Testimony in Opposition to A5119/S3218
Before Assembly Financial Institutions Committee
12/14/2020

Maura Collinsgru, Health Care Program Director, New Jersey Citizen Action
Renee Steinhagen, Esq., Executive Director, New Jersey Appleseed, PILC

Chairman McKeon and Members of the Committee,

Yesterday, we received a draft of proposed amendments being considered today. We thank the members that shared these updates. While the bill has somewhat improved, the process continues to lack transparency and adequate time for stakeholders and legislators to fully understand it and all its implications. Legislators are being asked to vote on a complex piece of legislation that has enormous implications for our health care, residents and taxpayers without the benefit of being able to fully vet or understand it. There is a false sense of urgency creating artificial deadlines that compromise the ability of us all to ensure that Horizon's assets and charitable mission are guaranteed to be protected. The structure proposed is still problematic and we urge you to slow down, reconsider and amend the bill to clear ambiguities and address the following deficits.

1) The mutual holding company still only has to hold "100% interest in the reorganized insurer". 100% interest is not defined. **It must read: "100% ownership interest or all voting and preferred capital stock."**

Two provisions in the bill reinforce the need for this change.

i) The reorganized insurer is still defined to hold only liabilities and business of Horizon, not its surplus, profit or in essence charitable assets, permitting the mutual holding company to put any profits or surplus generated by the reorganized insurer, which is a for-profit stock company, in another for-profit stock subsidiary of the holding company.

ii) The bill still contains the definition of "intermediate holding company" that speaks about only holding a 51% of the voting shares of the for-profit subsidiaries, leading us to believe that this intermediate holding company will be used to permit ownership of stock subsidiaries by third parties with the holding company only having a controlling interest in the subsidiary, not an ownership interest.

2) The amendments to Section 4 are deficient and somewhat misleading. The amendment proposes the following:

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

The amendment says that "any ownership interest in a subsidiary shall be held by the mutual and that any profits generated by that interest are returned to the holding company in proportion to the ownership interest."

The amendment *does not require* the holding company to hold a 100% ownership interest in all the for-profit subsidiaries that it creates or establishes with Horizon's charitable assets. The amendment speaks only to the situation where the mutual takes surplus or profits generated by the reorganized insurer or other subsidiaries and invests it in a joint venture with another company or simply invests money in another company through the market.

The bill would still permit the holding company to acquire for-profit stock companies or create for-profit stock subsidiaries and just hold 51% of the voting shares of those subsidiaries and issue ownership stock to private investors who then would hold all or any part of the ownership of that subsidiary. The bill does not prevent the mutual holding company from having ownership interests in such entities, but does not require them to do so.

The past practice of mutual holding companies (and the first proposed version of this bill) indicates that they typically control (through voting shares)several for-profit stock subsidiaries that are owned by private investors or other third parties and accordingly, profits of those companies get shared with private investors as dividends or stock buy-backs, and <u>do not flow up to the mutual holding company</u>.

Section 4 must be amended to clearly state:

> **<u>"The mutual holding company must hold a 100% ownership or all the voting and preferred capital stock in any for-profit stock company that it acquires or creates. With respect to any ownership interest held in other for-profit companies or in joint ventures, it must retain the dividends proportionate to the ownership interest it holds in such entities."</u>**

3) Section 3 regarding the Mutual Holding Company mission has not changed.

<u>The charitable health mission must be specified to ensure that the holding company is organized to benefit the public more broadly than just Horizon's membership</u> — a definition, which itself still has problems (since not all policyholders are members, members get to vote only for a pre-selected candidates for the board of directors and they cannot receive any payment or share in profits of subsidiaries). Meaning the MHC is not in fact charitable if it is organized only to benefit its members; that is the purpose of a mutual, not a charitable corporation.

A fourth prong to Section 3(a) must be added specifying Horizon's charitable mission to provide community benefits beyond their policyholders (members) by assisting the state and other non-profit safety net providers; provide affordable health care, close the coverage gap and decrease racial disparities in health access and outcomes.

4) Section 7 regarding merger and acquisition has not changed.

The bill still permits the MHC to merge with or be acquired by another mutual insurer or mutual holding company—almost all of which around the country are for-profit entities—without requiring a charitable trust payment. This Chairman's statement last week that the amendments would prohibit such merger or acquisition. **Although the transaction must be approved by the Commissioner and Attorney General the bill should acknowledge that at such point a charitable trust payment must be made.** Such an issue arose more than 20 years ago when a Michigan BCBS sought to merge with a Texas BCBS that were treated differently under their respective state laws. One must make the need for a charitable trust payment explicit at this juncture or when any of the for-profit subsidiaries that the mutual holding company creates, controls and owns starts issuing ownership interests to private investors.

5) Section 11 does not include reporting to AG.

The MHC should report not only to the Commissioner and the Governor, but also financial reporting to the AG must be required so that the AG can protect the charitable assets. The bill still says that any reports that are required under Title 15A—nonprofit statue—are not required if inconsistent with this bill. We need to ensure the public that the AG knows what is happening to Horizon's current charitable assets valued at $7billion; and that they are not dissipated into the hands of private investors through the for-profit subsidiary structure of the mutual holding company; a situation that is different than the MHC retaining ownership interests in joint ventures.

If this bill is not amended to make sure that this transaction does not constitute a conversion to a for-profit entity in fact, the one change that has to be made in addition to requiring financial reporting to the Attorney General is a provision that enables the Attorney General to protect the full and fair market value of the charitable assets. Such a provision should read as follows: **If any subsidiary of the MHC, or any other member of the holding company system issues stock to investors, then a conversion will be deemed to have occurred and an independent valuation of all the assets of the entire holding company system shall be overseen by the Attorney General.**

6) The payment to the State is still not dedicated to health care nor is it secure, meaning it might not be paid.

First, the $600 million which we understand is coming out of Horizon's reserves belongs to the policyholders not the State. This money should be used for that purpose, and cannot be suspended during the approval process as the bill currently permits pursuant to Section 5(a)(8)(b).

Second, it is unlikely that the remaining $650 million will be paid, since as we noted above, the reorganized insurer does not have to retain any surplus above its reserves and that money can be put in other for-profit subsidiaries or joint ventures. That is Horizon can make sure that it will always be able to defer such payments and that the debt will expire. This is the game that the mutual holding company structure permits any company to play—--not just Horizon, and it is such “shuffling around money game” that this mutual holding company is able to play regardless of its nonprofit status.

Any funds paid to the state in any reorganization should be deposited to the Health Insurance Affordability Fund (created under the Health Insurance Assessment act) and held by the Department of Treasury for the purposes of advancing affordability and access for low and moderate income New Jerseyans and to decrease racial disparities.

We thank you for your consideration of our suggested changes. This bill will have a significant impact on New Jersey health consumers and the insurance market in New Jersey. It implicates important issues of law and public policy and it deserves open, transparent discussion of all its terms. Right now, we are faced with a bill that was drafted by counsel for Horizon BCBS, based on a recommendation made to the company by McKinsey & Co. It is our belief that this nonprofit mutual holding company model was suggested simply as a means to avoid making a charitable trust settlement payment to the public. Either make sure that this bill does not permit a conversion or make sure that a charitable trust payment is made once the mutual starts issuing ownership interests to a third parties, i.e., private investors. The choice is yours; but you cannot renege on your obligation to protect the charitable health assets by, at minimum, explicitly giving the Attorney General the ability to monitor those assets throughout the holding company system.