PROPOSED AFFILIATION AMONG
MONADNOCK COMMUNITY HOSPITAL
HUGGINS HOSPITAL
CATHOLIC MEDICAL CENTER

REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS

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NEW HAMPSHIRE
Department of Justice
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Introduction

The Charitable Trusts Unit has received a notice and submission, filed July 6, 2016, pursuant to RSA 7:19-b, regarding the proposed affiliation among Huggins Hospital (HH), Monadnock Community Hospital (MCH) and Catholic Medical Center (CMC). CMC Healthcare System (CMCHS) is the current sole member of CMC. HH and MCH filed the notice because the proposed affiliation constitutes a change of control of their respective assets. The proposed affiliation does not constitute a change of control of CMC, but CMC joined in the notice to provide required information and representations.

The transaction is described in an Affiliation Agreement dated June 29, 2016. It will result in the formation of a new organization, to be called GraniteOne Health, Inc. ("System Parent") that will in turn become the sole member of HH and MCH and one of two members of CMC (CMCHS currently is CMC's sole member). System Parent will hold certain director appointment rights and reserved powers over the three hospitals and will provide these hospitals with certain management and operational services.

In addition to the July 6, 2016 submission, the Charitable Trusts Unit received responses dated August 18, September 6 and October 13, 2016 to requests for additional information. It has also received additional materials that further explain those responses. The documentation submitted will be referred to collectively as the "Notice". The Notice constitutes one of the requirements of RSA 7:19-b, II and III, which generally obligates the governing bodies of health care charitable trusts, including MCH, CMC and HH, to satisfy certain minimum standards before they consummate an acquisition transaction.

The Charitable Trusts Unit has completed its review of the Notice. In doing so, it took into consideration the public meetings and the media outreach conducted by the parties leading up to the submission of the Notice. The Director of Charitable Trusts and the Assistant Director of Charitable Trusts also attended public meetings held in Peterborough, Manchester and Wolfeboro on October 24, 25 and 26, 2016. They met with members of the boards of directors of MCH and HH prior to the public meetings in their respective communities. They also met with representatives of Manchester Community Health Center, Manchester Health Department, the Endowment for Health and the UNH School of Law Health Law and Policy Program. The Charitable Trusts Unit solicited written comments regarding the proposed affiliation through a notice on its web page. Finally, the Charitable Trusts Unit retained the New Hampshire Center for Public Policy Studies (NHCPPS) to assess the effect on cost, quality and access resulting from hospital consolidation in New Hampshire. NHCPPS also analyzed the community benefits efforts of the hospitals. NHCPPS issued a preliminary report on October 20, 2016.

Review of Minimum Standards for Acquisition Transactions

The affiliation contemplated in the Notice meets the definition of an acquisition transaction under RSA 7:19-b, I(a) because it involves a transfer of control of 25 percent or more of the assets of HH and MCH. RSA 7:19-b, II sets forth in six subparagraphs the minimum standards that the board of directors must find to have been met in order to approve a health care acquisition transaction. This report will address each of the standards but organized in a different manner than the statute.

(b) Due Diligence

The Notice describes the extensive process that HH, CMC and MCH independently used to consider the future of their institutions, the alternatives available and the negotiations that led to the Affiliation Agreement. In making their decisions, each of the hospitals relied upon the advice of health care and legal experts.

The hospitals reported that they have worked together before. They have participated in contractual relationships for several years in cardiology, vascular and hospitalist services. CMC has served as a patient transfer center for HH and MCH. CMC provides laboratory services for MCH.

The Notice describes certain clinical and operational initiatives that may take place as a result of the affiliation. The hospitals anticipate future improvements in the cost, quality and access to health services as a result of this transaction. The due diligence of the parties has not documented a likelihood of specific improvements in those metrics, however. That lack of specificity may be well founded, given that an integration plan has yet to be developed, given purported legal restraints on the sharing of certain information which could help quantify the potential affiliation benefits, and given the paucity of good data in New Hampshire on the subject, according to the NHCPPS report. Perhaps to address the lack of data, the hospitals plan to assess clinical services going forward. Affiliation Agreement, Section 9.1.

(c) Conflicts of Interest

The Notice represents that no director or officer of any hospital is involved in any conflict of interest or pecuniary benefit transaction with respect to the proposed transaction.

