rights, duties and obligations pursuant to
41 P.L.1985, c.236 (C.17:48E-1 et seq.) as of the effective date of
42 P.L. , c. (C.) (pending before the Legislature as this bill);
43 amendments to P.L.1985, c.236 (C.17:48E-1 et seq.) enacted after
44 the effective date of P.L. , c. (C.) (pending before the
45 Legislature as this bill) shall not apply. Notwithstanding the above,
46 the reorganized insurer shall be subject to the laws applicable to

1 domestic health insurance companies contained in Title 17B of the
2 New Jersey Statutes ¹and P.L.1970, c.22 (C.17:27A-1 et seq.)¹.

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

12 b. The mutual holding company system shall consist of a
13 mutual holding company and one or more controlled nonprofit or
14 for-profit subsidiaries, including the reorganized insurer, and shall
15 be operated for the benefit of its members. The mission of a mutual
16 holding company shall be as specified in subsection a. of section 3
17 of P.L. , c. (C.) (pending before the Legislature as this
18 bill).

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

22 (1) an insurer and therefore shall not be subject to any of the
23 provisions of N.J.S.17B:18-1 et seq. applicable to stock or mutual
24 insurers, or to any laws concerning the writing of insurance,
25 including rules and regulations adopted thereunder, including with
26 respect to governance, stock or other voting or equity interest, the
27 writing of insurance, any investment limitations directly applicable
28 to risk-bearing entities engaged in the writing of insurance such as
29 those pursuant to N.J.S.17B:20-1 et seq., or any capital or surplus
30 requirements;

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

32 (3) qualified as an insurer.

33 The writing of insurance shall be permitted only through the
34 reorganized insurer and other insurance company subsidiaries or
35 investments of the mutual holding company. Nothing herein shall
36 alter the oversight of the commissioner with respect to the mutual
37 holding company and its non-insurance subsidiaries provided for
38 pursuant to applicable laws and rules of this State relating to
39 insurance holding company systems.

40 d. A mutual holding company shall be a nonprofit entity
41 incorporated under, and shall conduct its business pursuant to, the
42 provisions of Title 15A of the New Jersey Statutes, except that in
43 situations in which the provisions of that title are inconsistent with
44 the provisions of P.L. , c. (C.) (pending before the
45 Legislature as this bill), the provisions of
46 P.L. , c. (C.)(pending before the Legislature as this bill)
47 shall govern.

1 e. At the effective time, members shall receive membership
2 interests of the mutual holding company, and thereafter 100 percent
3 of the membership interests of the mutual holding company shall
4 continue to be held by members, in each case, in the manner set
5 forth in the articles of incorporation and bylaws of the mutual
6 holding company.

7 f. The shares of the capital stock of the reorganized insurer
8 shall be:

9 (1) issued to the mutual holding company or one or more
10 intermediate holding companies that are wholly-owned by the
11 mutual holding company; and

12 (2) at all times owned by the mutual holding company or one or
13 more intermediate holding companies that are wholly-owned by the
14 mutual holding company.

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

17 (1) the formation of one or more subsidiaries;

18 (2) amendment or restatement of the articles of incorporation
19 and bylaws of one or more companies;

20 (3) transfer of assets and liabilities among two or more
21 companies; **1[or]**¹

22 (4) issuance, acquisition or transfer of capital stock of one or
23 more companies ¹; or

24 (5) merger or consolidation of two or more companies.

25 h. The mutual holding company shall ensure that any
26 ownership interest in a subsidiary shall be held by the mutual
27 holding company, and that any profits generated by that interest are
28 returned to the mutual holding company¹.

29

30 5. (New section) a. A health service corporation may submit
31 an application to the commissioner to form a mutual holding
32 company system. ¹Upon submission of an application to the
33 commissioner, a health service corporation shall immediately
34 thereafter provide a copy of the application to the Attorney
35 General.¹ Prior to submission of the application, the board of
36 directors of the health service corporation shall adopt a resolution
37 proposing to transition to a mutual insurer and form a mutual
38 holding company system, at a meeting of the board by a two-thirds
39 affirmative vote of the total number of directors of the health
40 service corporation. A copy of the minutes of the meeting at which
41 that resolution is adopted shall be filed with the commissioner. The
42 resolution shall include a plan to transition to a mutual insurer and
43 form a mutual holding company system, including proposed articles
44 of incorporation and bylaws for the mutual holding company and
45 proposed articles of incorporation, certificates of formation,
46 restatements of, or amendments to, existing articles of incorporation
47 or bylaws, and plans of merger or consolidation, with respect to

1 each entity to be formed, converted or otherwise subject or party to
2 the transition transactions pursuant to the plan of mutualization and
3 reorganization.

4 In addition to including information required pursuant to section
5 2 of P.L.1995, c.196 (C.17:48E-46) for the plan of mutualization,
6 with respect to the formation of a mutual holding company system
7 for purposes of this provision, the plan shall include:

8 (1) A description of the structure of the mutual holding
9 company system consistent with the requirements set forth in
10 P.L. , c. (C.) (pending before the Legislature as this bill);

11 (2) A description of the qualifications for members'
12 membership in, and the rights of members of, the mutual holding
13 company consistent with the requirements set forth in
14 P.L. , c. (C.) (pending before the Legislature as this bill);

15 (3) A description of the transactions, and parties to those
16 transactions, that will affect the mutualization and reorganization,
17 including, but not limited to, transfer and assumption of policies,
18 contracts, assets and liabilities, formation of entities, and the
19 amendment or restatement of certificates of incorporation or
20 bylaws. The plan of reorganization may provide for the transfer of
21 assets of a health service corporation and its subsidiaries to the
22 mutual holding company or one or more subsidiaries of the mutual
23 holding company in connection with the formation of the mutual
24 holding company system;

25 (4) The identity of those persons who shall serve as directors
26 and officers of the mutual holding company, its intermediate
27 holding companies, if any, and its subsidiaries, including the
28 reorganized insurer, as of the effective time of the mutualization
29 and reorganization. The plan shall specify the members of the board
30 of directors of the health service corporation who shall serve as
31 initial directors of the mutual holding company, as provided in
32 section 15 of P.L. , c. (C.) (pending before the Legislature
33 as this bill);

34 (5) Information sufficient to demonstrate that the financial
35 condition of the reorganized insurer and the insurance company
36 subsidiaries of the reorganized insurer shall meet solvency
37 requirements pursuant to applicable laws and rules of this State
38 relating to insurance companies after giving effect to the
39 mutualization and reorganization;

40 (6) A ¹**[representation]** certification¹ that, following the
41 mutualization and reorganization, the material terms and conditions
42 of insurance coverage of:

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

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

4 (7) A ¹**【representation】 certification**¹ that, following the
5 mutualization and reorganization, the material terms and conditions
6 of subordinated surplus notes and other contractual obligations,
7 other than those arising pursuant to policies described in paragraph
8 (6) of this subsection, of the health service corporation and its
9 subsidiaries shall, subject to the rights of the health service
10 corporation and its subsidiaries pursuant to applicable law, and to
11 the extent those obligations are not otherwise satisfied or terminated
12 in accordance with their terms, remain in effect upon the transfer of
13 those obligations to, and assumption of those obligations by, the
14 reorganized insurer or one or more other subsidiaries of the mutual
15 holding company; and

16 (8) A ¹**【representation】 certification**¹ that, following the
17 mutualization and reorganization, the mutual holding company shall
18 comply with the employment requirements as provided in section
19 16 of P.L. , c. (C.) (pending before the Legislature as
20 this bill).

21 b. Upon the affirmative vote of the board of directors
22 complying with subsection a. of this section, the plan to form a
23 mutual holding company system pursuant to P.L. , c. (C.)
24 (pending before the Legislature as this bill) shall be filed with the
25 commissioner for approval. Upon filing the plan to form a mutual
26 holding company system, the obligations pursuant to section 4 of
27 P.L.2017, c.100 (C.17:48E-17.3) shall be suspended during the
28 pendency of the commissioner's review process pursuant to this
29 subsection; if the commissioner approves the plan to form a mutual
30 holding company, any obligations arising pursuant to section 4 of
31 P.L.2017, c.100 (C.17:48E-17.3) shall be deemed satisfied by the
32 initial assessment pursuant to subsection a. of section 13 of
33 P.L. , c. (C.) (pending before the Legislature as this bill).
34 The commissioner shall review the plan to mutualize and reorganize
35 in accordance with the requirements of subsection a. of section 3 of
36 P.L.1995, c.196 (C.17:48E-47). ¹**【The public hearing conducted**
37 **pursuant to subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-**
38 **47)】 The commissioner shall hold three public hearings on the plan**
39 **to form a mutual holding company within 90 days after the**
40 **commissioner determines that the filing is complete, with notice**
41 **provided by publication in a manner satisfactory to the**
42 **commissioner. The public hearings**¹ shall also address the plan of
43 reorganization to the mutual holding company system required by
44 P.L. , c. (C.) (pending before the Legislature as this bill).
45 Consistent with subsection a. of section 3 of P.L.1995, c.196
46 (C.17:48E-47), the commissioner shall approve a plan of

1 mutualization and reorganization unless the commissioner finds the
2 plan:

3 (1) is contrary to law;

4 (2) would be detrimental to the safety or soundness of the
5 proposed reorganized insurer and insurance company subsidiaries
6 of the proposed mutual holding company; or

7 (3) ~~["prejudices"]~~ does not benefit¹ the interests of the
8 policyholders of the health service corporation or treats them
9 inequitably.

10 The commissioner may engage the services of experts and
11 consultants to advise on any matters related to the application ¹, and
12 if a written study or other expert report is prepared, it shall be made
13 available to the applicant within a reasonable period of time prior to
14 the initial public hearing. The commissioner may also engage the
15 services of a consultant to conduct a health impact study of the
16 effects of the reorganization on the health of the policy holders of
17 the health service corporation, and the general public¹. The
18 engagement shall not be subject to Chapter 32 of Title 52 of the
19 Revised Statutes and all costs related to such engagement for the
20 examination and deliberations of the application shall be paid by the
21 health service corporation that makes the filing, both for services
22 prior to the effective time and for services after the effective time.
23 At the expiration of 30 days after the ¹final public hearing, the
24 commissioner shall approve or disapprove the plan of mutualization
25 and reorganization and shall set forth the decision in writing and
26 shall state the reasons therefor. The commissioner shall inform the
27 health service corporation of the specific reasons for the disapproval
28 of any plan of mutualization and reorganization and provide a cure
29 period of no shorter than 90 days to cure any deficiencies. Any
30 disapproval shall be subject to judicial review as a final decision of
31 a State administrative agency.

32 c. A plan of mutualization and reorganization may be amended,
33 terminated, or approved consistent with P.L. , c. (C.)
34 (pending before the Legislature as this bill). A plan of
35 mutualization and reorganization adopted by the board of directors
36 of the applicant may be:

37 (1) Amended by the board of directors of the applicant in
38 response to the comments or recommendations of the commissioner
39 at any time; or

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

44 d. An approved plan of mutualization and reorganization shall
45 be effective at the effective time specified in the plan of
46 reorganization, or such other time subsequently requested by the
47 applicant and agreed to by the commissioner.

1 6. (New section) A mutual holding company system shall be
2 considered an insurance holding company system and subject to
3 P.L.1970, c.22 (C.17:27A-1 et seq.). ¹The commissioner shall
4 possess supervisory powers with respect to the insurance holding
5 company system which shall include the authority to monitor the
6 mutual holding company systems financial health, enterprise risk,
7 and examine its operations pursuant to P.L.1070, c.22 (C.17:27A-
8 1 et seq.).¹ Notwithstanding the foregoing, solely with regard to the
9 transactions set forth in the application to form a mutual holding
10 company system filed pursuant to section 5 of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 a mutual holding company system shall not be required to seek
13 separate approval for an acquisition of controlling stock, ownership
14 interest, assets or control, or for a ¹merger or consolidation,¹ share
15 exchange, organization, or reorganization of insurance companies
16 within the mutual holding company system, or other transactions set
17 forth in the application to form a mutual holding company system.
18 Thereafter, any future transactions not approved as part of the
19 application to form a mutual holding company system, shall be
20 subject to the applicable requirements of P.L.1970, c.22 (C.17:27A-
21 1 et seq.). As an insurance holding company system subject to
22 P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner shall have
23 the power to order production of any records, books, or other
24 information and papers in the possession of a mutual holding
25 company system as are reasonably necessary to ascertain the
26 financial condition of the mutual holding company system or to
27 determine compliance with P.L. , c. (C.)(pending before
28 the Legislature as this bill).

29

30 7. (New section)a. A mutual holding company or a non-
31 insurance subsidiary may, alone or together, make any lawful
32 investments including directly or indirectly acquiring or otherwise
33 holding the stock or other ownership interests of any nonprofit or
34 for-profit entities.

35 b. Insurance company subsidiaries and the reorganized insurer
36 may make investments, including investments in non-insurance
37 entities subject to investment and asset limitations pursuant to
38 applicable laws and rules relating to insurance companies.

39 ¹c. The mutual holding company and its non-insurance and
40 insurance company subsidiaries shall continue to operate a diverse
41 supplier program that promotes and invests in the utilization of
42 minority-owned and women-owned businesses in the procurement
43 of goods and services, including professional services. The mutual
44 holding company shall include in its annual filing pursuant to
45 subsection b. of section 11 of P.L. , c. (C.) (pending
46 before the Legislature as this bill) information on this subsection.¹

1 8. (New section) Neither the adoption nor the implementation
2 of a plan of mutualization and reorganization shall be deemed to
3 give rise to any obligation by or on behalf of any entity in the
4 mutual holding company system or any predecessor entity to make
5 any distribution or payment to any member or policyholder, or to
6 any other person, fund, or entity of any nature whatsoever, in
7 connection with the ownership, control, benefits, policies, purpose,
8 or nature of any entity in the mutual holding company system, any
9 predecessor entity or otherwise.

10
11 9. (New section) a. Membership in a mutual holding company
12 shall be determined in accordance with the mutual holding
13 company's articles of incorporation and bylaws and may be based
14 upon:

15 (1) the amount of health insurance policies in force with the
16 reorganized insurer;

17 (2) the amount of the health insurance premiums paid to the
18 reorganized insurer; or

19 (3) other reasonable factors.

20 A mutual holding company may also consider the amount of
21 premiums paid to, or policies in force under, affiliated insurance
22 companies operating under the same brand licensee program as the
23 reorganized insurer and permit entities holding administrative
24 services agreements with the mutual holding company to be
25 members of the mutual holding company. The mutual holding
26 company may provide in its bylaws the basis for the number of
27 votes those entities will have as members of the mutual holding
28 company.

29 b. Members of a mutual holding company shall be entitled to
30 vote for the election of directors of the mutual holding company in
31 accordance with the mutual holding company's bylaws. Directors
32 of the mutual holding company shall be elected from nominees
33 selected by the nominating and governance committee of the board
34 of directors of the mutual holding company, or a comparably
35 authorized committee, except for public directors serving in
36 accordance with section 15 of P.L. , c. (C.)(pending
37 before the Legislature as this bill).

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

40 d. Except as specified in subsection b. of this section, a
41 membership interest in a mutual holding company shall not be
42 deemed to give rise to any other rights, including any ownership
43 interests in, or ownership rights with respect to, the assets of any
44 entity in the mutual holding company system or any predecessor
45 entity, and shall not be deemed to give rise to any entitlement to
46 receive payment of any dividend or other distribution in connection
47 with the ownership, control, benefits, policies, purpose or nature of

1 any entity in the mutual holding company system or any
2 predecessor entity.

3 e. A member of a mutual holding company is not personally
4 liable for the acts, debts, liabilities or obligations of the mutual
5 holding company solely because of the member's membership
6 status.

7 f. No assessments shall be imposed upon the members of a
8 mutual holding company by the directors or members, or because of
9 any liability, act, debt or obligation of the mutual holding company
10 or of any company owned or controlled by the mutual holding
11 company.

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

14

15 10. (New section) Upon any voluntary dissolution of a mutual
16 holding company in accordance with N.J.S.15A:12-2, 15A:12-3,
17 15A:12-4, 15A:12-5, 15A:12-6, 15A:12-7, or section 19 of
18 P.L.1992, c.65 (C.17B:32-49), the mutual holding company shall
19 adopt a plan of dissolution in accordance with N.J.S.15A:12-8. The
20 plan shall provide that any assets of the mutual holding company
21 remaining after the discharge of all liabilities and obligations, if
22 any, shall be distributed in accordance with N.J.S.15A:12-8.

23

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

27 b. The mutual holding company shall, on an annual basis, and
28 in a form and manner prescribed by the Department of Banking and
29 Insurance, file with the department information relating to the
30 mutual holding company's operations, including but not limited to
31 the following: the mutual holding company's mission, activities,
32 revenues, expenses, assets, liabilities, and total compensation
33 provided to officers, directors, trustees and the five other highest
34 compensated employees who are not an officer, director or trustee,
35 which information shall be posted on the department's website.

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

41

42 ¹12. (New section) All information, documents and copies of
43 information and documents obtained by or disclosed to the
44 commissioner, the Department of Banking and Insurance, or any
45 other person in the course of preparing, filing or processing an
46 application to reorganize pursuant to P.L. , c. (C.)
47 (pending before the Legislature as this bill), including the annual

1 statement required pursuant to section 11 of P.L. , c. (C.)
 2 (pending before the Legislature as this bill), other than information
 3 or documents distributed to policyholders in connection with the
 4 plan of reorganization or election of directors, shall be subject to
 5 the confidentiality requirements set forth in section 6 of P.L.1970,
 6 c.22 (C.17:27A-6).¹

7
 8 ¹12. (New section) a. The application submitted pursuant to
 9 section 5 of P.L. , c. (C.)(pending before the Legislature as
 10 this bill) shall be a public record, except for the following
 11 documents, which shall be confidential and not public records:

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

13 (2) the business plan, capitalization plan, financial projections,
 14 and market competitive data; and

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

19 b. The commissioner shall provide the public with prompt and
 20 reasonable access to public records relating to the proposed
 21 reorganization of the health service corporation. The commissioner
 22 shall make the public records received pursuant to
 23 P.L. , c. (C.)(pending before the Legislature as this bill)
 24 available for inspection at no cost to the public. These public
 25 records shall be made available to the public in connection with the
 26 public hearing to be held pursuant to P.L. , c. (C.)(pending
 27 before the Legislature as this bill).¹

28
 29 13. (New section) a. Following regulatory approval pursuant to
 30 section 5 of P.L. , c. (C.)(pending before the Legislature
 31 as this bill) and the establishment of a mutual holding company, the
 32 mutual holding company, ¹**【through itself or any of its affiliates】** or
 33 any affiliates benefiting from the establishment of a mutual holding
 34 company¹, shall pay an initial assessment to the State Treasury in
 35 the amount of \$600,000,000 by June 1, 2022 if the effective time
 36 precedes June 1, 2022. If the effective time is later than June 1,
 37 2022, the initial assessment shall be due by June 1 of the calendar
 38 year following the effective time. The initial assessment shall be a
 39 one-time, nonrecurring State business tax on the ¹**【reorganized**
 40 **insurer】** mutual holding company and its affiliates¹.

41 b. Following the initial assessment, and subject to subsections
 42 c. and d. of this section, the mutual holding company, ¹**【through**
 43 **itself or any of its affiliates】** or any affiliates benefiting from the
 44 establishment of a mutual holding company¹, shall pay a limited
 45 duration business tax by June 1 of each calendar year beginning
 46 with the calendar year following the initial assessment, and for a

1 period of seventeen years. The total assessment, including both the
2 initial and annual assessments, shall not exceed \$1,250,000,000.
3 The annual assessments represent a limited duration state business
4 tax on the ¹reorganized insurer's mutual holding company and its
5 affiliates¹ business payable by the mutual holding company or any
6 ¹of its¹ affiliates benefiting from the establishment of a mutual
7 holding company¹, and shall be based on the following schedule
8 with earned premiums defined consistent with 45 C.F.R, 158.130:

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

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

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

20 c. The mutual holding company shall not pay any portion of
21 the annual assessment for a given calendar year if the mutual
22 holding company's system-wide health risk-based capital
23 authorized control level would fall below 550 percent based on the
24 standards for risk based capital for health organizations as adopted
25 by the National Association of Insurance Commissioners following
26 the payment as applied against the prior calendar year's risk based
27 capital, or if in the opinion of any nationally recognized statistical
28 rating organization, the group credit rating of the mutual holding
29 company would not be considered investment grade. ¹The
30 commissioner shall determine that the mutual holding company's
31 system-wide health risk-based capital authorized control level
32 would fall below 550 percent before payments shall be deferred
33 pursuant to this subsection and paragraph (1) of subsection d. of this
34 section. Neither the insurance company subsidiaries nor the
35 reorganized insurer shall make dividends or distributions to the
36 mutual holding company or any subsidiaries thereof until such time
37 as the annual assessment deferred pursuant to paragraph (1) of
38 subsection d. of this section is satisfied.¹

39 d. (1) If the mutual holding company does not pay the annual
40 assessment for a given calendar year pursuant to subsection c. of
41 this section, the annual assessment that was not paid shall be
42 deferred to the subsequent calendar year, which shall be the deferral
43 date for the deferred annual assessment, with all subsequent annual
44 assessments pursuant to subsection b. of this section also deferred
45 by another calendar year so that no two annual assessments are due
46 in the same calendar year. If an annual assessment is deferred, that

1 annual assessment shall not be required by law to be paid until the
2 deferral date.

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

8 e. The initial assessment is a one-time business tax imposed on
9 the mutual holding company system and the annual assessment is a
10 limited duration business tax imposed on the mutual holding
11 company system based on the reorganized insurer's business. The
12 assessment of additional taxes, penalties and interest shall be as
13 provided by the "State Uniform Tax Procedure Law," R.S.54:48-1
14 et seq.; provided that no interest shall accrue or penalty shall be
15 levied on a deferred annual assessment.

16

17 14. (New section) A mutual holding company formed pursuant
18 to P.L. , c. (C.) (pending before the Legislature as this
19 bill) shall not convert to a for-profit stock holding company. The
20 provisions of P.L.2001, c.131 (C.17:48E-49 et seq.) providing for
21 conversion of a health service corporation to a domestic stock
22 insurer shall not apply to a mutual holding company formed
23 pursuant to P.L. , c. (C.) (pending before the Legislature
24 as this bill).

25

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

28 (1) 13 directors shall be elected, as provided in the bylaws, one
29 of whom shall be the chair;

30 (2) 5 directors shall be public directors appointed by the
31 Governor with the advice and consent of the Senate;

32 (3) 2 directors shall be public directors appointed by the Senate
33 President; and

34 (4) 2 directors shall be public directors appointed by the Speaker
35 of the General Assembly.

36 b. Upon the effective time, the term of office of the public
37 directors of the reorganized insurer shall ¹not immediately¹ expire
38 ¹but rather shall be temporarily continued and each such director
39 shall continue in holdover status until such time as the appointing
40 authority reappoints or renames such director or appoints or names
41 another director¹. The initial board of directors of the mutual
42 holding company shall be:

43 (1) the elected directors of the reorganized insurer supplemented
44 by additional elected directors nominated and elected by the mutual
45 holding company's board after the effective time for a total number
46 of elected directors specified in paragraph (1) of subsection a. of
47 this section;

1 (2) 5 public directors appointed by the Governor with the advice
2 and consent of the Senate ¹【within 30 days after the effective
3 time】¹;

4 (3) 2 public directors named by the Senate President ¹【within 30
5 days after the effective time】¹; and

6 (4) 2 public directors named by the Speaker of the General
7 Assembly ¹【within 30 days after the effective time】¹.

8 c. Each elected director shall have a term of three years with up
9 to two successive three-year terms following the initial term for up
10 to a total of three successive terms, and as provided for in the
11 bylaws, with such other term and term limits specifically applying
12 to the individual directors. The chief executive officer or president
13 of the mutual holding company shall be an elected director at all
14 times and shall not be subject to any term limit or election pursuant
15 to section 9 of P.L. , c. (C.)(pending before the
16 Legislature as this bill). The board of directors ¹【or the members】¹,
17 as provided by the bylaws, shall elect a chair, who shall be a
18 member of the board elected pursuant to paragraph (1) of subsection
19 a. of this section. Each director elected pursuant to paragraph (1) of
20 subsection a. of this section shall meet the statutory and regulatory
21 qualifications for the mutual holding company system's businesses
22 and be free from conflicts of interest that would prohibit the person
23 from materially executing the person's duties as a director. Each
24 public director shall ¹【serve at the pleasure of the appointing
25 authority】 have a term of three years with up to two successive
26 three-year terms following the initial term, for a total of up to three
27 successive terms. Upon the effective time, the terms of office of the
28 public directors of the reorganized insurer shall continue until their
29 respective successors are appointed and qualified. No period during
30 which a public director holds over shall be deemed to be an
31 extension of the public director's term of office for the purpose of
32 determining the date on which a successor's term expires¹.

33 d. There shall be a transitional period of 18 months following
34 the effective time before elected directors of the mutual holding
35 company are subject to election by its members pursuant to section
36 9 of P.L. , c. (C.)(pending before the Legislature as this
37 bill). The first election shall occur at the first annual meeting
38 following the transitional period, and in accordance with the mutual
39 holding company's bylaws.

