

SENATE, No. 2532

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 2, 2009

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

Requires additional public participation and health impact “fairness analysis” as conditions of conversion of health service corporation to domestic stock insurer.

CURRENT VERSION OF TEXT

As introduced.



S2532 WEINBERG

2

1 AN ACT concerning the conversion of a health service corporation
2 to a domestic stock insurer, and amending P.L.2001, c.131.

3

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

6

7 1. Section 3 of P.L.2001, c.131 (C.17:48E-51) is amended to
8 read as follows:

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

19 b. The application shall include the following:

20 (1) The plan of conversion and exhibits thereto.

21 (2) A business plan of the converted insurer and any parent
22 corporation, including five-year financial projections and the
23 number of shares of capital stock that the converted insurer and any
24 parent corporation is authorized to issue, together with estimates of
25 the capital which might be raised by the sales of the capital stock or
26 securities convertible into capital stock.

27 (3) A certification by the secretary of the health service
28 corporation that the plan of conversion has been duly adopted by
29 action of not less than two-thirds of the total number of directors of
30 the board of the health service corporation. Subscribers of the
31 health service corporation shall not have the right to vote on or
32 approve the plan of conversion, any amendments to the health
33 service corporation's certificate of incorporation or bylaws, or the
34 certificate of incorporation or bylaws of the converted insurer or
35 parent corporation, notwithstanding any provision to the contrary in
36 the certificate of incorporation or bylaws of the health service
37 corporation.

38 (4) The proposed forms of the notice of **[hearing]** hearings
39 required by subsection e. of this section and any other notices
40 required by the plan of conversion or by the commissioner.

41 (5) Any information provided to the board of directors of the
42 health service corporation in connection with its review and
43 approval of the plan of conversion, except materials that are
44 protected by attorney-client privilege.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (6) A comparative premium rate analysis of all the policies of
2 the health service corporation, comparing actual premium rates for
3 the three-year period preceding the filing of the plan of conversion
4 and projected premium rates for the three-year period following the
5 proposed conversion. The rate analysis shall address the projected
6 impact, if any, of the proposed conversion upon the cost to
7 subscribers as well as the projected impact, if any, of the proposed
8 conversion upon the health service corporation's underwriting
9 profit, investment income, tax liability and loss and claim reserves,
10 including the effect, if any, of adverse market or risk selection on
11 reserves.

12 (7) Any conditions, other than approval of the plan of
13 conversion by the commissioner, to be fulfilled on or before the
14 effective time.

15 (8) Any proposed agreement between or among the foundation
16 and the converted insurer or its parent corporation, if applicable,
17 including, but not limited to, any agreement relating to the voting or
18 registration for sale of any capital stock issued to the foundation by
19 the converted insurer or any parent corporation.

20 (9) Any other additional information that the health service
21 corporation believes is necessary.

22 (10) Any other additional information that the commissioner in
23 his sole discretion deems appropriate.

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

31 (1) The appraisal shall enable determinations of value of:

32 (a) the amount of cash or other assets that the foundation will be
33 entitled to receive, without consideration, under the provisions of
34 the plan of conversion; and

35 (b) the price of any shares to be issued pursuant to the optional
36 provisions of a plan of conversion permitted by subsection e. of
37 section 6 of this act;

38 (2) The appraisal required by this subsection c. shall be prepared
39 by persons independent of the health service corporation,
40 experienced and expert in the area of corporate appraisals and
41 acceptable to the commissioner. The appraisal shall be in a form
42 and content acceptable to the commissioner and contain a complete
43 and detailed description of the elements that make up the appraisal,
44 justification for the methodology employed and sufficient support
45 for the conclusions reached in the appraisal. The commissioner
46 may also require the appraisal to include an analysis of fair market
47 value based on actuarial considerations, as well as other methods
48 for determining fair market value.

1 (3) To the extent that the appraisal is based on a capitalization
2 of the pro forma income of the converted insurer, the appraisal shall
3 indicate the basis for determination of the income to be derived
4 from any proceeds of the sale of stock and demonstrate the
5 appropriateness of the earnings-multiple used, including
6 assumptions made regarding future earnings growth.

