ACT permitting the reorganization of a health service corporation and establishing attributes of a mutual holding company and reorganized insurer, and supplementing P.L. 1985, c. 286 (C:17:48E-1 et seq.).

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

New Section: C. 17:48E-46.1 Declarations.

1. The Legislature finds and declares that:

a. It is in the interest of the subscribers of a health service corporation and the State of New Jersey that a health service corporation be afforded the ability to modernize its corporate structure, subject to appropriate standards, oversight, and approval, in order to meet the evolving health care needs of its subscribers, while continuing its statutory mission, and maintaining its status as a charitable and benevolent institution as declared in N.J.S.A. 17:48E-41.

b. Ensuring that the health service corporation statutes provide the opportunity for a health service corporation to reorganize itself efficiently and effectively in the form and manner authorized by this act will facilitate increased utilization of 21st century technologies and tools to better address current challenges, improving both the State's healthcare infrastructure and its readiness to address future crises such as those resulting from the ongoing COVID-19 pandemic. Such a reorganization, if undertaken, approved, and completed consistent with the provisions of this act, also will promote vital investments and growth in health services and diversified businesses for the benefit of its members and the State.

c. Current law governing health service corporations (e.g., P.L.2001, c.131, sections 17 and 18, N.J.S.17:48E-65 and -66) expressly permits a health service corporation to engage in certain actions that effectuate a corporate reorganization, subject to certain conditions, including potential conversion to a for-profit domestic stock insurer or other actions constituting a material change in its form, subject to the approval of the Commissioner of Banking and Insurance in the Commissioner's capacity as regulator of the business of insurance and the Attorney General in furtherance of the Attorney General's statutory and common law responsibilities as protector, supervisor, and enforcer of charitable trusts and charitable corporations; the current statutes do not, however, prescribe a clear path for a health service corporation that wishes to update and improve its corporate structure for the benefit of its members and the State while, at the same time, maintaining its non-profit status, continuing to adhere to the statutory mission to provide affordable and accessible health insurance and promote the integration of the health care system to meet the needs of its members, and fulfilling the health care obligations of a health service corporation as they exist prior to any such reorganization.

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

e. Because a reorganization authorized under this act does not constitute a conversion or material change in form as defined under P.L.2001, c.131, the currently existing statutory mission of a health service corporation to provide affordable and accessible health insurance and promote the integration of the health care system to meet the needs of its members shall continue unabated regardless of whether the health service corporation reorganizes in the manner authorized by this act or not. Similarly, the health service corporation conversion law, set forth at P.L.2001, c.131, shall remain fully applicable to the reorganized entity, which shall be and remain a charitable and benevolent institution unless and until it undergoes an approved conversion or material change in form and satisfies all requirements fully consistent with current law.

f. It is also in the interest of the subscribers of a health service corporation and the State of New Jersey that the important statutory mission of a health service corporation continue to be upheld following any reorganization pursuant to this act; provided, however, that it is appropriate to expand and modernize that mission to encourage further innovation as well as improvement and diversification of services.

New Section: C. 17:48E-46.2 Definitions.

2. As used in this act:

"Assessment" means an initial and a limited duration assessment made upon the mutual holding company system pursuant to section 13 of this act.

"Commissioner" means the Commissioner of Banking and Insurance.

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

"Effective time" means the date and time at which the reorganization into a mutual holding company is effective, as provided in subsection d. of section 5 of this act.

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

"Insurance company" means any entity, other than the reorganized insurer, that engages in the business of insurance.

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

"Majority of the voting shares of the capital stock" means, with respect to any entity, shares of the capital stock of that entity which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of that entity for the election of directors.

"Member" means the holder of a membership interest in a mutual holding company, pursuant to the articles of incorporation or bylaws of that mutual holding company.

"Mutual holding company" means a non-insurance, nonprofit entity without permanent capital stock organized under the laws of this State in accordance with the provisions of this act for the purpose of holding, directly or indirectly, one hundred percent interest in a reorganized insurer pursuant to a plan of reorganization as provided in this act. A mutual holding company is an insurance holding company system under P.L. 1970, c. 22 (C. 17:27A-1 et seq.), and shall not be qualified as an insurer licensed to issue insurance policies, insurance contracts or health benefit plans.

"Mutual holding company system" means the structure resulting from the simultaneous formation of a mutual holding company with a reorganized insurer in connection with the mutualization and reorganization of a health service corporation.

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

"Non-insurance subsidiary" means any subsidiary of a mutual holding company system that is not an insurance company or the reorganized insurer.

"Reorganization" means the simultaneous mutualization of a health service corporation to a domestic mutual insurer and transformation from a domestic mutual insurer to a mutual holding company with a reorganized insurer in accordance with the provisions of this act. A reorganization under this act in which the mutual holding company remains a charitable and benevolent institution shall not constitute a material change in form as defined in section 1 of P.L.2001, c.131 (C.17:48E-49).

"Reorganized insurer" means a stock insurer authorized pursuant to Title 17B of the New Jersey Statutes to transact health insurance as defined in N.J.S.17B:17-4 and that, pursuant to a plan of reorganization as provided in this act, is a subsidiary of the mutual holding company system that holds the business of the health service corporation mutualizing and reorganizing pursuant to this act that is related to policies directly written and issued by the health service corporation. All risk-bearing or health insurance obligations of the health service corporation shall be undertaken by the reorganized insurer pursuant to subsection c. and e. of section 3 of this act.

New Section: C. 17:48E-46.3. Mission; Succeeding the rights and obligations of a health service corporation.

3.a. A mutual holding company organized under this act shall not be established as a company organized for pecuniary profit and shall retain the designation as a charitable and benevolent institution under Section 41 of P.L. 1985, c. 236 (C.17:48E-41). A mutual holding company established pursuant to the provisions of this act shall retain the health service corporation's mission while supplementing that mission to promote innovation and delivery of diversified services. The mission of a mutual holding company shall be 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.

b. Other than as provided under this act, 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 shall not be considered a health service corporation. Notwithstanding anything to the contrary, the provisions of section 41 of P.L. 1985, c.236 (C.17:48E-41) shall continue to apply to a mutual holding company.

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

d. In addition to the mutual holding company's qualification under section 2 of this act, and for avoidance of doubt, the mutual holding company shall be expressly excluded from insurance operations and reporting, investment limits, and risk-bearing provisions of P.L. 1985, c. 236 (C.17:48E-1 et seq.), including the following provisions because a mutual holding company is not a risk-bearer:

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

C.17:48E-6 through C.17:48E-9, and C.17:48E-11), as amended;
(ii) Section 16 and subsections a. through c. of section 17 of P.L. 1985, c. 236 (C. 17:48E-16 and C.17:48E-17), section 5 of P.L.1988, c.71 (C.17:48E-17.1), and section 8 of P.L.1993, c.235 (C.17:48E-17.2), as amended;
(iii) Section 4 of P.L.2017, c. 100 (C. 17:48E-17.3), as may be amended;
(iv) Sections 36 and 37 of P.L. 1985, c. 236 (C.17:48E-36 and C.17:48E-37), as amended; and
(v) Sections 31 through 35 of P.L.2014, c. 81 (C.17:48E-37.1 through -37.5), as amended.

e. 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 as defined in N.J.S.17B:17-4. Notwithstanding the provisions of subsection c. of section 3 of this act, the following sections of P.L. 1985, c. 236 (C.17:48E-1 et seq.) shall not apply to the reorganized insurer or any insurance company or risk-bearing entity within the mutual holding company system:
(i) Section 4 of P.L.2017, c. 100 (C. 17:48E-17.3), as may be amended;
(ii). Sections 31 through 35 of P.L. 2014, c. 81 (C. 17:48E-37.1 through C.17:48E-37.5), but subject to the solvency rules set forth under N.J.S.17B:18-70 et seq., as amended; and
(iii) Subsection e. of section 1, subsection b. of section 2, subsection a. of section 3, sections 6 through 9, and section 11 of P.L. 1985, c. 236 (C.17:48E-1, C.17:48E-2, C.17:48E-3, C.17:48E-6 through C.17:48E-9, and C.17:48E-11).

f. The insurance premium rate tax cap law provided by N.J.S. 54:18A-6a 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 pursuant to subsection b of section 6 of P.L. 1945, c. 132 (C.54:18A-6) 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.

g. 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 such pursuits being considered a material change in form as such term is defined under section 1 of P.L. 2001, c.131 (C:17:48E-49). The subsidiaries of the mutual holding company, including the reorganized insurer, shall be

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

h. The continuation of the rights, duties and obligations of a health service corporation under this section following completion of an approved reorganization pursuant to this act shall be limited to such rights, duties and obligations under P.L. 1985, c. 236 (C. 17:48E-1 et seq.) as of the effective date of this act; amendments to P.L. 1985, c. 236enacted after the effective date of this act shall not apply. Notwithstanding the above, the reorganized insurer shall be subject to the laws applicable to domestic health insurance companies contained in Title 17B of the state statutes.

New Section: C. 17:48E-46.4 Establishment of a mutual holding company.

4. a. A health service corporation organized pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.) 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 pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.). Thereafter, the succeeding mutual holding company system shall be operated in a manner consistent with sections 1 and 3 of this act.

b. The mutual holding company system shall consist of a mutual holding company and one or more controlled nonprofit or for-profit subsidiaries, including the reorganized insurer, and shall be operated for the benefit of its members. The mission of a mutual holding company shall be as specified in subsection a of section 3 of this act.

c. 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 N.J.S.17B:18-1 et seq. 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 such as those under N.J.S.17B:20-1 et seq., or any capital or surplus requirements;

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

(3) qualified as an insurer.

The writing of insurance shall be permitted only through the reorganized insurer and other insurance company subsidiaries or investments of the mutual holding company. Nothing herein shall alter 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.

d. A mutual holding company shall be a nonprofit entity incorporated under, and shall 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 this act, the provisions of this act shall govern.

e. 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.

f. The shares of the capital stock of the reorganized insurer:

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

(2) shall be 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.

g. 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.

New Section: C. 17:48E-46.5. Filing and approval to form a mutual holding company.

5. a. A health service corporation may submit an application to the commissioner to form a mutual holding company system. 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 under the plan of mutualization and reorganization.

In addition to including information required pursuant to section 2 of P.L.1995, c.196 (C.17:48E-46) 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 this act;

(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 this act;

(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, as provided in section 15 of this act;

(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 under applicable laws and rules of this State relating to insurance companies after giving effect to the mutualization and reorganization;

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

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

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

(7) A representation that, following the mutualization and reorganization, the material terms and conditions of subordinated surplus notes and other contractual obligations, other than those arising under policies described in paragraph (6) of this subsection, 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 representation that, following the mutualization and reorganization, the mutual holding company shall comply with the employment requirements as provided in section 16 of this act.

b. Upon the affirmative vote of the board of directors complying with subsection a. of this section, the plan to form a mutual holding company system under this act shall be filed with the commissioner for approval. Upon filing the plan to form a mutual holding company system, the obligations under section 4 of P.L. 2017, c.100 (C.17:48E-17.3) shall be suspended during the pendency of the commissioner's review process under this subsection; if the commissioner approves the plan to form a mutual holding company, any obligations arising under section 4 of P.L. 2017, c.100 (C.17:48E-17.3) shall be deemed satisfied by the initial assessment under subsection a of section 13 of this act. The commissioner shall review the plan to mutualize and reorganize in accordance with the requirements of subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47). The public hearing conducted pursuant to subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47) shall also address the plan of reorganization to the mutual holding company system required by this act. Consistent with subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47), the commissioner shall 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) prejudices the interests of the policyholders of the health service corporation or treats them inequitably.

The commissioner may engage the services of experts and consultants to advise on any matters related to the application. 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 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.

c. A plan of mutualization and reorganization may be amended, terminated, or approved consistent with this act. 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.

d. An approved plan of mutualization and reorganization shall be 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.

New Section: C. 17:48E-46.6. Mutual holding company as an insurance holding company system.

6. A mutual holding company system shall be considered an insurance holding company system and subject to P.L.1970, c.22 (C.17:27A-1 et seq.). Notwithstanding the foregoing, solely with regard to the transactions set forth in the application to form a mutual holding company system filed pursuant to section 5 of this act, a mutual holding company system shall not be required to seek separate approval for an acquisition of controlling stock, ownership interest, assets or control, or for a merger or consolidation, share exchange, organization, or reorganization of insurance companies within the mutual holding company system, or other transactions set forth in the application to form a mutual holding company system. Thereafter, any future transactions not approved as part of the application to form a mutual holding company system, shall be subject to the applicable requirements of P.L.1970, c.22 (C.17:27A-1 et seq.). As an insurance holding company system subject to P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner shall have the power to order production of any records, books, or other information and papers in the possession of a mutual holding company system as are reasonably necessary to ascertain the financial condition of the mutual holding company system or to determine compliance with this act.

New Section: C. 17:48E-46.7. Investments and merger.

7. a. Subject to the approval of the commissioner and compliance with section 2 of P.L.1970, c.22 (C.17:27A-2) and the approval of the Attorney General, a domestic mutual holding company may merge or consolidate with one or more mutual holding companies or mutual insurers. Any surviving or new company resulting from a merger or consolidation of a mutual holding company with one or more mutual holding companies or mutual insurers, in each case, shall at all times own, directly or indirectly through one or more intermediate holding companies or subsidiaries, all of the voting shares of the capital stock of the reorganized insurer. For purposes of this subsection, "mutual holding company" or "mutual insurer" means a mutual holding company or mutual insurer organized under the laws of any state.

b. A mutual holding company or a non-insurance subsidiary may, alone or together, 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.

c. Insurance company subsidiaries and the reorganized insurer may make investments, including investments in non-insurance entities subject to investment and asset limitations under applicable laws and rules relating to insurance companies.

New Section: C. 17:48E-46.8. No right to distribution.

8. Neither the adoption nor the implementation of a plan of mutualization and reorganization shall be 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.

New Section: C. 17:48E-46.9. Membership in a mutual holding system.

9. a. Membership in a mutual holding company shall 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.

b. 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 section 15 of this act.

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

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

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

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

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

New Section: C. 17:48E-46.10. Dissolution.

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

New Section: C. 17:48E-46.11. Annual statement as an insurance holding company system.

11. A mutual holding company shall file with the commissioner an annual statement pursuant to applicable laws of this state.

New Section: C. 17:48E-46.12. Confidentiality.

12. All information, documents and copies of information and documents obtained by or disclosed to the commissioner, the Department of Banking and Insurance, or any other person in the course of preparing, filing or processing an application to reorganize pursuant to this act, including the annual statement required under section 11 of this act, other than information or documents distributed to policyholders in connection with the plan of reorganization or election of directors, shall be subject to the confidentiality requirements set forth in section 6 of P.L.1970, c.22 (C.17:27A-6).

New Section: C. 17:48E-46.13. Initial assessment upon establishment of a mutual holding company system and limited duration state business tax.

13. a. Following regulatory approval under Section 5 of this Act and the establishment of a mutual holding company, the mutual holding company, through itself or any of its affiliates, 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, non-recurring state business tax on the reorganized insurer.

b. Following the initial assessment, and subject to subsections c. and d. of this section, the mutual holding company, through itself or any of its affiliates, 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 reorganized insurer's business payable by the mutual holding company or any of its affiliates, 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.

c. 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.

d. (1) If the mutual holding company does not pay the annual assessment for a given calendar year pursuant to subsection c. of this section, 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 under subsection b. of this section 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.

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

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

New Section: C. 17:48E-46.14. Conversion to a stock holding company.

14. a. A mutual holding company may convert to a stock holding company by complying with the applicable provisions of P.L.2001, c.131. For purposes of this section, references therein to "health service corporation" shall be deemed to be references to a mutual holding company, and references therein to "domestic stock insurer" shall be deemed to be references to a stock holding company

b. Upon conversion of a mutual holding company to a stock holding company, the entire fair market value of the mutual holding company system, including all assets held by the mutual holding company shall be transferred to a foundation in a manner and form in accordance with section 6 of P.L.2001, c.131 (C.17:48E-54).

New Section: C. 17:48E-46.15. Board of Directors of a Mutual Holding Company.

15. a. The board of the mutual holding company shall be constituted of 22 directors as follows:

(i) 13 directors shall be elected, as provided in the bylaws;
(ii) 5 directors shall be public directors appointed by the Governor with the advice and consent of the Senate, except that the initial appointments pursuant to subsection b. (ii) shall not require the advice and consent of the Senate;
(iii) 2 directors shall be public directors appointed by the Senate President; and
(iv) 2 directors shall be public directors appointed by the Speaker of the General Assembly.

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

(i) 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 subsection a. (i) of Section 15;
(ii) 5 public directors named by the Governor within 30 days after the effective time, and such appointments shall not require the advice and consent of Senate;
(iii) 2 public directors named by the Senate President within 30 days after the effective time; and
(iv) 2 public directors named by the Speaker of the General Assembly within 30 days after the effective time.

c. 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 pursuant to Section 9 of this act. 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 such person from materially executing their duties as a director. Each public director shall serve at the pleasure of the appointing authority.

d. 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 pursuant to Section 9 of this act. The first election shall occur at the first annual meeting following the transitional period, and in accordance with the mutual holding company's bylaws.

New Section: C. 17:48E-46.16. Employment.

16. a. 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 24 months following that formation based on the full-time employee count of the health service corporation as of September 30, 2019, except as provided in subsection b. of this section.

b. This section shall not:

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

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

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

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

As used in this act:

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

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

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

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

"Commissioner" means the Commissioner of Banking and Insurance.

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

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

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

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

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

“Foundation” means the foundation or foundations established under section 18 or 19 of this act.
“Foundation plan” means the plan submitted to the Attorney General pursuant to section 19 of this act.

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

“Material change in form” means any action or series of actions that effect a fundamental corporate change which involves a transfer of ownership or control of assets of the health service corporation or a change of the mission or purpose of the health service corporation, including, without limitation, the purchase, lease, exchange, conversion, restructuring, merger, division, consolidation or transfer of control, bulk reinsurance or other disposition or transfer of a substantial amount of business, line of business, assets or operations of the health service corporation, including the transfer, directly or indirectly, of a substantial amount of the health service corporation's business, line of business, assets or operations to one or more nonconforming affiliates. A material change in form by the transfer, directly or indirectly, of a substantial amount of the health service corporation's business, line of business, assets or operations to one or more nonconforming affiliates shall not be deemed to occur so long as, during the most recent four prior consecutive calendar quarters: (1) the aggregate revenues of all nonconforming affiliates do not exceed 50 percent of the aggregate revenues for the health service corporation and all affiliates; (2) the aggregate revenues of all nonconforming affiliates derived from providing individual or group health coverage to residents of New Jersey equal or exceed 50 percent of the aggregate revenues from all nonconforming affiliates; and (3) the aggregate assets of all nonconforming affiliates do not exceed 50 percent of the aggregate assets of the health service corporation and all affiliates. Notwithstanding the above, a reorganization approved by the commissioner pursuant to Section 5 of P.L.2020, c.XX (pending before the Legislature as this bill), whereby the mutual holding company is a charitable and benevolent institution as provided in N.J.S.A. 17:48E-41, shall not constitute a material change in form for purposes of this act.

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

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

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

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

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

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

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

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

Definitions.

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

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

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

c. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of P.L.1970, c. 22 (C.17:27A-1 et seq.). This presumption may be rebutted by a showing made in the manner provided by subsection j. of section 3 of P.L.1970, c. 22 (C.17:27A-3) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and an opportunity to be heard, and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

d. An “insurance holding company system” consists of two or more affiliated persons, one or more of which is an insurer. A mutual holding company system resulting from a mutualization and reorganization of a health service corporation pursuant to section 5 of P.L.2020, c.XX (pending before the Legislature as this bill), shall be an insurance holding company system under this act.

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

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

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

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

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

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

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

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

New Section: C. 17:48E-46.18. Severability.

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

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

20. This act shall take effect immediately.