

ASSEMBLY, No. 2223

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Provides for reorganization of health service corporation into mutual holding company system.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning certain mutual holding companies and
2 supplementing Title 17 of the Revised Statutes.

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

6
7 1. The Legislature finds and declares that it is in the interest of
8 the subscribers of a health service corporation that a health service
9 corporation mutualizing under existing law also be permitted to
10 reorganize into a mutual holding company system to promote
11 investments in health services and diversified businesses for the
12 benefit of its subscribers. The Legislature further finds and declares
13 that other states have authorized nonprofit health insurance carriers
14 to reorganize into a nonprofit mutual holding company system to
15 the benefit of subscribers and the health care marketplace.

16
17 2. As used in this act:

18 “Assessment” means a limited duration assessment made upon a
19 mutual holding company pursuant to section 12 of this act.

20 “Commissioner” means the Commissioner of Banking and
21 Insurance.

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

24 “Effective time” means the date and time at which the
25 reorganization into a mutual holding company is effective, as
26 provided in subsection d. of section 4 of this act.

27 “Former health service corporation” or “subsidiary legacy stock
28 insurer” means a stock insurer authorized pursuant to Title 17B of
29 the New Jersey Statutes to transact health insurance as defined in
30 N.J.S.17B:17-4 and that, pursuant to a plan of reorganization as
31 provided in this act, is a subsidiary of the mutual holding company
32 system that holds the business of the health service corporation
33 mutualizing and reorganizing pursuant to this act that is related to
34 policies directly written and issued by the health service
35 corporation.

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

38 “Insurance company” means any entity, other than the former
39 health service corporation, that is a risk-bearing entity authorized to
40 write insurance and transact the business of insurance.

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

45 “Majority of the voting shares of the capital stock” means, with
46 respect to any entity, shares of the capital stock of that entity which
47 carry the right to cast a majority of the votes entitled to be cast by

1 all of the outstanding shares of the capital stock of that entity for
2 the election of directors.

3 “Member” means the holder of a membership interest in a
4 mutual holding company, pursuant to the articles of incorporation
5 or bylaws of that mutual holding company.

6 “Mutual holding company” means a non-insurance, nonprofit
7 entity without permanent capital stock organized under the laws of
8 this State in accordance with the provisions of this act for the
9 purpose of holding, directly or indirectly, a controlling interest in a
10 former health service corporation pursuant to a plan of
11 reorganization as provided in this act. A mutual holding company
12 is not an insurer and is not licensed to issue insurance policies,
13 contracts or health benefit plans.

14 “Mutual holding company system” means the structure resulting
15 from the simultaneous formation of a mutual holding company and
16 subsidiary legacy stock insurer in connection with the mutualization
17 of a health service corporation, with the business of the health
18 service corporation related to the policies directly written and
19 issued by the health service corporation being continued by the
20 subsidiary legacy stock insurer (former health service corporation).

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

24 “Non-insurance subsidiary” means any subsidiary of a mutual
25 holding company that is not an insurance company or the former
26 health service corporation.

27 “Reorganization” means the simultaneous mutualization of a
28 health service corporation to a domestic mutual insurer and
29 transformation from a domestic mutual insurer to a mutual holding
30 company with a subsidiary legacy stock insurer (former health
31 service corporation) in accordance with the provisions of this act.

32

33 3. a. A health service corporation organized pursuant to
34 P.L.1985, c.236 (C.17:48E-1 et seq.) may reorganize to create a
35 mutual holding company system pursuant to a plan of
36 reorganization at the same time it applies to transition to a mutual
37 insurer pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.).
38 Thereafter, the reorganized entity including any of its non-insurance
39 subsidiaries and insurance company subsidiaries shall not be
40 qualified as a health service corporation or be subject to the laws,
41 rules, or regulations pertaining to a health service corporation,
42 except for the specific purposes of section 13 of this act.

43 b. The mutual holding company system shall consist of a
44 mutual holding company and one or more controlled subsidiaries,
45 including the former health service corporation, and shall be
46 operated for the benefit of its members.

1 c. The mutual holding company and each of its non-insurance
2 subsidiaries, other than the former health service corporation and
3 any insurance company subsidiaries, shall not be:

4 (1) an insurer and therefore shall not be subject to any of the
5 provisions of N.J.S.17B:18-1 et seq. applicable to stock or mutual
6 insurers, including rules and regulations adopted thereunder,
7 including with respect to governance, stock or other voting or
8 equity interest, the writing of insurance, any investment limitations
9 directly applicable to risk-bearing entities engaged in the writing of
10 insurance such as those under N.J.S.17B:20-1 et seq., or any capital
11 or surplus requirements;

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

13 (3) qualified as an insurer.

