

**PROPOSED TRANSACTION INVOLVING  
SENIOR HOUSING OF NEW HAMPSHIRE D/B/A MEREDITH BAY COLONY CLUB  
AND  
TAYLOR COMMUNITY**

**REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS**

**October 11, 2024**

**I. INTRODUCTION**

On August 23, 2024, pursuant to [RSA 7:19-b, III](#), Senior Housing of New Hampshire d/b/a Meredith Bay Colony Club (“MBCC”) and OnePoint Partners, LLC (“OnePoint”), in its capacity as Rehabilitation Trustee, submitted to the Director of Charitable Trusts (“Director”) a notice of a proposed acquisition transaction with Taylor Community (“Taylor”). Under the terms of the proposed transaction, Taylor will purchase substantially all of MBCC’s assets and will continue to operate MBCC’s senior living facility in Meredith, New Hampshire. This report describes the proposed transaction and the Director’s review and conclusions.

**A. The Entities Involved**

1. Meredith Bay Colony Club

MBCC is a not-for-profit organization incorporated in the Commonwealth of Massachusetts on May 22, 1973, as North Shore Jewish Community Housing for Aged, Inc. In 2007, North Shore Jewish Community Housing for Aged, Inc.’s Articles of Organization were amended to change its corporate name to “Senior Housing of New Hampshire, Inc.” and to amend its purpose as follows:

[t]o operate for charitable purposes including to provide housing and care, including assisted living facilities, for elderly persons whether within or outside the Commonwealth of Massachusetts, and to carry on any other charitable or educational (within the meaning of Section 501(c)(3)) activity which is consistent with the other provisions of these Articles and which may be lawfully carried on by a corporation under M.G.L.A. c. 180 §§ 1 et seq. (the “Charitable Corporations Act”)[.]

MBCC is a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code. Since 2008, it has been registered to do business with the New Hampshire Secretary of State as a foreign non-profit corporation. MBCC’s independent living units and membership fee structure constitute a continuing care community under RSA 420-D. MBCC is therefore subject to regulation by the New Hampshire Insurance Department (“NHID”). MBCC is also licensed by the New Hampshire Department of Health and Human Services (“HHS”) as an assisted living and supported residential care facility. MBCC has been registered with the New Hampshire Department of Justice’s Charitable Trust Unit (“CTU”) since August 22, 2008. MBCC last filed an Annual Report with CTU in 2021 and therefore is not in good standing.

MBCC's senior living facility, located at 21 Upper Mile Point Drive in Meredith, New Hampshire, consists of 41 independent living units, 20 assisted living beds, and 24 supported residential care beds (the "Meredith campus"). The Meredith campus's amenities include a pool, fitness center, art studio, exercise room, library, community spaces, and multiple dining locations. MBCC, however, does not offer skilled or long-term nursing care, acute care, or other healthcare services. MBCC has no donor restricted assets.

MBCC's independent living residents pay a one-time membership fee. All MBCC residents also pay monthly fees. MBCC's fees are based upon the type of residential unit and the services provided. MBCC's assisted living and supported residential care services are private pay with no insurance reimbursements. As of September 2024, MBCC had about 72 current residents. Its independent living occupancy rate was approximately 85%, and its assisted living occupancy rate was approximately 70%.

MBCC currently employs approximately 48 full-time and part-time staff with tenure from 10 months to 15 years. MBCC does not offer health care, dental, or retirement benefits to its staff.

## 2. Taylor Community

Taylor is a New Hampshire voluntary corporation formed in 1907 by the New Hampshire General Court as "The Laconia Home for the Aged." In 1957, the Laconia Home for the Aged was renamed as "The Taylor Home" and, in 2008, it was renamed "Taylor Community." Taylor's mission is to provide continuing lifetime care to all of its continuing care residents who hold a continuing care contract, irrespective of their individual ability to pay. Taylor is licensed with NHID as a continuing care community and with HHS for assisted residential care and supported residential care. Taylor is registered with CTU and is in good standing.

Taylor's main facility is a fully established continuing care community located in Laconia, New Hampshire. The Laconia campus is located on a 104-acre property and includes 129 independent living cottages and 57 independent living apartments. In addition, the Laconia campus has 61 supported assisted living units, including a memory care unit, and 49 nursing beds.

In 2000, Taylor added Taylor Back Bay in Wolfeboro as a satellite location. Taylor Back Bay currently consists of 24 independent living single-story cottages located on 31 acres. In 2021, Taylor expanded its operations in Wolfeboro to include the Sugar Hill Retirement Community, a community of 71 independent living units including the independent senior living apartments and town homes located on 118 acres. Of the 71 independent living units, 52 independent units are currently owned by Taylor Community, and eventually all units will be owned by Taylor. In addition, in 2023 Taylor opened the Residence at Back Bay which offers 33 assisted living apartments, a 14 bed memory care neighborhood, and a 14 bed private nursing care neighborhood.

Taylor's revenue mainly consists of contracts with individuals for independent residential home living, assisted living, and nursing room-and-board arrangements.

Contracts for most arrangements are in place until the resident leaves the community or moves to a higher level of care. Once a resident is no longer financially capable of paying all applicable fees, Taylor does not pursue collection of amounts determined to qualify as charitable care. Per its 2023 audited financial statements, Taylor's charitable care services to residents for the 2023 and 2022 fiscal years were approximately \$1,873,483 and \$1,815,002, respectively.

Taylor has approximately 300 employees. Taylor provides its employees with health and dental benefits. Taylor also offers a 401(k)-retirement plan to eligible employees. In the 2023 and 2022 fiscal years, Taylor made discretionary contributions to the retirement plan of 4%.

### 3. Court Appointed Rehabilitation Trustee - OnePoint Partners, LLC

OnePoint is a Massachusetts limited liability company specializing in advising not-for-profit providers serving the senior living and care industry. As discussed below, by Court Order dated October 20, 2023, OnePoint was appointed to serve as the Rehabilitation Trustee of MBCC.

## **B. MBCC Financial Challenges and Court Appointment of Receiver Trustee**

In 2007, MBCC financed the development of the Meredith campus through bond offerings secured by a mortgage and a first lien on MBCC's property and gross revenues. The Meredith campus was built in 2008 and opened in 2009.

From its inception, MBCC encountered financial challenges. Given the economic conditions when it opened, MBCC initially was unable to attract potential residents who could pay the established membership fees. To attract residents, MBCC offered loans, payment concessions, and other incentives which reduced its income below a sustainable level. Furthermore, in 2009, MBCC learned that it was required by NHID to have a higher cash reserve limit than it budgeted, which further impeded its finances. On more than one occasion, MBCC successfully negotiated the terms of its repayment obligations to the bondholders in an ongoing effort to relieve some of its financial burdens.

The COVID-19 pandemic had a significant negative financial impact on MBCC. Beginning in 2020, emergency executive orders and HHS restrictions prohibited visits and assisted living admissions. Supply chain issues, workforce shortages, and inflation stressed MBCC's financial reserves throughout 2021. To mitigate these issues, in late April 2020, MBCC received a \$323,000 loan from the U.S. Small Business Administration as part of the Paycheck Protection Program. The loan was forgiven under the provisions of the CARES Act in August 2021. While MBCC has been able to continue operations since that time, MBCC has been unable to offer its employees with regular cost of living wage adjustments or healthcare or retirement benefits.

Furthermore, MBCC's financial deterioration and uncertain future harmed its ability to attract residents. Throughout 2021, MBCC's average assisted living occupancy rates remained at a historic low of 74% and only increased to 82% for the first quarter of 2022.

In 2022, as a result of its financial situation and regulatory concerns raised by NHID, the MBCC Board of Trustees (“MBCC Board”) engaged OnePoint to analyze MBCC’s market opportunities, pricing structure, and debt capacity. In late January 2023, OnePoint issued two reports recommending that MBCC revise its pricing model and hire a consultant to help MBCC restructure its debt.

In response to those reports, MBCC retained Aurora Management Partners, Inc. (“Aurora”) to negotiate with Greenwich Investment Management, Inc. (“GIM”), the Bondholder Representative, on MBCC’s behalf. Aurora attempted to negotiate with GIM as well as solicit interest from potential purchasers of the Meredith campus but was unsuccessful.