However, the governance structure of a health care system lends itself to structural conflicts of interest. In this transaction, the System Parent's board of directors will be comprised of various directors appointed by the boards of directors of CMC, HH and MCH, plus the chief executive officers of those hospitals or their designees. In turn, ¼ of the HH and MCH boards of directors will each be appointed by the System Parent board of directors, and ¾ will be appointed by the HH and MCH boards of directors. The chief executive officer of the System Parent will also be a director of each board. The System Parent will retain the right to object to those directors nominated by the HH and MCH board who do not meet criteria established under the Affiliation Agreement.

Under the governance structure of the transaction, Hospital chief executive officers will serve on two boards and likely one or more volunteer directors will also serve on two boards. While there is no per se prohibition of director service on interlocking boards, the practice requires a heightened awareness by those directors to spot financial and/or mission conflicts as they arise and to analyze whether a proposed action will benefit an individual hospital, the system, neither or both. *See* Huberfeld, Tackling the 'Evils' of Interlocking Directorates in Healthcare Nonprofits, 85 Neb.L.Rev. 681 (2007); Hershey and Jarzab, Fiduciary Duties of Interlocking Directors within a Nonprofit Health System, 38 HOSPLW 449 (2005). This issue is discussed further, below, with respect to use of a corporate member.

(d), (e) and (f) Proceeds of Transaction

The transaction is among New Hampshire voluntary corporations. Moreover, the transaction contemplates no transfer of pre-affiliation assets. Affiliation Agreement, Section 3.9.3.1. The hospitals will retain control of their restricted assets and all of their pre-affiliation unrestricted assets.

CMC, through the System Parent, has committed to make an investment in HH for primary care and information technology. Affiliation Agreement, Schedule 9.5. CMC has confirmed that the investment will come from its post-affiliation assets.

The financial statements of CMC and MCH are unclear as to the treatment of certain specific permanently restricted funds. As of this date, questions raised about the treatment of those funds have not been resolved.

(g) Notice and Hearing

The Notice describes the outreach to the communities affected by the proposed transaction and the opportunity for individuals to provide input about the transaction to the boards of directors of the hospitals.

As mentioned previously, the Director of Charitable Trusts and the Assistant Director of Charitable Trusts attended public meetings in Peterborough, Manchester and Wolfeboro on October 24, 25 and 26, 2016.

The transaction has received little public comment, but the comments received have largely been positive.

(a), (b) and (e) Best Interests of Organization

At its most basic level, each of the organizations shares an interest in surviving and prospering as a hospital that provides the level of health care needed in its service area. The Notice describes the need of both HH and MCH to affiliate with a larger hospital to address declining admissions, physician retention and recruitment, financial stability, specialty care access, population health initiatives and reimbursement. The Notice describes the need of CMC to remain an independent Manchester-based Catholic hospital, to develop closer relationships with smaller hospitals to increase access to CMC specialty care lines of service as well as to develop population health initiatives. The Affiliation Agreement attempts to address each of the interests of the hospitals.

As mentioned above, there is a lack of good data as to the success of hospital affiliations to address certain of the needs expressed by HH and MCH. The parties do plan to assess clinical services going forward. Affiliation Agreement, Section 9.1.

(a), (b) and (e) Continuation of Charitable Purposes

(i) Hospitals as Charitable Organizations

All of the hospitals are charitable organizations registered with the Charitable Trusts Unit. The Internal Revenue Service has determined them to be public charities classified under §501(c)(3) of the Internal Revenue Code. After the affiliation, all of the hospitals will retain their separate status as charitable organizations.

(ii) Preservation of CMC's Catholic Identity

The Notice describes how the Affiliation Agreement will structure the transaction to preserve the Catholic identity of CMC. While its articles of agreement have been amended over the years, they have consistently stated its purposes to "maintain its identity as a Catholic hospital" and to "comply with the Ethical and Religious Directives for Catholic Health Care Services" (ERDs). Its adherence to these purposes is overseen by CMCHS, which holds certain reserved powers as to CMC and is CMC's sole member at the present time. The members of CMCHS are its directors. The Roman Catholic Bishop of Manchester (RCBM) holds certain reserved powers or approval rights with respect to decisions of the CMCHS Board, including the power of appointment of all of its directors.

The transaction contemplates that after System Parent is created by HH and MCH, the CMC board directors will then vote to make the System Parent its co-member, retaining CMCHS as its other member. CMCHS will continue to monitor CMC's adherence to the ERDs, and System Parent will conduct other activities relating to CMC that neither enforce the ERDs nor are inconsistent with them.

The RCBM approved the transaction after receiving advice from experts in the field. His approval letter, dated June 22, 2016, states that the transaction "will help to ensure the preservation of CMC's Catholic identity."

CMC is a charitable organization registered with the Charitable Trusts Unit. Despite its "Catholic identity", the First Amendment to the United States Constitution does not exempt CMC from adherence to New Hampshire charitable trust law. *See*, *e.g.*, *Berthiaume v. McCormack*, 153 N.H. 239, 249 (2006) (citing *Jones v. Wolf*, 443 U.S. 595, 602 (1979)). However, as to a church, enforcement of the law is limited to the application of "neutral principles". *Id*. The determination of whether the transaction preserves CMC's Catholic identity would require an inquiry into church doctrine and practice. The Roman Catholic Church is classified as a hierarchical church. Under that structure, the local bishop decides what is doctrine and practice. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). *See also Means v. U.S. Conf. of Catholic Bishops*, 2015 U.S. Dist. LEXIS 84302 (W.D.Mich. 2015). Moreover, the ERDs specifically allocate the authority to approve hospital partnerships to the local bishop. Directive No. 68, ERDs (5th Ed. 2009). Here, RCBM has stated that the transaction will preserve CMC's Catholic identity. This review must accept that statement.

(iii) Preservation of HH's and MCH's Secular Identity

The Notice also states how the Affiliation Agreement will structure the transaction to preserve the secular (i.e. non-religious) identity of HH and MCH. The Act of Incorporation of HH and the Articles of Agreement of MCH both create organizations with the purpose to establish and maintain a hospital. The purpose is described in general terms without mention of any religious or healing orientation.

The transaction contemplates that System Parent will become the sole member of HH and MCH. System Parent will hold certain reserved powers over HH and MCH, including the appointment of ¼ of its board members, the limited right to object to the appointment of the remaining ¾ of elected board members, and the ratification of budgets, chief executives and certain governing document amendments. The System Parent in turn is controlled by CMC, since it will appoint a majority of its directors.

Because CMC maintains a Catholic identity, CMC controls System Parent, and System Parent may exercise limited control over HH and MCH, the question becomes whether HH and MCH in turn could evolve into hospitals with a Catholic identity. Without deciding what "Catholic identity" means or deciding the extent to which religious and non-religious hospitals share common purposes, the Affiliation Agreement states that System Parent will not be a Catholic organization, System Parent cannot require HH or MCH to be bound by the ERDs, HH and MCH will retain their secular identity, and HH and MCH will not be bound by the ERDs. Affiliation Agreement, Section 3.7.

Affiliations between Catholic and non-Catholic hospitals, whether religious or secular, have been fraught with controversy and difficulty across the nation. CMC's failed affiliation with Elliot Hospital in Optima Health is evidence of that. From these experiences, certain patterns have emerged. The arrangement chosen here is similar to that used in 2012 for the Providence Health/Swedish Health transaction in Washington State: the creation of a secular system parent and the preservation of the Catholic and secular identities of the affiliated hospitals. Ostrom, Swedish Alliance with Providence is Now Complete, Seattle Times, February 1, 2012.

The Affiliation Agreement does commit HH and MCH not to engage in certain activities which the hospitals represent they do not currently practice. They are: "direct abortion, in-vitro fertilization, embryonic stem cell research and physician assisted suicide". Affiliation Agreement, Section 3.7. While apparently these are prohibited practices in the ERDs, the justification for the commitment is limited to "respect for CMC's core values", nominally a secular purpose. Id.

The question becomes whether HH and MCH, as part of an affiliation, can make an agreement to continue to refrain from certain activities without triggering a change to their purpose that would require the application of the cy pres doctrine. HH and MCH have broad statements of purpose. They neither require nor prohibit any medical or surgical procedures. HH formerly offered maternity services – a typical hospital service – until its board decided to close the unit in 2009. Hospitals initiate and terminate specific services for a variety of reasons – including economic -- and those decisions do not affect the core purpose of the hospital. Therefore the decision by HH and MCH to forego the institution of a hypothetical new service as

part of the deal to affiliate with CMC does not change their purpose and does not change their identity as secular hospitals.

(iv) Participation of the Hospitals in a System

Each of the hospitals proposes to amend its articles of agreement to make System Parent the sole member (in the case of HH and MCH) or a co-member (in the case of CMC). They propose to amend their by-laws to become part of a system. Apart from the governance role exercised by the member, discussed in the next section, these amendments will make the hospitals part of a system. In furtherance of their participation in a system, the hospitals have collectively agreed to engage in population health initiatives, joint ventures, clinical service programs and physician recruitment. Affiliation Agreement, Sections 6 – 9. They will develop an integration plan, but not before this report is issued. As a result, the specifics of system activities are not now known.

The participation of the hospitals in a system does mean some expansion of their charitable purposes. Charitable organizations may expand their purposes without court oversight, with some limits, so long as it is not inconsistent with their prior purposes. *See generally Queen of Angels Hospital v. Younger*, 66 Cal. App. 359, 368 – 71 (Cal.App., 1977); Restatement of the Law of Charitable Organizations (Tent. Draft No. 1, 2016) §2.02, Comment (e) and Reporters' Note 17; §3.01(a), Comment (b) and (c); §3.04(a), Comment (b) and (c). There are limits, however, to the use of pre-affiliation assets for the support of the expanded mission. *See generally* Restatement of Charitable Organizations §3.01(b), Comment (e), citing *Attorney General v. Hahnemann Hospital*, 494 N.E.2d 101, 1021 (Mass. 1987). The hospitals attempt to address those limits in Section 3.9.3.1 of the Affiliation Agreement. The section requires that restricted assets continue to be used to benefit its hospital in accordance with the terms of the restriction and that pre-affiliation unrestricted assets also be used to benefit its hospital, but may also be used in future system financing so long as it benefits that hospital.

(v) Use of Corporate Member

The proposed affiliation among the hospitals takes its form from contracts and governing documents. The articles of agreement of each hospital will be amended to make System Parent the sole member (in the case of HH and MCH) or a co-member (in the case of CMC). The membership rights of the System Parent will be documented in the amended articles of agreement and/or by-laws of each hospital. The membership rights include the voting rights of the System Parent, discussed in the Conflicts of Interest section, above, and a number of reserved rights, including System Parent approval of the following hospital initiated actions: budgets, capital projects, clinical program changes, articles of agreement and by-law changes, and chief executive officer appointment and compensation.

Corporate membership has become the preferred method to structure hospital affiliations. It provides control while preserving pre-existing health insurance contracts, Medicare reimbursement rates and local identity. It may also avoid some Attorney General oversight and court approval. *See* Reiser, Decision-Makers without Duties: Defining the Duties of Parent Corporations Acting as Sole Corporate Members in Nonprofit Health Care Systems, 53 Rutgers L.Rev. 979, 988 - 91 (2001).

Simply stated, System Parent, as the sole or co-member of each of the hospitals, will hold considerable power. The breadth of that power requires consideration of the responsibility that comes with its exercise. Traditionally, members of a charitable organization exercise their rights in their own interest, bringing a layer of democracy to the entity. *See* Klimon, Re-membering the Nonprofit – Uses of Memberships in Corporate Governance, Taxation of Exempts November 2012 at 22. That model works well where a group of individuals serve as members. But where another corporate entity exercises authority over a charitable organization by use of its controlling membership, the member owes a fiduciary duty to act in the best interest of the organization, and not just in the interest of the member. *See generally* RSA 7:19-a, IX (charitable organization transactions with member must be "fair" to organization); *Lifespan Corp. v. New England Medical Center*, 731 F.Supp.2d 232, 239 - 41 (D.R.I. 2010); Restatement of Charitable Organizations §2.01, Comment (c); Hesse and Szabo, The Fiduciary Duty of a Charitable Corporation's Sole Corporate Member: New Law and New Questions, 7 Boston Health L.Rep., Winter 2012 at 4; Decision-Makers without Duties, 53 Rutgers L.Rev. at 1013 - 26.

The controlling member's fiduciary duties pertain to its exercise of its director appointment and reserved powers just as a trust protector's fiduciary duties pertain to its granted powers. *See* RSA 564-B:7-711; 12-1202 (trust protector of directed trust is a fiduciary as to granted powers). And since the controlling member exercises those powers through its board of directors, the corresponding fiduciary duties apply to that same body.

Issues may arise when the corporate member exercises its power in a way that benefits one hospital at the expense of another. This situation is complicated further when a director of the corporate member also sits on the board of a member hospital. While recusal of a member or a director may occasionally be appropriate, at some point the practice would imperil the success of the system project. Tackling the 'Evils', 85 Neb.L.Rev. at 716 – 32. Upfront disclosure, clearer governance and other mission documents, identification of congruence vs. conflict of interest and attention to which hospital is taking what action may permit a member or director to observe fiduciary duties within a hospital system. Id. *See* Fiduciary Duties of Interlocking Directors, 38 HOSPLW at 449.

In this transaction the System Parent's fiduciary duties are effectively acknowledged in its proposed amended articles of agreement. It is created as a supporting organization to the hospitals under §509(a)(3) of the Internal Revenue Code. The System Parent proposes to "promote cost savings, efficiencies and quality improvements" in the hospitals. It proposes to "preserve the charitable missions" of the hospitals", to "protect [their] ability to perform their existing charitable missions" and to "enhance [their] charitable missions."

Use of a corporate member with voting rights and reserved powers does diminish the independent authority of the member hospitals. But in this case, it will become a sharing of power among co-fiduciaries and not simply a delegation of power. Moreover the Affiliation Agreement and the amended by-laws limit the reserved powers to ratification of actions taken by hospital boards of directors and not to the initiation of action by the System Parent. This model will require diligent stewardship by all parties to ensure that this shared governance is not lost.

(b) and (e) Best Interest of Community

(i) Community Benefits

The board of directors of each hospital is expected to determine whether the transaction is in the best interest of the community, as well as in the best interest of each hospital. The statute does not define "best interest", but it likely includes issues identified in the health needs assessment and addressed in the community benefits that hospitals measure and report to the Charitable Trusts Unit pursuant to RSA 7:32-c – 32-*l*.

The most recent community health needs assessments for CMC (2016), HH (2016) and MCH (2015) all list services dealing with substance abuse and mental illness as their top two community needs. The community benefits reports do not report spending prioritized to those needs, perhaps in part because other organizations provide more of those services and perhaps because community benefits allocations lag priorities identified in needs assessments.

The annual community benefits reports permit a comparison among New Hampshire hospitals in terms of the amount paid and the relative effort. The NHCPPS study showed that in 2014 CMC and HH each exceeded the statewide average of 12.1% of operating expense for total community benefits (including Medicaid shortfall). MCH's effort was half of the average, at 6.1%. But two-thirds of HH's spending came from subsidized health services, i.e. supporting its owned physician practices. MCH represents that it did not include support of its owned physician practices in its community benefits report, but had it done so, its expenditure would also exceed the state average. CMC represents that included in its community benefits report is support of only those owned physician practices that focus on medically underserved populations. There are also variations among hospitals statewide as to what is included in the Medicaid shortfall calculation.

CMC is highly engaged in community health efforts in Manchester, including its health care for the homeless program, the Poisson Dental Clinic and the newly opened West Side Neighborhood Health Center. It leads the Integrated Delivery Network in the Manchester/Derry area for substantial new Medicaid-funded programs targeting substance abuse services. By comparison, the lower percentage effort made by MCH and by HH (depending on whether support of its physician practices truly benefits the community) may reflect in part the financial pressures that have led them to pursue an affiliation. In fact, HH and MCH have suffered operating losses in recent years.

Still, all three hospitals can improve. Also, given CMC's commitment in Schedule 9.5 to fund physician practice and information technology needs at HH, there is a risk that CMC will lose focus on providing community benefits to Manchester.

Finally, with respect to HH's and MCH's agreement not to begin to offer four services that are contrary to CMC's core values, neither the HH nor MCH health needs assessments identified those services as community needs.

(ii) Affiliation Benefits

There are three outcomes that are measured in any health care system: cost, quality and access. If the transaction improves these metrics, then it certainly would be in the best interest of the community. Here, the hospitals foresee improvements in all three areas. While this is laudable, the best predictor of the future is the experience of past hospital affiliations. And unfortunately, according to NHCPPS, the available literature offers limited guidance. It does not show whether recent hospital consolidations have affected quality. Price increases may be associated with some affiliations. There is also evidence that greater competition increases the access component of population health initiatives. Consolidation does not seem to affect the broader provision of community benefits.

The hospitals plan to assess clinical services going forward. Affiliation Agreement, Section 9.1. That assessment will include quality, cost and access. No assessment tool has been developed as of yet.

Conclusions and Determination

The Notice, the meetings, the outreach and the research indicate that HH, CMC and MCH have complied with the minimum standards set forth in RSA 7:19-b, II for an acquisition transaction, subject to the representations and conditions set forth below. The information presented described how far-reaching changes are taking place in the delivery of and payment for healthcare, all of which greatly affect the parties. As small community hospitals, HH and MCH have faced challenges relating to the volume of their services, reimbursement from payers and retention of physicians. The Notice also described the process that the HH and MCH boards of directors used to explore alternatives. In the end, they chose to affiliate with CMC given their history of collaboration and the opportunity to increase access to population health initiatives and specialty health care.

HH, MCH and CMC are not alone. Hospitals in New Hampshire have decided in recent years that the future lies in greater consolidation. The jury is still out on whether these affiliations will in the end deliver net benefits to the communities served by these hospitals. Better data is needed to evaluate how access, quality and cost may change. The information available now is mixed, and on balance cannot refute the conclusions reached by the hospitals in their due diligence: that the pending transaction is in the best interest of the hospitals and their communities.

Still, this review has identified some concerns with the Notice and some matters that require further clarification and oversight. Accordingly, the Director of Charitable Trusts will take **no further action** with respect to the transaction, subject to the following representations, conditions and guidance.

Representations

(i) The transaction will comply with the terms of the Affiliation Agreement and the statements made in the Notice.

(ii) Since the chief executive officer of a hospital or the System Parent retains the right to appoint another person in his or her stead to serve as an ex officio director of the System Parent, should that occur, the person will be appointed for a term of at least one year. *See* Affiliation Agreement, Section 3.2.

Conditions

(i) Prior to closing, CMC and MCH will address concerns expressed about the accounts of their permanently restricted funds to the satisfaction of the Assistant Director of Charitable Trusts;

(ii) Those persons who will serve on more than one board of directors (among HH, MCH, CMC and System Parent) will receive training and written materials with respect to the heightened awareness of mission and potential conflicts required for such service;

(iii) The parties will notify the Director of Charitable Trusts for a period of five years from the closing should a dispute arise that requires dispute resolution with respect to any clinical practices that are or proposed to be prohibited at HH or MCH based upon an assertion that they relate to CMC's core values;

(iv) The hospitals will create a plan for the assessment of access, quality and cost of their clinical services, which assessment will be reported in a form acceptable to the Director of Charitable Trusts. The hospitals will thereafter deliver to the Director of Charitable Trusts a copy of that assessment annually for a period of five years from the closing;

(v) CMC will maintain a level of community benefit spending proportionate to or greater than its current ratio of community benefit spending to net patient service revenue for a period of five years from the closing. CMC will remain committed to maintaining and advancing community benefits in the Manchester area. It is recognized that the form of community benefits report may change in the future as a result of efforts to standardize reporting, and that such changes will be considered in determining compliance with this condition, but such changes will not justify a reduction from CMC's current effort. Should future circumstances beyond CMC's control impact its financial condition and make imprudent the maintenance of this level of community benefit spending, CMC shall report the circumstances in advance to the Director of Charitable Trusts;

(vi) HH and MCH will maintain a level of community benefit proportionate to or greater than its current ratio of community benefit spending to net patient service revenue for a period of five years from the closing. It is recognized that the form of community benefits report may change in the future as a result of efforts to standardize reporting, and that such changes will be considered in determining compliance with this condition, but such changes will not justify a reduction from HH's or MCH's current effort. Should future circumstances beyond HH's or MCH's control impact its

financial condition and make imprudent the maintenance of this level of community benefit spending, that hospital shall report the circumstances in advance to the Director of Charitable Trusts. HH will respond to inquiries from the Charitable Trusts Unit with respect to its support of physician practices as a community benefit;

(vii) For a period of five years from the closing, the hospitals will provide the Director of Charitable Trusts with 60 days' advance notice of any proposed financing that will use pre-affiliation non-restricted assets of one hospital for the support of financing to benefit another hospital or the System Parent. Affiliation Agreement, Section 3.9.3.; and

(viii) The hospitals will give notice to the Director of Charitable Trusts of the completion of the closing of the transaction.

Guidance

(i) The Director of Charitable Trusts expects that the System Parent will act as a fiduciary toward MCH and HH when exercising its voting rights and reserved powers. This expectation, which applies generally to charitable corporation membership arrangements, is discussed in the section of this report entitled "Use of a Corporate Member."

This no further action report concerns the review of the Charitable Trusts Unit under RSA 7:19-b and does not implicate the jurisdiction of any other section of the New Hampshire Department of Justice which may also have a role in reviewing this proposed affiliation, including that of the anti-trust section.