40 ¹e. To the extent practicable, the mutual holding company shall
41 make best efforts to reflect the racial, ethnic, and gender diversity
42 of the communities that it serves throughout the organization,
43 including the board of directors and executive leadership, to achieve
44 its mission.¹

1 16. (New section) a. Upon the formation of a mutual holding
2 company, the total number of full-time employees that were
3 employed within a mutual holding company system shall be
4 maintained for a transition period of ¹~~24~~ ³⁶ months following
5 that formation based on the full-time employee count of the health
6 service corporation as of September 30, 2019, except as provided in
7 subsection b. of this section.

8 b. This section shall not:

9 (1) supersede the terms of any collective bargaining
10 agreement; or

11 (2) require a mutual holding company system to replace
12 headcount lost due to voluntary attrition or terminations for cause,
13 including for performance, or replace any loss of headcount
14 attributable to a decline in enrollment, market share, or loss of a
15 major account.

16 c. This section shall expire following the transition period of
17 ¹~~24~~ ³⁶ months following the formation of a mutual holding
18 company.

19
20 17. Section 1 of P.L.2001, c.131 (C.17:48E-49) is amended to
21 read as follows:

22 1. As used in this act:

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

25 “Alternative foundation plan” means the plan submitted to the
26 Attorney General and the commissioner pursuant to section 18 of
27 this act.

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

31 “Attorney General” means the Attorney General of the State of
32 New Jersey.

33 “Commissioner” means the Commissioner of Banking and
34 Insurance.

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

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

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

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

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

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

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

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

10 “Material change in form” means any action or series of actions
11 that effect a fundamental corporate change which involves a
12 transfer of ownership or control of assets of the health service
13 corporation or a change of the mission or purpose of the health
14 service corporation, including, without limitation, the purchase,
15 lease, exchange, conversion, restructuring, merger, division,
16 consolidation or transfer of control, bulk reinsurance or other
17 disposition or transfer of a substantial amount of business, line of
18 business, assets or operations of the health service corporation,
19 including the transfer, directly or indirectly, of a substantial amount
20 of the health service corporation's business, line of business, assets
21 or operations to one or more nonconforming affiliates. A material
22 change in form by the transfer, directly or indirectly, of a
23 substantial amount of the health service corporation's business, line
24 of business, assets or operations to one or more nonconforming
25 affiliates shall not be deemed to occur so long as, during the most
26 recent four prior consecutive calendar quarters: (1) the aggregate
27 revenues of all nonconforming affiliates do not exceed 50 percent
28 of the aggregate revenues for the health service corporation and all
29 affiliates; (2) the aggregate revenues of all nonconforming affiliates
30 derived from providing individual or group health coverage to
31 residents of New Jersey equal or exceed 50 percent of the aggregate
32 revenues from all nonconforming affiliates; and (3) the aggregate
33 assets of all nonconforming affiliates do not exceed 50 percent of
34 the aggregate assets of the health service corporation and all
35 affiliates. Notwithstanding the above, a reorganization approved by
36 the commissioner pursuant to section 5 of P.L. _____, c. (C. _____)
37 (pending before the Legislature as this bill), whereby the mutual
38 holding company is a charitable and benevolent institution as
39 provided in section 41 of P.L.1985, c.236 (C.17:48E-41), shall not
40 constitute a material change in form for purposes of P.L.2001, c.131
41 (C.17:48E-49 et seq.).

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

46 “Parent corporation” means a stock corporation incorporated
47 under the laws of this State that is or has been organized for the

1 purpose of acquiring, directly or indirectly, control of the converted
2 insurer pursuant to the plan of conversion.

3 “Petition” means the petition for approval of a foundation plan
4 submitted to the Attorney General pursuant to subsection a. of
5 section 19 of this act.

6 “Plan of conversion” means the written plan of conversion
7 adopted by the health service corporation in compliance with
8 section 2 of this act.

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

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

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

18

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

21 1. Definitions.

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

25 a. An “affiliate” of, or person “affiliated” with, a specific
26 person, is a person that directly, or indirectly through one or more
27 intermediaries, controls, or is controlled by, or is under common
28 control with, the person specified.

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

31 c. The term “control” (including the terms “controlling,”
32 “controlled by” and “under common control with”) means the
33 possession, direct or indirect, of the power to direct or cause the
34 direction of the management and policies of a person, whether
35 through the ownership of voting securities, by contract other than a
36 commercial contract for goods or nonmanagement services, or
37 otherwise, unless the power is the result of an official position with
38 or corporate office held by the person. Control shall be presumed to
39 exist if any person, directly or indirectly, owns, controls, holds with
40 the power to vote, or holds proxies representing, 10% or more of the
41 voting securities of any other person, provided that no such
42 presumption of control shall of itself relieve any person so
43 presumed to have control from any requirement of P.L.1970, c. 22
44 (C.17:27A-1 et seq.). This presumption may be rebutted by a
45 showing made in the manner provided by subsection j. of section 3
46 of P.L.1970, c. 22 (C.17:27A3) that control does not exist in fact.
47 The commissioner may determine, after furnishing all persons in

- 1 interest notice and an opportunity to be heard, and making specific
2 findings of fact to support such determination, that control exists in
3 fact, notwithstanding the absence of a presumption to that effect.
- 4 d. An “insurance holding company system” consists of two or
5 more affiliated persons, one or more of which is an insurer. A
6 mutual holding company system resulting from a mutualization and
7 reorganization of a health service corporation pursuant to section 5
8 of P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
9 bill), shall be an insurance holding company system pursuant to
10 P.L.1970, c. 22 (C.17:27A-1 et seq.).
- 11 e. The term “insurer” means any person or persons,
12 corporation, partnership or company authorized by the laws of this
13 State to transact the business of insurance or to operate a health
14 maintenance organization in this State, except that it shall not
15 include agencies, authorities or instrumentalities of the United
16 States, its possessions and territories, the Commonwealth of Puerto
17 Rico, the District of Columbia, or a state or political subdivision of
18 a state.
- 19 f. A “person” is an individual, a corporation, a limited liability
20 company, partnership, an association, a joint stock company, a trust,
21 an unincorporated organization, any similar entity or any
22 combination of the foregoing acting in concert.
- 23 g. (Deleted by amendment, P.L.1993, c. 241).
- 24 h. A “subsidiary” of a specified person is an affiliate controlled
25 by such person directly, or indirectly through one or more
26 intermediaries.
- 27 i. The term “voting security” shall include any security
28 convertible into or evidencing a right to acquire a voting security.
- 29 j. “Acquisition” means any agreement, arrangement or
30 activity, the consummation of which results in a person acquiring
31 directly or indirectly the control of another person, and includes but
32 is not limited to the acquisition of voting securities, and assets, and
33 bulk reinsurance and mergers.
- 34 k. “Health maintenance organization” means any person
35 operating under a certificate of authority issued pursuant to
36 P.L.1973, c. 337 (C.26:2J-1 et seq.).
- 37 l. “Enterprise risk” means any activity, circumstance, event or
38 series of events involving one or more affiliates of an insurer that, if
39 not remedied promptly, is likely to have a material adverse effect
40 upon the financial condition or liquidity of the insurer or its
41 insurance holding company system as a whole, including, but not
42 limited to, anything that would cause the insurer's Risk-Based
43 Capital to fall into company action level as set forth in
44 administrative rules adopted by the commissioner which reflect the
45 standards set forth in the Risk-Based Capital For Insurers Model
46 Act adopted by the National Association of Insurance
47 Commissioners or would cause the insurer to be in hazardous

1 financial condition as defined in administrative rules adopted by the
2 commissioner which reflect the standards set forth in the Model
3 Regulation adopted by the National Association of Insurance
4 Commissioners to define standards and the commissioner's
5 authority over companies deemed to be in a hazardous
6 financial condition.

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

8

9 19. (New section) a. The provisions of P.L. , c. (C.)
10 (pending before the Legislature as this bill) shall be severable; and
11 if any phrase, clause, sentence, or provision is deemed
12 unenforceable, the remaining provisions of P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall be enforceable.

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

17

18 20. This act shall take effect immediately.

19

20

21

22

23 _____
Provides for reorganization of health service corporation.

ASSEMBLY, No. 5119

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 10, 2020

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman ROBERT D. CLIFTON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblywoman Speight, Assemblymen Thomson and Houghtaling

SYNOPSIS

Provides for reorganization of health service corporation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2020)

A5119 MCKEON DOWNEY

2

1 AN ACT permitting reorganization of a health service corporation,
2 supplementing P.L.1985, c.286 (C.17:48E-1 et seq.), and
3 amending P.L.2001, c.131 and P.L.1970, c.22.

4

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

7

8 1. (New section) The Legislature finds and declares that:

9 a. It is in the interest of the subscribers of the health service
10 corporation and the State of New Jersey that the health service
11 corporation be afforded the ability to modernize its corporate
12 structure, subject to appropriate standards, oversight, and approval,
13 in order to meet the evolving health care needs of its subscribers,
14 while continuing its statutory mission, and maintaining its status as
15 a charitable and benevolent institution as declared in section 41 of
16 P.L.1985, c.236 (C.17:48E-41).

17 b. Ensuring that the health service corporation statutes provide
18 the opportunity for the health service corporation to reorganize
19 itself efficiently and effectively in the form and manner authorized
20 by P.L. , c. (C.) (pending before the Legislature as this
21 bill) will facilitate increased utilization of 21st century technologies
22 and tools to better address current challenges, improving both the
23 State's healthcare infrastructure and its readiness to address future
24 crises such as those resulting from the ongoing COVID-19
25 pandemic. Such a reorganization, if undertaken, approved, and
26 completed consistent with the provisions of P.L. , c. (C.)
27 (pending before the Legislature as this bill), also will promote vital
28 investments and growth in health services and diversified
29 businesses for the benefit of its members and the State.

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

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

Matter underlined thus is new matter.

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

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

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

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

28

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

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

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

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

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

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

45 “Insurance company” means any entity, other than the
46 reorganized insurer, that engages in the business of insurance.

47 “Intermediate holding company” means an entity of which at
48 least a majority of the voting shares of the capital stock are at all

1 times owned directly or indirectly through other intermediate
2 holding companies by a mutual holding company.

3 “Majority of the voting shares of the capital stock” means, with
4 respect to any entity, shares of the capital stock of that entity which
5 carry the right to cast a majority of the votes entitled to be cast by
6 all of the outstanding shares of the capital stock of that entity for
7 the election of directors.

8 “Member” means the holder of a membership interest in a mutual
9 holding company, pursuant to the articles of incorporation or
10 bylaws of that mutual holding company.

11 “Mutual holding company” means a non-insurance, nonprofit
12 entity without permanent capital stock organized pursuant to the
13 laws of this State in accordance with the provisions of P.L. , c.
14 (C.)(pending before the Legislature as this bill) for the
15 purpose of holding, directly or indirectly, one hundred percent
16 interest in a reorganized insurer pursuant to a plan of reorganization
17 as provided in P.L. , c. (C.)(pending before the
18 Legislature as this bill). A mutual holding company is an insurance
19 holding company system pursuant to P.L.1970, c.22 (C.17:27A-1 et
20 seq.), and shall not be qualified as an insurer licensed to issue
21 insurance policies, insurance contracts or health benefit plans.

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

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

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

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

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

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

7
8 3. (New section) a. A mutual holding company organized
9 pursuant to P.L. , c. (C.)(pending before the Legislature
10 as this bill) shall not be established as a company organized for
11 pecuniary profit and shall retain the designation as a charitable and
12 benevolent institution pursuant to section 41 of P.L.1985, c.236
13 (C.17:48E-41). A mutual holding company established pursuant to
14 the provisions of P.L. , c. (C.)(pending before the
15 Legislature as this bill) shall retain the health service corporation's
16 mission while supplementing that mission to promote innovation
17 and delivery of diversified services.

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

19 (1) provide affordable and accessible health insurance to its
20 members;

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

23 (3) promote innovation and delivery of solutions and diversified
24 services for its members.

25 b. Other than as provided pursuant to P.L. , c. (C.)
26 (pending before the Legislature as this bill), all property, assets,
27 rights, liabilities, interest and relations of whatever kind of the
28 health service corporation, and its subsidiaries, shall be that of the
29 mutual holding company system. The mutual holding company
30 shall not be considered a health service corporation.
31 Notwithstanding anything to the contrary, the provisions of section
32 41 of P.L.1985, c.236 (C.17:48E-41) shall continue to apply to a
33 mutual holding company.

34 c. The health insurance duties and obligations pursuant to
35 P.L.1985, c.236 (C.17:48E-1 et seq.) shall continue and remain in
36 the succeeding reorganized insurer reorganizing pursuant to
37 P.L. , c. (C.)(pending before the Legislature as this bill),
38 in each case, except as provided pursuant to P.L. , c.
39 (C.)(pending before the Legislature as this bill). Except as
40 listed below in subsection e. of this section, all references to a
41 "health service corporation" in P.L.1985, c.236 (C.17:48E-1 et
42 seq.), shall refer to a "reorganized insurer" established pursuant to
43 P.L. , c. (C.)(pending before the Legislature as this bill)
44 and shall not refer to the mutual holding company.

45 d. In addition to the mutual holding company's qualification
46 pursuant to section 2 of P.L. , c. (C.)(pending before the
47 Legislature as this bill), and for avoidance of doubt, the mutual
48 holding company shall be expressly excluded from insurance

1 operations and reporting, investment limits, and risk-bearing
2 provisions of P.L.1985, c.236 (C.17:48E-1 et seq.), including the
3 following provisions because a mutual holding company is not a
4 risk-bearer:

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

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

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

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

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

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

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

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

32 (3) Subsection e. of section 1, subsection b. of section 2,
33 subsection a. of section 3, sections 6 through 9, and section 11 of
34 P.L.1985, c.236 (C.17:48E-1, C.17:48E-2, C.17:48E-3, C.17:48E-6
35 through C.17:48E-9, and C.17:48E-11).

36 f. The insurance premium rate tax cap law provided by
37 subsection a. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall
38 apply to the companies within the mutual holding company system
39 that have an insurance premium tax liability, and the exclusion from
40 the tax cap applicable to a health service corporation pursuant to
41 subsection b. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall not
42 apply to the mutual holding company or any entity within the
43 mutual holding company system, including the reorganized insurer,
44 that has an insurance premium tax liability.

45 g. A mutual holding company system may pursue businesses,
46 assets, or operations through one or more of its insurance
47 subsidiaries and non-insurance subsidiaries without a limit on
48 aggregate revenues from nonconforming affiliates or such pursuits

1 being considered a material change in form as such term is defined
2 pursuant to section 1 of P.L.2001, c.131 (C:17:48E-49). The
3 subsidiaries of the mutual holding company, including the
4 reorganized insurer, shall be permitted to make dividends or
5 distributions to the mutual holding company, any subsidiaries
6 thereof, or both, and shall not be considered a material change in
7 form as such term is defined pursuant to section 1 of P.L.2001,
8 c.131 (C:17:48E-49). Dividends and distributions from domestic
9 insurers, including the reorganized insurer, within the mutual
10 holding company system shall be subject only to the applicable
11 provisions of subsection c. of section 4 of P.L.1970, c.22
12 (C:17:27A-4).

13 h. The continuation of the rights, duties and obligations of a
14 health service corporation pursuant to this section following
15 completion of an approved reorganization pursuant to P.L. , c.
16 (C.) (pending before the Legislature as this bill) shall be
17 limited to such rights, duties and obligations pursuant to P.L.1985,
18 c.236 (C:17:48E-1 et seq.) as of the effective date of P.L. , c.
19 (C.) (pending before the Legislature as this bill); amendments
20 to P.L.1985, c.236 (C:17:48E-1 et seq.) enacted after the effective
21 date of P.L. , c. (C.) (pending before the Legislature as
22 this bill) shall not apply. Notwithstanding the above, the
23 reorganized insurer shall be subject to the laws applicable to
24 domestic health insurance companies contained in Title 17B of the
25 New Jersey Statutes.

26

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

35 b. The mutual holding company system shall consist of a
36 mutual holding company and one or more controlled nonprofit or
37 for-profit subsidiaries, including the reorganized insurer, and shall
38 be operated for the benefit of its members. The mission of a mutual
39 holding company shall be as specified in subsection a. of section 3
40 of P.L. , c. (C.) (pending before the Legislature as this
41 bill).

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

45 (1) an insurer and therefore shall not be subject to any of the
46 provisions of N.J.S.17B:18-1 et seq. applicable to stock or mutual
47 insurers, or to any laws concerning the writing of insurance,
48 including rules and regulations adopted thereunder, including with

1 respect to governance, stock or other voting or equity interest, the
2 writing of insurance, any investment limitations directly applicable
3 to risk-bearing entities engaged in the writing of insurance such as
4 those pursuant to N.J.S.17B:20-1 et seq., or any capital or surplus
5 requirements;

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

7 (3) qualified as an insurer.

8 The writing of insurance shall be permitted only through the
9 reorganized insurer and other insurance company subsidiaries or
10 investments of the mutual holding company. Nothing herein shall
11 alter the oversight of the commissioner with respect to the mutual
12 holding company and its non-insurance subsidiaries provided for
13 pursuant to applicable laws and rules of this State relating to
14 insurance holding company systems.

15 d. A mutual holding company shall be a nonprofit entity
16 incorporated under, and shall conduct its business pursuant to, the
17 provisions of Title 15A of the New Jersey Statutes, except that in
18 situations in which the provisions of that title are inconsistent with
19 the provisions of P.L. , c. (C.) (pending before the
20 Legislature as this bill), the provisions of P.L. , c. (C.)
21 (pending before the Legislature as this bill) shall govern.

22 e. At the effective time, members shall receive membership
23 interests of the mutual holding company, and thereafter 100 percent
24 of the membership interests of the mutual holding company shall
25 continue to be held by members, in each case, in the manner set
26 forth in the articles of incorporation and bylaws of the mutual
27 holding company.

28 f. The shares of the capital stock of the reorganized insurer
29 shall be:

30 (1) issued to the mutual holding company or one or more
31 intermediate holding companies that are wholly-owned by the
32 mutual holding company; and

33 (2) at all times owned by the mutual holding company or one or
34 more intermediate holding companies that are wholly-owned by the
35 mutual holding company.

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

38 (1) the formation of one or more subsidiaries;

39 (2) amendment or restatement of the articles of incorporation
40 and bylaws of one or more companies;

41 (3) transfer of assets and liabilities among two or more
42 companies; or

43 (4) issuance, acquisition or transfer of capital stock of one or
44 more companies.

45

46 5. (New section) a. A health service corporation may submit
47 an application to the commissioner to form a mutual holding
48 company system. Prior to submission of the application, the board

1 of directors of the health service corporation shall adopt a resolution
2 proposing to transition to a mutual insurer and form a mutual
3 holding company system, at a meeting of the board by a two-thirds
4 affirmative vote of the total number of directors of the health
5 service corporation. A copy of the minutes of the meeting at which
6 that resolution is adopted shall be filed with the commissioner. The
7 resolution shall include a plan to transition to a mutual insurer and
8 form a mutual holding company system, including proposed articles
9 of incorporation and bylaws for the mutual holding company and
10 proposed articles of incorporation, certificates of formation,
11 restatements of, or amendments to, existing articles of incorporation
12 or bylaws, and plans of merger or consolidation, with respect to
13 each entity to be formed, converted or otherwise subject or party to
14 the transition transactions pursuant to the plan of mutualization and
15 reorganization.

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

20 (1) A description of the structure of the mutual holding
21 company system consistent with the requirements set forth in P.L.
22 , c. (C.) (pending before the Legislature as this bill);

23 (2) A description of the qualifications for members'
24 membership in, and the rights of members of, the mutual holding
25 company consistent with the requirements set forth in P.L. , c.
26 (C.) (pending before the Legislature as this bill);

27 (3) A description of the transactions, and parties to those
28 transactions, that will affect the mutualization and reorganization,
29 including, but not limited to, transfer and assumption of policies,
30 contracts, assets and liabilities, formation of entities, and the
31 amendment or restatement of certificates of incorporation or
32 bylaws. The plan of reorganization may provide for the transfer of
33 assets of a health service corporation and its subsidiaries to the
34 mutual holding company or one or more subsidiaries of the mutual
35 holding company in connection with the formation of the mutual
36 holding company system;

37 (4) The identity of those persons who shall serve as directors
38 and officers of the mutual holding company, its intermediate
39 holding companies, if any, and its subsidiaries, including the
40 reorganized insurer, as of the effective time of the mutualization
41 and reorganization. The plan shall specify the members of the board
42 of directors of the health service corporation who shall serve as
43 initial directors of the mutual holding company, as provided in
44 section 15 of P.L. , c. (C.) (pending before the Legislature
45 as this bill);

46 (5) Information sufficient to demonstrate that the financial
47 condition of the reorganized insurer and the insurance company
48 subsidiaries of the reorganized insurer shall meet solvency

1 requirements pursuant to applicable laws and rules of this State
2 relating to insurance companies after giving effect to the
3 mutualization and reorganization;

4 (6) A representation that, following the mutualization and
5 reorganization, the material terms and conditions of insurance
6 coverage of:

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

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

13 (7) A representation that, following the mutualization and
14 reorganization, the material terms and conditions of subordinated
15 surplus notes and other contractual obligations, other than those
16 arising pursuant to policies described in paragraph (6) of this
17 subsection, of the health service corporation and its subsidiaries
18 shall, subject to the rights of the health service corporation and its
19 subsidiaries pursuant to applicable law, and to the extent those
20 obligations are not otherwise satisfied or terminated in accordance
21 with their terms, remain in effect upon the transfer of those
22 obligations to, and assumption of those obligations by, the
23 reorganized insurer or one or more other subsidiaries of the mutual
24 holding company; and

25 (8) A representation that, following the mutualization and
26 reorganization, the mutual holding company shall comply with the
27 employment requirements as provided in section 16 of P.L. , c.
28 (C.) (pending before the Legislature as this bill).

29 b. Upon the affirmative vote of the board of directors
30 complying with subsection a. of this section, the plan to form a
31 mutual holding company system pursuant to P.L. , c. (C.)
32 (pending before the Legislature as this bill) shall be filed with the
33 commissioner for approval. Upon filing the plan to form a mutual
34 holding company system, the obligations pursuant to section 4 of
35 P.L.2017, c.100 (C.17:48E-17.3) shall be suspended during the
36 pendency of the commissioner's review process pursuant to this
37 subsection; if the commissioner approves the plan to form a mutual
38 holding company, any obligations arising pursuant to section 4 of
39 P.L.2017, c.100 (C.17:48E-17.3) shall be deemed satisfied by the
40 initial assessment pursuant to subsection a. of section 13 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill). The
42 commissioner shall review the plan to mutualize and reorganize in
43 accordance with the requirements of subsection a. of section 3 of
44 P.L.1995, c.196 (C.17:48E-47). The public hearing conducted
45 pursuant to subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-
46 47) shall also address the plan of reorganization to the mutual
47 holding company system required by P.L. , c. (C.)
48 (pending before the Legislature as this bill). Consistent with

1 subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47), the
2 commissioner shall approve a plan of mutualization and
3 reorganization unless the commissioner finds the plan:

4 (1) is contrary to law;

5 (2) would be detrimental to the safety or soundness of the
6 proposed reorganized insurer and insurance company subsidiaries
7 of the proposed mutual holding company; or

8 (3) prejudices the interests of the policyholders of the health
9 service corporation or treats them inequitably.

10 The commissioner may engage the services of experts and
11 consultants to advise on any matters related to the application. The
12 engagement shall not be subject to Chapter 32 of Title 52 of the
13 Revised Statutes and all costs related to such engagement for the
14 examination and deliberations of the application shall be paid by the
15 health service corporation that makes the filing, both for services
16 prior to the effective time and for services after the effective time.
17 At the expiration of 30 days after the public hearing, the
18 commissioner shall approve or disapprove the plan of mutualization
19 and reorganization and shall set forth the decision in writing and
20 shall state the reasons therefor. The commissioner shall inform the
21 health service corporation of the specific reasons for the disapproval
22 of any plan of mutualization and reorganization and provide a cure
23 period of no shorter than 90 days to cure any deficiencies. Any
24 disapproval shall be subject to judicial review as a final decision of
25 a State administrative agency.

26 c. A plan of mutualization and reorganization may be amended,
27 terminated, or approved consistent with P.L. , c. (C.)
28 (pending before the Legislature as this bill). A plan of
29 mutualization and reorganization adopted by the board of directors
30 of the applicant may be:

31 (1) Amended by the board of directors of the applicant in
32 response to the comments or recommendations of the commissioner
33 at any time; or

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

38 d. An approved plan of mutualization and reorganization shall
39 be effective at the effective time specified in the plan of
40 reorganization, or such other time subsequently requested by the
41 applicant and agreed to by the commissioner.

