Post-Hearing Report and Summary and Consultants' Evaluations of Horizon Healthcare Services, Inc.'s Application for Mutualization & Reorganization

October 31, 2022

I. OVERVIEW

In December 2020, the Legislature enacted P.L. 2020, Chapter 145 ("Chapter 145")[1], which, subject to the conditions set forth at length in Chapter 145, permits the state's sole licensed health service corporation ("HSC"), Horizon Healthcare Services, Inc. ("HHSI"), to reorganize as a nonprofit mutual holding company system. As currently organized, and uniquely among insurers offering health coverage in New Jersey, HHSI is required to make all its investments and hold all its assets through legal entities that are subject to insurance regulations that apply to HSCs. In enacting Chapter 145, the Legislature found that it is appropriate to preserve HHSI's "important statutory mission" to "provide affordable and accessible health insurance and promote the integration of the health care system to meet the needs of its members" as a "charitable and benevolent institution," while permitting HHSI "to expand and modernize that mission to encourage further innovation as well as improvement and diversification of services," as a nonprofit mutual holding company system.[2] Under Chapter 145, the nonprofit mutual holding company, which retains a charitable and benevolent mission, becomes the ultimate parent, and owner, of all entities, and assets, owned by the HSC today. The insurance entities held by the mutual holding company continue to be subject to Department of Banking and Insurance ("Department") regulation as an insurer. The reorganization does not result in any investors obtaining interests in any of the HSC's current assets; the "members" of the mutual holding company vote for the directors of the mutual holding company but have no "ownership" interest in the mutual holding company and no right to dividends or any other distributions.[3]

On August 1, 2022, HHSI submitted to the Department an application to create a mutual holding company ("Horizon Mutual Holdings, Inc." or "HMH" or the "MHC") with a reorganized insurer and various subsidiaries (HHSI, HMH, and all such companies in the mutual holding company system, collectively, "Horizon"), pursuant to Chapter 145. As set forth at length in its application, HHSI asserts that such a plan of mutualization and reorganization (the "Plan") is necessary to allow HHSI to compete in the New Jersey market due to unique restrictions that are placed on it as the state's only HSC. HHSI has indicated that the intent of the restructuring is to provide Horizon with greater flexibility to increase integration in the healthcare system by offering innovative health solutions and diversified services while retaining its not-for-profit charitable status and mission.

Under Chapter 145, the Commissioner of Banking and Insurance (the "Commissioner") is required to approve an application seeking to create a mutual holding company system, unless the Commissioner determines that the application triggers any of the three statutory grounds for disapproval discussed in Section II below (the "Grounds for Disapproval"). The Commissioner engaged Manatt, Phelps, & Phillips, LLP, and Manatt Health; Oliver Wyman Actuarial Consulting, Inc.; and Rudmose & Noller Advisors, LLC (collectively, the "Consultants") to assist the Commissioner in the Department's review of HHSI's application.

Based on the Consultants' thorough reviews of HHSI's application and supplementary

[1] N.J.S.A. §§ 17:48E-46.1 to -46.17.

[2] N.J.S.A. § 17:48E-46.1.

[3] N.J.S.A. § 17:48E-46.9.

submissions, testimony from the three separate public hearings concerning HHSI's application, a health impact study evaluating the likely effects of the restructuring on New Jersey insurance markets and policyholders, and conditions that the Department will be imposing (the "Conditions"), the Consultants have concluded that this record constitutes an appropriate basis for the Department to approve HHSI's application under the statutory requirements of Chapter 145.

II. KEY STATUTORY REQUIREMENTS FOR APPLICATION REVIEW AND APPROVAL

Chapter 145 authorizes the creation of a mutual holding company, which is a "non-insurance," not-for-profit entity that is organized for the purpose of holding a domestic stock insurer,[4] and allows an HSC to restructure as a stock insurer that will be 100% owned by the nonprofit mutual holding company (also referred to as "the reorganized insurer"). Following the reorganization, the mutual holding company holds any other entities currently owned by the HSC, which could include both insurance and non-insurance subsidiaries. In order for an HSC to undergo such a restructuring, Chapter 145 requires the HSC to submit an application to the Department detailing its Plan and addressing various statutorily required elements. HHSI submitted its application on August 1, 2022 and, upon review and guided by the statutory requirements for the application, the Department deemed HHSI's application to be complete on September 22, 2022.

Once an HSC's application for mutualization and reorganization is deemed complete, the Commissioner must evaluate the application for approval. Chapter 145 states that the Commissioner "shall" approve a Plan (meaning that the Commissioner is required to approve the HSC's application) unless the Commissioner finds that the plan triggers any of the three following Grounds for Disapproval – that the Plan:

> (1) is contrary to law;
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> (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
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> (3) does not benefit the interests of the policyholders of the HSC or treats them inequitably.[5]

Chapter 145 provides that the Commissioner may engage expert consultants to advise on any matters related to the application and has the option to conduct a health impact study evaluating the effects of the Plan on the health of the policyholders of the HSC, and the general public. To assist with the Department's review of HHSI's application, the Commissioner engaged the Consultants.

As part of the evaluation process, Chapter 145 required the Commissioner to hold three public hearings concerning the application within ninety (90) days of deeming the application complete, at which hearings the public can submit comments and testimony concerning the application. Prior to the public hearings for HHSI's application, the Department posted on its

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[4] N.J.S.A. § 17:48E-46.2 (2022).
[5] N.J.S.A. § 17:48E-46.5(b).

website all non-confidential components of the application for public inspection.[6] The Department published advanced notice of the public hearing schedule in seven New Jersey newspapers and thereafter held such public hearings on three different days spread out over two weeks' time (October 6, October 11, and October 17) and via different forums (in person and virtual) to ensure individuals wanting to participate were able to do so. Two hearings were held during the day and one in the evening to permit wide participation. The Department also accepted written public comments through October 18. The Department intends to publish the written public comments as an exhibit to this report and has posted video of the hearings at https://nj.gov/hschearings/.