14 The writing of insurance shall be permitted only through the
15 former health service corporation and other insurance company
16 subsidiaries or investments of the mutual holding company.
17 Nothing herein shall alter the oversight of the commissioner with
18 respect to the mutual holding company and its non-insurance
19 subsidiaries provided for under applicable laws and rules of this
20 State relating to insurance holding company systems.

21 d. A mutual holding company shall be a nonprofit entity
22 incorporated under, and shall conduct its business pursuant to, the
23 provisions of Title 15A of the New Jersey Statutes, except that in
24 situations in which the provisions of that title are inconsistent with
25 the provisions of this act, the provisions of this act shall govern.

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

32 f. All of the initial shares of the capital stock of the former
33 health service corporation shall be issued either to the mutual
34 holding company, or to one or more intermediate holding
35 companies that are wholly owned by the mutual holding company.
36 This restriction shall not preclude, subject to the approval of the
37 commissioner pursuant to section 4 of P.L.1970, c.22 (C.17:27A-4),
38 the transfer of existing, or subsequent issuance of additional, shares
39 of stock by the former health service corporation, provided the
40 mutual holding company at all times owns, directly or indirectly
41 through one or more intermediate holding companies, a majority of
42 the voting shares of the capital stock of the former health service
43 corporation.

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

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

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

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

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

5 (5) merger or consolidation of two or more companies.
6

7 4. a. A health service corporation may submit an application to
8 the commissioner to form a mutual holding company system at the
9 same time the corporation submits an application to transition to a
10 mutual insurer pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.).
11 Prior to submission of the application, the board of directors of the
12 health service corporation shall adopt a resolution to form a mutual
13 holding company system and transition to a mutual insurer, at a
14 meeting of the board by a two-thirds affirmative vote of the total
15 number of directors of the health service corporation. A copy of the
16 minutes of the meeting at which that resolution is adopted shall be
17 filed with the commissioner. The resolution shall include a plan to
18 form a mutual holding company system and transition to a mutual
19 insurer, including proposed articles of incorporation and bylaws for
20 the mutual holding company and proposed articles of incorporation,
21 certificates of formation, restatements of, or amendments to,
22 existing articles of incorporation or bylaws, and plans of merger or
23 consolidation, with respect to each entity to be formed, converted or
24 otherwise subject or party to the transition transactions under the
25 plan of mutualization and reorganization.

26 In addition to including information required pursuant to section
27 2 of P.L.1995, c.196 (C.17:48E-46) for the plan of mutualization,
28 with respect to the formation of a mutual holding company system
29 for purposes of this provision, the plan shall include:

30 (1) A description of the structure of the mutual holding
31 company system consistent with the requirements set forth in this
32 act;

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

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

46 (4) The identity of those persons who shall serve as directors
47 and officers of the mutual holding company, its intermediate
48 holding companies, if any, and its subsidiaries, including the former

1 health service corporation, as of the effective time of the
2 mutualization and reorganization. The plan shall specify the
3 members of the board of directors of the health service corporation
4 who shall serve as initial directors of the mutual holding company,
5 as provided in section 15 of this act;

6 (5) Information sufficient to demonstrate that the financial
7 condition of the former health service corporation and the insurance
8 company subsidiaries of the former health service corporation will
9 meet solvency requirements under applicable laws and rules of this
10 State relating to insurance companies after giving effect to the
11 mutualization and reorganization;

12 (6) A representation that, following the mutualization and
13 reorganization, the material terms and conditions of insurance
14 coverage of:

15 (a) policyholders of policies directly written and issued by the
16 health service corporation shall remain in full force and effect under
17 policies transferred to and assumed by the subsidiary legacy stock
18 insurer (former health service corporation); and

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

22 (7) A representation that, following the mutualization and
23 reorganization, the material terms and conditions of subordinated
24 surplus notes and other contractual obligations, other than those
25 arising under policies described in paragraph (6) of this subsection,
26 of the health service corporation and its subsidiaries shall, subject to
27 the rights of the health service corporation and its subsidiaries
28 under applicable law, and to the extent those obligations are not
29 otherwise satisfied or terminated in accordance with their terms,
30 remain in effect upon the transfer of those obligations to, and
31 assumption of those obligations by, the subsidiary legacy stock
32 insurer or one or more other subsidiaries of the mutual holding
33 company; and

34 (8) A representation that, following the mutualization and
35 reorganization, the mutual holding company shall comply with the
36 employment requirements as provided in section 16 of this act.

