

**PROPOSED MERGER BETWEEN INDIAN STREAM HEALTH CENTER
AND UPPER CONNECTICUT VALLEY HOSPITAL**

REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS

OCTOBER 25, 2021

I. Introduction

On June 23, 2021, Indian Stream Health Center (“ISHC”) submitted to the Charitable Trusts Unit of the New Hampshire Department of Justice a notice of a proposed change of control pursuant to RSA 7:19-b (“[Notice](#)”).¹ Under the proposal, ISHC would merge into Upper Connecticut Valley Hospital Association, Inc. (“UCVH”), and UCVH would be the surviving entity. This report describes the proposed merger and the CTU’s review and conclusions.

A. The Parties

Indian Stream Health Center

ISHC was established in 2004 “to provide excellent preventive, acute, and wellness focused healthcare” to residents in the Colebrook, New Hampshire region. *See* Articles of Agreement, Indian Stream Health Center (June 1, 2004).² In 2006, ISHC applied for and received approval from the United States Health Services Resources Administration (“HRSA”) to qualify for designation as a Federally-Qualified Health Center (“FQHC”). ISHC is a charitable organization within the meaning of RSA 7:21, II (b) and is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

Until March 2020, ISHC offered its services in two locations: Colebrook, New Hampshire and Canaan, Vermont. At the end of 2019, ISHC employed 47 individuals, but by the time that ISHC submitted the Notice, ISHC employed approximately 32 individuals. ISHC offers primary and family health care, substance misuse and behavioral health services, care management and outreach assistance (including transportation arrangements and translation services), and community health education.

ISHC is registered and enrolled in HRSA’s Section 340B Drug Pricing Program. The 340B program requires drug manufacturers participating in Medicaid to provide discounted brand, generic, and specialty drug products to certain eligible health care entities. The intent of the program was “to enable [covered] entities to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services,”³ but the program does not specify how the savings must be

¹ The Notice, including the response to the Charitable Trusts Unit’s request for additional information, may be found on the Department of Justice [website](#).

² The Articles of Agreement may be found on the New Hampshire Secretary of State’s [website](#).

³ H.R. Rep. No. 102-384 (Part 2), at 12 (1992) (Conf. Rep.).

used by the covered entities. Under the terms of the program, the 340B-purchased drugs may be dispensed only to patients of the covered entities.

Upper Connecticut Valley Hospital Association, Inc.

UCVH was established in 1965 to, among other things, support and contribute to the operations and maintenance of the Coos County Hospital in Stewartstown, New Hampshire and participate in other activities designed and carried on to promote the successful operation of the hospital and/or the general health of the people of the area it serves. *See* Articles of Agreement, Upper Connecticut Valley Hospital Association (February 26, 1965).⁴ The purpose of UCVH subsequently was amended to permit the construction of a new hospital and support for that hospital, and in August 1970, UCVH opened a 30-bed facility in the Town of Colebrook, New Hampshire.

UCVH currently is a 16-bed critical access hospital in Colebrook that serves 20 communities in New Hampshire, Vermont, and Maine. UCVH employs approximately 100 full time equivalent employees. UCVH offers a broad array of services, including emergency services, outpatient surgical care, cardiac rehabilitation, inpatient care, ambulatory care, imaging services, outpatient rehabilitation, and laboratory services. UCVH is a charitable organization within the meaning of RSA 7:21, II (b) and is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

In 2016, North Country Health Care, Inc. (“NCH”), a charitable, nonprofit corporation within the meaning of RSA 7:21, II (b), became the sole corporate member of UCVH. NCH is also the sole corporate member of Androscoggin Valley Hospital in Berlin, New Hampshire, Weeks Medical Center in Lancaster, New Hampshire, and North Country Home Health and Hospice Agency in Littleton, New Hampshire.

B. The Proposed Merger

Background

In recent years, ISHC has experienced significant financial and workforce challenges. In 2016, ISHC’s expenses escalated as a result of hiring a population health medical director, engaging in increased marketing efforts, and planning a construction project. Approximately one year later, after the United States Drug Enforcement Agency initiated an investigation, ISHC’s population health medical director, Dr. John Fothergill, was identified as one of the highest prescribers of OxyContin in New Hampshire, and as a result, ISHC suffered negative publicity and reputational damage. In 2017, Dr. Fothergill separated from ISHC’s employment and currently is employed by a competing primary care practice in Colebrook.

Since then, ISHC has been unable to sustain a stable staff of physicians, physician assistants, and nurse practitioners. Between 2019 and 2020, ISHC experienced 100% provider turnover, and many of ISHC’s patients have followed those practitioners to their

⁴ The Articles of Agreement may be found on the New Hampshire Secretary of State’s [website](#).

new practices. ISHC has been compelled to hire *locum tenens* physicians on a temporary basis to replace the departed providers, but the costs to hire *locum tenens* is substantially higher than it is for employed physicians. ISHC's Canaan, Vermont facility has been closed since March 2020. Thus, ISHC currently experiences fewer patient visits at a higher cost to ISHC.

Some of the provider turnover may be related to the fact that ISHC has been led by 4 different chief executive officers in the last 5 years. The current chief executive officer also serves as ISHC's pharmacist.

In 2017, ISHC served approximately 4,000 patients. Currently, ISHC serves approximately 1,100 patients. Between 2017 and 2021, ISHC has laid off more than 7 employees.

In 2018, UCVH provided ISHC with a \$300,000 grant to assist ISHC with its operational budget. And in 2019, after ISHC's electronic health record vendor notified ISHC that its electronic health record program no longer would be available at the end of the year, and ISHC was unable to secure financing for a new electronic health record program, UCVH extended to ISHC a \$50,000 grant and ultimately, a \$175,000 no interest loan to finance ISHC's transition to NCH's Meditech program.

These many challenges over the past 7 years have led the ISHC board to the conclusion that its current status as an independent FQHC is not sustainable in the long-term. While the grants from UCVH and the COVID-related financial assistance provided by the state and federal governments have been helpful to ISHC, the funds have not been sufficient to sustain ISHC long-term and have done nothing to address the inability to attract and retain providers. Indeed, at the public listening session on April 7, 2021, the board chair stated that at that time, ISHC was \$750,000 in debt.⁵

In 2020, the ISHC Board formed a workgroup to evaluate long-term strategies. While it recognized that one strategy would be dissolution, the board members considered dissolution to be a last resort. One proposed strategy was to affiliate or merge with another FQHC-qualified health center. The workgroup engaged in discussions with the chief executive officers of Mid-State Health Center (with offices in Bristol and Plymouth, New Hampshire) ("Mid-State") and Coos County Family Health Services (located in Berlin, New Hampshire). Coos County Family Health Services ultimately declined to make an affiliation proposal.

On February 3, 2021, Mid-State's CEO made a presentation to ISHC's board of directors regarding his proposal that Mid-State and ISHC enter into a management agreement, whereby Mid-State would offer administration and financial support to ISHC, including billing and finance, credentialing, and provider recruitment assistance. According to Mid-State's CEO, the proposal was intended to stabilize ISHC until it could determine whether a merger would be appropriate and was estimated to save ISHC

⁵ The board chair noted that ISHC expected an additional grant from the federal government, but the grant was intended to cover vaccine-related expenses.

approximately \$541,800 each year. The CEO admitted that he had not presented the management proposal to Mid-State's board, but such a management proposal was within the purview of the CEO and did not require board approval.