Chapter 145 requires the Commissioner to approve or disapprove HHSI's application within thirty (30) days after the last public hearing, and to set forth the reasons for the Commissioner's decision in writing.

III. Description of the Application

HHSI's application describes its current role in New Jersey's healthcare ecosystem, the purpose of undertaking simultaneous mutualization and reorganization, and its Plan for restructuring, including certain confidential operational details and exhibits.

A. *HHSI's Current Role*

HHSI is New Jersey's largest and oldest health insurer, and is the only not-for-profit health insurer in the state. HHSI employs over 5,000 New Jerseyans, a majority of whom are women and members of minority communities. HHSI is an independent licensee of the Blue Cross and Blue Shield Association ("BCBSA").

As an HSC, HHSI must be "operated for the benefit of its subscribers" and is the only insurer with a statutory mission to benefit its policyholders.[7] It is also required to hold open enrollment annually in the individual health insurance market.[8] HHSI says it is one of two insurers that has participated in the Affordable Care Act insurance exchanges each year since 2014 and provides coverage to New Jerseyans across all product lines in each of New Jersey's 21 counties. HHSI serves over 3.7 million members, over 1 million of whom are covered by HHSI's Medicaid line of business.

HHSI currently directly or indirectly owns 100% percent of the shares or membership interests of its various insurance and non-insurance subsidiaries (except for New Jersey Collaborative Care, LLC, of which HHSI owns 50%), which structure is detailed in Exhibit 1-A to HHSI's application. As an HSC, HHSI is currently subject to the regulations of the HSC law, P.L. 1985, ch. 236, which restricts HHSI's ability to invest in entities and earn revenue from particular sources. HHSI's application details these restrictions. In particular, HHSI is subject to the following operating restrictions:

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[6] Chapter 145 says that the following components of the application, among others, are confidential and not public records: "the business plan, capitalization plan, financial projections, and market competitive data." N.J.S.A. § 17:48E-46.12(a).

[7] N.J.S.A. 17:48E-3(a).

[8] N.J.S.A. § 17:48E-3(d).

1. HHSI is limited to investing no more than two percent of its reserves in any single entity without regard to whether additional investment would provide further value for its members. HHSI indicates this limitation has restricted HHSI from further investment in partner companies that HHSI believes could have benefited millions of policyholders. HHSI further states that the inability to further invest in its partners due to these limitations creates an unlevel playing field, as competing insurers are able to use the modern day holding company structure to deploy assets without strict investment limitations.
2. At least 50 percent of HHSI's revenue must derive from businesses engaged through the predominantly commercial insurance-based HSC entity, irrespective of whether other revenue sources are consistent with HHSI's status and mission as a not-for-profit and would benefit New Jerseyans. HHSI indicates being able to diversify in these areas, including in emerging areas like behavioral health services, could create new streams of revenue that could limit reliance on member premiums to fund operational investments.
3. HHSI may not use more than ten percent of its current aggregate reserves to fund investments in outside opportunities, such as joint ventures or non-commercial lines of business. HHSI points to such a low limitation and represents that it does not allow HHSI to invest robustly and deliver certain health care programs that policyholders have come to expect and that competitors are able to deliver.

B. ***Purpose of Mutualization and Reorganization***

HHSI's application describes various ways, as noted above, that the unique statutory restrictions on HSCs have impeded HHSI's ability to grow, compete with other large insurers, adapt to the changing healthcare ecosystem, and better serve its members, New Jerseyans, and the state. As other for-profit insurers and insurers operating under a holding company structure may more nimbly and robustly deploy capital and make investments in benefits, care delivery platforms, and growing lines of business, such as Medicare Advantage and Medicaid managed care, HHSI's ability to pursue such areas of growth remains stifled by the HSC limitations.

The application addresses three broad areas in which Horizon would focus future investments should HHSI's application be approved: (1) initiatives that aim to improve individuals' social determinants of health and reduce disparities in health, (2) programs that bolster mental healthcare through an "integrated system of care" or "ISC" model, and (3) evidence-based behavioral health enterprises that desire to expand to New Jersey but lack sufficient resources to do so. These are in addition to a number of additional potential investments in care-enabling technology; population health management and analytics; prescription management; non-commercial insurance products, such as Medicare Advantage and Medicaid managed care; integrated services for seniors; and student health insurance.

HHSI states that converting to a mutual holding company structure would enable Horizon to dedicate additional targeted financial and operational support to such programs, the benefits of which would flow directly to HHSI's policyholders, the broader Horizon membership, and the minority and underserved communities most at need for such interventions. In addition to improving the quality of care and New Jerseyans' health outcomes, HHSI believes such investments would generate substantial benefit to the state in the form of economic growth. HHSI asserts that dedicating funds to investments such as those broadly proposed by HHSI in its application would create new jobs, expand local businesses, and make New Jersey a center for healthcare innovation. To support these assertions, in 2019, HHSI commissioned an economic study by Econsult Solutions Inc. to evaluate the impact of an approved reorganization on the New Jersey economy. The study determined that HHSI's current corporate structure creates an uneven playing field where HHSI is unable to invest and operate similar to other insurers, making it impossible for HHSI to realize these benefits for its policyholders, New Jerseyans, and the state unless the status quo is changed. The study is among the public comments published as an exhibit to this report.

C. *HHSI's Plan for Mutualization and Reorganization*

Pursuant to Chapter 145, HHSI's Plan includes numerous steps to effectuate the proposed reorganization, various commitments to maintaining HHSI's current operations, and supporting exhibits, many of which were filed confidentially under Chapter 145, providing detailed financials and organizational documents in connection with its application.

As set forth in its Plan, HHSI proposed to reorganize such that HMH will be the ultimate parent entity of HHSI's current wholly owned subsidiaries instead of HHSI, and the reorganized HHSI will become a subsidiary stock insurance company wholly owned (indirectly) by HMH. All of HHSI's current subsidiaries will also be wholly owned (directly or indirectly) by HMH. HMH will be a not-for-profit entity. Horizon describes in its "step plan" the following transfers of assets or interests that will occur upon approval to effectuate the Plan:

1. 100% of Horizon Healthcare Plan Holding Company, Inc.'s ("HHPHC") interest in each of Healthcare of New Jersey, Inc. ("HHNJ"), Horizon Insurance Company ("HIC"), Horizon Healthcare Dental, Inc. ("HHD"), and Greenwood Insurance Company, Inc. ("Captive") and HHSI's membership interest in New Jersey Collaborative Care, LLC ("NJCC") will be transferred to Horizon Insurance Holdings, Inc. ("HIH"), a newly formed New Jersey intermediate holding company to hold the insurance businesses of HMH.
2. 100% of HHSI's equity interest in each of Multistate Investment Services, Inc. ("MISI") and Multistate Professional Services, Inc. ("MPSI") and 100% of HHPHC's equity interest in Horizon Casualty Services, Inc. ("HCS") will be transferred to Horizon Diversified Holdings ("HDH"), Inc., a newly formed New Jersey intermediate holding company to hold non-insurance strategic investments and diversified businesses of HMH.
3. Upon approval, HMH will be capitalized by a $300 million distribution from HHNJ passing through HHSI to HMH.
4. HHSI's membership interest in Horizon Charitable Foundation Inc. ("HCF") will be transferred to HMH, which will also assume from HHSI control of HCF's board.

Upon reorganization, HHSI's current and future policyholders will become members of and gain associated membership rights in HMH pursuant to its bylaws. HHSI will provide notice to each policyholder within 180 days of approval advising them of the reorganization and eligibility for membership interest in HMH. The reorganized structure is detailed in Exhibit 1-B to HHSI's application.

HHSI's Plan describes certain measures it will take to avoid policyholder disruption if its application is approved, including retaining its current corporate name. Notably, HHSI certified in its application that all terms and conditions of insurance coverage currently written by HHSI and its current subsidiaries will remain in full force and effect, as will the terms and conditions of all of HHSI's subordinated surplus notes and contractual obligations. HHSI committed in its Plan to continuing its current levels of participation in New Jersey's individual insurance markets across all 21 counties in the state. HHSI also affirmed that provider contracts and credentialing will not change, that reimbursement rates will not be impacted, and that its service model, claims processing, and utilization management practices will not be modified as a result of the proposed reorganization. Furthermore, HHSI stated that its policyholders benefit plans, rates, and choices of providers will not change as a result of the proposed reorganization. To ensure adequate operational support, Horizon also noted it has no plans to modify its workforce or downsize in the twelve months following its submission of its application.

In support of its application, and in addition to Exhibits 1-A and 1-B referenced above, HHSI submitted the following exhibits pursuant to Chapter 145, each of which has been thoroughly evaluated by the Department and the Consultants and has been made and is marked either as public or confidential in accordance with New Jersey law, including but not limited to Chapter 145:

- Exhibit 2-A: Form notice to members (public)
- Exhibit 3-A: Step plan (public)
- Exhibit 3-D(i): Articles of incorporation of HMH (public)
- Exhibit 3-D(ii): Bylaws of the HMH (confidential)
- Exhibit 3-D(iii): Articles of incorporation of HIH (public)
- Exhibit 3-D(iv): Bylaws of HIH (confidential)
- Exhibit 3-D(v): Amended articles of incorporation of HHSI (public)
- Exhibit 3-D(vi): Amended bylaws of HIS (confidential)
- Exhibit 3-D(vii): Amended bylaws of HHNJ (confidential)
- Exhibit 3-D(viii): Amended bylaws of HIC (confidential)
- Exhibit 3-D(ix): Amended bylaws of HHD (confidential)
- Exhibit 3-D(x): Articles of incorporation of HDH (public)
- Exhibit 3-D(xi): Bylaws of HDH (confidential)
- Exhibit 3-D(xii): Amended bylaws of HCS (confidential)
- Exhibit 3-D(xiii): Amended bylaws of MISI (confidential)
- Exhibit 3-D(xiv): Amended bylaws of MPSI (confidential)

- Exhibit 4A - P: Directors and Officers of HMH and its subsidiaries (public)
- Exhibit 5-A: Business plan of Horizon Healthcare Services, Inc. (confidential)
- Exhibit 5-B: Balance sheet and income statement of controlled insurers (public)
- Exhibit 5-C: Capital accounts and risk-based capital following reorganization (confidential)

IV. SUMMARY ANALYSIS OF PUBLIC COMMENTS

During and after the completion of three public hearings, approximately 600 people representing several categories of New Jersey stakeholders offered oral and/or written testimony commenting on HHSI's application. The overwhelming majority of comments were enthusiastically supportive of HHSI's Plan and urged the Commissioner to approve the application, although a small minority of commenters raised concerns about HHSI's application, the process followed to evaluate the application, and oversight of HHSI's charitable assets. The public comments are summarized and analyzed below. HHSI also submitted written and oral testimony describing the Plan at the public hearing.

Policyholders/Consumers. The vast majority of comments were offered by policyholders and consumers, all of whom emphatically supported the approval of HHSI's application. These approvals were shared via several different forms of emails in which policyholders and consumers cited improved "health care quality, affordability, and convenience" as reason for the strong support. In addition, the consumer approval emails cited the impact that the investments will have on the community, pointing to the "more than $4 billion in additional economic output over the next decade, more than 2,000 new full-time jobs and additional tax revenue approach $62 million for New Jersey."

Not-for-Profit Entities. Many comments were offered by a variety of not-for-profit entities, including foodbanks, community-based organizations, neighborhood revitalization associations, affordable housing programs, arts societies, YMCAs, issue advocacy organizations, and social support organizations, each of which strongly supported approval of HHSI's application. Such commenters based their support on past and ongoing experiences working directly with HHSI as a funder, supporter, and partner of their organizations. Of note, many commenters described HHSI's commitment to investing in initiatives to address social determinants of health, provide linkages to healthcare providers, and enhance access to behavioral healthcare. One commenter called HHSI's longstanding partnership and investment in its affordable housing and caregiver support initiative "a shining example of corporate responsibility." Another praised HHSI's partnership and funding of its initiatives to support healthy lifestyles and improve healthcare literacy for individuals with intellectual and developmental disabilities as emblematic of the types of community investments that approval of the Plan will enable Horizon to expand. Other commenters noted HHSI's steadfast commitment to empowering minority and underserved communities. Such commenters almost universally noted that approval of HHSI's application will allow for Horizon to make more, and more targeted, investments in these key areas, which will serve to strengthen New Jersey's communities most in need and improve the health and well-being of New Jerseyans.

Healthcare Providers and Hospitals. Numerous healthcare providers, including representatives from two of New Jersey's largest health systems, Robert Wood Johnson Barnabas and Hackensack-Meridian Health, in addition to New Jersey-based safety net behavioral health providers, large medical groups, volunteer medical initiatives, and substance abuse disorder treatment programs all commented in support of approval of HHSI's application. The health systems noted their respective partnerships with Horizon in addressing unmet healthcare needs in their communities, in particular by addressing social determinants of health and integrating care for seniors, and advocated that approval will result in greater investment in such partnerships to benefit New Jerseyans. Large medical groups noted Horizon's partnership in designing efficient, high-quality healthcare delivery models and expanding access to care. Similarly, providers of safety net, volunteer medical, and substance use disorder treatment services hailed Horizon's financial support and innovative partnerships to improve linkages to care providers for underserved individuals. These commenters expressed the view that reorganization would give Horizon the flexibility it needs to further innovate in care delivery and invest in community providers so that underserved individuals have better access to high-quality care.

However, three physical therapists testified at the hearings opposing approval of HHSI's application. These providers said that HHSI had not raised reimbursement rates for physical therapy services for the past eight years. Even taking these claims at face value, they do not directly bear on HHSI's application, the Plan, or any of the statutory Grounds for Disapproval, since there is nothing in the Plan or the record in this proceeding to suggest the Plan would have any impact on provider reimbursement for physical therapy or other services.

Trade Associations and Business Groups. Representatives from trade associations, including insurance associations, and business groups, such as local and state chambers of commerce, commented in enthusiastic support of approval of HHSI's application. Each such group noted the economic benefits to New Jersey businesses, the increased tax base, and the overall growth of New Jersey's local economy that would flow from additional investment by Horizon if HHSI's application were to be approved. Such commenters also noted that many of their members rely on and partner with HHSI for their employees' health insurance, and that improved efficiencies and additional investment in care delivery and healthcare innovation by Horizon will ultimately bolster the health and well-being of employees of New Jersey-based businesses.

Insurance Brokers. A number of insurance brokers with businesses based in New Jersey and who service other New Jersey businesses commented in universal support of approval of HHSI's application. Each such commenter noted that mutualization and reorganization would make Horizon more competitive with out-of-state insurers and would strengthen New Jersey insurance markets. The commenters noted that increased competition could result in net benefits to businesses, employees, and individual consumers in the form of enhanced benefits and more competitive pricing offered by Horizon and other insurers.

Consultants. Econsult Solutions Inc. offered testimony in support of HHSI's application based on its work evaluating the Plan and its economic benefits to New Jersey. Their analysis, prepared in 2019, detailed investment impacts, operating impacts, and tax revenue impacts that would flow from mutualization and reorganization. Of note, their analysis found that relative to the status quo, each $100 million invested by Horizon in New Jersey businesses would generate $206 million in statewide economic impact over 10 years. Furthermore, Econsult Solutions, Inc.

deduced that improved product offerings would lead to $4.2 billion in statewide economic impact over the same period, spurring increased tax collections for the state.

Consumer Group Coalition. Several consumer groups explained that they were jointly submitting testimony. New Jersey Citizen Action, New Jersey Appleseed Public Interest Law Center, New Jersey for Healthcare, Health Professionals & Allied Employees, and SPAN Parent Advocacy Network (collectively referred to here as the "Coalition") expressed two main categories of objections relating to HHSI's application: procedural concerns and concerns regarding safeguarding of HHSI's charitable purpose and assets.

<u>Procedural Concerns</u>

Concerns: The Coalition expressed concern that some parts of HHSI's application were determined to be confidential and exempt from public disclosure, as well as the fact that the Department did not choose to take the full 90 days permitted by law for public hearings. The Coalition claimed these alleged deficiencies violate policyholders' and the general public's "due process" rights. The Coalition asserted that the parts of HHSI's application made public are "grossly incomplete" for the purposes of evaluating the Plan. It stated that HHSI's entire application should be made public. The Coalition also posed numerous hypotheticals and questions that it wanted addressed in HHSI's business plan submitted as Exhibit 5-A to the application, which it believes must be released to the public for inspection. The Coalition referenced a request for HHSI's full application and all related documentation, including Horizon's internal documents and information that is non-public and privileged by nature. The Coalition also stressed in its comments that the Department's failure to produce a health impact study in advance of the hearings, and the Department's failure to space out public hearings over a 90 day period or otherwise add more public hearings following the October 17 hearing, renders the evaluation process and administrative record defective.

The Coalition also commented that HHSI offers little specificity as to its proposed investments, noting that HHSI's vague description of its proposed investments is, in the Coalition's view, insufficient to demonstrate that the Plan will benefit policyholders. The Coalition proposed in its comments that as HHSI's rationale for the Plan is to enable it to invest more robustly while maintaining its charitable and benevolent mission, HHSI must demonstrate how Horizon's proposed investments would be proscribed under HHSI's current corporate structure and would differ from HHSI's current investments. Furthermore, the Coalition expressed concerns over the lack of explanation for how potential future joint ventures and other endeavors in which Horizon were to invest would benefit its policyholders.

Analysis: As discussed above, the Department and the Consultants diligently assessed HHSI's application against the statutory criteria for completeness set forth in Chapter 145 and determined that HHSI's submission satisfies such requirements for completeness. Under Chapter 145, the Department must keep confidential and is not permitted to make public certain parts of HHSI's application, including "(1) documents deemed confidential by statute or regulation; (2) the business plan, capitalization plan, financial projections, and market competitive data; and (3) any other information the [C]ommissioner determines could result in harm to the [HSC], [MHC], reorganized insurer or other insurance entity within the mutual holding company system, or the public interest, if disclosed."[9] The Commissioner determined the maximum extent to which parts of HHSI's application could be made public under applicable law and, in accordance with Chapter 145, promptly posted such documents to the website the Department established for the purposes of public transparency in this application process.[10] While the Coalition requested certain procedural changes to how the Department chose to consider HHSI's application, the Coalition identified no relevant legal basis for demanding those changes, and the Department concludes it acted consistent with applicable law. The Coalition's comments fail to identify any aspect of the Plan that is applicable to any of the three Grounds for Disapproval.

Furthermore, the Commissioner is not mandated to undertake a health impact study under Chapter 145; nothing in the statute requires the Department to make any such study public, either before or after the public hearings commence or conclude. Nevertheless, in an effort to be as transparent as possible, the Commissioner deemed a health impact study to be beneficial to the evaluation of HHSI's application and released the health impact study with the final order and this report so that the public has a complete picture of the effects of HHSI's Plan on the health of policyholders and the general public.

Moreover, Chapter 145 does not require HHSI to commit to specific future investments of any kind, nor does it require HHSI to demonstrate how any proposed investments would differ in kind or quantity from those made by HHSI in its current corporate form. HHSI did set forth key areas in which it expects to make substantial future investments following approval – initiatives addressing social determinants of health, mental healthcare access, and behavioral health integration – and explains the basis for targeting these areas of investment, including examples of HHSI's past partnerships in such areas. The majority of commenters attested to HHSI's unwavering partnership and commitment to addressing these targeted areas through future community support, funding, and operational collaboration. In addition, the Plan's failure to specify exact investments is not a criterion upon which disapproval of HHSI's application may be based; the Coalition has not identified in any way how the Plan would not benefit the interests of policyholders or treat them inequitably. See also the discussion in section VI.D of this report regarding the proposed distribution to HMH and section VII.3 regarding the interests of policyholders.

Concerns Regarding HHSI's Charitable Purpose and Assets

Concerns: The Coalition also raised concerns about how HHSI's charitable purpose and charitable assets would be maintained and protected following restructuring. The Coalition noted various subjective misgivings with HMH's proposed governance structure, stating that thirteen of HMH's twenty-two board seats will be, in the Coalition's view, self-perpetuating because of their ability to control the board. The Coalition believes this presents an inherent conflict of interest for the board's fiduciary duties should the thirteen board members desire to invest in initiatives with which the policyholders disagree, despite the MHC being required to "be operated for the benefit of its subscribers." The Coalition also took issue with the possibility that Horizon may make minority investments in joint ventures, thereby ceding control of joint ventures to third parties that

[9] N.J.S.A. 17:48E-46.12(a).

[10] https://nj.gov/hschearings/.

may have priorities not aligned with Horizon's charitable and benevolent mission, or may sell stock in its subsidiaries to third parties, which, in the Coalition's view, could distort HMH's not-for-profit mission. The Coalition advocated for making HMH's bylaws public, imposing on HMH obligations to report to the Attorney General for any investments, and conditioning any approval on HMH acquiescing to oversight of the Attorney General in the event of any transaction involving HMH's subsidiaries to ensure HMH's not-for-profit mission is maintained and its charitable assets are appropriately stewarded.

Analysis: The Coalition's comments regarding the charitable mission and assets of HMH do not identify elements of the Plan that are contrary to law, or otherwise trigger one of the three statutory Grounds for Disapproval. The Coalition's substantive comments are instead primarily concerned with hypothetical actions HMH and its subsidiaries could take in the future that may be contrary to law, especially those governing New Jersey charitable corporations and charitable trusts. To that end, the Attorney General has submitted a public comment letter to the Commissioner regarding the Plan, which states in pertinent part, that the Attorney General maintains "statutory and common law responsibilities as protector, supervisor, and enforcer of charitable trusts and charitable corporations, which includes Horizon in its current form and in any new, future corporate form." The Attorney General concludes that "Chapter 145 does not diminish the Attorney General's oversight power."

With respect to certain specific comments raised by the Coalition, Chapter 145 does not require that HHSI's current and future policyholders control the board of HMH just that HMH exist and operate for the benefit of such policyholders. The Coalition's comment is contrary to law, as in fact, the board structure of the proposed MHC is determined by statute under Chapter 145.[11] Furthermore, any potential conflicts of interest that may result from such structure, and the Coalition's concerns about how HHSI's charitable assets would be deployed by HMH if the Plan is approved are addressed by the text of Chapter 145. Chapter 145 was explicitly designed to enable HHSI to more robustly invest through HMH, including in for-profit entities,[12] while specifically maintaining a charitable and benevolent mission at the MHC level.[13]

V. HEALTH IMPACT STUDY

The health impact study prepared by Manatt Health examines the statutory mission and charitable status issues in regard to HHSI's restructuring and such restructuring's potential impact on policyholders and the general public. This impact study considered the full range of policyholder concerns, including impacts on: (1) the health care needs of subscribers; (2) the health care costs of subscribers; (3) whether quality care is accessible, available and affordable for underserved and vulnerable individuals; (4) health insurance markets; (5) current and future provider networks; (6) provider compensation; (7) claims processing and payment; and (8) the health care needs of all New Jerseyans and the promotion of the public interest, and then focused on the areas that were most likely to be impacted by the proposed reorganization. Specifically, the health impact study reviews Horizon's commitments made in the application, focuses on areas

[11] N.J.S.A. 17:48E-46.15.
[12] N.J.S.A. 17:48E-46.7(a).
[13] N.J.S.A. 17:48E-46.3.

where the restructuring may have an impact on policyholders, and considers areas that will require ongoing Department monitoring.

The health impact study ultimately concludes that HHSI's restructuring would maintain the policyholder benefits associated with HHSI's unique status in the New Jersey market, including explicit Horizon commitments to both its statutory mission and charitable status.

VI. Observations and Conditions Regarding HHSI's Application

The Department staff and the Consultants reviewed HHSI's application, attended each of the three public hearings, read all written public comments, and conducted analyses to evaluate whether the Plan as presented in the application or any public comments identified a basis that would require the Commissioner to disapprove HHSI's application under Chapter 145. During this process, the Department and the Consultants made various observations regarding HHSI's application and concerns raised by the public and the health impact study that impacted the analysis of whether any of the statutory Grounds for Disapproval had been triggered. While the Plan as submitted did not appear to form any basis to disapprove the transaction under Chapter 145, the Consultants recommended that the Commissioner impose certain conditions on any potential approval to provide a greater measure of assurance that Horizon operate prospectively in a manner consistent with objectives of chapter 145, including that the Horizon act in the interest of policyholders and maintain safe and sound insurance subsidiaries. Each observation and, where applicable, condition is described here.

A. ***Preservation of Horizon's Charitable Mission***: *Chapter 145 requires that a mutual holding company be a nonprofit with a charitable and benevolent mission. Chapter 145 further explicitly prohibits the mutual holding company from converting to a for-profit stock holding company.*[14] *The draft articles of incorporation for HMH included in the application also require that upon dissolution, HMH's assets be used for a charitable purpose.*

Chapter 145 requires that a mutual holding company created under the statute "shall not be established as a company organized for pecuniary profit and shall retain the [HSC's] designation as a charitable and benevolent institution."[15] The legislative findings in Chapter 145 make clear that one important objective in adopting Chapter 145 was providing a pathway for Horizon to modernize its corporate form while ensuring it remain a nonprofit with a charitable and benefit mission.[16] Chapter 145 explicitly prohibits the mutual holding company (HMH) from converting to a for-profit stock holding company.[17]

Consistent with these statutory requirements, Article X of the draft Articles of Incorporation of HMH would require that, upon dissolution of HMH, all assets of HMH, after satisfaction of all debts, will be distributed "pursuant to a plan of dissolution adopted in accordance with New Jersey Statutes Section 15A:12-8," regarding the distribution of a non-profit's charitable assets. Article X would further specify that the plan of dissolution,

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[14] N.J.S.A. § 17:48E-46.14.

[15] N.J.S.A. § 17:48E-46.3(a).

[16] N.J.S.A. § 17:48E-46.1

[17] N.J.S.A. § 17:48E-46.14.

per N.J.S.A. § 15A:12-8 and under the Attorney General's oversight, "shall require the distribution of residual assets to, or among, one or more charitable and benevolent non-profit institutions in furtherance of the purposes" of HMH.

B. **(1)** ***Obligation to offer comprehensive individual coverage in every county***: *Consistent with the statutory mandate that will continue to apply to HHSI, HHSI's application commits to offering comprehensive health insurance coverage in the individual market in every county in the state.*

(i) While Chapter 145 does not explicitly address changes in insurance availability resulting from mutualization and reorganization, a reduction in available insurance options could be interpreted as not benefiting the interests of HHSI's policyholders. HHSI's application commits the company to "continue to offer comprehensive medical coverage, compliant with all appropriate state and federal laws and regulations, in the individual market in each county in the State." Further, the statutory obligation that HHSI, as an HSC, "maintain an open enrollment period for coverage to persons who are otherwise unable to obtain hospital, medical-surgical, or major medical coverage" remains applicable to the reorganized insurer.[18]

(2) ***Conditions and Rationales***: *The Consultants found that statements made in HHSI's application, when taken together with the following Condition, provide assurances that approval of the Plan will not materially change the availability of insurance offered by Horizon*.

(i) Horizon will continue to offer comprehensive medical coverage, compliant with all state and federal law and regulation, through one or more of its insurer subsidiaries in the individual insurance market in each county of the state. This Condition would bolster HHSI's statements in its application and safeguard policyholders against potential reductions in the availability of insurance that might otherwise occur.

C. ***No Basis to Find Plan Will Impact Premiums***: *The application and record contain no information suggesting to the Consultants that the Plan itself would result in an increase in premiums. There is a sound basis to find that, over a long period of time, the Plan could result in a decrease, or at least a lower rate of increase, of premium rates as compared to the status quo without the Plan.*

One public commenter advocated that HHSI provide a commitment not to raise policyholder premiums to safeguard policyholders. While HHSI did not offer to make such a commitment, the Consultants considered whether anything in the Plan is likely to result in premium increases (not due to factors extrinsic to the Plan). The Consultants observed that financial projections attached to the application indicate that HHSI does not intend to fund the initial $600 million state assessment through premium increases, nor do other elements of the Plan appear to be projected to result in a premium increase. Further, the Consultants noted that Horizon's premium tax liability would be reduced to one-eighth of what it currently pays, and such savings could be passed on to policyholders in the form of decreased premiums. A reasonable assumption is that the premium rates will not be

[18] N.J.S.A. §§ 17:48E-3(d), 17:48E-46.3(c), (e).

significantly impacted by the changes in the premium taxes and new assessments since they do not significantly impact Horizon's economic position and the relatively large initial assessment is not being passed onto policyholders through premium increases based on HHSI's financial projections.

D. **(1)** ***Dividend Moratorium, Minimum Capital Requirements, and Parental Guarantee***: *HHSI's application requests approval to distribute $300 million from Horizon's regulated insurer subsidiaries to HMH. The Department can impose conditions on approval that reasonably ensure the insurance subsidiaries are safe and sound, and there is no basis to make a determination that, due to the $300 million distribution, the Plan does not benefit the interests of HSC policyholders.*

(i) The proposed distribution would move capital to the MHC from entities that directly provide benefits to policyholders. While HHSI cited broad areas of potential deployment of the $300 million distribution – mainly, addressing behavioral health and social determinants of health by investing in integrated systems of care – the Consultants noted that HHSI's application does not offer specificity or any firm commitments as to how or when the $300 million distribution would be used. Some public testimony expressed concern that approval of HHSI's application could permit HHSI's charitable assets to support for-profit entities and promote investments without clear benefit to HHSI's policyholders or New Jerseyans.

(ii) HHSI's application leaves open the ability for an unlimited number of future distributions, including ordinary and extraordinary dividends, from HMH's regulated insurance company subsidiaries to HMH. Allowing for such distributions without sufficient controls and oversight by the Department could result in the reallocation of insurer resources for undefined purposes when such funds, if left in the insurer, would be used to pay claims and provide benefits to policyholders.

(2) ***Conditions and Rationales***: *The Consultants find that, while Chapter 145 does not require the Plan to explain how HMH will deploy the $300 million in capital it will directly hold after the reorganization, the following Conditions would provide a greater level of assurance that this distribution does not disadvantage or inequitably treat HHSI's policyholders.*

(i) The Consultants recommended three related conditions that together ensure that HMH and each of its regulated insurer subsidiaries, and the entire mutual holding company system, remain on stable financial footing so that Horizon continues to act in the interest of policyholders. First, the Consultants recommended that HHSI, HHNJ, and HIC should each be subject to a minimum risk-based capital ("RBC") of 425% of authorized control level ("ACL") RBC and that HHD should be subject to an RBC of 200% of ACL RBC. The statutory minimum RBC for authorized insurers in New Jersey is 200%;[19] further, while HSCs are required to maintain a minimum RBC of 550%,[20] in enacting Chapter 145 the legislature expressly freed a reorganized insurer – in this case, HHSI – from this

[19] N.J.S.A. § 17B:18-67 et seq.; N.J. Admin. Code 11:2-39A.1 et seq.
[20] N.J.S.A. § 17:48E-17.3.

requirement. Second, the Consultants also recommended that HMH and its officers provide a signed parental guarantee to HMH guaranteeing the minimum RBCs of each of its regulated insurer subsidiaries (that is, 425% for HHSI, HHNJ, and HIC, and 200% for HHD) in accordance with the following requirements: (a) the RBCs are perpetual; (b) the annual RBC filing will be filed by March 1 of each year, and the first, second, and third quarter estimates of each insurer's RBC will be filed within 45 days after each quarter end; (c) HMH must satisfy shortfalls within 30 days after the annual RBC filing or quarterly estimate is made; and (d) the Department must approve any changes to the guarantees. These regulatory capital and surplus requirements would ensure that each of HMH's regulated insurance company subsidiaries would remain amply capitalized even after the $300 million distribution to HMH.

(ii) Accompanying the above conditions, the Consultants find that following the $300 million distribution to HMH, imposing a three-year moratorium on the declaration or payment of any dividend by any of HMH's regulated insurer subsidiaries to either HMH or an HMH affiliate would prevent HMH from accumulating cash without a designated purpose while simultaneously allowing HMH the flexibility to determine how best to invest the $300 million to serve its charitable purpose. These three conditions together would enable Horizon to make prudent investments benefiting policyholders and New Jerseyans that HHSI, in its current HSC form, could not.

(iii) The Consultants concluded that HHSI's decision to not specify how and when HMH would deploy the $300 million distribution to benefit the interests of policyholders is not a sufficient basis upon which to conclude that approval of HHSI's application does not benefit the interests of policyholders. Given the conditions above, the reorganized insurer and other insurance subsidiaries would remain sufficiently capitalized while enabling HMH to determine optimal investments for its charitable and benevolent mission consistent with the legislative intent of Chapter 145. During the public hearings, the overwhelming majority of commenters supported approval of HHSI's application based on the commenters' longstanding experience working with HHSI. Commenters from the healthcare provider and not-for-profit communities cited HHSI as a trusted partner and funder of efforts to bolster access to behavioral health, address social determinants of health, and empower minority and underserved communities in New Jersey. If any investments made by HMH are not in keeping with its not-for-profit status or charitable mission, the Office of the Attorney General may exercise its oversight and investigational authority to protect the public interest, as the Attorney General explained in his public comment letter in this proceeding.

E. **(1)** ***Quarterly Reporting of Enterprise-Wide Capital***: *Chapter 145 and HHSI's application did not explain what would occur if HMH fails to maintain a system-wide health RBC of 550%, or fails to maintain an investment-grade group credit rating, such that it would be required to defer payment of that year's annual assessment pursuant to N.J.S.A. 17:48E-46.13(c).*

(2) ***Conditions and Rationales***: *The Consultants determined that the below conditions together will provide transparency and information adequate for the State to evaluate whether Horizon will be able to pay the annual assessments.*

(i) The Consultants recommended that the Department require Horizon to annually report its system-wide financial health and that HMH and its regulated insurer subsidiaries quarterly report its financial health using industry-standard methodology for calculating RBC. In each case, such reports should account for accrued estimated assessments to be paid to the state. This condition will enable the Department to monitor the mutual holding company system and implement measures to ensure its continued financial health and its ability to pay the statutorily-mandated assessments. Similarly, the Consultants advised that HMH be required to promptly notify the Department in the event that its officers anticipate that either HMH's system-wide RBC will drop below 550% or that HMH will fail to maintain a BBB credit rating. Accompanying such notice, HMH should be required to file financial statements and projections covering the next eight calendar quarters for HMH and each of its regulated insurer subsidiaries, complete with detailed assumptions and explanations for the current financial position and results of operations. To the extent HMH's RBC is less than 550% in any quarterly or annual filing, the Consultants proposed that the same filing conditions be imposed on HMH for the following quarter.

(ii) To ensure that HMH has sufficient system-wide RBC to continue operations in a financially prudent manner, the Consultants recommended that the Department require HMH to annually file allocations of the annual assessments prior to making such payments.

(iii) Lastly, underpinning the financial health of the entire holding company system, Horizon has demonstrated its ability to obtain third-party reinsurance, if needed. This provides a backstop against unexpected material changes in system-wide RBC that would otherwise endanger the safety and soundness of the mutual holding company system.

VII. CONCLUSION

As discussed above, Chapter 145 *requires* the Department to approve a complete application, unless the Department determines that 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) does not benefit the interests of the policyholders of the HSC or treats them inequitably.[21]

The Consultants considered each of these Grounds for Disapproval:

(1) *Contrary to law*

In the course of determining whether the application was complete upon its initial submission, the Consultants and the Department compared Horizon's submissions to the statutory requirements for a complete application under Chapter 145 and concluded those criteria were satisfied. The Consultants and the Department also did not identify any elements of the Plan, including the "step plan" of corporate transactions, capitalization and financing plan, and corporate

[21] N.J.S.A. § 17:48E-46.5(b).

formation documents, that were contrary to laws within the Department's jurisdiction. As discussed above, some public testimony identified concern regarding whether the mutual holding company system would remain compliant with New Jersey not-for-profit law and the mutual holding company's charitable and benevolent mission, but the Attorney General has submitted a letter indicating his office would continue to be the "protector, supervisor, and enforcer of charitable trusts and charitable corporations, which includes Horizon in its current form and in any new, future corporate form." Chapter 145 "does not diminish the Attorney General's oversight power over charitable trusts and charitable corporations." Thus, the Attorney General remains free to take appropriate action if his office believes there is cause to do so in light of Horizon's status as a not-for-profit with a charitable and benevolent mission. In any case, the comments on Horizon's charitable status focus on future hypothetical actions that could violate the law, not any violations of the law in the Plan itself. The Plan, together with the Conditions and the Attorney General's continuing enforcement of state law with respect to charitable trusts and charitable corporations, ensure that Horizon will remain a not-for-profit entity with a charitable and benevolent mission consistent with Chapter 145. Further, the application and Conditions confirm that HHSI will remain subject to the statutory requirement that it make available insurance coverage in the individual market in every county of the state. Thus, the record, including the public testimony, does not appear to provide any basis to conclude the Plan is contrary to law.

(2) ***Detrimental to the safety or soundness of the proposed reorganized insurer and insurance company subsidiaries of the proposed mutual holding company***

The Consultants believe the capital distributions contemplated in the Plan, together with the substantial restrictions on future distributions, do not form a basis to conclude that the Plan would be detrimental to the safety or soundness of the proposed reorganized insurer and insurance company subsidiaries of the proposed MHC. As discussed above, while Chapter 145 specifically exempts the reorganized insurer from the 550% minimum RBC standard currently imposed on HHSI as an HSC, the Conditions ensure that the reorganized insurer and the two other major insurance company subsidiaries of the MHC will maintain RBC levels at least at 425%, well in excess of the statutory minimum of 200%, and above any level where there would be serious concerns about the safety or soundness of the insurance company subsidiaries in light of the circumstances. In addition, the Department is imposing a requirement that HMH provide a parental guarantee to its insurance company subsidiaries to ensure they are able to maintain these RBC levels. The Consultants' thorough review of the record in this proceeding, including Horizon's most recent Own Risk and Solvency Assessment Summary Report filed with the Department, do not reveal other bases to determine that this Ground for Disapproval is triggered.

(3) ***Does not benefit the interests of the policyholders of the HSC or treats them inequitably***

The Consultants and the Health Impact Study have considered the Plan from a number of perspectives that affect HSC policyholder interests, including, but not limited to, the Plan's impact on: the availability of insurance, the price of insurance, the availability of capital to pay policyholder claims, and the deployment of capital for non-insurance businesses. Based on the entire administrative record, the Consultants concluded that there would not be a basis to determine that the Plan does not benefit the HSC's policyholders or treats them inequitably. First, the Conditions reinforce the statutory requirement that HHSI, both in its current form and as the reorganized insurer, is obligated to offer individual market coverage in every county in the state. Second, the Plan contains no provisions that lead the Consultants to believe the Plan would cause premiums to increase, and, in the distant future, lower premium-tax costs could result in premiums being lower than they otherwise would be. Third, by limiting the distributions that may be made from the regulated insurance company subsidiaries to the MHC and by requiring minimum RBCs for the major insurance subsidiaries well in excess of statutory minima, the Conditions ensure sufficient capital will be available to provide benefits to policyholders through the regulated insurance company subsidiaries, while giving the MHC sufficient capital and flexibility to pursue efforts to better achieve its charitable and benevolent mission.

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The Consultants have concluded that the administrative record before the Department, which they have thoroughly reviewed, does not form a basis for triggering any of the three Grounds for Disapproval and, therefore, constitutes an appropriate basis for the Department to approve the Plan under Chapter 145 and to conclude that the Plan is consistent with the legislative intent of Chapter 145.