37 b. Upon the affirmative vote of the board of directors
38 complying with subsection a. of this section, the plan to form a
39 mutual holding company system simultaneous with the transition to
40 a mutual insurer under this act shall be filed with the commissioner
41 for approval. The commissioner shall review the plan to mutualize
42 and reorganize in accordance with the requirements of subsection a.
43 of section 3 of P.L.1995, c.196 (C.17:48E-47). The public hearing
44 conducted pursuant to subsection a. of section 3 of P.L.1995, c.196
45 (C.17:48E-47) shall also address the plan of reorganization to the
46 mutual holding company system required by this act. Consistent
47 with subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47),

1 the commissioner shall approve a plan of mutualization and
2 reorganization unless the commissioner finds the plan:

3 (1) is contrary to law;

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

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

9 At the expiration of 30 days after the public hearing, the
10 commissioner shall approve or disapprove the plan of mutualization
11 and reorganization and shall set forth the decision in writing and
12 shall state the reasons therefor. The plan of mutualization and
13 reorganization shall be deemed approved 30 days after the public
14 hearing unless it has previously been approved or disapproved by
15 the commissioner. The commissioner shall inform the health
16 service corporation of the specific reasons for the disapproval of
17 any plan of mutualization and reorganization and provide a cure
18 period of no shorter than 90 days to cure any deficiencies. Any
19 disapproval shall be subject to judicial review as a final decision of
20 a State administrative agency.

21 c. A plan of mutualization and reorganization may be amended,
22 terminated, or approved consistent with this act. A plan of
23 mutualization and reorganization adopted by the board of directors
24 of the applicant may be:

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

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

33 d. An approved plan of mutualization and reorganization shall
34 be effective at the effective time specified in the plan of
35 reorganization, or such other time subsequently requested by the
36 applicant and agreed to by the commissioner.

37

38 5. A mutual holding company system shall be considered an
39 insurance holding company system and subject to P.L.1970, c.22
40 (C.17:27A-1 et seq.) but shall not be required to seek separate
41 approval for an acquisition of controlling stock, ownership interest,
42 assets or control, or for a merger or consolidation, share exchange,
43 organization, or reorganization of insurance companies, or other
44 transactions with respect to any action taken in compliance with the
45 provisions of this act. As an insurance holding company system,
46 the commissioner shall have the power to order production of any
47 records, books, or other information and papers in the possession of
48 a mutual holding company system as are reasonably necessary to

1 ascertain the financial condition of the mutual holding company
2 system or to determine compliance with this act.

3
4 6. a. Subject to the approval of the commissioner and
5 compliance with section 2 of P.L.1970, c.22 (C.17:27A-2), a
6 domestic mutual holding company may merge or consolidate with
7 one or more mutual holding companies or mutual insurers. Any
8 surviving or new company resulting from a merger or consolidation
9 of a mutual holding company with one or more mutual holding
10 companies or mutual insurers, in each case, shall at all times own,
11 directly or indirectly through one or more intermediate holding
12 companies or subsidiaries, a majority of the voting shares of the
13 capital stock of the former health service corporation. For purposes
14 of this subsection, “mutual holding company” or “mutual insurer”
15 means a mutual holding company or mutual insurer organized under
16 the laws of any state.

17 b. A mutual holding company or a non-insurance subsidiary
18 may, alone or together, make any lawful investments including
19 directly or indirectly acquiring the stock or other ownership
20 interests of any entities.

21 c. Insurance company subsidiaries and the former health
22 service corporation may make investments, including investments
23 in non-insurance entities subject to investment and asset limitations
24 under applicable laws and rules of this State relating to insurance
25 companies.

26
27 7. Neither the adoption nor the implementation of a plan of
28 mutualization and reorganization shall be deemed to give rise to any
29 obligation by or on behalf of any entity in the mutual holding
30 company system or any predecessor entity to make any distribution
31 or payment to any member or policyholder, or to any other person,
32 fund, or entity of any nature whatsoever, in connection with the
33 ownership, control, benefits, policies, purpose, or nature of any
34 entity in the mutual holding company system, any predecessor
35 entity or otherwise.