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

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

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

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

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

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

1 e. (1) Upon determining that the application is complete and
2 the forms of notice are adequate, the commissioner shall designate
3 【a date】 dates for 【a】 at least four public 【hearing】 hearings on the
4 plan of conversion, with at least one hearing each in the northern
5 and southern regions of the State, and at least two in the central
6 region of the State. Additionally, at least two public hearings shall
7 be held only after the commissioner has received and made public
8 all written reports obtained from his advisors and consultants,
9 retained by the commissioner pursuant to the provisions of
10 subsection g. of this section. The public 【hearing】 hearings may be
11 held on one or more days, the first commencing within 90 days after
12 the date on which the commissioner determines the application is
13 complete, unless the health service corporation requests, and the
14 commissioner agrees to, a longer period for the purpose of
15 preparing and distributing the notices required by this subsection.
16 The public 【hearing】 hearings may, if the commissioner and
17 Attorney General so agree, be conducted jointly as part of the
18 public 【hearing】 hearings required under subsection e. of section 19
19 of this act.

20 【The】 (2) Each hearing shall be in the nature of a legislative
21 hearing and shall not constitute or be considered a contested case
22 under the "Administrative Procedure Act," P.L.1968, c.410
23 (C.52:14B-1 et seq.). The health service corporation shall provide
24 the public with at least 【45】 75 days' notice of the 【hearing】
25 schedule of hearings, the notice to be in the form, and provided in
26 the manner, that the commissioner approves. The health service
27 corporation shall cause notice of the time and place of 【the】 each
28 public hearing to be published at least two times at intervals of not
29 less than one week, the first publication to be not more than 【45】
30 75 days and the last publication not less than 15 days prior to the
31 first scheduled public hearing in at least two newspapers of general
32 circulation in New Jersey. The notice of the 【hearing】 hearings
33 shall state the purpose thereof and the time and the place where
34 【the】 each hearing will occur. The purpose of the 【hearing】
35 hearings shall be to receive comments and information for the
36 purpose of aiding the commissioner in making a decision as to
37 whether to approve the plan of conversion. Persons wishing to
38 make comments and submit information may submit written
39 statements to the commissioner prior to 【the】 any public hearing
40 and may appear and be heard at 【the】 any hearing.

41 (3) Notwithstanding the nature of the public hearings as
42 legislative hearings, any person representing an interested party to
43 the proposed plan of conversion may apply to the commissioner to
44 act as an intervenor, permitting that person, if qualified pursuant to
45 this paragraph, to participate in the review of the plan of conversion
46 by requesting and accessing information directly from the health
47 service corporation for use at the public hearings, and for aiding the

1 commissioner in making the decision as to whether to approve the
2 plan of conversion. Additionally, status as an intervenor shall
3 provide a person standing to appeal the commissioner's decision as
4 to whether to approve the plan of conversion consistent with the
5 provisions of subsection b. of section 4 of P.L.2001, c.131
6 (C.17:48E-52).

7 (a) A person shall qualify to intervene in the review of the plan
8 of conversion by filing a registration with the commissioner, for
9 which a minimum fee may be charged, demonstrating that the
10 person:

11 (i) represents the health care interests of underserved
12 individuals, or the health care interests of current subscribers of the
13 health service corporation, or the interests of hospitals, physicians,
14 or other health care providers in the State, or the promotion of
15 fundamental improvements in the health status of all New
16 Jerseyans, and accepts a duty of fidelity to do so; and

17 (ii) possesses sufficient expertise and resources to intervene in
18 the review of the plan of conversion as set forth in this section.

19 (b) The commissioner shall require appropriate documentation
20 as determined to be necessary to qualify a person pursuant to
21 subparagraph (a) of this paragraph to intervene in the review of the
22 plan of conversion. The commissioner may require that persons
23 representing identical or substantially similar individuals or
24 interests designate one person as the intervenor for those
25 individuals or interests.

26 (c) An intervenor, upon acceptance of the registration to
27 intervene by the commissioner, may request access to information
28 that has been designated as confidential and not a public record
29 pursuant to section 10 of P.L.2001, c.131 (C.17:48E-58). If the
30 commissioner and Attorney General determine that the intervenor's
31 interest cannot be pursued fully in the review of the plan of
32 conversion without access to the information, they shall jointly
33 agree to grant access to the information, subject to an executed non-
34 disclosure agreement.

35 f. **【The】** Each hearing shall be conducted by the commissioner
36 or, at the commissioner's discretion, his designee, who shall report
37 to and advise the commissioner on the matter, in which case the
38 determination or order issued by the commissioner shall have the
39 same force and effect as if the commissioner had conducted **【the】**
40 each hearing personally. The commissioner's order or determination
41 on the application pursuant to section 4 of this act shall be issued
42 within 45 days after the closing of the record of the last scheduled
43 hearing by the commissioner or his designee, as applicable. The
44 commissioner shall issue a written decision detailing the reasons for
45 the approval or disapproval of the plan of conversion. The
46 commissioner may, for good cause, extend the time within which he
47 shall issue an order or determination on the application.

1 g. (1) The commissioner shall engage the services of a
2 consultant to prepare a fairness analysis examining the direct and
3 indirect health impact of the proposed conversion, which shall be
4 completed for the commissioner and released to the public prior to
5 conducting the final two or more public hearings as required by
6 subsection e. of this section, and shall be used by the commissioner
7 in making the final decision on the approval or disapproval of the
8 plan of conversion pursuant to subsection f. of this section and
9 section 4 of P.L.2001, c.131 (C.17:48E-52). The fairness analysis
10 shall incorporate information and testimony presented at any public
11 hearings already conducted and as otherwise obtained by the
12 consultant, under the direction of the commissioner. The analysis
13 shall examine all of the factors required to be considered by the
14 commissioner in making the final decision on the approval or
15 disapproval of the plan of conversion pursuant to subsection f. of
16 this section and section 4 of P.L.2001, c.131 (C.17:48E-52), and
17 shall additionally include, but not be limited to:

18 (a) assessing the impact of the conversion on the health care
19 needs of subscribers;

20 (b) analyzing the business plan and comparative premium rate
21 analysis submitted with the application pursuant to paragraphs (2)
22 and (6) of subsection b. of this section, to determine whether the
23 business plan and projections set forth in the rate analysis
24 adequately address concerns of the health care costs of subscribers;

25 (c) assessing the impact of the conversion on accessible,
26 available, affordable, and quality health care for underserved and
27 vulnerable individuals, including children, seniors, low income or
28 disabled individuals, and individuals with chronic illnesses; and

29 (d) determining whether the conversion meets the health care
30 needs of all New Jerseyans and promotes the public interest.

31 (2) The commissioner may additionally engage the services of
32 other advisors and consultants, which may include, but are not
33 limited to, lawyers, actuaries, accountants, investment bankers,
34 compensation and employee benefit plan consultants or any
35 combination thereof, to advise him on any matters related to the
36 conversion. Any consultant engaged by the commissioner shall be
37 subject to all applicable statutes, regulations, and rules of
38 professional conduct governing conflicts of interest.

39 (3) All reasonable costs related to the development and
40 examination of, and deliberations concerning, a plan of conversion
41 and other related matters, including, but not limited to, those
42 reasonable costs attributable to the consultant's completion of the
43 fairness analysis and the use by the commissioner of other advisors
44 and consultants, shall be paid by the health service corporation that
45 makes the filing or initiates the discussions about a plan of
46 conversion, both for services prior to the effective time and for
47 services after the effective time.

48 (cf: P.L.2001, c.131, s.3)

1 2. Section 4 of P.L.2001, c.131 (C.17:48E-52) is amended to
2 read as follows:

3 4. a. The commissioner shall approve the plan of conversion
4 and issue a certificate of authority to the converted insurer to
5 transact business in this State as a domestic stock insurer only if the
6 commissioner finds, using the fairness analysis required to be
7 completed pursuant to subsection g. of section 3 of P.L.2001, c.131
8 (C.17:48E-51) and information otherwise obtained pursuant to
9 P.L.2001, c.131 (C.17:48E-49 et seq.), all of the following:

10 (1) The plan of conversion meets the requirements of sections 2
11 and 3 of this act.

12 (2) Upon conversion, the converted insurer will meet the
13 applicable standards and conditions under this section, including
14 applicable minimum capital and surplus requirements.

15 (3) The plan of conversion adequately protects the existing
16 contractual rights of subscribers.

17 (4) The plan of conversion will promote the best interests of the
18 health service corporation.

19 (5) The health service corporation has complied with all
20 requirements of sections 2 and 3 of this act.

21 (6) The plan of conversion is fair and equitable.

22 (7) The plan provides for the enhancement of the operations of
23 the converted insurer.

24 (8) The plan provides for the transfer at or before the effective
25 time of the entire fair market value of the health service corporation
26 to the foundation in accordance with section 6 of this act.

27 (9) The plan is consistent with the foundation plan.

28 (10) The plan does not adversely affect the distribution of the
29 health service corporation's value to the foundation.

30 (11) The plan is not contrary to law.

31 (12) The plan promotes the public interest.

32 (13) The Attorney General has concurred:

33 (a) with any findings of the commissioner pursuant to paragraph
34 (8) of this subsection and section 6 of this act; and

35 (b) with the actions of the commissioner under subsection c. of
36 section 3 of this act.

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

42 (cf: P.L.2001, c.131, s.4)

43
44 3. Section 19 of P.L.2001, c.131 (C.17:48E-67) is amended to
45 read as follows:

46 19. a. (1) A health service corporation shall submit to the
47 Attorney General a petition for review of a foundation plan at the
48 same time that it submits a plan of conversion to the commissioner.

1 The petition shall include the foundation plan and any other
2 information that the Attorney General requests.

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

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

11 b. The Attorney General, and any intervenor qualified to
12 intervene in the review of the foundation plan petition pursuant to
13 subsection g. of this section, shall review the petition and may
14 either support the proposed foundation plan, with or without any
15 specific modifications, or, if **[he]** the Attorney General or
16 intervenor finds that it is not in the public interest, oppose the
17 foundation plan in the Superior Court proceeding commenced
18 pursuant to subsection f. of this section.

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

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

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

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

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

35 (5) any proceeds of the conversion will be used solely for
36 purposes of expanding access to affordable, quality health care for
37 underserved individuals and promoting fundamental improvements
38 in the health status of New Jerseyans, and not used to replace
39 current government appropriations and other spending on health
40 care;

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

45 (7) officers, directors, board members or senior management of
46 the health service corporation will receive contracts in any existing,
47 new or affiliated health service corporation, foundation, the

1 converted insurer, any parent corporation or any affiliate of any of
2 the foregoing.

3 d. The foundation plan, subject to review by the Attorney
4 General and any intervenor, shall meet the following requirements:

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

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

13 (b) The foundation shall be a charitable entity that qualifies for
14 federal income tax exemption under [paragraph (3) of subsection
15 (c) of] section 501(c)(3) of the federal Internal Revenue Code [of
16 1986,] (26 U.S.C. s.501(c)(3)).

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

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

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

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

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

38 (2) The foundation shall provide the Attorney General with an
39 annual report which shall include an audited financial statement and
40 a detailed description of its grant-making and other charitable
41 activities related to its use of the charitable assets received pursuant
42 to the conversion. The annual report shall be made available to the
43 public at both the Attorney General's office and the office of the
44 foundation. Nothing contained in this act shall affect the
45 obligations of an entity possessing endowment funds under the
46 "Uniform Management of Institutional Funds Act," P.L.1975, c.26
47 (C.15:18-15 et seq.).

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

8 e. The Attorney General shall, during the course of the review
9 of the foundation plan pursuant to this section, hold at least **[one]**
10 four public **[hearing]** hearings, with at least one hearing each in the
11 northern and southern regions of the State, and at least two in the
12 central region of the State, in which any person may file written
13 comments and exhibits or appear and make a statement. The public
14 **[hearing]** hearings may, if the Attorney General and the
15 commissioner so agree, be conducted jointly as part of the public
16 **[hearing]** hearings on the conversion required pursuant to
17 subsection e. of section 3 of this act. The Attorney General, or an
18 intervenor qualified to intervene in the review of the foundation
19 plan petition pursuant to subsection g. of this section, may subpoena
20 additional information or witnesses, including, but not limited to,
21 information about any transaction that is collateral to the proposed
22 conversion and any related documents, require and administer
23 oaths, require sworn statements, take depositions and use related
24 discovery procedures for purposes of the **[hearing]** hearings and at
25 any time prior to completing the review of the proposed conversion.
26 **[The]** Each hearing shall be in the nature of a legislative hearing
27 and shall not constitute or be considered a contested case under the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.). The first public hearing shall be held no later than 90 days
30 after the date that the petition is declared complete by the Attorney
31 General. Public notice of **[the]** each hearing shall be provided by
32 the health service corporation not more than **[45]** 75 days and not
33 less than 15 days prior to the first scheduled public hearing in at
34 least two newspapers of general circulation in New Jersey.

35 f. Upon completion by the Attorney General of the review of
36 the petition, and completion by any intervenor of a review of the
37 petition no later than one month next following the completion of
38 the Attorney General's review, the health service corporation shall
39 apply to the Superior Court for approval of the establishment of the
40 foundation. In that action, which shall proceed in a summary
41 manner, the Attorney General and any intervenor shall advise the
42 court as to whether **[he]** that party supports or opposes the
43 foundation plan, with or without any specific modifications, and the
44 basis for that position. In considering whether the foundation plan
45 is in the public interest, the court shall consider whether the
46 requirements of paragraph (1) of subsection d. of this section have
47 been satisfied and may consider the criteria established in

1 subsection c. of this section, as applicable. If the health service
2 corporation fails to comply with this subsection, the Attorney
3 General or an intervenor may seek appropriate relief in Superior
4 Court.

5 g. An intervenor, in addition to the Attorney General, may
6 participate in the review of the foundation plan petition as set forth
7 in this section.

8 (1) A person shall qualify to intervene in the review of the
9 foundation plan by filing a registration with the Attorney General,
10 for which a minimum fee may be charged, demonstrating that the
11 person:

12 (a) represents the health care interests of underserved
13 individuals, or the health care interests of current subscribers of the
14 health service corporation, or the interests of hospitals, physicians,
15 or other health care providers in the State, or the promotion of
16 fundamental improvements in the health status of all New
17 Jerseyans, and accepts a duty of fidelity to do so; and

18 (b) otherwise possesses sufficient expertise and resources to
19 intervene in the review of the foundation plan petition as set forth in
20 this section.

21 (2) The Attorney General shall require appropriate
22 documentation as determined to be necessary to qualify a person
23 pursuant to paragraph (1) of this subsection to intervene in the
24 review of the foundation plan petition. The Attorney General may
25 require that persons representing identical or substantially similar
26 individuals or interests designate one person as the intervenor for
27 those individuals or interests.

28 (3) An intervenor, upon acceptance of the registration to
29 intervene by the Attorney General, may request access to
30 information that has been designated as confidential and not a
31 public record pursuant to section 10 of P.L.2001, c.131 (C.17:48E-
32 58). If the Attorney General and the commissioner determine that
33 the intervenor's interest cannot be pursued fully in the review of the
34 foundation plan petition without access to the information, they
35 shall jointly agree to grant access to the information, subject to an
36 executed non-disclosure agreement.

37 (4) All reasonable costs related to the review of the foundation
38 plan petition and related matters by an intervenor, including in
39 connection with any matter before any court or any administrative
40 agency in which the health service corporation that files the petition
41 is a party, shall be paid by that health service corporation, both for
42 services prior to the effective time of the foundation plan and for
43 services after the effective time.

44 (cf: P.L.2001, c.131, s.19)

45
46 4. This act shall take effect on the first day of the third month
47 next following enactment, and shall apply to any conversion
48 application and foundation petition filed on or after the effective

1 date, and any conversion application and foundation petition filed,
2 but not deemed complete, on or before the effective date.

3
4
5 STATEMENT

6
7 This bill, concerning the statutory process by which a health
8 service corporation may convert to a for-profit, domestic insurer,
9 provides for additional public participation in the process and
10 requires the completion of a fairness analysis by an outside
11 consultant, examining the health impact of any proposed
12 conversion, before the health service corporation may obtain State
13 approval of the conversion.

14 The bill specifically provides for additional public participation
15 in the conversion process by requiring at least four public hearings
16 on any proposed conversion and the accompanying foundation plan
17 to expend monies generated from the conversion. The public
18 hearings, both for the proposed conversion and the proposed
19 foundation plan, shall be split between the northern, central, and
20 southern regions of the State. Additionally, at least two public
21 hearings on the proposed conversion shall be held only after the
22 commissioner has received and made public all written reports
23 obtained from advisors and consultants retained to assist the
24 commissioner during the conversion process, including the fairness
25 analysis prepared in accordance with this bill. As with the current
26 law, the Commissioner of Banking and Insurance, primarily
27 responsible for reviewing the proposed conversion, and the
28 Attorney General, primarily responsible for reviewing the proposed
29 foundation plan, may agree to conduct joint hearings.

30 The bill additionally provides that the Commissioner of Banking
31 and Insurance shall engage the services of a consultant to prepare a
32 fairness analysis, examining the direct and indirect health impact of
33 any proposed conversion, as part of the review process. This
34 analysis shall include, but not be limited to: assessing the impact of
35 the proposed conversion on the health care needs for subscribers;
36 analyzing the business plan and comparative premium rate analysis
37 submitted to the commissioner with the conversion plan pursuant to
38 current law; assessing the impact of the conversion on accessible,
39 available, affordable, and quality health care for underserved and
40 vulnerable individuals; and determining whether the conversion
41 meets the health care needs of all New Jerseyans and promotes the
42 public interest. The fairness analysis shall incorporate information
43 and testimony presented at any public hearings already conducted
44 and as otherwise obtained by the consultant, under the direction of
45 the commissioner, and shall be used by the commissioner in making
46 the final decision on the approval or disapproval of the plan of
47 conversion.

1 The bill further increases public participation by permitting
2 intervenors to review information on the plan of conversion or the
3 foundation plan petition, obtained directly from the health service
4 corporation or other sources. A person shall qualify to intervene by
5 filing a registration with the commissioner or Attorney General, as
6 appropriate, for which a fee may be charged, demonstrating that the
7 person: represents the health care interests of underserved
8 individuals or current subscribers, or hospitals, physicians, or other
9 health care providers, or the promotion of fundamental
10 improvements in the health status of all New Jerseyans; and
11 otherwise possesses sufficient expertise and resources to intervene
12 as set forth in the bill.

13 For purposes of the public hearings on the foundation plan
14 petition and at any time prior to completing the review of the
15 proposed conversion, an intervenor approved by the Attorney
16 General may, similarly to the authorized actions of the Attorney
17 General, subpoena additional information or witnesses, including,
18 but not limited to, information about any transaction that is
19 collateral to the proposed conversion and any related documents,
20 require and administer oaths, require sworn statements, take
21 depositions and use related discovery procedures. Any such
22 intervenor shall also participate with the Attorney General in the
23 summary proceeding before the Superior Court regarding the
24 court's approval or disapproval of the establishment of the
25 foundation.

26 All reasonable costs of an intervenor approved by the Attorney
27 General related to the review of the foundation plan petition and
28 related matters, including in connection with any matter before any
29 court or any administrative agency in which the health service
30 corporation that files the plan or petition is a party, shall be paid by
31 that health service corporation, both for services prior to the
32 effective time of the conversion or foundation plan and for services
33 after the effective time.