Another proposed strategy explored by the ISHC board was to merge into UCVH and become the base of operations of a Rural Health Clinic ("RHC"). The boards of ISHC and UCVH formed a workgroup consisting of representatives of both ISHC and UCVH and several subcommittees to explore the impact of such a merger on certain services offered by ISHC: Sliding Scale/Charity Care; Care Coordination & Outreach; Behavioral Health; and 340B Retail Pharmacy. The findings of the workgroup were shared with the ISHC board, and at the ISHC board meeting on February 3, 2021, Scott Colby, the CEO of UCVH, made a presentation regarding a proposed merger. During his presentation, Mr. Colby indicated that UCVH was prepared to operate an RHC in Colebrook that would offer stable primary care services to Colebrook residents and that UCVH's parent, NCH, would take active steps to mitigate any job losses. In addition, UCVH would provide a pharmacy discount program comparable to the 340B program currently offered by ISHC.

During the February 3, 2021 meeting, in addition to the presentations by Mid-State and UCVH, Sergio Zulich, the CEO of ISHC, made a presentation to the ISHC Board about the differences between an FQHC and an RHC, the advantages an FQHC's "sliding scale" for services offers to the uninsured and underinsured in the community, and the fact that ISHC's 340B discount program saves members of the community up to \$745,000 per year. After hearing the presentations, the Board concluded that Mid-State's proposal would not address the major problem faced by ISHC: the lack of stable providers. *See* Notice, Appendix K (Minutes of Meeting of the Board of Directors February 3, 2021, pp. 5-6). The Board instead voted 7 to 1 to pursue negotiations for a merger with UCVH, finding that in light of the financial condition of ISHC, UCVH's proposal was "the most prudent way to continue to serve the community and its patients." *See* Notice, Appendix M-1 (Minutes of Meeting of the Board of Directors February 3, 2021, page 5).

On February 26, 2021, the boards of ISHC and UCVH announced their intent to merge. The parties thereafter engaged in negotiations for an Agreement and Plan of Merger, and on May 26, 2021, the Board of ISHC voted 6-0 to approve the Agreement and Plan of Merger with UCVH, with one abstention.⁶ Two members of the board were absent from the meeting.

In the meantime, on May 15, 2021, 11 days before the ISHC board voted to approve the proposed merger with UCVH, UCVH and Weeks Medical Center entered into a lease for the purposes of establishing an RHC on property owned by UCVH. The RHC has been operating since May 24, 2021, in a temporary, modular building in UCVH's parking lot only steps away from ISHC's facility. Two of the RHC's providers are former employees of ISHC.

⁶ The member who abstained was newly-elected to the board at the May 26 meeting.

On July 22, 2021, NCH and UCVH held a job fair for ISHC employees. Organizations that participated in the job fair were Androscoggin Valley Hospital, North Country Home Health & Hospice Agency, UCVH, Weeks Medical Center, White Mountain Community College, Bangor Savings Bank, and American Performance Polymers. On September 28, 2021, UCVH held a second job fair for ISHC employees. In addition to NCH, White Mountains Community College also participated. As of September 14, 2021, NCH had offered positions to 6 ISHC employees.

Summary of the Agreement and Plan of Merger

Under the terms of the Agreement and Plan of Merger dated June 4, 2021 (“Agreement”), if approved by the Director of Charitable Trusts, ISHC would be merged with and into UCVH, and UCVH would be the surviving entity. *See* Notice, Appendix H, p. 2. The Agreement provides that the assets and liabilities of ISHC shall become the assets and liabilities of UCVH. *Id.* The Agreement does not contain a special provision with respect to donor-restricted funds held by ISHC because ISHC does not hold donor-restricted funds. In addition to providing that the merger is subject to approval by the Director of Charitable Trusts pursuant to RSA 7:19-b, the Agreement provides that the merger is subject to approval by the Board of Directors of NCH and subject to review by the Consumer Protection and Antitrust Bureau of the New Hampshire Attorney General’s office.

The following are obligations of UCVH following the merger:

1. The RHC: UCVH will either operate or contract with Weeks Medical Center to operate an RHC on the property currently owned by ISHC in Colebrook for a period of three years, “subject to material adverse federal regulatory changes to RHC reimbursement and structure.”⁷ In the event of such regulatory changes, UCVH agrees to operate a primary care practice for at least a three year period subject to certain other obligations set forth in the agreement.⁸ *Id.* at p. 7.
2. Charity Care Program: For a period of at least three years, the RHC will (a) implement a charity care program to offer free care to patients with household incomes below 300% of the federal poverty level, provided that the patient applies for Medicaid and provides documentation to support income level; and (b) offer a self-pay discount of approximately 40%. *Id.*

⁷ Note that in May 2021, UCVH entered into an agreement with Weeks Medical Center to operate an RHC on property owned by UCVH for a three year period. While the May 2021 agreement anticipates the proposed transaction between UCVH and ISHC, the agreement to operate an RHC is effective regardless of whether the ISHC/UCVH transaction closes.

⁸ The Notice states that if the federal government implements reimbursement or regulations that would affect the RHC’s structure, and such revisions “result in material adverse impacts to the RHC,” UCVH nevertheless is required to continue to provide primary care services for three years from the date of the revisions. Notice, p. 7. The Agreement does not specifically state that the 3 year period begins on the date of the revisions.

3. Behavioral Health: For a period of at least three years, the RHC will offer outpatient behavioral health services, substance use disorder services, including medication-assisted treatment, and care management/outreach. *Id.* at p. 8.
4. Retail Pharmacy Discount: UCVH will “work with NCH to continue to offer patients an NCH 340B discount program participation at the retail pharmacy at ISHC’s current location, so long as the federal government does not materially reduce the benefit of such program.”⁹ *Id.*
5. Governance: UCVH will amend its bylaws so that ISHC will have the right to appoint two members with full voting rights on UCVH’s board of directors to serve for a period of three years from the date of the merger. *Id.*
6. Job Fair: UCVH will hold a job fair for ISHC employees. *Id.*
7. Severance: ISHC shall pay severance to employees who are eligible under the terms of an agreement between ISHC and UCVH. *Id.*

The Agreement does not require that UCVH re-open the Canaan, Vermont facility, and UCVH does not intend to do so. UCVH’s plan is to renovate ISHC’s current building and relocate the RHC into the renovated building. After the renovation is complete, UCVH will consider the possibility of relocating the modular building to West Stewartstown, New Hampshire, which is adjacent to Canaan, Vermont.

II. Review by the Charitable Trusts Unit

A. Overview

Under state law, RSA 7:19-b, the Director of Charitable Trusts of the Attorney General’s office is charged with reviewing acquisition and change of control 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.

As discussed above, the Charitable Trusts Unit received the Notice on June 23, 2021. After reviewing the Notice, on July 9, 2021, the Charitable Trusts Unit requested that ISHC and UCVH provide additional information and documentation, which the parties provided on July 23, 2021. *See* [NH DOJ Website](#). The collection of documents submitted by the parties are included in the “Notice.”

⁹ While the sentence in the Agreement is awkward, according to the Notice, the Agreement provides that UCVH will engage NCH to continue to offer 340B pharmacy discount pricing currently available in the ISHC pharmacy to patients of the RHC. Notice, p. 8. The Agreement does not require that UCVH or NCH maintain this program for a particular period of time, and details of the program are not included in the Agreement.

On August 31, 2021, the Attorney General's office issued a media release inviting public comment on the proposed merger and announcing a public hearing on September 14, 2021, in the gymnasium at the Colebrook Academy and Elementary School. The Director of Charitable Trusts sent notice of the public hearing to individuals who had submitted comments or questions about the transaction by email and required that ISHC and UCVH share the media release with their constituents as well.

At the request of representatives of ISHC and UCVH, attendees of the public hearing in the gymnasium were required to wear masks and practice social distancing regardless of vaccination status. The Director made arrangements for individuals who chose not to wear masks to be accommodated in a separate room with the ability to view the hearing and submit comments and questions. Approximately 35 people attended the meeting in-person in the gymnasium, all of whom wore masks.

In addition, the hearing was made available by videoconference in order to allow remote participation. Approximately 38 people attended the public hearing remotely, including the ISHC board chair and many of the members of the ISHC board.

The vast majority of the comments expressed at the public hearing involved concerns about the lack of leadership at ISHC as well as the losses of a 340B pharmacy program, the sliding scale discount program, an FQHC in the community, and jobs. Some of the comments suggested that the ISHC board had not fairly considered options other than a merger with UCVH, including a merger with another FQHC and sale of its existing assets. Most of the people who spoke at the public hearing were current or former ISHC employees.

Before and after the public hearing, the Charitable Trusts Unit received a number of comments by letter, electronic mail, and phone opposing the merger. Most of them were submitted by current or former employees of ISHC.

On September 15, 2021, the Director of Charitable Trusts and Assistant Director of Charitable Trusts met via videoconference with 5 members of the ISHC board of directors. The members demonstrated a clear understanding of the terms of the Merger Agreement and expressed their strong support. They did not express any reservations about the merger. They also refuted some of the comments made at the public hearing, including the suggestion that a member of the board said that the board was "tired." The board members said that they put their "hearts and souls" into ISHC and "agonized" over the decision but truly believed that the merger was in the best interests of the community ISHC serves.

The Director of Charitable Trusts and Assistant Director of Charitable Trusts questioned the board members about their level of engagement since they entered into the agreement with UCVH. Although they have continued to meet monthly, for a brief

period, the board consisted of fewer than the minimum of 9 members.¹⁰ According to representatives of HRSA, the board did not keep HRSA representatives fully apprised of the plans to merge. And the board members seemed reluctant to fully participate in the September 14, 2021 public hearing. For example, they resisted the suggestion that they make a thorough presentation of their reasoning for the decision to merge with UCVH using powerpoint slides, and few of the board members attended the hearing in person. Indeed, two members of the board admitted that a reason that they attended the public hearing remotely was because they did not wish to be confronted by people who disagree with their decision to merge. Had the Charitable Trusts Unit not made the determination below, it likely would have addressed with the board the importance of ongoing active governance.

In addition to the parties' submission, the public hearing, and written comments, the Charitable Trusts Unit reached out to a number of stakeholders with an interest in health care in the region served by ISHC. Among the individuals and organizations that provided input were Tri-County Community Action Program, the New Hampshire Charitable Foundation, Mid-State, Dr. Fothergill, Dr. Gregory Culley (the former Clinical Director and CEO of ISHC), and attorneys for the United States Department of Health and Human Services.

In accordance with RSA 7:19-b, IV (b), the Charitable Trusts Unit provided notification about the proposed merger to the Commissioner of the Department of Health and Human Services and the Insurance Commissioner and invited them to provide input or advice. Neither Commissioner offered input or advice regarding the proposed transaction.

In conducting its review, the Charitable Trusts Unit has considered the Notice, the outreach and research conducted by the parties leading up to the submission of the Notice, and comments and other documentation submitted to and solicited by the Charitable Trusts Unit. After considering all of the evidence, the Charitable Trusts Unit has determined that the Notice complies with RSA 7:19-b and will take no action to oppose the merger, subject to the representations and conditions set forth in this report.

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

The Merger Agreement under review constitutes a change of control under the change of control statute, RSA 7:19-b. ISHC is a "health care charitable trust" within the meaning of RSA 7:19-b, I (d), in that it is a charitable organization within the meaning of RSA 7:21, II (b), is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, and offers "community health services." *See* RSA 7:19-b, I (d). The proposal would involve a transfer of control in that ISHC would be merged into UCVH, and UCVH would be the surviving entity. *See* RSA 7:19-b, I (a).

¹⁰ The ISHC board had a sufficient number of members consistent with its bylaws when it voted to enter into negotiations to merge with UCVH and to approve the Agreement and Plan of Merger.

RSA 7:19-b, II requires that a governing body of a health care charitable trust ensure that a change of control transaction complies with seven minimum standards. The following sets forth the Charitable Trust Unit's analysis and conclusions with respect to each of the standards.