36
37 8. a. Membership in a mutual holding company shall be
38 determined in accordance with the mutual holding company’s
39 articles of incorporation and bylaws and may be based upon:

40 (1) the amount of health insurance policies in force with the
41 subsidiary legacy stock insurer;

42 (2) the amount of the health insurance premiums paid to the
43 subsidiary legacy stock insurer; or

44 (3) other reasonable factors.

45 A mutual holding company may also consider the amount of
46 premiums paid to, or policies in force under, affiliated insurance
47 companies operating under the same brand licensee program as the
48 former health service corporation and permit entities holding

1 administrative services agreements with the mutual holding
2 company to be members of the mutual holding company. The
3 mutual holding company may provide in its bylaws the basis for the
4 number of votes those entities will have as members of the mutual
5 holding company.

6 b. Members of a mutual holding company shall be entitled to
7 vote for the election of directors of the mutual holding company in
8 accordance with the mutual holding company's bylaws. Directors
9 of the mutual holding company shall be elected from nominees
10 selected by the nominating and governance committee of the board
11 of directors of the mutual holding company, or a comparably
12 authorized committee, except for public directors serving in
13 accordance with section 15 of this act.

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

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

26 e. A member of a mutual holding company is not personally
27 liable for the acts, debts, liabilities or obligations of the mutual
28 holding company solely because of the member's membership
29 status.

30 f. No assessments shall be imposed upon the members of a
31 mutual holding company by the directors or members, or because of
32 any liability, act, debt or obligation of the mutual holding company
33 or of any company owned or controlled by the mutual holding
34 company.

35 g. A membership interest in a mutual holding company shall
36 not constitute a security under the laws of this state.

37
38 9. Upon any voluntary dissolution of a mutual holding
39 company in accordance with N.J.S.15A:12-2, 15A:12-3, 15A:12-4,
40 15A:12-5, 15A:12-6, 15A:12-7, or section 19 of P.L.1992, c.65
41 (C.17B:32-49), the mutual holding company shall adopt a plan of
42 dissolution in accordance with N.J.S.15A:12-8. The plan shall
43 provide that any assets of the mutual holding company remaining
44 after the discharge of all liabilities and obligations, if any, shall be
45 distributed in accordance with N.J.S.15A:12-8.

46
47 10. A mutual holding company shall file with the commissioner,
48 by May 1 of each year, an annual statement consisting of an income

1 statement, balance sheet, and cash flow statement prepared in
2 accordance with generally accepted accounting principles, as
3 amended from time to time, and a confidential statement disclosing
4 any intention to pledge, borrow against, alienate, hypothecate, or in
5 any way encumber the assets of the mutual holding company. A
6 mutual holding company shall also have an annual audit by an
7 independent certified public accountant in a form approved by the
8 commissioner and shall file the audit on or before June 1 of each
9 year for the year ended December 31 immediately preceding.

10
11 11. All information, documents and copies of information and
12 documents obtained by or disclosed to the commissioner, the
13 Department of Banking and Insurance, or any other person in the
14 course of preparing, filing or processing an application to
15 reorganize pursuant to this act, including the annual statement
16 required under section 10 of this act, other than information or
17 documents distributed to policyholders in connection with the plan
18 of reorganization or election of directors, shall be subject to the
19 confidentiality requirements set forth in section 9 of P.L.2014, c.81
20 (C.17:27A-6).

21
22 12. a. On June 1 of the next calendar year following the
23 calendar year of the effective time, the mutual holding company
24 shall pay an initial assessment to the State Treasury in the amount
25 of \$200,000,000.

26 b. Following the initial assessment, and subject to subsections
27 c. and d. of this section, the mutual holding company shall pay to
28 the State Treasury by June 1 of each subsequent calendar year an
29 annual assessment for a period of six years. The total assessment,
30 including both the initial and annual assessments, shall not exceed
31 \$1,000,000,000. The annual assessments shall be based on the
32 following schedule:

33 (1) For annual assessment 1, 2 percent of the mutual holding
34 company's consolidated annual revenue for the calendar year
35 preceding this assessment, with this assessment not to exceed
36 \$200,000,000.

37 (2) For annual assessment 2, 2 percent of the mutual holding
38 company's consolidated annual revenue for the calendar year
39 preceding this assessment, with this assessment not to exceed
40 \$200,000,000.

41 (3) For annual assessment 3, 1 percent of the mutual holding
42 company's consolidated annual revenue for the calendar year
43 preceding this assessment, with this assessment not to exceed
44 \$100,000,000.

