PROPOSED ACQUISITION TRANSACTION INVOLVING EXETER HEALTH RESOURCES, INC. AND BETH ISRAEL LAHEY HEALTH

REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS

June 14, 2023

I. Introduction

On October 4, 2022, pursuant to RSA 7:19-b, Exeter Health Resources, Inc. ("EHR") and its subsidiaries, Exeter Hospital, Inc. ("EH"), Core Physicians, LLC ("Core"), and Rockingham Visiting Nurse Association and Hospice ("RVNA"), submitted to the Charitable Trusts Unit of the New Hampshire Department of Justice ("CTU") notice of a proposed change of control transaction with Beth Israel Lahey Health ("BILH").[1] Under the terms of the proposed transaction, BILH would become the sole corporate member of EHR and the indirect parent of all of EHR's subsidiaries, including EH, Core, RVNA, and Exeter Med Real, Inc. ("EMRI"). This report describes the proposed transaction and the CTU's review and conclusions.

A. The Entities Involved

1. Exeter Health Resources, Inc.

EHR was originally founded in 1891 under the name "Exeter Cottage Hospital" to maintain and establish a hospital in Exeter for the relief, care, and treatment of the sick and disabled. Several years later, the hospital opened its doors, and in 1907, the New Hampshire Legislature incorporated the hospital. In 1923, the corporation changed its name to Exeter Hospital. In 1985, pursuant to a corporate reorganization, the corporation again changed its name to Exeter Health Resources.

EHR is the sole member and parent organization of EH, Core, and RVNA. Its charitable purposes are set forth in its amended articles of agreement filed with the New Hampshire Secretary of State and are as follows:

> The object for which this corporation is formed is the support of the advancement of the knowledge and practice of, and education and research in, medicine, surgery, nursing and all other subjects relating to the care, treatment and healing of humans, to improve the health and welfare of all persons, and to sponsor, develop and promote services and programs which are charitable, educational or scientific and which address the physical and mental needs of the community at large, provided, however, that the corporation shall not engage in the practice of medicine and provided further, that it shall operate exclusively for the benefit of Exeter Hospital,

[1] The Notice and exhibits are posted to the New Hampshire Department of Justice website.

Inc. and its affiliated organizations in the conduct of their charitable, educational and scientific functions.

See Articles of Agreement, Article III (available on the Secretary of State's website).

EHR currently has a 12-member board of trustees, 10 of whom are elected. The 2 *ex officio* trustees are the President and CEO of EHR and the President of EH's medical staff. Under the terms of the bylaws, in order to be eligible to serve on the board, the elected trustees must have demonstrated awareness of the purposes and objectives of EHR and have demonstrated capabilities in leadership and governance. EHR is registered with the CTU as a charitable trust. According to the consolidated audited financial statements submitted by EHR with the notice, the annual revenue for EHR and its subsidiaries for fiscal year ending September 2020 was approximately $377 million.

2. Exeter Hospital

EH is a New Hampshire voluntary corporation formed in 1985 as part of the corporate reorganization of EHR. EH is a 100-bed, community-based hospital that offers inpatient and outpatient diagnostic and treatment services, including medical and radiation oncology programs, general and specialty surgery, labor and delivery, orthopedics, wound care, sleep medicine, and occupational and employee health care. The hospital employs onsite acute care adult and pediatric hospitalists and critical care physicians in its intensive care unit. The emergency department experiences approximately 28,000 visits per year. EH's service area includes Exeter, New Hampshire and 45 surrounding communities.

Like EHR, EH currently is governed by a 12-member board of trustees, the same people who serve as EHR board members. The President of EH and the President of the Medical Staff of EH, are *ex officio* members of the EH board. In addition to the 2 *ex officio* members, under the terms of the EH bylaws, EHR elects the other members of the EH board from among the EHR board of trustees. The criteria for elected trustees are the same as the criteria for elected trustees of the EHR board. EH is registered with the CTU as a charitable trust.

3. Other EHR Subsidiaries

Core was formed in 2007 to "[provide] health and medical services to the community and the general public, [conduct] medical research, [engage] in community benefit activities, and other activities of a similar nature…." *See* Certificate of Formation (July 31, 2007).[2] Core is registered with the CTU as a charitable trust. Core currently employs 164 full-time equivalent physicians and other providers, including primary care and specialty physicians, advanced practice registered nurses, physician assistants, dentists, and podiatrists. Core has over 15 office locations in the greater seacoast area.

[2] Core was formed as a limited liability company. Its Certificate of Formation can be found on the NH Secretary of State's website.

RVNA is a New Hampshire charitable corporation registered with the CTU and organized to, among other things, "provide community health services that enhance independence and the quality of life." *See* Affidavit of Amendment (April 1, 1996).[3] RVNA's over 130 employees provide home care and hospice services and offer outreach programs to the communities within Rockingham County as well as the Strafford County towns of Barrington, Durham, and Lee, New Hampshire.

EMRI is a nonprofit subsidiary of EHR that holds and manages real estate assets for the benefit of EHR and its subsidiaries. EMRI owns and leases land and buildings to the organizations. Although it is a nonprofit corporation under section 501(c)(25) of the Internal Revenue Code, it is not a charity and therefore is not registered with the CTU.

4. Beth Israel Lahey Health, Inc.

The BILH system was formed in 2019 as a result of a corporate affiliation among Lahey Health System; Beth Israel Deaconess Medical Center, New England Baptist Hospital, Mount Auburn Hospital, and their corporate parent, CareGroup; and Seacoast Regional Health Systems, the parent of Anna Jaques Hospital. Under the terms of the corporate affiliation, the parties formed BILH, which would become the sole corporate parent of the hospitals and systems, merging them and their subsidiaries into one organization. In 2021, BILH became the sole corporate member of Josline Diabetes Center.[4]

Today, there are 13 Massachusetts hospitals in the BILH system, including academic medical centers, teaching hospitals, and community and specialty hospitals. There are also 25 major ambulatory care facilities in the system, including ambulatory surgery centers and urgent care centers. The BILH system is the second largest private employer in Massachusetts, with more than 35,000 employees. Among its clinical staff are approximately 6,500 physicians, 850 primary care providers, and 9,000 nurses. BILH's annual revenue is approximately $7.1 billion.

BILH is a charitable nonprofit corporation exempt from income tax under section 501(c)(3) of the Internal Revenue Code. As a Massachusetts charitable health care organization, it is subject to the oversight of the Massachusetts Health Policy Commission and the Massachusetts Attorney General. BILH is also registered with the CTU.

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[3] The Affidavit of Amendment can be found on the NH Secretary of State's website.

[4] An organization overview can be found in the materials submitted by EHR to the CTU and posted on the CTU website.

B. Overview of the Terms of the Parties' Proposed Transaction

The proposed transaction between EHR and BILH is described in the Affiliation Agreement between the parties. The terms of the Affiliation Agreement, as proposed, are explained below.[5]

1. Governance

Under the Affiliation Agreement between BILH and EHR, EHR will maintain its separate corporate identity but will amend its articles of agreement and bylaws. These amendments will make BILH the sole corporate member of EHR and the indirect parent of EHR's subsidiaries. The current EHR board members will continue to serve for the remainder of their terms, and BILH will appoint an *ex officio* trustee to the EHR board. Thereafter, the EHR board governance nominating committee will recommend appointments to the EHR board, subject to approval by the BILH board (which shall not be unreasonably withheld). Other than the *ex officio* members, the EHR board will be composed of persons who are "members of the communities served by [EHR] and able to serve as representatives of [EHR] to those communities." *See* Affiliation Agreement, 9.1 (c). BILH has represented that since its formation in 2019, BILH has "never rejected a trustee candidate recommended by one of its community hospitals." *See* December 13, 2022, Letter to the Director of Charitable Trusts, p. 9.[6]

Following the closing of the transaction, the EHR board will appoint one of its board members to the BILH board for a 3-year term. *See* Affiliation Agreement, 9.1. The EHR board representative will have the same rights and responsibilities as the other members of the BILH board. *Id*. After the 3-year term has expired, BILH will appoint individuals to serve on the BILH board without designation, provided that for the 3-year term following the initial 3-year term (years 4–6 after the closing date), one BILH trustee will be a current EHR board member nominated by EHR and appointed by the BILH board. *Id*.

In accordance with the Affiliation Agreement, BILH will serve as the ultimate governing fiduciary body for EHR and its subsidiaries. That is, BILH will have the "right to exercise all powers, positive and negative, conferred on boards of corporations under RSA Chapter 292."[7] Among other things, BILH will oversee financial management, strategy, and clinical service lines. The roles and responsibilities of the EHR board, on the other hand, are limited to those set forth in the Affiliation Agreement and the Restated EHR bylaws.

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[5] The agreed-upon Final Judgment described below will result in changes to some terms.

[6] The December 13, 2022, letter from J. Gregoire on behalf of EHR ("December 13, 2022 Letter") can be found on the Department of Justice website: https://www.doj.nh.gov/charitable-trusts/exeter-health-beth-israel-lahey.htm.

[7] *See* Proposed Bylaws (Attachment 37, p. 1-2).

Generally, following the closing of the transaction, the EHR board's role will be limited to:

- Reviewing and recommending approval by the BILH Board of strategic initiatives, operating and capital budgets, and amendments to the articles of agreement and bylaws of EHR and its subsidiaries;
- Recommending and nominating for appointment by the BILH board EHR board members and an EHR representative to the BILH board;
- Providing oversight of and governance responsibility for philanthropy by EHR and its subsidiaries;
- Providing oversight of and governance responsibility for quality, safety, and risk management programs administered by the EH, Core, and RVNA boards;
- Providing oversight of and governance responsibility for licensure, credentialing, and medical staff matters administered by the EH board; and
- Providing oversight of and governance responsibility for an annual "Local Community Benefit Allocation" (as defined in the Affiliation Agreement).

The EHR board will have any additional powers conferred on EHR by BILH and authority to enforce any rights vested in EHR under the Affiliation Agreement. BILH may not amend the EHR bylaws to change or remove such powers without EHR Board approval. BILH also is prohibited from taking the following actions without EHR board approval:

- Reducing the 10-year capital commitment or eliminating any of the projects comprising the capital investments to be made in the first 5 years after the closing;
- Requiring any change in or consolidation of philanthropic gifts, assets, and programs of EHR and its subsidiaries;
- Requiring any change in the name, brand, or trademark of EHR; and
- Requiring a "material reduction in health care services" for a period of 10 years. After that 10-year period, BILH cannot cause EHR to cease operating a separately licensed hospital facility in NH or close any "essential service" of the facility without first consulting with the EHR board.

2. Capital Commitments

Under the terms of the Affiliation Agreement, BILH will make a capital commitment in EHR and its subsidiaries of a total of $375,000,000, including the following:

- $165,000,000 capitalization of a new inpatient building, including new private patient rooms and equipment, a new lab and pharmacy, and space to support care coordination;
- $35,000,000 for the acquisition and implementation of a new electronic medical record system and other information technology, including the

implementation of a new version of the Epic systems that will be equivalent to the BILH system;

- $50,000,000 to support a 5-year capital plan (in the first 5 years following the closing), a plan that has yet to be developed. According to the parties, the intent of this provision of the Affiliation Agreement was that the funds will be used for investments in the expansion of access to primary care (with integrated behavioral health), urgent care, appropriate specialty services, and outpatient diagnostics in communities served by the hospital; and
- $125,000,000 for investment in EHR and its affiliates during years 5–10 following the transaction.

The sources of the funds for the 5-year capital plan and the capital commitment may include operating cash flow, BILH unrestricted cash and investments, debt, and other sources. *See* December 13, 2022, Letter, p. 12. The endowment funds and EHR board-designated funds will not be sources of funds for either the 5-year commitment or the additional capital commitment. *Id*.

3. Other Key Provisions

a. Operating and Service Line Commitments

The Affiliation Agreement provides that BILH will continue to operate "substantially all" existing facilities, services, and programs of EHR and its affiliates "or as such facilities, services, and programs may be changed in response to future demands over time under the oversight and authority of the [EHR board or the BILH board]." Affiliation Agreement, 10.5 (a). During the first 10 years following the closing, the parties must "collaborate in good faith regarding any proposed Material Reduction in Services," and any such Material Reduction in Services must be approved by the EHR board and BILH. Affiliation Agreement, 10.5 (b). The term "Material Reduction in Services" is defined in the Affiliation Agreement as the "permanent, substantial reduction, or elimination of a material clinical service or program." *Id*. The term "material clinical service or program" is not defined, but the parties interpret the term to mean "significant or meaningful" in terms of revenue contribution or importance to the patient population served. *See* December 13, 2022, Letter, p. 21.

b. Philanthropy and Donor-Restricted Assets

Restricted and unrestricted donated funds must be used in support of EHR's charitable mission in its service area and will remain subject to the oversight and control of the EHR or EH board of trustees, as applicable. Affiliation Agreement, 10.12 (a). That is, any and all funds raised in New Hampshire must be used only within New Hampshire. Moreover, legal title to EHR board-designated and unrestricted funds will not change as a result of the affiliation, and such funds must be used for the benefit of the communities served by EHR. Affiliation Agreement, 10.12(b). EHR will have a *consultative* role with respect to determining the use of all existing board-designated and unrestricted funds. Affiliation Agreement, 10.12 (c) (emphasis supplied). The use of such board-designated

and unrestricted funds will be determined in coordination with the broader BILH system. *Id*.

c. Community Benefits and Charity Care

Following the closing, BILH will adopt policies for the provision of care to vulnerable populations served by EHR that are at least as generous as EHR's current charity care policies. If BILH's policies are more generous than EHR's policies, BILH will take actions necessary to ensure that the more generous policies are in effect at EHR by the time of the closing.

Pursuant to section 10.11 of the Affiliation Agreement, following the closing, BILH will maintain all community health and charitable initiatives provided by EHR, consistent with its historical clinical and financial support. The EHR board and the EHR leadership team will be responsible for identifying community needs, developing plans, and determining the use of a "Local Community Benefits Allocation" of *up to* $3 million annually in inflation-adjusted dollars. The allocation is intended to be spent on grants to local service providers and on subsidizing EHR's own efforts to address community needs. *See* December 13, 2022, Letter, p. 13. The amount of the annual Local Community Benefits Allocation is dependent upon EHR's budget. Unspent dollars from the Local Community Benefits Allocation in a given year may not be accumulated and spent in subsequent years.[8]

d. Medical Staff

EH medical staff will remain constituted in accordance with the EH medical staff bylaws. Affiliation Agreement, 10.7 (b). Following the closing, the medical staff will continue to be self-governing.

II. Review by the Charitable Trusts Unit

A. Summary

Under state law, RSA 7:19-b, the Director of Charitable Trusts of the Attorney General's Office is charged with reviewing acquisition transactions involving healthcare charitable trusts and determining compliance with the statute's provisions. In making this determination, the Director is required to accept public comment and may conduct public hearings. RSA 7:19-b, IV. RSA 7:19-b, IV requires that the Director of Charitable Trusts make the determination within a reasonable time not to exceed 180 days after receipt of a

[8] Section 10.11 provides that "The annual Local Community Benefit Allocation for any given year shall be equal to [$3 million], as adjusted by applying all annual inflation escalators to date, without regard to whether the entire budget is spent in a given year." Although the sentence suggests that the Local Community Benefit Allocation necessarily would be $3 million each year, counsel for BILH informed the Charitable Trusts Unit that this sentence was intended to limit the allocation to $3 million per year, even if the total amount allocated in the previous year was not spent.

notice of a proposed acquisition transaction. In this case, the parties entered into tolling agreements to extend the deadline for a report to June 16, 2023.

After receiving the Notice on October 4, 2022, the CTU posted on the Department of Justice website information pertaining to the Notice, including non-confidential documents submitted to the CTU. The Director of Charitable Trusts contacted the Commissioners of Health and Human Services and of Insurance to alert them to the Notice and to request their input on the transaction in accordance with RSA 7:19-b, IV(b). Both the Insurance Commissioner and the Commissioner of Health and Human Services provided the CTU with helpful input.

The CTU retained Tyler Brannen, MHS, FHFMA, Senior Health Economist in Berry Dunn's Health Analytics Practice Group, to conduct an analysis of the proposed transaction, particularly with respect to its potential impact on EHR and the community it serves. Mr. Brannen has extensive experience in analyzing issues related to the healthcare delivery system and community health needs. In addition to reviewing the parties' submissions to the CTU and available data, Mr. Brannen interviewed the EHR board of directors and members of the community to inform his analysis. Mr. Brannen's report is attached as Exhibit A and is incorporated by reference into this report.

By letter dated November 10, 2022, in accordance with RSA 7:19-b, IV (a), the CTU required that EHR submit additional information and documentation to the CTU. On December 13, 2022, counsel for EHR (in consultation with counsel for BILH) provided a written response to the November 10, 2022, letter. On January 20, 2023, the CTU held a telephone conference with legal counsel for EHR and BILH during which the CTU asked for additional information and clarification of their earlier responses. On February 17, 2023, and on February 21, 2023, the parties supplemented their responses with additional documents. All the correspondence, documents, and other information submitted by EHR and BILH pertaining to the proposed transaction collectively are considered to be the "Notice."[9]

On February 22, 2023, representatives of the CTU met with the members of the EHR board of trustees. During the meeting, the CTU questioned the board members about their decision to enter into the proposed transaction with BILH. In particular, representatives of the CTU asked the board about their choice of BILH as a partner, their involvement in negotiating the terms and conditions of the agreement, and why they determined that the transaction was in the best interests of EHR and the community served by EHR.

On Wednesday, March 1, 2023, the CTU held a public hearing regarding the proposed transaction at Exeter High School in Exeter, New Hampshire. In order to make the public hearing more widely available, the CTU offered an option to attend the hearing

[9] The CTU posted to its website the correspondence and documentation submitted to the CTU by the parties, with the exception of certain documents not subject to disclosure under the New Hampshire Right to Know law, RSA 91-A.

remotely, using the Zoom videoconference platform. Members of the public were invited to submit their comments or ask questions either in person or through the Zoom chat feature. Over 63 people attended the hearing in person, and approximately 85 people attended the hearing remotely.

Scott Spradling of the Spradling Group served as moderator of the public hearing. The first part of the public hearing consisted of a presentation by Robert Eberle, Chair of the Board of EHR, followed by comments delivered by Peter Shorett, Chief Strategy Officer for BILH. In addition, Mr. Brannen made a presentation regarding his analysis of the proposed transaction. Following the presentations, in-person and online attendees made comments or asked questions for approximately one hour.

The CTU issued a news release and posted on its website a notice inviting public comment on the proposed transaction through March 17, 2023. In addition to comments received at the public hearing on March 1, 2023, the CTU received written comments from the public and met in person or by videoconference with various community members and other stakeholders to obtain input.

Following the public hearing, the CTU and other representatives of the New Hampshire Attorney General's office, including representatives of the Consumer Protection and Antitrust Bureau ("CPAB"), engaged in discussions with the parties regarding the terms and conditions of the proposed transaction. The CPAB, CTU, and the parties have since negotiated a proposed Final Judgment setting forth certain commitments by EHR and BILH that would satisfy concerns about the transaction raised by CPAB and CTU. [10] *See* Exhibit B (hereinafter "Final Judgment"). On the date that this report issued, the Attorney General's office, with the assent of the parties, filed with the Merrimack County Superior Court a Complaint, requesting that the Court enter the Final Judgment.

After completing its review, the CTU has determined that the Notice complies with RSA 7:19-b and will take no action to oppose the proposed transaction between EHR and BILH, subject to the representations and conditions set forth in this report, including compliance with the terms of the Final Judgment.

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[10] Because BILH is a Massachusetts corporation, the CTU generally would not have jurisdiction over the internal affairs of BILH. *See generally* RSA 293-A:15.05(c) (no regulation of internal affairs of foreign business corporations); Brody, Whose Public? Parochialism and Paternalism in State Charity Law Enforcement, 79 Ind. L.J. 937, 979–84 (2004). However, in this transaction, BILH seeks to obtain significant control over the governance and operations of a New Hampshire charitable organization over which the CTU has oversight responsibilities. *See* RSA 7:19-32-*l; In re Trust of Mary Baker Eddy,* 172 N.H. 266, 273 (2019) ("[T]he attorney general (or the DCT, as his representative) has the statutory power and duty to represent the public in the enforcement and supervision of charitable trusts."). As a result, the CTU has jurisdiction to require that BILH comply with certain standards in acquiring control over EHR, a nonprofit healthcare organization in which the public has a significant interest.

B. Application of the Review Standards under RSA 7:19-b

The proposed transaction constitutes a change of control under RSA 7:19-b, I (a) because under the terms of the Affiliation Agreement, BILH will have the authority to elect a majority or more of the membership of the governing bodies of EHR and EH. *See* RSA 7:19-b, I (c). RSA 7:19-b, II requires that the governing body of a health care charitable trust ensure that such a transaction comply with seven minimum standards. The role of the CTU is to review the proposed transaction to determine compliance with the seven minimum standards and determine whether to object or take no further action regarding the transaction. RSA 7:19-b, IV.

The following sets forth the CTU's analysis and conclusions with respect to each of the standards set forth in RSA 7:19-b, II.

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

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

> 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;

a. Consumer Protection and Antitrust Review

As part of its public protection function, the CPAB of the New Hampshire Attorney General's office conducted a nonpublic review of the proposed transaction to examine the impact on competition for health care services in the region. *See* RSA 356 and 358-A and related federal law. The CPAB's review included an analysis of existing overlap between the parties' service lines and facilities, existing and increase of market share and market power implicated by the proposed transaction, existing market concentration in the surrounding market, and potential efficiencies to be gained. BILH and EHR have agreed to terms to ameliorate the CPAB's concerns, which have been incorporated into a Final Judgment. Provided that the Superior Court enters the Final Judgment, and the parties comply with its terms, the CTU does not have a basis to conclude that the proposed transaction will give rise to a violation of consumer protection and antitrust laws.

b. Massachusetts Regulatory Review

As discussed above, because BILH is a Massachusetts charitable health care system, it is subject to the oversight of the Massachusetts Health Policy Commission and the Massachusetts Attorney General. The Massachusetts Health Policy Commission has reviewed the proposed transaction between BILH and EHR and has decided not to take further action. *See* M.G.L. c. 6D §13.

c. Judicial Review

RSA 7:19-b, VI (b) provides that the CTU's review under RSA 7:19-b does not "supplant or restrict the standards that may lawfully be applied in connection with the doctrines of cy pres, deviation, and termination." RSA 7:19-b, VI (b). In this case, and in light of the commitments made in the Final Judgment, the CTU takes the position that judicial review is not required.

i. Doctrine of *Cy Pres*

Cy pres is an equitable doctrine applied by the courts to modify the charitable purpose of a charitable trust in appropriate circumstances. *See Restatement of Charitable Organizations* § 3.02; *Restatement (Third) of Trusts* § 67. A substantial change in the purpose of a charitable organization or a change in the use of its restricted or even unrestricted assets may require judicial review under the doctrine of *cy pres*. *See, e.g.*, RSA 498:4-a; 547:3-d; 564-B:4-413; *see also Restatement of Charitable Nonprofit Organizations* § 3.01 (2021). Charitable organizations may *expand* their purposes without court oversight, with some limits, so long as the expansion is not inconsistent with their prior purposes. *See Queen of Angels Hospital v. Younger*, 66 Ca. App. 359, 368–71 (Cal. App. 1977); *Restatement of Charitable Nonprofit Organizations* § 3.01, cmt. a and b; § 3.04, cmt. b. However, judicial permission under the doctrine of *cy pres* generally is required before changing the purposes to which existing assets are applied. *Restatement of Charitable Nonprofit Organizations* § 3.01, cmt. a.