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

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

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

The proposed merger does not implicate the doctrines of *cy pres*, deviation, or termination in accordance with RSA 7:19-b, VI (b) because ISHC would merge with another charitable, nonprofit organization. As ISHC does not hold any donor-restricted funds, court approval under the doctrine of *cy pres* or deviation is not required.

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

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

- (b) 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. Selection of the Acquirer.

As discussed above, ISHC explored the possibility of affiliating with other local FQHCs: Mid-State Health Center and Coos County Family Health Services. Coos County Family Health Services did not submit a proposal for an affiliation, but Mid-State proposed that the parties enter into a management agreement until ISHC stabilized and could enter into discussions about a merger. The ISHC board decided that its financial position was too precarious to delay a merger and that Mid-State's proposal would not address its biggest concern: provider turnover.

The ISHC board concluded that the charitable missions of ISHC and UCVH were compatible and that a merger with UCVH would enhance access to and the quality of the primary care services offered in Colebrook. At the public listening session, the ISHC board chair noted that NCH has a record of recruiting and retaining providers. It is also notable that in the past, UCVH provided ISHC with financial assistance and the opportunity to share its electronic medical records system.

b. Use of Expert Assistance.

Stroudwater Associates provided the boards of ISHC and UCVH with an analysis of the efficacy of converting ISHC into an RHC. The ISHC board also consulted with Courtney McFarland, CPA, MSA, AAFCPAs regarding grants, the PPP loan forgiveness program, and Health Resources & Services Administration (“HRSA”) requirements. Finally, the ISHC board consulted with its outside general counsel, Katherine M. Hanna, Esq. and Andrew B. Eills, Esq. of Sheehan Phinney, who provided the board with guidance and advice and negotiated the merger agreement and related governance documentation on behalf of ISHC.

c. Negotiating the Terms and Conditions.

The Agreement and Plan of Merger was the result of months of negotiations between the parties. According to the ISHC board, they were particularly concerned about ensuring that the surviving entity would offer a pharmacy discount program and would continue to offer the same health care and outreach services offered by ISHC. They were also concerned about offering employment transition assistance to ISHC employees.

d. Best Interests of the Health Care Charitable Trust and the Community it Serves.

RSA 7:19-b, II (b) requires that the board of trustees of a health care charitable trust exercise due diligence in determining that the transaction is in the best interests of the health care charitable trust. This requirement is consistent with the board’s fiduciary duty of loyalty under common law to “act in good faith and in a manner the fiduciary reasonably believes to be in the best interests of the charity in light of its purposes.” See Restatement of the Law, Charitable Nonprofit Organizations § 2.02 (2021).¹¹

In considering the merger, the ISHC board noted that the Community Needs Assessment Survey (“CHAN”) that was conducted in January 2021 demonstrated the need for a stable staff of primary care providers that could provide continuity of care to patients as well as the need for access to the drug discount program offered by ISHC’s 340B pharmacy. The board believed that UCVH could offer a stable staff of health care providers, recognizing the differences between FQHCs and RHCs, and it negotiated a charity care program as well as a retail pharmacy discount program.

The ISHC board concluded that the merger of ISHC into UCVH furthers its charitable mission. While they admitted that the merger agreement was not “perfect,” they believed that it was the best agreement that they could negotiate and addressed their most significant concerns: that primary care and other health services, charity care, and a discounted pharmacy program would continue to be available to and in the community.

¹¹ Before it was finally approved, the Draft Restatement of the Law, Charitable Nonprofit Organizations was cited with approval in *In re Trust of Mary Baker Eddy*, 172 N.H. 266, 274 (2019).

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

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

(c) 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;

The minutes of the ISHC board meetings submitted to the Charitable Trusts Unit reflect that prior to voting on the proposed merger transaction, the board members were asked whether any board member had a potential conflict of interest pursuant to RSA 7:19-a. Notice, Appendix K (Minutes of February 3, 2021 Board meeting, p. 5); Appendix Q (Minutes of May 26, 2021 Board meeting, p. 1). There is no evidence or suggestion to contradict the certification provided by the board members with respect to conflicts of interest and pecuniary benefit transactions.

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

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

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

The proposed merger does not involve compensation or consideration, and RSA 7:19-b, II (d) therefore is inapplicable to the proposed merger.

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

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

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

The proposed transaction involves a merger of two charitable organizations, and the surviving charitable organization is responsible for all of the assets and liabilities of ISHC. As discussed above, ISHC does not hold any donor-restricted funds.

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

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

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

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

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

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

(g) 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.

On February 26, 2021, ISHC and UCVH issued a media release announcing the proposed merger. They held a public listening session via Zoom videoconferencing on April 7, 2021 from 6:00 pm to approximately 7:30 pm that was noticed on the parties' websites and social media pages. Approximately 75 people attended the listening session, including ISHC board members, and attendees were able to (and did) ask questions and submit comments. The ISHC board members interviewed said that the listening session helped to inform negotiations of the final merger agreement, particularly the necessity for a pharmacy discount program similar to the 340B program offered by ISHC.

III. CONCLUSIONS AND DETERMINATION

After reviewing the evidence, the Charitable Trusts Unit concludes that ISHC's decision to merge was informed and based on reasonable beliefs that the merger would further ISHC's charitable mission and would be in the best interests of the communities served by ISHC.

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

Representations

1. Completeness of the Notice and Plan of Reorganization: ISHC and UCVH represent that the statements and documents made or provided in the Notice and the documents thereafter submitted to the Charitable Trusts Unit are true and correct and that the merger will be implemented in accordance with the

Notice and documents submitted in response to the Charitable Trusts Unit's requests for information.

2. Conflicts of Interest: There are no conflicts of interest or pecuniary benefit transactions involving directors or officers of ISHC or UCVH contemplated as part of the Merger Agreement.

Conditions

3. Commitment to Offering Services in Colebrook: For a period of at least five (5) years, UCVH will either operate or contract with Weeks Medical Center to operate an RHC on the property currently owned by ISHC in Colebrook, providing the same health care, outreach, and care coordination services currently offered by ISHC, subject to material adverse federal regulatory changes to RHC reimbursement and structure. In the event of material adverse federal regulatory changes to RHC reimbursement and structure, UCVH shall operate a primary care practice for a period of at least five (5) years on the property currently owned by ISHC in Colebrook, providing the same health care, outreach, and care coordination services currently offered by ISHC.
4. Charity Care Program: For a period of at least five (5) years, UCVH shall implement at the health clinic operated on the property currently owned by ISHC (a) a charity care program to offer free care to patients with household incomes below 300% of the federal poverty level, provided that the patient applies for Medicaid and provides documentation to support income level; and (b) a self-pay discount of approximately 40%.
5. Behavioral Health: For a period of at least five (5) years, UCVH shall offer on-site at the health clinic operated on the property currently owned by ISHC outpatient behavioral health services, substance use disorder services, including medication-assisted treatment, and care management/outreach. These services shall be made available to individuals regardless of whether they are primary care patients of NCH.
6. Retail Pharmacy Discount Program: For a period of at least five (5) years, UCVH shall offer to eligible individuals a pharmacy financial assistance program at the health clinic operated on the property currently owned by ISHC. The program shall be as described in the "Pharmacy Financial Assistance Program" document attached as Exhibit A, except that the unavailability of manufacturer samples shall not be a pre-condition to application for the financial assistance program unless the samples are unexpired, properly labeled, and medically-appropriate, and dispensing the samples will not lead to interruptions in therapy once the samples are exhausted.
7. Satellite Facility: Within two (2) years after the effective date of the merger, UCVH shall open a satellite facility in West Stewartstown to offer primary

care services and shall maintain that facility for a period of at least five (5) years.

8. Transportation: As part of its outreach and care management services, for a period of at least five (5) years, UCVH shall offer transportation assistance to patients of its health clinic operated on the property currently owned by ISHC. This assistance may include making arrangements for patient transportation or providing patient transportation through an arrangement with a third party provider.

This no further action report concerns the review of the Charitable Trusts Unit pursuant to RSA 7:19-b and does not implicate the jurisdiction of any other bureau of the New Hampshire Department of Justice which may also have a role in reviewing this proposed transaction.

EXHIBIT A TO
REPORT OF THE DIRECTOR OF CHARITABLE
TRUSTS



Pharmacy Financial Assistance Program

Purpose:

The intent of this program is to provide access to home medications to those that qualify based on financial need and who might not be able to afford their medications otherwise. There are various options, identified below. The Pharmacy Financial Assistance Program (PFAP) is the option of last resort and is only applicable to prescriptions filled through the North Country Healthcare Retail Pharmacy located in Colebrook, NH.

This program is separate from all other Hospital or Rural Health Clinic (RHC) Financial Assistance programs offered by North Country Healthcare (NCH), Upper Connecticut Valley Hospital (UCVH) and Weeks Medical Center (WMC).

Policy:

This policy details the options available for patients who cannot afford their home medications. Pharmaceuticals supplied while a patient in the hospital are covered under the Hospital Financial Assistance Program.

Identification of patients potentially needing assistance with medication may happen through any of our clinical areas. These patients should then be referred to the Pharmacy Assistance Coordinator in the Physician Offices who will first review available options to include:

- Manufacturer samples available in the office
- Vouchers to local pharmacies
- Industry medication assistance programs

If none of these options are viable, patients may apply to the PFAP. An application and financial information which include asset testing and income qualification are required and will need to be re-certified annually.

Financial assistance does not apply to amounts that are covered by insurance or other funding sources. Patients are expected to obtain and maintain health insurance coverage if affordable coverage is available to them. All patients requesting financial assistance will be screened for potential Medicaid and Medicare eligibility, Insurance Exchange or Employer sponsored Insurance coverage.

Definitions:

340B Drug Pricing Program: The 340B Drug Pricing Program is a federal program that requires drug manufacturers participating in the Medicaid Drug Rebate Program to provide outpatient drugs to enrolled "covered entities" at or below the statutorily-defined ceiling price. This requirement is described in Section 340B of the Public Health Service Act and codified at 42 USC 256b. The purpose of the 340B Program is to enable these entities to stretch scarce federal resources, reaching more eligible patients and provide more comprehensive services.

Procedure:

Patients must be identified by the Pharmacy Assistance Coordinator as potentially eligible for this program. An application form will be provided to the patient.

Eligibility will be determined by the following criteria:

- The prescription was written by a Provider in the NCH Clinic in Colebrook, NH. This is a requirement per 340B statutes.
- The household annual income does not exceed 200% of the Federal Poverty Guidelines based upon family size.
 - Annual income will be calculated based on gross annual wages for the patient/spouse (significant other if shared minor children are living in same household) and other dependents (claimed on the most recent tax return) living in the household will be considered in the calculation.
 - Please see the WMC Financial Assistance Policy for further details regarding income calculations.
- Household defined assets will not exceed 200% of the Federal Poverty Guidelines based upon family size to correspond to one year of living expenses.
 - All liquid assets will be included, with the exception of \$2,500 per individual or \$5,000 per family and retirement plans.
 - All physical assets will be included, with the exception of the primary residence and one automobile per individual and two per family.

Specific dollar amounts per family size are referenced in the Financial Chart – addendum to the Financial Assistance Policy.

Discount offered upon acceptance into the program will be as follows:

- 340B cost of the medication, plus a per prescription dispensing fee of \$12.00

Reference to other Policies:

- Financial Assistance Policy
- Financial Chart (Federal Poverty Levels)
- Hospital Pharmacy Assistance Program
- Pharmaceutical Assistance Program Steps

Title:

Owner: VP Finance

Approved by:

Accrediting/Lic Body

Standard/Rule # 42 USC 256b

Effective Date: 11/1/2021

Reviewed:

Revised: