

CHAPTER 131

AN ACT concerning the conversion of a health service corporation to a domestic stock insurer, providing for the establishment of a charitable foundation and amending P.L.1992, c.161 and P.L.1992, c.162.

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

C.17:48E-49 Definitions relative to conversion of health service corporation to domestic stock insurer.

1. 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.

"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).

C.17:48E-50 Procedure for conversion.

2. a. A health service corporation may convert to a domestic stock insurer by complying with the provisions of sections 2 through 14 and section 19 of this act.

b. To convert to a domestic stock insurer, the board of directors of a health service corporation shall adopt a resolution to become a domestic stock insurer 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 and with the Attorney General at least 120 days before the proposed effective time of the conversion. The resolution shall include a written plan of conversion to a domestic stock insurer. The plan shall include:

(1) The purposes of the conversion and the manner in which the proposed conversion will occur.

(2) The proposed certificate of incorporation of the converted insurer and any parent corporation.

(3) The proposed bylaws of the converted insurer and any parent corporation. The bylaws of the converted insurer shall provide for the appointment of officers, and may provide that the officers of the health service corporation shall serve to the end of the term to which they were appointed under the bylaws of the health service corporation.

(4) A description of any proposed changes in the converted insurer's mode of operations after conversion.

(5) A statement describing the manner in which the plan of conversion provides for the protection of all existing contractual rights of subscribers under the policies in effect at the effective time, including the payment of claims for reimbursement for those services.

(6) A statement that the health service corporation's subscribers shall have no right to receive any assets, surplus, capital or other distribution, or to receive any stock or other ownership interest in the converted insurer or parent corporation in connection with the conversion.

(7) A statement that the legal existence of the health service corporation does not terminate and that the converted insurer is subject to all of the liabilities, obligations and relations of whatever kind of the health service corporation and succeeds to all property, assets, rights, interests and relations of the health service corporation.

(8) An explanation of how policies to be offered by the converted insurer will comply with section 8 of this act.

(9) The manner and form in which the fair market value of the health service corporation will be transferred, without consideration, to the foundation.

C.17:48E-51 Filing of application.

3. a. The health service corporation shall file with the commissioner an application pursuant to subsection b. of this section for approval of, and permission to convert pursuant to, a plan of conversion. Concurrent with the filing of the application with the commissioner, the health service corporation shall submit a petition to the Attorney General pursuant to section 19 of this act and submit a copy of the petition to the commissioner. The health service corporation shall file a copy of the application with the Attorney General at the time the health service corporation files the application with the commissioner.

b. The application shall include the following:

- (1) The plan of conversion and exhibits thereto.
- (2) A business plan of the converted insurer and any parent corporation, including five-year financial projections and the number of shares of capital stock that the converted insurer and any parent corporation is authorized to issue, together with estimates of the capital which might be raised by the sales of the capital stock or securities convertible into capital stock.
- (3) A certification by the secretary of the health service corporation that the plan of conversion has been duly adopted by action of not less than two-thirds of the total number of directors of the board of the health service corporation. Subscribers of the health service corporation shall not have the right to vote on or approve the plan of conversion, any amendments to the health service corporation's certificate of incorporation or bylaws, or the certificate of incorporation or bylaws of the converted insurer or parent corporation, notwithstanding any provision to the contrary in the certificate of incorporation or bylaws of the health service corporation.
- (4) The proposed forms of the notice of hearing required by subsection e. of this section and any other notices required by the plan of conversion or by the commissioner.
- (5) Any information provided to the board of directors of the health service corporation in connection with its review and approval of the plan of conversion, except materials that are protected by attorney-client privilege.
- (6) A comparative premium rate analysis of all the policies of the health service corporation, comparing actual premium rates for the three-year period preceding the filing of the plan of conversion and projected premium rates for the three-year period following the proposed conversion. The rate analysis shall address the projected impact, if any, of the proposed conversion upon the cost to subscribers as well as the projected impact, if any, of the proposed conversion upon the health service corporation's underwriting profit, investment income, tax liability and loss and claim reserves, including the effect, if any, of adverse market or risk selection on reserves.
- (7) Any conditions, other than approval of the plan of conversion by the commissioner, to be fulfilled on or before the effective time.
- (8) Any proposed agreement between or among the foundation and the converted insurer or its parent corporation, if applicable, including, but not limited to, any agreement relating to the voting or registration for sale of any capital stock issued to the foundation by the converted insurer or any parent corporation.
- (9) Any other additional information that the health service corporation believes is necessary.
- (10) Any other additional information that the commissioner in his sole discretion deems appropriate.

c. If required pursuant to section 6 of this act, the plan of conversion shall include an appraisal of the fair market value, or range of values, of the aggregate equity of the converted insurer to be outstanding upon completion of the plan of conversion and, if a range of values, the methodology for fixing a final value coincident with the completion of the transactions provided for in the plan of conversion.

- (1) The appraisal shall enable determinations of value of:
 - (a) the amount of cash or other assets that the foundation will be entitled to receive, without consideration, under the provisions of the plan of conversion; and
 - (b) the price of any shares to be issued pursuant to the optional provisions of a plan of conversion permitted by subsection e. of section 6 of this act;
- (2) The appraisal required by this subsection c. shall be prepared by persons independent of the health service corporation, experienced and expert in the area of corporate appraisals and acceptable to the commissioner. The appraisal shall be in a form and content acceptable to the commissioner and contain a complete and detailed description of the elements that make up the appraisal, justification for the methodology employed and sufficient support for the conclusions reached in the appraisal. The commissioner may also require the appraisal to include an analysis of fair market value based on actuarial considerations, as well as other methods for determining fair market value.
- (3) To the extent that the appraisal is based on a capitalization of the pro forma income of

the converted insurer, the appraisal shall indicate the basis for determination of the income to be derived from any proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made regarding future earnings growth.

(4) To the extent that the appraisal is based on the comparison of the capital stock of the converted insurer with outstanding capital stock of existing stock entities offering comparable insurance products, the existing stock entities shall be reasonably comparable to the converted insurer in terms of factors such as size, market area, competitive conditions, profit history and expected future earnings.

(5) In those instances in which the commissioner determines that the appraisal is materially deficient or substantially incomplete, the commissioner may declare the entire application materially deficient or substantially incomplete and decline to further process or may reject the application.

(6) The health service corporation shall submit to the commissioner information demonstrating to the satisfaction of the commissioner the independence and expertise of any person preparing the appraisal or related materials under this subsection.

(7) The appraiser shall not serve as an underwriter or selling agent under the plan of conversion. With the prior written approval of the commissioner, an affiliate of the appraiser may act as an underwriter or selling agent if procedures are followed and representations and warranties are made to ensure that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way have an impact on the appraisal.

(8) An appraiser may not receive any other fee except the fee for services rendered in connection with the appraisal.

d. The commissioner in his sole discretion: (1) shall determine, within 60 days of submission of the application, whether the application is complete and, if not, shall specify what additional information is required; and (2) shall further determine when an application is complete. The commissioner may request additional information from the health service corporation which the commissioner determines is necessary to review the application and plan of conversion. The commissioner may also conduct an examination under section 37 of P.L.1985, c.236 (C.17:48E-37) to obtain any information the commissioner determines necessary in connection with the application or transaction or series of transactions, that the commissioner determines constitute, or may constitute, a material change in form. The failure of the health service corporation to provide the information or cooperate in the examination, in addition to other applicable penalties, constitutes grounds for denial of the application.

e. Upon determining that the application is complete and the forms of notice are adequate, the commissioner shall designate a date for a public hearing on the plan of conversion. The public hearing may be held on one or more days, the first commencing within 90 days after the date on which the commissioner determines the application is complete, unless the health service corporation requests, and the commissioner agrees to, a longer period for the purpose of preparing and distributing the notices required by this subsection. The public hearing may, if the commissioner and Attorney General so agree, be conducted jointly as part of the public hearing required under subsection e. of section 19 of this act. The hearing shall be in the nature of a legislative hearing and shall not constitute or be considered a contested case under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The health service corporation shall provide the public with at least 45 days' notice of the hearing, the notice to be in the form, and provided in the manner, that the commissioner approves. The health service corporation shall cause notice of the time and place of the public hearing to be published at least two times at intervals of not less than one week, the first publication to be not more than 45 days and the last publication not less than 15 days prior to the public hearing in at least two newspapers of general circulation in New Jersey. The notice of the hearing shall state the purpose thereof and the time and the place where the hearing will occur. The purpose of the hearing shall be to receive comments and information for the purpose of aiding the commissioner in making a decision as to whether to approve the plan of conversion. Persons wishing to make comments and submit information may submit written statements to the commissioner prior to the public hearing and may appear and be heard at the hearing.

f. The hearing shall be conducted by the commissioner or, at the commissioner's discretion, his designee, who shall report to and advise the commissioner on the matter, in which case the determination or order issued by the commissioner shall have the same force and effect as if the commissioner had conducted the hearing personally. The commissioner's order or determination on the application pursuant to section 4 of this act shall be issued within 45 days after the closing of the record of the hearing by the commissioner or his designee, as applicable. The commissioner shall issue a written decision detailing the reasons for the approval or disapproval of the plan of conversion. The commissioner may, for good cause, extend the time within which he shall issue an order or determination on the application.

g. The commissioner may engage the services of advisors and consultants, which may include, but are not limited to, lawyers, actuaries, accountants, investment bankers, compensation and employee benefit plan consultants or any combination thereof, to advise him on any matters related to the conversion. All reasonable costs related to the development and examination of, and deliberations concerning, a plan of conversion and other related matters, including, but not limited to, those reasonable costs attributable to the use by the commissioner of advisors and consultants, shall be paid by the health service corporation that makes the filing or initiates the discussions about a plan of conversion, both for services prior to the effective time and for services after the effective time.

C.17:48E-52 Approval of plan, certificate of authority.

4. a. The commissioner shall approve the plan of conversion and issue a certificate of authority to the converted insurer to transact business in this State as a domestic stock insurer only if the commissioner finds all of the following:

- (1) The plan of conversion meets the requirements of sections 2 and 3 of this act.
- (2) Upon conversion, the converted insurer will meet the applicable standards and conditions under this section, including applicable minimum capital and surplus requirements.
- (3) The plan of conversion adequately protects the existing contractual rights of subscribers.
- (4) The plan of conversion will promote the best interests of the health service corporation.
- (5) The health service corporation has complied with all requirements of sections 2 and 3 of this act.
- (6) The plan of conversion is fair and equitable.
- (7) The plan provides for the enhancement of the operations of the converted insurer.
- (8) The plan provides for the transfer at or before the effective time of the entire fair market value of the health service corporation to the foundation in accordance with section 6 of this act.
- (9) The plan is consistent with the foundation plan.
- (10) The plan does not adversely affect the distribution of the health service corporation's value to the foundation.
- (11) The plan is not contrary to law.
- (12) The plan promotes the public interest.
- (13) The Attorney General has concurred:
 - (a) with any findings of the commissioner pursuant to paragraph (8) of this subsection and section 6 of this act; and
 - (b) with the actions of the commissioner under subsection c. of section 3 of this act.

b. The commissioner's order approving or disapproving a plan of conversion under this section shall be a final agency decision subject to appeal in accordance with, and within the time periods specified by, the Rules Governing the Courts of the State of New Jersey.

C.17:48E-53 Issuance of subsequent order.

5. The order of the commissioner issued pursuant to section 4 of this act shall not take effect unless the commissioner issues a subsequent order finding that:

- a. the Superior Court has entered an order pursuant to subsection f. of section 19 of this act approving the establishment of the foundation; and
- b. the Superior Court has not imposed any terms or conditions that are materially inconsistent with the order of the commissioner issued pursuant to section 4 of this act.

C.17:48E-54 Transfer of fair market value.

6. a. At or before the effective time, the entire fair market value of the health service corporation, exclusive of any shares of the converted insurer or any parent corporation issued pursuant to subsection e. of this section, shall be transferred to the foundation, without consideration, in a manner and form acceptable to the commissioner. In determining fair market value, consideration shall be given to value as a going concern, market value, investment or earnings value, net asset value and a control premium, if any.

b. If the foundation receives, at the effective time, 100 percent of the shares of the outstanding capital stock of the converted insurer or any parent corporation freely transferable and without restriction, the foundation is presumed to have acquired the entire fair market value of the health service corporation and no appraisal shall be required under subsection c. of section 3 of this act, unless the commissioner finds that the proposed capital structure of the converted insurer does not represent the fair market value of the health service corporation.

c. (1) If the foundation receives, at the effective time, 100 percent of shares of the outstanding capital stock of the converted insurer or any parent corporation and the shares are subject to restrictions the commissioner determines are necessary and reasonable to maintain the value of the assets of the converted insurer, the foundation is presumed to have acquired the entire fair market value of the health service corporation and, subject to paragraph (2) of this subsection, no appraisal shall be required under subsection c. of section 3 of this act, unless the commissioner finds that the proposed capital structure of the converted insurer does not represent the fair market value of the health service corporation.

(2) In determining whether the restrictions are necessary and reasonable, the commissioner may require an appraisal of the diminution in value of the shares as a result of the restrictions, which appraisal shall take into consideration the increase in value of the shares on account of any registration rights granted to the foundation in connection with the shares of capital stock of the converted insurer or parent corporation.

d. If the foundation receives consideration in a form other than as described in subsections b. and c. of this section, the plan of conversion shall include an appraisal of the fair market value of the health service corporation that satisfies the requirements of subsection c. of section 3 of this act.

e. This section does not prohibit the inclusion in the plan of conversion of provisions under which the converted insurer would make a simultaneous offering of shares of its authorized but unissued capital stock for cash to either (1) the public, or (2) its directors, officers and employees as a group, or both, in each case under terms and conditions and pursuant to valuation procedures the commissioner approves and that do not materially dilute the value of the shares distributed to the foundation. In no event may in excess of five percent of the aggregate shares of capital stock to be issued by the converted insurer pursuant to the plan of conversion be offered for purchase by the directors, officers and employees, in the aggregate, of the health service corporation and the shares shall be offered only on terms generally available to the public.

C.17:48E-55 Continuation of health service corporation.

7. a. The legal existence of the health service corporation shall not terminate, and the converted insurer shall be a continuation of the health service corporation. The conversion shall only be a change in identity and form of organization. All property, assets, rights, liabilities, obligations, interests and relations of whatever kind of the health service corporation, including, but not limited to, any rights, duties and obligations pursuant to a collective bargaining agreement, shall continue and remain in the converted insurer. All actions and legal proceedings to which the health service corporation was a party prior to conversion shall be unaffected by the conversion. The subscribers of the health service corporation shall have no right to receive any assets, surplus, capital or other distribution, or to receive any stock or other ownership interest in the converted insurer or parent corporation in connection with the conversion.

b. So long as the foundation owns at least 10 percent of the shares of stock of the converted insurer or the parent corporation issued to the foundation at the effective time, the converted insurer or its parent corporation shall not issue any shares of capital stock or other securities

convertible into shares of capital stock of the converted insurer or the parent corporation without the approval of the commissioner, who may approve the sale of additional shares of stock of the converted insurer or its parent corporation if the converted insurer demonstrates to the commissioner's sole satisfaction that the sale would not materially dilute the value of the shares distributed to the foundation and that all shares and other securities sold pursuant to this subsection b. or subsection e. of section 6 of this act are priced in a manner consistent with the fair market value of the aggregate equity of the converted insurer or any parent corporation at the time of the sale. The sale of capital stock of the converted insurer or its parent corporation in a firm commitment underwritten public offering shall be presumed to satisfy the standards set forth in this subsection, as long as the capital stock is of the same class and series as the stock owned by the foundation.

C.17:48E-56 Conversion of policies.

8. a. The policies of the health service corporation shall be converted to policies of the converted insurer without any further action on the part of the converted insurer.

b. Policies of the health service corporation that were issued and remain in force prior to the effective time shall be deemed to comply with laws and regulations applicable to a domestic stock insurer.

c. Policies of the converted insurer issued on or after the effective time shall comply with all laws and regulations that apply to a domestic stock insurer; provided, however, that policies issued on and after the effective time shall, for a period not to exceed six months from the effective time, be deemed to comply with all laws and regulations applicable to a domestic stock insurer if the policies comply with the laws and regulations applicable to a health service corporation.

C.17:48E-57 Receipt of compensation contingent upon approval of plan prohibited.

9. No director, officer, agent or employee of the health service corporation shall receive any fee, commission or other valuable consideration that is contingent upon the plan of conversion becoming approved or effective or is based upon a director, officer, agent or employee aiding, promoting or assisting in the approval or effectuation of the plan of conversion. Subject to the approval of the commissioner, the health service corporation may provide in its plan of conversion for employee benefit and compensation arrangements that are to become effective simultaneously with the plan of conversion. Except for stock issued to employee benefit plans generally available to all employees, no member of the board of directors or officer of the converted insurer or parent corporation may receive any compensation involving the use of stock of the converted insurer or parent corporation until after the first anniversary of the effective time.

C.17:48E-58 Documents considered public records; exceptions.

10. All applications, reports, plans and other documents to be filed or submitted under section 3 and section 19 shall be public records, except for the following documents, which shall be confidential and not public records:

a. documents deemed confidential by statute or regulation; and

b. the business plan, the financial projections and any other information the commissioner and Attorney General jointly determine could result in harm to the health service corporation, harm to the converted insurer or parent corporation, or harm to the public interest, if disclosed.

The commissioner and Attorney General shall provide the public with prompt and reasonable access to public records relating to the proposed conversion of the health service corporation. The commissioner and Attorney General shall make the public records received pursuant to this act available for inspection at no cost to the public. These public records shall be made available to the public at least 30 days prior to any public hearing to be held pursuant to this act.

C.17:48E-59 Conversion effective; conditions.

11. The conversion shall be effective at midnight on the date provided for in the certificate of incorporation of the converted insurer or such other time as the commissioner may agree. On

or prior to the effective time of the conversion, the health service corporation shall file with the commissioner a certificate stating that:

- a. all the conditions set forth in the order of the commissioner issued pursuant to section 4 of this act have been satisfied;
- b. the commissioner has issued the order required under section 5 of this act and all the conditions set forth in that order have been satisfied;
- c. the board of directors of the health service corporation has not abandoned or amended the plan of conversion pursuant to section 12 of this act; and
- d. the foundation has been established in the manner approved by the Superior Court pursuant to section 19 of this act and at least a majority of the directors of the foundation have been appointed.

