§ 7317. Conversion of certain article 43 corporations. (a) (1) An article forty-three corporation which was the subject of an initial opinion and decision issued by the superintendent on or before December thirty-first, nineteen hundred ninety-nine, as the same may be amended or one or more article forty-three corporations whose main offices on January first, two thousand seven were located in one of the counties listed in section one thousand two hundred sixty-two of the public authorities law and its or their not-for-profit subsidiaries (including, without limitation, any such subsidiary licensed as a health service corporation pursuant to this chapter or as a health maintenance organization organized pursuant to article forty-four of the public health law), hereinafter referred to in the singular, which seeks to convert into one or more corporations or other entities organized for pecuniary profit or into one or more for-profit organizations of any kind shall submit a proposed plan of conversion to the superintendent for approval pursuant to this section.

(2) This section shall apply to any transaction the effect of which is to change the status, orientation or operation of the applicant from a not-for-profit organization to a for-profit organization, including:

(A) Any sale, lease, transfer, exchange, option, conveyance, gift, joint venture, merger, consolidation or disposition of all or a material portion of the assets of the applicant over a period of five years;

(B) Any transfer of control, responsibility or governance over all or substantially all of the assets of the applicant; or

(C) Continuation of the corporate existence of the applicant by reconstituting the corporate form of the applicant from a not-for-profit corporation to a business corporation by the filing of a restated certificate of incorporation regardless of whether such changes occur in one transaction or in a series of transactions.

(b) The proposed plan of conversion shall include all items and address all issues as may be required by the superintendent in order for the superintendent to assure that the conversion process will not adversely affect the applicant's contractholders or members, will protect the interests of and will not negatively impact on the delivery of health care benefits and services to the people of the state of New York and results in the fair, equitable and convenient winding down of the business and affairs of the applicant. The superintendent may adopt

such rules or regulations or establish such procedures as he or she deems necessary or proper to implement the provisions of this section.

(c)(1) The proposed plan shall address the following items and issues, if applicable, to the satisfaction of the superintendent:

(A) The transition of contract forms from the not-for-profit corporation to the converted corporation or health maintenance organization including any related holding companies, subsidiaries or other entities involved in the proposed conversion;

(B) Any transfer of assets agreements;

(C) Any corporate resolutions or authorizations by the board of directors;

(D) Any reinsurance arrangements;

(E) An explanation of any transfers of employees, records and equipment;

(F) Any management contracts or administrative service agreements;

(G) Any guarantees or cross-guarantee agreements;

(H) Any trust agreements;

(I) That the applicant's financial reserves are funded prior to the conversion at the level required by law and provide a detailed description of the financial structure and reserve levels of the converted corporation or organization;

(J) The governance structure and the character and competence of directors and officers;

(K) Any administrative agreements among related companies, including fair and equitable terms and reasonable fees;

(L) A detailed description of any proposed public sale of stock or securities or any initial public offering;

(M) New or revised contract forms together with notices of discontinuance or any other explanation to contractholders of the conversion process;

(N) A plan for outreach to consumers to explain in simple terms the transaction and the steps, if any, consumers need to take to preserve their coverage;

(O) Any necessary protections for contractholders to preserve contract form anniversary dates, calculation of deductibles and consistent premiums as part of the contract transfer process; and

(P) That sufficient safeguards are in place to ensure that the

affected community has continued or increased access to health care coverage.

(2) The proposed plan shall explain in detail the method of transfer of contract forms or other methods of assuring uninterrupted continuance of coverage for all covered persons, with particular focus on medicare supplement, policies issued pursuant to sections four thousand three hundred twenty-one and four thousand three hundred twenty-two of this chapter, policies subject to chapter six hundred sixty-one of the laws of nineteen hundred ninety-seven, and any other types of coverage designated by the superintendent which may warrant special attention.

(d) (i) The superintendent shall review the proposed plan of conversion and may require, prior to issuing any approval, that the applicant make any changes to the proposed plan that the superintendent deems necessary. The superintendent shall establish a date certain by which the initial public offering shall occur. In the event the proposed plan of conversion affects an organization certified under article forty-four of the public health law, the superintendent shall solicit the views of the commissioner of health and the superintendent shall not issue any approvals of the plan of conversion unless the commissioner has consented in writing to those elements of the plan of conversion which are under the commissioner's jurisdiction with respect to the applicant's certificate of authority under article forty-four of the public health law.

