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 SR xxx

 TR xxx

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

A M E N D M E N T S

to

**ASSEMBLY, No. 5119**

(Sponsored by Assemblyman McKeon )

REPLACE SECTION 4 TO READ:

 4. (New section) 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 P.L. , c. (C. ) (pending before the Legislature as this bill).

 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 P.L. , c. (C. ) (pending before the Legislature as this bill).

 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 pursuant to 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 pursuant to 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 P.L. , c. (C. ) (pending before the Legislature as this bill), the provisions of P.L. , c. (C. )(pending before the Legislature as this bill) 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 shall be:

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

 (2) 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; or

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

 **1**h. The mutual holding company shall ensure that any ownership interest in a subsidiary shall be held by the mutual holding company, and that any profits generated by that interest are returned to the mutual holding company in proportion to the ownership interest.**1**

REPLACE SECTION 5 TO READ:

 5. (New section) 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 pursuant to 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 P.L. , c. (C. )(pending before the Legislature as this bill);

 (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 P.L. , c. (C. ) (pending before the Legislature as this bill);

 (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 P.L. , c. (C. )(pending before the Legislature as this bill);

 (5) Information sufficient to demonstrate that the financial condition of the reorganized insurer and the insurance company subsidiaries of the reorganized insurer shall meet solvency requirements pursuant to 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 pursuant to 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 pursuant to 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 P.L. , c. (C. ) (pending before the Legislature as this bill).

 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 pursuant to P.L. , c. (C. )(pending before the Legislature as this bill) shall be filed with the commissioner for approval. Upon filing the plan to form a mutual holding company system, the obligations pursuant to 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 pursuant to this subsection; if the commissioner approves the plan to form a mutual holding company, any obligations arising pursuant to section 4 of P.L.2017, c.100 (C.17:48E-17.3) shall be deemed satisfied by the initial assessment pursuant to subsection a. of section 13 of P.L. , c. (C. ) (pending before the Legislature as this bill). 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). **1[**The public hearing conducted pursuant to subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-47)**]** The commissioner shall hold three public hearings on the plan to form a mutual hold company within 30 days after the filing, with notice provided by publication in a manner satisfactory to the commissioner. The public hearings**1** shall also address the plan of reorganization to the mutual holding company system required by P.L. , c. (C. )(pending before the Legislature as this bill). 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) **1[**prejudices**]** does not benefit**1** 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 **1**, including a health impact study of the effects of the reorganization on the health of the policy holders of the health service corporation, and the general public**1**. 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 **1**final**1** 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 P.L. , c. (C. )(pending before the Legislature as this bill). 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.

OMIT SECTION 12 IN ITS ENTIRETY

INSERT NEW SECTION 12 TO READ:

 **1**12. (New section) a. The application submitted pursuant to section 5 of P.L. , c. (C. )(pending before the Legislature as this bill) shall be a public record, except for the following documents, which shall be confidential and not public records:

 (1) documents deemed confidential by statute or regulation; and

 (2) the business plan, capitalization plan, financial projections, market competitive data, and any other information the commissioner determines could result in harm to the health service corporation, mutual holding company, reorganized insurer or other insurance entity within the mutual holding company system, or the public interest, if disclosed.

 b. The commissioner shall provide the public with prompt and reasonable access to public records relating to the proposed reorganization of the health service corporation. The commissioner shall make the public records received pursuant to P.L. , c. (C. )(pending before the Legislature as this bill) available for inspection at no cost to the public. These public records shall be made available to the public in connection with the public hearing to be held pursuant to P.L. , c. (C. )(pending before the Legislature as this bill).**1**

REPLACE SECTION 13 TO READ:

 13. (New section) a. Following regulatory approval pursuant to section 5 of P.L. , c. (C. )(pending before the Legislature as this bill) 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, nonrecurring 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 C.F,R, 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. **1**The commissioner shall certify that the mutual holding company’s system-wide health risk-based capital authorized control level would fall below 550 percent before payments may be deferred pursuant to this subsection and paragraph (1) of subsection d. of this section. Neither the insurance company subsidiaries nor the reorganized insurer shall make dividends or distributions to the mutual holding company or any subsidiaries thereof until such time as the annual assessment deferred pursuant to paragraph (1) of subsection d. of this section is satisfied.**1**

 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 pursuant to 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) of this subsection to the contrary, the assessment years pursuant to subsection b. of this section shall not be extended beyond, and the payment obligation pursuant to this section shall cease to exist after, the date that is **1[**20**]** 25**1** 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.

REPLACE SECTION 16 TO READ:

 16. (New section) 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 **1[**24**]** 36**1** 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 **1[**24**]** 36**1** months following the formation of a mutual holding company.