42

43 6. (New section) A mutual holding company system shall be
44 considered an insurance holding company system and subject to
45 P.L.1970, c.22 (C.17:27A-1 et seq.). Notwithstanding the
46 foregoing, solely with regard to the transactions set forth in the
47 application to form a mutual holding company system filed pursuant
48 to section 5 of P.L. , c. (C.)(pending before the

1 Legislature as this bill), a mutual holding company system shall not
2 be required to seek separate approval for an acquisition of
3 controlling stock, ownership interest, assets or control, or for a
4 share exchange, organization, or reorganization of insurance
5 companies within the mutual holding company system, or other
6 transactions set forth in the application to form a mutual holding
7 company system. Thereafter, any future transactions not approved
8 as part of the application to form a mutual holding company system,
9 shall be subject to the applicable requirements of P.L.1970, c.22
10 (C.17:27A-1 et seq.). As an insurance holding company system
11 subject to P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner
12 shall have the power to order production of any records, books, or
13 other information and papers in the possession of a mutual holding
14 company system as are reasonably necessary to ascertain the
15 financial condition of the mutual holding company system or to
16 determine compliance with P.L. , c. (C.) (pending before
17 the Legislature as this bill).

18

19 7. (New section)a. A mutual holding company or a non-
20 insurance subsidiary may, alone or together, make any lawful
21 investments including directly or indirectly acquiring or otherwise
22 holding the stock or other ownership interests of any nonprofit or
23 for-profit entities.

24 b. Insurance company subsidiaries and the reorganized insurer
25 may make investments, including investments in non-insurance
26 entities subject to investment and asset limitations pursuant to
27 applicable laws and rules relating to insurance companies.

28

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

38

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

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

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

47 (3) other reasonable factors.

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

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

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

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

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

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

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

42

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

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

3

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

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

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

21

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

34

35 13. (New section) a. Following regulatory approval pursuant to
36 section 5 of P.L. , c. (C.) (pending before the Legislature
37 as this bill) and the establishment of a mutual holding company, the
38 mutual holding company, through itself or any of its affiliates, shall
39 pay an initial assessment to the State Treasury in the amount of
40 \$600,000,000 by June 1, 2022 if the effective time precedes June 1,
41 2022. If the effective time is later than June 1, 2022, the initial
42 assessment shall be due by June 1 of the calendar year following the
43 effective time. The initial assessment shall be a one-time,
44 nonrecurring State business tax on the reorganized insurer.

45 b. Following the initial assessment, and subject to subsections
46 c. and d. of this section, the mutual holding company, through itself
47 or any of its affiliates, shall pay a limited duration business tax by
48 June 1 of each calendar year beginning with the calendar year

1 following the initial assessment, and for a period of seventeen
2 years. The total assessment, including both the initial and annual
3 assessments, shall not exceed \$1,250,000,000. The annual
4 assessments represent a limited duration state business tax on the
5 reorganized insurer's business payable by the mutual holding
6 company or any of its affiliates, and shall be based on the following
7 schedule with earned premiums defined consistent with 45 C.F.R,
8 158.130:

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

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

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

20 c. The mutual holding company shall not pay any portion of
21 the annual assessment for a given calendar year if the mutual
22 holding company's system-wide health risk-based capital
23 authorized control level would fall below 550 percent based on the
24 standards for risk based capital for health organizations as adopted
25 by the National Association of Insurance Commissioners following
26 the payment as applied against the prior calendar year's risk based
27 capital, or if in the opinion of any nationally recognized statistical
28 rating organization, the group credit rating of the mutual holding
29 company would not be considered investment grade.

30 d. (1) If the mutual holding company does not pay the annual
31 assessment for a given calendar year pursuant to subsection c. of
32 this section, the annual assessment that was not paid shall be
33 deferred to the subsequent calendar year, which shall be the deferral
34 date for the deferred annual assessment, with all subsequent annual
35 assessments pursuant to subsection b. of this section also deferred
36 by another calendar year so that no two annual assessments are due
37 in the same calendar year. If an annual assessment is deferred, that
38 annual assessment shall not be required by law to be paid until the
39 deferral date.

40 (2) Notwithstanding the provisions of paragraph (1) of this
41 subsection to the contrary, the assessment years pursuant to
42 subsection b. of this section shall not be extended beyond, and the
43 payment obligation pursuant to this section shall cease to exist after,
44 the date that is 20 years from the effective time.

45 e. The initial assessment is a one-time business tax imposed on
46 the mutual holding company system and the annual assessment is a
47 limited duration business tax imposed on the mutual holding
48 company system based on the reorganized insurer's business. The

1 assessment of additional taxes, penalties and interest shall be as
2 provided by the “State Uniform Tax Procedure Law,” R.S.54:48-1
3 et seq.; provided that no interest shall accrue or penalty shall be
4 levied on a deferred annual assessment.

5
6 14. (New section) A mutual holding company formed pursuant
7 to P.L. , c. (C.) (pending before the Legislature as this
8 bill) shall not convert to a for-profit stock holding company. The
9 provisions of P.L.2001, c.131 (C.17:48E-49 et seq.) providing for
10 conversion of a health service corporation to a domestic stock
11 insurer shall not apply to a mutual holding company formed
12 pursuant to P.L. , c. (C.) (pending before the Legislature
13 as this bill).

14
15 15. (New section) a. The board of the mutual holding company
16 shall be constituted of 22 directors as follows:

17 (1) 13 directors shall be elected, as provided in the bylaws, one
18 of whom shall be the chair;

19 (2) 5 directors shall be public directors appointed by the
20 Governor with the advice and consent of the Senate;

21 (3) 2 directors shall be public directors appointed by the Senate
22 President; and

23 (4) 2 directors shall be public directors appointed by the Speaker
24 of the General Assembly.

25 b. Upon the effective time, the term of office of the public
26 directors of the reorganized insurer shall expire. The initial board
27 of directors of the mutual holding company shall be:

28 (1) the elected directors of the reorganized insurer supplemented
29 by additional elected directors nominated and elected by the mutual
30 holding company’s board after the effective time for a total number
31 of elected directors specified in paragraph (1) of subsection a. of
32 this section;

33 (2) 5 public directors appointed by the Governor with the advice
34 and consent of the Senate within 30 days after the effective time;

35 (3) 2 public directors named by the Senate President within 30
36 days after the effective time; and

37 (4) 2 public directors named by the Speaker of the General
38 Assembly within 30 days after the effective time.

39 c. Each elected director shall have a term of three years with up
40 to two successive three-year terms following the initial term for up
41 to a total of three successive terms, and as provided for in the
42 bylaws, with such other term and term limits specifically applying
43 to the individual directors. The chief executive officer or president
44 of the mutual holding company shall be an elected director at all
45 times and shall not be subject to any term limit or election pursuant
46 to section 9 of P.L. , c. (C.)(pending before the
47 Legislature as this bill). The board of directors or the members, as
48 provided by the bylaws, shall elect a chair, who shall be a member

1 of the board elected pursuant to paragraph (1) of subsection a. of
2 this section. Each director elected pursuant to paragraph (1) of
3 subsection a. of this section shall meet the statutory and regulatory
4 qualifications for the mutual holding company system's businesses
5 and be free from conflicts of interest that would prohibit the person
6 from materially executing the person's duties as a director. Each
7 public director shall serve at the pleasure of the appointing
8 authority.

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

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

24 b. This section shall not:

25 (1) supersede the terms of any collective bargaining agreement;
26 or

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

32 c. This section shall expire following the transition period of
33 24 months following the formation of a mutual holding company.

34
35 17. Section 1 of P.L.2001, c.131 (C.17:48E-49) is amended to
36 read as follows:

37 1. As used in this act:

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

40 "Alternative foundation plan" means the plan submitted to the
41 Attorney General and the commissioner pursuant to section 18 of
42 this act.

43 "Application" means the application for approval of a plan of
44 conversion filed with the commissioner pursuant to section 3 of this
45 act.

46 "Attorney General" means the Attorney General of the State of
47 New Jersey.

1 “Commissioner” means the Commissioner of Banking and
2 Insurance.

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

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

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

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

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

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

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

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

23 “Material change in form” means any action or series of actions
24 that effect a fundamental corporate change which involves a
25 transfer of ownership or control of assets of the health service
26 corporation or a change of the mission or purpose of the health
27 service corporation, including, without limitation, the purchase,
28 lease, exchange, conversion, restructuring, merger, division,
29 consolidation or transfer of control, bulk reinsurance or other
30 disposition or transfer of a substantial amount of business, line of
31 business, assets or operations of the health service corporation,
32 including the transfer, directly or indirectly, of a substantial amount
33 of the health service corporation's business, line of business, assets
34 or operations to one or more nonconforming affiliates. A material
35 change in form by the transfer, directly or indirectly, of a
36 substantial amount of the health service corporation's business, line
37 of business, assets or operations to one or more nonconforming
38 affiliates shall not be deemed to occur so long as, during the most
39 recent four prior consecutive calendar quarters: (1) the aggregate
40 revenues of all nonconforming affiliates do not exceed 50 percent
41 of the aggregate revenues for the health service corporation and all
42 affiliates; (2) the aggregate revenues of all nonconforming affiliates
43 derived from providing individual or group health coverage to
44 residents of New Jersey equal or exceed 50 percent of the aggregate
45 revenues from all nonconforming affiliates; and (3) the aggregate
46 assets of all nonconforming affiliates do not exceed 50 percent of
47 the aggregate assets of the health service corporation and all
48 affiliates. Notwithstanding the above, a reorganization approved by

1 the commissioner pursuant to section 5 of P.L. , c. (C.)
2 (pending before the Legislature as this bill), whereby the mutual
3 holding company is a charitable and benevolent institution as
4 provided in section 41 of P.L.1985, c.236 (C.17:48E-41), shall not
5 constitute a material change in form for purposes of P.L.2001, c.131
6 (C.17:48E-49 et seq.).

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

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

15 “Petition” means the petition for approval of a foundation plan
16 submitted to the Attorney General pursuant to subsection a. of
17 section 19 of this act.

18 “Plan of conversion” means the written plan of conversion
19 adopted by the health service corporation in compliance with
20 section 2 of this act.

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

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

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

30

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

33 1. Definitions.

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

37 a. An “affiliate” of, or person “affiliated” with, a specific
38 person, is a person that directly, or indirectly through one or more
39 intermediaries, controls, or is controlled by, or is under common
40 control with, the person specified.

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

43 c. The term “control” (including the terms “controlling,”
44 “controlled by” and “under common control with”) means the
45 possession, direct or indirect, of the power to direct or cause the
46 direction of the management and policies of a person, whether
47 through the ownership of voting securities, by contract other than a
48 commercial contract for goods or nonmanagement services, or

1 otherwise, unless the power is the result of an official position with
2 or corporate office held by the person. Control shall be presumed to
3 exist if any person, directly or indirectly, owns, controls, holds with
4 the power to vote, or holds proxies representing, 10% or more of the
5 voting securities of any other person, provided that no such
6 presumption of control shall of itself relieve any person so
7 presumed to have control from any requirement of P.L.1970, c. 22
8 (C.17:27A-1 et seq.). This presumption may be rebutted by a
9 showing made in the manner provided by subsection j. of section 3
10 of P.L.1970, c. 22 (C.17:27A3) that control does not exist in fact.
11 The commissioner may determine, after furnishing all persons in
12 interest notice and an opportunity to be heard, and making specific
13 findings of fact to support such determination, that control exists in
14 fact, notwithstanding the absence of a presumption to that effect.

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

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

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

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

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

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

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

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

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

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

19

20 19. (New section) a. The provisions of P.L. , c. (C.)
21 (pending before the Legislature as this bill) shall be severable; and
22 if any phrase, clause, sentence, or provision is deemed
23 unenforceable, the remaining provisions of P.L. , c. (C.)
24 (pending before the Legislature as this bill) shall be enforceable.

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

28

29 20. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill provides for the reorganization of a health service
35 corporation.

36 The bill provides that a mutual holding company organized
37 pursuant to the bill may not be established as a company organized
38 for pecuniary profit and retains the designation as a charitable and
39 benevolent institution pursuant to current law. A mutual holding
40 company established pursuant to the bill retains the health service
41 corporation's mission while supplementing that mission to promote
42 innovation and delivery of diversified services.

43 The bill provides that mission of the mutual holding company is
44 to:

45 (1) provide affordable and accessible health insurance to its
46 members;

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

1 (3) promote innovation and delivery of solutions and diversified
2 services for its members.

3 Other than as otherwise provided, the bill provides that all
4 property, assets, rights, liabilities, interest and relations of whatever
5 kind of the health service corporation, and its subsidiaries, will be
6 that of the mutual holding company system. The mutual holding
7 company is no longer considered a health service corporation.
8 Notwithstanding anything to the contrary, the provisions of current
9 that exempt health service corporations from taxes other than taxes
10 on real estate and equipment and taxes on premiums continue to
11 apply to a mutual holding company.

12 Under the bill, certain health insurance duties and obligations
13 pursuant to current law continue and remain in the succeeding
14 reorganized insurer.

15 The mutual holding company is excluded from certain insurance
16 operations and reporting, investment limits, and risk-bearing
17 provisions of the health service corporation law, because the mutual
18 holding company is not a risk-bearer:

19 The bill provides that the reorganized insurer shall engage in
20 risk-bearing activities, reporting, investments, financial
21 transactions, including the issuance of dividends or distributions,
22 and insurance trade practices consistent with laws governing stock
23 insurance companies organized under Title 17B of the New Jersey
24 Statutes to transact health insurance. The bill also provides that
25 certain provisions of the health service corporation law do not apply
26 to the reorganized insurer or any insurance company or risk-bearing
27 entity within the mutual holding company system.

28 The bill provides that the insurance premium rate tax cap law
29 provided pursuant to current law shall apply to the companies
30 within the mutual holding company system that have an insurance
31 premium tax liability, and the exclusion from the tax cap applicable
32 to a health service corporation shall not apply to the mutual holding
33 company or any entity within the mutual holding company system,
34 including the reorganized insurer, that has an insurance premium
35 tax liability.

36 The bill provides that a mutual holding company system may
37 pursue businesses, assets, or operations through one or more of its
38 insurance subsidiaries and non-insurance subsidiaries without a
39 limit on aggregate revenues from nonconforming affiliates or those
40 pursuits being considered a material change in form. The
41 subsidiaries of the mutual holding company, including the
42 reorganized insurer, may make dividends or distributions to the
43 mutual holding company, any subsidiaries thereof, or both, and not
44 be considered a material change in form. Dividends and
45 distributions from domestic insurers, including the reorganized
46 insurer, within the mutual holding company system are subject only
47 to certain applicable provisions of current law.

1 The bill provides that a health service corporation may
2 reorganize to create a mutual holding company system pursuant to a
3 plan of reorganization at the same time it applies to transition to a
4 mutual insurer. Thereafter, the succeeding mutual holding company
5 system shall be operated in a manner consistent with the provisions
6 of the bill.

7 The bill requires the mutual holding company system to consist
8 of a mutual holding company and one or more controlled nonprofit
9 or for-profit subsidiaries, including the reorganized insurer, and to
10 be operated for the benefit of its members.

11 The bill provides that the mutual holding company and each of
12 its non-insurance subsidiaries, other than the reorganized insurer
13 and any insurance company subsidiaries, shall not be:

14 (1) an insurer and therefore shall not be subject to any of the
15 provisions of current law applicable to stock or mutual insurers, or
16 to any laws concerning the writing of insurance, including rules and
17 regulations adopted thereunder, including with respect to
18 governance, stock or other voting or equity interest, the writing of
19 insurance, any investment limitations directly applicable to risk-
20 bearing entities engaged in the writing of insurance, or any capital
21 or surplus requirements;

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

23 (3) qualified as an insurer.

24 The bill provides that the writing of insurance is permitted only
25 through the reorganized insurer and other insurance company
26 subsidiaries or investments of the mutual holding company.
27 Nothing in the bill alters the oversight of the commissioner with
28 respect to the mutual holding company and its non-insurance
29 subsidiaries provided for under applicable laws and rules of this
30 State relating to insurance holding company systems.

31 The bill requires a mutual holding company to be a nonprofit
32 entity incorporated under, and to conduct its business pursuant to,
33 the provisions of Title 15A of the New Jersey Statutes, except that
34 in situations in which the provisions of that title are inconsistent
35 with the provisions of the bill, the provisions of the bill shall
36 govern.

37 The bill provides that, at the effective time, members shall
38 receive membership interests of the mutual holding company, and
39 thereafter 100 percent of the membership interests of the mutual
40 holding company shall continue to be held by members, in each
41 case, in the manner set forth in the articles of incorporation and
42 bylaws of the mutual holding company.

43 The bill requires the shares of the capital stock of the
44 reorganized insurer to be:

45 (1) issued to the mutual holding company or one or more
46 intermediate holding companies that are wholly-owned by the
47 mutual holding company; and

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

4 The subsidiaries of a mutual holding company system may be
5 formed by any of the following means:

6 (1) the formation of one or more subsidiaries;

7 (2) amendment or restatement of the articles of incorporation
8 and bylaws of one or more companies;

9 (3) transfer of assets and liabilities among two or more
10 companies; or

11 (4) issuance, acquisition or transfer of capital stock of one or
12 more companies.

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

31 The bill provides that, in addition to including information
32 required pursuant to current law for the plan of mutualization, with
33 respect to the formation of a mutual holding company system for
34 purposes of this provision, the plan shall include:

35 (1) A description of the structure of the mutual holding
36 company system consistent with the requirements set forth in the
37 bill;

38 (2) A description of the qualifications for members'
39 membership in, and the rights of members of, the mutual holding
40 company consistent with the requirements set forth in the bill;

41 (3) A description of the transactions, and parties to those
42 transactions, that will affect the mutualization and reorganization,
43 including, but not limited to, transfer and assumption of policies,
44 contracts, assets and liabilities, formation of entities, and the
45 amendment or restatement of certificates of incorporation or
46 bylaws. The plan of reorganization may provide for the transfer of
47 assets of a health service corporation and its subsidiaries to the
48 mutual holding company or one or more subsidiaries of the mutual

1 holding company in connection with the formation of the mutual
2 holding company system;

3 (4) The identity of those persons who shall serve as directors
4 and officers of the mutual holding company, its intermediate
5 holding companies, if any, and its subsidiaries, including the
6 reorganized insurer, as of the effective time of the mutualization
7 and reorganization. The plan shall specify the members of the board
8 of directors of the health service corporation who shall serve as
9 initial directors of the mutual holding company;

10 (5) Information sufficient to demonstrate that the financial
11 condition of the reorganized insurer and the insurance company
12 subsidiaries of the reorganized insurer will meet solvency
13 requirements pursuant to applicable laws and rules of this State
14 relating to insurance companies after giving effect to the
15 mutualization and reorganization;

16 (6) A representation that, following the mutualization and
17 reorganization, policies shall remain in full force and effect under
18 policies transferred to and assumed by insurance company
19 subsidiaries of the mutual holding company;

20 (7) A representation that, following the mutualization and
21 reorganization, the material terms and conditions of subordinated
22 surplus notes and other contractual obligations, with certain
23 exceptions, of the health service corporation and its subsidiaries
24 shall, subject to the rights of the health service corporation and its
25 subsidiaries under applicable law, and to the extent those
26 obligations are not otherwise satisfied or terminated in accordance
27 with their terms, remain in effect upon the transfer of those
28 obligations to, and assumption of those obligations by, the
29 reorganized insurer or one or more other subsidiaries of the mutual
30 holding company; and

31 (8) A representation that, following the mutualization and
32 reorganization, the mutual holding company shall comply with the
33 employment requirements as provided in the bill.

34 The bill provides that, upon the affirmative vote of the board of
35 directors complying with the requirements of the bill, the plan to
36 form a mutual holding company system shall be filed with the
37 commissioner for approval. Upon filing the plan to form a mutual
38 holding company system, the obligations pursuant to current law
39 shall be suspended during the pendency of the commissioner's
40 review process. If the commissioner approves the plan to form a
41 mutual holding company, certain obligations arising pursuant to
42 current law shall be deemed satisfied by the initial assessment
43 required by the bill.

44 The bill requires the commissioner to review the plan to
45 mutualize and reorganize in accordance with the requirements of
46 current law and the bill, including requirements for a public
47 hearing.

1 The bill requires the commissioner to approve a plan of
2 mutualization and reorganization unless the commissioner finds the
3 plan:

4 (1) is contrary to law;

5 (2) would be detrimental to the safety or soundness of the
6 proposed reorganized insurer and insurance company subsidiaries
7 of the proposed mutual holding company; or

8 (3) prejudices the interests of the policyholders of the health
9 service corporation or treats them inequitably.

10 The bill provides that the commissioner may engage the services
11 of experts and consultants to advise on any matters related to the
12 application. The engagement shall not be subject to Chapter 32 of
13 Title 52 of the Revised Statutes and all costs related to such
14 engagement for the examination and deliberations of the application
15 shall be paid by the health service corporation that makes the filing,
16 both for services prior to the effective time and for services after the
17 effective time. At the expiration of 30 days after the public hearing,
18 the commissioner shall approve or disapprove the plan of
19 mutualization and reorganization and shall set forth the decision in
20 writing and shall state the reasons therefor. The commissioner shall
21 inform the health service corporation of the specific reasons for the
22 disapproval of any plan of mutualization and reorganization and
23 provide a cure period of no shorter than 90 days to cure any
24 deficiencies. Any disapproval shall be subject to judicial review as
25 a final decision of a State administrative agency.

26 The bill provides that a plan of mutualization and reorganization
27 may be amended, terminated, or approved. A plan of mutualization
28 and reorganization adopted by the board of directors of the
29 applicant may be:

30 (1) Amended by the board of directors of the applicant in
31 response to the comments or recommendations of the commissioner
32 at any time; or

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

37 The bill provides that an approved plan of mutualization and
38 reorganization is effective at the effective time specified in the plan
39 of reorganization, or such other time subsequently requested by the
40 applicant and agreed to by the commissioner.

41 The bill provides that a mutual holding company system is
42 considered an insurance holding company system and subject to the
43 current law governing insurance holding company systems, with
44 certain exceptions.

45 The bill allows a mutual holding company or a non-insurance
46 subsidiary to make any lawful investments including directly or
47 indirectly acquiring or otherwise holding the stock or other
48 ownership interests of any nonprofit or for-profit entities. Insurance

1 company subsidiaries and the reorganized insurer may make
2 investments, including investments in non-insurance entities subject
3 to investment and asset limitations pursuant to applicable laws and
4 rules relating to insurance companies.

5 Neither the adoption nor the implementation of a plan of
6 mutualization and reorganization pursuant to the bill is deemed to
7 give rise to any obligation by or on behalf of any entity in the
8 mutual holding company system or any predecessor entity to make
9 any distribution or payment to any member or policyholder, or to
10 any other person, fund, or entity of any nature whatsoever, in
11 connection with the ownership, control, benefits, policies, purpose,
12 or nature of any entity in the mutual holding company system, any
13 predecessor entity or otherwise.

14 Under the bill, membership in a mutual holding company is to be
15 determined in accordance with the mutual holding company's
16 articles of incorporation and bylaws and may be based upon:

17 (1) the amount of health insurance policies in force with the
18 reorganized insurer;

19 (2) the amount of the health insurance premiums paid to the
20 reorganized insurer; or

21 (3) other reasonable factors.

22 A mutual holding company may also consider the amount of
23 premiums paid to, or policies in force under, affiliated insurance
24 companies operating under the same brand licensee program as the
25 reorganized insurer and permit entities holding administrative
26 services agreements with the mutual holding company to be
27 members of the mutual holding company. The mutual holding
28 company may provide in its bylaws the basis for the number of
29 votes those entities will have as members of the mutual holding
30 company.

31 A mutual holding company formed pursuant to the bill may not
32 convert to a for-profit stock holding company. The provisions of
33 current law providing for conversion of a health service
34 corporation to a domestic stock insurer do not apply to a mutual
35 holding company formed pursuant to the bill.

36 The bill provides that members of a mutual holding company
37 shall be entitled to vote for the election of directors of the mutual
38 holding company in accordance with the mutual holding company's
39 bylaws. Directors of the mutual holding company shall be elected
40 from nominees selected by the nominating and governance
41 committee of the board of directors of the mutual holding company,
42 or a comparably authorized committee, except for public directors
43 serving in accordance with the provisions of the bill.

44 The bill prohibits a member of a mutual holding company from
45 transferring membership or any right arising therefrom.

46 Upon any voluntary dissolution of a mutual holding company in
47 accordance with current law, the mutual holding company shall
48 adopt a plan of dissolution. The plan shall provide for distribution

1 of any assets of the mutual holding company remaining after the
2 discharge of all liabilities and obligations.

3 The bill requires a mutual holding company to file with the
4 commissioner an annual statement pursuant to applicable laws of
5 this State.

6 Following approval of a transition pursuant to the bill, and the
7 establishment of a mutual holding company, the mutual holding
8 company, through itself or any of its affiliates, shall pay an initial
9 assessment to the State Treasury in the amount of \$600,000,000 by
10 June 1, 2022 if the effective time precedes June 1, 2022. If the
11 effective time is later than June 1, 2022, the initial assessment shall
12 be due by June 1 of the calendar year following the effective time.
13 The initial assessment shall be a one-time, nonrecurring State
14 business tax on the reorganized insurer.

15 Following the initial assessment, the mutual holding company,
16 through itself or any of its affiliates, shall pay a limited duration
17 business tax by June 1 of each calendar year beginning with the
18 calendar year following the initial assessment, and for a period of
19 seventeen years. The total assessment, including both the initial
20 and annual assessments, shall not exceed \$1,250,000,000. The
21 annual assessments represent a limited duration state business tax
22 on the reorganized insurer's business payable by the mutual holding
23 company or any of its affiliates, and shall be based on the following
24 schedule with earned premiums defined consistent with 45 CFR
25 158.130:

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

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

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

37 The bill provides that the mutual holding company shall not pay
38 any portion of the annual assessment for a given calendar year if the
39 mutual holding company's system-wide health risk-based capital
40 authorized control level would fall below 550 percent based on the
41 standards for risk based capital for health organizations as adopted
42 by the National Association of Insurance Commissioners following
43 the payment as applied against the prior calendar year's risk based
44 capital, or if in the opinion of any nationally recognized statistical
45 rating organization, the group credit rating of the mutual holding
46 company would not be considered investment grade.

47 If the mutual holding company does not pay the annual
48 assessment for a given calendar year, the annual assessment that

1 was not paid shall be deferred to the subsequent calendar year,
2 which shall be the deferral date for the deferred annual assessment,
3 with all subsequent annual assessments also deferred by another
4 calendar year so that no two annual assessments are due in the same
5 calendar year. If an annual assessment is deferred, that annual
6 assessment shall not be required by law to be paid until the deferral
7 date.

8 Notwithstanding the provisions of the bill to the contrary, the
9 assessment years shall not be extended beyond, and the payment
10 obligation shall cease to exist after, the date that is 20 years from
11 the effective time.

12 The bill provides that the board of the mutual holding company
13 shall be constituted of 22 directors as follows:

14 (1) 13 directors shall be elected, as provided in the bylaws, one
15 of whom shall be the chair;

16 (2) 5 directors shall be public directors appointed by the
17 Governor with the advice and consent of the Senate;

18 (3) 2 directors shall be public directors appointed by the Senate
19 President; and

20 (4) 2 directors shall be public directors appointed by the Speaker
21 of the General Assembly.

22 Upon the effective time of the conversion to a mutual holding
23 company system, the term of office of the public directors of the
24 reorganized insurer shall expire. The initial board of directors of
25 the mutual holding company shall be:

26 (1) the elected directors of the reorganized insurer supplemented
27 by additional elected directors nominated and elected by the mutual
28 holding company's board after the effective time for a total number
29 of elected directors specified in the bill;

30 (2) 5 public directors appointed by the Governor with the advice
31 and consent of the Senate within 30 days after the effective time;

32 (3) 2 public directors named by the Senate President within 30
33 days after the effective time; and

34 (4) 2 public directors named by the Speaker of the General
35 Assembly within 30 days after the effective time.

36 The bill provides that each elected director shall have a term of
37 three years with up to two successive three-year terms following the
38 initial term for up to a total of three successive terms, and as
39 provided for in the bylaws, with such other term and term limits
40 specifically applying to the individual directors. The chief
41 executive officer or president of the mutual holding company shall
42 be an elected director at all times and shall not be subject to any
43 term limit or election. Each director shall meet the statutory and
44 regulatory qualifications for the mutual holding company system's
45 businesses and be free from conflicts of interest that would prohibit
46 the person from materially executing the person's duties as a
47 director. Each public director shall serve at the pleasure of the
48 appointing authority.

1 The bill provides that there shall be a transitional period of 18
2 months following the effective time before elected directors of the
3 mutual holding company are subject to election by its members.
4 The first election shall occur at the first annual meeting following
5 the transitional period, and in accordance with the mutual holding
6 company's bylaws.

7 Upon the formation of a mutual holding company, the total
8 number of full-time employees that were employed within a mutual
9 holding company system shall be maintained for a transition period
10 of 24 months following that formation based on the full-time
11 employee count of the health service corporation as of September
12 30, 2019, with certain exceptions.

13 The employment requirements of the bill do not supersede the
14 terms of any collective bargaining agreement or require a mutual
15 holding company system to replace headcount lost due to various
16 causes.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 5119

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2020

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 5119.

As amended, this bill provides for the reorganization of a health service corporation.

The bill provides that a mutual holding company organized pursuant to the bill may not be established as a company organized for pecuniary profit and retains the designation as a charitable and benevolent institution pursuant to current law. A mutual holding company established pursuant to the bill retains the health service corporation's mission while supplementing that mission to promote innovation and delivery of diversified services.

The bill provides that mission of the mutual holding company is to:

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

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

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

Other than as otherwise provided, the bill provides that all property, assets, rights, liabilities, interest and relations of whatever kind of the health service corporation, and its subsidiaries, will be that of the mutual holding company system. The mutual holding company is no longer considered a health service corporation. Notwithstanding anything to the contrary, the provisions of current law that exempt health service corporations from taxes other than taxes on real estate and equipment and taxes on premiums continue to apply to a mutual holding company if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program. If the mutual holding company does not continue to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program, then the mutual holding company shall no longer be exempt from those taxes.

Under the bill, certain health insurance duties and obligations pursuant to current law continue and remain in the succeeding reorganized insurer.

The mutual holding company is excluded from certain insurance operations and reporting, investment limits, and risk-bearing provisions of the health service corporation law, because the mutual holding company is not a risk-bearer.

The bill provides that the reorganized insurer shall engage in risk-bearing activities, reporting, investments, financial transactions, including the issuance of dividends or distributions, and insurance trade practices consistent with laws governing stock insurance companies organized under Title 17B of the New Jersey Statutes to transact health insurance. The bill also provides that certain provisions of the health service corporation law do not apply to the reorganized insurer or any insurance company or risk-bearing entity within the mutual holding company system.

The bill provides that the insurance premium rate tax cap law provided pursuant to current law shall apply to the companies within the mutual holding company system that have an insurance premium tax liability, and the exclusion from the tax cap applicable to a health service corporation shall not apply to the mutual holding company or any entity within the mutual holding company system, including the reorganized insurer, that has an insurance premium tax liability.

The bill provides that a mutual holding company system may pursue businesses, assets, or operations through one or more of its insurance subsidiaries and non-insurance subsidiaries without a limit on aggregate revenues from nonconforming affiliates or those pursuits being considered a material change in form. The subsidiaries of the mutual holding company, including the reorganized insurer, may make dividends or distributions to the mutual holding company, any subsidiaries thereof, or both, and not be considered a material change in form. Dividends and distributions from domestic insurers, including the reorganized insurer, within the mutual holding company system are subject only to certain applicable provisions of current law.

The bill provides that a health service corporation may reorganize to create a mutual holding company system pursuant to a plan of reorganization at the same time it applies to transition to a mutual insurer. Thereafter, the succeeding mutual holding company system shall be operated in a manner consistent with the provisions of the bill.

The bill requires the mutual holding company system to consist of a mutual holding company and one or more controlled nonprofit or for-profit subsidiaries, including the reorganized insurer, and to be operated for the benefit of its members.

The bill provides that the mutual holding company and each of its non-insurance subsidiaries, other than the reorganized insurer and any insurance company subsidiaries, shall not be:

(1) an insurer and therefore shall not be subject to any of the provisions of current law applicable to stock or mutual insurers, or to any laws concerning the writing of insurance, including rules and regulations adopted thereunder, including with respect to governance, stock or other voting or equity interest, the writing of insurance, any investment limitations directly applicable to risk-bearing entities engaged in the writing of insurance, or any capital or surplus requirements;

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

(3) qualified as an insurer.

The bill provides that the writing of insurance is permitted only through the reorganized insurer and other insurance company subsidiaries or investments of the mutual holding company. Nothing in the bill alters the oversight of the commissioner with respect to the mutual holding company and its non-insurance subsidiaries provided for under applicable laws and rules of this State relating to insurance holding company systems.

The bill requires a mutual holding company to be a nonprofit entity incorporated under, and to conduct its business pursuant to, the provisions of Title 15A of the New Jersey Statutes, except that in situations in which the provisions of that title are inconsistent with the provisions of the bill, the provisions of the bill shall govern.

The bill provides that, at the effective time, members shall receive membership interests of the mutual holding company, and thereafter 100 percent of the membership interests of the mutual holding company shall continue to be held by members, in each case, in the manner set forth in the articles of incorporation and bylaws of the mutual holding company.

The bill requires the shares of the capital stock of the reorganized insurer to be:

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

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

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

(1) the formation of one or more subsidiaries;

(2) amendment or restatement of the articles of incorporation and bylaws of one or more companies;

(3) transfer of assets and liabilities among two or more companies;

(4) issuance, acquisition or transfer of capital stock of one or more companies; or

(5) merger or consolidation of two or more companies.

The bill provides that the mutual holding company is to ensure that any ownership interest in a subsidiary is held by the mutual holding

company and any profits generated by that interest are returned to the mutual holding company.

The bill provides that a health service corporation may submit an application to the commissioner to form a mutual holding company system. Upon submission of an application to the commissioner, a health service corporation shall immediately thereafter provide a copy of the application to the Attorney General. Prior to submission of the application, the board of directors of the health service corporation shall adopt a resolution proposing to transition to a mutual insurer and form a mutual holding company system, at a meeting of the board by a two-thirds affirmative vote of the total number of directors of the health service corporation. A copy of the minutes of the meeting at which that resolution is adopted shall be filed with the commissioner. The resolution shall include a plan to transition to a mutual insurer and form a mutual holding company system, including proposed articles of incorporation and bylaws for the mutual holding company and proposed articles of incorporation, certificates of formation, restatements of, or amendments to, existing articles of incorporation or bylaws, and plans of merger or consolidation, with respect to each entity to be formed, converted or otherwise subject or party to the transition transactions pursuant to the plan of mutualization and reorganization.

The bill provides that, in addition to including information required pursuant to current law for the plan of mutualization, with respect to the formation of a mutual holding company system for purposes of this provision, the plan shall include:

(1) A description of the structure of the mutual holding company system consistent with the requirements set forth in the bill;

(2) A description of the qualifications for members' membership in, and the rights of members of, the mutual holding company consistent with the requirements set forth in the bill;

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

(4) The identity of those persons who shall serve as directors and officers of the mutual holding company, its intermediate holding companies, if any, and its subsidiaries, including the reorganized insurer, as of the effective time of the mutualization and reorganization. The plan shall specify the members of the board of

directors of the health service corporation who shall serve as initial directors of the mutual holding company;

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

(6) A certification that, following the mutualization and reorganization, policies shall remain in full force and effect under policies transferred to and assumed by insurance company subsidiaries of the mutual holding company;

(7) A certification that, following the mutualization and reorganization, the material terms and conditions of subordinated surplus notes and other contractual obligations, with certain exceptions, of the health service corporation and its subsidiaries shall, subject to the rights of the health service corporation and its subsidiaries under applicable law, and to the extent those obligations are not otherwise satisfied or terminated in accordance with their terms, remain in effect upon the transfer of those obligations to, and assumption of those obligations by, the reorganized insurer or one or more other subsidiaries of the mutual holding company; and

(8) A certification that, following the mutualization and reorganization, the mutual holding company shall comply with the employment requirements as provided in the bill.

The bill provides that, upon the affirmative vote of the board of directors complying with the requirements of the bill, the plan to form a mutual holding company system shall be filed with the commissioner for approval. Upon filing the plan to form a mutual holding company system, the obligations pursuant to current law shall be suspended during the pendency of the commissioner's review process. If the commissioner approves the plan to form a mutual holding company, certain obligations arising pursuant to current law shall be deemed satisfied by the initial assessment required by the bill.

The bill requires the commissioner to review the plan to mutualize and reorganize in accordance with the requirements of current law and the bill, including requirements for three public hearings.

The bill requires the commissioner to approve a plan of mutualization and reorganization unless the commissioner finds the plan:

- (1) is contrary to law;
- (2) would be detrimental to the safety or soundness of the proposed reorganized insurer and insurance company subsidiaries of the proposed mutual holding company; or
- (3) does not benefit the interests of the policyholders of the health service corporation or treats them inequitably.

The bill provides that the commissioner may engage the services of experts and consultants to advise on any matters related to the application, and if a written study or other expert report is prepared, it is to be made available to the applicant within a reasonable period of time prior to the initial public hearing. Pursuant to the bill, the commissioner may also engage the services of a consultant to conduct a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation, and the general public. The engagement shall not be subject to Chapter 32 of Title 52 of the Revised Statutes and all costs related to such engagement for the examination and deliberations of the application shall be paid by the health service corporation that makes the filing, both for services prior to the effective time and for services after the effective time. At the expiration of 30 days after the final public hearing, the commissioner shall approve or disapprove the plan of mutualization and reorganization and shall set forth the decision in writing and shall state the reasons therefor. The commissioner shall inform the health service corporation of the specific reasons for the disapproval of any plan of mutualization and reorganization and provide a cure period of no shorter than 90 days to cure any deficiencies. Any disapproval shall be subject to judicial review as a final decision of a State administrative agency.

The bill provides that a plan of mutualization and reorganization may be amended, terminated, or approved. A plan of mutualization and reorganization adopted by the board of directors of the applicant may be:

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

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

The bill provides that an approved plan of mutualization and reorganization is effective at the effective time specified in the plan of reorganization, or such other time subsequently requested by the applicant and agreed to by the commissioner.

The bill provides that a mutual holding company system is considered an insurance holding company system and subject to the current law governing insurance holding company systems, with certain exceptions. In addition, the bill provides that the commissioner possesses supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and exam its operations pursuant to P.L. 1970, c.22 (C.17:27A-1 et seq.).

The bill allows a mutual holding company or a non-insurance subsidiary to make any lawful investments including directly or

indirectly acquiring or otherwise holding the stock or other ownership interests of any nonprofit or for-profit entities. Insurance company subsidiaries and the reorganized insurer may make investments, including investments in non-insurance entities subject to investment and asset limitations pursuant to applicable laws and rules relating to insurance companies.

The bill requires the mutual holding company and its non-insurance and insurance company subsidiaries to continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services.

The bill provides that the application submitted pursuant to the bill be a public record, except for certain confidential documents which shall not be public records. The commissioner is to provide the public with prompt and reasonable access to public records relating to the proposed reorganization of the health service corporation.

Neither the adoption nor the implementation of a plan of mutualization and reorganization pursuant to the bill is deemed to give rise to any obligation by or on behalf of any entity in the mutual holding company system or any predecessor entity to make any distribution or payment to any member or policyholder, or to any other person, fund, or entity of any nature whatsoever, in connection with the ownership, control, benefits, policies, purpose, or nature of any entity in the mutual holding company system, any predecessor entity or otherwise.

Under the bill, membership in a mutual holding company is to be determined in accordance with the mutual holding company's articles of incorporation and bylaws and may be based upon:

- (1) the amount of health insurance policies in force with the reorganized insurer;
- (2) the amount of the health insurance premiums paid to the reorganized insurer; or
- (3) other reasonable factors.

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

A mutual holding company formed pursuant to the bill may not convert to a for-profit stock holding company. The provisions of current law providing for conversion of a health service corporation to a domestic stock insurer do not apply to a mutual holding company formed pursuant to the bill.

The bill provides that members of a mutual holding company shall be entitled to vote for the election of directors of the mutual holding company in accordance with the mutual holding company's bylaws. Directors of the mutual holding company shall be elected from nominees selected by the nominating and governance committee of the board of directors of the mutual holding company, or a comparably authorized committee, except for public directors serving in accordance with the provisions of the bill.

The bill prohibits a member of a mutual holding company from transferring membership or any right arising therefrom.

Upon any voluntary dissolution of a mutual holding company in accordance with current law, the mutual holding company shall adopt a plan of dissolution. The plan shall provide for distribution of any assets of the mutual holding company remaining after the discharge of all liabilities and obligations.

The bill requires a mutual holding company to file with the commissioner an annual statement pursuant to applicable laws of this State.

Following approval of a transition pursuant to the bill, and the establishment of a mutual holding company, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay an initial assessment to the State Treasury in the amount of \$600,000,000 by June 1, 2022 if the effective time precedes June 1, 2022. If the effective time is later than June 1, 2022, the initial assessment shall be due by June 1 of the calendar year following the effective time. The initial assessment shall be a one-time, nonrecurring State business tax on the mutual holding company and its affiliates.

Following the initial assessment, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay a limited duration business tax by June 1 of each calendar year beginning with the calendar year following the initial assessment, and for a period of seventeen years. The total assessment, including both the initial and annual assessments, shall not exceed \$1,250,000,000. The annual assessments represent a limited duration state business tax on the mutual holding company and its affiliates business payable by the mutual holding company or any affiliates benefiting from the establishment of a mutual holding company, and shall be based on the following schedule with earned premiums defined consistent with 45 CFR 158.130:

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

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

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

The bill provides that the mutual holding company shall not pay any portion of the annual assessment for a given calendar year if the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent based on the standards for risk based capital for health organizations as adopted by the National Association of Insurance Commissioners following the payment as applied against the prior calendar year's risk based capital, or if in the opinion of any nationally recognized statistical rating organization, the group credit rating of the mutual holding company would not be considered investment grade. The commissioner is to determine that the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent before payments are to be deferred pursuant to the bill. Neither the insurance company subsidiaries nor the reorganized insurer are to make dividends or distributions to the mutual holding company or any subsidiaries thereof until such time as the annual assessment deferred pursuant to the bill is satisfied.

If the mutual holding company does not pay the annual assessment for a given calendar year, the annual assessment that was not paid shall be deferred to the subsequent calendar year, which shall be the deferral date for the deferred annual assessment, with all subsequent annual assessments also deferred by another calendar year so that no two annual assessments are due in the same calendar year. If an annual assessment is deferred, that annual assessment shall not be required by law to be paid until the deferral date.

Notwithstanding the provisions of the bill to the contrary, the assessment years shall not be extended beyond, and the payment obligation shall cease to exist after, the date that is 25 years from the effective time.

The bill provides that the board of the mutual holding company shall be constituted of 22 directors as follows:

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

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

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

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

Upon the effective time of the conversion to a mutual holding company system, the term of office of the public directors of the reorganized insurer shall not immediately expire but rather be temporarily continued with each such director continuing in holdover

status until such time as the appointing authority reappoints or renames such director or appoints or names another director. The initial board of directors of the mutual holding company shall be:

(1) the elected directors of the reorganized insurer supplemented by additional elected directors nominated and elected by the mutual holding company's board after the effective time for a total number of elected directors specified in the bill;

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

(3) 2 public directors named by the Senate President; and

(4) 2 public directors named by the Speaker of the General Assembly.

The bill provides that each elected director shall have a term of three years with up to two successive three-year terms following the initial term for up to a total of three successive terms, and as provided for in the bylaws, with such other term and term limits specifically applying to the individual directors. The chief executive officer or president of the mutual holding company shall be an elected director at all times and shall not be subject to any term limit or election. Each director shall meet the statutory and regulatory qualifications for the mutual holding company system's businesses and be free from conflicts of interest that would prohibit the person from materially executing the person's duties as a director. Each public director shall have a term of three years with up to two successive three-year terms following the initial term, for a total of up to three successive terms. Upon the effective time, the terms of office of the public directors of the reorganized insurer shall continue until their respective successors are appointed and qualified. No period during which a public director holds over shall be deemed to be an extension of the public director's term of office for the purpose of determining the date on which a successor's term expires.

The bill provides that there shall be a transitional period of 18 months following the effective time before elected directors of the mutual holding company are subject to election by its members. The first election shall occur at the first annual meeting following the transitional period, and in accordance with the mutual holding company's bylaws.

The bill provides that, to the extent practicable, the mutual holding company is to make best efforts to reflect the racial, ethnic, and gender diversity of the communities that it serves throughout the organization, including the board of directors and executive leadership, to achieve its mission.

Upon the formation of a mutual holding company, the total number of full-time employees that were employed within a mutual holding company system shall be maintained for a transition period of 36 months following that formation based on the full-time employee

count of the health service corporation as of September 30, 2019, with certain exceptions.

The employment requirements of the bill do not supersede the terms of any collective bargaining agreement or require a mutual holding company system to replace headcount lost due to various causes.

As amended and reported, this bill is identical to Senate Bill No. 3218, as amended and reported by the Senate Commerce Committee on December 14, 2020.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that the provisions of current law that exempt health service corporations from taxes other than taxes on real estate and equipment and taxes on premiums continue to apply to a mutual holding company if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program or the New Jersey Small Employer Health Benefits Program;

(2) clarify that the provisions of the Insurance Holding Company System Act (C.17:27A-1 et seq.) apply to the reorganized insurer;

(3) add the merger or consolidation of two or more companies to the means by which the subsidiaries of a mutual holding company system may be formed;

(4) require the mutual holding company to ensure that any ownership interest in a subsidiary be held by the mutual holding company and any profits generated by that interest be returned to the mutual holding company;

(5) provide that, upon submission of an application to the commissioner, a health service corporation must provide a copy of the application to the Attorney General;

(6) provide that the commissioner is to hold three public hearings on the plan to form a mutual holding company within 90 days after the commissioner determines that the filing is complete, with notice provided by publication in a manner satisfactory to the commissioner;

(7) provide that the commissioner is to approve of a plan of mutualization and organization unless the commissioner finds the plan, among certain other requirements, does not benefit the interests of the policyholders of the health service corporation or treats them inequitably;

(8) permit the commissioner to engage the services of a consultant to conduct a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation and the general public;

(9) provide that if a written study or other expert report is prepared, it shall be made available to the health service corporation applying for reorganization, within a reasonable period of time prior to the initial public hearing;

(10) provide that commissioner shall possess supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and exam its operations pursuant to P.L. 1970, c.22 (C.17:27A-1 et seq.);

(11) require the mutual holding company and its non-insurance and insurance company subsidiaries to continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services;

(12) provide that the application submitted pursuant to the bill be a public record, except for certain confidential documents;

(13) provide that the commissioner is to determine that the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent before the deferment of the annual assessment for a given calendar year;

(14) extend the date beyond which the assessment years may not be extended to 25 years from the effective time from 20 years from the effective time;

(15) provide that, to the extent practicable, the mutual holding company is to make best efforts to reflect the racial, ethnic, and gender diversity of the communities that it serves throughout the organization, including the board of directors and executive leadership, to achieve its mission;

(16) make certain changes for federal tax filing purposes;

(17) extend certain employment protection provisions for a period of 36 months following the formation of the mutual holding company from 24 months following the formation of the mutual holding company; and

(18) make certain changes concerning the appointment of public directors.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 5119

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: DECEMBER 23, 2020

SUMMARY

Synopsis: Provides for reorganization of health service corporation.

Types of Impact: Recurring State revenue decrease.
One-time State expenditure increase.

Agencies Affected: Department of the Treasury.
Department of Banking and Insurance.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023 to FY 2039</u>
State Revenue Impact	(\$54,900,000) – (\$62,500,000)	\$506,200,000 - \$565,600,000	(\$712,700,000) - (\$927,900,000)
State Expenditure Increase	Indeterminate	\$0	\$0

- The Office of Legislative Services (OLS) projects that the bill will lower annual State revenue collections by varying amounts in each fiscal year with the exception of net revenue gains in FY 2022 and FY 2023.
- The OLS estimates that the bill will decrease State insurance premium tax collections by between \$54.9 million and \$62.5 million in FY 2021, assuming that the reorganization will already affect insurance premium tax payments that are due in March and June of 2021.
- Because of a one-time \$600.0 million assessment on the successful conversion applicant, the OLS estimates that the bill will increase State net tax revenues by a range of \$506.2 million to \$565.6 million in FY 2022.
- The OLS forecasts that for fiscal years 2023 to 2039, the fiscal years in which the State will likely receive additional assessment revenue and incur insurance premium losses attributable to the bill, the potential combined net revenue loss to the State may range between \$712.7 million and \$927.9 million. Starting in FY 2040, the bill's sole fiscal impact will be an annual loss in insurance premium tax revenue.

- Indeterminate one-time State expenditures will accrue as the Department of Banking and Insurance will examine and rule on any reorganization application. The added responsibility may include the engagement of outside experts and consultants, the cost of whose services would be recouped from the applicant.

BILL DESCRIPTION

This bill permits the reorganization of a health service corporation (Horizon Blue Cross Blue Shield of New Jersey) into a mutual holding company, subject to Department of Banking and Insurance approval. The department may contract with experts and consultants in examining an application with the costs of the outside services charged to the applicant.

If the reorganization is approved and takes effect before June 1, 2022, the company must pay a one-time \$600 million assessment to the State by June 1, 2022. If the reorganization takes effect after that date, the payment will be due by June 1 of the calendar year following the reorganization.

For 17 years beginning with the calendar year following the initial assessment, the mutual holding company must also pay to the State an annual limited duration business tax by June 1 of each year. Total limited duration business tax payments over the 17-year period cannot exceed \$650 million with the payment in each year determined according to the following schedule:

(1) In the first assessment year, 20 percent of the reorganized insurer's earned premiums in the preceding calendar year, with the assessment not to exceed \$100 million.

(2) In each of the next ten assessment years, 5 percent of the reorganized insurer's earned premiums in the preceding calendar year, with each year's assessment not to exceed \$25 million.

(3) In each of the last six assessment years, 10 percent of the reorganized insurer's earned premiums in the preceding calendar year, with each year's assessment not to exceed \$50 million.

If the mutual holding company does not pay the required assessment for a given calendar year, that payment, along with the remaining payment schedule, will be deferred one year. Any payment obligation required under the assessment schedule that remains deferred and outstanding 25 years from the date the reorganization takes effect will be cancelled.

Lastly, the reorganized entity will continue to be subject to the State's insurance premium tax but will newly qualify for a cap on the total tax liability that applies to other insurers under current law. Currently, a health service corporation pays insurance premium tax on 100 percent of premiums earned in New Jersey at the following rates: 2.1 percent for premiums paid on individual, or "non-group" business and 1.05 percent on group accident and health insurance premiums. Under the bill, the calculation of the base tax liability will not change, but if the company's New Jersey premiums exceed 12.5 percent of its total worldwide premiums, it will pay not more than 12.5 percent of worldwide premiums earned.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will lower annual State revenue collections by varying amounts in each fiscal year with the exception of revenue gains in FY 2022 and FY 2023. In addition, indeterminate one-time State expenditures will accrue as the Department of Banking and Insurance will examine and rule on any reorganization application. The added responsibility may include the engagement of outside experts and consultants, the cost of whose services would ultimately be recouped from the applicant.

For purposes of this revenue impact analysis, the OLS builds two scenarios. For the first scenario, the OLS assumes two-percent growth in annual taxable premiums based on the actual average rate of growth in the years for which the OLS has access to data. The OLS bases the second scenario on current Federal Reserve Board projections for the price index for core personal consumption expenditures (Core PCE) excluding food and energy.

The table below displays the difference in annual State tax collections under current law and the bill using both scenarios. As an overarching caveat to these projections, the OLS notes that there is a larger degree of uncertainty concerning the more distant years.

State Revenue Collections under Current Law and Bill (in \$ Millions)							
Scenario 2: Core PCE Growth as Inflater of Insurance Premiums				Scenario 1: Two-Percent Growth as Inflater of Insurance Premiums Based on Historical Data			
Fiscal Year	Current Law	Bill	Net Impact: Bill - Current Law	Fiscal Year	Current Law	Bill	Net Impact: Bill - Current Law
2021	\$62.7 - \$69.3	\$7.8 - \$8.2	(\$54.9) – (\$60.6)	2021	\$64.6 - \$71.5	\$8.1 - \$8.9	(\$56.6) – (\$62.5)
2022	\$63.8 - \$70.5	\$608.0 - \$608.8	\$506.2 - \$559.5	2022	\$66.6 - \$73.6	\$608.3 - \$609.2	\$511.7 - \$565.6
2023 – 2039	\$1,520.2 - \$1,680.2	\$840.0 - \$860.0	(\$712.7) – (\$787.7)	2023 - 2039	\$1,665.1 - \$1,840.4	\$858.1 - \$880.1	(\$839.5) – (\$927.9)

First, as shown in the table, under both scenarios combined, the OLS estimates that the bill will decrease State insurance premiums tax collections by at least \$54.9 million and at most \$62.5 million in FY 2021, assuming that the reorganization will already affect insurance premium tax payments that are due and payable in March and June of 2021.

Second, the bill imposes a one-time \$600.0 million assessment on Horizon Blue Cross Blue Shield of New Jersey payable to the Department of the Treasury on June 1, 2022, provided that the reorganization takes effect before June 1, 2022. Therefore, the OLS estimates that the bill will likely result in a net increase in State revenues by a range of \$506.2 million and \$565.6 million in FY 2022 after subtracting the projected revenue loss from reduced insurance premium tax liabilities.

Third, the OLS further forecasts that for fiscal years 2023 to 2039, the potential combined net revenue loss to the State may be between \$712.7 million and \$927.9 million. The OLS opts for FY 2039 as the endpoint of its range because FY 2039 will likely be the last year in which the mutual holding company will pay an assessment to the State. Starting in FY 2040, the bill’s sole fiscal impact will be an annual loss in insurance premium tax revenue.

The table below shows a forecast of the impact of the bill on State revenue collections per fiscal year from FY 2021 through FY 2042 using the midpoint estimates of scenario 1 above.

Estimated State Revenue Impact per Fiscal Year, FY 2021 through FY 2042					
Fiscal Year	Current Law: Insurance Premium Tax Revenue	Bill: Insurance Premium Tax Revenue	Bill: Assessment Revenue	Bill: Total Revenue	Net State Revenue Impact: Bill Revenue Minus Current Law Revenue
2021	\$68,049,010	\$8,506,126	\$0	\$8,506,126	-\$59,542,883
2022	\$70,111,058	\$8,763,882	\$600,000,000	\$608,763,882	\$538,652,824
2023	\$72,353,749	\$9,044,219	\$100,000,000	\$109,044,219	\$36,690,470
2024	\$74,791,187	\$9,348,898	\$25,000,000	\$34,348,898	-\$40,442,289
2025	\$77,438,589	\$9,679,824	\$25,000,000	\$34,679,824	-\$42,758,766
2026	\$80,312,371	\$10,039,046	\$25,000,000	\$35,039,046	-\$45,273,324
2027	\$83,430,237	\$10,428,780	\$25,000,000	\$35,428,780	-\$48,001,458
2028	\$86,811,289	\$10,851,411	\$25,000,000	\$35,851,411	-\$50,959,878
2029	\$90,476,130	\$11,309,516	\$25,000,000	\$36,309,516	-\$54,166,613
2030	\$94,446,983	\$11,805,873	\$25,000,000	\$36,805,873	-\$57,641,110
2031	\$98,747,824	\$12,343,478	\$25,000,000	\$37,343,478	-\$61,404,346
2032	\$103,404,513	\$12,925,564	\$25,000,000	\$37,925,564	-\$65,478,949
2033	\$108,444,946	\$13,555,618	\$25,000,000	\$38,555,618	-\$69,889,328
2034	\$113,899,214	\$14,237,402	\$50,000,000	\$64,237,402	-\$49,661,812
2035	\$119,799,776	\$14,974,972	\$50,000,000	\$64,974,972	-\$54,824,804
2036	\$126,181,644	\$15,772,706	\$50,000,000	\$65,772,706	-\$60,408,939
2037	\$133,082,589	\$16,635,324	\$50,000,000	\$66,635,324	-\$66,447,265
2038	\$140,543,349	\$17,567,919	\$50,000,000	\$67,567,919	-\$72,975,431
2039	\$148,607,872	\$18,575,984	\$50,000,000	\$68,575,984	-\$80,031,888
2040	\$160,299,349	\$20,037,419	\$0	\$20,037,419	-\$140,261,931
2041	\$172,910,634	\$21,613,829	\$0	\$21,613,829	-\$151,296,805
2042	\$186,514,091	\$23,314,261	\$0	\$23,314,261	-\$163,199,830
Total	\$2,410,656,406	\$301,332,051	\$1,250,000,000	\$1,551,332,051	-\$859,324,356

Additionally, the OLS notes that the bill provides that if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program, it will continue to be exempt from all State, county, district, municipal, and school taxes other than taxes on real estate and equipment and taxes on premiums. In the event that the company stops participating in either program, there will be an indeterminate increase in annual State and local units' tax collections. Horizon Blue Cross Blue Shield of New Jersey reported in its 2016 "Understanding Reserves" publication that the company saved \$9.1 million in sales and use taxes and the Newark payroll taxes in 2016 because of the exemption.

Section: Commerce, Labor and Industry

*Analyst: Juan C. Rodriguez
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 3218

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 7, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Provides for reorganization of health service corporation.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT permitting reorganization of a health service corporation,
2 supplementing P.L.1985, c.286 (C.17:48E-1 et seq.), and
3 amending P.L.2001, c.131 and P.L.1970, c.22.

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

7
8 1. (New section) The Legislature finds and declares that:

9 a. It is in the interest of the subscribers of the health service
10 corporation and the State of New Jersey that the health service
11 corporation be afforded the ability to modernize its corporate
12 structure, subject to appropriate standards, oversight, and approval,
13 in order to meet the evolving health care needs of its subscribers,
14 while continuing its statutory mission, and maintaining its status as
15 a charitable and benevolent institution as declared in section 41 of
16 P.L.1985, c.236 (C.17:48E-41).

17 b. Ensuring that the health service corporation statutes provide
18 the opportunity for the health service corporation to reorganize
19 itself efficiently and effectively in the form and manner authorized
20 by P.L. , c. (C.)(pending before the Legislature as this
21 bill) will facilitate increased utilization of 21st century technologies
22 and tools to better address current challenges, improving both the
23 State's healthcare infrastructure and its readiness to address future
24 crises such as those resulting from the ongoing COVID-19
25 pandemic. Such a reorganization, if undertaken, approved, and
26 completed consistent with the provisions of P.L. ,
27 c. (C.)(pending before the Legislature as this bill), also will
28 promote vital investments and growth in health services and
29 diversified businesses for the benefit of its members and the State.

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

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

Matter underlined thus is new matter.

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

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

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

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

28

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

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

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

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

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

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

45 “Insurance company” means any entity, other than the
46 reorganized insurer, that engages in the business of insurance.

47 “Intermediate holding company” means an entity of which at
48 least a majority of the voting shares of the capital stock are at all

1 times owned directly or indirectly through other intermediate
2 holding companies by a mutual holding company.

3 “Majority of the voting shares of the capital stock” means, with
4 respect to any entity, shares of the capital stock of that entity which
5 carry the right to cast a majority of the votes entitled to be cast by
6 all of the outstanding shares of the capital stock of that entity for
7 the election of directors.

8 “Member” means the holder of a membership interest in a mutual
9 holding company, pursuant to the articles of incorporation or
10 bylaws of that mutual holding company.

11 “Mutual holding company” means a non-insurance, nonprofit
12 entity without permanent capital stock organized pursuant to the
13 laws of this State in accordance with the provisions of P.L. ,
14 c. (C.)(pending before the Legislature as this bill) for the
15 purpose of holding, directly or indirectly, one hundred percent
16 interest in a reorganized insurer pursuant to a plan of reorganization
17 as provided in P.L. , c. (C.)(pending before the
18 Legislature as this bill). A mutual holding company is an insurance
19 holding company system pursuant to P.L.1970, c.22 (C.17:27A-1 et
20 seq.), and shall not be qualified as an insurer licensed to issue
21 insurance policies, insurance contracts or health benefit plans.

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

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

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

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

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

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

7
8 3. (New section) a. A mutual holding company organized
9 pursuant to P.L. , c. (C.)(pending before the Legislature
10 as this bill) shall not be established as a company organized for
11 pecuniary profit and shall retain the designation as a charitable and
12 benevolent institution pursuant to section 41 of P.L.1985, c.236
13 (C.17:48E-41). A mutual holding company established pursuant to
14 the provisions of P.L. , c. (C.)(pending before the
15 Legislature as this bill) shall retain the health service corporation's
16 mission while supplementing that mission to promote innovation
17 and delivery of diversified services.

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

19 (1) provide affordable and accessible health insurance to its
20 members;

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

23 (3) promote innovation and delivery of solutions and diversified
24 services for its members.

25 b. Other than as provided pursuant to P.L. , c. (C.)
26 (pending before the Legislature as this bill), all property, assets,
27 rights, liabilities, interest and relations of whatever kind of the
28 health service corporation, and its subsidiaries, shall be that of the
29 mutual holding company system. The mutual holding company
30 shall not be considered a health service corporation.
31 Notwithstanding anything to the contrary, the provisions of section
32 41 of P.L.1985, c.236 (C.17:48E-41) shall continue to apply to a
33 mutual holding company.

34 c. The health insurance duties and obligations pursuant to
35 P.L.1985, c.236 (C.17:48E-1 et seq.) shall continue and remain in
36 the succeeding reorganized insurer reorganizing pursuant to
37 P.L. , c. (C.)(pending before the Legislature as this bill),
38 in each case, except as provided pursuant to P.L. ,
39 c. (C.)(pending before the Legislature as this bill). Except
40 as listed below in subsection e. of this section, all references to a
41 "health service corporation" in P.L.1985, c.236 (C.17:48E-1 et
42 seq.), shall refer to a "reorganized insurer" established pursuant to
43 P.L. , c. (C.)(pending before the Legislature as this bill)
44 and shall not refer to the mutual holding company.

45 d. In addition to the mutual holding company's qualification
46 pursuant to section 2 of P.L. , c. (C.)(pending before the
47 Legislature as this bill), and for avoidance of doubt, the mutual
48 holding company shall be expressly excluded from insurance

1 operations and reporting, investment limits, and risk-bearing
2 provisions of P.L.1985, c.236 (C.17:48E-1 et seq.), including the
3 following provisions because a mutual holding company is not a
4 risk-bearer:

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

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

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

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

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

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

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

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

32 (3) Subsection e. of section 1, subsection b. of section 2,
33 subsection a. of section 3, sections 6 through 9, and section 11 of
34 P.L.1985, c.236 (C.17:48E-1, C.17:48E-2, C.17:48E-3, C.17:48E-6
35 through C.17:48E-9, and C.17:48E-11).

36 f. The insurance premium rate tax cap law provided by
37 subsection a. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall
38 apply to the companies within the mutual holding company system
39 that have an insurance premium tax liability, and the exclusion from
40 the tax cap applicable to a health service corporation pursuant to
41 subsection b. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall not
42 apply to the mutual holding company or any entity within the
43 mutual holding company system, including the reorganized insurer,
44 that has an insurance premium tax liability.

45 g. A mutual holding company system may pursue businesses,
46 assets, or operations through one or more of its insurance
47 subsidiaries and non-insurance subsidiaries without a limit on
48 aggregate revenues from nonconforming affiliates or such pursuits

1 being considered a material change in form as such term is defined
2 pursuant to section 1 of P.L.2001, c.131 (C:17:48E-49). The
3 subsidiaries of the mutual holding company, including the
4 reorganized insurer, shall be permitted to make dividends or
5 distributions to the mutual holding company, any subsidiaries
6 thereof, or both, and shall not be considered a material change in
7 form as such term is defined pursuant to section 1 of P.L.2001,
8 c.131 (C:17:48E-49). Dividends and distributions from domestic
9 insurers, including the reorganized insurer, within the mutual
10 holding company system shall be subject only to the applicable
11 provisions of subsection c. of section 4 of P.L.1970, c.22
12 (C:17:27A-4).

13 h. The continuation of the rights, duties and obligations of a
14 health service corporation pursuant to this section following
15 completion of an approved reorganization pursuant to P.L. ,
16 c. (C.) (pending before the Legislature as this bill) shall be
17 limited to such rights, duties and obligations pursuant to P.L.1985,
18 c.236 (C:17:48E-1 et seq.) as of the effective date of P.L. ,
19 c. (C.) (pending before the Legislature as this bill);
20 amendments to P.L.1985, c.236 (C:17:48E-1 et seq.) enacted after
21 the effective date of P.L. , c. (C.) (pending before the
22 Legislature as this bill) shall not apply. Notwithstanding the above,
23 the reorganized insurer shall be subject to the laws applicable to
24 domestic health insurance companies contained in Title 17B of the
25 New Jersey Statutes.

26

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

35 b. The mutual holding company system shall consist of a
36 mutual holding company and one or more controlled nonprofit or
37 for-profit subsidiaries, including the reorganized insurer, and shall
38 be operated for the benefit of its members. The mission of a mutual
39 holding company shall be as specified in subsection a. of section 3
40 of P.L. , c. (C.) (pending before the Legislature as this
41 bill).

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

45 (1) an insurer and therefore shall not be subject to any of the
46 provisions of N.J.S.17B:18-1 et seq. applicable to stock or mutual
47 insurers, or to any laws concerning the writing of insurance,
48 including rules and regulations adopted thereunder, including with

1 respect to governance, stock or other voting or equity interest, the
2 writing of insurance, any investment limitations directly applicable
3 to risk-bearing entities engaged in the writing of insurance such as
4 those pursuant to N.J.S.17B:20-1 et seq., or any capital or surplus
5 requirements;

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

7 (3) qualified as an insurer.

8 The writing of insurance shall be permitted only through the
9 reorganized insurer and other insurance company subsidiaries or
10 investments of the mutual holding company. Nothing herein shall
11 alter the oversight of the commissioner with respect to the mutual
12 holding company and its non-insurance subsidiaries provided for
13 pursuant to applicable laws and rules of this State relating to
14 insurance holding company systems.

15 d. A mutual holding company shall be a nonprofit entity
16 incorporated under, and shall conduct its business pursuant to, the
17 provisions of Title 15A of the New Jersey Statutes, except that in
18 situations in which the provisions of that title are inconsistent with
19 the provisions of P.L. , c. (C.) (pending before the
20 Legislature as this bill), the provisions of P.L. ,
21 c. (C.)(pending before the Legislature as this bill) shall
22 govern.

23 e. At the effective time, members shall receive membership
24 interests of the mutual holding company, and thereafter 100 percent
25 of the membership interests of the mutual holding company shall
26 continue to be held by members, in each case, in the manner set
27 forth in the articles of incorporation and bylaws of the mutual
28 holding company.

29 f. The shares of the capital stock of the reorganized insurer
30 shall be:

31 (1) issued to the mutual holding company or one or more
32 intermediate holding companies that are wholly-owned by the
33 mutual holding company; and

34 (2) at all times owned by the mutual holding company or one or
35 more intermediate holding companies that are wholly-owned by the
36 mutual holding company.

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

39 (1) the formation of one or more subsidiaries;

40 (2) amendment or restatement of the articles of incorporation
41 and bylaws of one or more companies;

42 (3) transfer of assets and liabilities among two or more
43 companies; or

44 (4) issuance, acquisition or transfer of capital stock of one or
45 more companies.

46

47 5. (New section) a. A health service corporation may submit
48 an application to the commissioner to form a mutual holding

1 company system. Prior to submission of the application, the board
2 of directors of the health service corporation shall adopt a resolution
3 proposing to transition to a mutual insurer and form a mutual
4 holding company system, at a meeting of the board by a two-thirds
5 affirmative vote of the total number of directors of the health
6 service corporation. A copy of the minutes of the meeting at which
7 that resolution is adopted shall be filed with the commissioner. The
8 resolution shall include a plan to transition to a mutual insurer and
9 form a mutual holding company system, including proposed articles
10 of incorporation and bylaws for the mutual holding company and
11 proposed articles of incorporation, certificates of formation,
12 restatements of, or amendments to, existing articles of incorporation
13 or bylaws, and plans of merger or consolidation, with respect to
14 each entity to be formed, converted or otherwise subject or party to
15 the transition transactions pursuant to the plan of mutualization and
16 reorganization.

17 In addition to including information required pursuant to section
18 2 of P.L.1995, c.196 (C.17:48E-46) for the plan of mutualization,
19 with respect to the formation of a mutual holding company system
20 for purposes of this provision, the plan shall include:

21 (1) A description of the structure of the mutual holding
22 company system consistent with the requirements set forth in
23 P.L. , c. (C.) (pending before the Legislature as this bill);

24 (2) A description of the qualifications for members'
25 membership in, and the rights of members of, the mutual holding
26 company consistent with the requirements set forth in P.L. ,
27 c. (C.) (pending before the Legislature as this bill);

28 (3) A description of the transactions, and parties to those
29 transactions, that will affect the mutualization and reorganization,
30 including, but not limited to, transfer and assumption of policies,
31 contracts, assets and liabilities, formation of entities, and the
32 amendment or restatement of certificates of incorporation or
33 bylaws. The plan of reorganization may provide for the transfer of
34 assets of a health service corporation and its subsidiaries to the
35 mutual holding company or one or more subsidiaries of the mutual
36 holding company in connection with the formation of the mutual
37 holding company system;

38 (4) The identity of those persons who shall serve as directors
39 and officers of the mutual holding company, its intermediate
40 holding companies, if any, and its subsidiaries, including the
41 reorganized insurer, as of the effective time of the mutualization
42 and reorganization. The plan shall specify the members of the board
43 of directors of the health service corporation who shall serve as
44 initial directors of the mutual holding company, as provided in
45 section 15 of P.L. , c. (C.) (pending before the Legislature
46 as this bill);

47 (5) Information sufficient to demonstrate that the financial
48 condition of the reorganized insurer and the insurance company

1 subsidiaries of the reorganized insurer shall meet solvency
2 requirements pursuant to applicable laws and rules of this State
3 relating to insurance companies after giving effect to the
4 mutualization and reorganization;

5 (6) A representation that, following the mutualization and
6 reorganization, the material terms and conditions of insurance
7 coverage of:

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

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

14 (7) A representation that, following the mutualization and
15 reorganization, the material terms and conditions of subordinated
16 surplus notes and other contractual obligations, other than those
17 arising pursuant to policies described in paragraph (6) of this
18 subsection, of the health service corporation and its subsidiaries
19 shall, subject to the rights of the health service corporation and its
20 subsidiaries pursuant to applicable law, and to the extent those
21 obligations are not otherwise satisfied or terminated in accordance
22 with their terms, remain in effect upon the transfer of those
23 obligations to, and assumption of those obligations by, the
24 reorganized insurer or one or more other subsidiaries of the mutual
25 holding company; and

26 (8) A representation that, following the mutualization and
27 reorganization, the mutual holding company shall comply with the
28 employment requirements as provided in section 16 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill).

30 b. Upon the affirmative vote of the board of directors
31 complying with subsection a. of this section, the plan to form a
32 mutual holding company system pursuant to P.L. ,
33 c. (C.)(pending before the Legislature as this bill) shall be
34 filed with the commissioner for approval. Upon filing the plan to
35 form a mutual holding company system, the obligations pursuant to
36 section 4 of P.L.2017, c.100 (C.17:48E-17.3) shall be suspended
37 during the pendency of the commissioner's review process pursuant
38 to this subsection; if the commissioner approves the plan to form a
39 mutual holding company, any obligations arising pursuant to
40 section 4 of P.L.2017, c.100 (C.17:48E-17.3) shall be deemed
41 satisfied by the initial assessment pursuant to subsection a. of
42 section 13 of P.L. , c. (C.) (pending before the Legislature
43 as this bill). The commissioner shall review the plan to mutualize
44 and reorganize in accordance with the requirements of subsection a.
45 of section 3 of P.L.1995, c.196 (C.17:48E-47). The public hearing
46 conducted pursuant to subsection a. of section 3 of P.L.1995, c.196
47 (C.17:48E-47) shall also address the plan of reorganization to the
48 mutual holding company system required by P.L. ,

1 c. (C.) (pending before the Legislature as this bill).
2 Consistent with subsection a. of section 3 of P.L.1995, c.196
3 (C.17:48E-47), the commissioner shall approve a plan of
4 mutualization and reorganization unless the commissioner finds the
5 plan:

- 6 (1) is contrary to law;
- 7 (2) would be detrimental to the safety or soundness of the
8 proposed reorganized insurer and insurance company subsidiaries
9 of the proposed mutual holding company; or
- 10 (3) prejudices the interests of the policyholders of the health
11 service corporation or treats them inequitably.

12 The commissioner may engage the services of experts and
13 consultants to advise on any matters related to the application. The
14 engagement shall not be subject to Chapter 32 of Title 52 of the
15 Revised Statutes and all costs related to such engagement for the
16 examination and deliberations of the application shall be paid by the
17 health service corporation that makes the filing, both for services
18 prior to the effective time and for services after the effective time.
19 At the expiration of 30 days after the public hearing, the
20 commissioner shall approve or disapprove the plan of mutualization
21 and reorganization and shall set forth the decision in writing and
22 shall state the reasons therefor. The commissioner shall inform the
23 health service corporation of the specific reasons for the disapproval
24 of any plan of mutualization and reorganization and provide a cure
25 period of no shorter than 90 days to cure any deficiencies. Any
26 disapproval shall be subject to judicial review as a final decision of
27 a State administrative agency.

28 c. A plan of mutualization and reorganization may be amended,
29 terminated, or approved consistent with P.L. ,
30 c. (C.) (pending before the Legislature as this bill). A plan
31 of mutualization and reorganization adopted by the board of
32 directors of the applicant may be:

- 33 (1) Amended by the board of directors of the applicant in
34 response to the comments or recommendations of the commissioner
35 at any time; or
- 36 (2) Terminated by the board of directors of the applicant at any
37 time. An applicant that has terminated a plan to form a mutual
38 holding company system shall be deemed to have also terminated
39 the application to transition to a mutual insurer.

40 d. An approved plan of mutualization and reorganization shall
41 be effective at the effective time specified in the plan of
42 reorganization, or such other time subsequently requested by the
43 applicant and agreed to by the commissioner.

44
45 6. (New section) A mutual holding company system shall be
46 considered an insurance holding company system and subject to
47 P.L.1970, c.22 (C.17:27A-1 et seq.). Notwithstanding the
48 foregoing, solely with regard to the transactions set forth in the

1 application to form a mutual holding company system filed pursuant
2 to section 5 of P.L. , c. (C.)(pending before the
3 Legislature as this bill), a mutual holding company system shall not
4 be required to seek separate approval for an acquisition of
5 controlling stock, ownership interest, assets or control, or for a
6 share exchange, organization, or reorganization of insurance
7 companies within the mutual holding company system, or other
8 transactions set forth in the application to form a mutual holding
9 company system. Thereafter, any future transactions not approved
10 as part of the application to form a mutual holding company system,
11 shall be subject to the applicable requirements of P.L.1970, c.22
12 (C.17:27A-1 et seq.). As an insurance holding company system
13 subject to P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner
14 shall have the power to order production of any records, books, or
15 other information and papers in the possession of a mutual holding
16 company system as are reasonably necessary to ascertain the
17 financial condition of the mutual holding company system or to
18 determine compliance with P.L. , c. (C.)(pending before
19 the Legislature as this bill).