(ii) For purposes of granting his approval pursuant to subsection (f) of this section, the superintendent may deem sufficient and as meeting all legal requirements any or all portions of the conversion transaction completed by an applicant organized under article forty-three of this chapter which was the subject of an initial opinion and decision issued by the superintendent on or before December thirty-first, nineteen hundred ninety-nine, as the same may be amended.

(e) The superintendent shall provide in an opinion and decision approving the conversion for the timely transfer of the public asset consistent with the purposes of this chapter so as to maximize the value of the public asset. The public asset shall be deposited in a special fund to be known as the "public asset fund." Such fund shall consist of assets or moneys paid to it as a result of the creation of a "public asset", as defined in paragraph three of subsection (j) of section four

thousand three hundred one of this chapter, together with any earnings thereon. Such fund shall be separate and apart from any other fund and from all other state moneys. The comptroller shall be the sole custodian of the fund. Custodial authority of the fund shall be limited to the rights set forth in this subsection, and any and all other rights, including shareholder rights with respect to the public asset shall be vested in the board, as set forth in paragraph four of subsection (j) of section four thousand three hundred one of this chapter. All disbursements shall be made by the comptroller upon vouchers signed by the superintendent, or his deputy, upon the direction of the board established pursuant to subparagraph (B) of paragraph four of subsection (j) of section four thousand three hundred one of this chapter. The moneys of the fund shall be invested by the comptroller, pursuant to the direction of such board, so as to maximize the value of the assets in such fund consistent with the board's statutory obligation to direct disbursements as described herein and in subsection (j) of section four thousand three hundred one of this chapter. The fund shall continue until there are no longer any assets or moneys therein available for distribution.

(f) (i) Notwithstanding any other provision of law, the superintendent's approval of the conversion transaction shall constitute final approval of the transaction and no further authorizations or approvals shall be required. Notwithstanding any other provision of law, sole jurisdiction for any challenge of the superintendent's final determination regarding the conversion transaction shall rest with the New York supreme court and shall be commenced within thirty days of the superintendent's final determination. Judicial review shall be limited to a determination as to whether the superintendent acted in an arbitrary or capricious manner with respect to reaching a determination.

(ii) This section shall be deemed to supercede all otherwise applicable laws and legal requirements and compliance with this section and subsection (j) of section four thousand three hundred one of this chapter and the use of such funds as provided in such section, and in subsection (k) of this section, shall be deemed to constitute compliance with and shall supercede all such other legal requirements, including, but not limited to, statutory, common law and any other requirements relating to not-for-profit corporations and fiduciary requirements

applicable to the board of directors of any company filing a plan pursuant to this section. In addition, and not in limitation of the foregoing, a transaction approved by the superintendent shall be deemed for all purposes to be a transaction that is fair and reasonable to an applicant and to promote the purposes of that applicant, and the use of proceeds as described herein shall be deemed for all purposes to be a use for a purpose that is consistent with and as near as may be to the purposes for which the applicant was originally organized and subsequently operated.

(g) The conversion transaction shall not result in inurement to any private person or entity. The converted corporation shall not issue to any employee or member of the board of directors of either the applicant or the converted corporation, any stock options, warrants or stock appreciation rights unless the value of such options, warrants or rights is initially set at the publicly traded price of the stock of the converted insurer on a date no earlier than six months after the commencement of the initial public offering. In no event shall a director of the applicant receive stock options in his or her capacity as a director of the applicant.

(h) After the superintendent deems the proposed plan of conversion sufficiently complete, the superintendent shall hold one or more public hearings regarding the proposed plan of conversion within the geographic area served by the applicant. The number and locations of the hearings shall be sufficient to ensure adequate public involvement and comment. The applicant shall provide notice of the public hearings throughout the geographic area affected by the application by distributing a form or notice approved by the superintendent and including such notices in the state register, in accordance with the provisions of the state administrative procedure act, in newspapers of general circulation and electronic notices posted on the internet. The applicant shall notify contractholders, subscribers and enrollees, as well as participating providers of health care services under the applicant's health plan, in writing of the application and hearings. In the event that there is an amendment to the application, additional hearings shall be held with due notice provided that the superintendent determines that such changes to the plan are materially adverse to the interests of policyholders, subscribers or enrollees. Upon receipt of a complete application, the

application and any supporting material submitted to the superintendent in conjunction with the application shall be deemed to be public records and shall be made available to the public for inspection during normal business hours, at no cost, at the applicant's main office within the state of New York and at the office of the superintendent. Prior to the hearing date, the applicant shall post its application and all such supporting material electronically on the internet. The superintendent shall cause a transcript to be made of each public hearing and such transcript and any submitted written comments shall become public records. The superintendent shall similarly promptly provide copies of transcripts of any hearings held by the superintendent to the commissioner of health and all members of the board.