In January and July 2023, MBCC failed to make required payments under the bonds, and, on August 17, 2023, the Bond Trustee, UMB Bank, N.A., issued a Notice of Acceleration to MBCC for all amounts due under the bonds.<sup>1</sup> In October 2023, NHID brought a Petition in Merrimack County Superior Court seeking the appointment of a Rehabilitation Trustee over MBCC because it had failed to maintain the statutorily required liquid reserves under RSA 420-D:8 (“Rehabilitation Proceedings”). In its Order issued the same day, the Court appointed OnePoint as Rehabilitation Trustee and conferred it with the authority “to exercise all of the powers of the MBCC Board to manage the affairs of MBCC in a manner that is in the best interest [of] the residents and the NHID’s regulatory purpose[.]”

The Court permitted the current MBCC Board to remain in place but, for the pendency of the Rehabilitation Proceedings, withdrew its authority (and corresponding fiduciary duty) to oversee the management or operation of the Meredith campus and to approve the Receiver’s proposed disposition of MBCC’s assets. Around that time, MBCC’s debts totaled more than \$28,000,000, including at least \$18,000,000 in bond debt and approximately \$10,000,000 in resident refunds.

Upon being appointed Rehabilitation Trustee, OnePoint analyzed MBCC’s operations and concluded that it could not be rehabilitated except through a transaction that restructured debt and equity. OnePoint determined that the only viable way to effectuate such a restructure would be through MBCC’s sale to a buyer who could invest equity. OnePoint considered prospective buyers previously solicited by MBCC without success. Based on its knowledge of the senior living industry in the Northeast generally and New Hampshire specifically, OnePoint identified Taylor as the most suitable purchaser because of Taylor’s experience, resources, and reputation in New Hampshire.

After negotiations, OnePoint and Taylor executed a nonbinding letter of intent on March 5, 2024 (the “Letter of Intent”), with a proposed sale price of \$5,525,000.

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<sup>1</sup> On August 21, 2023, UMB Bank, as Bond Trustee, filed a complaint against MBCC in the United States District Court for the District of New Hampshire, seeking a judgment of at least \$21 million and the appointment of a receiver over MBCC. After discussions with representatives of NHID, MBCC, and the Attorney General’s office, UMB Bank moved to voluntarily dismiss the suit. The District Court granted the motion in September 2023.

The Letter of Intent conferred “Stalking Horse” rights to Taylor, meaning that in an auction process, Taylor’s offer would set the floor for the bidding.

### **C. Selection of Taylor as Potential Buyer**

In March 2024, OnePoint filed a notice in the Rehabilitation Proceeding, stating that it had executed the Letter of Intent with Taylor.

The same month, with UMB Bank and GIM’s consent, OnePoint filed an Emergency Motion to Confirm Authority to Retain Continuum Advisors LLC (“Continuum”) and Approving Sale Process. In its motion, OnePoint proposed holding an auction to sell MBCC with Taylor’s \$5,525,000 offer as the “Stalking Horse” bid.

In early May 2024, the Court granted OnePoint’s request to retain Continuum and approved the proposed sale process, which included at least two rounds of bidding: an initial offer round based on a form agreement and a second round which would be conducted as an auction.

As part of its marketing efforts, Continuum contacted approximately 1,900 potential buyers. From that outreach, 83 of those potential buyers engaged in some form of due diligence before the due date for initial offers. The initial offer round, however, resulted in only two bids: (1) a \$10,000,000 bid from Taylor; and (2) a bid for \$275,000, which OnePoint determined to be unrealistic. After Taylor agreed, at GIM and UMB Bank’s request, to increase its bid to \$11,000,000, OnePoint, GIM, and UMB Bank concurred that conducting a second round of bidding was unnecessary; they accordingly requested that the Court eliminate the second round of bidding.

On August 12, 2024, Taylor and MBCC entered into an Asset Purchase Agreement (“APA”) described in more detail below. Under the APA and an accompanying Bondholder Agreement, the bondholders agreed to release their lien against MBCC in exchange for \$8.5 million from the sale, MBCC’s remaining operating cash after closing, and other adjustments. Soon afterward, the MBCC Board ratified its approval and acceptance of the APA without modification to its existing terms. On September 5, 2024, the Court granted a motion to approve the APA, subject to regulatory and bondholder approval.

### **D. The Proposed Transaction**

Under the APA’s terms, Taylor will purchase virtually all of MBCC’s tangible and intangible assets including the land on which the MBCC facility is located and subsequently acquired abutting acreages, buildings, furniture, equipment, inventory, intellectual property, and records pertaining to the operations of MBCC in exchange for the cash purchase price of \$11,000,000. The APA also provides that Taylor will loan OnePoint, as Rehabilitation Trustee, up to \$500,000 for any operating shortfalls realized by MBCC during the period of time between the signing of the APA to the date

that the transaction closes. Any loaned amount will be deducted from the purchase price at Closing.<sup>2</sup>

Under the APA, Taylor will assume the contracts between MBCC and the current residents and will hold any and all deposits arising out of the contracts. Under the terms of the APA, closing is to occur on or before November 1, 2024.

## **II. REVIEW BY THE CTU**

### **A. Overview and Jurisdiction**

Under RSA 7:19-b, the Director is charged with reviewing acquisition transactions involving healthcare charitable trusts and determining compliance with the statute's provisions. MBCC meets the definition of a health care charitable trust under RSA 7:19-b, I (d) because it is a charitable trust organized to provide health care services. The proposed transaction meets the definition of an "acquisition transaction" under RSA 7:19-b, I(a) because, pursuant to the terms of the APA, Taylor will acquire control of substantially all of MBCC's assets, far more than the required 25% threshold.

### **B. Review Process**

After receiving Notice on August 23, 2024, CTU posted the Notice on the Department of Justice's Website and solicited public comments regarding the proposed transaction. On August 26, 2024, CTU representatives attended MBCC's public listening session held at the Meredith campus. MBCC's Board of Trustees (Jeanie Forrester, Ray Moritz, and Justin Van Etten) attended as well as OnePoint's representatives, Tobey Shea and Tom Brod. Taylor's Board Chair, David Pearlman, and Taylor's Chief Executive Officer, Michael Flaherty, were also present. NHID's Financial Regulation and Tax Counsel, Steven Notinger, was present for the public listening session and attended CTU's scheduled meetings with stakeholders.

MBCC's public listening session was held both in-person as well as remotely. The in-person meeting was well attended with approximately 60 people present including residents, family members, and staff. Approximately 70 people participated remotely. Remote participants could both speak and provide questions and comments through the videoconference platform. OnePoint representatives provided an overview of the transaction as well as the background that brought MBCC to where it is today (from inception in 2009 to financial challenges to lawsuit instituted by NHID to protect the residents).

David Pearlman and Michael Flaherty of Taylor spoke about how Taylor would incorporate MBCC residents and staff into the Taylor organization. Taylor made the following representations at the public listening session:

- Meredith campus residents can keep their present MBCC contracts and all terms will be honored by Taylor; however, if they choose, MBCC

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<sup>2</sup> The APA also provides that the balance of a \$550,000 loan that Meredith Village Savings Bank made to MBCC will be paid at closing.

residents will be permitted to enter new contracts that are available to present Taylor residents including “Continuum of Care” contracts.

- On average, Taylor Community’s fees have increased approximately by 4% each year.
- Taylor Community conducts monthly Town Halls with its residents.
- Meredith campus residents would be invited to attend any social functions or activities at any other Taylor location.
- Taylor’s goal is to add services to the Meredith campus but will also work to provide transportation services for free within 15 miles. Taylor also has a network of volunteers who assist with transport for medical appointments.
- The average length of stay for Taylor residents is 15 years.
- Taylor employs approximately 300 people and is committed to hiring the MBCC staff. Taylor’s employment culture is such that staff feel empowered to serve residents.
- All MBCC employees, who satisfy Taylor’s standard employment eligibility, will be offered employment with Taylor and will be eligible to receive the same employment benefits as other Taylor employees.

Throughout the presentations, the attendees were able to ask questions of both OnePoint and Taylor. The attendees were very engaged and offered questions and comments to the presenters on a variety of topics.