45 (4) For annual assessment 4, 1 percent of the mutual holding
46 company's consolidated annual revenue for the calendar year
47 preceding this assessment, with this assessment not to exceed
48 \$100,000,000.

1 (5) For annual assessment 5, 1 percent of the mutual holding
2 company's consolidated annual revenue for the calendar year
3 preceding this assessment, with this assessment not to exceed
4 \$100,000,000.

5 (6) For annual assessment 6, 1 percent of the mutual holding
6 company's consolidated annual revenue for the calendar year
7 preceding this assessment, with this assessment not to exceed
8 \$100,000,000.

9 c. The mutual holding company shall not pay any portion of
10 the annual assessment for a given calendar year if the mutual
11 holding company's system-wide health risk-based capital
12 authorized control level would fall below 550 percent based on the
13 standards for risk based capital for health organizations as adopted
14 by the National Association of Insurance Commissioners following
15 the payment as applied against the prior calendar year's risk based
16 capital, or in the opinion of any nationally recognized statistical
17 rating organization, the group credit rating of the mutual holding
18 company would not be considered investment grade.

19 d. (1) If the mutual holding company does not pay the annual
20 assessment for a given calendar year pursuant to subsection c. of
21 this section, the annual assessment that was not paid shall be
22 deferred to the subsequent calendar year with all future annual
23 assessments under subsection b. of this section also deferred by
24 another calendar year so that no two annual assessments are due in
25 the same calendar year. In the case of a deferred assessment, the
26 percentage payment by the mutual holding company shall be for
27 either the calendar year originally assessed, or the calendar year
28 preceding the deferred payment, whichever is greater, provided that
29 no payment shall exceed the limitations for the respective scheduled
30 step.

31 (2) Notwithstanding the provisions of paragraph (1) to the
32 contrary, the assessment years under subsection b. of this section
33 shall not be extended beyond, and the payment obligation under this
34 section shall cease to exist after, the date that is 20 years from the
35 effective time.

36 e. The assessment of additional taxes, penalties and interest
37 shall be as provided by the State Uniform Tax Procedure Law,
38 R.S.54:48-1 et seq.

39
40 13. a. A mutual holding company may convert to a stock
41 holding company by complying with the provisions of sections 2
42 through 4, 6, 7, 9, 10, and 12 of P.L.2001, c.131 (C.17:48E-50,
43 17:48E-51, 17:48E-52, 17:48E-54, 17:48E-55, 17:48E-57, 17:48E-
44 58 and 17:48E-60). For purposes of this section, references therein
45 to "health service corporation" shall be deemed to be references to a
46 mutual holding company, and references therein to "domestic stock
47 insurer" shall be deemed to be references to a stock holding
48 company

1 b. Upon conversion of a mutual holding company to a stock
2 holding company, the fair market value of the mutual holding
3 company shall be transferred in accordance with section 6 of
4 P.L.2001, c.131 (C.17:48E-54).

5
6 14. a. The provisions of this act shall be severable; and if any
7 phrase, clause, sentence, or provision is deemed unenforceable, the
8 remaining provisions of this act shall be enforceable.

9 b. The provisions of this act shall be liberally construed to
10 effectuate its purposes.

11
12 15. a. The board of directors of the former health service
13 corporation shall serve as the initial directors of the mutual holding
14 company for a transitional period of 18 months following the
15 effective time, except that during the transitional period:

16 (1) the Governor, Senate President, and Speaker of the General
17 Assembly may each appoint one additional public director after the
18 effective time with all public directors serving at the pleasure of the
19 appointing authority; and

20 (2) the board of directors of the former health service
21 corporation may nominate and elect two additional directors who
22 shall serve as directors of the mutual holding company upon the
23 effective time.

24 b. Subsequent to the transitional period, the board of directors
25 of the mutual holding company shall be constituted in accordance
26 with subsection c. of this section, and elected by its members at the
27 first annual meeting following the transitional period in accordance
28 with the mutual holding company's bylaws.

29 c. The board of the mutual holding company shall consist of 22
30 directors as follows:

31 (1) 13 directors shall be elected, as provided in the bylaws;

32 (2) 5 directors shall be public directors appointed by the
33 Governor with the advice and consent of the Senate;

34 (3) 2 directors shall be public directors appointed by the Senate
35 President; and

36 (4) 2 directors shall be public directors appointed by the Speaker
37 of the General Assembly.