(i) Within a reasonable time after receipt of a final plan of conversion, the superintendent shall render a written decision determining whether the proposed plan of conversion shall become effective as filed, shall become effective as modified or shall be disapproved.

(j) To assist in the review of the proposed plan of conversion, the superintendent shall be authorized to hire independent financial, health, legal and other experts and consultants, the reasonable and necessary costs of which shall be paid by the applicant. The applicant shall deliver to the superintendent at the time of submission of the proposed plan of conversion a written undertaking in form and substance satisfactory to the superintendent and signed by the applicant and by such other persons as the superintendent may require specifying the manner in which all costs and expenses incurred in any manner in connection with the plan of conversion shall be paid or reimbursed. Such undertaking shall provide for the payment or reimbursement of all expenses incurred by the superintendent or the department in connection with the plan of conversion, other than normal operating expenses of the department.

(k) (1) A charitable organization shall be established for the purpose of receiving the charitable asset and shall operate as a tax exempt organization pursuant to section 501(c)(3) of the federal internal revenue code for the purposes of receiving the charitable asset. Whether or not the charitable organization is classified as a private foundation under section 509 of the internal revenue code, as amended or any

comparable provision of any successor law, it shall be subject to the restrictions and limitations that apply to private foundations in sections 4941 through 4945 of the federal internal revenue code, as amended or any comparable provision of any successor law. The superintendent shall provide in an opinion and decision approving the conversion for the timely transfer of the charitable asset consistent with the purposes of this chapter. In the case of the conversion of a corporation or corporations which occurs after the effective date of the chapter of the laws of two thousand seven which amended this paragraph, the superintendent shall provide in an opinion and decision approving such conversion for the timely transfer of the charitable asset to the New York state health foundation created pursuant to this subsection and in compliance with all applicable provisions of this subsection.

(2) The charitable organization shall be governed by a board of directors composed of nine members, three of whom shall be voting members and six of whom shall be non-voting members, which shall be appointed as follows: one voting member and two non-voting members shall be appointed by each of the governor, the temporary president of the senate, and the speaker of the assembly. Each member shall have a term of three years and may be reappointed at the end of said term by the same person that made the original appointment. A vacancy in the membership of the board shall be filled for the unexpired portion of the term provided for by the original appointment by the same person that made the original appointment. Members may not be officers or employees of the state or any municipal subdivision thereof. The board of such charitable organization shall be broadly representative of the community and include representatives of patient, consumer and public interest organizations and individuals with expertise in public health, health care delivery and financing, patient health issues, investments and philanthropic administration, provided further, no more than three board members of the entire board shall be representatives from any one organization or provider group and board vacancies shall be filled from eligible representatives who are not represented or who are under represented on the board. The charitable organization's structure shall provide mechanisms for ongoing community consultation and engagement including, but not limited to, the establishment of a community advisory board. A vacancy in the membership of the board shall be filled for the

unexpired portion of the term provided for by the original appointment by the same person that made the original appointment.

(3) The mission of such charitable organization shall include:

(A) expansion of access to health care by extending health insurance coverage to state residents who cannot afford to purchase their own coverage or who have coverage that is inadequate to meet their needs;

(B) expansion and enhancement of access to health care by augmenting and creating health care programs that deliver services to populations that are unable to access health care or that improve public health; and

(C) augmentation of its other program priorities by supporting programs that inform and educate New Yorkers about public health issues and empower communities to address these issues by becoming more effective at identifying and articulating health care needs and implementing solutions.

Programs or initiatives instituted by the charitable organization shall not neglect the residents or institutions served by the applicant prior to the conversion.

(4) The members of the board of directors of the charitable organization shall serve without compensation for their services as members, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties. Such members, except as otherwise provided by law, may engage in private employment, or in a profession or business.