Separate from MBCC’s public listening session, CTU representatives met with MBCC employees, residents, and the MBCC Board. CTU’s meeting with MBCC employees included maintenance staff, the Executive Chef, the Administrator of the Assisted Living and Memory Support, the Director of Activities, the Nurse Manager, the Medical Record Coordinator, the Front Desk Receptionist, and MBCC Administration. The staff had not yet met with Taylor representatives about the transaction although they were assured by MBCC administration that they would be hired and begin receiving benefits. MBCC employees received an overview of the transaction from MBCC and OnePoint. They were interested in receiving additional information regarding employment benefits, including information about any waiting periods and transition time. They noted that MBCC’s wages recently were increased to be more in line with Taylor’s wages. They said that Taylor runs large facilities, and they have some confidence that Taylor will have the capacity to make needed improvements at MBCC. One staff member worked at Taylor for seven years and said that Taylor “does things the right way.” While the staff were cautiously optimistic about the potential changes, they indicated that they wanted to ensure that the transaction would not adversely impact the residents.

CTU representatives also met with MBCC’s Ambassador Group, a group of three residents who were appointed by MBCC’s Chief Operating Officer and regularly meet

with the COO and certain front office staff. The Ambassador Group includes a 15-year resident, a 14-year resident, and a 3-year resident (who previously served on the MBCC Board). The ambassadors seemed most concerned about ensuring that the transaction not impact the culture of MBCC, as they indicated that they were all very happy with MBCC's lifestyle. They expressed their hopes that Taylor will bring more activities to the Meredith campus, that Taylor will expend funds on needed improvements and deferred maintenance at the campus, and that Meredith campus residents will receive the same services Taylor offers at its other facilities.

On the same day, CTU met with the MBCC Board and OnePoint representatives. OnePoint and the MBCC Board displayed a strong understanding of the APA's terms, and it was clear that they strongly believe that the proposed transaction is in the best interests of MBCC and the community it serves.

On September 6, 2024, CTU and NHID representatives met with representatives of Taylor Community, including the Board Chair. Taylor representatives assured CTU that Taylor intends to hire all MBCC employees, offer them employment benefits, and allow them to retain their seniority. They asserted that Taylor has had experience acquiring other senior living facilities, and integration of the new staff has been smooth. Taylor also represented that management regularly meets with the residents at their facilities to obtain their input. Although the Taylor Board does not include representatives from each of Taylor's facilities, the CEO attends monthly town hall meetings at each Taylor facility, and he conveys to the Board what he learns at those meetings. The Taylor Board consists of 12 to 13 people, including 2 designated resident representatives who are elected by the residents. In addition, the Taylor Board may elect other qualified residents to the Board and has done so in the past. While Taylor management encourages residents to seek election to the Board, very few residents do so.

Taylor has a Resident Project Advisory Council, which consists of a five-member board including the CEO, the Facilities manager, and three residents. This Council typically has a budget of about \$20,000 per year for projects.

Taylor representatives indicated that Taylor's operating budget includes \$700,000 for capital improvements and maintenance projects at MBCC in the first year after closing. Taylor plans to invest \$2,500,000 at MBCC within the first 5 years, including refurbishing each unit as the units are turned over and updating the air conditioning system at the facility. They expressed their hope that Taylor would be able to expand services at MBCC to include nursing care.

In addition to the foregoing meetings, CTU representatives spoke with Lisa Henderson, the Executive Director of LeadingAge Maine & New Hampshire, about the transaction and the impact on senior living. The Executive Director was supportive of the transaction, highlighting Taylor's ability to extend access to nursing care to Meredith campus residents, as well as its ability to make necessary capital and maintenance investments to keep the Meredith campus competitive in the current market environment. The Executive Director also spoke positively of Taylor's participation and leadership in her organization and the nonprofit senior-living services industry generally.



### **C. Application of the Review Standards under RSA 7:19-b**

Pursuant to RSA 7:19-b, II, prior to voting to enter into an acquisition transaction, the trustees of a health care charitable trust must ensure that the transaction complies with seven minimum standards. CTU's analysis of these standards is as follows.

#### 1. RSA 7:19-b, II(a): Permitted by Law

RSA 7:19-b, II(a) provides:

(a) The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law;

The proposed transaction would transfer the assets of one charitable entity (MBCC) to another charitable entity (Taylor). Nevertheless, the sale of MBCC's assets is not expressly authorized by its charitable purpose and therefore requires judicial approval under the doctrine of *cy pres*. On September 5, 2024, the Merrimack County Superior Court approved the parties' *cy pres* request under RSA 498:4-e subject to the conclusion of CTU review under RSA 7:19-b and a finding of no action. As noted above, MBCC has no donor restricted funds so the Court's Order regarding *cy pres* was limited to authorizing MBCC to sell its assets to Taylor so that Taylor may operate the Meredith campus as a senior living facility consistent with its charitable purpose.

In addition to CTU's statutory review, this proposed transaction is subject to NHID's review and approval under RSA 420-D:13. On September 10, 2024, Commissioner Bettencourt informed CTU that NHID is supportive of the proposed transaction and it has met NHID statutory approval. CTU also received input from HHS who reviewed the proposed transaction and reported no concerns.

#### 2. RSA 7:19-b, II(b): Due Diligence

RSA 7:19-b, II(b) provides:

Due diligence has been exercised in selecting the acquirer, in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the proposed transaction, and in determining that the transaction is in the best interest of the health care charitable trust and the community which it serves;

RSA 7:19-b, II (b) requires that the board of trustees of a health care charitable trust exercise due diligence in determining that the transaction is in the best interests of the health care charitable trust. This requirement is consistent with the board's fiduciary duty of loyalty under common law to "act in good faith and in a manner the fiduciary reasonably believes to be in the best interests of the charity in light of its purposes." See *Restatement of Charitable Nonprofit Organizations* § 2.02 (Am. Law Inst. 2021); see also [Opinion of the Attorney General](#), Fiduciary Duty of Corporate Members of Charitable Organizations, at 3 (Feb. 13, 2017). It is important to note that unlike

corporate law, the “duty of loyalty of charitable fiduciaries is to the charity’s purposes and thus by extension to the indefinite beneficiaries of those purposes.” *Id.*

In reviewing whether a board exercised due diligence in determining whether the transaction is in the charity’s best interests, a court will not substitute its own judgment unless the exercise was not reasonably informed or objectively reasonable in light of the charity’s purposes and the fact they have perpetual existence. See *Restatement of Charitable Nonprofit Organizations* § 2.02 cmt. c. By comparison, CTU’s review requires a determination that the board complied with the specific due diligence requirements of RSA 7:19-b, II (b). RSA 7:19-b, IV.

Here, CTU is reviewing the actions of both OnePoint, as Rehabilitation Trustee with authority to manage MBCC’s operations, as well as the MBCC Board. Through participating in weekly conferences with NHID, OnePoint, MBCC Trustees, and legal counsel for all, CTU has confirmed that OnePoint and the MBCC Board were actively involved in developing a strategy to address MBCC’s financial condition and in selecting Taylor as a potential purchaser. As Rehabilitation Trustee and consistent with the Court’s Order conferring OnePoint with control of MBCC operations, OnePoint was actively engaged in negotiating the sale process; the APA; and the Bondholder Agreement. Although the MBCC Board did not have authority to negotiate the terms of the APA or Bondholder Agreement, the MBCC Board remained actively engaged in discussions with the Rehabilitation Trustee and state regulators throughout the negotiations.

In selecting Taylor and in negotiating the terms and conditions of the APA, OnePoint and the MBCC Board engaged and consulted with appropriate experts. OnePoint itself is a national expert in rehabilitation of senior living facilities with experience in New Hampshire. OnePoint also retained appropriate outside experts to aid with the transaction, including Continuum to market and solicit bids for MBCC’s assets and Ford, McDonald & Borden, PA to serve as its legal counsel. The MBCC Board retained Hinckley, Allen to provide legal counsel to the board regarding the transaction.

The Notice, the information conveyed at MBCC’s public hearing, and the interviews conducted by the CTU and other information obtained by the CTU confirm that OnePoint and the MBCC Board exercised due diligence in selecting Taylor as the acquirer of MBCC’s assets. OnePoint and the MBCC Board unanimously chose to accept Taylor’s bid not only because it was the highest offer but also because of Taylor’s nonprofit status, its reputation and financial strength, and its commitments to honor resident contracts, hire MBCC employees, integrate MBCC into Taylor’s programming and activities, and continue MBCC’s charitable mission. Moreover, Taylor possesses the capital to make necessary improvements to MBCC’s facility and plans to invest and expand the services offered there. In addition, the APA and Bondholder Agreement satisfy all of MBCC’s outstanding liens and debts which had rendered it financially insolvent.

CTU believes that OnePoint and the MBCC Board’s decisions were well-informed, within the bounds of professional judgment, and consistent with the best interests of MBCC including its charitable purpose. Thus, OnePoint and MBCC Board complied with the due diligence requirements set forth in RSA 7:19-b, II.

3. RSA 7:19-b, II(c): Conflicts of Interest

RSA 7:19-b, II(c) provides:

Any conflict of interest, or any pecuniary benefit transaction as defined in this chapter, has been disclosed and has not affected the decision to engage in the transaction;

On March 5, 2024, OnePoint filed a Trustee's Conflict Disclosure with the Court in the Rehabilitation Proceedings, indicating that Sarah Laffey, a partner at OnePoint, served as a member of Taylor's Board. OnePoint's pleading describes the steps taken to prevent Ms. Laffey from having any access to proprietary or confidential concerning MBCC and the proposed transaction. Ms. Laffey had no direct involvement in negotiating the terms of the APA, and there is no evidence or allegation that her status as a Taylor board member influenced the negotiations. CTU therefore concludes that MBCC has complied with RSA 7:19-b, II (c).

4. RSA 7:19-b, II(d): Fair Value Transaction

RSA 7:19-b, II(d) provides:

The proceeds to be received on account of the transaction constitute fair value therefor;

The purchase price set forth in the APA was by far the highest bid submitted to MBCC through the sale process approved by the Court in connection with the Rehabilitation Proceeding. While CTU has the right to obtain a fairness opinion as to the asset purchase price, in light of the process supervised by the Court, no fairness opinion is necessary. MBCC has conducted sufficient due diligence to obtain fair value for its assets.

5. RSA 7:19-b, II(e): Use of Charitable Assets

RSA 7:19-b, II(e) provides:

The assets of the health care charitable trust and any proceeds to be received on account of the transaction shall continue to be devoted to charitable purposes consistent with the charitable objects of the health care charitable trust and the needs of the community which it serves;

The proposed transaction involves a transaction between two charitable organizations with substantially similar charitable missions. As discussed above, the Court order on the petition for *cy pres* will assure that the charitable assets will continue to be used consistent with MBCC's charitable purpose.

6. RSA 7:19-b, II(f): Control of the Proceeds

RSA 7:19-b, II(f) provides:

If the acquirer is other than another New Hampshire health care charitable trust, control of the proceeds shall be independent of the acquirer;

The proposed affiliation does not involve a non-New Hampshire health care charitable trust, and RSA 7:19-b, II (f) therefore is inapplicable.

7. RSA 7:19-b, II(g): Notice and Hearing

RSA 7:19-b, II(g) provides:

Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust, along with reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

The statute is clear that the public notice and opportunity for the community served by the health care charitable trusts to provide information is intended to “inform the deliberations” of the board of directors. RSA 7:19-b, II (g). In this case, however, MBCC did not provide “reasonable public notice” before entering into the proposed transaction with Taylor because this matter involved a Rehabilitation Proceeding overseen by the Court. As such, OnePoint and the MBCC Board were not in a position to solicit comments until after the parties entered into the APA.

Although OnePoint and the MBCC Board did not have a public listening session for members of the community before MBCC entered into the APA, OnePoint and the MBCC Board provided MBCC’s residents with several opportunities to learn more about the transaction and its implications for them. In particular, on June 17, 2024, OnePoint and the MBCC Board provided written notice to MBCC residents, families and staff about the proposed transaction with Taylor. That same day, OnePoint and MBCC issued a joint press release regarding the transaction, and, on June 18, 2024, an article about the transaction was published in the local newspaper. On July 11, 2024, OnePoint held a special Resident & Staff Town Hall Meeting at MBCC to discuss the transaction.

CTU recognizes that holding a public listening session before entering into the APA was impractical under the atypical circumstances of this transaction. To remedy its deficiency in obtaining public input prior to entering into the transaction, as discussed above, on August 26, 2024, OnePoint and the MBCC Board held a public listening session at MBCC to hear from MBCC residents, family members, and staff regarding the proposed transaction. The comments and questions raised at the public hearing were thoughtful and helpful, and OnePoint representatives and the MBCC Board confirmed to CTU representatives after the hearing that they continue to believe that the transaction with Taylor is in the best interests of MBCC and the community it serves. While robust outreach to the community before the execution of a definitive agreement generally is required, in light of the Rehabilitation Proceeding and the positive result of the August 26 listening session, the CTU concludes that the terms of RSA 7:19-b, II (g) have been satisfied.

### **III. CONCLUSIONS AND DETERMINATION**

Having reviewed the submitted evidence and completed an independent review, CTU concludes that MBCC's decision to enter into the transaction with Taylor was informed and based on reasonable beliefs that the transaction would (1) further MBCC's charitable missions and (2) be in the best interests of the communities it serves.

Although CTU has concluded that MBCC has substantially complied with the minimum standards for changes of control set forth in RSA 7:19-b, II, CTU's decision to take no action to oppose the transaction is subject to the following representations and conditions:

#### **A. Representations**

##### **1. Completeness of the Notice and Plan of Reorganization:**

Taylor, MBCC, OnePoint, and the MBCC Board represent that the statements and documents made or provided in the Notice and the documents thereafter submitted to the CTU are true and correct. They represent that they have not omitted any material information about the transaction from the statements and documents provided to CTU. They further represent that the transaction will be implemented in accordance with the Notice, Rehabilitation Proceeding Orders, and their representations to CTU during the course of CTU's review, including all representations made by Taylor representatives to CTU, Meredith campus residents, and MBCC employees during the August 26, 2024 public listening session.

##### **2. No Conflicts of Interest:**

Taylor, MBCC, OnePoint, and the MBCC Board represent that, as described above in relation to RSA 7:19-b, II(c), the statements set forth in OnePoint's Notice in the Rehabilitation proceedings are true and correct and there are no additional conflicts of interest.

#### **B. Conditions**

- 1. Hiring of MBCC Employees:** Taylor will, consistent with its representations to CTU during the August 26, 2024 public listening session and September 6, 2024 meeting, offer all current MBCC employees who satisfy Taylor's standard employment eligibility and operating criteria employment with Taylor with eligibility to receive comparable employment benefits on comparable terms to other Taylor employees.
- 2. Meredith Campus Resident Contracts:** Taylor will, consistent with the APA and its representations to CTU and MBCC residents during the August 26, 2024 public listening session: (1) honor and comply with the terms of all present Meredith campus resident contracts and (2) offer to

all current Meredith campus residents who satisfy Taylor's standard clinical assessment and financial criteria new contracts on comparable terms as available to current Taylor residents.

3. Implementation of Other Public Listening Session Representations: Taylor will, consistent with its representations to CTU during the August 26, 2024 public listening session, and for at least five years following the transaction's closing date:
  - a. Commencing in January 2025, conduct monthly town halls which include Meredith campus residents;
  - b. Ensure all Meredith campus residents are invited to attend social functions or activities at any other Taylor location;
  - c. Work to establish a volunteer network for the Meredith campus to assist with medical-appointment transport of Meredith campus residents comparable to Laconia's volunteer network while encouraging Laconia's volunteer network to help in the interim; and
  - d. Upon acquisition of a bus which is currently being pursued, provide free transportation services to Meredith campus residents for travel within 15 miles of the Meredith campus pursuant to an established schedule during normal business operating hours.
4. Approval by the Commissioner of Insurance: The APA and Plan of Reorganization shall be approved by the Commissioner of Insurance pursuant to RSA 420-D:13.
5. Dissolution of MBCC in accordance with Massachusetts law: MBCC shall comply with Massachusetts law with respect to its corporate dissolution.
6. Final Annual Report with CTU: MBCC shall submit to CTU a final annual report in accordance with RSA 7:28 and Jus 407.
7. Notice of Closing: MBCC shall provide written notice to CTU within three days of the closing of the proposed transaction.

CTU retains its ability to pursue any remedies under its common law and statutory authority, including its authority under RSA 7:19-b, V, to enjoin or void this healthcare acquisition transaction, for violation of any of the above-listed conditions and representations. This no further action report concerns the review of CTU pursuant to RSA 7:19-b and does not implicate the jurisdiction of any other bureau of the New Hampshire Department of Justice or any other state agency that may have a role in reviewing the proposed plan of reorganization.