38 d. Each elected director shall have a term and a term limit as
39 specified in the bylaws of the mutual holding company. The chief
40 executive officer or president of the mutual holding company shall
41 be a director at all times and shall not be subject to any term limit.
42 Each director shall be free from conflicts of interest that would
43 prohibit such person from fully executing their duties as a director.
44 Each public director shall serve at the pleasure of the appointing
45 authority.

46
47 16. a. Upon the formation of a mutual holding company, the
48 total number of full-time employees that were employed within a

1 mutual holding company system shall be maintained for a transition
2 period of 48 months following that formation based on the full-time
3 employee count as of September 30, 2019, except as provided in
4 subsection b. of this section.

5 b. This section shall not:

6 (1) supersede the terms of any collective bargaining agreement;
7 or

8 (2) require a mutual holding system to replace positions vacated
9 by voluntary attrition or terminations for cause, including for
10 performance, or replace positions lost due to a decline in
11 enrollment, market share, or loss of a major account.

12
13 17. This act shall take effect immediately.
14
15

16 STATEMENT

17
18 This bill allows a health service corporation to reorganize to
19 create a mutual holding company system pursuant to a plan of
20 reorganization at the same time it transitions to become a mutual
21 insurer.

22 Specifically, the bill allows a health service corporation
23 organized pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.) to
24 reorganize to create a mutual holding company system pursuant to a
25 plan of reorganization at the same time it applies to transition to a
26 mutual insurer pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.).
27 Thereafter, the reorganized entity including any of its non-insurance
28 subsidiaries and insurance company subsidiaries will not be
29 qualified as a health service corporation and will not be subject to
30 the laws, rules, or regulations pertaining to a health service
31 corporation except for certain purposes specified in the bill.

32 The bill requires the mutual holding company system to consist
33 of a mutual holding company and one or more controlled
34 subsidiaries, including the former health service corporation, and to
35 be operated for the benefit of its members.

36 The bill provides a mutual holding company and each of its non-
37 insurance subsidiaries, other than the former health service
38 corporation and any insurance company subsidiaries, may not be an
39 insurer, authorized to transact the business of insurance, or qualified
40 as an insurer.

41 The bill provides that the writing of insurance is permitted only
42 through the former health service corporation and other insurance
43 company subsidiaries or investments of the mutual holding
44 company. The bill does not alter the oversight of the commissioner
45 with respect to the mutual holding company and its non-insurance
46 subsidiaries provided for under applicable laws and rules of this
47 State relating to insurance holding company systems.

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

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

13 Under the bill, all of the initial shares of the capital stock of the
14 former health service corporation must be issued either to the
15 mutual holding company, or to one or more intermediate holding
16 companies that are wholly owned by the mutual holding company.
17 This restriction does not preclude, subject to the approval of the
18 commissioner, the transfer of existing, or subsequent issuance of
19 additional, shares of stock by the former health service corporation,
20 provided the mutual holding company at all times owns, directly or
21 indirectly through one or more intermediate holding companies, a
22 majority of the voting shares of the capital stock of the former
23 health service corporation.

24 The bill provides that a health service corporation may submit an
25 application to form a mutual holding company system at the same
26 time the corporation submits an application to transition to a mutual
27 insurer. Prior to submission of the application, the board of
28 directors of a health service corporation are required to adopt a
29 resolution to form a mutual holding company system and transition
30 to a mutual insurer, at a meeting of the board by a two-thirds
31 affirmative vote of the total number of directors of the health
32 service corporation. A copy of the minutes of the meeting at which
33 that resolution is adopted must be filed with the commissioner.

34 In addition to including information required pursuant to current
35 law for the plan of mutualization, with respect to the formation of a
36 mutual holding company system for purposes of this provision, the
37 bill requires the plan to include:

38 (1) Descriptions, consistent with the requirements set forth in
39 the bill, of the structure of the mutual holding company system, the
40 qualifications for members' membership in, and the rights of
41 members of, the mutual holding company, and the transactions, and
42 parties to those transactions, that will affect the mutualization and
43 reorganization;

44 (2) The identity of those persons who shall serve as directors
45 and officers of the mutual holding company, its intermediate
46 holding companies, if any, and its subsidiaries, including the former
47 health service corporation;

1 (3) Information sufficient to demonstrate that the financial
2 condition of the former health service corporation and the insurance
3 company subsidiaries of the former health service corporation will
4 meet solvency requirements under applicable laws and rules of this
5 State;

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

9 (a) policyholders of policies directly written and issued by the
10 health service corporation shall remain in full force and effect under
11 policies transferred to and assumed by the subsidiary legacy stock
12 insurer (former health service corporation); and

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

16 (5) A representation that, following the mutualization and
17 reorganization, the material terms and conditions of subordinated
18 surplus notes and other contractual obligations of the health service
19 corporation and its subsidiaries shall remain in effect upon the
20 transfer of those obligations to the subsidiary legacy stock insurer
21 and one or more other subsidiaries of the mutual holding company.

