

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 4**

# **STATE OF NEW JERSEY**

DATED: JUNE 26, 2017

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No. 4.

This substitute makes various revisions to the regulation of health service corporations. The substitute bill clarifies the charitable role of health service corporations, revises the membership of the board of directors of health service corporations, establishes a process to determine an efficient level of surplus, and directs the reduction of surplus that is in excess of an efficient range.

Specifically, the substitute provides that a health service corporation shall have a charitable mission 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;
- (5) acknowledge its obligation to the residents of this State to make health care coverage available to underserved markets by supporting and supplying community services in connection with the provision of health care; and
- (6) recognize an ongoing responsibility to contribute to fundamental improvements in the overall health status of all New Jersey residents.

Additionally, a health service corporation is directed to develop goals, objectives, and strategies for carrying out, in accordance with this bill, its statutory mission.

The substitute also requires a health service corporation to file on an annual basis, and in a form and manner prescribed by the Department of Banking and Insurance, information similar to the information required to be filed by a charitable organization in Internal Revenue Service Form 990 and Schedule A (990), which information the department shall post on its website. This form allows the IRS and the general public to evaluate a nonprofit's operations; it includes information on the nonprofit's mission, programs, and finances.

The substitute directs, on or before June 30, 2019, and annually thereafter, the commissioner to report to the Governor, and to the Legislature on the compliance of a health service corporation with the provisions of the bill.

The substitute also provides for three members of a health service corporation board of directors to be elected by its qualified voters. Qualified voters are health service corporation subscribers who are 18 years of age or more, if an individual, and whose subscription certificate or contract has been in force for at least one year.

Regarding a health service corporation's surplus, the substitute requires the commissioner to establish a public process to determine an appropriate, efficient surplus range. The substitute 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. Once the public process, and notification to the health service corporation of the commissioner's determination of the efficient range, is complete, the efficient surplus range shall remain in effect, provided, however, the commissioner may, at his discretion initiate a new public process, if the commissioner deems it necessary to reevaluate the efficient surplus range.

The substitute requires the commissioner to examine the surplus amount and the health service corporation's annual regulatory filings for the prior calendar year on an annual basis to determine whether the surplus is inefficient. If a surplus falls above the established efficient 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.

The plan to reduce the surplus must 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 commissioner is directed to review the plan, make the plan available on the department's website, and provide notice concerning a public comment period within 10 days of receipt of the report. The public is permitted an additional 20 day period to comment on the proposal and, based upon the comments submitted from the public, and in consultation with the Department of Health, the commissioner

must make a determination concerning the surplus. The commissioner may:

- (1) approve the surplus level if it is justified consistent with the bill's requirements;
- (2) approve the health service corporation plan to reduce the surplus to an efficient level; or
- (3) direct the health service corporation to revise the plan to reduce the surplus to an efficient level.

If, after 30 days from the date of the end of the public comment period, the health service corporation and the commissioner do not agree on a revised plan to reduce the surplus, the commissioner is directed to order the health service corporation to deposit, no later than 60 days after the date of the written notification, with the State, in a newly created "New Jersey Quality Health and Wellness Fund," the surplus amount, or portion thereof, determined to be in excess of the efficient range.

The substitute also establishes, in the Department of Health, a nonlapsing, revolving fund, to be known as the "New Jersey Quality Health and Wellness Fund." This fund shall consist of monies that may be deposited by a health service corporation if it is directed to do so by the Commissioner of Banking and Insurance after failing to otherwise agree on a method of reducing the surplus deemed in excess of the efficient range. The monies collected in the fund shall be dedicated, and may be appropriated by the Legislature after completion of the public process to be administered by the Commissioner of Health concerning allocation of the funds in the "New Jersey Quality Health and Wellness Fund" in a manner that benefits the public and is otherwise consistent with this substitute.

The public process to determine the manner in which to allocate any funds in the "New Jersey Quality Health and Wellness Fund" shall include testimony from members of the public and health care experts determined by the commissioner to be necessary to inform the process. Testimony submitted shall be made available on the department's website. Once the public process is completed, the Commissioner of Health shall make recommendations to the Legislature, based upon the testimony submitted, concerning the manner in which to appropriate the funds. The Commissioner of Banking and Insurance shall suspend, and may revoke, the certificate of authority of a health service corporation until the time that the entire surplus amount, or portion thereof, determined to be in excess of the efficient range is deposited in the fund.

The substitute also prohibits a health service corporation with a previous-year surplus in the efficient range from including 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.

Finally, the substitute also supplements the "Health Care Quality Act" to require the Department of Banking and Insurance to publish on

its website the annual financial statement of each carrier, as defined in that act, within 30 days of the receipt of that statement.

The provisions of the substitute that define the charitable mission of the health service corporation, require the filing of the Form 990, and require DOBI to post the financial statement of carriers, take effect immediately. The remaining provisions of the substitute concerning the revisions to a health service corporation's board of directors and the process of establishing an efficient surplus, and reducing excess surplus, take effect on February 1, 2018.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this substitute may generate an indeterminate amount of revenue to, offset by an indeterminate amount of expenditures from, the New Jersey Quality Health and Wellness Fund, as established under the substitute. The OLS, however, is unable to forecast the amount of such revenue as moneys are only to be deposited into the fund if the Commissioner of Banking and Insurance and a health service corporation cannot agree to a plan to reduce the amount of the health service corporation's surplus that is determined to be in excess of the efficient range. The efficient range will be determined by the Department of Banking and Insurance through a process established in the substitute and is therefore not known. Furthermore, any expenditure from the fund will be reliant on the existence of revenue in the fund, and therefore is unpredictable as well.

The OLS also concludes that enactment of the substitute may result in an indeterminate amount of expenditures from the General Fund due to expenses incurred by the Department of Banking and Insurance and the Department of Health in administering the provisions of the substitute.

The OLS notes that currently the only health service corporation operating in New Jersey is Horizon Blue Cross Blue Shield of New Jersey. According to the Department of Banking and Insurance, in CY 2016, Horizon had a \$2.4 billion surplus. The department indicated that Horizon's statutory surplus minimum in the same calendar year was \$624.3 million.