EHR's current purpose as articulated in its articles of agreement is to, among other things, "operate exclusively for the benefit of Exeter Hospital and its affiliated organizations in the conduct of their charitable, educational, and scientific functions." *See* Articles of Agreement, Article III (available on the Secretary of State's website). The proposed transaction arguably would result in an expansion of EHR's purpose in that, among other things, it would participate in a network of Massachusetts health care providers, including an academic medical center in Massachusetts. It would not result in such a substantial change to its purpose that judicial review is required, however, as its principal purpose, supporting the provision of health care in its community, will not change.

The Affiliation Agreement contains certain protections to ensure that the restricted assets and certain unrestricted assets of EHR and EH will continue to be used for their current purposes. Nevertheless, additional protections are required to ensure that their existing assets are not used for new purposes. Those additional protections are set forth in the Final Judgment. *Cy pres* will not be necessary, provided that the parties adhere to the Final Judgment.

ii. Doctrine of Deviation

The doctrine of deviation is an equitable doctrine that allows a court to modify an administrative term governing charitable assets or permit a departure from such term under certain circumstances. *See* RSA 547:3-c; *see also Restatement of Charitable*

Organizations § 3.03 (a). "Administrative terms are those that direct the means by which the charitable purposes are accomplished." *Restatement of Charitable Organizations* § 3.03, cmt. b. A substantial change in how a charitable organization administers its assets may require the court to decide whether the organization may deviate from its original administrative mechanism. *See* RSA 547:3-c.

Under the terms of the Affiliation Agreement, as the sole corporate member of EHR, BILH will hold considerable power over EHR's governance and operations and over management of its assets. It will also hold power indirectly over EHR's subsidiaries, including EH, and their assets. EHR will have only one representative on the BILH board for only a short period of time following the closing of the transaction. As a result, there necessarily will be some changes in how the charitable assets of EHR and its subsidiaries will be administered and how their charitable purposes will be carried out.

The Final Judgment contains terms that alleviate concerns that the changes in the administration of EHR's charitable assets will be so substantial as to require court approval under the doctrine of deviation.

2. RSA 7:19-b, II (b) Due Diligence in Structuring the Reorganization

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;

a. Due Diligence in Selecting the Acquirer and in Engaging and Considering the Advice of Expert Assistance and in Negotiating the Terms and Conditions

As discussed in the Report of the Attorney General, Charitable Trusts Unit Regarding the Governance of LRGHealthcare,[11] hospitals are among the largest, most complex, charitable organizations in New Hampshire. Board members of hospitals therefore must devote more time and attention to making major decisions than their counterparts who govern less complex charities. *See* Restatement of Charitable Nonprofit Organizations, § 2.03, cmt. b. As a result, before entering into transactions that could impact the hospital's ability to carry out its charitable mission, board members not only should apply their own particular skills and expertise in reviewing the transactions, they should consult with outside experts to advise them on whether the transactions are in the best interests of the charitable trust in light of its purpose.

[11] *See* Report of the Attorney General, Charitable Trusts Unit Regarding the Governance of LRGHealthcare (April 21, 2022).

In this case, EHR retained Kaufman Hall, a nationally recognized strategic health care consulting firm, to assist the board in identifying potential affiliation partners and in analyzing the various proposals submitted by the potential partners. On behalf of the EHR Board, Kaufman Hall solicited proposals from 16 potential partners. After receiving detailed proposals from 3 potential partners, Kaufman Hall made several presentations to the EHR Board and the boards of its subsidiaries, setting forth the relative merits and drawbacks of each proposal. In addition, the EHR Board sought legal advice from transactional lawyers with the firms Locke Lorde and Sheehan Phinney.

The Kaufman Hall presentation materials and board meeting minutes as well as the February 22, 2023, interview with board members reflect that the process of selecting BILH as a potential partner was thorough and thoughtful and that the board members were deeply involved in the process. Before entertaining proposals, the board identified and articulated its goals and objectives in choosing a partner, and those goals and objectives guided the selection process. Indeed, the criteria ultimately were included as an exhibit to the Affiliation Agreement with BILH.

The EHR Board is composed of talented, engaged, and knowledgeable members with ties to EH or the communities it serves. EHR board members devoted a considerable amount of time to reviewing and deliberating over proposals submitted by potential partners and weighing the benefits and drawbacks of each. Board members utilized their own skills and experiences but considered the expert advice of their outside consultants as well. They clearly understood the significant matters in the agreement and had some involvement in the negotiations. While the board members were not "at the negotiating table," they provided their input and were involved to the extent of offering edits to certain language in the Affiliation Agreement.

b. Best Interest of the Health Care Charitable Trust and the Communities it Serves

RSA 7:19-b, II (b) requires that the board of directors 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(a); *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 the trustees of for-profit corporations, 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.* (emphasis supplied).

The EHR board recognized that it was becoming increasingly difficult to continue to operate the hospital without an affiliation partner, particularly as a result of staffing and other challenges following the pandemic. While EHR had a slightly positive

operating margin in the years prior to the pandemic, it experienced substantial losses in 2020 and even more substantial losses in 2022.[12]

The EHR board voted unanimously to select BILH as its affiliation partner after a lengthy review process. During the CTU's interview with the board, the board members said that among the reasons that they believe the transaction is in the best interests of EHR is that BILH is "community-focused." In support of their conclusion, they said that BILH intends to keep health care in the community, work with existing community partners, and make capital investments in the community, including investing in the implementation of the Epic electronic medical record system. The board members indicated that they thought that the cultures of the organizations were aligned and that the transition, therefore, would not be problematic. The physicians on the board said that they supported the affiliation, in part, because they have had positive experiences working with BILH medical staff. Some of the board members said that they were less concerned about entering into the transaction with BILH than they were about the future of EHR if they did not enter into the transaction with BILH.

RSA 7:19-b requires that the board consider how the transaction would address community needs, "including the community's or communities' need for access to quality and affordable physical and mental health care services." RSA 7:19-b, II (e). Community needs may be identified in the community health needs assessments developed pursuant to RSA 7:32-f. Moreover, the concept of community needs likely includes consideration of the three outcomes that are evaluated with respect to any health care system: cost, quality, and access.[13]

As more fully described in Mr. Brannen's report, the public comments received by the CTU and the interviews of stakeholders conducted by Mr. Brannen and the CTU reflected both potential benefits as well as potential concerns. Among the positive comments were that the transaction could result in improved access to services close to home, expanded mental health and substance use disorder services in the region, and investments in clinical programming, workforce development, and infrastructure. Among the concerns were that the transaction could result in higher costs, potential changes in referral relationships and providers, and loss of local control over management, assets, and clinical service plans.

In the public hearing and in communications with the CTU, the focus of the parties to the proposed transaction has been on expansion of access to specialized health care services in the Exeter community. However, the CTU is concerned that some important services could be discontinued at Exeter Hospital and provided at other BILH locations. For example, many New Hampshire hospitals have discontinued obstetric services, including labor and delivery, creating a "maternity desert" in parts of the state.

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[12] Mr. Brannen's report notes that in spite of the challenges caused by the pandemic, EHR has performed well on quality-of-care measures.

[13] *See* Community Benefit and Market Changes in New Hampshire, N.H. Ctr. for Pub. Policy Studies (2017).

In addition, in 2022, BILH closed a birthing center in Beverly, Massachusetts.[14] Provisions in the Final Judgment are intended to address those concerns.

The EHR board members made considerable efforts to negotiate an agreement that was in the best interests of EHR and the communities it serves. However, additional safeguards are required to preserve local control and ensure that the promises made by BILH are enforced. In addition, in light of the information contained in Mr. Brannen's report concerning cost of care and community needs, the parties must make further efforts to address certain unmet community health needs and to address the community's need for access to quality care at a reasonable cost. These matters are addressed in the Final Judgment.

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;

Pecuniary benefit transactions are financial conflict of interest transactions involving a charitable organization's directors, their family members, their employers, or their businesses. RSA 7:19-a. Pecuniary benefit transactions are not prohibited under New Hampshire law, provided that they are in the best interest of the charity and certain conditions are met, including the exclusion of the interested board member from deliberations and votes and the disclosure of the transaction to the Director of Charitable Trusts. RSA 7:19-a, II.

Section II (E) (c) of the Notice dated September 30, 2022 (and submitted on October 4, 2022), provides that EHR and EH have a "robust conflict of interest policy" and that no conflicts of interest or pecuniary benefit transactions involving board members with respect to the transaction with BILH were identified. The CTU likewise has not identified any such conflicts of interest.

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

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

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

The proposed transaction between EHR and BILH does not involve a sale, and RSA 7:19-b therefore is inapplicable to the proposed transaction.

[14] The CTU received a number of public comments related to the closure of the Beverly birthing center. The CTU notes that BILH continues to offer labor and delivery services at Beverly Hospital.

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 Affiliation Agreement includes some protections to ensure that certain of EHR's assets will continue to be devoted to its charitable purposes in New Hampshire. For example, the agreement provides that "any and all [philanthropic] funds raised in New Hampshire shall be used in New Hampshire only." *See* Affiliation Agreement, 10.12 (a). In addition, the agreement requires that board-restricted and unrestricted funds held by EHR and its subsidiaries must be used to advance the purposes of the Exeter entities for the communities they serve. *Id*. at 10.12 (b).

Additional commitments nevertheless are required to ensure that the charitable assets of EHR and its subsidiaries are devoted to its charitable purpose in New Hampshire and to ensure that BILH exercises its fiduciary responsibilities over EHR. *See Opinion of the Attorney General*, Fiduciary Duty of Corporate Members of Charitable Organizations, at 3 (Feb. 13, 2017). Compliance with the requirement of RSA 7:19-b, II (e) therefore is met only subject to the commitments set forth in the Final Judgment.

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;

RSA 7:19-b, II (f) states that control of any proceeds from a transaction "shall be independent of the acquirer" if it is other than a New Hampshire charitable organization. As discussed, BILH will obtain substantial governance and management control over EHR, but the transaction does not involve a "sale" or "proceeds" from EHR to BILH. Nevertheless, the statutory provision reflects a policy concern with the loss of local control over hospital assets to an out-of-state organization. Compliance with the requirement of RSA 7:19-b, II (f) therefore is met only subject to the commitments set forth in the Final Judgment.

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 purpose of the "reasonable public notice" requirement is to ensure that prior to finalizing and voting in favor of an acquisition or change of control transaction, the board considers input from the public. This requirement recognizes that the ultimate beneficiary of a health care charitable trust is the public, and that the board should consider the interests of the communities served by the health care charitable trust in its deliberations.

On May 18, 2022, EHR held a virtual public meeting to inform the public of the proposed affiliation with BILH. EHR publicized the meeting via social media, direct email to 39,000 constituents whose contact information is maintained in EHR's customer relations management database, and email notices to members of the Exeter Area and Hampton Chambers of Commerce. EHR posted a summary of the terms of the transaction on EH's web site and on the website: https://www.exeterandbilh.com. Approximately 180 people attended the presentation.

Not all of the board members attended the May 18 public meeting. The questions and comments were summarized and presented to the EHR and EH Boards of Trustees at a special joint board meeting on May 27, 2022. Certain members of management, including the CEO, met with community members to discuss the transaction and conveyed the information they learned to the board. The board members were not included in those discussions.

In addition to the May 18, 2022, listening session, EHR and BILH reported that management of the organizations participated in 6 community forums between March and June 2022. According to the parties, members of the community asked questions about the transaction, but they did not receive any negative feedback.

While community forums during which management explains proposed transactions are helpful, it is important that the board members (not just management) elicit and obtain community input before they vote to approve any change of control transaction. Commitments set forth in the Final Judgment reflect community and stakeholder input, and the minimum requirements set forth in RSA 7:19-b, II (g) therefore are met, subject to compliance with those commitments.

III. Conclusions and Determination

Based on the evidence, the Director of Charitable Trusts finds that the EHR board has substantially complied with the minimum standards for changes of control set forth in RSA 7:19-b, II. The CTU's decision not to object and to take **no further action** with respect to the transaction is, however, subject to the following representations and conditions:

1. The Affiliation Agreement and the ancillary agreements and other documents referenced therein constitute the entire agreement of the parties relating to the transaction.

2. The statements and documents made or provided in the Notice and statements made by the parties and their attorneys to the Charitable Trusts Unit are true and correct in all material respects.

3. The transaction does not implicate any conflicts of interest or pecuniary benefit transactions involving trustees or officers of EHR, EH, or EHR affiliates.

4. The Merrimack County Superior Court enters the Final Judgment, and BILH, EHR, and EHR affiliates comply with its terms. The provisions of the Final Judgment are hereby incorporated into this report. *See* Exhibit B.

EXHIBIT A

BerryDunn

Acquisition Transaction of Exeter Hospital by Beth Israel Lahey Health System

Review for the New Hampshire Attorney General Charitable Trusts Unit

Submitted By:

BerryDunn Health Analytics Practice Group
Tyler Brannen, Senior Health Economist
Donna Friedsam, Senior Health Policy Manager

Submitted: March 2023

BerryDunn

Table of Contents

1.0 Executive Summary

Exeter Health Resources, Inc. (EHR) submitted notice to the New Hampshire Attorney General, Director of Charitable Trusts of plans to affiliate with Beth Israel Lahey Health (BILH). BILH will become the sole corporate member of EHR and the indirect parent of its subsidiaries. BILH will have authority over EHR's governance and operations and, indirectly, powers of EHR subsidiaries. A local EHR board with substantial independent authority will remain in place.

The New Hampshire Department of Justice (DOJ) Charitable Trusts Unit (CTU) retained BerryDunn to provide consulting services in support for the affiliation review by the CTU.

Reasons given by EHR/BILH for the potential transaction state that this transaction will proceed "for the purpose of ensuring that residents of southeastern New Hampshire have long-term, sustainable access to a full panoply of needed, high quality and cost-effective healthcare services." More specific examples include retaining and improving access to primary and specialty care services, maintaining and improving the quality and continuity of care, recruiting staff more effectively, increasing opportunities to meet community needs, and preserving the status as a recognized, value-based health care system for the region to advance its charitable mission.

EHR has weathered the pandemic well, but low operating margins in recent years, losses in 2020, and substantial financial burdens in 2022 have challenged the organization to meet community needs and expectations for integrated health care services in the region. Third parties rate EHR in health care quality and patient safety. EHR received 4 out of 5 stars for overall measures and patient survey ratings from the Centers for Medicare & Medicaid Services (CMS), and it also received a recent **A** grade from the Leapfrog Group for patient safety. These rankings are similar to or better than other hospitals in the New Hampshire seacoast region.

Identified community needs substantially overlay with EHR-provided community benefits and plans with BILH after the transaction occurs. BILH/EHR anticipates improved access to services considered a priority in the community, including service lines that generally result in low margins for the organization. Examples include behavioral health treatment, substance use disorder services, primary care, and pediatrics. BILH also intends to expand access to financially attractive clinical services, such as vascular surgery, general surgery, gastroenterology, oncology, and orthopedics.

BILH's total investment is expected to be $375 million over 10 years, primarily for capital investments and an integrated electronic medical record (EMR) system.

Concerns stem from the ability to maintain local control over EHR, potentially higher costs, and maintaining local access to health care services. The BILH proposal has the potential to addresses many of the identified needs of EHR and the needs of the Exeter community, and BILH is an organization well positioned to provide a favorable transition. Confidence in this outcome will depend on conditions and assurances that the Parties adhere to specific representations.

2.0 Introduction

On September 30, 2022, Exeter Health Resources, Inc. submitted notice to the New Hampshire Attorney General, Director of Charitable Trusts of plans to affiliate with Beth Israel Lahey Health, a Massachusetts charitable corporation.[1] The notice, submitted pursuant to New Hampshire RSA 7:19-b III,[2] includes EHR as a New Hampshire nonprofit corporation together with its subsidiaries:

- Exeter Hospital Inc. (EH): A New Hampshire nonprofit corporation
- Core Physicians, LLC (Core): A New Hampshire limited liability company
- Rockingham VNA & Hospice (RVNA): A New Hampshire nonprofit corporation

The affiliation with BILH will cause BILH to become the sole corporate member of EHR and the indirect parent of all EHR subsidiaries, including EH. Through this affiliation, EHR will operationally, clinically, and financially integrate with BILH. BILH will have substantial authority over EHR's governance and operations and, indirectly, powers over EHR subsidiaries.

The CTU retained BerryDunn to provide consulting services in support for the review by the CTU. BerryDunn produced this report, developed a fact sheet, and presented at the CTU-hosted hearing on March 1, 2023, regarding the potential transaction.

This report aims to support the CTU's process to decide whether to oppose the potential affiliation and consider what conditions might apply. Included is an overview of the organizations involved and an analysis of information obtained from public resources and documents submitted by the parties to the transaction. The Affiliation Agreement provides extensive details on the agreements between the parties and is one of the key documents used to guide expectations about the future organizational structure, operations, and priorities of the merged entity. This report frequently uses capitalized terms defined in the Affiliation Agreement, and the agreement can be found on the CTU's website.

Because the agreement is legally binding, information about the potential transaction provided in the Affiliation Agreement is considered factual. BerryDunn does not provide an opinion about whether these requirements will be satisfied, but, in some cases, BerryDunn has identified challenges and opportunities that may not be fully addressed in the Affiliation Agreement or supporting documentation.

[1] Exeter Health Resources, Inc. September 30, 2022. "In Re: Affiliation of Exeter Health Resources Inc. and its subsidiaries with Beth Israel Lahey Health Inc. Notice to the Director of Charitable Trusts Pursuant to New Hampshire RSA 7:19-b,III." *U.S. Department of Justice.* Accessed March 10, 2023. https://www.doj.nh.gov/charitable-trusts/documents/exeter-health-beth-israel-lahey-notice.pdf

[2] Office of the Attorney General, Charitable Trusts Unit. 2022. *Guidebook for New Hampshire Charitable Organizations. Fifth Edition*. *U.S. Department of Justice.* Accessed March 10, 2023. https://www.doj.nh.gov/charitable-trusts/documents/guidebook-non-profit-organizations.pdf

2.1 New Hampshire Parties to the Potential Transaction

2.1.1 EH

EH is a charitable trust located in Exeter, New Hampshire. It operates as a community hospital, offering 100 inpatient beds as well as inpatient and outpatient diagnostic and treatment services. Examples of services include medical and radiation oncology programs, general and specialty surgery, labor and delivery, sleep medicine, and occupational health care for local businesses and their employees. The hospital has acute care adult and pediatric hospitalists on-site around the clock and critical care physicians in its intensive care unit (ICU). The emergency department has approximately 28,000 visits per year and features an adjacent heliport for transferring patients who require more specialized services to tertiary or quaternary hospitals. The hospital's telemedicine program is staffed with neurologists and neurology residents, providing diagnosis and treatment for stroke patients.[3]

2.1.2 Core

EHR is the sole corporate member of Core, a New Hampshire LLC formed in 2007 to "further the charitable purposes of its Members by providing health and medical services to the community and the general public, conducting medical research, engaging in community benefit activities, and other activities of similar nature, or related to it."[4] As of the 2022 CTU filing, Core reports employing approximately 164 full-time equivalent physicians and other providers, including primary and specialty care physicians, advanced-practice nurses, physician assistants, dentists, and podiatrists. Core operates as a multispecialty group practice with community-based office locations throughout the New Hampshire seacoast region.

2.1.3 RVNA

RVNA is a licensed home health and hospice services provider that offers "community services to enhance independence and the quality of life." RVNA offers home care, visiting nurses, approximately 40 clinics yearly—including on-site diabetes and foot care clinics in senior and community centers—and hospice care to patients in institutional and home-based settings.

2.2 BILH

The BILH system is the second largest health care system in New England and operates as a nonprofit corporation in the Commonwealth of Massachusetts. The system is the parent corporation to 13 hospitals, 21 major ambulatory care facilities, and more than 7,500 professional health care providers. The system includes an academic medical center, an

[3] Exeter Hospital. November 2017. "Exeter Health Resources." *Exeter Hospital.* Accessed March 20, 2023. https://www.exeterhospital.com/getmedia/d4624674-1eae-4d42-9e5e-c2e3f498527c/EHR-140-17-Affiliate-Overview-Fact-Sheet-V7-3.pdf.aspx

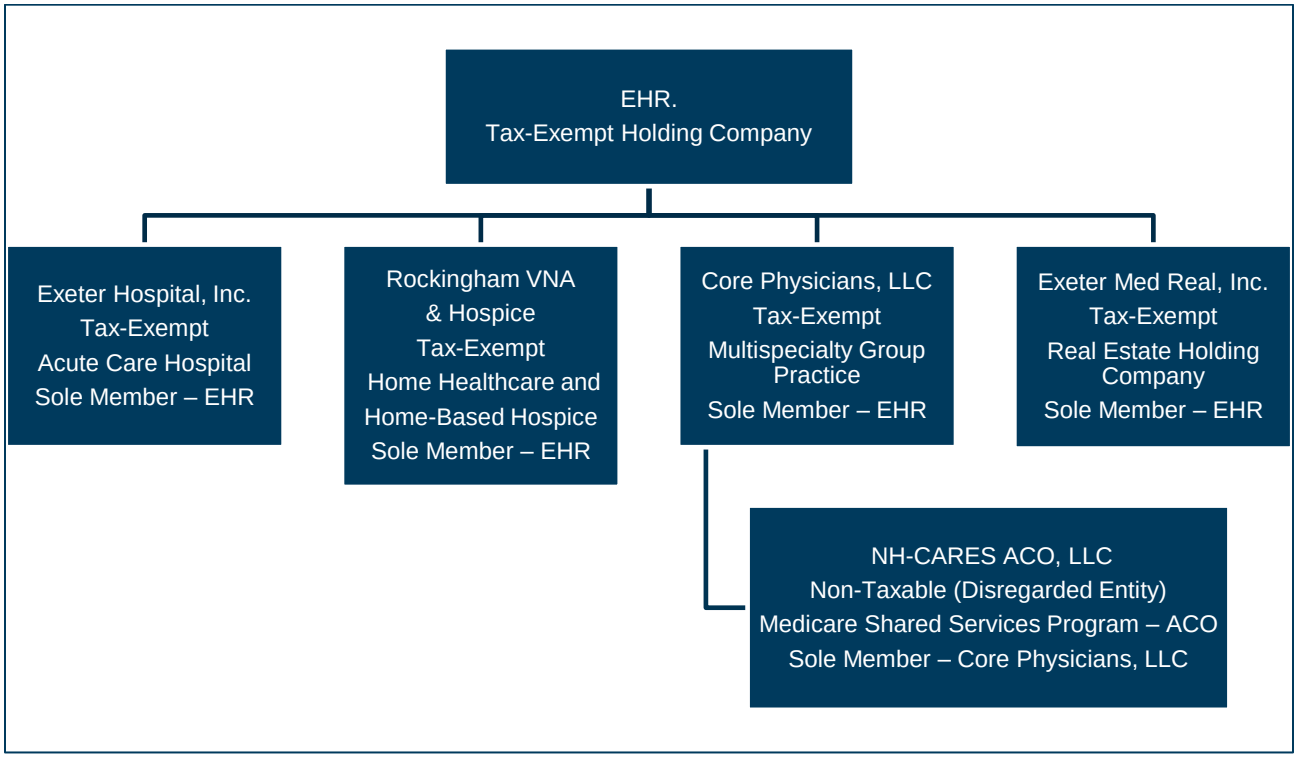
[4] Exeter Health Resources, Inc. September 30, 2022. "In Re: Affiliation of Exeter Health Resources Inc. and its subsidiaries with Beth Israel Lahey Health Inc. Notice to the Director of Charitable Trusts Pursuant to New Hampshire RSA 7:19-b,III." *U.S. Department of Justice.* Accessed March 10, 2023. https://www.doj.nh.gov/charitable-trusts/documents/exeter-health-beth-israel-lahey-notice.pdf

orthopedic teaching hospital, two additional general acute care teaching hospitals, eight acute care community hospitals, and a behavioral health hospital.[5]

2.3 Governance Structures

Three EHR subsidiaries fall under the governance of EHR, the sole corporate member and parent organization of EH. The two other charitable trusts involved in the delivery of health care are Core and RVNA. EHR qualifies for tax-exempt status as a public charity providing executive management for the operation of its subsidiaries. The EHR governing board comprises 12 members and is self-perpetuating.

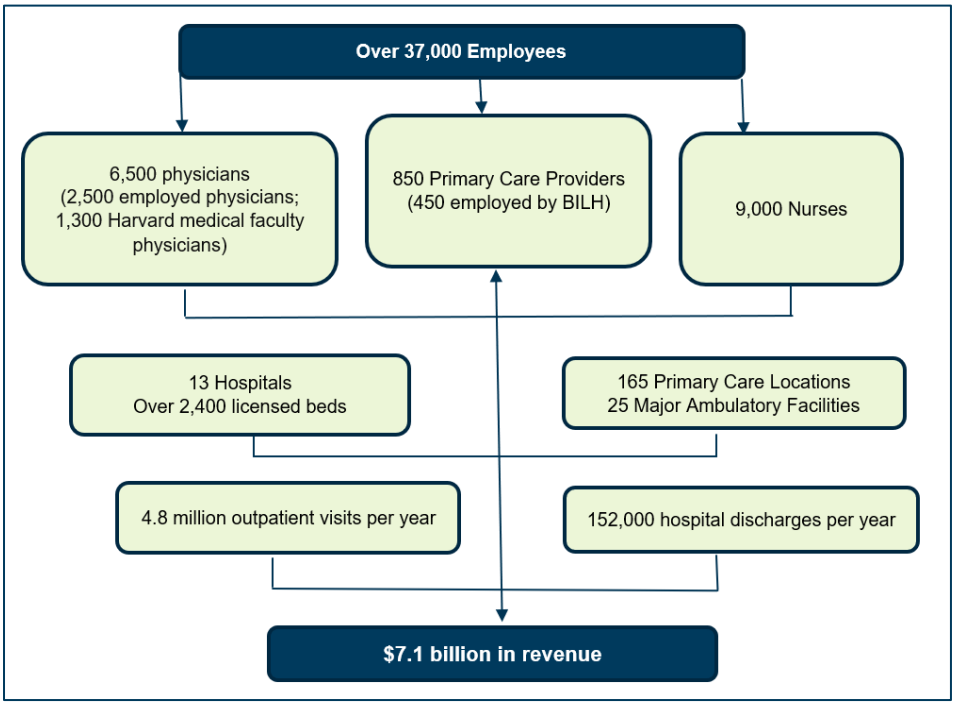
Figure 1. EHR, July 28, 2022



The BILH Board of Trustees consists of 21 members and includes representation from legacy health systems that have joined the larger system. BILH has both affirmative and negative reserved powers of governance and operations of its subsidiaries. For some decisions related to philanthropy, medical school affiliations, and hospital closures, the BILH board may not act directly on behalf of certain subsidiaries without approval of the subsidiary's board of directors or trustees. The hospital's board of trustees also hold responsibility for physician credentialing at their hospital.

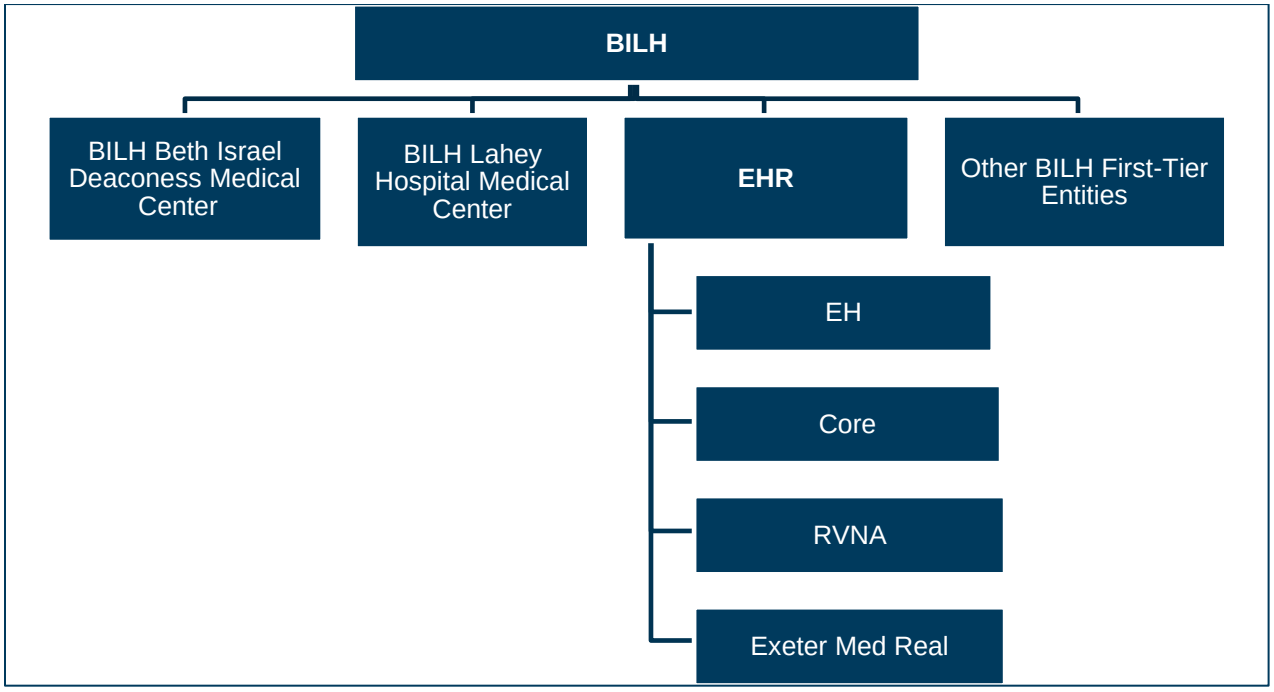
[5] Beth Israel Lahey Health. "Hospitals." *Beth Israel Lahey Health.* Accessed March 10, 2023. https://www.bilh.org/system/hospitals

Figure 2. Summary of BILH Operations



The transaction materials specify that EHR will join the BILH structure as a first-tier entity, as displayed in Figure 33, meaning that EHR will be an entity with BILH as the sole corporate member. The local EHR board will continue to oversee operations for all business units that it manages today.

Figure 3. EHR Within the BILH Corporate Structure



2.4 Reasons Indicated for the Proposed Transaction

EHR materials state that this transaction will proceed "for the purpose of ensuring that residents of southeastern New Hampshire have long-term, sustainable access to a full panoply of needed, high quality and cost-effective health care services." The documents offer 10 substantial promises for this transaction:

1. Strengthen and improve access to local health care services in EHR's service area.
2. Provide seamless, appropriate access to primary, secondary, tertiary, and quaternary care.
3. Improve quality and continuity of care through shared leadership and shared use of resources such as comprehensive population health management, a single EMR, and a shared clinical technology.
4. Rationalize clinical programs and services to promote the provision of the appropriate level of care at the right provider location.
5. Achieve economies of scale and enable the applicants to efficiently use their clinical and administrative resources by spreading care management, capital planning, and other overhead costs across a broader integrated delivery system.
6. Increase the applicants' ability to recruit and retain highly qualified physicians and other staff for the provision of services locally.
7. Maximize their support for the delivery and management of physical and behavioral health programs to meet community needs in a coordinated and cost-effective manner.
8. Position EHR, including all the EHR subsidiaries, as destination centers of BILH in New Hampshire through local program development, primary care and specialist physician recruitment, and deployment of population health tools and resources to manage complex patient needs.
9. Preserve, sustain, and enhance EHR's status as a recognized value-based health care system for the region in furtherance of its charitable mission, including the continued provision of care to vulnerable populations.
10. Develop and expand EHR's capabilities to successfully adapt to both health care reform and continued industry transformation.

The documents assert that EHR and its subsidiaries "can collectively better serve the health care needs of the community and thereby better meet their charitable missions over the long term through the proposed Affiliation, than they could do so independently."

2.5 Standards for Acquisition Transactions

New Hampshire RSA 7:19-32 defines seven standards for review of transactions "involving Health Care Charitable Trusts" that require review by the Director of Charitable Trusts:

1. The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292.
2. 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; in determining that the transaction is in the best interest of the health care charitable trust and the communities it serves.
3. Conflicts of interest have been disclosed and averted.
4. Proceeds from the transaction constitute fair value.
5. Assets continue for charitable purposes, including access, quality, and affordability of physical and mental health care services.
6. If acquirer is not a NH nonprofit, control of proceeds shall be independent of acquirer.
7. Process has included reasonable public notice, comment period, and deliberations.

This report to the Director of the CTU of the New Hampshire Attorney General focuses on three of the standards directly tied to questions of the charitable mission of the corporation:

- Due diligence in determining that the transaction is in the best interest of the health care charitable trust and the communities it serves.
- Assets continue for charitable purposes, including access, quality, and affordability of physical and mental health care services.
- If the acquirer is not an NH nonprofit, control of proceeds shall be independent of acquirer.

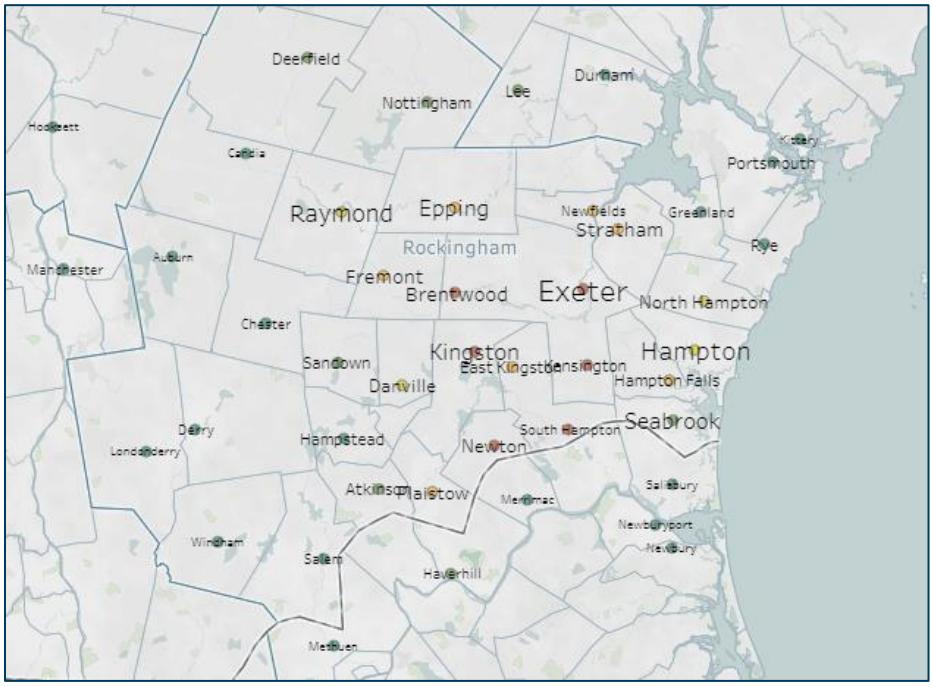
BerryDunn's analysis considers the current circumstances of the parties and what conditions or circumstances may be needed in order to help ensure adherence to these standards. Section 3 describes EHR, its area and scope of services, financial and quality measures, costs, and its existing community investments. Section 4 describes the planned transaction, stated commitments, governance, service delivery, funds flow, and additional investments. Section 5 returns to the three points above, reviewing how facts of the transaction align with the charitable purpose of the organization and the interests of the community.

3.0 Exeter Background

3.1 Scope of Services and Service Area

According to documents provided by EHR, the affiliates of EHR serve 46 communities in the seacoast region with a population of approximately 300,000. Figures 4 and 5 below reflect the service area based on the origin of patients discharged from EH.[6] The relative size of the text reflects the percentage of discharges to locality.

Figure 4. EH Service Area



The distance between Exeter Hospital and the Beth Israel Lahey flagship hospitals in Boston is about 55 miles, amounting to about 1.25 hours by car travel. Several other BILH hospitals are located between Exeter and Boston. Figure 5 displays the travel route from Exeter, with various BILH organizations located in the geographic area between Exeter and Boston, Massachusetts. Within that area, BILH operates the following hospitals:[7]

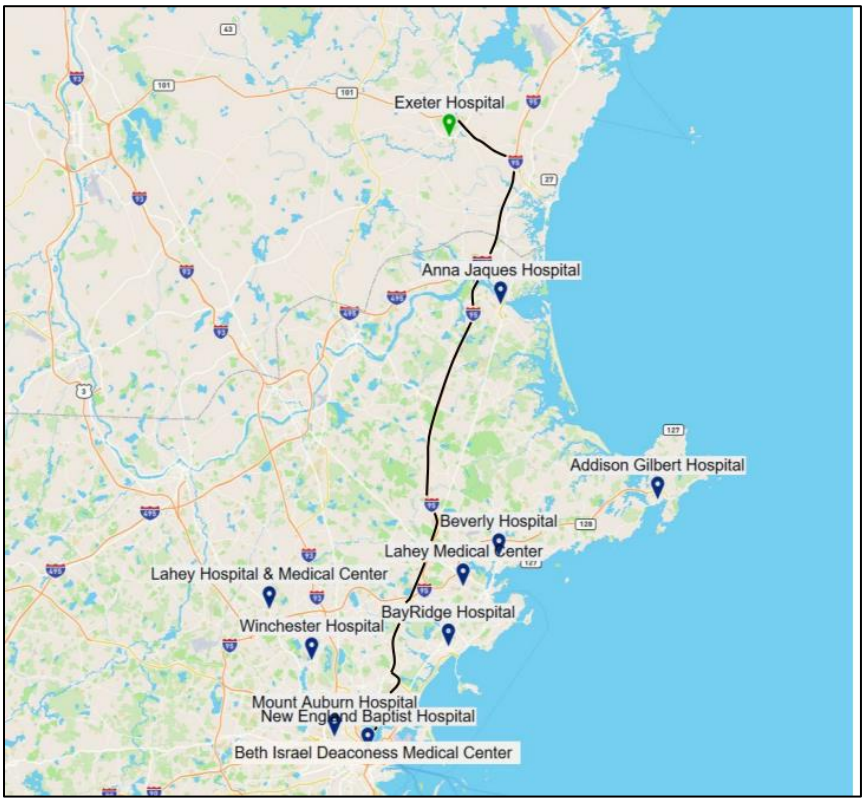
- Addison Gilbert Hospital, Gloucester, MA
- Anna Jaques Hospital (Anna Jaques), Newburyport, MA

[6] New Hampshire Hospital Association. 2020. *Data Insights: New Hampshire Acute Care Hospital Patient Origin Report, Inpatient 2020*. New Hampshire Hospital Association. Accessed March 10, 2023. https://www.nhha.org/wp-content/uploads/2022/11/Patient_Origin_Report_CY2020_Inpatient.pdf

[7] Beth Israel Lahey Health. "Hospitals." *Beth Israel Lahey Health.* Accessed March 10, 2023. https://www.bilh.org/system/hospitals

- BayRidge Hospital, Lynn, MA
- Beth Israel Deaconess Medical Center, Boston area
- Beverly Hospital, Beverly, MA
- Winchester Hospital, Winchester, MA
- Lahey Hospital & Medical Center, Burlington, MA
- Lahey Medical Center, Peabody, MA

Figure 5. Geographic Area From EH to BILH Hospitals



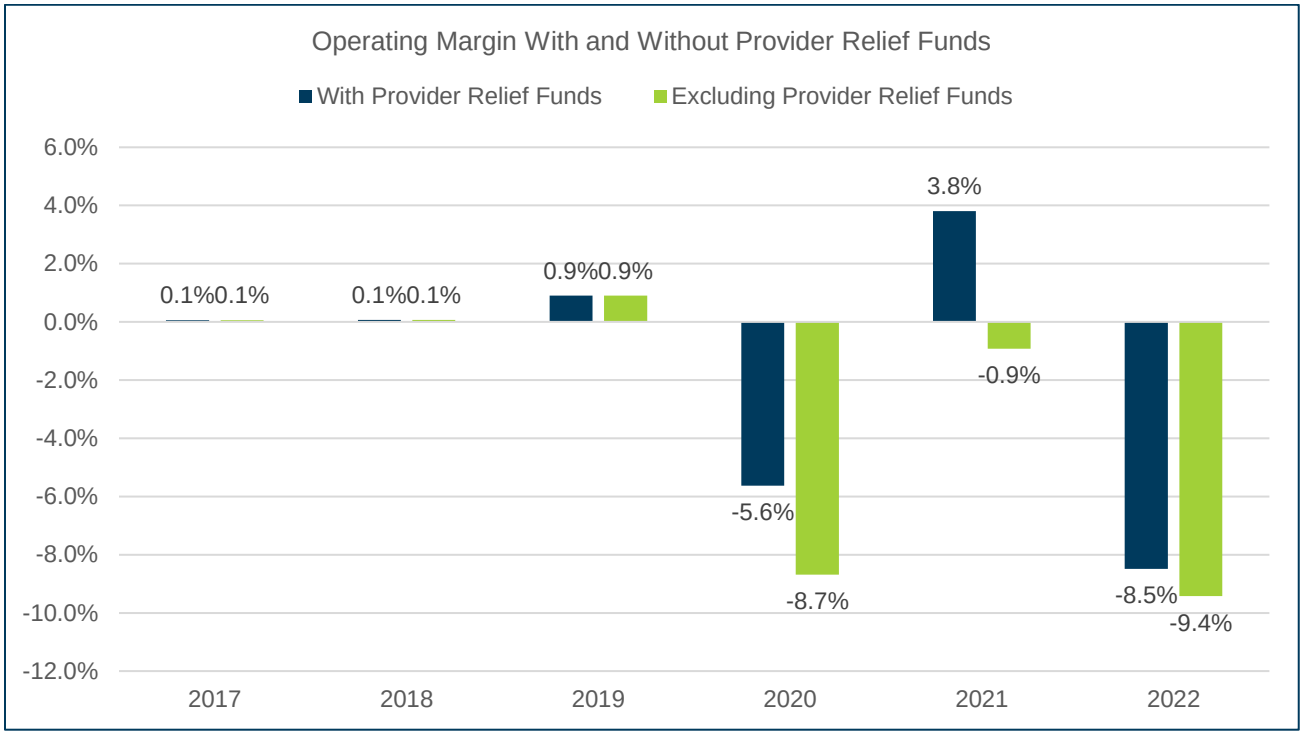
3.2 EH Financial Position[8]

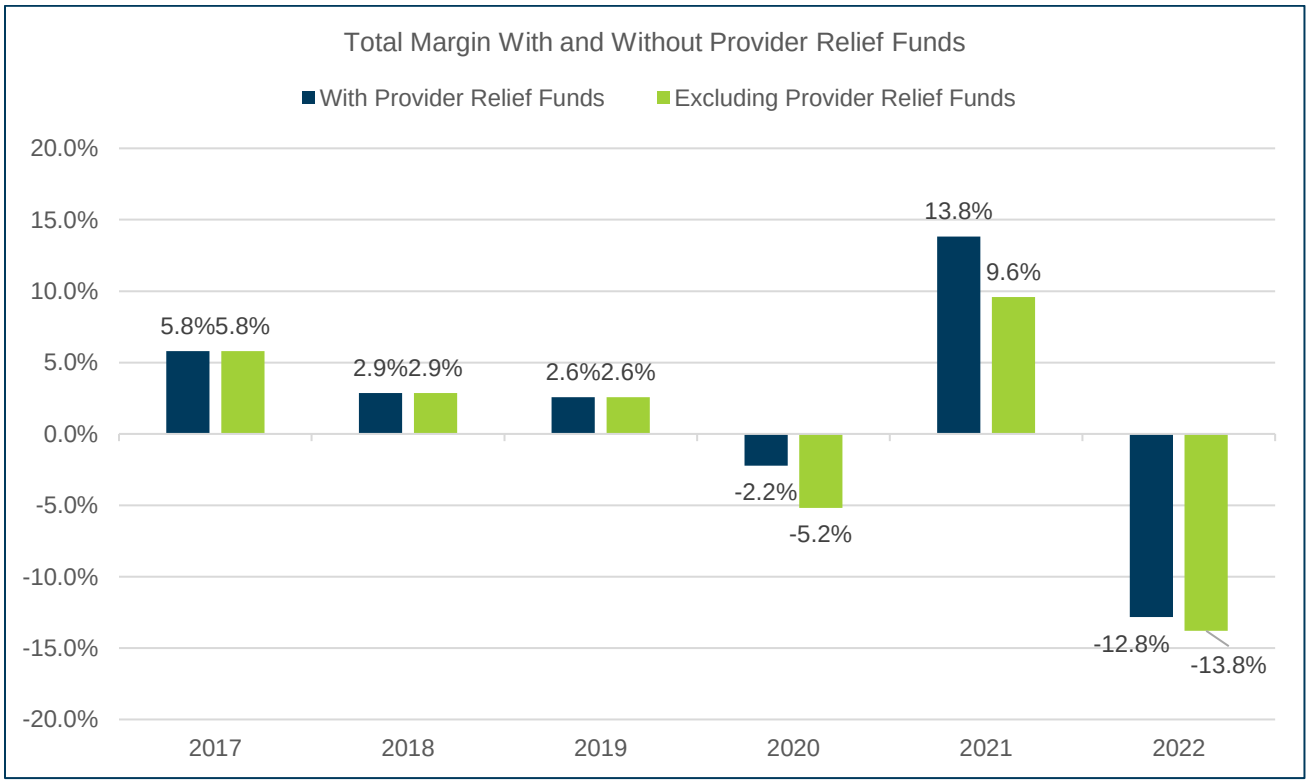
EHR operated at a slightly positive operating margin in the immediate years prior to the beginning of the COVID-19 pandemic; 2020 resulted in substantial operating losses, somewhat mitigated by federal provider relief funding. The hospital operating margin was substantially more favorable in 2021 with provider relief funds. The 2021 total margins were much higher due to the positive market performance of EH's assets in 2021, but the market downturn in 2022

[8] All data sourced from FY2022 EHR-provided data and the following report: Exceptional Care During Extraordinary Times: Exeter Health Resources Annual Report: 2021. Accessed March 10, 2023. https://documents.exeterhospital.com/view/595412026/

caused more substantial losses. Unaudited financial data submitted by EHR for 2022 show losses greater than in any of the prior years included in the analysis.

Figure 6. EH Operating and Total Margin, 2017 – 2022, With and Without COVID-19 Provider Relief Funds





3.3 Quality and Cost of Care

EH performs well on quality of care measures and earned a four-star rating in the Centers for Medicare & Medicaid Services Hospital Quality Initiative.[9] EH does well in a separate patient survey ranking, earning four stars for the Patient Survey Rating. Table 1 displays CMS quality ratings comparing Anna Jaques—a local community hospital in Massachusetts that is also part of the BILH system—with local community hospitals on the New Hampshire seacoast. Portsmouth Regional Hospital, also nearby and part of the HCA Healthcare (HCA) system, earned four stars overall, but only three stars for the Patient Survey Rating. Frisbie Memorial Hospital earned the same ratings and is now part of the HCA system. Wentworth-Douglass Hospital (Wentworth-Douglass)—also part of the Massachusetts General Brigham system—received the same ratings as EH.

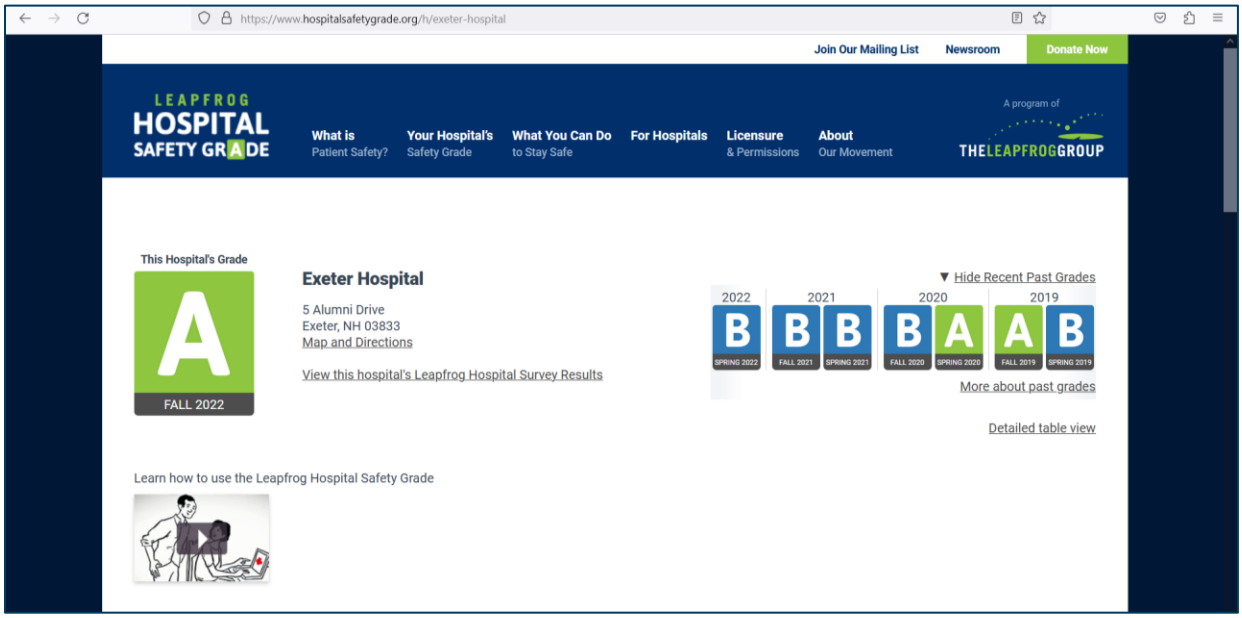
Table 1. CMS Hospital Quality Initiative, Public Reporting Data[10]

	EH Exeter, NH	Anna Jaques Newburyport, MA	Portsmouth Regional Hospital Portsmouth, NH	Wentworth-Douglass Hospital Dover, NH	Frisbie Memorial Hospital Rochester, NH
Overall Star Rating	★★★★☆	★★★☆☆	★★★★☆	★★★★☆	★★★★☆
Patient Survey Rating	★★★★☆	★★★★☆	★★★☆☆	★★★★☆	★★★☆☆

A separate resource focusing specifically on patient safety is produced by the Leapfrog Group. EH earned an overall patient safety grade of **A** in 2022 and either an **A** or a **B** from 2019 to 2022 (Figure 7). The EH **A** grade is comparable to the grade earned by Wentworth-Douglas, Frisbie Memorial Hospital, and Portsmouth Regional Hospital. Leapfrog reports an overall grade of **C** for Anna Jaques.

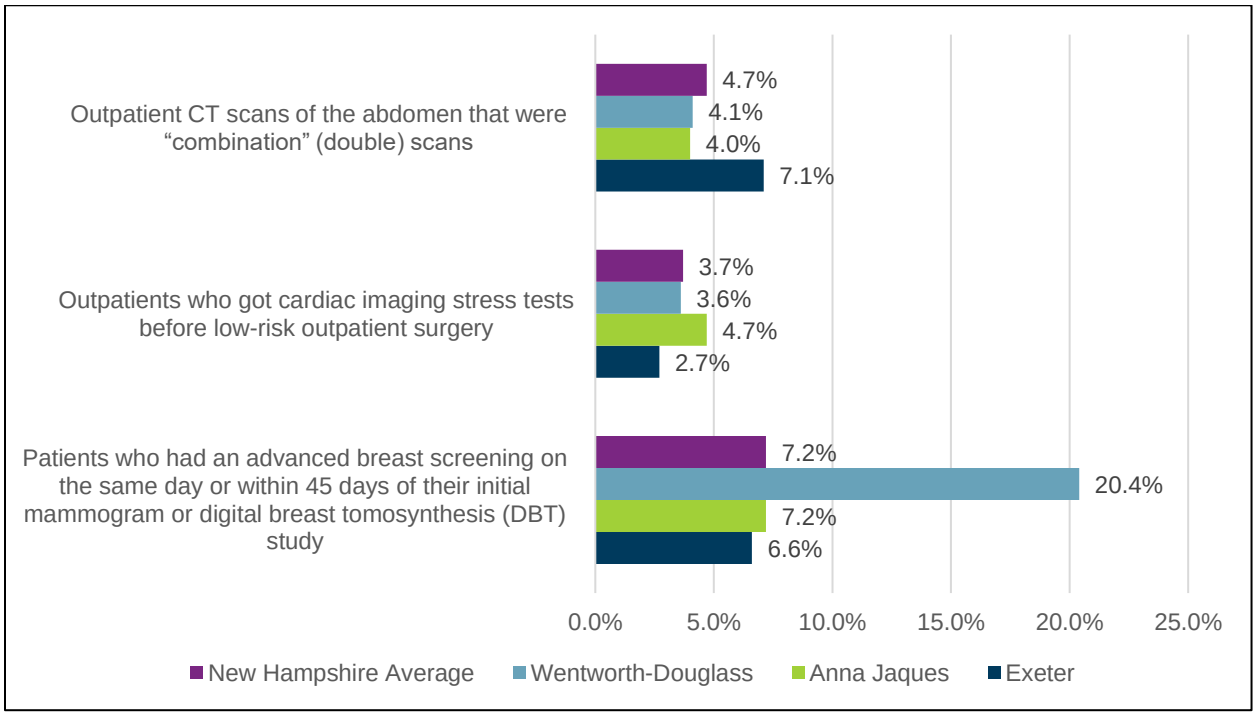
[9] Centers for Medicare & Medicaid Services. "Exeter Hospital Inc." *CMS.gov*. Accessed March 10, 2023. https://www.medicare.gov/care-compare/details/hospital/300023?city=Exeter&state=NH&zipcode=
[10] Ibid.

Figure 7. Patient Safety Grades for EH



CMS reports that hospitals vary in their reported occurrence of select lower value services.[11] Figure 8 displays some variation among EH, Anna Jaques, Wentworth-Douglass, and the New Hampshire average.

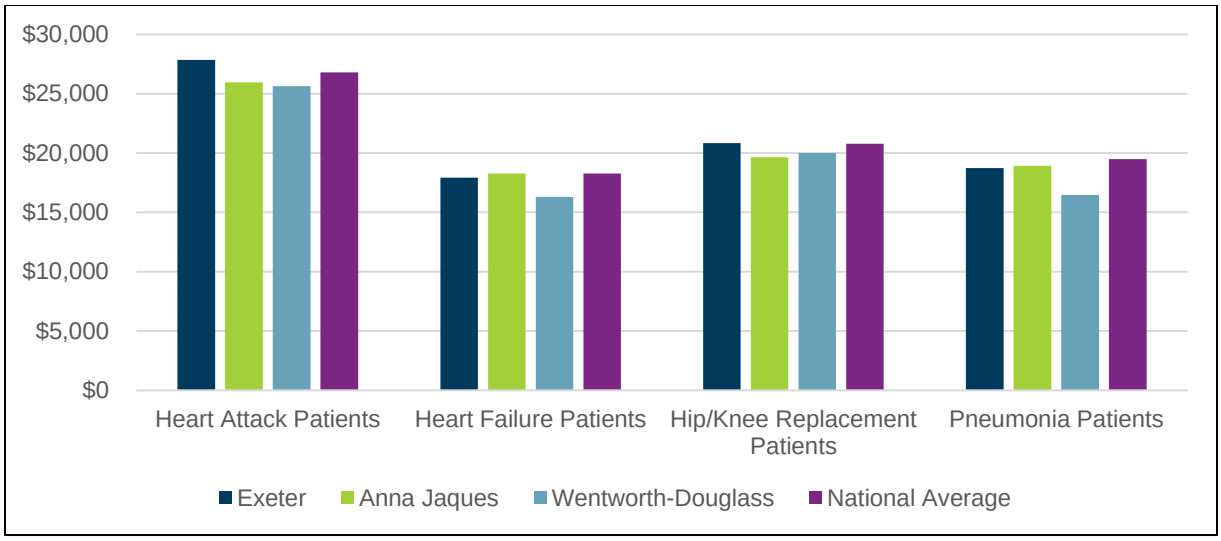
Figure 8. Reported Occurrence of Lower Value Services



[11] Ibid.

As health care reimbursement methods move from a fee-for-service system to value-based care, CMS reports on a limited number of episode bundles and the associated payments (Figure 9). EH did not differ substantially in its Medicare payments from the national average for any of the four service bundles reported. Wentworth-Douglass patients resulted in lower total payments for pneumonia and heart failure patients. Anna Jaques patients resulted in lower total payments for hip/knee replacements. Based on priorities identified by BILH in the submitted documents, Anna Jaques, as part of the BILH system, may have adopted some cost of care approaches that yield such savings—a potential benefit in value-based payment and accountable care organization models.

Figure 9. Cost Comparison – EH Medicare Payment for Patients with Specific Episodes of Care



Healthcare costs are typically reflected in the prices paid for health care services, and these prices are often negotiated between private insurance companies and health care providers. The negotiations and the contracts that determine payment levels are usually confidential, and the public is often poorly equipped to evaluate a health care provider based on price. Various state and federal regulatory requirements exist to encourage price transparency by health care providers and insurance companies; however, except for the NH HealthCost website, most are in their infancy.

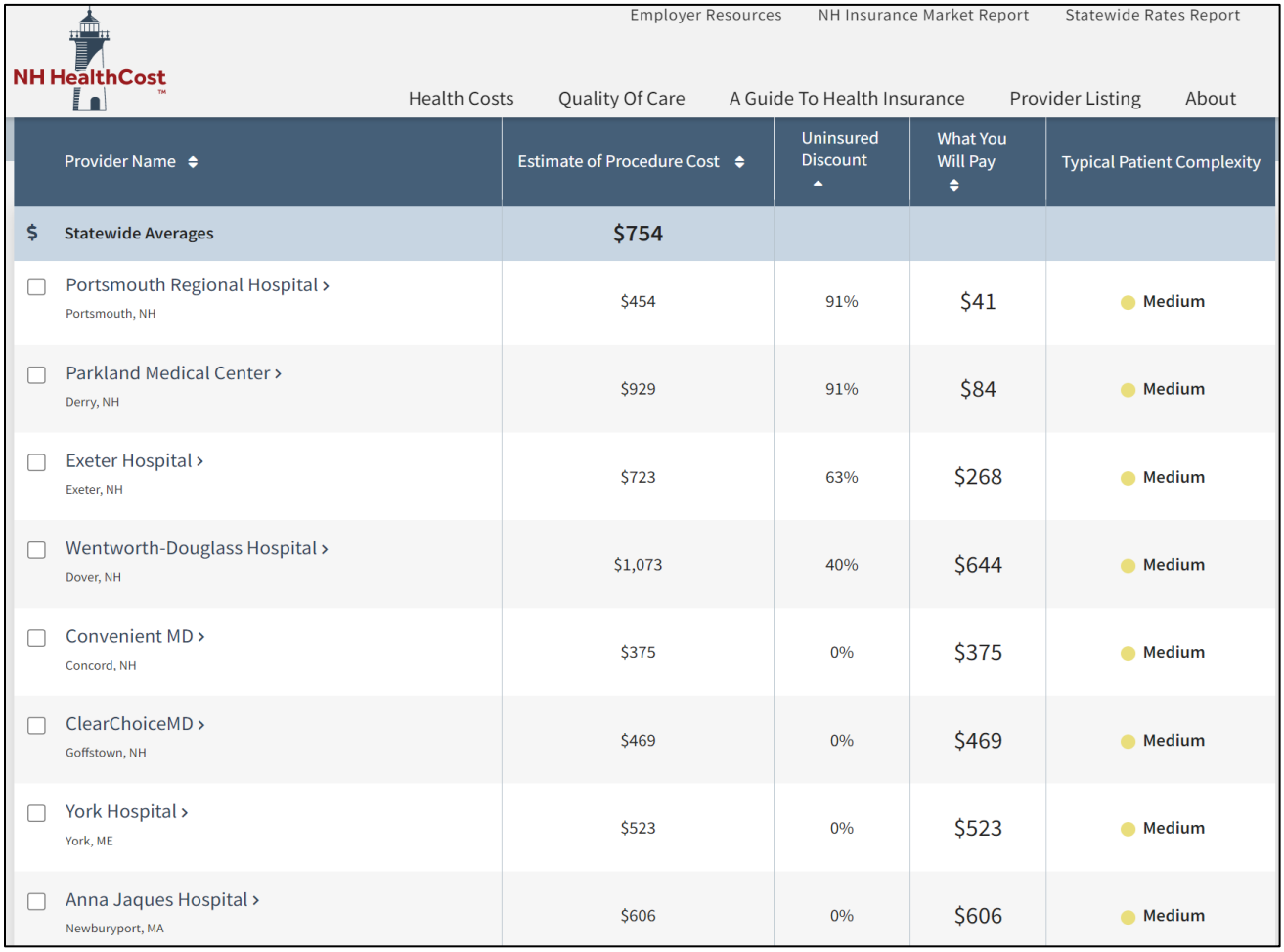
NH HealthCost reports a selected group of services and prices based on the negotiated rates between insurance companies and healthcare providers, including EHR providers.[12] The website can provide insight about a healthcare price with an entity, but it cannot provide accurate generalized prices for services at the organization. This is because the services on NH HealthCost were not chosen randomly, and many services not reported may have prices that are frequently higher or lower on a comparative basis.

The prices on NH HealthCost are available for both commercially insured populations and the uninsured; these are outlined in Figures 10 and 11 as examples. Figure 10 shows an “Estimate of Procedure Cost” for , at $723 for EH. This provider charge that might apply to an uninsured

[12] NHHealthCost. https://nhhealthcost.nh.gov/

patient. The charge compares unfavorably to other providers nearby but is close to the statewide average of $754. However, the uninsured patient may qualify for financial assistance and a 63% discount from charges, bringing the amount due to $268. Other providers may also offer discounts based on the financial situation of the uninsured patient, so the charge should often be considered a starting point for determining actual patient liabilities.

Figure 11. Price Comparison of a Chest X-Ray for a Patient with No Insurance



NH HealthCost

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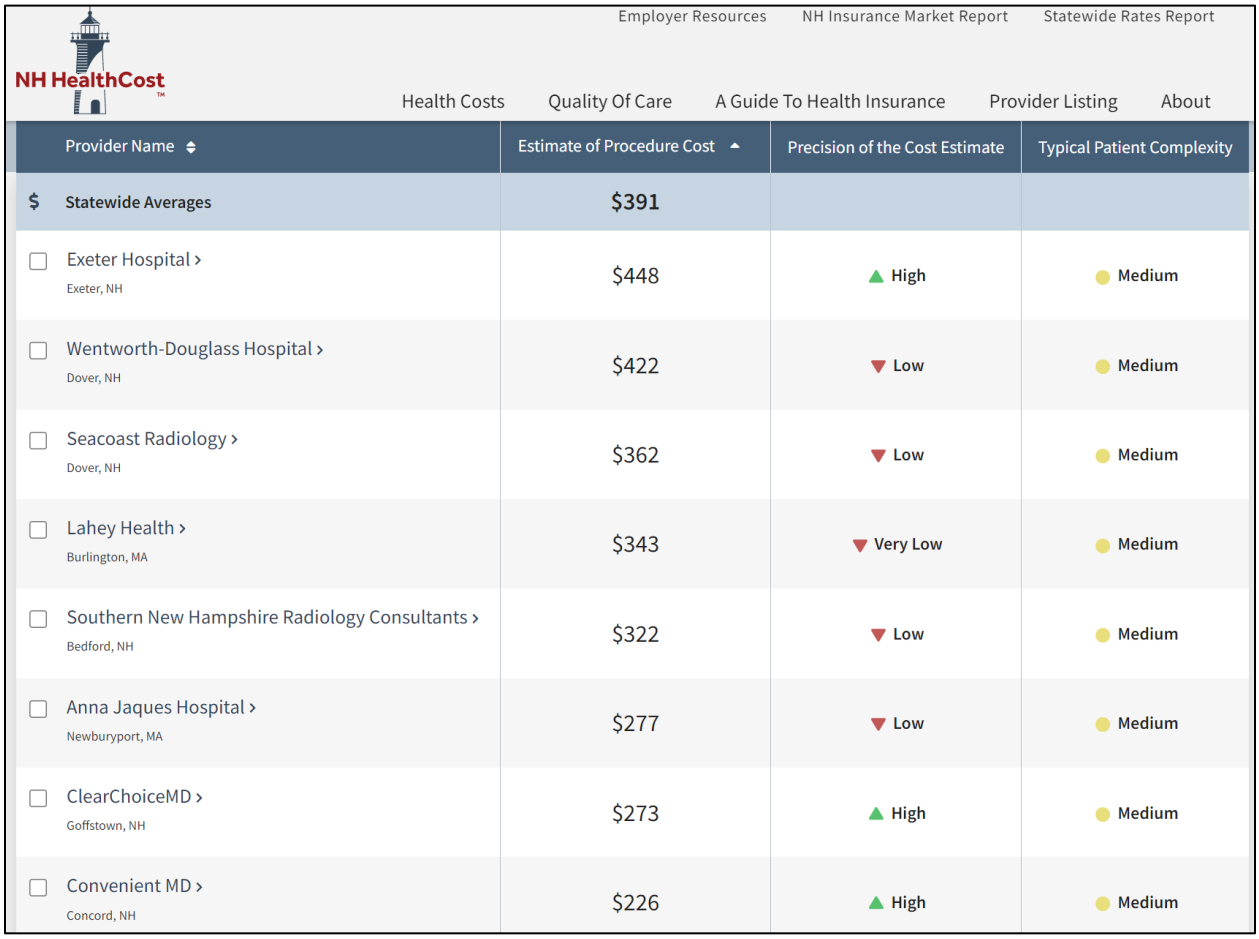
Provider Name	Estimate of Procedure Cost	Uninsured Discount	What You Will Pay	Typical Patient Complexity
$ Statewide Averages	$754			
Portsmouth Regional Hospital › Portsmouth, NH	$454	91%	$41	Medium
Parkland Medical Center › Derry, NH	$929	91%	$84	Medium
Exeter Hospital › Exeter, NH	$723	63%	$268	Medium
Wentworth-Douglass Hospital › Dover, NH	$1,073	40%	$644	Medium
Convenient MD › Concord, NH	$375	0%	$375	Medium
ClearChoiceMD › Goffstown, NH	$469	0%	$469	Medium
York Hospital › York, ME	$523	0%	$523	Medium
Anna Jaques Hospital › Newburyport, MA	$606	0%	$606	Medium

Figure 11 provides an example of the same service covered by Anthem Blue Cross Blue Shield of New Hampshire (Anthem) and shows EH slightly higher than the statewide average but appears to be more expensive than other nearby providers. The “Estimate of the Procedure Cost” column is based on historical claims payments that reflect the negotiated amounts between Anthem (now called Elevance Health) and the providers included for comparison purposes.

Figure 11. Price Comparison of a Chest X-Ray for a Patient with Anthem Group Insurance



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Provider Name	Estimate of Procedure Cost	Precision of the Cost Estimate	Typical Patient Complexity
$ Statewide Averages	$391		
Exeter Hospital › Exeter, NH	$448	▲ High	● Medium
Wentworth-Douglass Hospital › Dover, NH	$422	▼ Low	● Medium
Seacoast Radiology › Dover, NH	$362	▼ Low	● Medium
Lahey Health › Burlington, MA	$343	▼ Very Low	● Medium
Southern New Hampshire Radiology Consultants › Bedford, NH	$322	▼ Low	● Medium
Anna Jaques Hospital › Newburyport, MA	$277	▼ Low	● Medium
ClearChoiceMD › Goffstown, NH	$273	▲ High	● Medium
Convenient MD › Concord, NH	$226	▲ High	● Medium

3.4 Community Needs Assessment and Benefits Report

Federal and state laws require EH, as a nonprofit hospital, to conduct a community health needs assessment and develop a community health plan.[13] EHR performs the assessment in collaboration with local healthcare and community organizations, but the final product represents EH, Core, and RVNA.[14]

EH is also required to report on its provision of community benefits.[15] The hospital-specific community benefits allow comparison to the community needs and the benefits provided by

[13] New Hampshire RSA 732-e and 7:32-f. As referenced in Office of the New Hampshire Attorney General Charitable Trusts Unit. Community Benefits Reporting Guide. December 2020. https://www.doj.nh.gov/charitable-trusts/documents/community-benefits-guide.pdf

[14] Exeter Hospital. "Community Benefits & Community Health Needs Assessment." *Exeter Hospital.* Accessed March 10, 2023. https://www.exeterhospital.com/About-Us/Community-Benefits

[15] New Hampshire RSA 7:32-c-I. As referenced in Office of the New Hampshire Attorney General Charitable Trusts Unit. Community Benefits Reporting Guide. December 2020. https://www.doj.nh.gov/charitable-trusts/documents/community-benefits-guide.pdf

other hospitals in New Hampshire. This section also reports the EHR system-wide reported community benefits, including those provided by RVNA and Core.

Table 22 lists the high-priority needs identified in the most recent health needs assessments, 2019 and 2022, along with the provision of hospital community benefits reported in 2021 and 2022 that relate to those identified needs.

Table 2. Community Needs Assessments and Investments – EH

Community Health Needs Assessment, 2019 and 2022	Community Health Benefits Report, 2021 and 2022
Mental health and substance use disorder services; suicide prevention	Cash donations, subsidized services, funding of education in support of Youth Suicide initiative, initiating internal opioid task force. Subsidized emergency department access program with Seacoast Mental Health Center, youth suicide grant and awareness programs, expansion of support services with Seacoast Mental Health Center.
Financial barriers: Difficult to afford care; cost of dental services, cost of insurance premiums, deductibles, and affordability of prescription drugs	Financial assistance program, including catastrophic coverage at EH; charity care through EH and Core charity care policies; services provided below cost.
Senior services/geriatric care providers	Grants to Rockingham Meals on Wheels, Community Toolbox, Society of St. Vincent de Paul, NH Hospice & Palliative Care.
Transportation for older adults and those with disabilities	Hospital-supported subsidized transportation program via taxi voucher program, support for Lamprey transportation services, Transportation Assistance for Seacoast Citizens (TASC) taxi voucher program with Seacoast Mental Health Center.

Timely access to primary and specialty care providers, as well as affordable housing, were other areas emphasized in the community health needs assessments.

EH's community health benefit report for 2022 identified $4.1 million in net expenses provided for community health improvement activities outside of direct health services (Table 3). This amounts to 1.3% of EH's total operating expenses. EH identified an additional $6.5 million as subsidized health services, bringing EH's total community health improvement expenses to 3.5% of total expenses.

EH also reported $21.3 million to cover costs that exceed payments received for patients covered by Medicaid and $46.6 million for Medicare, totaling $67.9 million in combined shortfalls from Medicare and Medicaid. The additional $10.7 million in other community benefit expenses yields a total of $78.6 million in reported community benefit expenses (

Figure 12). As such, direct outlays account for about 14% of EH's reported community benefit expenses, with the remaining 86% resulting from EH's reported costs exceeding payments received from Medicare and Medicaid.

A view of EH community benefit spending as a percentage of the budget, apart from community benefit reported by RVNA and Core, allows for comparison to other hospitals. The 2022 New Hampshire Hospital Association (NHHA) Statewide Community Benefit Report showed community health spending with shortfalls associated with Medicaid, but not Medicare; therefore, BerryDunn provided that comparison here. Based on NHHA data, about 33% of EH's community benefit expenditures are for community health improvement services, and 67% are associated with covering costs that exceed Medicaid payment levels (Figure 7).[16] The EH distribution is similar to the average among New Hampshire and neighboring hospitals.[17,18]

Table 3. EH Community Health Benefits Report, Community Improvement Expenses, 2022

Community Benefit Category and Spending		Percentage of Total EHR Expenses
Community health improvement services	$1,322,449	1.3%
Health professions education	$1,708,769	
Cash and in-kind contributions	$510,314	
Research	$464,352	
Community-building activities	$124,456	
Total community benefit excluding healthcare services	$4,130,340	
Subsidized health services	$6,219,346	2.1%
Other financial assistance	$379,913	0.1%
Total, including subsidized health services and financial assistance	$10,729,599	3.5%

[16] New Hampshire Hospital Association. 2022. *Statewide Community Benefit Report*. Accessed March 10, 2023. https://www.nhha.org/wp-content/uploads/2023/01/NH_Community_Health_Report_1122_FINAL.pdf
[17] Charitable Trusts Unit. "Community Benefit Plans – 2020." *New Hampshire Department of Justice, Office of the Attorney General.* Accessed March 10, 2023. https://www.doj.nh.gov/charitable-trusts/community-benefits-2020.htm.
[18] Wentworth-Douglass Hospital. June 30, 2021. "Form NHCT31, Community Benefits Reporting." *Wentworth-Douglass Hospital.* Accessed March 10, 2023. https://www.doj.nh.gov/charitable-trusts/documents/2020-wentworth-douglass.pdf

Figure 12. EH Community Benefit Report, Net Expenses 2022

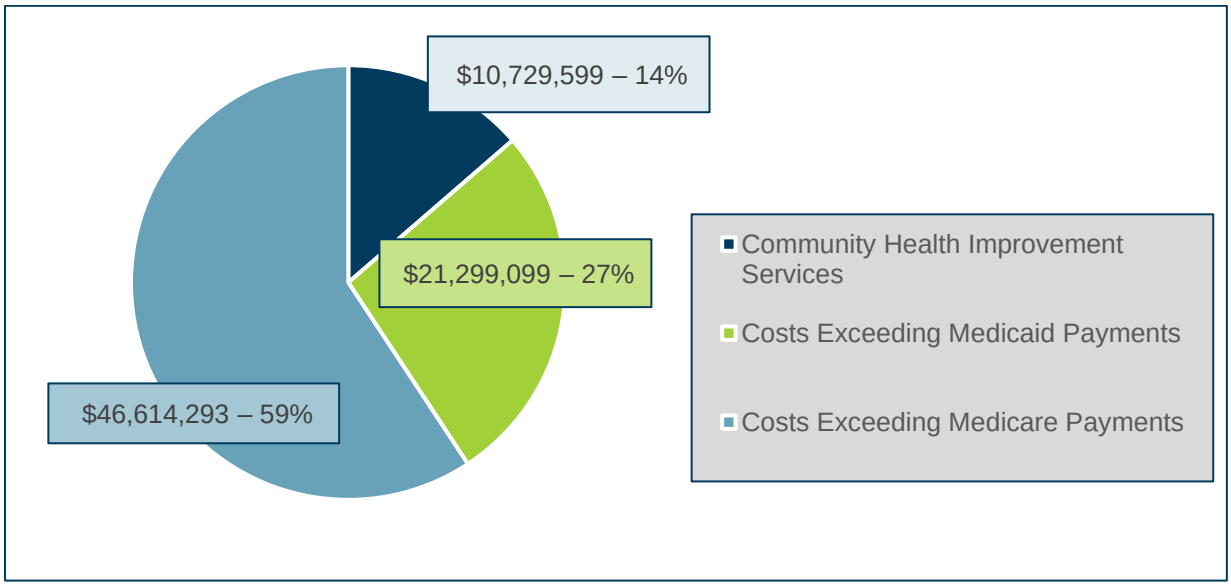
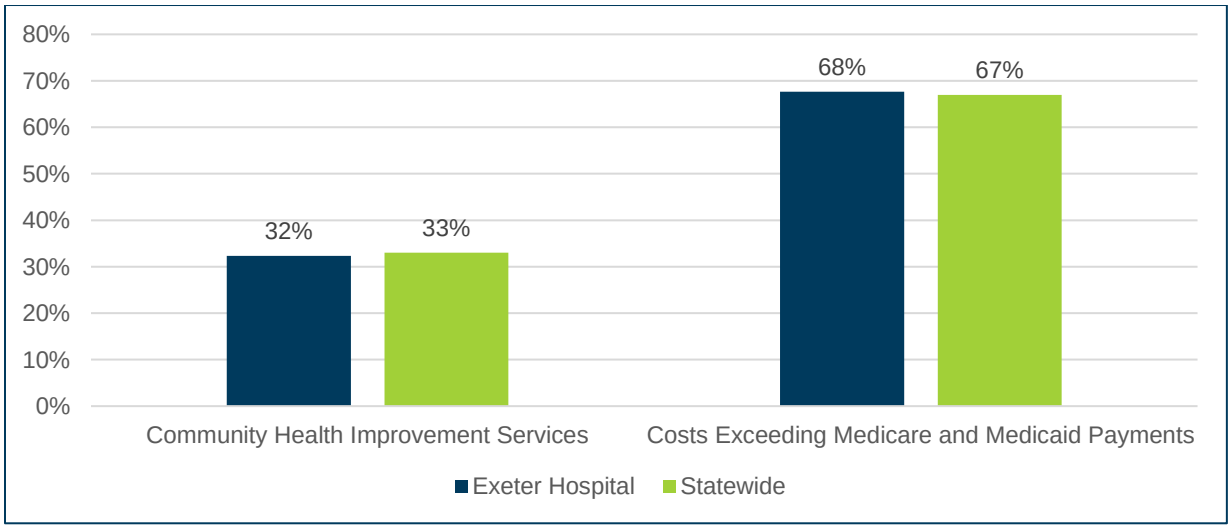


Figure 73. Distribution of Reported Community Benefits Funding: EH and Statewide Averages (Excluding Reported Medicare Shortfalls)



The Exeter Health System includes the hospital along with RVNA and Core, and all three entities provide community benefits. EHR reports the two other entities added $292,473 in community benefit that is not direct health services, and an additional $3,702,562 in subsidized health services. Table 4 details the reported community benefits of the combined entity.

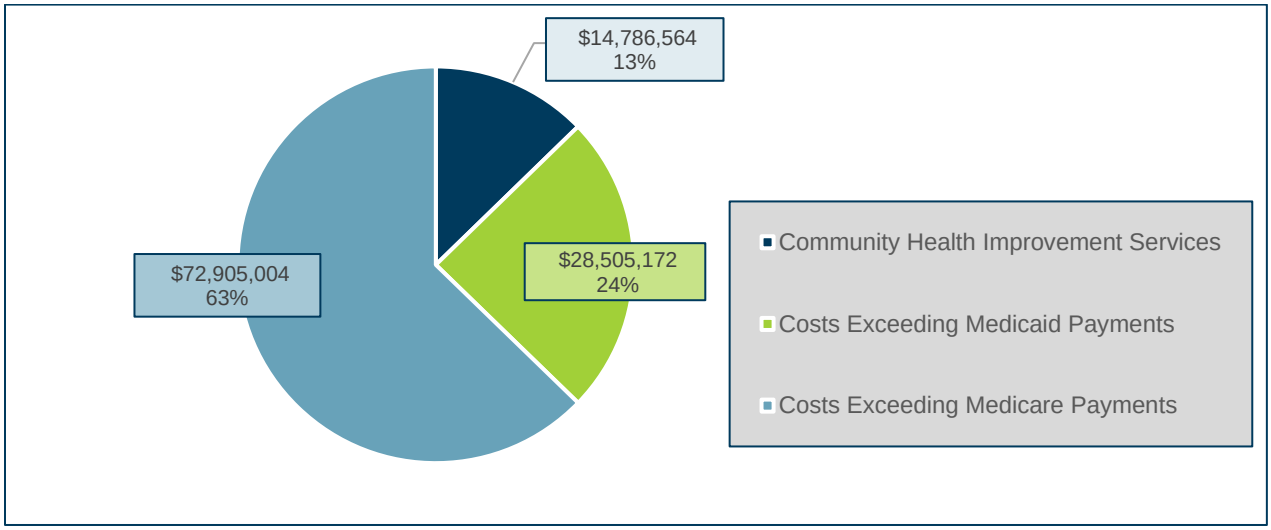
EHR also reports $28.5 million to cover costs that exceed payments received for patients covered by Medicaid and $72.9 for Medicare, totaling $101.4 million in combined shortfalls from Medicare and Medicaid. The additional $14.8 million in other community benefit expenses yields a total of approximately $116.2 million in community benefit expenses (Figure 4). As such, direct

outlays account for about 13% of EHR's reported community benefit expenses, with the remaining 87% resulting from EHR's reported costs exceeding payments received from Medicare and Medicaid.

Table 4. Exeter Health System Community Health Benefits Report, Community Improvement Expenses

	EH	RVNA	Core	EHR Consolidated	Percentage of Total EHR Expenses
Community health improvement services	$1,322,449	$140,274	$13,553	$1,476,276	1.0%
Health professions education	$1,708,769	$20,262	$112,643	$1,842,104	
Cash and in-kind contributions	$510,314	$5,311		$515,625	
Research	$464,352			$464,352	
Community-building activities	$124,456			$124,456	
Total community benefit – not payment for direct health services	$4,130,340	$166,277	$126,196	$4,422,813	
Subsidized health services	$6,219,346	$40,469	$3,662,093	$9,921,908	2.2%
Other financial assistance	$379,913		$61,930	$441,843	0.1%
Total, including subsidized health services and financial assistance	$10, 729,599	$206,746	$3,850,219	$14,786,564	3.3%

Figure 14. Exeter Health System, Community Benefit Report, Net Expenses 2022



4.0 Potential Effects of the Acquisition Transaction

BerryDunn reviewed a range of information and interviewed stakeholders to assess their confidence in the transaction plan as stated and structured. The essential question was: *Would the plan be implemented as described and advance the best interests of the community?* Among the information reviewed was the Affiliation Agreement, public and confidential financial statements, changes to bylaws, financial assistance policies, information from public forums, public transparency websites, analyses and reports from consultants that contributed to the transaction decision, and meeting agendas, minutes, and notes. Among the interviews performed by BerryDunn were individuals representing local community healthcare and social service providers, health policy experts, current and former elected officials, consumer advocates, and members of the EHR Board.

Table 5 lists the major points of focus for potential community impact from the interviews and submitted comments. All parties and stakeholders voiced interest in and concern for the major goals of healthcare improvement—access, quality, and cost containment. EHR operates as a charitable trust in the community, and the transaction raises questions about its process and structure for continuing in that role:

- What changes might be ahead for the governance and decision-making processes?
- What about disruption with EHR providers and employees, increased limits on charity care, reduced community benefit services, and loss of charitable assets?

Table 5. Points of Focus for Potential Community Impact

• Access to services	• Governance and decision-making process and participants
• Quality of care	• Changes in charity care and community benefit services
• Cost of care	• Retention of charitable assets in local communities
• Changes in/continuity of/additions to providers and services	• Relationships with and support for community-based programs and services

The Parties and stakeholders identified a range of potential benefits and concerns. They are listed below as provided, with further detail throughout this report:

Potential Benefits

- Long-term financial and operational stability, and viability for EHR and its subsidiaries.
- Continued commitment to community-focused practice and mission.
- Maintenance of local governance structure, meaningful input, and retention of charitable assets in the local community.

- Expanded mental health and substance use disorder services in the region.
- Improved access to services close to home by providing more specialty services in person and through telehealth.
- Investments in clinical programming, workforce development, and infrastructure.
- Potential cost savings by coordinating administrative functions.
- More support for the clinical staff in pursuing continuous quality improvement, population health management, and adoption of best practices.

Potential Concerns

- Extraction or redirection of local resources for previous charitable mission and purposes.
- Reduction in existing scope of services.
- Effect on members with low incomes and those who are uninsured, charity care policies, and collaboration with local safety-net providers, including Lamprey Health Care and Seacoast Mental Health Center.
- Potential change in referral relationships and providers, including replacement of existing provider entities with BILH-employed entities.
- Higher service rates at some locations; facilities may face increased costs for administrative services provided through the larger system due to requirements to invest in their infrastructure and administrative services in order to align with the BILH system.
- Changes to local control of EH, including the local administrative workforce and the operational, reporting, and management structures of the hospital systems.

Broadly, these potential changes fall within three categories:

1) Changes in control and ownership of assets.
2) Changes in clinical services plan.
3) Investment in (or extraction of) resources from the community.

Stakeholders also shared questions and concerns about specific health care services—particularly for mental health and substance use disorders and for obstetrical care—and how this transaction might affect health care costs more generally. Input received through interviews and submitted comments/letters emphasized the need to monitor adherence to the Affiliation Agreement and potential approval conditions and provide ongoing accountability after the transaction takes effect.

The transaction documents, including the Affiliation Agreement, Notice to the Attorney General, and other collateral materials, address these potential benefits and concerns.

4.1 Changes in Control and Ownership of the Assets

The proposed transaction fundamentally changes the ownership and governing structure of the EHR corporation:

> "The Affiliation will result in a change of control of EHR and the EHR Subsidiaries … BILH will be the sole corporate member of EHR and the indirect parent of the EHR subsidiaries. As the system parent, BILH will oversee financial management, strategy and clinical service lines, and other functions. The BILH Board of Trustees will serve as the ultimate governing fiduciary body for EHR and the EHR Subsidiaries, *except as specifically noted in the amended and restated governing documents*" (emphasis added).

The final clause, noting the exceptions to the BILH governing authority relative to the local EHR board, is essential for maintaining local control over EHR charitable resources and assets. Transaction Provision III.A, under Material Terms of the Transaction, partially addresses EHR control of local assets:

> "Ownership of the assets of EHR and the EHR Subsidiaries will not change as a result of the Affiliation … The assets will continue to be devoted to the charitable purposes of each respective subsidiary, consistent with New Hampshire charitable trust laws and regulations, including RSA 7:19-b."

The governance over these assets and their availability for charitable purposes will depend on the authority available to the EHR board, as discussed below.

Figure 3 displays the proposed structure as EHR joins the BILH corporate system. As provided by the Parties:

- EHR's existing structure will remain the same. EHR and its operating affiliates will remain not-for-profit.
- EHR will join BILH, and BILH will become the sole corporate member of EHR.
- EHR will become a first-tier entity of BILH, and have one representative on the BILH board for a period of six years.
- The integration will include all assets, liabilities, and operations associated with EHR.
- EHR's local board will remain in place, with a consistent number of trustees as the current EHR board.
- People now serving on the EHR Board of Trustees will continue to serve through the remainder of their individual terms to ensure continuity of leadership after the effective date of the affiliation.
- The EHR Board of Trustees will be responsible for recommending trustees (other than those serving ex officio) to serve on the EHR board.

- Future trustees will be persons who are members of communities served by EHR.
- BILH would have one representative on the EHR board (serving ex officio).

Under the oversight of the BILH system board, EHR's local board will continue to have meaningful oversight of and governance responsibility for:

- Determining philanthropy and local community benefit funding.
- Reviewing and recommending strategic plans and operating/capital budgets.

The boards of EH, Core, and RVNA will provide oversight of and governance responsibility for quality, safety, and risk management programs. The EH board will provide oversight of and governance responsibility for licensure, credentialing, medical staff matters.

4.2 Changes in Clinical Services and Clinical Affiliation Plan

BILH states, in its "Commitment to Maintain Facilities, Services and Programs," Article 10.5, the following:

> "In all events and at all times, the assets of Exeter shall remain dedicated to promoting the health of Exeter's communities." BILH will "continue operating substantially all existing Exeter facilities, services and programs in a manner consistent with Exeter's mission and operations immediately preceding closing."

The Affiliation Agreement addresses questions and concerns about the potential for reduction or closure of services or units:

> "During the first 10 years after the affiliation occurs," EHR and BILH "will collaborate in good faith regarding any proposed Material Reduction in Services ... [meaning] a permanent, substantial reduction or elimination, outside the Ordinary Course of Business, of a material clinical service or program. Any proposed Material Reduction in Services during the ten (10)-year period following the Effective Date will be submitted for review and input form Exeter senior management and subject to the respective approvals of the Exeter Board of Trustees and BILH."

Core, Affiliation Agreement Article 10-.7 states the following:

> "For at least three (3) years following [the Affiliation], Exeter shall remain the sole corporate member of Core Physicians, LLC … unless mutually agreed upon by the Parties. BILH shall plan to support and integrate Core Physicians, LLC within its system over time."

However, BILH will "develop a plan to maintain, enhance, and, to the extent applicable, eventually replace the Exeter Entities' legacy commitments, relationships, and other clinical affiliations" under the Clinical Affiliation Plan.

> "To the extent certain clinical relationships are replaced with programs provided by BILH, the Clinical Affiliation Plan shall be reviewed by the EHR Board of Trustees

> to ensure such replacement programs offer services on par with or more beneficial to the community than those currently offered by Exeter Entities and their current Clinical Affiliates, and that the transition to such replacement programs minimizes disruptions to physicians, employees, and patient care."

The Affiliation Agreement and transaction documents assert that the Clinical Affiliation Plan will be designed to minimize disruption of the care provided by EHR to the community. The success of this will depend on the active engagement and authority exercised by the local EHR board. To further amplify this point:

> "Any permanent material reduction, outside of the ordinary course of business, in clinical services and programs for 10 years following Closing, will be submitted by Exeter management subject to approvals of Exeter Board and BILH."

Community stakeholders have voiced high expectations about EHR's ongoing relationship with and commitment to local safety net providers. The Parties' Notice to the Director of the CTU addresses these concerns as follows:

> "BILH will support and maintain EHR's existing community provider relationships, including those with Seacoast Mental Health, Lamprey Health Care, and ClearChoiceMD, among others … BILH will collaborate with EHR's leadership to determine how these relationships [with federally qualified health centers as well as community organizations] could be enhanced for continued success and growth."

The Affiliation Agreement, however, does not include requirements to satisfy the stated intentions. Future relationships with existing providers, apart from Core, remain somewhat unclear. BILH, in public comments, has noted its existing providers' relationships with and reliance on federally qualified health centers (FQHCs) and other community providers.

4.3 Investment in (or Extraction of) Community Resources

BILH states a commitment to make substantial investments in EHR and its subsidiaries including:

A. Capital Commitments of $375 Million

- $165 million for recapitalization of EH's inpatient beds.
- $35 million for acquisition and implementation of a new Epic Systems EMR and other IT. Within 24 months of the completion of the affiliation, BILH will install and implement an integrated clinical and financial Epic Systems EMR across all applicable EHR programs and sites.
- $50 million additional capital investment in the first five years.
- $125 million additional capital investment in the second five years.

BILH agrees not to reduce the 10-year Capital Commitment or eliminate any of the projects comprising the capital investments in the first five years of the Affiliation without approval of the EHR board. Potential changes will depend on the due diligence of the local board in exercising its authority.

B. Other Charitable Commitments

EHR boards and EHR leadership teams will need to identify how to use up to $3 million annually in support of community benefit programs advancing EHR's mission in the communities served, consistent with BILH system activities for community programs. The $3 million will be adjusted annually with an inflation escalator, but it is described as "up to" $3 million, so the actual amount could be substantially less.

The Affiliation Agreement also states that:

> "Philanthropic funds raised in the State of New Hampshire (whether restricted and unrestricted) shall continue to be deployed in a manner consistent with the direction of the respective donors, for the support of the Exeter charitable mission in its service area and shall remain subject to the oversight and control of the Exeter or Exeter Hospital, Inc. Board of Trustees, as applicable. For the avoidance of any doubt, any and all funds raised in New Hampshire shall be used within New Hampshire only."

Legal title to board-designated funds will not change with the Affiliation and will only be spent to advance the charitable purposes of EHR.

The EHR board and EHR Executive Leadership Team will have an active and central consultative role in determining the use of all existing board-designated funds for the charitable mission in New Hampshire. At all times, the use of such funds will be determined in coordination with the broader BILH system.

BILH will not approve or require any changes in or consolidation of philanthropic gifts, assets, and programs of EHR or the EHR subsidiaries, and are required to remain under the control of and be used for the benefit of EHR and the EHR Subsidiaries.

C. Operating Commitments

EHR, including EHR Subsidiaries, is expected to have access to all of BILH's operating and clinical resources, expertise and innovations, equal to access provided to other similarly situated BILH entities, including back-offices services, joint purchasing, population health management, quality, compliance, and patient safety programs, medical and utilization management, technology, data analytics, insurance, and risk management.

Affiliation Agreement Article 10.7:

- BILH will support medical staff development efforts by providing EHR with recruitment assistance according to a Recruitment Plan to be developed within six months of closing.

- EH and Core will participate in the BILH Quality Forum, development of system quality goals, and other clinical leadership meetings consistent with other "first-tier" entities.

D. BILH Other Stated Commitment to EH Charitable Objectives

- Support for strengthening each pillar of EHR's community benefits program through local efforts with large-scale system resources.
- Pursue opportunities to expand (1) behavioral health capacity and access, particularly through primary care, (2) programs for substance use disorder treatment, (3) access to health care for low-income and disadvantaged populations, and (4) elder care capacity and services.
- When appropriate, support EHR's expansion of the Collaborative Care model, currently in place in some Core practice sites. The model integrates behavioral health into primary care practice sites. BILH represents that it currently has the Collaborative Care model in over 60% of employed primary care practices. BILH intends to embed licensed clinical social workers into each primary care office and offer telephonic consultative services across its network to increase behavioral health provider system capacity.
- Support for EHR in development or expansion of substance use disorder treatment programs in southern New Hampshire and with linking the emergency department to community-based programs.
- Work with EHR to identify undersupplied services that need increased access for residents with low incomes.
- Part of the BILH active recruitment effort is to grow its homecare and hospice network and help EHR expand capacity to provide elder care. BILH has integrated 80 preferred skilled nursing facilities and will assess the expansion of this network to serve patients in EHR's service area (Rockingham County, NH).

5.0 Analysis: Best Interest of the Health Care Charitable Trust and the Communities It Serves

This section returns to the three standards defined in RSA 7:19b, specific to community benefit and the charitable mission of the corporation:

- Due diligence in determining that the transaction is in the best interest of the health care charitable trust and the communities it serves.
- Assets continue for charitable purposes, including access, quality, and affordability of physical and mental health care services.
- If acquirer is not a NH nonprofit, control of proceeds remain independent of acquirer.

5.1 Due Diligence

Due diligence requires that, throughout the transaction, EHR adhere to this standard:

- In selecting the acquirer
- In engaging and considering the advice of expert assistance
- In negotiating the terms and conditions of the transaction
- In determining that the transaction Is In best interests of affected communities

Exeter engaged in a yearlong, board-driven, comprehensive, and competitive process to seek a fully integrated partnership by engaging and evaluating multiple health care systems in NH, across New England, and beyond.

BILH and EHR reported they participated in seven community forums between March and June 2022, with a total of nearly 300 participants. The community asked questions about the charitable and community mission of BILH, including the following:

- Is BILH a not-for-profit?
- How will the transaction affect the cost of health care?
- How will the transaction expand services and access for patients?
- How will the transaction affect Exeter's current affiliations?
- How will the transaction affect employees at Exeter?
- How will the transaction affect the relationship between Exeter and Lamprey Healthcare?
- What is the commitment to the most vulnerable, disadvantaged members of the community?

Section 3.3 reviews the potential investments in (or extraction of) community resources. The Transaction offers a range of potential investments and resources that address community needs.

5.2 Assets Remain for Charitable Purposes and Proceeds Remain Independent of Out-of-State Acquirer

Transaction provision III.A, under "Material Terms of the Transaction," states the following:

- "In all events and at all times, the assets of Exeter shall remain dedicated to promoting the health of Exeter's communities." Affiliation Agreement Article 10.5(a).
- Ownership of EHR and subsidiary assets will not change because of the affiliation. The assets will continue to be devoted to the charitable purposes of each respective subsidiary.

- Legal title to board-designated funds will not change because of the affiliation and will only be spent to advance the charitable purposes of Exeter.
- "BILH shall adopt policies for the provision of care to vulnerable populations served by the Exeter Entities that are no less generous than [EHR's current] written policies." Affiliation Agreement Article 10.10.
- All philanthropic funds raised in the State of New Hampshire, both restricted and unrestricted, will remain subject to oversight of the Exeter Board and will be deployed in a manner consistent with the direction of donors and in support of EHR's charitable mission.
- The Exeter Board and Exeter Executive Leadership Team will have an active, central consultative role in determining the use of all existing board-designated funds for the EHR charitable mission in New Hampshire. At all times, the use of such funds will be determined in coordination with the broader BILH system.

6.0 Key Expectations with the Proposed Transaction

6.1 Community Expectations

The communities served by EHR have seen their neighboring hospitals become part of larger systems and expressed mixed feelings about the results for the community and for the hospital's performance. Such transactions present risks and opportunities. Concerns particularly focus on whether the transaction shows fidelity to its stated plans, that it retains and strengthens community resources, or that it maintains patient and community control over their health care options and decisions.

The EHR/BILH Transaction offers significant opportunity for positive results. Successful outcomes depend on carefully drafted Transaction agreements, a transparent and inclusive community process, and close adherence to stated intentions. Those stated intentions, strongly endorsed within the community, include the following:

- Local board will maintain meaningful oversight and input.
- Retain charitable commitments and promote ongoing community investments:
    - Existing board-designated funds stay in Exeter
    - Care for vulnerable populations (Article 19) and "abide by policies that are no less generous than existing Exeter policies"
    - BILH will make an overall $375 million capital investment over 10 years.
- Maintain existing facilities, services, programs, and partners.
- Clinical affiliations – extend and maintain existing relationships with:
    - Seacoast Mental Health Center

  - Lamprey Health Care.
- Administrative economies of scale and shared clinical resources will grow through:
  - Joint purchasing
  - Clinical expertise/innovations
  - Support transition toward population health management/value-based care
  - Patient safety programs, technology, data, analytics, and best practices.
- Commitment to employees for 24 months.

Access to obstetrical services and labor and delivery at local community hospitals is an issue frequently raised in New Hampshire and nationwide, as obstetric units close and pregnant patients are required to travel farther for care. Continued access to these services was a concern raised during interviews and by a member of the public at the hearing.

Noticeably absent from the documents submitted by the parties are any assurances that obstetrical services would continue to be available through EHR. BILH and EHR will rely on the proposed EHR board to make these decisions in the best interest of the organization and the community. A decision to reduce obstetrical services is typically made with consideration for staffing abilities, patient volume to maintain expertise and patient safety, costs, and reimbursement. There are related guidelines developed by the American College of Obstetrics and Gynecology on the levels of maternal care from 2019.[19] This resource and the Centers for Disease Control and Prevention's (CDC's) Levels of Care Assessment Tool[20] could be used by EHR/BILH, the community, and public health officials if the organization plans to consider changes in access to obstetrical services. EHR/BILH can also help ensure that primary care providers, certified midwives, doulas, emergency medicine physicians, and other providers with potential obstetrical care expertise are considered in making decisions about access.

The Exeter community expects to maintain local control after the transaction. Changes to philanthropic gifts, assets, and programs of EHR or the EHR subsidiaries, or changes to capital commitments, may occur with the approval of the EHR board. It will be important to maintain an independent and empowered EHR board operating at the community level where primary fiduciary commitment to EHR and the EHR community continues, even if the EHR board departs from larger BILH strategic interests.

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[19] American College of Obstetricians and Gynecologists. August 19, 2019. "Levels of Maternal Care." *Obstetrics and Gynecology (134)2:* e41 – e55. Accessed March 10, 2023. https://www.acog.org/-/media/project/acog/acogorg/clinical/files/obstetric-care-consensus/articles/2019/08/levels-of-maternal-care.pdf

[20] Centers for Disease Control and Prevention. "CDC Levels of Care Assessment Tool℠ (CDC LOCATe℠)." *Centers for Disease Control and Prevention.* Accessed March 10, 2023. https://www.cdc.gov/reproductivehealth/maternalinfanthealth/cdc-locate/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Freproductivehealth%2Fmaternalinfanthealth%2FLOCATe.html

6.2 Opportunities for Clinical Service Expansions and Reimbursement

Community stakeholders and transaction documents identified several areas for clinical services where the proposed transaction may offer the potential to expand breadth, depth, and access. BILH brings resources, administrative project management, and relationships to build on existing EHR systems and may be able to help address staff recruitment challenges.

Several of the service lines planned for expansion may offer lower margins and be more sustainable with the combined expansion of higher margin service lines. Some of the higher margin service lines BILH plans to expand include cardiology, vascular surgery, general surgery, gastroenterology, oncology, and orthopedics.

Table 6. Stakeholder-Identified Clinical Areas and Services Identified by BILH for Expansion

- Mental health and substance use disorder
  - Collaborative Care Model
  - Licensed clinical social workers in primary care offices
  - Add hospital inpatient beds
  - Link emergency department to community-based programs for better access to substance use disorder treatment.
- Primary care and pediatrics
  - Expanded office hours and more urgent care walk-ins.
- Continued access to obstetric care and Exeter-based labor and delivery services.
- Geriatric services
  - Elder care capacity and services, including post-acute
  - Homecare and hospice
  - Align network of skilled nursing facilities.

Because BILH and EHR remain at this point separate organizations that technically compete, until the transaction takes place, antitrust laws limit the opportunities to develop collaborative business plans and articulate specific intentions for expanding service lines. A new combined entity will be challenged to develop a solvent operational model for some of the planned expansions due to staffing shortages, limited reimbursement for services, and competing priorities. Some of the important steps for developing an effective business plan include developing demand, volume, and revenue projections, based on scenarios that do not result in major disruptions to referral systems and significant increases with existing contractual provider reimbursement levels.

In 2008, the New Hampshire Insurance Department produced a report showing the relative price difference among hospitals in the state, and EH was ranked as the highest.[21] In 2010 and 2011, the state's largest health insurance company, Anthem, was involved in a major contract

[21] New Hampshire Insurance Department. August 27, 2008. New Hampshire Acute Care Hospital Comparison. Accessed March 10, 2023. https://www.nh.gov/insurance/consumers/documents/nh_ac_hosp_comp.pdf

dispute about the prices at EH.[22] The dispute had the potential to result in both EH and Core physicians classified as out-of-network providers, and members covered by Anthem would need to seek care elsewhere to receive their maximum health insurance coverage with an in-network provider. This history suggests that EHR sought to test the limits of its market power and receive higher reimbursement levels while operating as an independent system.

Because there are no other BILH hospital providers in the state, the additional bargaining power that may come from participation in a larger system and putting new inflationary pressures on reimbursement levels is more limited than it would be if other nearby New Hampshire hospitals were also part of the BILH system. Insurance companies and health systems frequently operate on a regional basis, and for insurance companies negotiating to include all the BILH providers in their networks, including EHR, they may see a slight shift in bargaining power to BILH. Due to differences in marketing and network development strategies, this dynamic is unlikely to affect the insurance companies equally because Blue Cross Blue Shield plans generally rely on the local plan to negotiate provider payment levels. In this case, that would likely result in separate negotiations between Blue Cross Blue Shield of Massachusetts and BILH, and Anthem NH/Elevance Health negotiating with BILH for just EHR as an in-network provider.

The documents submitted as part of the transaction review suggest that BILH will negotiate in good faith with insurance carriers and not seek major price increases that could otherwise be sought to improve the likelihood of success with service line expansions. Regardless, EHR has demonstrated its ability to obtain prices substantially higher than the averages in the state, and there is some concern that future actions may reflect historical behavior more than what is represented in materials submitted for the transaction review.

Materials submitted and public statements by the parties suggest an interest in moving toward value-based care as an alternative to fee-for-service reimbursement models, with an additional emphasis on patient outcomes and population health management. If these approaches, including the Collaborative Care Model highlighted by BILH, are implemented by BILH/EHR, improvements could be seen in patient health outcomes as well as some relief on upward pressures associated with health care costs.

For many of the patients who need behavioral health care and substance use disorder treatment, insurance coverage is less likely to be as robust than for patients seeking other forms of care. BILH/EHR anticipates expansion of services on this front, and for many patients without insurance, the Financial Assistance Program or standard uninsured discount (currently 63% at EH) will provide an opportunity to receive treatment at a substantially lower cost than EHR's charges. These policies are not expected to be less favorable for patients after the transaction takes place, but receiving minimal payments for services adds to the complexity of ensuring a financially successful operating model. Adoption of a more restrictive Financial Assistance Program to improve revenues associated with the expanded service lines would be

[22] Kibbe, Cindy. October 23, 2010. "Exeter Hospital, Blue Cross Dispute Could Impact Doctors." *Foster's Daily Democrat.* Accessed March 10, 2023. https://www.fosters.com/story/business/2010/10/23/exeter-hospital-blue-cross-dispute/51428052007/

counterproductive if the goal of the initiative is to improve access to the services. It could also be at odds with requirements in the Affiliation Agreement.

7.0 Conclusion

The proposal has the potential to address many of the identified needs of EHR and the needs of the Exeter community. Confidence in this outcome will depend on conditions and assurances that the Parties adhere to specific representations. BILH is well positioned to provide a favorable transition. EH has weathered the pandemic well and operates as a valued community hospital with strong quality indicators in a local environment favorable for its continued service. EHR, like many healthcare systems, is seeking a new corporate structure to address existing organizational limits, help ensure ongoing financial viability, and to better address community needs.

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS SUPERIOR COURT

STATE OF NEW HAMPSHIRE,
33 Capitol St.
Concord, NH 03301

and

ATTORNEY GENERAL,
DIRECTOR OF CHARITABLE TRUSTS,
33 Capitol St.
Concord, NH 03301

Plaintiffs,

v.

EXETER HEALTH RESOURCES, INC.
5 Alumni Dr.
Exeter, NH 03833

and

BETH ISRAEL LAHEY HEALTH, INC.,
20 University Road
Cambridge, MA 02138

Respondents.

Docket No.

FINAL JUDGMENT

Plaintiffs State of New Hampshire, by and through its attorneys, the Office of the Attorney General, Consumer Protection and Antitrust Bureau ("State" or "CPAB") and the Attorney General, Director of Charitable Trusts ("DCT") (collectively, "Plaintiffs" or "Attorney General") filed a Complaint on June 14, 2023 against Exeter Health Resources, Inc. ("EHR") and Beth Israel Lahey Health, Inc. ("BILH") (collectively, "Respondents"), seeking an

injunction and other relief in this matter pursuant to the New Hampshire Combinations and Monopolies Act, N.H. Rev. Stat. Ann. ch. 356; the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. ch. 358-A; the New Hampshire statutes pertaining to charitable trusts, N.H. Rev. Stat. Ann. Ch. 7, secs. 19–32-*l*; and Section 7 of the Clayton Act, 15 U.S.C. § 18. Plaintiff State, acting through the CPAB enforces state and federal laws designed to protect free and open markets and fair business practices for the benefit of consumers. *See* N.H. Const., Part II, Art. 83; N.H. Rev. Stat. Ann. chs. 356, 358-A; 15 U.S.C. §§ 18, 26.

Plaintiff State, by and through its Attorney General, also brings this action as *parens patriae* on behalf of and to protect the health and welfare of its citizens and the general economy of the State. *See* N.H. Rev. Stat. Ann. chs. 356, 358-A; 15 U.S.C. § 15c. The Complaint alleges that the consummation of the proposed transaction under the Affiliation Agreement and related agreements, whereby BILH acquires EHR's assets, would constitute an unfair method of competition and risk substantially lessening competition in health care markets served by Respondents to the detriment of consumers.

Plaintiff DCT has the common law duty and power to supervise and enforce charitable trusts. *See* RSA 7:19–32-*l*; *see also In re Trust of Mary Baker Eddy*, 172 N.H. 266, 212 A.3d 414, 420 (2019) ("the attorney general (or the DCT, as his representative) has the statutory power and duty to represent the public in the enforcement and supervision of charitable trusts"). The DCT is further required by statute to review any change of control or acquisition transaction of a health care charitable trust to determine compliance with the requirements of N.H. Rev. Stat. Ann. 7:19-b.

Plaintiff State represents that under the circumstances of this case, the entry of this Final Judgment is in the public interest and will provide a remedy for potential alleged harm to free

and fair competition in health care markets in New Hampshire. Plaintiff DCT represents that under the circumstances of this case, the entry of this Final Judgment and compliance therewith will satisfy Respondents' obligations under N.H. Rev. Stat. Ann. 7:19-b. Respondents have denied all allegations and contend that the proposed transaction will result in substantial benefits for New Hampshire consumers. Nonetheless, in order to avoid the time, expense, and uncertainty of litigation, the parties agree that this Final Judgment contains the relief agreed to by Plaintiffs and Respondents pursuant to negotiated terms without trial or adjudication of any issue of fact or law.

NOW THEREFORE, IT IS HEREBY ORDERED that the proposed transaction between Exeter Health Resources, Inc. and Beth Israel Lahey Health, Inc. may proceed without undue delay, subject to their compliance with the conditions that follow.

I. JURISDICTION

Pursuant to N.H. Rev. Stat. Ann 358-A:4, III(a) and agreement with the Respondents, this Court has jurisdiction over the subject matter of the Complaint and this Final Judgment, and over the Respondents named in the Complaint.

II. BACKGROUND

1. EHR is an independent, nonprofit community health care system located in Exeter, New Hampshire and the surrounding communities. Its subsidiary, Exeter Hospital ("EH"), is a Medicare-dependent community hospital consisting of 100 beds and provides comprehensive health care services, including maternity care, cardiovascular, gastroenterology, oncology, orthopedics, general surgery, and emergency care. Core Physicians LLC, a multi-specialty group practice, is also a subsidiary of EHR, along with Rockingham Visiting Nurse Association and Hospice, Inc., a provider of home and hospice care.

2. BILH is a nonprofit, integrated health system with facilities located across Eastern Massachusetts. BILH, one of the largest healthcare systems in New England, is comprised of two academic medical centers and eleven community hospitals across Eastern Massachusetts as well as multiple primary care locations, including in Salem and Seabrook, New Hampshire. BILH further contracts with its own provider network as operational affiliates. BILH delivers the majority of its care in community hospitals and has made efforts to expand local capabilities, such as using teleconsulting programs for select tertiary care services for its community hospitals. BILH also has integrated behavioral health to primary care practice sites across its network and intends to increase access to primary care and behavioral health through growing primary care access at its community hospitals.

3. Respondents are nonprofit corporations exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code.

4. Respondents executed an Affiliation Agreement on June 28, 2022, providing for a change of control of EHR by BILH (the "Affiliation") subject to regulatory reviews.

5. Respondents notified the CPAB and the DCT of the Affiliation Agreement and filed a notice of a proposed transaction with the DCT on October 4, 2022 (hereinafter, "DCT Notice"). In accordance with RSA 7:19-b, IV (a), the DCT subsequently requested and obtained from the Respondents additional documentation and information regarding the Affiliation Agreement. The additional information and documentation submitted by the Respondents are included in the DCT Notice.

6. Plaintiff State represents that in the circumstances of this case, the terms and remedies described herein are appropriate and in the public interest and is therefore willing to accept this

resolution in lieu of proceeding with an action to permanently enjoin the consummation of the Affiliation.

7. Plaintiff DCT has determined that the Affiliation complies with N.H. Rev. Stat. Ann. 7:19-b, subject to the terms of the DCT Notice and the terms and conditions set forth herein. The Report of the DCT is attached as an exhibit to this Final Judgment.

8. Plaintiffs reviewed and investigated the proposed transaction pursuant to their separate jurisdictions. In Plaintiffs' view, the jointly-filed Complaint and this Final Judgment is the most appropriate and efficient manner to resolve Plaintiffs' concerns with the proposed transaction.

9. Respondents agree to enter into and comply with this Final Judgment so as to avoid significant expense, inconvenience, and uncertainty, and to permit the Affiliation to close without further delay.

10. This Final Judgment governs the conduct and obligations of Respondents, and any successors or assigns upon closing of the proposed transaction under the Affiliation Agreement for the Term of the Final Judgment or unless otherwise specified below or as ordered by this Court.

III. CONSTRUCTION

1. This Final Judgment shall be construed pursuant to the laws of the State of New Hampshire and enforced pursuant to the authority of the Merrimack County Superior Court in the State of New Hampshire. The Final Judgment shall be interpreted in accordance with its fair meaning and not against any party hereto.

2. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of consumer protection and antitrust laws and to protect the competition that Plaintiff State alleges may be lessened by the Affiliation. The Final Judgment also should be interpreted

to allow Respondents to provide the full benefits of the Affiliation to the communities they serve within the State of New Hampshire. All captions are for convenience only and are not deemed a part of the substantive terms of this Final Judgment.

3. This Final Judgment shall not create a private cause of action or confer any right to any Third Party for violation of any state or federal law by any Respondent except that the Attorney General, acting through the CPAB or the DCT, may file an action or motion to enforce this Final Judgment.

4. Nothing contained in this Final Judgment shall be construed to alter or modify any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law.

5. Nothing contained in this Final Judgment shall be construed to relieve Respondents of the obligation to comply with all state and federal laws, nor shall it be construed as approval by the Attorney General of any business or governance practices of Respondents.

IV. DEFINITIONS

As used in this Final Judgment:

1. "**Affiliate**" means any Person (other than an individual) that through one or more intermediaries controls, is controlled by or is under common control with another Person and includes the power to direct or cause the direction of the management and policies of a Person.

2. "**Affiliation Agreement**" means the contractual agreement by and between BILH and EHR titled Affiliation Agreement, dated June 28, 2022.

3. "**Anti-Tiering or Anti-Steering Clause**" means any written or unwritten agreement, term or practice between a Health Care Provider and a Payor that prohibits the Payor from steering its members to a Hospital or Health Care Provider based on price, access, and/or quality

criteria, such as placing the Health Care Provider in a tiered product based on objective criteria determined by the Payor, or that requires the Payor place the Health Care Provider in a particular tier in a tiered health plan product. This includes a gag clause that would prevent a Payor from disclosing cost, access, or quality information to its enrollees, patients or employers.

4. **"Beth Israel Lahey Health"** or **"BILH"** means Respondent Beth Israel Lahey Health, Inc., a Massachusetts nonprofit corporation with its headquarters in Cambridge, Massachusetts, its successors and assigns, Affiliates, and their respective directors, officers, managers, agents, and employees.

5. **"BILH Mid-Level Provider"** means a Mid-Level Provider who has an employment relationship with BILH, or any BILH Affiliate.

6. **"BILH Physician"** means a Physician who has an employment relationship with BILH, or any BILH Affiliate.

7. "**Closing Date**" means the effective date when the Affiliation is consummated pursuant to the Affiliation Agreement.

8. "**Community Needs Assessment**" means the assessment conducted by EHR, as provided in RSA 7:32-f and 26 U.S.C. § 501(r)(3).

9. "**Designated Receiving Facility**" means a treatment facility which is designated by the commissioner of the New Hampshire Department of Health and Human Services to accept for care, custody, and treatment persons involuntarily admitted to the state mental health services in accordance with RSA 135-C:2, XIV.

10. **"Exeter Health Resources"** or **"EHR"** means Respondent Exeter Health Resources, Inc., a New Hampshire nonprofit corporation with its headquarters in Exeter, New Hampshire, its successors and assigns, subsidiaries and Affiliates, and their respective directors, officers,

managers, agents, and employees. EHR's subsidiaries include Exeter Hospital, Inc. ("EH"), Core Physicians, LLC ("Core"), and Rockingham Visiting Nurse Association and Hospice, Inc.

11. **"EHR Mid-Level Provider"** means a Mid-Level Provider who has an employment relationship with EHR, EH, Core, or RVNA.

12. **"EHR Physician"** means a Physician who has an employment relationship with EHR, EH, Core, or RVNA.

13. "**EHR Service Area**" means the cities and towns served by EHR identified in EHR's most recent Community Benefits Plan Report.

14. "**Exclusivity Clause**" **or** "**Exclusive Contract**" means any written or unwritten term, agreement, or practice between a Health Care Provider and a Payor that makes EHR an exclusive provider for a particular Payor in a region, prohibits the Payor from contracting with another Health Care Provider, or provides more favorable rates or terms contingent on not contracting with another Health Care Provider.

15. "**Final Judgment**" means this Final Judgment reflecting the agreement between Plaintiff State of New Hampshire, DCT, and Respondents.

16. **"Health Care Facility"** means any facility located in New Hampshire where Health Care Services are provided, and includes, but is not limited to, ambulatory surgical centers, birthing centers, freestanding emergency rooms, hospitals and specialty hospitals, non-emergency walk-in or urgent care clinics, outpatient clinics, skilled nursing facilities, laboratories, freestanding imaging facilities, and freestanding radiation therapy facilities.

17. **"Health Care Provider"** means a Person who provides Health Care Services, and includes but is not limited to Mid-Level Providers, Physicians, other health care professionals,

practices, networks, and other individuals providing Health Care Services, and Health Care Facilities.

18. "**Health Care Services**" means the provision of health or medical care by a Health Care Provider, including but not limited to inpatient and outpatient hospital services, physician and non-physician professional medical services, outpatient medical services, behavioral and mental health services, and ancillary services including but not limited to, laboratory, pharmacy, and imaging.

19. "**Hospital**" means a licensed acute care or other hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has as a primary function the provision of inpatient services for medical diagnosis, treatment, rehabilitation, and care of the injured, disabled, or those with short-term or episodic health problems or infirmities.

20. **"Material EHR Clinical Affiliations"** means (i) current agreements for Health Care Services between EHR and the following: Massachusetts General Physicians Organization ("MGPO") Medical Oncology, MGPO Radiation Oncology, Massachusetts General Hospital Pediatric Inpatient / Emergency Department Hospitalist Coverage, and Brigham and Women's Physicians Organization Maternal and Fetal Medicine, and (ii) any other current clinical affiliation agreement that is comparable in scope to any of the agreements identified in subpart (i) hereto, but excluding professional services agreements for radiology, emergency services, anesthesia, and pathology, and any agreement between Exeter Hospital and Core Physicians.

21. **"Medical Staff Privileges"** means the authorization that EHR or BILH grants to a Physician or Mid-Level Provider to provide Health Care Services at a Health Care Facility based on factors including but not limited to licensing, training, experience, and credentials.

22. "**Mid-Level Provider**" means a non-physician provider who performs professional Health Care Services that can be billed independently from that of a Health Care Facility or Physician, including but not limited to advanced practice registered nurses, physician assistants, physical therapists, licensed clinical social workers, psychologists, and other behavioral health counselors, as applicable.

23. "**Monitor**" means the Person designated by the Attorney General and Respondents to serve and act as independent compliance monitor pursuant to Article VII.1. of this Final Judgment.

24. "**Monitoring Period**" means the Term, subject to the provisions in Article XXIII of this Final Judgment.

25. "**Most Favored Nations Clause**" means any written or unwritten term, agreement, or practice between a Health Care Provider and a Payor that allows the Payor to receive the benefit of a better payment rate, term or condition that the Health Care Provider gives to another Payor, that requires a Payor to pay a Health Care Provider a payment rate at least as high as the highest rate paid by the Payor to any other Hospital or Health Care Provider, or that requires a Health Care Provider to accept a payment rate at least as low as the lowest rate paid to the Health Care Provider by any other Payor.

26. **"Payor"** means any organization or entity that contracts with Health Care Providers and other health care organizations to provide or arrange for the provision of Health Care Services to any person or group of persons and that is responsible for payment to such Health Care

Providers and other health care organizations of all or part of any expense for such Health Care Services, including but not limited to commercial insurance companies, health maintenance organizations, preferred provider organizations, union trust funds, multiple employer trusts and self-insured health plans.

27. **"Payor-Provider Contract"** means a contract or agreement for Health Care Services between a Health Care Provider and a Payor, including but not limited to rates, definitions, terms, conditions, policies, and pricing methodologies (*e.g.*, per diem, discount rate, and case rate) that relates to the payment of or reimbursement for the Health Care Provider's provision of Health Care Services to the Payor's members or enrollees.

28. "**Person**" means any individual, partnership, association, corporation, business trust, legal representative, any organized group of persons, or government entity, and any subsidiaries, divisions, groups, or affiliates thereof.

29. "**Physician**" means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O.").

30. **"Population Health Arrangement"** means a Payor-Provider Contract involving capitated or other form of risk sharing taken across a population of defined members.

31. "**Pre-Existing Contract**" means a Payor-Provider Contract between a Payor and a Respondent that is in effect on the date that this Final Judgment is entered.

32. "**Residential Treatment Program**" means a live-in Health Care Facility providing therapy for substance use disorders, mental health treatment, or treatment for other behavioral health conditions.

33. "**Term**" has the meaning set forth in Article XXIII.

34. "**Third Party**" means a Person other than Plaintiff, the DCT, the CPAB, the Monitor, or the Respondents.

35. "**Tying Clause,**" "**Must Have Clause**" or "**All-or-Nothing Clause**" means any written or unwritten agreement, term, or practice between a Health Care Provider and a Payor that requires the Payor to contract with one or more, or all, of the contracting Health Care Provider's services, providers, or products in order to contract with any of that Health Care Provider's services, providers, or products.

36. "**Value-Based Payment Arrangement**" means a Payor-Provider Contract under which a Respondent or their subsidiaries are paid or assume risk based on patient health outcomes or some form of quality metrics, instead of being paid on a fee-for-service basis, including, but not limited to, alternative payment models, shared savings programs, pay for performance, bundled payments, capitation, or accountable care organizations.

V. APPLICABILITY

From the date that this Final Judgment is entered and after the Closing Date, the Final Judgment is binding for the Term on Respondents, and in the case of EHR, all current and future EHR Affiliates. EHR shall not permit any EHR Affiliate or a substantial portion of the assets of EHR or an EHR Affiliate to be acquired by any other Person unless that Person agrees in advance and in writing to be bound by the provisions of this Final Judgment and the Respondents provide written Notice to the Monitor and to the Attorney General.

VI. COMPLIANCE TERMS

1. Capital Commitments to Exeter Health Resources

A. BILH shall make a minimum combined capital commitment to EHR of three hundred seventy-five million dollars ($375,000,000), comprised of the following:

(i) During the first through sixth years following the Closing Date, BILH shall make a minimum capital commitment to EHR of two hundred fifty million dollars ($250,000,000), comprised of (a) approximately one hundred sixty-five million dollars ($165,000,000) to EHR's inpatient bed recapitalization project, (b) approximately thirty-five million dollars ($35,000,000) to the implementation of information technology and electronic medical records systems at EHR, and (c) approximately fifty million dollars ($50,000,000) in additional capital investment;

(ii) During the seventh through thirteenth years from the Closing Date, BILH shall make a minimum capital commitment to EHR of one hundred twenty-five million dollars ($125,000,000).

B. *Capital Investment Plans.* No later than one hundred eighty (180) calendar days following the Closing Date, Respondents (with input from the Respondents' Integration Committee (as defined in the Affiliation Agreement)) shall develop a plan, which shall be based on infrastructure and relevant clinical needs, including any identified in EHR's most recent Community Needs Assessment, including timetables and measurable goals and metrics, for the $50 million of additional capital investment over years one through six as set forth in Section 1.A.(i)(c) hereof (the "Year 1–6 Capital Investment Plan"). Respondents also shall develop a plan, within the sixth year following the Closing Date which shall be based on infrastructure and relevant clinical needs, including any identified in EHR's most recent Community Needs Assessment, including timetables and measurable goals and metrics, for the $125 million capital investment in years seven through thirteen as set forth in Section 1.A.(ii) hereof (the "Year 7–13 Capital Investment Plan" and with the Year 1–6 Capital Investment Plan, the "Capital Investment Plans"). The Capital Investment Plans shall require approval by the EHR Board of

Trustees ("EHR Board"), and the EHR Board shall review any modifications during the Term. The Capital Investment Plans shall be submitted to the Attorney General and to the Monitor no later than thirty (30) calendar days after EHR Board approval and shall be subject to monitoring as further described in Article VII.3. herein.

C. *EMR Implementation Plan.* Respondents (with input from the Respondents' Integration Committee) shall develop a plan (the "EMR Implementation Plan"), including timetables and measurable goals and metrics and approved by the EHR Board, for the implementation of the approximately $35 million information technology and electronic medical records systems commitment to EHR, including a plan for interoperability with existing BILH systems. The EMR Implementation Plan shall be approved by the EHR Board, and the EHR Board shall review any modifications during the Term of the Final Judgment. The EMR Implementation Plan shall be submitted to the Attorney General and the Monitor and shall be subject to monitoring as further described in Article VII.3 herein. BILH shall include in the EMR Implementation Plan provisions under which Lamprey Health Care and Seacoast Community Mental Health Center, as existing collaborators in delivering services with EHR, would be able to securely access information in the EHR medical record system in a manner consistent with applicable law.

D. *Designated Receiving Facility.* EHR shall design, develop, and implement a minimum of ten (10) Designated Receiving Facility ("DRF") beds on its campus as part of the capital commitment as set forth in Section 1.A.(i). The licensure status of the beds (hospital-based or non-hospital based Residential Treatment Program ("RTP")) shall be determined by Respondents after completion of a reimbursement, regulatory, and feasibility analysis.

(i) The DRF unit or facility shall include space to accommodate judicial proceedings for involuntarily committed individuals. EHR shall conduct a review to determine and implement an appropriate admission process to balance the therapeutic needs of patients with unit acuity to maintain a safe and secure environment for both patients and staff.

(ii) The DRF beds shall be developed either: (a) in existing non-hospital space and licensed as an RTP, and EHR shall open the DRF beds no later than three (3) years after regulatory approval, or (b) as part of its inpatient recapitalization project, and EHR shall open the DRF beds by the end of 2029.

(iii) In the event of low census or utilization, EHR may utilize the DRF beds for voluntary behavioral health treatment, provided that such use maintains priority to the admission of appropriate involuntarily committed individuals.

E. *Community Benefit Allocation.* During the Term, beginning in the second full fiscal year after the Closing Date, the annual Local Community Benefit Allocation as referenced and defined in section 10.11 of the Affiliation Agreement shall be a minimum of one million dollars ($1,000,000), shall increase to a minimum of two million dollars ($2,000,000) by the sixth year following the Closing Date, shall be at least two million dollars ($2,000,000) through the tenth year following the Closing Date, and shall be administered as set forth in the Affiliation Agreement. Such Local Community Benefit Allocation shall be used in support of community benefit programs and initiatives for purposes of advancing EHR's and EHR Affiliates' charitable missions.

F. *Additional Investments*. Nothing in this Section 1 should be construed as limiting additional investments or commitments by Respondents beyond the capital investments and commitments already set forth herein.

2. **Financial Commitment to the State of New Hampshire**

A. Respondents shall pay, in addition to the amounts committed to EHR pursuant to Section 1, a sum of money totaling in the aggregate ten million dollars ($10,000,000) directly to the State of New Hampshire and/or the Office of the Attorney General ("Funds").

B. The Funds shall be payable in ten equal annual installments of one million dollars ($1,000,000) with the first installment due on the Closing Date and each subsequent installment payment due on each of the first nine (9) anniversaries of the Closing Date.

C. The Funds shall be held separately from the State's General Fund and shall be used and dispersed by the State in a manner consistent with applicable law for the benefit of New Hampshire health care consumers. Priority shall be given to developing a health care market research entity or program to conduct studies and publish information regarding the impact of Health Care Provider consolidation in the New Hampshire health care delivery system. If the Funds cannot be used for this identified purpose, or any requisite approvals for such use cannot be obtained, the Funds shall be used for a purpose consistent with the goal of studying, preserving and/or enhancing competition, access, and quality in the New Hampshire health care market. The Attorney General will notify the Respondents, at least fourteen (14) calendar days prior to the scheduled date of transfer, regarding the identity of the recipient(s) to which it (or the State) will transfer the Funds, which may include Health Care Providers, including BILH and EHR, so long as the purpose is consistent with the foregoing.

3. **Payor-Provider Contracting Restrictions and Terms**

A. *Honor All Pre-Existing Contracts with Payors.* EHR shall honor all Pre-Existing Contracts and shall not seek to terminate or renegotiate the terms of such contracts without cause except as required by scheduled or permitted expiration, renewal, or by mutual agreement of EHR and the applicable Payor. Notwithstanding the foregoing, a Pre-Existing Contract that does not have a fixed expiration date (i.e., an "evergreen" agreement) may be terminated or not renewed in accordance with its terms.

B. *Prohibited Conduct and Contract Terms.* EHR shall not propose, require, or enter into any Payor-Provider Contract, whether directly or through a BILH entity, that includes the following terms or practices, or similar terms or practices that violate the intent or spirit of these prohibitions:

(i) Anti-Tiering or Anti-Steering Clause

(ii) Exclusivity Clause or Exclusive Contract

(iii) Most Favored Nations Clause

(iv) Tying Clause, Must Have Clause or All-or-Nothing Clause

Provided, however, that (1) EHR may require that (a) a Payor that enters into an agreement with either EH or Core must also enter into an agreement with the other, or (b) a Payor enroll all Core Physicians, with an exception only for generally applicable credentialing issues; (2) the prohibited conduct and contract terms are not applicable to the extent that (a) the otherwise prohibited clauses are requested by a particular Payor to be included as a part of a Payor-Provider Contract, and (b) EHR and the Payor agree that the clause is required for purposes such as a Population Health Arrangement or a Value-Based Payment Arrangement; and (3) this section shall not apply to EHR's participation in Medicare or Medicaid, or to

Medicare Advantage Payor-Provider Contracts (or portions of Payor-Provider Contracts concerning Medicare Advantage). Further, nothing herein shall prevent either BILH or EHR from refusing to enter into a Payor-Provider Contract that in the sole discretion of BILH or EHR provides insufficient rates of payment or inappropriate business terms.

C. *Prohibitions on Billing Changes.* Respondents will adhere to the following prohibitions on billing changes:

(i) EHR shall not convert a Payor's payments for the Health Care Services provided by an EHR Physician to hospital-based or provider-based services unless those Health Care Services were billed that way prior to the Closing Date.

(ii) EHR shall not transfer Health Care Services from Core Physicians' offices to an inpatient setting if doing so would result in higher billings for those Health Care Services without a corresponding medical benefit or other benefit to the patient, provided that if the treating Physician determines that a patient's care is better provided in an inpatient or other setting that may result in higher billings for those services, EHR will follow that order.

(iii) EHR shall not bill a BILH Physician or BILH Mid-Level Provider as an EHR Physician or EHR Mid-Level Provider, or vice-versa, after the Closing Date if doing so would result in higher billings for the Health Care Service at issue, unless it is reasonably appropriate and necessary for the purposes of (1) delivering the clinical service within the EHR Service Area, or (2) including a BILH Physician or BILH Mid-Level Provider in a New Hampshire Payor's network in accordance with applicable law and Payor policies. Nothing herein shall restrict

the right of any EHR Physician or EHR Mid-Level Provider or BILH Physician or BILH Mid-Level Provider to choose to change employers.

4. **Protections for Health Care Providers and Patients**

A. *Compliance with New Hampshire State Law on Physician Contract Restrictions.* EHR (and BILH, as applicable) shall comply with state law, N.H. Rev. Stat. Ann. § 329:31-a, which makes certain contract restrictions upon Physicians unenforceable. Respondents shall amend noncompliant existing or form contracts, agreements, and addenda, if any, to comply with N.H. Rev. Stat. Ann. § 329:31-a within ninety (90) calendar days from the Closing Date. Physician contracts, including form contracts, shall be made available to the Monitor for inspection upon request to monitor compliance with this term.

B. *Health Care Provider Referral Patterns.* Neither EHR nor its subsidiaries shall limit their employed or contracted Physicians from exercising their professional judgment to refer patients for services in the best medical interests of the patient, nor from maintaining their existing patient referral practices. This applies to Physicians whom EHR may employ or with whom EHR may contract following the Closing Date, provided that nothing in this Final Judgment shall bar limitations on referrals set forth in Value-Based Payment Arrangements or that are required to meet the goals set forth in Value-Based Payment Arrangements.

C. *Notice Regarding Departing Health Care Providers.* If a Physician or Mid-Level Provider who is employed by EHR or an EHR Affiliate leaves their employment or terminates their agreement to provide Health Care Services for any reason, EHR or the applicable EHR Affiliate shall provide prompt written notice to all patient panels that, at a minimum, (i) informs patients that the provider is leaving (or has left) EHR, (ii) it is the patient's choice whether to

transfer care, and (iii) upon the patient's or provider's request, informs the patients of the provider's new practice location.

D. *Medical Staff Privileges*. Subject to applicable law, EH shall maintain Health Care Providers' current Medical Staff Privileges in accordance with EH's medical staff bylaws and applicable policies, including, but not limited to, Medical Staff Privileges of primary care providers, family practice providers, and certified nurse midwives. It is understood that Medical Staff Privileges are granted and retained based on periodic review and findings of sufficient training, experience, and competence, and may be revoked or limited in individual cases as set forth in EH's medical staff bylaws, EH's policies, and applicable law. Further:

(i) Following the Closing Date, employment by EHR or an EHR Affiliate shall not be used as a criterion for continuing or granting Medical Staff Privileges at any EHR Healthcare Facility or BILH Healthcare Facility located in New Hampshire, with exceptions for employed Physicians that are principally hospital or inpatient-based (e.g. hospitalists) or where services are subject to an exclusive agreement with Core or a Third-Party physician group (for example, Massachusetts General Physicians Organization for cancer care).

(ii) Medical Staff Privileges at any other Hospital shall not be used as a criterion for continuing or granting Medical Staff Privileges at any EHR-affiliated Healthcare Facility, with exceptions for employed Physicians that are principally hospital or inpatient-based (e.g., hospitalists) or where services are subject to an exclusive agreement with Core or a Third-Party physician group.

(iii) EH may amend its medical staff bylaws and policies so long as such amendments do not circumvent this provision.

E. *Non-Discrimination in Provision of Health Care Services.* Respondents shall not discriminate in the provision of Health Care Services to patients at a Health Care Facility, the release and transfer of medical records or information about such patients based upon the identity or affiliation of a patient's Physician or Mid-Level Provider, the patient's health plan, or the patient's utilization of Third-Party Health Care Providers; *provided, however,* that this prohibition shall not require Respondents to credential or offer Medical Staff Privileges to any Health Care Provider who otherwise does not qualify for Medical Staff Privileges or credentials.

F. *Non-Discrimination in Patient Transfer and Duty to Communicate.* Respondents shall not refuse to transfer a patient, whether for diagnosis or treatment, to a Health Care Facility other than a BILH-affiliated facility, if such transfer is requested by the patient, the patient's authorized representative, or the patient's Physician or Mid-Level Provider, provided that the patient is stable, the transfer is medically appropriate and legally permissible, and the proposed Health Care Facility accepts the patient. In connection with any such patient transfer, Respondents shall cooperate with the patient, the patient's authorized representative (if applicable), and the Health Care Facility to which the patient is transferred regarding the release and transfer of such patient's medical records.

G. *Clinical Affiliation Plan.* Within one hundred eighty (180) calendar days after the Closing Date, Respondents (with input from the Respondents' Integration Committee) shall develop a plan (the "Clinical Affiliation Plan") including timetables, and measurable goals and metrics, and any requisite funding, for any transition of existing Material EHR Clinical Affiliations, taking into account factors including any requisite patient notice and care transfers, as well as contingency plans in the event that any existing Material EHR Clinical Affiliations are terminated by a Third Party as a result of the announced or consummated Affiliation. The

Clinical Affiliation Plan shall be submitted to the Attorney General and the Monitor, and subject to monitoring as further described below. Respondents shall provide Notice to the Attorney General if EHR receives notice of termination of any existing Material EHR Clinical Affiliation prior to the Clinical Affiliation Plan being submitted to the Attorney General and Monitor.

5. **Facilities, Services, and Programs**

A. *Clinical Services Growth Plan.* Within one hundred eighty (180) calendar days after the Closing Date, Respondents (with input from the Respondents' Integration Committee) shall develop a plan (the "Clinical Services Growth Plan"), including timetables and measurable goals and metrics (including but not limited to ambulatory investments and medical staff recruiting/development) and any requisite funding, to expand access to certain key Health Care Services in the EHR Service Area. The Clinical Services Growth Plan shall be based on relevant clinical needs, including any identified in the most recent EHR Community Needs Assessment, and including consultation with applicable clinical affiliates, as appropriate. At a minimum, the Clinical Services Growth Plan shall include plans to expand the following services: (1) primary care; (2) behavioral health services; (3) substance use disorder care; (4) access to health care for low income and disadvantaged populations; (5) maternity care, including labor and delivery; and (6) elder care, including efforts to develop a preferred network of skilled nursing facilities for the aging population. The Clinical Services Growth Plan shall require the approval by the EHR Board, and the EHR Board shall review any modifications during the Term. The Clinical Services Growth Plan shall be submitted to the Attorney General and the Monitor, and subject to monitoring as further described in Article VII.3. The Clinical Services Growth Plan shall include, but not be limited to, the following strategies: (1) enhanced primary care capabilities, which may include expanded office hours and accommodating additional walk-in patients; (2)

embedded licensed clinical social workers in appropriate primary care offices; and (3) use of the Collaborative Care Model in compliance with applicable law, including requirements for billing with the Collaborative Care Model CPT codes.

B. During the Term of the Final Judgment, EHR will maintain the licenses, privileges, and service offerings required for the provision of maternity care, including level I or II maternity care services and level I nursery at EH, and continue to offer all other maternity care at EH, in each case subject to the ability to maintain the necessary volume to ensure care quality and patient safety in accordance with applicable medical, industry and accreditation standards. In the unlikely event that EHR determines that the continuation of such maternity care is not feasible based on the criteria above, Respondents shall provide Notice to the Attorney General upon an EHR Board vote to cease maternity care, including labor and delivery at EH, in accordance with Article XVIII. The Attorney General shall have an opportunity to object within sixty (60) calendar days. Respondents then shall meet with the Attorney General about the proposed plan to discontinue such services within thirty (30) calendar days of the objection. The Attorney General may seek any applicable remedy at law, including but not limited to, restitution, damages, injunctive relief, and attorneys' fees and costs if the discontinuation of maternity care is not based on the criteria set forth above and Respondents proceed with the discontinuation of services.

C. EHR shall continue to have a discharge planning process that arranges for follow-up care, as available and to the extent practicable, for patients with diagnosed mental health or substance use disorders. EHR shall utilize community resource guides when appropriate.

D. BILH will support maintaining EHR's existing community provider relationships, including those with Seacoast Mental Health Center and Lamprey Health Care. BILH will

collaborate with EHR's leadership to determine how these relationships may be enhanced for continued success and growth.

E. EHR shall explore development of crisis mental health and/or other mental health capacity on site in partnership with Seacoast Mental Health Center.

F. Respondents shall operate the ten (10) DRF beds on the EH campus referenced in Article VI.1.D hereof for at least ten (10) years from the date upon which the ten (10) beds become available for patients. In the event the DRF beds become significantly underutilized as either DRF or voluntary behavioral health beds, Respondents may submit a request to the Attorney General to repurpose some or all of the DRF beds consistent with the relevant clinical needs, including any in the most recent EHR Community Needs Assessment. The Attorney General will not unreasonably withhold approval of such a request, provided that Respondents adequately demonstrate that the beds are significantly underutilized as DRF or voluntary behavioral health beds.

6. **Governance of Exeter Health Resources**

A. As the sole corporate member of EHR, BILH shall serve as a fiduciary of EHR and the EHR Affiliates when exercising its rights pursuant to its reserved powers. *See* N.H. Att'y Gen. Opinion, February 13, 2017.

B. The bylaws of EHR shall be amended and restated as set forth in the DCT Notice and further amended, to the extent they are inconsistent with this Final Judgment.

C. Within three (3) months of initiating concurrent board service, those persons who serve concurrently on the Boards of Trustees of BILH and EHR shall undergo training with respect to their fiduciary duties to each organization and with respect to identifying and resolving any potential conflicts of interest.

D. An EHR representative shall serve on the BILH Board of Trustees ("BILH Board") for six (6) years following the Closing Date with the same rights and responsibilities as the other trustees of the BILH Board, as follows. In accordance with section 9.1 of the Affiliation Agreement, the EHR Board will appoint one of its Board trustees to the BILH Board for a three (3)-year term ("initial term"). After the initial three (3)-year term has expired, BILH shall appoint individuals to serve on the BILH Board without designation, provided that for one three (3)-year term following the initial term, one BILH trustee shall be a current EHR Board trustee residing in the EHR Service Area who is nominated by EHR and appointed by the BILH Board. The BILH Board shall not unreasonably withhold the appointment of the nominated EHR Board trustees.

E. Notwithstanding BILH's reserved powers, all EHR trustees appointed by BILH, other than the CEO or the CEO's designee, shall be members of the communities served by EHR and shall be able to serve as representatives of EHR to such communities, and the majority of EHR trustees shall be "Independent Trustees" as defined in section 3.1.2 of the EHR proposed amended and restated bylaws included with the DCT Notice (hereinafter "Independent Trustees").

F. Notwithstanding BILH's reserved powers, during the Term of this Final Judgment, BILH shall not effect or approve any of the following transactions without the affirmative vote of at least a majority of the EHR Independent Trustees then in office, or a greater percentage thereof as may be required by law, EHR's articles of agreement, or EHR's bylaws, at a meeting of the EHR Board at which there is a quorum of trustees:

i. The liquidation or dissolution of EHR or EHR Affiliates;

ii. Any change of membership, merger, or consolidation of EHR or EHR Affiliates;

iii. The sale, lease, exchange, or other disposition of all or substantially all of EHR or EHR Affiliates' assets; or

iv. Discontinuance of a material clinical service or program as set forth in section 10.5(b) of the Affiliation Agreement, which term shall include maternity care, including labor and delivery.

7. **Charitable Assets of Exeter Health Resources**

A. Notwithstanding BILH's reserved powers over EHR, EHR's unrestricted assets shall be used to support EHR's charitable purposes and the EHR Service Area. EHR's restricted assets shall remain dedicated to their specified charitable purpose(s) and subject to the control of the EHR Board.

B. Notwithstanding BILH's reserved powers over EHR, the net proceeds of the sale of EHR or any EHR Affiliate's real property and other assets owned by EHR or EHR Affiliates on the Closing Date shall remain dedicated to EHR and EHR Affiliates' charitable purposes in the EHR Service Area in New Hampshire.

C. Notwithstanding BILH's reserved powers, any restricted and unrestricted investment assets of EHR or EHR Affiliates that are transferred to the pooled investment accounts managed by BILH will be identified through unitized sub-accounts and will be subject to New Hampshire's version of the Uniform Prudent Management of Institutional Funds Act, RSA 292-B.

D. Upon the liquidation or dissolution of EHR or any EHR Affiliates, or the sale, lease, exchange, or other disposition of all or substantially all of EHR or any EHR Affiliate's assets, the proceeds shall remain dedicated to EHR and EHR Affiliates' charitable purposes in the EHR Service Area in New Hampshire.

8. **Charity Care Policies**

A. EH will retain a financial assistance policy for the provision of care to disadvantaged patients that is no less generous than the written policies of EH immediately prior to the Closing Date. In addition, EH shall not defer, deny, or require a payment before providing medical necessary care because of nonpayment of one or more bills for previously covered care. Patients with unpaid balances who otherwise meet the criteria for financial assistance and apply for financial assistance will be eligible to receive care under the financial assistance policy.

B. Core will retain a financial assistance policy no less generous than the written policy in place as of the Closing Date. In addition, patients who apply for and are determined eligible for financial assistance under the policy shall not be financially responsible for any services received from Core up to six months prior to the determination of eligibility. Before referring bills to collection, Core shall provide patients with the financial assistance policy and shall offer assistance to patients in completing the application.

VII. TRANSPARENCY, REPORTING AND MONITORING

In order to facilitate monitoring, compliance review, and the study and research pertaining to Health Care Services and Health Care Providers in New Hampshire, Respondents shall commit to the following terms set forth below.

1. **Monitor Appointment and Retention**

A. The Attorney General and Respondents agree to appoint Grant Thornton to serve as the Independent Compliance Monitor (hereinafter, and throughout this Final Judgment, "Monitor") pursuant to the terms and conditions set forth in this Final Judgment.

B. No later than thirty (30) calendar days after the entry of Final Judgment, Respondents shall retain and enter into a formal written engagement agreement with the Monitor

(herein after "Monitor Agreement") to perform the duties set forth in this Final Judgment and on terms consistent with this Final Judgment. The terms of the engagement shall be subject to review and approval by the Attorney General, which such approval will not be unreasonably withheld. Respondents shall designate the Attorney General as a third-party beneficiary to their engagement agreement with the Monitor.

C. In consultation with the Respondents and the Attorney General, the Monitor shall develop a proposed scope of work for the first year following the Closing Date consistent with the obligations of this Final Judgment, and an associated budget within thirty (30) calendar days after the engagement, and thereafter on an annual basis for the term of the Monitoring Period no later than sixty (60) calendar days following each anniversary of the Closing Date.

D. BILH shall be solely responsible for payment of all fees and expenses of the Monitor and the Monitor's staff to perform the duties set forth in this Final Judgment. Respondents shall compensate the Monitor, and any individuals or firms hired to assist the Monitor: (i) promptly and on reasonable and customary terms commensurate with the individual's or firm's experience and responsibilities; and (ii) consistent with the Monitor's scope of work.

2. **Monitor Duties and Responsibilities**

A. Throughout the Monitoring Period, the Monitor shall have authority and responsibility to monitor the Respondents' compliance with all aspects of the Final Judgment, including but not limited to inspecting records; requiring BILH and EHR to produce documents and information including confidential documents (subject to appropriate confidentiality protections), and to make individuals available for interviews; meeting with the Respondents

together or separately; and periodically surveying or requesting information from Payors, as the Monitor deems necessary.

B. Respondents shall cooperate with the Monitor in the performance of his or her work and shall take no action that reasonably could be expected to interfere with or impede the Monitor's ability to timely monitor compliance with the Final Judgment.

C. Respondents waive any confidentiality obligations owed to them on the part of any Third Party who has records or other information of Respondents that is relevant to the Respondents' compliance with this Final Judgment.

D. The Monitor Agreement shall provide that the Monitor shall not disclose nonpublic information to any Third-Party Payor or competitor of Respondents.

E. The Monitor Agreement shall provide that the Attorney General may request access to, and the Monitor shall provide access to, any documents or information relating to the Respondents' compliance with the terms herein, including, but not limited to, confidential information obtained from Respondents in the course of regular or ad hoc reporting to the Monitor, to the CPAB or to the DCT, where appropriate.

F. The Attorney General may contact the Monitor at any time during the Monitoring Period to discuss the Respondents' compliance with the Final Judgment, including concerns that Respondents may not be complying with the terms of this Final Judgment.

G. If, during the Monitoring Period (i) the Monitor becomes unable to perform its obligations or (ii) if the Attorney General, in its sole reasonable discretion, determines that the Monitor cannot reasonably fulfill its obligations to monitor compliance with the Final Judgment to the satisfaction of the Attorney General, and the Attorney General's underlying concerns remain uncured within sixty (60) calendar days following the Attorney General's notification to

Respondents of such determination, the Attorney General and Respondents shall attempt to agree upon a new Monitor. Respondents shall propose a candidate within thirty (30) calendar days of such notification by the Attorney General, and the proposed candidate shall be subject to the final approval of the Attorney General. Respondents shall submit to the Attorney General sufficient supporting material to demonstrate the candidate's qualifications and willingness to serve as monitor. If the Attorney General does not approve the Respondents' proposed candidate, Respondents shall propose another candidate within thirty (30) calendar days. This process shall continue until a candidate is approved.

H. Beginning with the one-year anniversary of entry of this Final Judgment, and thereafter each year during the Term of this Final Judgment, the Monitor will prepare an annual report to be provided to the Attorney General, who will in turn provide that report to the public; provided, however, Respondents shall be given Notice thirty (30) calendar days in advance to submit any comments or objections to any aspect of the Monitor's report to the Attorney General and to the Monitor before the report is made public, including whether Respondents assert an applicable exemption under N.H. Rev. Stat. Ann. 91-A for any information in the report. The Attorney General shall redact any information reasonably asserted by Respondents that is within an applicable exemption.

3. **Annual Reporting to Monitor.** Respondents shall provide to the Monitor, on or before March 31st of each year, annual reporting on Respondents' compliance with the Terms of this Final Judgment that includes, at a minimum, the following sections, with details to be determined through the scope of work developed by the Monitor in consultation with Respondents and the Attorney General. The Monitor will prepare an annual report to the Attorney General on the following matters and each report shall be considered a public record

under the New Hampshire Right-to-Know Law, N.H. Rev. Stat. Ann. 91-A subject to any redactions pursuant to Section 2.H. above.

A. **Respondents' Plans**: Performance results and compliance, including progress with respect to timetables, measurable goals and metrics, and requisite funding as applicable, and any material deviations from or changes to, the Capital Investment Plans, the EMR Implementation Plan, the Clinical Affiliation Plan, and the Clinical Services Growth Plan. Material deviations shall include but are not limited to: changes that result in more than a 10% decrease in the financial commitment to a capital project or service line identified in Respondents' Plans; removing, replacing or failing to complete a planned capital project or service line identified in Respondents' Plans; or any change in the EMR Implementation Plan that would result in EH, Core, or RVNA not having at least the same EMR functionality as other BILH community hospitals, physician groups or home health agencies, as applicable; and removing, replacing or failing to complete any planned capability for the EMR system identified in Section 10.1 of the Affiliation Agreement or in the EMR Implementation Plan.

B. **Inpatient Bed Recapitalization**: Performance results of the approximately $165 million capital commitment for inpatient bed recapitalization as set forth in Article VI.1.A.(i) herein.

C. **Cost Savings**: Analyses with financial data detailing cost savings as a result of reduction of redundant operations, improved efficiencies related to patient care, and shifting sites of care.

D. **Community-Based Care**: Performance results with respect to keeping care in the EHR Service Area.

E. **Payors/Contracting**: Prohibited contract terms and practices described above in Article VI.3. Monitor may inspect Payor-Provider Contracts to confirm compliance. EHR shall report on its participation in Value-Based Payment Agreements and steering/tiering initiatives.

F. **Physicians and Medical Staff**: Prohibited contract terms and practices; hiring of additional Physicians across key specialties after the Closing Date, with option of Monitor to inspect additional/new professional services agreements for compliance with law regarding non-competition provisions.

G. **Service Offerings**: Report on current service offerings, cessation of material services and closure of facilities, and on the utilization of the ten (10) DRF beds.

H. **Charity Care**: On an annual basis, EHR shall submit a report to the DCT regarding its spending and programming for charity care (as defined in N.H. Rev. Stat. Ann. § 7:32-d, I) and for meeting relevant community needs as identified in EHR's Community Needs Assessment (described in N.H. Rev. Stat. Ann. § 7:32-f). The report shall include information regarding spending of the Local Community Benefit Allocation, as described in Article VI.1.E.

4. **Data Submission to New Hampshire All Payor Claims Database**

A. Respondents shall submit, or shall cause its third-party administrator to submit, in a timely, complete, and accurate manner all Payor claims and related data and information to New Hampshire Comprehensive Health Care Information System ("NH CHIS") consistent with N.H. Rev. Stat. Ann. § 420-G:11, related regulations including N.H. Code Admin R. Ins. 4005.03, guidance, and reporting forms (including any amendments or updates thereto) with respect to its self-funded employer sponsored plans, with any historical gaps since the beginning of 2016. Submissions shall include: (i) all data specific therein for EHR and any subsidiaries,

with all employees and membership of the self-insured health benefit plan(s); and (ii) Group Identification information.

B. No later than six (6) months after the Closing Date, Respondents shall execute any and all opt-in forms (*e.g.*, All-Payer Claims Database Indication of Intent for Private Employers Offering Self-funded Health Coverage in New Hampshire) and all necessary agreements with any Third Party to submit any historical claims and ongoing claims data to NH CHIS.

C. Timely, accurate, and complete reporting and submissions for this Section shall include but is not limited to: (i) submission, standardized formatting, and compliance standards of NH CHIS under state law; and (ii) diligently interfacing with any Third Party for any agreements and other communication necessary for compliance.

5. **Annual Submissions of Health Care Provider and Facility Information.** Respondents shall annually submit to the Attorney General as a public record:

A. A list of Health Care Providers on EH's medical staff, as reasonably available, with at least those employed by EHR, Core, and other Affiliates listing the following information: (a) including both first and last name; (b) practitioner NPI that is valid and non-duplicative (*i.e.*, unique value); (c) primary service location address for patients (including facility type such as hospital, urgent care, professional practice, ambulatory surgical center, or other); (d) any billing NPIs used to submit claims for each identified individual Health Care Provider at any time during year; (e) specialty assignment designation based on the Health Care Provider's predominant area of actual practice; and (f) designation of employed or affiliated, whichever is applicable during the submission set;

B. A list of licensed Health Care Facilities located in New Hampshire that EHR or BILH owns, controls, or submits billing claims to Payors on behalf, and such list shall include: (a) the corporate and d/b/a name; (b) physical location/address; (c) New Hampshire facility license number; (d) facility NPI that is valid and non-duplicative (i.e. unique value); and (e) the primary Health Care Services currently offered at the Health Care Facility; and

C. A description of material expansions, relocations, or closures of locations or sites of Health Care Services, owned or controlled by Respondents in New Hampshire, including the date of closure or relocation.

6. **DCT Reporting.** BILH shall register and report annually to the DCT pursuant to N.H. Rev. Stat. Ann. § 7:28 as a non-resident charitable trust organization to the extent required by law and shall comply with N.H. Rev. Stat. Ann. § 7:19-32-l with respect to its activities in New Hampshire. Additionally, for a period of five (5) years from the Closing Date, Respondents will notify the DCT should a dispute arise that requires dispute resolution pursuant to section 13.18 of the Affiliation Agreement.

XII. CONFIDENTIALITY

1. Respondents understand that materials submitted to the Monitor and the materials submitted to the Attorney General after the Closing Date shall be available to the public in accordance with state law, including the New Hampshire Right-to-Know Law, N.H. Rev. Stat. Ann. § 91-A. Respondents may request confidential, nonpublic treatment of any portion of their submission materials that they consider in good faith to be confidential, containing trade secrets, or commercially sensitive information not subject to public release consistent with applicable law.

2. To the full extent permitted by law, the Attorney General will treat and maintain all confidential submission materials clearly designated and marked by Respondents as confidential in accordance with and within pertinent exemptions from public disclosure provided in N.H. Rev. Stat. Ann. § 91-A. In the event the Attorney General receives a public records request that calls for the disclosure of Respondents' submission materials designated and marked confidential, the Attorney General will notify Respondents as soon as reasonably practicable upon receipt of any such request and the Attorney General's legal position with respect to such request. The Attorney General further agrees to not produce any such records until at least fifteen (15) calendar days after having given Notice of the request to Respondents, to enable them reasonable time to seek judicial review or otherwise make arrangements to secure confidential treatment of the submission materials.

XIII. NOTICE OBLIGATIONS

1. **Notice of Consummation**

Respondents shall not effectuate or consummate the Affiliation until this Final Judgment is entered by the Court. Within three (3) calendar days following the Closing Date, Respondents shall provide written notice of the Closing Date, together with a copy of the executed transaction documents to the Attorney General.

2. **Notice of Final Judgment**

A. No later than seven (7) calendar days after the Closing Date, Respondents shall publicly post on the websites of EHR and BILH a copy of this Final Judgment after it is entered by the Court and throughout the Term of this Final Judgment;

B. Respondents shall no later than thirty (30) calendar days after the Closing Date:

(i) Provide a copy of this Final Judgment to the Board of Trustees and statutory officers for each Respondent, and shall provide the Final Judgment to newly appointed Board members, appointed during the Term, upon commencement of each Board member's term of office;

(ii) Provide a summary of the terms of the Final Judgment to EHR's executive management employees and Core Physicians, including Core's Physicians annually; and

(iii) Provide a copy of this Final Judgment at Closing to any Payor that has a Pre-Existing Contract with a Respondent.

XIV. COMPLIANCE INSPECTION

If the Attorney General has a reasonable belief that the Respondents are not in compliance with this Final Judgment or related orders, and upon written request of the Attorney General, with reasonable notice (at least fourteen (14) calendar days) to Respondents, Respondents must permit (subject to legally recognized privileges) the Attorney General, including any retained agents or consultants:

1. To have reasonable access during Respondents' and/or their subsidiaries' regular business hours to inspect and copy, or at the option of the Attorney General, to require Respondents and/or their subsidiaries to provide electronic copies of books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Respondents and/or their subsidiaries relating to compliance with the terms of this Final Judgment; and

2. To interview Respondents' or their subsidiaries' officers, employees, or agents.

XV. NO RETALIATION

Respondents shall amend within thirty (30) calendar days of the Closing Date their whistleblower policies to include good faith reports made to the Attorney General by any director, officer, or employee of alleged noncompliance with any terms of this Final Judgment, including compliance monitoring, and to bar retaliation against any person with respect to such reports. Retaliation includes, but is not limited to, conduct that impedes or prevents any Person from providing information to the Monitor or the Attorney General or their agents related to the terms of this Final Judgment.

XVI. ENFORCEMENT, VIOLATION, AND CURE

1. Respondents agree that the Attorney General shall have the standing and authority to enforce BILH's post-closing commitments and covenants contained in the Affiliation Agreement for the benefit of EHR; provided that nothing herein shall affect any rights or obligations of the EHR Board under the Affiliation Agreement.

2. The Attorney General shall have exclusive jurisdiction to seek court enforcement of this Final Judgment against Respondents. If the Attorney General believes there has been a violation of this Final Judgment, the Attorney General shall provide Respondents advanced Notice thereof and grant a reasonable opportunity to cure any such alleged violation. If such alleged violation is not cured by Respondents within sixty (60) calendar days of the date Respondents receive the Notice, the Attorney General may thereafter seek to undertake appropriate remedial action. The sixty-day period shall be extended upon Respondents' written request at the Attorney General's discretion in circumstances where Respondents provide an explanation as to why sixty days is inadequate to cure the alleged violation. These time periods may be adjusted in the event of exigent circumstances, as determined by the Attorney General.

3. Any Person who believes they have been aggrieved by a violation of this Final Judgment may file a complaint with the Attorney General for review. If, after the Attorney General's review (including any findings, evaluation, and recommendation by the Monitor), the Attorney General believes either a violation of the Final Judgment has occurred or additional information is needed to evaluate the complaint, the Attorney General may, in his or her discretion, forward a copy of the complaint to the Respondents for a response. If, after receiving and reviewing the response, the Attorney General believes a violation of the Final Judgment has occurred, it shall so advise the Monitor and the Respondents, give time to cure and take necessary action. No other Person or entity shall have the right to enforce the Final Judgment other than the Attorney General.

4. The Attorney General retains and reserves all rights to seek an order of contempt and appropriate legal and equitable relief from the Court. Respondents agree that in a civil contempt action, a motion to show cause, or a similar action brought by the Attorney General regarding an alleged violation of this Final Judgment, the Attorney General may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence. If the Court determines that the Respondents violated this Final Judgment, the Court may require payment of the Attorney General's costs of investigation and enforcement, including legal fees, expenses and court costs.

XVII. FEES AND COSTS

Within sixty (60) calendar days after the Closing Date, Respondents shall directly pay the Attorney General's retained consultants for the reasonable fees and costs incurred by the CPAB related to its investigation of this matter, but not to exceed $565,000.00 for consultant fees and costs, pursuant to N.H. Rev. Stat. Ann. § 356:10, VI, and pay the Attorney General $250,000.00

for CPAB's fees and costs, pursuant to N.H. Rev. Stat. Ann. §§ 356:4-b, 358-A:6, IV. Within sixty (60) calendar days after the Closing Date, Respondents shall directly pay the DCT's retained consultant costs if not already paid.

XVIII. NOTICE

1. Any notice, demand, or communication required, permitted, or desired to be given hereunder, shall be in writing and deemed effectively given when mailed by prepaid certified or registered mail, return receipt requested, addressed as follows, with courtesy copies sent contemporaneously by email ("Notice"):

***If to the Attorney General*:**

Department of Justice
Office of the Attorney General
c/o Charitable Trusts Unit and Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, New Hampshire 03301

With copy by email to:

Diane Murphy Quinlan, Director of Charitable Trusts
Diane.M.Quinlan@doj.nh.gov

Alexandra C. Sosnowski, Assistant Attorney General
Consumer Protection and Antitrust Bureau
Alexandra.C.Sosnowski@doj.nh.gov

If to Independent Compliance Monitor:

Grant Thornton
171 N Clark Street
Chicago, IL 60601

If to Respondent BILH:

Beth Israel Lahey Health, Inc.
20 University Road
Cambridge, MA 02138

With copy by email only to:

Jamie Katz, General Counsel
jamie.katz@bilh.org

If to Respondent EHR:

Exeter Health Resources, Inc.
5 Alumni Dr.
Exeter, NH 03833
ATTN: President

With copy by email only to:

David S. Szabo, Esq.
david.szabo@lockelord.com

2. Respondents shall provide the Attorney General with ten (10) calendar days advance Notice of any changes to designated Notice contacts.

XIX. AVERMENT OF TRUTH AND FURTHER ASSURANCES

1. Respondents have averred that, to the best of their knowledge, the information they have provided to the Attorney General, the CPAB, and the DCT in connection with the Attorney General's investigation of the Affiliation is true in all material respects.

2. Respondents shall cooperate and take such actions as may be reasonably requested by the Monitor, by the Attorney General, the CPAB, and the DCT in order to carry out the provisions and purposes of this Final Judgment.

XX. ENTIRE AGREEMENT OF THE PARTIES

The terms of this Final Judgment contain the entire agreement of Respondents hereto, and there are no agreements or representations which are not set forth herein. No other promises, representations, inducements, or agreements of any nature have been made or entered into by Respondents. Respondents acknowledge that this Final Judgment constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be

legally insufficient or unenforceable then the remaining provisions shall be construed in order to effectuate the purposes hereof and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

XXI. MODIFICATION

If the Attorney General or Respondents believe that modification of this Final Judgment would be in the public interest, the requesting party shall give Notice to the other party and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly modify the Final Judgment and present the modification for approval and entry by the Court. If the parties cannot agree on a modification, the requesting party may request the intervention of the Monitor before petitioning the Court to modify this Final Judgment.

XXII. RETENTION OF JURISDICTION

This Final Judgment shall remain in full force and effect until further order of the Court, subject to Article XXIII hereof. During the Term of this Final Judgment, this Court shall retain jurisdiction to enable any party to the Final Judgment to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification, and enforcement of this Final Judgment.

XXIII. TERM OF THE FINAL JUDGMENT

This Final Judgment will expire ten (10) years from the date it is entered or the Closing Date, whichever is later (the "Term"). Any provision of this agreement not otherwise required by applicable law shall only be applicable for the Term. The Term may be otherwise modified by mutual agreement of Respondents and the Attorney General, with approval of the Court; provided, that the Attorney General may, after seven (7) years, reduce the Term for certain commitments hereunder, to be determined in the in the sole discretion of the Attorney General

(which may, but is not required, to consider any recommendations of the Monitor), if Respondents can adequately demonstrate in the sole discretion of the Attorney General, Respondents' overall compliance with this Final Judgment throughout the Term. The Attorney General will not unreasonably withhold approval of such modification. Notwithstanding the foregoing, reporting and monitoring shall in all cases continue beyond the Term with respect to (a) the Capital Investment Plans until all projects are complete through the thirteenth year following the Closing Date, and (b) the utilization of the DRF beds for ten years from the date the DRF beds are first available for clinical use.

XXIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest based on the record before the Court.

Signatures on the next pages.

AGREED TO AND ENTRY OF THIS FINAL JUDGMENT IS REQUESTED BY:

On behalf of the State of New Hampshire

By its attorney,

JOHM M. FORMELLA
ATTORNEY GENERAL

Brandon H. Garod
Senior Assistant Attorney General
Consumer Protection and Antitrust Bureau
New Hampshire Department of Justice
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
Brandon.H.Garod@doj.nh.gov

Date: 06/14/2023

Alexandra C. Sosnowski
Assistant Attorney General
Consumer Protection and Antitrust Bureau
New Hampshire Department of Justice
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
Alexandra.C.Sosnowski@doj.nh.gov

Date: 6/14/2023

On behalf of the Attorney General,
Director of Charitable Trusts

Diane M. Quinlan
Director of Charitable Trusts
New Hampshire Department of Justice
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
Diane.M.Quinlan@doj.nh.gov

Date: 6/14/2023

On Behalf of Defendant Exeter Health Resources, Inc.

By: _____
Kevin J. Callahan
President and CEO
Exeter Health Resources, Inc.
5 Alumni Dr.
Exeter, NH 03833
KCallahan@ehr.org

On Behalf of Defendant Beth Israel Lahey Health, Inc.

By: _____
Kevin Tabb, M.D.
President and CEO
Beth Israel Lahey Health, Inc.
20 University Road
Cambridge, MA 02138
Kevin.Tabb@bilh.org

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