22 Under the bill, upon an affirmative vote of the board of directors,
23 the plan to form a mutual holding company system and to transition
24 to a mutual insurer shall be filed with the commissioner for
25 approval. The commissioner is required to review the plan to
26 mutualize and reorganize in accordance with the requirements of
27 current law, which requires the commissioner to conduct a public
28 hearing on the transition plan. Consistent with current law, the
29 commissioner must approve a plan of mutualization and
30 reorganization unless the commissioner finds the plan is contrary to
31 law, would be detrimental to the safety or soundness of the
32 proposed subsidiary legacy stock insurer and insurance company
33 subsidiaries of the proposed mutual holding company, or prejudices
34 the interests of the policyholders of the health service corporation
35 or treats them inequitably.

36 Under the bill, at the expiration of 30 days after the public
37 hearing, the commissioner is required to approve or disapprove the
38 plan of mutualization and reorganization. The commissioner is
39 required to inform the health service corporation of the specific
40 reasons for the disapproval of any plan of mutualization and
41 reorganization and provide a cure period of no shorter than 90 days
42 to cure any deficiencies. Any disapproval is subject to judicial
43 review as the final decision of a State administrative agency.

44 A plan of mutualization and reorganization may be amended,
45 terminated, or approved consistent with the bill. A plan of
46 mutualization and reorganization adopted by the board of directors
47 of the applicant may be amended by the board of directors of the

1 applicant in response to the comments or recommendations of the
2 commissioner or terminated at any time.

3 An approved plan of mutualization and reorganization is
4 effective at the effective time specified in the plan of
5 reorganization, or such other time subsequently requested by the
6 applicant and agreed to by the commissioner.

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

10 (1) the amount of health insurance in force with the subsidiary
11 legacy stock insurer;

12 (2) the amount of the health insurance premiums paid to the
13 subsidiary legacy stock insurer; or

14 (3) other reasonable factors.

15 A mutual holding company may also consider the amount of
16 premiums paid to, or policies in force under, affiliated insurance
17 companies operating under the same brand licensee program as the
18 former health service corporation and permit entities holding
19 administrative services agreements with the mutual holding
20 company to be members of the mutual holding company. The
21 mutual holding company may provide in its bylaws the basis for the
22 number of votes those entities will have as members of the mutual
23 holding company.

24 The bill provides that members of a mutual holding company are
25 entitled to vote for the election of directors of the mutual holding
26 company in accordance with the mutual holding company's bylaws.
27 Directors of the mutual holding company shall be elected from
28 nominees selected by the nominating and governance committee of
29 the board of directors of the mutual holding company, or a
30 comparably authorized committee.

31 Upon any voluntary dissolution of a mutual holding company in
32 accordance with current law, the bill requires the mutual holding
33 company to adopt a plan of dissolution in accordance with
34 N.J.S.15A:12-8.

35 The bill requires a mutual holding company to file with the
36 commissioner, by May 1 of each year, an annual statement
37 consisting of an income statement, balance sheet, and cash flow
38 statement prepared in accordance with generally accepted
39 accounting principles, as amended from time to time, and a
40 confidential statement disclosing any intention to pledge, borrow
41 against, alienate, hypothecate, or in any way encumber the assets of
42 the mutual holding company. A mutual holding company must also
43 have an annual audit by an independent certified public accountant
44 in a form approved by the commissioner and file the audit on or
45 before June 1 of each year for the year ended December 31
46 immediately preceding.

47 All information, documents and copies of information and
48 documents obtained by or disclosed to the commissioner, the

1 Department of Banking and Insurance, or any other person in the
2 course of preparing, filing or processing an application to
3 reorganize pursuant to the bill, are subject to the confidentiality
4 requirements provided pursuant to current law.

5 On June 1 of the next calendar year following the calendar year
6 of the effective time of the transition and reorganization, the mutual
7 holding company is required to pay an initial assessment to the
8 State Treasury in the amount of \$200,000,000.