C.17:48E-60 Abandonment, amendment of plan of conversion.

12. The health service corporation may, by action of not less than two-thirds of its board of directors, abandon or amend the plan of conversion at any time before the effective time. No amendment made after the public hearing required by subsection e. of section 3 of this act shall change the plan in any manner which the commissioner determines is material unless a further public hearing is held on the plan as amended.

C.17:48E-61 Directors, officers continue to serve.

13. The directors and officers of the health service corporation, unless otherwise specified in the plan of conversion, shall serve as the directors and officers of the converted insurer until new directors and officers are duly elected pursuant to the articles of incorporation and bylaws of the converted insurer.

C.17:48E-62 Participation of Attorney General.

14. The Attorney General has the right to participate in any proceeding before the commissioner under this act and has the right to receive any documents or other information received by the commissioner in connection with the proceeding. The Attorney General is subject to all confidentiality provisions that apply to the commissioner.

C.17:48E-63 Orders, rules, regulations.

15. The commissioner may issue orders as necessary to effect the conversion and promulgate rules and regulations to implement the provisions of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.17:48E-64 Construction of act.

16. a. Nothing in this act shall be construed to limit the existing authority of the Attorney General, except that the procedures set forth in this act shall be exclusive.

b. A health service corporation shall reimburse the Attorney General and the commissioner for the costs of any advisors and consultants, which may include, but are not limited to, lawyers, actuaries, accountants and investment bankers or any combination thereof, to advise either of them in connection with any matter before any court or any administrative agency relating to any matter under this act.

C.17:48E-65 Requirements prior to action constituting material change in form.

17. A health service corporation shall satisfy the requirements of sections 18 and 19 of this act prior to engaging in any actions that constitutes or may constitute a material change in form. Any material change in form shall be subject to the prior review of the Attorney General and commissioner pursuant to the provisions of sections 18 and 19 of this act. The Attorney General shall review these material changes in form in furtherance of his common law responsibilities as protector, supervisor and enforcer of charitable trusts and charitable corporations.

C.17:48E-66 Notification of action constituting material change in form, procedure.

18. a. Except for a conversion pursuant to sections 2 through 14 and section 19 of this act, a

health service corporation shall notify the Attorney General and the commissioner of the health service corporation's intent to engage in any action that constitutes or may constitute a material change in form at least 120 days prior to engaging in that action, or such shorter time expressly specified by statute or regulation, within which the commissioner is required to issue an approval or disapproval of the action. Upon the Attorney General's or commissioner's determination that the action is a material change in form, notice shall be given to the health service corporation and the Attorney General or commissioner, as applicable.

b. Within 90 days after the Attorney General or commissioner issues a notice of the determination that the action is a material change in form, the health service corporation shall submit to the commissioner and the Attorney General a petition for review of the material change in form if the health service corporation desires to proceed with the proposed action. The petition shall include an alternative foundation plan that contains the provisions set forth in section 19 of this act applicable under the circumstances, together with any additional provisions the Attorney General determines are reasonably required to coordinate the alternative foundation plan with any proceeding instituted or to be instituted by the commissioner in connection with the material change in form. The petition and alternative foundation plan shall be subject to Attorney General review under section 19 of this act and court approval pursuant to subsection f. of section 19 of this act. If the health service corporation does not desire to proceed with the proposed action, the health service corporation shall notify the commissioner and Attorney General and shall withdraw all filings and submissions made with the commissioner and Attorney General and not engage in the proposed action. If the health service corporation fails to comply with this subsection, the commissioner or Attorney General may seek appropriate relief in Superior Court.

c. An action that has been determined to constitute a material change in form shall not be consummated unless the Superior Court has issued its approval in accordance with subsection f. of section 19 of this act and the commissioner has issued an order or orders approving the material change in form and any related transactions, which, if applicable, may include a determination of the fair market value arising in connection with the material change in form with the concurrence of the Attorney General.

d. The commissioner may hold proceedings as the commissioner determines are necessary to permit him to enter an order or orders approving the material change in form and any related transactions. If either the commissioner or Attorney General determine that a valuation of the health service corporation is necessary, the appraisal shall be conducted in accordance with subsection c. of section 3 of this act.

e. Depending on the nature of the material change in form, the commissioner and Attorney General may permit or require the health service corporation, after complying with this section and consummating the material change in form, to continue to operate as a health service corporation, partially convert to for-profit form, or completely convert to for-profit form.

f. This section shall not apply to a conversion subject to sections 2 through 14 and section 19 of this act.

C.17:48E-67 Petition for review of foundation plan.

19. a. (1) A health service corporation shall submit to the Attorney General a petition for review of a foundation plan at the same time that it submits a plan of conversion to the commissioner. The petition shall include the foundation plan and any other information that the Attorney General requests.

(2) Within 60 days of the health service corporation's submission of the petition to the Attorney General, the Attorney General shall advise the health service corporation in writing whether the petition is complete, and, if not, shall specify what additional information is required.

(3) The Attorney General shall, upon receipt of the information requested, notify the health service corporation in writing of the date of completion of the petition.

b. The Attorney General shall review the petition and may either support the proposed foundation plan, with or without any specific modifications, or, if he finds that it is not in the public interest, oppose the foundation plan in the Superior Court proceeding commenced

pursuant to subsection f. of this section.

c. When reviewing the petition, in addition to considering whether the foundation plan meets the requirements of subsection d. of this section, the Attorney General shall consider whether:

(1) the health service corporation exercised due diligence in deciding to effectuate the conversion, selecting any other party to the conversion or related transactions, and negotiating the terms and conditions of the conversion;

(2) the procedures used by the health service corporation in approving the conversion, including whether expert assistance was used, were appropriate;

(3) a conflict of interest was disclosed, including, but not limited to, conflicts of interest related to board members of, employees of, and experts retained by, the health service corporation or any other parties to the conversion;

(4) any management contract under the conversion or any related transaction is for reasonable fair value;

(5) any proceeds of the conversion will be used solely for purposes of expanding access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of New Jerseyans;

(6) the health service corporation established appropriate criteria in deciding to pursue a conversion and considered the proposed conversion as the only alternative or as the best alternative in relation to carrying out its mission and purposes; and

(7) officers, directors, board members or senior management of the health service corporation will receive contracts in any existing, new or affiliated health service corporation, foundation, the converted insurer, any parent corporation or any affiliate of any of the foregoing.

d. The foundation plan shall meet the following requirements:

(1) The foundation plan shall provide for the establishment of one or more foundations that will receive the fair market value of the health service corporation following its conversion to a domestic stock insurer and that meets the following requirements:

(a) The foundation shall be a trust or nonprofit corporation formed under the laws of this State, but shall not include the health service corporation or any person controlled by the health service corporation.

(b) The foundation shall be a charitable entity that qualifies for federal income tax exemption under paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code of 1986, 26 U.S.C. s. 501.

(c) The foundation shall have the sole purposes of expanding access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of all New Jerseyans.

(d) The foundation, its directors, officers and trustees and the assets of the foundation, including any stock of the converted insurer or a parent corporation, shall be independent of any influence or control by the converted insurer, its parent corporation, any of their subsidiaries or affiliates, any of their respective directors, officers, trustees or employees, except with the prior approval of the Attorney General and the commissioner.

(e) The foundation shall not have more than one of its directors serve as a director of the converted insurer or its parent corporation.

(f) The foundation shall not have as a director, officer or senior management any person who has been a director, officer, agent, trustee or employee of the health service corporation, the converted insurer, its parent corporation or any affiliate of any of them during the three-year period preceding the date of appointment as a director, officer or senior manager of the foundation.

(g) The foundation shall have a board of directors that when appointed will comply with section 20 of this act.

(2) The foundation shall provide the Attorney General with an annual report which shall include an audited financial statement and a detailed description of its grant-making and other charitable activities related to its use of the charitable assets received pursuant to the conversion. The annual report shall be made available to the public at both the Attorney General's office and the office of the foundation. Nothing contained in this act shall affect the obligations of an entity possessing endowment funds under the "Uniform Management of Institutional Funds Act,"

P.L.1975, c.26 (C.15:18-15 et seq.).

(3) The governing body of the foundation shall establish or demonstrate that it has in place, as the case may be, a mechanism to avoid conflicts of interest, including those associated with grant-making activities that may benefit the converted insurer, its affiliates, any person who owns or controls any ownership interest in either the converted insurer or any of its affiliates, and any director or officer of the converted insurer or its affiliates.

e. The Attorney General shall, during the course of the review of the foundation plan pursuant to this section, hold at least one public hearing in which any person may file written comments and exhibits or appear and make a statement. The public hearing may, if the Attorney General and the commissioner so agree, be conducted jointly as part of the public hearing on the conversion required pursuant to subsection e. of section 3 of this act. The Attorney General may subpoena additional information or witnesses, including, but not limited to, information about any transaction that is collateral to the proposed conversion and any related documents, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the hearing and at any time prior to completing the review of the proposed conversion. The hearing shall be in the nature of a legislative hearing and shall not constitute or be considered a contested case under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The public hearing shall be held no later than 90 days after the date that the petition is declared complete by the Attorney General. Public notice of the hearing shall be provided by the health service corporation not more than 45 days and not less than 15 days prior to the public hearing in at least two newspapers of general circulation in New Jersey.

f. Upon completion by the Attorney General of the review of the petition, the health service corporation shall apply to the Superior Court for approval of the establishment of the foundation. In that action, which shall proceed in a summary manner, the Attorney General shall advise the court as to whether he supports or opposes the foundation plan, with or without any specific modifications, and the basis for that position. In considering whether the foundation plan is in the public interest, the court shall consider whether the requirements of paragraph (1) of subsection d. of this section have been satisfied and may consider the criteria established in subsection c. of this section, as applicable. If the health service corporation fails to comply with this subsection, the Attorney General may seek appropriate relief in Superior Court.

C.17:48E-68 Health Service Corporation Conversion Temporary Advisory Commission.

20. a. There is established in, but not of, the Department of the Treasury a Health Service Corporation Conversion Temporary Advisory Commission. The commission shall consist of 15 members. Seven members shall be appointed by the Governor, including two public members, one physician licensed to practice medicine in New Jersey, one licensed health care provider other than a physician, one representative of the dental community, one representative of a community based organization that provides or assists in providing health care or health care services to New Jersey residents and one representative of the AFL-CIO. Three members shall be appointed by the President of the Senate, including one public member, one representative of the hospital community and one physician licensed to practice medicine in New Jersey. One public member shall be appointed by the Minority Leader of the Senate. Three members shall be appointed by the Speaker of the General Assembly, including one public member, one representative of the hospital community and one representative of a community based organization that provides or assists in providing health care or health care services to New Jersey residents. One public member shall be appointed by the Minority Leader of the General Assembly. The members shall be appointed for a term of three years. A vacancy in the membership of the commission shall be filled for an unexpired term in the same manner provided for the original appointment. Members shall serve without fee or compensation. The foundation shall commence its activities upon appointment of at least a majority of its initial board of directors.

The commission shall, in anticipation of a conversion as authorized under this act, examine issues related to access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of New Jerseyans, and may review

experiences in other states related to the establishment of foundations in other states resulting from the conversion of health care service corporations. The commission shall advise the Attorney General and Commissioner of Banking and Insurance as to its findings on these issues. The Department of the Treasury shall provide the commission with such assistance as the commission may require in order to perform its duties under this act. The commission may engage the services of advisors and consultants in order to assist in the performance of its duties under this act.

b. Members of the advisory commission appointed pursuant to subsection a. of this section shall serve as the initial board of directors of a foundation established pursuant to this act until such time as the terms of their appointments expire. The advisory commission established pursuant to subsection a. of this section shall expire upon establishment of a foundation in accordance with this act. A vacancy in the membership of the board shall be filled for an unexpired term in the same manner provided for the original appointment. In the event more than one foundation is established pursuant to this act, the board of directors of any such additional foundations shall be appointed in compliance with the requirements of subsection a. of this section.

21. Section 9 of P.L.1992, c.161 (C.17B:27A-10) is amended to read as follows:

C.17B:27A-10 New Jersey Individual Health Coverage Program; board of directors.

9. a. There is created the New Jersey Individual Health Coverage Program. All carriers subject to the provisions of this act shall be members of the program.

b. Within 30 days of the effective date of this act, the commissioner shall give notice to all members of the time and place for the initial organizational meeting, which shall take place within 60 days of the effective date. The board shall consist of nine representatives. The commissioner or his designee shall serve as an ex officio member on the board. Four members of the board shall be appointed by the Governor, with the advice and consent of the Senate: one of whom shall be a representative of an employer, appointed upon the recommendation of a business trade association, who is a person with experience in the management or administration of an employee health benefit plan; one of whom shall be a representative of organized labor, appointed upon the recommendation of the A.F.L.-C.I.O., who is a person with experience in the management or administration of an employee health benefit plan; and two of whom shall be consumers of a health benefits plan who are reflective of the population in the State. Four board members who represent carriers shall be elected by the members, subject to the approval of the commissioner, as follows: to the extent there is one licensed in this State that is willing to have a representative serve on the board, a representative from each of the following entities shall be elected:

(1) a health service corporation or a domestic stock insurer which converted from a health service corporation pursuant to the provisions of P.L.2001, c.131 (C.17:48E-49 et al.) and is primarily engaged in the business of issuing health benefit plans in this State;

(2) a health maintenance organization;

(3) an insurer authorized to write health insurance in this State subject to Subtitle 3 of Title 17B of the New Jersey Statutes; and

(4) a foreign health insurance company authorized to do business in this State.

In approving the selection of the carrier representatives of the board, the commissioner shall assure that all members of the program are fairly represented.

Initially, two of the Governor's appointees and two of the carrier representatives shall serve for a term of three years; one of the Governor's appointees and one of the carrier representatives shall serve for a term of two years; and one of the Governor's appointees and one of the carrier representatives shall serve for a term of one year. Thereafter, all board members shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointments.

c. If the initial carrier representatives to the board are not elected at the organizational meeting, the commissioner shall appoint those members to the initial board within 15 days of the organizational meeting.

d. Within 90 days after the appointment of the initial board, the board shall submit to the

commissioner a plan of operation and thereafter, any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the program. The commissioner may disapprove the plan of operation, if the commissioner determines that it is not suitable to assure the fair, reasonable, and equitable administration of the program, and that it does not provide for the sharing of program losses on an equitable and proportionate basis in accordance with the provisions of section 11 of this act. The plan of operation or amendments thereto shall become effective unless disapproved in writing by the commissioner within 45 days of receipt by the commissioner.

e. If the board fails to submit a suitable plan of operation within 90 days after its appointment, the commissioner shall adopt a temporary plan of operation pursuant to section 9 of P.L.1993, c.164 (C.17B:27A-16.2). The commissioner shall amend or rescind a temporary plan adopted under this subsection, at the time a plan of operation is submitted by the board.

f. The plan of operation shall establish procedures for:

(1) the handling and accounting of assets and moneys of the program, and an annual fiscal reporting to the commissioner;

(2) collecting assessments from members to provide for sharing program losses in accordance with the provisions of section 11 of this act and administrative expenses incurred or estimated to be incurred during the period for which the assessment is made;

(3) approving the coverage, benefit levels, and contract forms for individual health benefits plans in accordance with the provisions of section 3 of this act;

(4) the imposition of an interest penalty for late payment of an assessment pursuant to section 11 of this act; and

(5) any additional matters at the discretion of the board.

g. The board shall appoint an insurance producer licensed to sell health insurance pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.) to advise the board on issues related to sales of individual health benefits plans issued pursuant to this act.

22. Section 13 of P.L.1992, c.162 (C.17B:27A-29) is amended to read as follows:

C.17B:27A-29 Meetings, organization of board; terms.

13. a. Within 60 days of the effective date of this act, the commissioner shall give notice to all members of the time and place for the initial organizational meeting, which shall take place within 90 days of the effective date. The members shall elect the initial board, subject to the approval of the commissioner. The board shall consist of 10 elected public members and two ex officio members who include the Commissioner of Health and Senior Services and the commissioner or their designees. Initially, three of the public members of the board shall be elected for a three-year term, three shall be elected for a two-year term, and three shall be elected for a one-year term. Thereafter, all elected board members shall serve for a term of three years. The following categories shall be represented among the elected public members:

(1) Three carriers whose principal health insurance business is in the small employer market;

(2) One carrier whose principal health insurance business is in the large employer market;

(3) A health service corporation or a domestic stock insurer which converted from a health service corporation pursuant to the provisions of P.L.2001, c.131 (C.17:48E-49 et al.) and is primarily engaged in the business of issuing health benefit plans in this State;

(4) Two health maintenance organizations; and

(5) (Deleted by amendment, P.L.1995, c.298).

(6) (Deleted by amendment, P.L.1995, c.298).

(7) Three persons representing small employers, at least one of whom represents minority small employers.

No carrier shall have more than one representative on the board.

The board shall hold an election for the two members added pursuant to P.L.1995, c.298 within 90 days of the date of enactment of that act. Initially, one of the two new members shall serve for a term of one year and one of the two new members shall serve for a term of two years. Thereafter, the new members shall serve for a term of three years. The terms of the risk-assuming carrier and reinsuring carrier shall terminate upon the election of the two new

members added pursuant to P.L.1995, c.298, notwithstanding the provisions of this section to the contrary.

In addition to the 10 elected public members, the board shall include six public members appointed by the Governor with the advice and consent of the Senate who shall include:

Two insurance producers licensed to sell health insurance pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.);

One representative of organized labor;

One physician licensed to practice medicine and surgery in this State; and

Two persons who represent the general public and are not employees of a health benefits plan provider.

The public members shall be appointed for a term of three years, except that of the members first appointed, two shall be appointed for a term of one year, two for a term of two years and two for a term of three years.

A vacancy in the membership of the board shall be filled for an unexpired term in the manner provided for the original election or appointment, as appropriate.

b. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the public members within 15 days of the organizational meeting, in accordance with the provisions of paragraphs (1) through (7) of subsection a. of this section.

c. (Deleted by amendment, P.L.1995, c.298).

d. All meetings of the board shall be subject to the requirements of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

e. At least two copies of the minutes of every meeting of the board shall be delivered forthwith to the commissioner.

23. This act shall take effect immediately.

Approved June 29, 2001.