Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

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

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

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

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

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

(1) fulfill its obligation as an insurer of last resort in this State;
(2) provide affordable and accessible health insurance to
subscribers;
(3) assist and support public and private health care initiatives
for individuals without health insurance;
(4) promote the integration of the health care system that meets
the health care needs of the residents of the State of New Jersey;
and
(5) recognize an ongoing responsibility to contribute to
fundamental improvements in the overall health status of all New
Jersey residents.

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

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

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.
granted to any corporation by a certificate of authority issued by the commissioner pursuant to any law of this State, or as preventing any person, firm, association or corporation from furnishing health services required under any workers’ compensation law, or law pertaining to health maintenance organizations, or as otherwise provided by law.

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

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

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

f. No health service corporation shall solicit subscribers or enter into any contract with any subscriber until it has received from the commissioner a certificate of authority to do so, but if a health service corporation is established by means of the merger of a medical service corporation into a hospital service corporation, which hospital service corporation possesses a valid certificate of authority issued prior to the effective date of [this act] P.L.1985, c.236 (C.17:48E-1 et seq.), the health service corporation thus established need not reapply for a new certificate of authority, but the corporation shall file in the Department of Banking and Insurance any documents relating to the merger, including, but not limited to, information concerning the operation of the health service corporation as set forth in subsection a. of this section, which the commissioner may require.

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

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

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

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

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

b. Of the initial members of the board, as provided for in
subsection a. of this section, one public member and three members
selected by the board of the health service corporation shall serve
for a term of one year; one public member and three members
selected by the board of the health service corporation shall serve
for a term of two years; and two public members and five members
selected by the board of the health service corporation shall serve
for a term of three years. Thereafter, all members of the board shall
serve for a term of three years, and shall hold office until their
successors are appointed or elected and qualified.

c. After the constitution of the initial board as provided in
subsection b. of this section, and as the initial terms expire as
provided for in that [section] subsection, the board shall be
constituted as follows:

(1) Four members shall be public members of the board
appointed by the Governor with the advice and consent of the
Senate; [and]
(2) **Eight** members shall be elected by the board of directors, as provided in the bylaws; and

(3) Three members shall be elected by subscribers of the health service corporation, pursuant to the process established in section 4 of P.L. , c. (pending before the Legislature as this bill).

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

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

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

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

(P.L.1991, c.208, s.21)

4. (New section) Within six months of the effective date of this section, a health service corporation shall submit to the commissioner a plan to create a process for three board members of the board of the health service corporation to be elected by subscribers. The plan shall allow every plan subscriber to cast a vote in an election for each of the three subscriber-elected board positions. The election shall not require the physical presence of the subscriber to vote and shall include a mail-in vote option. The plans shall include a process to phase in the three subscriber-elected board members upon the expiration of the terms of current board members. The plan shall ensure that the subscriber-elected board member positions are filled within three years of the effective date of this section. Upon the commissioner’s approval of the plan, which shall be no later than six months after the submission of the plan, the process shall become effective.

5. (New section) a. The commissioner shall establish a public process to examine a health service corporation’s annual regulatory filings for the prior calendar year, along with such other information as the commissioner may require, to determine an appropriate, efficient surplus range for a health service corporation. The process shall include input from the public including written and verbal testimony, public testimony from health insurance experts determined by the commissioner to be necessary to inform
the process, and the opportunity for the health service corporation
to respond to such public testimony. Testimony submitted,
including the health service corporation response, if provided, shall
be made available on the department’s website.
b. A health service corporation surplus in excess of the
maximum of the range established pursuant to subsection a. of this
section, shall be deemed inefficient. The commissioner shall, on an
annual basis, examine the surplus amount to determine whether the
surplus is inefficient pursuant to this section.
c. (1) If at any time the commissioner determines that a health
service corporation surplus is inefficient, the department shall
notify the health service corporation and the health service
corporation shall, within 90 days of notice from the commissioner,
file a report with the commissioner.
(2) The report shall either:
(a) justify, to the satisfaction of the commissioner and
consistent with the range established pursuant to subsection a. of
this section, that the current surplus level is appropriate and
efficient; or
(b) provide a plan to reduce the current surplus level in a
manner that results in the surplus being within the efficient surplus
range established pursuant to subsection a. of this section. The plan
shall include:
(i) proposals to benefit to policyholders; and
(ii) proposals to improve the overall health status of all New
Jersey residents by: expanding access to affordable, quality health
care for underserved individuals; responding to emerging health
care issues in New Jersey; and promoting fundamental
improvements in the health status of all New Jersey residents,
including but not limited to substance use disorder treatment and
prevention, behavioral healthcare, maternal, child and chronic
health services, cancer screening, research and treatment, and
improving veterans’ access to health care.
(3) The commissioner shall review the report and make a
determination concerning the surplus. The commissioner may:
(a) approve the surplus level if it is justified consistent with this
section;
(b) approve the health service corporation plan to reduce the
surplus to an efficient level; or
(c) direct the health service corporation to revise the plan to
reduce the surplus to an efficient level.
d. A health service corporation with a previous-year surplus in
the efficient range, as established pursuant to subsection a. of this
section, shall not include a risk or contingency factor in its filed
premium rates unless and until the surplus level is at or below the
lower bound of the surplus range.
e. In order to implement the provisions of this section, the
department may engage and retain attorneys, appraisers,
independent actuaries, independent certified public accountants or
other professionals or examiners, at the expense of the health
service corporation.

6. (New section) The Department of Banking and Insurance
shall publish on its website the annual financial statement of each
carrier required to file with the department within 30 days of the
receipt of that statement.

7. Sections 1 through 5 of this act shall take effect on February
1, 2018 and section 6 shall take effect immediately.

STATEMENT

This bill makes various revisions to the regulation of health
service corporations. The bill clarifies the charitable role of health
service corporations, revises the membership of the board of
directors of health service corporations, and establishes a process to
determine an efficient level of surplus. Specifically, the bill
provides for three members of a health service corporation board of
directors to be elected by its subscribers.

The bill also requires a public process, including input from
experts, members of the public, and the health service corporation,
to be established to determine an efficient and appropriate range of
surplus for a health service corporation. If a surplus falls above that
range and the health service corporation cannot justify the excess,
the health service corporation must provide a plan to reduce the
surplus level in a manner that results in the surplus being within the
efficient surplus range established under the bill.

The plan shall include:

(1) proposals to benefit to policyholders; and

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

The bill takes effect on February 1, 2018, except effective
immediately upon enactment, the bill requires the Department of
Banking and Insurance to publish on its website the annual financial
statement of each carrier required to file with the department within
30 days of the receipt of that statement.