9 Following the initial assessment, the mutual holding company is
10 required to pay to the State Treasury by June 1 of each subsequent
11 calendar year an annual assessment for a period of six years. The
12 total assessment, including both the initial and annual assessments,
13 may not exceed \$1,000,000,000. The annual assessments are
14 required to adhere to the following schedule:

15 (1) For annual assessment 1, 2 percent of the mutual holding
16 company's consolidated annual revenue for the calendar year
17 preceding this assessment, with this assessment not to exceed
18 \$200,000,000.

19 (2) For annual assessment 2, 2 percent of the mutual holding
20 company's consolidated annual revenue for the calendar year
21 preceding this assessment, with this assessment not to exceed
22 \$200,000,000.

23 (3) For annual assessment 3, 1 percent of the mutual holding
24 company's consolidated annual revenue for the calendar year
25 preceding this assessment, with this assessment not to exceed
26 \$100,000,000.

27 (4) For annual assessment 4, 1 percent of the mutual holding
28 company's consolidated annual revenue for the calendar year
29 preceding this assessment, with this assessment not to exceed
30 \$100,000,000.

31 (5) For annual assessment 5, 1 percent of the mutual holding
32 company's consolidated annual revenue for the calendar year
33 preceding this assessment, with this assessment not to exceed
34 \$100,000,000.

35 (6) For annual assessment 6, 1 percent of the mutual holding
36 company's consolidated annual revenue for the calendar year
37 preceding this assessment, with this assessment not to exceed
38 \$100,000,000.

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

1 credit rating of the mutual holding company would not be
2 considered investment grade.

3 If the mutual holding company does not pay the annual
4 assessment for a given calendar year, the annual assessment that
5 was not paid is to be deferred to the subsequent calendar year with
6 all future annual assessments also deferred by another calendar year
7 so that no two annual assessments are due in the same calendar
8 year. In the case of a deferred assessment, the percentage payment
9 by the mutual holding company shall be for either the calendar year
10 originally assessed, or the calendar year preceding the deferred
11 payment, whichever is greater, provided that the no payment shall
12 exceed the limitations for the respective scheduled payment step.

13 Notwithstanding the foregoing, the assessment years are not to
14 be extended beyond, and the payment obligation ceases to exist
15 after, the date that is 20 years from the effective time.

16 The bill provides that a mutual holding company may convert to
17 a stock holding company by complying with certain provisions of
18 current law. For purposes of the bill, references in current law to
19 “health service corporation” are deemed to be references to a
20 mutual holding company, references in current law to “domestic
21 stock insurer” are deemed to be references to a stock holding
22 company.

23 The bill provides that, upon conversion of a mutual holding
24 company to a stock holding company, the fair market value of the
25 mutual holding company shall be transferred to a foundation in
26 accordance with section 6 of P.L.2001, c.131 (C.17:48E-54).

27 The bill provides that the board of directors of the former health
28 service corporation shall serve as the initial directors of the mutual
29 holding company for a transitional period of 18 months following
30 the effective time. The Governor, the Senate President, and the
31 Speaker of the General Assembly may each appoint an additional
32 public director, in addition to the directors appointed to the board of
33 directors of the former health service corporation pursuant to
34 section 7 of P.L.1985, c.236 (C.17:48E-7).

35 Subsequent to the transitional period, the board of directors of
36 the mutual holding company is required to be constituted in
37 accordance with the bill, and elected by its members at the first
38 annual meeting following the transitional period in accordance with
39 the mutual holding company’s bylaws.

40 The bill requires the board of the mutual holding company to
41 consist of 22 directors as follows:

- 42 (1) 13 directors shall be elected, as provided in the bylaws;
- 43 (2) 5 directors shall be public directors appointed by the
44 Governor with the advice and consent of the Senate;
- 45 (3) 2 directors shall be public directors appointed by the Senate
46 President; and
- 47 (4) 2 directors shall be public directors appointed by the Speaker
48 of the General Assembly.

1 The bill provides that each elected director shall have a term and
2 a term limit as specified in the bylaws of the mutual holding
3 company. The chief executive officer or president of the mutual
4 holding company shall be a director at all times and shall not be
5 subject to any term limit. Each director shall be free from conflicts
6 of interest that would prohibit such person from fully executing
7 their duties as a director. Each public director shall serve at the
8 pleasure of the appointing officer.

9 The bill requires a mutual holding company to maintain the total
10 number of full-time employees of the former health service
11 corporation for a transition period of 48 months following the
12 effective time of the mutualization and reorganization.