20

21 7. (New section) a. A mutual holding company or a non-
22 insurance subsidiary may, alone or together, make any lawful
23 investments including directly or indirectly acquiring or otherwise
24 holding the stock or other ownership interests of any nonprofit or
25 for-profit entities.

26 b. Insurance company subsidiaries and the reorganized insurer
27 may make investments, including investments in non-insurance
28 entities subject to investment and asset limitations pursuant to
29 applicable laws and rules relating to insurance companies.

30

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

40

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

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

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

1 (3) other reasonable factors.

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

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

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

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

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

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

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

43

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

1 plan shall provide that any assets of the mutual holding company
2 remaining after the discharge of all liabilities and obligations, if
3 any, shall be distributed in accordance with N.J.S.15A:12-8.

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

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

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

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

35
36 13. (New section) a. Following regulatory approval pursuant to
37 section 5 of P.L. , c. (C.)(pending before the Legislature
38 as this bill) and the establishment of a mutual holding company, the
39 mutual holding company, through itself or any of its affiliates, shall
40 pay an initial assessment to the State Treasury in the amount of
41 \$600,000,000 by June 1, 2022 if the effective time precedes June 1,
42 2022. If the effective time is later than June 1, 2022, the initial
43 assessment shall be due by June 1 of the calendar year following the
44 effective time. The initial assessment shall be a one-time,
45 nonrecurring State business tax on the reorganized insurer.

46 b. Following the initial assessment, and subject to subsections
47 c. and d. of this section, the mutual holding company, through itself
48 or any of its affiliates, shall pay a limited duration business tax by

1 June 1 of each calendar year beginning with the calendar year
2 following the initial assessment, and for a period of seventeen
3 years. The total assessment, including both the initial and annual
4 assessments, shall not exceed \$1,250,000,000. The annual
5 assessments represent a limited duration state business tax on the
6 reorganized insurer's business payable by the mutual holding
7 company or any of its affiliates, and shall be based on the following
8 schedule with earned premiums defined consistent with 45 C.F.R,
9 158.130:

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

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

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

21 c. The mutual holding company shall not pay any portion of
22 the annual assessment for a given calendar year if the mutual
23 holding company's system-wide health risk-based capital
24 authorized control level would fall below 550 percent based on the
25 standards for risk based capital for health organizations as adopted
26 by the National Association of Insurance Commissioners following
27 the payment as applied against the prior calendar year's risk based
28 capital, or if in the opinion of any nationally recognized statistical
29 rating organization, the group credit rating of the mutual holding
30 company would not be considered investment grade.

31 d. (1) If the mutual holding company does not pay the annual
32 assessment for a given calendar year pursuant to subsection c. of
33 this section, the annual assessment that was not paid shall be
34 deferred to the subsequent calendar year, which shall be the deferral
35 date for the deferred annual assessment, with all subsequent annual
36 assessments pursuant to subsection b. of this section also deferred
37 by another calendar year so that no two annual assessments are due
38 in the same calendar year. If an annual assessment is deferred, that
39 annual assessment shall not be required by law to be paid until the
40 deferral date.

41 (2) Notwithstanding the provisions of paragraph (1) of this
42 subsection to the contrary, the assessment years pursuant to
43 subsection b. of this section shall not be extended beyond, and the
44 payment obligation pursuant to this section shall cease to exist after,
45 the date that is 20 years from the effective time.

46 e. The initial assessment is a one-time business tax imposed on
47 the mutual holding company system and the annual assessment is a
48 limited duration business tax imposed on the mutual holding

1 company system based on the reorganized insurer's business. The
2 assessment of additional taxes, penalties and interest shall be as
3 provided by the "State Uniform Tax Procedure Law," R.S.54:48-1
4 et seq.; provided that no interest shall accrue or penalty shall be
5 levied on a deferred annual assessment.

6
7 14. (New section) A mutual holding company formed pursuant
8 to P.L. , c. (C.)(pending before the Legislature as this
9 bill) shall not convert to a for-profit stock holding company. The
10 provisions of P.L.2001, c.131 (C.17:48E-49 et seq.) providing for
11 conversion of a health service corporation to a domestic stock
12 insurer shall not apply to a mutual holding company formed
13 pursuant to P.L. , c. (C.)(pending before the Legislature
14 as this bill).

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

18 (1) 13 directors shall be elected, as provided in the bylaws, one
19 of whom shall be the chair;

20 (2) 5 directors shall be public directors appointed by the
21 Governor with the advice and consent of the Senate;

22 (3) 2 directors shall be public directors appointed by the Senate
23 President; and

24 (4) 2 directors shall be public directors appointed by the Speaker
25 of the General Assembly.

26 b. Upon the effective time, the term of office of the public
27 directors of the reorganized insurer shall expire. The initial board
28 of directors of the mutual holding company shall be:

29 (1) the elected directors of the reorganized insurer supplemented
30 by additional elected directors nominated and elected by the mutual
31 holding company's board after the effective time for a total number
32 of elected directors specified in paragraph (1) of subsection a. of
33 this section;

34 (2) 5 public directors appointed by the Governor with the advice
35 and consent of the Senate within 30 days after the effective time;

36 (3) 2 public directors named by the Senate President within 30
37 days after the effective time; and

38 (4) 2 public directors named by the Speaker of the General
39 Assembly within 30 days after the effective time.

40 c. Each elected director shall have a term of three years with up
41 to two successive three-year terms following the initial term for up
42 to a total of three successive terms, and as provided for in the
43 bylaws, with such other term and term limits specifically applying
44 to the individual directors. The chief executive officer or president
45 of the mutual holding company shall be an elected director at all
46 times and shall not be subject to any term limit or election pursuant
47 to section 9 of P.L. , c. (C.)(pending before the
48 Legislature as this bill). The board of directors or the members, as

1 provided by the bylaws, shall elect a chair, who shall be a member
2 of the board elected pursuant to paragraph (1) of subsection a. of
3 this section. Each director elected pursuant to paragraph (1) of
4 subsection a. of this section shall meet the statutory and regulatory
5 qualifications for the mutual holding company system's businesses
6 and be free from conflicts of interest that would prohibit the person
7 from materially executing the person's duties as a director. Each
8 public director shall serve at the pleasure of the appointing
9 authority.

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

17

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

25 b. This section shall not:

26 (1) supersede the terms of any collective bargaining agreement;
27 or

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

33 c. This section shall expire following the transition period of
34 24 months following the formation of a mutual holding company.

35

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

38 1. As used in this act:

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

41 "Alternative foundation plan" means the plan submitted to the
42 Attorney General and the commissioner pursuant to section 18 of
43 this act.

44 "Application" means the application for approval of a plan of
45 conversion filed with the commissioner pursuant to section 3 of this
46 act.

47 "Attorney General" means the Attorney General of the State of
48 New Jersey.

1 “Commissioner” means the Commissioner of Banking and
2 Insurance.

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

5 “Conversion” means the process by which a health service
6 corporation converts to a domestic stock insurer in accordance with
7 the provisions of sections 2 through 14 and section 19 of this act.
8 “Converted insurer” means the domestic stock insurer into which a
9 health service corporation converts in accordance with the
10 provisions of sections 2 through 14 and section 19 of this act.

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

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

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

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

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

23 “Material change in form” means any action or series of actions
24 that effect a fundamental corporate change which involves a
25 transfer of ownership or control of assets of the health service
26 corporation or a change of the mission or purpose of the health
27 service corporation, including, without limitation, the purchase,
28 lease, exchange, conversion, restructuring, merger, division,
29 consolidation or transfer of control, bulk reinsurance or other
30 disposition or transfer of a substantial amount of business, line of
31 business, assets or operations of the health service corporation,
32 including the transfer, directly or indirectly, of a substantial amount
33 of the health service corporation's business, line of business, assets
34 or operations to one or more nonconforming affiliates. A material
35 change in form by the transfer, directly or indirectly, of a
36 substantial amount of the health service corporation's business, line
37 of business, assets or operations to one or more nonconforming
38 affiliates shall not be deemed to occur so long as, during the most
39 recent four prior consecutive calendar quarters: (1) the aggregate
40 revenues of all nonconforming affiliates do not exceed 50 percent
41 of the aggregate revenues for the health service corporation and all
42 affiliates; (2) the aggregate revenues of all nonconforming affiliates
43 derived from providing individual or group health coverage to
44 residents of New Jersey equal or exceed 50 percent of the aggregate
45 revenues from all nonconforming affiliates; and (3) the aggregate
46 assets of all nonconforming affiliates do not exceed 50 percent of
47 the aggregate assets of the health service corporation and all
48 affiliates. Notwithstanding the above, a reorganization approved by

1 the commissioner pursuant to section 5 of P.L. , c. (C.)
2 (pending before the Legislature as this bill), whereby the mutual
3 holding company is a charitable and benevolent institution as
4 provided in section 41 of P.L.1985, c.236 (C.17:48E-41), shall not
5 constitute a material change in form for purposes of P.L.2001, c.131
6 (C.17:48E-49 et seq.).

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

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

15 “Petition” means the petition for approval of a foundation plan
16 submitted to the Attorney General pursuant to subsection a. of
17 section 19 of this act.

18 “Plan of conversion” means the written plan of conversion
19 adopted by the health service corporation in compliance with
20 section 2 of this act.

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

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

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

30

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

33 1. Definitions.

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

37 a. An “affiliate” of, or person “affiliated” with, a specific
38 person, is a person that directly, or indirectly through one or more
39 intermediaries, controls, or is controlled by, or is under common
40 control with, the person specified.

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

43 c. The term “control” (including the terms “controlling,”
44 “controlled by” and “under common control with”) means the
45 possession, direct or indirect, of the power to direct or cause the
46 direction of the management and policies of a person, whether
47 through the ownership of voting securities, by contract other than a
48 commercial contract for goods or nonmanagement services, or

1 otherwise, unless the power is the result of an official position with
2 or corporate office held by the person. Control shall be presumed to
3 exist if any person, directly or indirectly, owns, controls, holds with
4 the power to vote, or holds proxies representing, 10% or more of the
5 voting securities of any other person, provided that no such
6 presumption of control shall of itself relieve any person so
7 presumed to have control from any requirement of P.L.1970, c.22
8 (C.17:27A-1 et seq.). This presumption may be rebutted by a
9 showing made in the manner provided by subsection j. of section 3
10 of P.L.1970, c.22 (C.17:27A3) that control does not exist in fact.
11 The commissioner may determine, after furnishing all persons in
12 interest notice and an opportunity to be heard, and making specific
13 findings of fact to support such determination, that control exists in
14 fact, notwithstanding the absence of a presumption to that effect.

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

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

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

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

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

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

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

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

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

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

19

20 19. (New section) a. The provisions of P.L. , c. (C.)
21 (pending before the Legislature as this bill) shall be severable; and
22 if any phrase, clause, sentence, or provision is deemed
23 unenforceable, the remaining provisions of P.L. , c. (C.)
24 (pending before the Legislature as this bill) shall be enforceable.

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

28

29 20. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill provides for the reorganization of a health service
35 corporation.

36 The bill provides that a mutual holding company organized
37 pursuant to the bill may not be established as a company organized
38 for pecuniary profit and retains the designation as a charitable and
39 benevolent institution pursuant to current law. A mutual holding
40 company established pursuant to the bill retains the health service
41 corporation's mission while supplementing that mission to promote
42 innovation and delivery of diversified services.

43 The bill provides that mission of the mutual holding company is
44 to:

45 (1) provide affordable and accessible health insurance to its
46 members;

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

1 (3) promote innovation and delivery of solutions and diversified
2 services for its members.

3 Other than as otherwise provided, the bill provides that all
4 property, assets, rights, liabilities, interest and relations of whatever
5 kind of the health service corporation, and its subsidiaries, will be
6 that of the mutual holding company system. The mutual holding
7 company is no longer considered a health service corporation.
8 Notwithstanding anything to the contrary, the provisions of current
9 that exempt health service corporations from taxes other than taxes
10 on real estate and equipment and taxes on premiums continue to
11 apply to a mutual holding company.

12 Under the bill, certain health insurance duties and obligations
13 pursuant to current law continue and remain in the succeeding
14 reorganized insurer.

15 The mutual holding company is excluded from certain insurance
16 operations and reporting, investment limits, and risk-bearing
17 provisions of the health service corporation law, because the mutual
18 holding company is not a risk-bearer:

19 The bill provides that the reorganized insurer shall engage in
20 risk-bearing activities, reporting, investments, financial
21 transactions, including the issuance of dividends or distributions,
22 and insurance trade practices consistent with laws governing stock
23 insurance companies organized under Title 17B of the New Jersey
24 Statutes to transact health insurance. The bill also provides that
25 certain provisions of the health service corporation law do not apply
26 to the reorganized insurer or any insurance company or risk-bearing
27 entity within the mutual holding company system.

28 The bill provides that the insurance premium rate tax cap law
29 provided pursuant to current law shall apply to the companies
30 within the mutual holding company system that have an insurance
31 premium tax liability, and the exclusion from the tax cap applicable
32 to a health service corporation shall not apply to the mutual holding
33 company or any entity within the mutual holding company system,
34 including the reorganized insurer, that has an insurance premium
35 tax liability.

36 The bill provides that a mutual holding company system may
37 pursue businesses, assets, or operations through one or more of its
38 insurance subsidiaries and non-insurance subsidiaries without a
39 limit on aggregate revenues from nonconforming affiliates or those
40 pursuits being considered a material change in form. The
41 subsidiaries of the mutual holding company, including the
42 reorganized insurer, may make dividends or distributions to the
43 mutual holding company, any subsidiaries thereof, or both, and not
44 be considered a material change in form. Dividends and
45 distributions from domestic insurers, including the reorganized
46 insurer, within the mutual holding company system are subject only
47 to certain applicable provisions of current law.

1 The bill provides that a health service corporation may
2 reorganize to create a mutual holding company system pursuant to a
3 plan of reorganization at the same time it applies to transition to a
4 mutual insurer. Thereafter, the succeeding mutual holding company
5 system shall be operated in a manner consistent with the provisions
6 of the bill.

7 The bill requires the mutual holding company system to consist
8 of a mutual holding company and one or more controlled nonprofit
9 or for-profit subsidiaries, including the reorganized insurer, and to
10 be operated for the benefit of its members.

11 The bill provides that the mutual holding company and each of
12 its non-insurance subsidiaries, other than the reorganized insurer
13 and any insurance company subsidiaries, shall not be:

14 (1) an insurer and therefore shall not be subject to any of the
15 provisions of current law applicable to stock or mutual insurers, or
16 to any laws concerning the writing of insurance, including rules and
17 regulations adopted thereunder, including with respect to
18 governance, stock or other voting or equity interest, the writing of
19 insurance, any investment limitations directly applicable to risk-
20 bearing entities engaged in the writing of insurance, or any capital
21 or surplus requirements;

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

23 (3) qualified as an insurer.

24 The bill provides that the writing of insurance is permitted only
25 through the reorganized insurer and other insurance company
26 subsidiaries or investments of the mutual holding company.
27 Nothing in the bill alters the oversight of the commissioner with
28 respect to the mutual holding company and its non-insurance
29 subsidiaries provided for under applicable laws and rules of this
30 State relating to insurance holding company systems.

31 The bill requires a mutual holding company to be a nonprofit
32 entity incorporated under, and to conduct its business pursuant to,
33 the provisions of Title 15A of the New Jersey Statutes, except that
34 in situations in which the provisions of that title are inconsistent
35 with the provisions of the bill, the provisions of the bill shall
36 govern.

37 The bill provides that, at the effective time, members shall
38 receive membership interests of the mutual holding company, and
39 thereafter 100 percent of the membership interests of the mutual
40 holding company shall continue to be held by members, in each
41 case, in the manner set forth in the articles of incorporation and
42 bylaws of the mutual holding company.

43 The bill requires the shares of the capital stock of the
44 reorganized insurer to be:

45 (1) issued to the mutual holding company or one or more
46 intermediate holding companies that are wholly-owned by the
47 mutual holding company; and

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

4 The subsidiaries of a mutual holding company system may be
5 formed by any of the following means:

6 (1) the formation of one or more subsidiaries;

7 (2) amendment or restatement of the articles of incorporation
8 and bylaws of one or more companies;

9 (3) transfer of assets and liabilities among two or more
10 companies; or

11 (4) issuance, acquisition or transfer of capital stock of one or
12 more companies.

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

31 The bill provides that, in addition to including information
32 required pursuant to current law for the plan of mutualization, with
33 respect to the formation of a mutual holding company system for
34 purposes of this provision, the plan shall include:

35 (1) A description of the structure of the mutual holding
36 company system consistent with the requirements set forth in the
37 bill;

38 (2) A description of the qualifications for members'
39 membership in, and the rights of members of, the mutual holding
40 company consistent with the requirements set forth in the bill;

41 (3) A description of the transactions, and parties to those
42 transactions, that will affect the mutualization and reorganization,
43 including, but not limited to, transfer and assumption of policies,
44 contracts, assets and liabilities, formation of entities, and the
45 amendment or restatement of certificates of incorporation or
46 bylaws. The plan of reorganization may provide for the transfer of
47 assets of a health service corporation and its subsidiaries to the
48 mutual holding company or one or more subsidiaries of the mutual

1 holding company in connection with the formation of the mutual
2 holding company system;

3 (4) The identity of those persons who shall serve as directors
4 and officers of the mutual holding company, its intermediate
5 holding companies, if any, and its subsidiaries, including the
6 reorganized insurer, as of the effective time of the mutualization
7 and reorganization. The plan shall specify the members of the board
8 of directors of the health service corporation who shall serve as
9 initial directors of the mutual holding company;

10 (5) Information sufficient to demonstrate that the financial
11 condition of the reorganized insurer and the insurance company
12 subsidiaries of the reorganized insurer will meet solvency
13 requirements pursuant to applicable laws and rules of this State
14 relating to insurance companies after giving effect to the
15 mutualization and reorganization;

16 (6) A representation that, following the mutualization and
17 reorganization, policies shall remain in full force and effect under
18 policies transferred to and assumed by insurance company
19 subsidiaries of the mutual holding company;

20 (7) A representation that, following the mutualization and
21 reorganization, the material terms and conditions of subordinated
22 surplus notes and other contractual obligations, with certain
23 exceptions, of the health service corporation and its subsidiaries
24 shall, subject to the rights of the health service corporation and its
25 subsidiaries under applicable law, and to the extent those
26 obligations are not otherwise satisfied or terminated in accordance
27 with their terms, remain in effect upon the transfer of those
28 obligations to, and assumption of those obligations by, the
29 reorganized insurer or one or more other subsidiaries of the mutual
30 holding company; and

31 (8) A representation that, following the mutualization and
32 reorganization, the mutual holding company shall comply with the
33 employment requirements as provided in the bill.

34 The bill provides that, upon the affirmative vote of the board of
35 directors complying with the requirements of the bill, the plan to
36 form a mutual holding company system shall be filed with the
37 commissioner for approval. Upon filing the plan to form a mutual
38 holding company system, the obligations pursuant to current law
39 shall be suspended during the pendency of the commissioner's
40 review process. If the commissioner approves the plan to form a
41 mutual holding company, certain obligations arising pursuant to
42 current law shall be deemed satisfied by the initial assessment
43 required by the bill.

44 The bill requires the commissioner to review the plan to
45 mutualize and reorganize in accordance with the requirements of
46 current law and the bill, including requirements for a public
47 hearing.

1 The bill requires the commissioner to approve a plan of
2 mutualization and reorganization unless the commissioner finds the
3 plan:

4 (1) is contrary to law;

5 (2) would be detrimental to the safety or soundness of the
6 proposed reorganized insurer and insurance company subsidiaries
7 of the proposed mutual holding company; or

8 (3) prejudices the interests of the policyholders of the health
9 service corporation or treats them inequitably.

10 The bill provides that the commissioner may engage the services
11 of experts and consultants to advise on any matters related to the
12 application. The engagement shall not be subject to Chapter 32 of
13 Title 52 of the Revised Statutes and all costs related to such
14 engagement for the examination and deliberations of the application
15 shall be paid by the health service corporation that makes the filing,
16 both for services prior to the effective time and for services after the
17 effective time. At the expiration of 30 days after the public hearing,
18 the commissioner shall approve or disapprove the plan of
19 mutualization and reorganization and shall set forth the decision in
20 writing and shall state the reasons therefor. The commissioner shall
21 inform the health service corporation of the specific reasons for the
22 disapproval of any plan of mutualization and reorganization and
23 provide a cure period of no shorter than 90 days to cure any
24 deficiencies. Any disapproval shall be subject to judicial review as
25 a final decision of a State administrative agency.

26 The bill provides that a plan of mutualization and reorganization
27 may be amended, terminated, or approved. A plan of mutualization
28 and reorganization adopted by the board of directors of the
29 applicant may be:

30 (1) Amended by the board of directors of the applicant in
31 response to the comments or recommendations of the commissioner
32 at any time; or

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

37 The bill provides that an approved plan of mutualization and
38 reorganization is effective at the effective time specified in the plan
39 of reorganization, or such other time subsequently requested by the
40 applicant and agreed to by the commissioner.

41 The bill provides that a mutual holding company system is
42 considered an insurance holding company system and subject to the
43 current law governing insurance holding company systems, with
44 certain exceptions.

45 The bill allows a mutual holding company or a non-insurance
46 subsidiary to make any lawful investments including directly or
47 indirectly acquiring or otherwise holding the stock or other
48 ownership interests of any nonprofit or for-profit entities. Insurance

1 company subsidiaries and the reorganized insurer may make
2 investments, including investments in non-insurance entities subject
3 to investment and asset limitations pursuant to applicable laws and
4 rules relating to insurance companies.

5 Neither the adoption nor the implementation of a plan of
6 mutualization and reorganization pursuant to the bill is deemed to
7 give rise to any obligation by or on behalf of any entity in the
8 mutual holding company system or any predecessor entity to make
9 any distribution or payment to any member or policyholder, or to
10 any other person, fund, or entity of any nature whatsoever, in
11 connection with the ownership, control, benefits, policies, purpose,
12 or nature of any entity in the mutual holding company system, any
13 predecessor entity or otherwise.

14 Under the bill, membership in a mutual holding company is to be
15 determined in accordance with the mutual holding company's
16 articles of incorporation and bylaws and may be based upon:

17 (1) the amount of health insurance policies in force with the
18 reorganized insurer;

19 (2) the amount of the health insurance premiums paid to the
20 reorganized insurer; or

21 (3) other reasonable factors.

22 A mutual holding company may also consider the amount of
23 premiums paid to, or policies in force under, affiliated insurance
24 companies operating under the same brand licensee program as the
25 reorganized insurer and permit entities holding administrative
26 services agreements with the mutual holding company to be
27 members of the mutual holding company. The mutual holding
28 company may provide in its bylaws the basis for the number of
29 votes those entities will have as members of the mutual holding
30 company.

31 A mutual holding company formed pursuant to the bill may not
32 convert to a for-profit stock holding company. The provisions of
33 current law providing for conversion of a health service
34 corporation to a domestic stock insurer do not apply to a mutual
35 holding company formed pursuant to the bill.

36 The bill provides that members of a mutual holding company
37 shall be entitled to vote for the election of directors of the mutual
38 holding company in accordance with the mutual holding company's
39 bylaws. Directors of the mutual holding company shall be elected
40 from nominees selected by the nominating and governance
41 committee of the board of directors of the mutual holding company,
42 or a comparably authorized committee, except for public directors
43 serving in accordance with the provisions of the bill.

44 The bill prohibits a member of a mutual holding company from
45 transferring membership or any right arising therefrom.

46 Upon any voluntary dissolution of a mutual holding company in
47 accordance with current law, the mutual holding company shall
48 adopt a plan of dissolution. The plan shall provide for distribution

1 of any assets of the mutual holding company remaining after the
2 discharge of all liabilities and obligations.

3 The bill requires a mutual holding company to file with the
4 commissioner an annual statement pursuant to applicable laws of
5 this State.

6 Following approval of a transition pursuant to the bill, and the
7 establishment of a mutual holding company, the mutual holding
8 company, through itself or any of its affiliates, shall pay an initial
9 assessment to the State Treasury in the amount of \$600,000,000 by
10 June 1, 2022 if the effective time precedes June 1, 2022. If the
11 effective time is later than June 1, 2022, the initial assessment shall
12 be due by June 1 of the calendar year following the effective time.
13 The initial assessment shall be a one-time, nonrecurring State
14 business tax on the reorganized insurer.

15 Following the initial assessment, the mutual holding company,
16 through itself or any of its affiliates, shall pay a limited duration
17 business tax by June 1 of each calendar year beginning with the
18 calendar year following the initial assessment, and for a period of
19 seventeen years. The total assessment, including both the initial
20 and annual assessments, shall not exceed \$1,250,000,000. The
21 annual assessments represent a limited duration state business tax
22 on the reorganized insurer's business payable by the mutual holding
23 company or any of its affiliates, and shall be based on the following
24 schedule with earned premiums defined consistent with 45 CFR
25 158.130:

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

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

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

37 The bill provides that the mutual holding company shall not pay
38 any portion of the annual assessment for a given calendar year if the
39 mutual holding company's system-wide health risk-based capital
40 authorized control level would fall below 550 percent based on the
41 standards for risk based capital for health organizations as adopted
42 by the National Association of Insurance Commissioners following
43 the payment as applied against the prior calendar year's risk based
44 capital, or if in the opinion of any nationally recognized statistical
45 rating organization, the group credit rating of the mutual holding
46 company would not be considered investment grade.

47 If the mutual holding company does not pay the annual
48 assessment for a given calendar year, the annual assessment that

1 was not paid shall be deferred to the subsequent calendar year,
2 which shall be the deferral date for the deferred annual assessment,
3 with all subsequent annual assessments also deferred by another
4 calendar year so that no two annual assessments are due in the same
5 calendar year. If an annual assessment is deferred, that annual
6 assessment shall not be required by law to be paid until the deferral
7 date.

8 Notwithstanding the provisions of the bill to the contrary, the
9 assessment years shall not be extended beyond, and the payment
10 obligation shall cease to exist after, the date that is 20 years from
11 the effective time.

12 The bill provides that the board of the mutual holding company
13 shall be constituted of 22 directors as follows:

14 (1) 13 directors shall be elected, as provided in the bylaws, one
15 of whom shall be the chair;

16 (2) 5 directors shall be public directors appointed by the
17 Governor with the advice and consent of the Senate;

18 (3) 2 directors shall be public directors appointed by the Senate
19 President; and

20 (4) 2 directors shall be public directors appointed by the Speaker
21 of the General Assembly.

22 Upon the effective time of the conversion to a mutual holding
23 company system, the term of office of the public directors of the
24 reorganized insurer shall expire. The initial board of directors of
25 the mutual holding company shall be:

26 (1) the elected directors of the reorganized insurer supplemented
27 by additional elected directors nominated and elected by the mutual
28 holding company's board after the effective time for a total number
29 of elected directors specified in the bill;

30 (2) 5 public directors appointed by the Governor with the advice
31 and consent of the Senate within 30 days after the effective time;

32 (3) 2 public directors named by the Senate President within 30
33 days after the effective time; and

34 (4) 2 public directors named by the Speaker of the General
35 Assembly within 30 days after the effective time.

36 The bill provides that each elected director shall have a term of
37 three years with up to two successive three-year terms following the
38 initial term for up to a total of three successive terms, and as
39 provided for in the bylaws, with such other term and term limits
40 specifically applying to the individual directors. The chief
41 executive officer or president of the mutual holding company shall
42 be an elected director at all times and shall not be subject to any
43 term limit or election. Each director shall meet the statutory and
44 regulatory qualifications for the mutual holding company system's
45 businesses and be free from conflicts of interest that would prohibit
46 the person from materially executing the person's duties as a
47 director. Each public director shall serve at the pleasure of the
48 appointing authority.

1 The bill provides that there shall be a transitional period of 18
2 months following the effective time before elected directors of the
3 mutual holding company are subject to election by its members.
4 The first election shall occur at the first annual meeting following
5 the transitional period, and in accordance with the mutual holding
6 company's bylaws.

7 Upon the formation of a mutual holding company, the total
8 number of full-time employees that were employed within a mutual
9 holding company system shall be maintained for a transition period
10 of 24 months following that formation based on the full-time
11 employee count of the health service corporation as of September
12 30, 2019, with certain exceptions.

13 The employment requirements of the bill do not supersede the
14 terms of any collective bargaining agreement or require a mutual
15 holding company system to replace headcount lost due to various
16 causes.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 3218

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2020

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 3218.

As amended, this bill provides for the reorganization of a health service corporation.

The bill provides that a mutual holding company organized pursuant to the bill may not be established as a company organized for pecuniary profit and retains the designation as a charitable and benevolent institution pursuant to current law. A mutual holding company established pursuant to the bill retains the health service corporation's mission while supplementing that mission to promote innovation and delivery of diversified services.

The bill provides that mission of the mutual holding company is to:

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

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

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

Other than as otherwise provided, the bill provides that all property, assets, rights, liabilities, interest and relations of whatever kind of the health service corporation, and its subsidiaries, will be that of the mutual holding company system. The mutual holding company is no longer considered a health service corporation. Notwithstanding anything to the contrary, the provisions of current law that exempt health service corporations from taxes other than taxes on real estate and equipment and taxes on premiums continue to apply to a mutual holding company if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program. If the mutual holding company does not continue to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program, then the mutual holding company shall no longer be exempt from those taxes.

Under the bill, certain health insurance duties and obligations pursuant to current law continue and remain in the succeeding reorganized insurer.

The mutual holding company is excluded from certain insurance operations and reporting, investment limits, and risk-bearing provisions of the health service corporation law, because the mutual holding company is not a risk-bearer.

The bill provides that the reorganized insurer shall engage in risk-bearing activities, reporting, investments, financial transactions, including the issuance of dividends or distributions, and insurance trade practices consistent with laws governing stock insurance companies organized under Title 17B of the New Jersey Statutes to transact health insurance. The bill also provides that certain provisions of the health service corporation law do not apply to the reorganized insurer or any insurance company or risk-bearing entity within the mutual holding company system.

The bill provides that the insurance premium rate tax cap law provided pursuant to current law shall apply to the companies within the mutual holding company system that have an insurance premium tax liability, and the exclusion from the tax cap applicable to a health service corporation shall not apply to the mutual holding company or any entity within the mutual holding company system, including the reorganized insurer, that has an insurance premium tax liability.

The bill provides that a mutual holding company system may pursue businesses, assets, or operations through one or more of its insurance subsidiaries and non-insurance subsidiaries without a limit on aggregate revenues from nonconforming affiliates or those pursuits being considered a material change in form. The subsidiaries of the mutual holding company, including the reorganized insurer, may make dividends or distributions to the mutual holding company, any subsidiaries thereof, or both, and not be considered a material change in form. Dividends and distributions from domestic insurers, including the reorganized insurer, within the mutual holding company system are subject only to certain applicable provisions of current law.

The bill provides that a health service corporation may reorganize to create a mutual holding company system pursuant to a plan of reorganization at the same time it applies to transition to a mutual insurer. Thereafter, the succeeding mutual holding company system shall be operated in a manner consistent with the provisions of the bill.

The bill requires the mutual holding company system to consist of a mutual holding company and one or more controlled nonprofit or for-profit subsidiaries, including the reorganized insurer, and to be operated for the benefit of its members.

The bill provides that the mutual holding company and each of its non-insurance subsidiaries, other than the reorganized insurer and any insurance company subsidiaries, shall not be:

- (1) an insurer and therefore shall not be subject to any of the provisions of current law applicable to stock or mutual insurers, or to any laws concerning the writing of insurance, including rules and regulations adopted thereunder, including with respect to governance,

stock or other voting or equity interest, the writing of insurance, any investment limitations directly applicable to risk-bearing entities engaged in the writing of insurance, or any capital or surplus requirements;

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

(3) qualified as an insurer.

The bill provides that the writing of insurance is permitted only through the reorganized insurer and other insurance company subsidiaries or investments of the mutual holding company. Nothing in the bill alters the oversight of the commissioner with respect to the mutual holding company and its non-insurance subsidiaries provided for under applicable laws and rules of this State relating to insurance holding company systems.

The bill requires a mutual holding company to be a nonprofit entity incorporated under, and to conduct its business pursuant to, the provisions of Title 15A of the New Jersey Statutes, except that in situations in which the provisions of that title are inconsistent with the provisions of the bill, the provisions of the bill shall govern.

The bill provides that, at the effective time, members shall receive membership interests of the mutual holding company, and thereafter 100 percent of the membership interests of the mutual holding company shall continue to be held by members, in each case, in the manner set forth in the articles of incorporation and bylaws of the mutual holding company.

The bill requires the shares of the capital stock of the reorganized insurer to be:

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

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

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

(1) the formation of one or more subsidiaries;

(2) amendment or restatement of the articles of incorporation and bylaws of one or more companies;

(3) transfer of assets and liabilities among two or more companies;

(4) issuance, acquisition or transfer of capital stock of one or more companies; or

(5) merger or consolidation of two or more companies.

The bill provides that the mutual holding company is to ensure that any ownership interest in a subsidiary is held by the mutual holding company and any profits generated by that interest are returned to the mutual holding company.

The bill provides that a health service corporation may submit an application to the commissioner to form a mutual holding company

system. Upon submission of an application to the commissioner, a health service corporation shall immediately thereafter provide a copy of the application to the Attorney General. Prior to submission of the application, the board of directors of the health service corporation shall adopt a resolution proposing to transition to a mutual insurer and form a mutual holding company system, at a meeting of the board by a two-thirds affirmative vote of the total number of directors of the health service corporation. A copy of the minutes of the meeting at which that resolution is adopted shall be filed with the commissioner. The resolution shall include a plan to transition to a mutual insurer and form a mutual holding company system, including proposed articles of incorporation and bylaws for the mutual holding company and proposed articles of incorporation, certificates of formation, restatements of, or amendments to, existing articles of incorporation or bylaws, and plans of merger or consolidation, with respect to each entity to be formed, converted or otherwise subject or party to the transition transactions pursuant to the plan of mutualization and reorganization.

The bill provides that, in addition to including information required pursuant to current law for the plan of mutualization, with respect to the formation of a mutual holding company system for purposes of this provision, the plan shall include:

(1) A description of the structure of the mutual holding company system consistent with the requirements set forth in the bill;

(2) A description of the qualifications for members' membership in, and the rights of members of, the mutual holding company consistent with the requirements set forth in the bill;

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

(4) The identity of those persons who shall serve as directors and officers of the mutual holding company, its intermediate holding companies, if any, and its subsidiaries, including the reorganized insurer, as of the effective time of the mutualization and reorganization. The plan shall specify the members of the board of directors of the health service corporation who shall serve as initial directors of the mutual holding company;

(5) Information sufficient to demonstrate that the financial condition of the reorganized insurer and the insurance company subsidiaries of the reorganized insurer will meet solvency

requirements pursuant to applicable laws and rules of this State relating to insurance companies after giving effect to the mutualization and reorganization;

(6) A certification that, following the mutualization and reorganization, policies shall remain in full force and effect under policies transferred to and assumed by insurance company subsidiaries of the mutual holding company;

(7) A certification that, following the mutualization and reorganization, the material terms and conditions of subordinated surplus notes and other contractual obligations, with certain exceptions, of the health service corporation and its subsidiaries shall, subject to the rights of the health service corporation and its subsidiaries under applicable law, and to the extent those obligations are not otherwise satisfied or terminated in accordance with their terms, remain in effect upon the transfer of those obligations to, and assumption of those obligations by, the reorganized insurer or one or more other subsidiaries of the mutual holding company; and

(8) A certification that, following the mutualization and reorganization, the mutual holding company shall comply with the employment requirements as provided in the bill.

The bill provides that, upon the affirmative vote of the board of directors complying with the requirements of the bill, the plan to form a mutual holding company system shall be filed with the commissioner for approval. Upon filing the plan to form a mutual holding company system, the obligations pursuant to current law shall be suspended during the pendency of the commissioner's review process. If the commissioner approves the plan to form a mutual holding company, certain obligations arising pursuant to current law shall be deemed satisfied by the initial assessment required by the bill.

The bill requires the commissioner to review the plan to mutualize and reorganize in accordance with the requirements of current law and the bill, including requirements for three public hearings.

The bill requires the commissioner to approve a plan of mutualization and reorganization unless the commissioner finds the plan:

(1) is contrary to law;

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

(3) does not benefit the interests of the policyholders of the health service corporation or treats them inequitably.

The bill provides that the commissioner may engage the services of experts and consultants to advise on any matters related to the application, and if a written study or other expert report is prepared, it is to be made available to the applicant within a reasonable period of time prior to the initial public hearing. Pursuant to the bill, the commissioner may also engage the services of a consultant to conduct

a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation, and the general public. The engagement shall not be subject to Chapter 32 of Title 52 of the Revised Statutes and all costs related to such engagement for the examination and deliberations of the application shall be paid by the health service corporation that makes the filing, both for services prior to the effective time and for services after the effective time. At the expiration of 30 days after the final public hearing, the commissioner shall approve or disapprove the plan of mutualization and reorganization and shall set forth the decision in writing and shall state the reasons therefor. The commissioner shall inform the health service corporation of the specific reasons for the disapproval of any plan of mutualization and reorganization and provide a cure period of no shorter than 90 days to cure any deficiencies. Any disapproval shall be subject to judicial review as a final decision of a State administrative agency.

The bill provides that a plan of mutualization and reorganization may be amended, terminated, or approved. A plan of mutualization and reorganization adopted by the board of directors of the applicant may be:

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

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

The bill provides that an approved plan of mutualization and reorganization is effective at the effective time specified in the plan of reorganization, or such other time subsequently requested by the applicant and agreed to by the commissioner.

The bill provides that a mutual holding company system is considered an insurance holding company system and subject to the current law governing insurance holding company systems, with certain exceptions. In addition, the bill provides that the commissioner possesses supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and exam its operations pursuant to P.L. 1970, c.22 (C.17:27A-1 et seq.).

The bill allows a mutual holding company or a non-insurance subsidiary to make any lawful investments including directly or indirectly acquiring or otherwise holding the stock or other ownership interests of any nonprofit or for-profit entities. Insurance company subsidiaries and the reorganized insurer may make investments, including investments in non-insurance entities subject to investment and asset limitations pursuant to applicable laws and rules relating to insurance companies.

The bill requires the mutual holding company and its non-insurance and insurance company subsidiaries to continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services.

The bill provides that the application submitted pursuant to the bill be a public record, except for certain confidential documents which shall not be public records. The commissioner is to provide the public with prompt and reasonable access to public records relating to the proposed reorganization of the health service corporation.

Neither the adoption nor the implementation of a plan of mutualization and reorganization pursuant to the bill is deemed to give rise to any obligation by or on behalf of any entity in the mutual holding company system or any predecessor entity to make any distribution or payment to any member or policyholder, or to any other person, fund, or entity of any nature whatsoever, in connection with the ownership, control, benefits, policies, purpose, or nature of any entity in the mutual holding company system, any predecessor entity or otherwise.

Under the bill, membership in a mutual holding company is to be determined in accordance with the mutual holding company's articles of incorporation and bylaws and may be based upon:

- (1) the amount of health insurance policies in force with the reorganized insurer;
- (2) the amount of the health insurance premiums paid to the reorganized insurer; or
- (3) other reasonable factors.

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

A mutual holding company formed pursuant to the bill may not convert to a for-profit stock holding company. The provisions of current law providing for conversion of a health service corporation to a domestic stock insurer do not apply to a mutual holding company formed pursuant to the bill.

The bill provides that members of a mutual holding company shall be entitled to vote for the election of directors of the mutual holding company in accordance with the mutual holding company's bylaws. Directors of the mutual holding company shall be elected from nominees selected by the nominating and governance committee of the board of directors of the mutual holding company, or a comparably

authorized committee, except for public directors serving in accordance with the provisions of the bill.

The bill prohibits a member of a mutual holding company from transferring membership or any right arising therefrom.

Upon any voluntary dissolution of a mutual holding company in accordance with current law, the mutual holding company shall adopt a plan of dissolution. The plan shall provide for distribution of any assets of the mutual holding company remaining after the discharge of all liabilities and obligations.

The bill requires a mutual holding company to file with the commissioner an annual statement pursuant to applicable laws of this State.

Following approval of a transition pursuant to the bill, and the establishment of a mutual holding company, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay an initial assessment to the State Treasury in the amount of \$600,000,000 by June 1, 2022 if the effective time precedes June 1, 2022. If the effective time is later than June 1, 2022, the initial assessment shall be due by June 1 of the calendar year following the effective time. The initial assessment shall be a one-time, nonrecurring State business tax on the mutual holding company and its affiliates.

Following the initial assessment, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay a limited duration business tax by June 1 of each calendar year beginning with the calendar year following the initial assessment, and for a period of seventeen years. The total assessment, including both the initial and annual assessments, shall not exceed \$1,250,000,000. The annual assessments represent a limited duration state business tax on the mutual holding company and its affiliates business payable by the mutual holding company or any affiliates benefiting from the establishment of a mutual holding company, and shall be based on the following schedule with earned premiums defined consistent with 45 CFR 158.130:

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

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

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

The bill provides that the mutual holding company shall not pay any portion of the annual assessment for a given calendar year if the

mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent based on the standards for risk based capital for health organizations as adopted by the National Association of Insurance Commissioners following the payment as applied against the prior calendar year's risk based capital, or if in the opinion of any nationally recognized statistical rating organization, the group credit rating of the mutual holding company would not be considered investment grade. The commissioner is to determine that the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent before payments are to be deferred pursuant to the bill. Neither the insurance company subsidiaries nor the reorganized insurer are to make dividends or distributions to the mutual holding company or any subsidiaries thereof until such time as the annual assessment deferred pursuant to the bill is satisfied.

If the mutual holding company does not pay the annual assessment for a given calendar year, the annual assessment that was not paid shall be deferred to the subsequent calendar year, which shall be the deferral date for the deferred annual assessment, with all subsequent annual assessments also deferred by another calendar year so that no two annual assessments are due in the same calendar year. If an annual assessment is deferred, that annual assessment shall not be required by law to be paid until the deferral date.

Notwithstanding the provisions of the bill to the contrary, the assessment years shall not be extended beyond, and the payment obligation shall cease to exist after, the date that is 25 years from the effective time.

The bill provides that the board of the mutual holding company shall be constituted of 22 directors as follows:

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

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

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

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

Upon the effective time of the conversion to a mutual holding company system, the term of office of the public directors of the reorganized insurer shall not immediately expire but rather be temporarily continued with each such director continuing in holdover status until such time as the appointing authority reappoints or renames such director or appoints or names another director. The initial board of directors of the mutual holding company shall be:

(1) the elected directors of the reorganized insurer supplemented by additional elected directors nominated and elected by the mutual

holding company's board after the effective time for a total number of elected directors specified in the bill;

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

(3) 2 public directors named by the Senate President; and

(4) 2 public directors named by the Speaker of the General Assembly.

The bill provides that each elected director shall have a term of three years with up to two successive three-year terms following the initial term for up to a total of three successive terms, and as provided for in the bylaws, with such other term and term limits specifically applying to the individual directors. The chief executive officer or president of the mutual holding company shall be an elected director at all times and shall not be subject to any term limit or election. Each director shall meet the statutory and regulatory qualifications for the mutual holding company system's businesses and be free from conflicts of interest that would prohibit the person from materially executing the person's duties as a director. Each public director shall have a term of three years with up to two successive three-year terms following the initial term, for a total of up to three successive terms. Upon the effective time, the terms of office of the public directors of the reorganized insurer shall continue until their respective successors are appointed and qualified. No period during which a public director holds over shall be deemed to be an extension of the public director's term of office for the purpose of determining the date on which a successor's term expires.

The bill provides that there shall be a transitional period of 18 months following the effective time before elected directors of the mutual holding company are subject to election by its members. The first election shall occur at the first annual meeting following the transitional period, and in accordance with the mutual holding company's bylaws.

The bill provides that, to the extent practicable, the mutual holding company is to make best efforts to reflect the racial, ethnic, and gender diversity of the communities that it serves throughout the organization, including the board of directors and executive leadership, to achieve its mission.

Upon the formation of a mutual holding company, the total number of full-time employees that were employed within a mutual holding company system shall be maintained for a transition period of 36 months following that formation based on the full-time employee count of the health service corporation as of September 30, 2019, with certain exceptions.

The employment requirements of the bill do not supersede the terms of any collective bargaining agreement or require a mutual holding company system to replace headcount lost due to various causes.

As amended and reported, this bill is identical to Assembly Bill No. 5119, as amended and reported by the Assembly Financial Institutions and Insurance Committee on December 14, 2020.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that the provisions of current law that exempt health service corporations from taxes other than taxes on real estate and equipment and taxes on premiums continue to apply to a mutual holding company if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program or the New Jersey Small Employer Health Benefits Program;

(2) clarify that the provisions of the Insurance Holding Company System Act (C.17:27A-1 et seq.) apply to the reorganized insurer;

(3) add the merger or consolidation of two or more companies to the means by which the subsidiaries of a mutual holding company system may be formed;

(4) require the mutual holding company to ensure that any ownership interest in a subsidiary be held by the mutual holding company and any profits generated by that interest be returned to the mutual holding company;

(5) provide that, upon submission of an application to the commissioner, a health service corporation must provide a copy of the application to the Attorney General;

(6) provide that the commissioner is to hold three public hearings on the plan to form a mutual holding company within 90 days after the commissioner determines that the filing is complete, with notice provided by publication in a manner satisfactory to the commissioner;

(7) provide that the commissioner is to approve of a plan of mutualization and organization unless the commissioner finds the plan, among certain other requirements, does not benefit the interests of the policyholders of the health service corporation or treats them inequitably;

(8) permit the commissioner to engage the services of a consultant to conduct a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation and the general public;

(9) provide that if a written study or other expert report is prepared, it shall be made available to the health service corporation applying for reorganization, within a reasonable period of time prior to the initial public hearing;

(10) provide that commissioner shall possess supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and exam its operations pursuant to P.L. 1970, c.22 (C.17:27A-1 et seq.);

(11) require the mutual holding company and its non-insurance and insurance company subsidiaries to continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services;

(12) provide that the application submitted pursuant to the bill be a public record, except for certain confidential documents;

(13) provide that the commissioner is to determine that the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent before the deferment of the annual assessment for a given calendar year;

(14) extend the date beyond which the assessment years may not be extended to 25 years from the effective time from 20 years from the effective time;

(15) provide that, to the extent practicable, the mutual holding company is to make best efforts to reflect the racial, ethnic, and gender diversity of the communities that it serves throughout the organization, including the board of directors and executive leadership, to achieve its mission;

(16) make certain changes for federal tax filing purposes;

(17) extend certain employment protection provisions for a period of 36 months following the formation of the mutual holding company from 24 months following the formation of the mutual holding company; and

(18) make certain changes concerning the appointment of public directors.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3218

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3218 (1R).

This bill provides for the reorganization of a health service corporation. The bill provides that a mutual holding company organized pursuant to the bill may not be established as a company organized for pecuniary profit and retains the designation as a charitable and benevolent institution pursuant to current law. A mutual holding company established pursuant to the bill retains the health service corporation's mission while supplementing that mission to promote innovation and delivery of diversified services.

The bill provides that mission of the mutual holding company is to:

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

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

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

Other than as otherwise provided, the bill provides that all property, assets, rights, liabilities, interest and relations of whatever kind of the health service corporation, and its subsidiaries, will be that of the mutual holding company system. The mutual holding company is no longer considered a health service corporation. Notwithstanding anything to the contrary, the provisions of current law that exempt health service corporations from taxes other than taxes on real estate and equipment and taxes on premiums continue to apply to a mutual holding company if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program. If the mutual holding company does not continue to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program, then the mutual holding company shall no longer be exempt from those taxes.

Under the bill, certain health insurance duties and obligations pursuant to current law continue and remain in the succeeding reorganized insurer.

The mutual holding company is excluded from certain insurance operations and reporting, investment limits, and risk-bearing provisions of the health service corporation law, because the mutual holding company is not a risk-bearer.

The bill provides that the reorganized insurer shall engage in risk-bearing activities, reporting, investments, financial transactions, including the issuance of dividends or distributions, and insurance trade practices consistent with laws governing stock insurance companies organized under Title 17B of the New Jersey Statutes to transact health insurance. The bill also provides that certain provisions of the health service corporation law do not apply to the reorganized insurer or any insurance company or risk-bearing entity within the mutual holding company system.

The bill provides that the insurance premium rate tax cap law provided pursuant to current law shall apply to the companies within the mutual holding company system that have an insurance premium tax liability, and the exclusion from the tax cap applicable to a health service corporation shall not apply to the mutual holding company or any entity within the mutual holding company system, including the reorganized insurer, that has an insurance premium tax liability.

The bill provides that a mutual holding company system may pursue businesses, assets, or operations through one or more of its insurance subsidiaries and non-insurance subsidiaries without a limit on aggregate revenues from nonconforming affiliates or those pursuits being considered a material change in form. The subsidiaries of the mutual holding company, including the reorganized insurer, may make dividends or distributions to the mutual holding company, any subsidiaries thereof, or both, and not be considered a material change in form. Dividends and distributions from domestic insurers, including the reorganized insurer, within the mutual holding company system are subject only to certain applicable provisions of current law.

The bill provides that a health service corporation may reorganize to create a mutual holding company system pursuant to a plan of reorganization at the same time it applies to transition to a mutual insurer. Thereafter, the succeeding mutual holding company system shall be operated in a manner consistent with the provisions of the bill.

The bill requires the mutual holding company system to consist of a mutual holding company and one or more controlled nonprofit or for-profit subsidiaries, including the reorganized insurer, and to be operated for the benefit of its members.

The bill provides that the mutual holding company and each of its non-insurance subsidiaries, other than the reorganized insurer and any insurance company subsidiaries, shall not be:

(1) an insurer and therefore shall not be subject to any of the provisions of current law applicable to stock or mutual insurers, or to any laws concerning the writing of insurance, including rules and regulations adopted thereunder, including with respect to governance,

stock or other voting or equity interest, the writing of insurance, any investment limitations directly applicable to risk-bearing entities engaged in the writing of insurance, or any capital or surplus requirements;

- (2) authorized to transact the business of insurance; or
- (3) qualified as an insurer.

The bill provides that the writing of insurance is permitted only through the reorganized insurer and other insurance company subsidiaries or investments of the mutual holding company. Nothing in the bill alters the oversight of the commissioner with respect to the mutual holding company and its non-insurance subsidiaries provided for under applicable laws and rules of this State relating to insurance holding company systems.

The bill requires a mutual holding company to be a nonprofit entity incorporated under, and to conduct its business pursuant to, the provisions of Title 15A of the New Jersey Statutes, except that in situations in which the provisions of that title are inconsistent with the provisions of the bill, the provisions of the bill shall govern.

The bill provides that, at the effective time, members shall receive membership interests of the mutual holding company, and thereafter 100 percent of the membership interests of the mutual holding company shall continue to be held by members, in each case, in the manner set forth in the articles of incorporation and bylaws of the mutual holding company.

The bill requires the shares of the capital stock of the reorganized insurer to be:

- (1) issued to the mutual holding company or one or more intermediate holding companies that are wholly-owned by the mutual holding company; and
- (2) at all times owned by the mutual holding company or one or more intermediate holding companies that are wholly-owned by the mutual holding company.

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

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

The bill provides that the mutual holding company is to ensure that any ownership interest in a subsidiary is held by the mutual holding company and any profits generated by that interest are returned to the mutual holding company.

The bill provides that a health service corporation may submit an application to the commissioner to form a mutual holding company

system. Upon submission of an application to the commissioner, a health service corporation shall immediately thereafter provide a copy of the application to the Attorney General. Prior to submission of the application, the board of directors of the health service corporation shall adopt a resolution proposing to transition to a mutual insurer and form a mutual holding company system, at a meeting of the board by a two-thirds affirmative vote of the total number of directors of the health service corporation. A copy of the minutes of the meeting at which that resolution is adopted shall be filed with the commissioner. The resolution shall include a plan to transition to a mutual insurer and form a mutual holding company system, including proposed articles of incorporation and bylaws for the mutual holding company and proposed articles of incorporation, certificates of formation, restatements of, or amendments to, existing articles of incorporation or bylaws, and plans of merger or consolidation, with respect to each entity to be formed, converted or otherwise subject or party to the transition transactions pursuant to the plan of mutualization and reorganization.

The bill provides that, in addition to including information required pursuant to current law for the plan of mutualization, with respect to the formation of a mutual holding company system for purposes of this provision, the plan shall include:

(1) A description of the structure of the mutual holding company system consistent with the requirements set forth in the bill;

(2) A description of the qualifications for members' membership in, and the rights of members of, the mutual holding company consistent with the requirements set forth in the bill;

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

(4) The identity of those persons who shall serve as directors and officers of the mutual holding company, its intermediate holding companies, if any, and its subsidiaries, including the reorganized insurer, as of the effective time of the mutualization and reorganization. The plan shall specify the members of the board of directors of the health service corporation who shall serve as initial directors of the mutual holding company;

(5) Information sufficient to demonstrate that the financial condition of the reorganized insurer and the insurance company subsidiaries of the reorganized insurer will meet solvency

requirements pursuant to applicable laws and rules of this State relating to insurance companies after giving effect to the mutualization and reorganization;

(6) A certification that, following the mutualization and reorganization, policies shall remain in full force and effect under policies transferred to and assumed by insurance company subsidiaries of the mutual holding company;

(7) A certification that, following the mutualization and reorganization, the material terms and conditions of subordinated surplus notes and other contractual obligations, with certain exceptions, of the health service corporation and its subsidiaries shall, subject to the rights of the health service corporation and its subsidiaries under applicable law, and to the extent those obligations are not otherwise satisfied or terminated in accordance with their terms, remain in effect upon the transfer of those obligations to, and assumption of those obligations by, the reorganized insurer or one or more other subsidiaries of the mutual holding company; and

(8) A certification that, following the mutualization and reorganization, the mutual holding company shall comply with the employment requirements as provided in the bill.

The bill provides that, upon the affirmative vote of the board of directors complying with the requirements of the bill, the plan to form a mutual holding company system shall be filed with the commissioner for approval. Upon filing the plan to form a mutual holding company system, the obligations pursuant to current law shall be suspended during the pendency of the commissioner's review process. If the commissioner approves the plan to form a mutual holding company, certain obligations arising pursuant to current law shall be deemed satisfied by the initial assessment required by the bill.

The bill requires the commissioner to review the plan to mutualize and reorganize in accordance with the requirements of current law and the bill, including requirements for three public hearings.

The bill requires the commissioner to approve a plan of mutualization and reorganization unless the commissioner finds the plan:

(1) is contrary to law;

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

(3) does not benefit the interests of the policyholders of the health service corporation or treats them inequitably.

The bill provides that the commissioner may engage the services of experts and consultants to advise on any matters related to the application, and if a written study or other expert report is prepared, it is to be made available to the applicant within a reasonable period of time prior to the initial public hearing. Pursuant to the bill, the commissioner may also engage the services of a consultant to conduct

a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation, and the general public. The engagement shall not be subject to Chapter 32 of Title 52 of the Revised Statutes and all costs related to such engagement for the examination and deliberations of the application shall be paid by the health service corporation that makes the filing, both for services prior to the effective time and for services after the effective time. At the expiration of 30 days after the final public hearing, the commissioner shall approve or disapprove the plan of mutualization and reorganization and shall set forth the decision in writing and shall state the reasons therefor. The commissioner shall inform the health service corporation of the specific reasons for the disapproval of any plan of mutualization and reorganization and provide a cure period of no shorter than 90 days to cure any deficiencies. Any disapproval shall be subject to judicial review as a final decision of a State administrative agency.

The bill provides that a plan of mutualization and reorganization may be amended, terminated, or approved. A plan of mutualization and reorganization adopted by the board of directors of the applicant may be:

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

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

The bill provides that an approved plan of mutualization and reorganization is effective at the effective time specified in the plan of reorganization, or such other time subsequently requested by the applicant and agreed to by the commissioner.

The bill provides that a mutual holding company system is considered an insurance holding company system and subject to the current law governing insurance holding company systems, with certain exceptions. In addition, the bill provides that the commissioner possesses supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and exam its operations pursuant to P.L. 1970, c.22 (C.17:27A-1 et seq.).

The bill allows a mutual holding company or a non-insurance subsidiary to make any lawful investments including directly or indirectly acquiring or otherwise holding the stock or other ownership interests of any nonprofit or for-profit entities. Insurance company subsidiaries and the reorganized insurer may make investments, including investments in non-insurance entities subject to investment and asset limitations pursuant to applicable laws and rules relating to insurance companies.

The bill requires the mutual holding company and its non-insurance and insurance company subsidiaries to continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services.

The bill provides that the application submitted pursuant to the bill be a public record, except for certain confidential documents which shall not be public records. The commissioner is to provide the public with prompt and reasonable access to public records relating to the proposed reorganization of the health service corporation.

Neither the adoption nor the implementation of a plan of mutualization and reorganization pursuant to the bill is deemed to give rise to any obligation by or on behalf of any entity in the mutual holding company system or any predecessor entity to make any distribution or payment to any member or policyholder, or to any other person, fund, or entity of any nature whatsoever, in connection with the ownership, control, benefits, policies, purpose, or nature of any entity in the mutual holding company system, any predecessor entity or otherwise.

Under the bill, membership in a mutual holding company is to be determined in accordance with the mutual holding company's articles of incorporation and bylaws and may be based upon:

- (1) the amount of health insurance policies in force with the reorganized insurer;
- (2) the amount of the health insurance premiums paid to the reorganized insurer; or
- (3) other reasonable factors.

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

A mutual holding company formed pursuant to the bill may not convert to a for-profit stock holding company. The provisions of current law providing for conversion of a health service corporation to a domestic stock insurer do not apply to a mutual holding company formed pursuant to the bill.

The bill provides that members of a mutual holding company shall be entitled to vote for the election of directors of the mutual holding company in accordance with the mutual holding company's bylaws. Directors of the mutual holding company shall be elected from nominees selected by the nominating and governance committee of the board of directors of the mutual holding company, or a comparably

authorized committee, except for public directors serving in accordance with the provisions of the bill.

The bill prohibits a member of a mutual holding company from transferring membership or any right arising therefrom.

Upon any voluntary dissolution of a mutual holding company in accordance with current law, the mutual holding company shall adopt a plan of dissolution. The plan shall provide for distribution of any assets of the mutual holding company remaining after the discharge of all liabilities and obligations.

The bill requires a mutual holding company to file with the commissioner an annual statement pursuant to applicable laws of this State.

Following approval of a transition pursuant to the bill, and the establishment of a mutual holding company, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay an initial assessment to the State Treasury in the amount of \$600,000,000 by June 1, 2022 if the effective time precedes June 1, 2022. If the effective time is later than June 1, 2022, the initial assessment shall be due by June 1 of the calendar year following the effective time. The initial assessment shall be a one-time, nonrecurring State business tax on the mutual holding company and its affiliates.

Following the initial assessment, the mutual holding company, or any affiliates benefiting from the establishment of a mutual holding company, shall pay a limited duration business tax by June 1 of each calendar year beginning with the calendar year following the initial assessment, and for a period of seventeen years. The total assessment, including both the initial and annual assessments, shall not exceed \$1,250,000,000. The annual assessments represent a limited duration state business tax on the mutual holding company and its affiliates business payable by the mutual holding company or any affiliates benefiting from the establishment of a mutual holding company, and shall be based on the following schedule with earned premiums defined consistent with 45 CFR 158.130:

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

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

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

The bill provides that the mutual holding company shall not pay any portion of the annual assessment for a given calendar year if the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent based on the standards for risk based capital for health organizations as adopted by the National Association of Insurance Commissioners following the payment as applied against the prior calendar year's risk based capital, or if in the opinion of any nationally recognized statistical rating organization, the group credit rating of the mutual holding company would not be considered investment grade. The commissioner is to determine that the mutual holding company's system-wide health risk-based capital authorized control level would fall below 550 percent before payments are to be deferred pursuant to the bill. Neither the insurance company subsidiaries nor the reorganized insurer are to make dividends or distributions to the mutual holding company or any subsidiaries thereof until such time as the annual assessment deferred pursuant to the bill is satisfied.

If the mutual holding company does not pay the annual assessment for a given calendar year, the annual assessment that was not paid shall be deferred to the subsequent calendar year, which shall be the deferral date for the deferred annual assessment, with all subsequent annual assessments also deferred by another calendar year so that no two annual assessments are due in the same calendar year. If an annual assessment is deferred, that annual assessment shall not be required by law to be paid until the deferral date.

Notwithstanding the provisions of the bill to the contrary, the assessment years shall not be extended beyond, and the payment obligation shall cease to exist after, the date that is 25 years from the effective time.

The bill provides that the board of the mutual holding company shall be constituted of 22 directors as follows:

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

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

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

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

Upon the effective time of the conversion to a mutual holding company system, the term of office of the public directors of the reorganized insurer shall not immediately expire but rather be temporarily continued with each such director continuing in holdover status until such time as the appointing authority reappoints or renames such director or appoints or names another director. The initial board of directors of the mutual holding company shall be:

(1) the elected directors of the reorganized insurer supplemented by additional elected directors nominated and elected by the mutual holding company's board after the effective time for a total number of elected directors specified in the bill;

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

(3) 2 public directors named by the Senate President; and

(4) 2 public directors named by the Speaker of the General Assembly.

The bill provides that each elected director shall have a term of three years with up to two successive three-year terms following the initial term for up to a total of three successive terms, and as provided for in the bylaws, with such other term and term limits specifically applying to the individual directors. The chief executive officer or president of the mutual holding company shall be an elected director at all times and shall not be subject to any term limit or election. Each director shall meet the statutory and regulatory qualifications for the mutual holding company system's businesses and be free from conflicts of interest that would prohibit the person from materially executing the person's duties as a director. Each public director shall have a term of three years with up to two successive three-year terms following the initial term, for a total of up to three successive terms. Upon the effective time, the terms of office of the public directors of the reorganized insurer shall continue until their respective successors are appointed and qualified. No period during which a public director holds over shall be deemed to be an extension of the public director's term of office for the purpose of determining the date on which a successor's term expires.

The bill provides that there shall be a transitional period of 18 months following the effective time before elected directors of the mutual holding company are subject to election by its members. The first election shall occur at the first annual meeting following the transitional period, and in accordance with the mutual holding company's bylaws.

The bill provides that, to the extent practicable, the mutual holding company is to make best efforts to reflect the racial, ethnic, and gender diversity of the communities that it serves throughout the organization, including the board of directors and executive leadership, to achieve its mission.

Upon the formation of a mutual holding company, the total number of full-time employees that were employed within a mutual holding company system shall be maintained for a transition period of 36 months following that formation based on the full-time employee count of the health service corporation as of September 30, 2019, with certain exceptions.

The employment requirements of the bill do not supersede the terms of any collective bargaining agreement or require a mutual holding company system to replace headcount lost due to various causes.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3218 STATE OF NEW JERSEY 219th LEGISLATURE

DATED: DECEMBER 23, 2020

SUMMARY

Synopsis: Provides for reorganization of health service corporation.

Types of Impact: Recurring State revenue decrease.
One-time State expenditure increase.

Agencies Affected: Department of the Treasury.
Department of Banking and Insurance.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023 to FY 2039</u>
State Revenue Impact	(\$54,900,000) – (\$62,500,000)	\$506,200,000 - \$565,600,000	(\$712,700,000) - (\$927,900,000)
State Expenditure Increase	Indeterminate	\$0	\$0

- The Office of Legislative Services (OLS) projects that the bill will lower annual State revenue collections by varying amounts in each fiscal year with the exception of net revenue gains in FY 2022 and FY 2023.
- The OLS estimates that the bill will decrease State insurance premium tax collections by between \$54.9 million and \$62.5 million in FY 2021, assuming that the reorganization will already affect insurance premium tax payments that are due in March and June of 2021.
- Because of a one-time \$600.0 million assessment on the successful conversion applicant, the OLS estimates that the bill will increase State net tax revenues by a range of \$506.2 million to \$565.6 million in FY 2022.
- The OLS forecasts that for fiscal years 2023 to 2039, the fiscal years in which the State will likely receive additional assessment revenue and incur insurance premium losses attributable to the bill, the potential combined net revenue loss to the State may range between \$712.7 million and \$927.9 million. Starting in FY 2040, the bill's sole fiscal impact will be an annual loss in insurance premium tax revenue.

- Indeterminate one-time State expenditures will accrue as the Department of Banking and Insurance will examine and rule on any reorganization application. The added responsibility may include the engagement of outside experts and consultants, the cost of whose services would be recouped from the applicant.

BILL DESCRIPTION

This bill permits the reorganization of a health service corporation (Horizon Blue Cross Blue Shield of New Jersey) into a mutual holding company, subject to Department of Banking and Insurance approval. The department may contract with experts and consultants in examining an application with the costs of the outside services charged to the applicant.

If the reorganization is approved and takes effect before June 1, 2022, the company must pay a one-time \$600 million assessment to the State by June 1, 2022. If the reorganization takes effect after that date, the payment will be due by June 1 of the calendar year following the reorganization.

For 17 years beginning with the calendar year following the initial assessment, the mutual holding company must also pay to the State an annual limited duration business tax by June 1 of each year. Total limited duration business tax payments over the 17-year period cannot exceed \$650 million with the payment in each year determined according to the following schedule:

(1) In the first assessment year, 20 percent of the reorganized insurer's earned premiums in the preceding calendar year, with the assessment not to exceed \$100 million.

(2) In each of the next ten assessment years, 5 percent of the reorganized insurer's earned premiums in the preceding calendar year, with each year's assessment not to exceed \$25 million.

(3) In each of the last six assessment years, 10 percent of the reorganized insurer's earned premiums in the preceding calendar year, with each year's assessment not to exceed \$50 million.

If the mutual holding company does not pay the required assessment for a given calendar year, that payment, along with the remaining payment schedule, will be deferred one year. Any payment obligation required under the assessment schedule that remains deferred and outstanding 25 years from the date the reorganization takes effect will be cancelled.

Lastly, the reorganized entity will continue to be subject to the State's insurance premium tax but will newly qualify for a cap on the total tax liability that applies to other insurers under current law. Currently, a health service corporation pays insurance premium tax on 100 percent of premiums earned in New Jersey at the following rates: 2.1 percent for premiums paid on individual, or "non-group" business and 1.05 percent on group accident and health insurance premiums. Under the bill, the calculation of the base tax liability will not change, but if the company's New Jersey premiums exceed 12.5 percent of its total worldwide premiums, it will pay not more than 12.5 percent of worldwide premiums earned.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will lower annual State revenue collections by varying amounts in each fiscal year with the exception of revenue gains in FY 2022 and FY 2023. In addition, indeterminate one-time State expenditures will accrue as the Department of Banking and Insurance will examine and rule on any reorganization application. The added responsibility may include the engagement of outside experts and consultants, the cost of whose services would ultimately be recouped from the applicant.

For purposes of this revenue impact analysis, the OLS builds two scenarios. For the first scenario, the OLS assumes two-percent growth in annual taxable premiums based on the actual average rate of growth in the years for which the OLS has access to data. The OLS bases the second scenario on current Federal Reserve Board projections for the price index for core personal consumption expenditures (Core PCE) excluding food and energy.

The table below displays the difference in annual State tax collections under current law and the bill using both scenarios. As an overarching caveat to these projections, the OLS notes that there is a larger degree of uncertainty concerning the more distant years.

State Revenue Collections under Current Law and Bill (in \$ Millions)							
Scenario 2: Core PCE Growth as Inflator of Insurance Premiums				Scenario 1: Two-Percent Growth as Inflator of Insurance Premiums Based on Historical Data			
Fiscal Year	Current Law	Bill	Net Impact: Bill - Current Law	Fiscal Year	Current Law	Bill	Net Impact: Bill - Current Law
2021	\$62.7 - \$69.3	\$7.8 - \$8.2	(\$54.9) – (\$60.6)	2021	\$64.6 - \$71.5	\$8.1 - \$8.9	(\$56.6) – (\$62.5)
2022	\$63.8 - \$70.5	\$608.0 - \$608.8	\$506.2 - \$559.5	2022	\$66.6 - \$73.6	\$608.3 - \$609.2	\$511.7 - \$565.6
2023 – 2039	\$1,520.2 - \$1,680.2	\$840.0 - \$860.0	(\$712.7) – (\$787.7)	2023 - 2039	\$1,665.1 - \$1,840.4	\$858.1 - \$880.1	(\$839.5) – (\$927.9)

First, as shown in the table, under both scenarios combined, the OLS estimates that the bill will decrease State insurance premiums tax collections by at least \$54.9 million and at most \$62.5 million in FY 2021, assuming that the reorganization will already affect insurance premium tax payments that are due and payable in March and June of 2021.

Second, the bill imposes a one-time \$600.0 million assessment on Horizon Blue Cross Blue Shield of New Jersey payable to the Department of the Treasury on June 1, 2022, provided that the reorganization takes effect before June 1, 2022. Therefore, the OLS estimates that the bill will likely result in a net increase in State revenues by a range of \$506.2 million and \$565.6 million in FY 2022 after subtracting the projected revenue loss from reduced insurance premium tax liabilities.

Third, the OLS further forecasts that for fiscal years 2023 to 2039, the potential combined net revenue loss to the State may be between \$712.7 million and \$927.9 million. The OLS opts for FY 2039 as the endpoint of its range because FY 2039 will likely be the last year in which the mutual holding company will pay an assessment to the State. Starting in FY 2040, the bill’s sole fiscal impact will be an annual loss in insurance premium tax revenue.

The table below shows a forecast of the impact of the bill on State revenue collections per fiscal year from FY 2021 through FY 2042 using the midpoint estimates of scenario 1 above.

Estimated State Revenue Impact per Fiscal Year, FY 2021 through FY 2042					
Fiscal Year	Current Law: Insurance Premium Tax Revenue	Bill: Insurance Premium Tax Revenue	Bill: Assessment Revenue	Bill: Total Revenue	Net State Revenue Impact: Bill Revenue Minus Current Law Revenue
2021	\$68,049,010	\$8,506,126	\$0	\$8,506,126	-\$59,542,883
2022	\$70,111,058	\$8,763,882	\$600,000,000	\$608,763,882	\$538,652,824
2023	\$72,353,749	\$9,044,219	\$100,000,000	\$109,044,219	\$36,690,470
2024	\$74,791,187	\$9,348,898	\$25,000,000	\$34,348,898	-\$40,442,289
2025	\$77,438,589	\$9,679,824	\$25,000,000	\$34,679,824	-\$42,758,766
2026	\$80,312,371	\$10,039,046	\$25,000,000	\$35,039,046	-\$45,273,324
2027	\$83,430,237	\$10,428,780	\$25,000,000	\$35,428,780	-\$48,001,458
2028	\$86,811,289	\$10,851,411	\$25,000,000	\$35,851,411	-\$50,959,878
2029	\$90,476,130	\$11,309,516	\$25,000,000	\$36,309,516	-\$54,166,613
2030	\$94,446,983	\$11,805,873	\$25,000,000	\$36,805,873	-\$57,641,110
2031	\$98,747,824	\$12,343,478	\$25,000,000	\$37,343,478	-\$61,404,346
2032	\$103,404,513	\$12,925,564	\$25,000,000	\$37,925,564	-\$65,478,949
2033	\$108,444,946	\$13,555,618	\$25,000,000	\$38,555,618	-\$69,889,328
2034	\$113,899,214	\$14,237,402	\$50,000,000	\$64,237,402	-\$49,661,812
2035	\$119,799,776	\$14,974,972	\$50,000,000	\$64,974,972	-\$54,824,804
2036	\$126,181,644	\$15,772,706	\$50,000,000	\$65,772,706	-\$60,408,939
2037	\$133,082,589	\$16,635,324	\$50,000,000	\$66,635,324	-\$66,447,265
2038	\$140,543,349	\$17,567,919	\$50,000,000	\$67,567,919	-\$72,975,431
2039	\$148,607,872	\$18,575,984	\$50,000,000	\$68,575,984	-\$80,031,888
2040	\$160,299,349	\$20,037,419	\$0	\$20,037,419	-\$140,261,931
2041	\$172,910,634	\$21,613,829	\$0	\$21,613,829	-\$151,296,805
2042	\$186,514,091	\$23,314,261	\$0	\$23,314,261	-\$163,199,830
Total	\$2,410,656,406	\$301,332,051	\$1,250,000,000	\$1,551,332,051	-\$859,324,356

Additionally, the OLS notes that the bill provides that if the mutual holding company continues to participate in the New Jersey Individual Health Coverage Program and the New Jersey Small Employer Health Benefits Program, it will continue to be exempt from all State, county, district, municipal, and school taxes other than taxes on real estate and equipment and taxes on premiums. In the event that the company stops participating in either program, there will be an indeterminate increase in annual State and local units' tax collections. Horizon Blue Cross Blue Shield of New Jersey reported in its 2016 "Understanding Reserves" publication that the company saved \$9.1 million in sales and use taxes and the Newark payroll taxes in 2016 because of the exemption.

Section: Commerce, Labor and Industry

*Analyst: Juan C. Rodriguez
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Takes Action on Legislation

12/23/2020

TRENTON – Today, Governor Murphy signed the following bills into law:

S-3046 wGR/A-4875 (Ruiz, Pou/Pintor Marin, Wimberly, Sumter) – Extends certain document submission deadlines for Urban Transit Hub Tax Credit program and Economic Redevelopment and Growth Grant Program

S-3225/A-5081 (Sweeney, Oroho/Freiman, Reynolds-Jackson, Taliaferro) – Appropriates \$11.5 million from constitutionally dedicated CBT revenues to State Agriculture Development Committee for municipal planning incentive grants for farmland preservation purposes

S-3226/A-5077 (Addiego, Bateman/Armato, Jasey, Houghtaling) – Appropriates \$29,886,172 to State Agriculture Development Committee for farmland preservation purposes

S-3228/A-5079 (Gopal/Taliaferro, Murphy, Houghtaling) – Appropriates \$12 million from constitutionally dedicated CBT revenues to State Agriculture Development Committee for county planning incentive grants for farmland preservation purposes

ACS for A-4907/SCS for S-3089 (Wimberly, Reynolds-Jackson, Tucker, Giblin/Cryan, Turner, Sweeney) – Makes supplemental appropriation of \$58,000,000 for NJ Statewide Body Worn Camera Program

A-4975/S-3187 (Chiaravalloti, Caputo/Pou, Turner) – Provides for postponement of New Jersey Quality Single Accountability Continuum review for certain school districts

A-5080/S-3227 (Zwicker, Verrelli, Downey/Bateman, Codey) – Appropriates \$3,763,625 from constitutionally dedicated CBT revenues to State Agriculture Development Committee for grants to certain nonprofit organizations for farmland preservation purposes

A-5119/S-3218 (McKeon, Downey, Clifton, Wimberly/Pou, Sarlo, Sweeney) – Provides for reorganization of health service corporation