(5) The members of the board of directors of the charitable organization and its corporate existence shall continue until there are no longer any assets or moneys comprising the charitable asset available for distribution.

(6) The affirmative vote of all three voting members of the board of directors of the charitable organization shall be necessary for the transaction of any business or the exercise of any power or function of such board. Such board may delegate to one or more of its members, or its agents, such powers and duties as it may deem proper.

(7) The members of the board of directors of the charitable organization shall have the power to make and execute contracts and all other instruments, and to exercise such other powers, necessary or convenient for the exercise of its powers and functions.

In directing investments pursuant to this subparagraph, the board of directors of the charitable organization shall not be limited by any restrictions on investments contained in any other section of law, subject only to the board's obligations and the considerations set forth above.

(8) (A) Neither the members of the board of directors of the charitable organization nor any agent or other person or persons acting on its behalf, while acting within the scope of their authority as members or agents of the board, shall be subject to any personal liability resulting from the carrying out of the powers conferred hereunder; and (B) the provisions of section seventeen of the public officers law shall apply to members of the board and agents or other persons acting on its behalf, in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against any of them arising out of any determination made or actions taken or omitted to be taken in compliance with any obligations under or pursuant to the terms of this section or section four thousand three hundred one of this chapter. The provisions of this subparagraph shall be severable from and shall survive any legal challenge to the legality, validity, or constitutionality of this section.

(9) The charitable organization receiving the charitable asset agrees in writing to register and file annual financial reports with the attorney general in compliance with section 8-1.4 of the estates, powers, and trusts law and to post its registration filing and annual reports electronically on the internet.

(10) The charitable organization receiving the charitable asset, its directors, officers, and staff shall be and will remain independent of any control or influence by the surviving corporation or other surviving entity organized for pecuniary profit and its affiliates and successors. Such requirement shall not prevent the charitable organization from voting its equity shares in the for-profit organization in accordance with the voting and shareholders rights agreement entered into by the board with respect to the public asset and the charitable organization shall be subject to such voting and shareholders rights agreement and the asset preservation agreement between the board with respect to the public asset and the converted corporation. No person who is an officer,

director, or staff member of the applicant at the time such corporation applies to the superintendent for permission to convert, or thereafter shall be an officer, director, or staff member of the charitable organization receiving the charitable asset. No director, officer, agent, or employee of the applicant or the charitable organization receiving the charitable asset will receive additional compensation arising from the conversion transaction.

(11) The charitable organization receiving the charitable asset will establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefitting the surviving corporation or other surviving entity organized for pecuniary profit, or its affiliates or successors, directors, management, and staff.

(12) Any action or proceeding in which any question arises as to the validity of any provision in this subsection or in section seven thousand three hundred seventeen of this chapter, shall be preferred over all other civil causes except election causes in all courts of the state of New York and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the board in any action or proceeding questioning the validity of any provision herein in which he or she may be allowed to intervene.

(13) To assist in carrying out its functions, the board shall be authorized to hire independent financial, legal and other experts and consultants.

(14) Inconsistent provisions of other laws are superseded. Insofar as any provision herein is inconsistent with the provisions of any other law, general, special or local, the provisions herein shall be controlling.

(15) This section, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes.

(l) For the purposes of this section, fair market value shall consist of either; (i) one hundred percent of the stock that is transferred, provided that a portion of the shares may be sold in an initial public offering and that the net proceeds shall be transferred, together with the remaining unsold shares, (provided further that additional stock may

be sold for fair market value that is transferred to the converted corporation), or (ii) in the case where one hundred percent of the stock is not transferred and a public stock offering is not anticipated, an independent valuation that takes into account market value, investment or earnings value and not asset value. Within five days of the superintendent's final determination of the fair market value, the superintendent shall forward to the attorney general such independent valuation. The attorney general may, within thirty days after having received such valuation, provide the superintendent with written objections to such valuation. The superintendent shall respond to such written objections within seven days stating either that the superintendent accepts such objections and has modified his or her determination accordingly, or that the superintendent rejects such objections. The attorney general may, thereafter, pursue an action in supreme court seeking to have the valuation adjusted in accordance with the attorney general's objections. Such action shall be preferred over all other civil causes except election causes in all courts of the state of New York and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar.