

**PROPOSED WITHDRAWAL BY  
HUGGINS HOSPITAL AND  
MONADNOCK COMMUNITY HOSPITAL  
FROM  
GRANITEONE HEALTH**

**REPORT OF THE CHARITABLE TRUSTS UNIT**

**December 1, 2023**

**I. INTRODUCTION**

GraniteOne Health (“GraniteOne”) is a New Hampshire voluntary corporation founded in late 2016 to effectuate an affiliation among Huggins Hospital (“Huggins”), Monadnock Community Hospital, (“Monadnock”) and Catholic Medical Center (“CMC”). Effective January 1, 2017, GraniteOne became the sole corporate member of Huggins and Monadnock and a co-member of CMC.<sup>1</sup> On June 16, 2023, Huggins and Monadnock submitted to the New Hampshire Department of Justice, Charitable Trusts Unit (“CTU”) a notice of a proposed change in control pursuant to RSA 7:19-b (“[Notice](#)”).<sup>2</sup> Under the proposal, Monadnock and Huggins will withdraw from GraniteOne, and GraniteOne will be dissolved. This report describes the proposed transaction and the conclusions of the CTU.

1. GraniteOne Health

GraniteOne is a New Hampshire voluntary corporation formed on November 21, 2016. It is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (the “IRC”). According to its articles of agreement,<sup>3</sup> the purpose of GraniteOne is to serve as a “supporting organization,” pursuant to Section 509(a)(3) of the IRC, for Huggins, Monadnock, and CMC (the “Affiliated Hospitals”). As a supporting organization, GraniteOne’s purposes are to:

Promote cost savings, efficiencies, and quality improvements in the provision of healthcare services to the communities served by each of the Affiliated Hospitals;

Preserve the charitable missions of each of the Affiliated Hospitals and to protect the ability of the Affiliated Hospitals to perform their existing charitable missions in the future by creating a regional healthcare network

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<sup>1</sup> The Director of Charitable Trusts reviewed this acquisition transaction pursuant to RSA 7:19-b and, on November 3, 2016, issued a report taking no action with respect to the transaction, subject to certain conditions. The director’s report is available on the [CTU’s website](#).

<sup>2</sup> The Notice and accompanying documents, as well as the response to the CTU’s request for additional information is available on the Department of Justice [website](#).

<sup>3</sup> The articles of agreement and, as applicable, enabling legislation for GraniteOne, Huggins, Monadnock, and CMC, as well as any amendments thereto, are available on the [website](#) of the New Hampshire Secretary of State.

that will allow the Affiliated Hospitals to collectively face their current challenges in a way that would not be possible independently;

Integrate the management, administrative and clinical functions of the Affiliated Hospitals in a manner that will align the missions, clinical services, and economic interests of the Affiliated Hospitals, and will create an integrated healthcare system that will allow for greater coordination of care, implementation of best practices, elimination of inefficiencies and collaborative regional planning, all of which will improve the quality and reduce the cost of care for the communities served by the Affiliated Hospitals; and

Enhance the charitable missions of each [of] the Affiliated Hospitals by: (1) developing a clinical integration program to evaluate and modify provider practices; (2) creating a high degree of interdependence and cooperation to control costs; (3) ensuring quality of care and greater patient access to care; and (4) broadening the charitable missions of the Affiliated Hospitals collectively to the communities served by the Affiliated Hospitals.

GraniteOne is the sole corporate member of Huggins and Monadnock, and is, together with CMC Healthcare System (“CMCHS”), a co-member of CMC. As the sole corporate member of Huggins and Monadnock, GraniteOne holds certain reserved powers over the two hospitals. These reserved powers are discussed in greater detail in Section I.B.2. below.

GraniteOne is governed by a 13-member board of trustees. CMC appoints 7 of the trustees, and Huggins and Monadnock each appoint 1 trustee. The remaining seats are filled by the CEOs of the three hospitals and the CEO of GraniteOne, all of whom serve as *ex officio* members with full voting rights.

GraniteOne is exempt from federal income taxation under Section 501(c)(3) of the IRC and is registered and in good standing with the CTU.

## 2. Huggins Hospital

Huggins was formed by statute in 1907.<sup>4</sup> Its purpose is “to establish and maintain in the town of Wolfeboro an institution for such nursing, care, support, and medical and surgical treatment of sick and disabled people, as are usually provided and furnished by similar institutions.” Huggins currently operates an acute care, 25-bed, Critical Access Hospital. Huggins provides primary and secondary acute care services, including inpatient, outpatient, emergency care, ambulatory care, and some specialty care services. It primarily serves the communities of Alton, Brookfield, Effingham, Freedom, Madison, Moultonborough, New Durham, Ossipee, Sanbornville, Sandwich, Tamworth, Tuftonboro, Wolfeboro, and their surrounding communities.

Huggins is governed by a board of trustees which, pursuant to its bylaws, must have between 8 and 18 members. One quarter of the members are appointed by

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<sup>4</sup> 1907 N.H. Laws 244.

GraniteOne. The remaining members are: the Huggins president; the president of the Huggins Medical Staff, and trustees appointed by the Huggins board, subject to GraniteOne's reserved right to approve or object to the appointments.

Huggins is exempt from federal income taxation under Section 501(c)(3) of the IRC and is registered and in good standing with the CTU.

### 3. Monadnock Community Hospital

Monadnock was incorporated in 1919 as The Peterborough Hospital with a purpose to "organize and conduct a general hospital or other kindred charitable institutions such as an infirmary, asylum, retreat or sanitarium, with training schools and such other auxiliaries as may be found desirable." Monadnock currently operates a 25-bed acute care Critical Access Hospital in Peterborough, as well as a network of professional offices in Peterborough and surrounding towns that provide primary and behavioral healthcare services. It primarily serves the communities of Antrim, Bennington, Dublin, Frankestown, Greenfield, Greenville, Hancock, Jaffrey, New Ipswich, Peterborough, Rindge, Sharon, Temple, and their surrounding communities.

Monadnock is governed by a board of trustees which, pursuant to its bylaws, consists of 5 *ex officio* trustees and between 9 and 16 elected trustees. One quarter of the elected trustees are nominated and elected by GraniteOne. The remaining elected members are appointed by the Monadnock board, subject to GraniteOne's reserved right to approve or object to the appointments.

Monadnock is exempt from federal income taxation under Section 501(c)(3) of the IRC and is registered and in good standing with the CTU.

### 4. Catholic Medical Center

CMC was founded in 1974 "[t]o establish and operate a hospital in the city of Manchester," and "[t]o maintain its identity as a Catholic Hospital."<sup>5</sup> It was created through a merger of Sacred Heart Hospital (founded 1892) and Notre Dame Hospital (founded 1894). CMC operates a 330-bed acute care hospital, providing a range of surgical care, as well as subspecialties, inpatient and outpatient rehabilitation services, an emergency department, outpatient behavioral health services, diagnostic imaging, and a heart and vascular institute.

GraniteOne and CMCHS are co-members of CMC. CMCHS is the public juridic person of diocesan right of the Catholic Bishop of the Diocese of Manchester and functions as the corporate mechanism by which the Bishop oversees CMC to insure its implementation of and compliance with Catholic teaching and doctrine. CMC is governed by a board of trustees which, pursuant to its bylaws, consists of between 12 and 25 trustees. Four trustees serve as *ex officio* members, 25% of the trustees are medical staff members who also serve on the medical staff of CMC, and the remaining

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<sup>5</sup> In the years since its founding, CMC's purpose has changed slightly. Its articles of agreement now refer to a purpose to operate "an *acute care* hospital" and to maintain its identity "as an *acute care* hospital in the Roman Catholic tradition" (emphasis added).

trustees are community trustees who are selected by the board, subject to the reserved right of CMCHS to approve of those appointments.

CMC is exempt from federal income taxation by virtue of its inclusion in the Official Catholic Directory and the IRS Group Ruling held by the Diocese of Manchester. It is registered and in good standing with the CTU.

Although CMC is a part of the GraniteOne affiliation, its withdrawal from GraniteOne is not an acquisition transaction subject to review by the CTU under RSA 7:19-b. As explained in greater detail in Section I.B.1. below, control of CMC did not change when GraniteOne became its co-member. Control will similarly not change when GraniteOne ceases to be CMC's co-member.

## **B. The Proposed Disaffiliation**

### **1. Summary of the Existing Affiliation**

As noted above, GraniteOne has the authority to appoint 25% of the Huggins and Monadnock board members and to object to any appointee to fill the remaining 75% of each board's seats. GraniteOne also must approve many of the actions taken by the Huggins and Monadnock boards, including:

- Approval of annual capital and operating budgets;
- Approval of strategic plans or material nonclinical programming;
- Authorization of debt incurred, assumed, or guaranteed in excess of \$5,000,000;
- Authorization to develop, implement, or terminate clinical programs and procedures;
- Certain amendments of the hospitals' bylaws and articles of agreement; and
- Appointment, reappointment, and compensation of the hospitals' CEOs.

The Huggins and Monadnock boards' decisions to grant these powers to GraniteOne constituted a change-of-control transaction and was reviewed as such by the Director of Charitable trusts in 2016. However, the decision by CMC's board to enter into GraniteOne did not constitute a change-of-control transaction because, although CMC granted certain reserved powers to GraniteOne, CMC also controlled GraniteOne by appointing a majority of its board members. In addition, the reserved powers granted to GraniteOne by CMC are far less extensive than those granted by Huggins and Monadnock. As its other co-member, CMCHS holds significant reserved powers over CMC, but that relationship did not change during the affiliation and will not change as a result of Huggins's and Monadnock's withdrawal from GraniteOne.

Under the terms of its affiliation agreement, GraniteOne was formed to serve 8 enumerated purposes:

- Furtherance of compatible charitable missions;
- Ensure long-term organizational stability;
- Integration and collaboration of care;

- Focus on local board initiation;
- Advancing and supporting information technology;
- Developing excellence in population health management;
- Achieving and maintaining appropriate specialty services; and
- Assuring sufficient financial capacity.

The hospitals did not, however, make much meaningful progress toward achieving these purposes throughout the course of their affiliation. Among the most notable steps the hospitals made in these efforts were:

- Some system-wide support for compliance;
- Some system-wide support for contracting;
- IT support, including electronic medical record support (Huggins) contract management software, and prescription software;
- Development of an accountable care organization (“ACO”) (although the ACO has not made significant progress toward its goals); and
- Some benefits that are not readily quantifiable, such as stakeholder comfort knowing that the smaller hospitals are a part of a larger system, and increased name recognition resulting in potential benefits to recruitment efforts.

Both hospitals identified some benefits that they gained from direct service agreements with CMC, independent of the GraniteOne affiliation. In their Notice, the parties state that these service contracts will not be terminated upon the withdrawal by Huggins and Monadnock from GraniteOne. The contracts include the provision by CMC of cardiology, gastrointestinal, hospitalist, tele-stroke, and other clinical services, as well as laboratory services. According to the Notice, the parties intend to maintain these contracts following their withdrawal from and dissolution of GraniteOne.

## 2. Terms of Disaffiliation

Under the terms of the parties’ affiliation agreement, as amended, the hospitals have the option to withdraw from GraniteOne without cause, provided that they give notice to GraniteOne prior to November 13, 2022. The Huggins and Monadnock boards both voted in late October to provide notice to the other hospitals of their intent to withdraw.

As part of their notice, the parties provided a “Plan of dissolution and satisfaction of debt of GraniteOne Health,” which includes draft resolutions for its board of trustees, draft filings for submission to the New Hampshire Secretary of State, and draft communication to the CTU. The plan includes a distribution of the minimal assets of GraniteOne health consistent with the GraniteOne articles of agreement, as well as the process by which GraniteOne will pay any outstanding debts it owes.<sup>6</sup> In their responses to the CTU’s request for supplemental information, the parties also provided a list of amendments they expected to make to their governing

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<sup>6</sup> In the Notice, the parties represent that GraniteOne acquired no assets and incurred no debt. Notice at 15.

documents to finalize their withdrawal, although they did not provide drafts of those amendments.

The parties do not have written agreements among themselves to, for example, specify how any disputes among them may be resolved in the course of the withdrawal and dissolution (including with respect to any reconciliation and payment of outstanding assessments to GraniteOne) or how Huggins and CMC will manage the disentanglement of their electronic medical record systems. In addition, although the parties represented in their Notice that they intend to maintain the service contracts that exist independently of GraniteOne, this commitment has not been memorialized in an agreement or contract among them, except to the extent that these contracts themselves may provide.

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

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

Under 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. The proposed disaffiliation does not conform to the dictionary definition of an "acquisition," but it is unambiguously an "acquisition transaction" as that term is defined in state law. An "acquisition transaction" means "transfer of control, direct or indirect, of a health care charitable trust, or of 25 percent or more of the assets thereof . . ." RSA 7:19-b, I(a).

As noted above, when Huggins and Monadnock joined GraniteOne in 2017, GraniteOne became the sole corporate member of both with significant reserved powers. By disaffiliating from GraniteOne, Huggins and Monadnock will reacquire the powers that they had previously ceded to GraniteOne, including the power to nominate their own boards of directors and to take any of the actions listed in Section I.B.1. above without subsequent approval by GraniteOne. The disaffiliation is, therefore, a change of control that meets the definition of "acquisition transaction" under RSA 7:19-b, I(a). This office reached the same conclusion with respect to Littleton Regional Hospital's withdrawal from North Country Health in 2019.<sup>7</sup>

There is no ambiguity in the statute as to the definition of "acquisition transaction." Huggins and Monadnock suggest in their Notice that the statute does not apply to transactions such as this. Notice at 2. However, where an agency charged with administering a statute interprets the statute consistently over time without interference by the legislature, that interpretation is presumed to conform to legislative intent. *N.H. Ctr. For Pub. Interest Journalism v. N.H. D.O.J.*, 173 N.H. 648, 657 (2020). If the legislature did not intend for the CTU to review disaffiliation transactions, it could have amended RSA 7:19-b at any time since 2019. It has not.

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<sup>7</sup> <https://www.doj.nh.gov/news/2019/documents/20191014-littleton-hospital.pdf>

## **B. Review Process**

In making this determination, the CTU is required to accept public comment and may conduct public hearings. RSA 7:19-b, IV. The CTU has not received any public comment regarding the transaction and has elected not to hold a public hearing. The CTU's decision not to hold a public hearing was also informed by the lack of public attention garnered by the parties' June 12, 2023, listening session, despite the parties' wide publicization of that event.

As part of its review, the CTU may employ, at the parties' expense, expert assistance, including independent counsel and independent financial advisors that are reasonably necessary to confirm the parties' compliance with the statute. RSA 7:19-b, IV(a). In this instance, the CTU has determined that this additional expert assistance is not necessary.

The CTU received the parties' Notice on June 16, 2023. After reviewing the Notice, the CTU requested that the parties provide additional information and documentation on July 19, 2023. The parties provided that additional information on August 30, 2023. The Notice, associated documents, and supplemental information are available on the CTU's website at <https://www.doj.nh.gov/charitable-trusts/graniteone-dissolution.htm>.

As part of its review, the CTU engaged with community stakeholders and sought the input of the NH Department of Health and Human Services and the NH Department of Insurance. Their input has been incorporated into this report and its conclusions.

On September 27, 2023, the CTU met with the Monadnock Board of Directors at one of the Board's regularly scheduled meetings. On September 28, 2023, the CTU met with the Huggins Board of Directors at one of the Board's regularly scheduled meetings. Both boards demonstrated significant involvement and understanding of the disaffiliation process. They articulated clear reasons for their desire to withdraw from GraniteOne and explained their plans for their respective hospitals following the consummation of their withdrawals. Their reasoning and plans are discussed in greater detail in Section II.C.2 below.

In conducting its review of the acquisition transaction under RSA 7:19-b, IV, the CTU reviewed the Notice and all documents appended thereto, the supplemental information provided by Huggins and Monadnock in response to requests from the CTU, the information provided by Huggins and Monadnock at the listening session, and input from the Department of Health and Human Services and the Insurance Department.

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 withdrawals, subject to the representations and conditions set forth in this report.

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

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

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

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

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

The proposed transaction does not implicate the doctrines of *cy pres* or deviation because the charitable purposes of Huggins and Monadnock will not change. Both hospitals hold donor-restricted funds, but they retained control over those funds throughout their affiliation with GraniteOne and will continue to retain that control after withdrawal. Court approval under the doctrine of *cy pres* or deviation will not be required. The CTU's review did not identify any other applicable laws that would otherwise prohibit the transaction.

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

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

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

##### *a. Selection of the Acquirer*

In this instance, unlike typical acquisition transactions, Monadnock and Huggins have not sought to transfer control of their organizations to another entity. The entity that will acquire control of Monadnock is Monadnock itself, and the entity that will acquire control of Huggins is Huggins itself.

The materials presented describe efforts by both hospitals to evaluate the effectiveness of their affiliation with GraniteOne and their options going forward. Both boards concluded that the GraniteOne affiliation had not yielded the intended results. Both boards used the goals and purposes articulated in the affiliation agreement as a basis for their analyses. They thoroughly reviewed each purpose, identified limited areas in which the GraniteOne affiliation had yielded results, and numerous areas in



which it had not. The boards then each considered whether to remain in GraniteOne and seek to improve it or to leave GraniteOne.<sup>8</sup>

*b. Use of Expert Assistance*

In conducting their due diligence with respect to the transaction, the parties both hired outside consultants. Monadnock used Forvis Capital Advisors, and Huggins used Stroudwater Associates. Both hospitals have used these consultants for many years, and both consultants were involved in the hospitals' decisions to join GraniteOne and negotiate the terms of that affiliation. In discussions with the CTU, both boards confirmed that they had not considered any other consultants, mainly because these consultants were already familiar with the hospitals' circumstances.

There are certainly efficiencies to be gained by utilizing familiar consultants. In this case, however, the consultants in question were instrumental in the consideration and creation of the affiliation that the hospitals now represent provide them little value. The hospitals could reasonably have questioned whether the advice provided to them in the past by these consultants had served them well. Although the hospitals are entitled to select their own consultants, they should have at least considered whether the consultants that got them into GraniteOne were best positioned to advise them on their withdrawal from it.

The CTU's review included the materials provided to the hospitals' boards by Forvis and Stroudwater. That review did not identify a basis to determine that the consulting services were compromised by the consultants' earlier involvement. Thus, although the boards should have considered other options, their decision not to did not appear to have materially impacted their decision to withdraw from GraniteOne.

In addition to Forvis and Stroudwater, both Huggins and Monadnock sought the legal advice of Orr & Reno P.A. In addition, Attorneys for Devine Millimet & Branch, P.A. (the firm representing GraniteOne and CMC) assisted the boards with preparing their Notice to the CTU and responding to the CTU's requests for supplemental information.

In its request for supplemental information, the CTU asked both hospitals to submit copies of any financial forecasts they considered in connection with the transaction. The hospitals responded that they had not considered any financial forecasts (although Huggins clarified during its meeting with the CTU that it had internally prepared financial forecasts). The hospitals explained that, because Huggins and Monadnock did not combine their assets with GraniteOne, they did not believe that any additional financial forecasting was necessary.

As is often the case with a corporate member substitution affiliation, it is true that Huggins and Monadnock did not "combine" their assets and debts with GraniteOne. It is also true, however, that withdrawing from GraniteOne will have an impact the hospitals' finances. The hospitals should have obtained forecasts on the nature and extent of those impacts. In this instance, the available information strongly

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<sup>8</sup> A third option of remaining in GraniteOne until an alternative preferable partner could be identified does not appear to have been considered in detail by either Huggins or Monadnock.

suggested to the hospitals that their finances would improve, largely because they will no longer be obligated to pay affiliation costs to GraniteOne, and because GraniteOne was not providing the hospitals with significant benefits. Although obtaining a financial forecast would have better informed the boards' decisions, their failure to do so here does not form a basis to object to the proposed transaction.

*c. Negotiating the Terms and Conditions*

The negotiated terms of the hospitals' withdrawal from GraniteOne are minimal. Huggins and Monadnock submitted draft articles of dissolution and a plan of dissolution as Appendix C-1 to their notice. These materials principally deal with the satisfaction of GraniteOne's remaining debts and the distribution of its minimal assets. The plan does not, however, address how the parties might resolve any conflicts that may arise among them with respect to the withdrawal.<sup>9</sup> Similarly, although the parties have promised in their Notice and at their public hearing that the withdrawal will have virtually no effect on their served communities, no enforceable agreement exists that might support the hospitals in fulfilling this promise.

The CTU's review did not identify any outstanding issues between Monadnock and GraniteOne that might negatively impact Monadnock's ability to adhere to this promise. Huggins, however, is engaged in negotiations with GraniteOne over two issues related to its withdrawal. First, Huggins currently uses an electronic medical record ("EMR") system and enterprise resource planning ("ERP") system that is hosted by GraniteOne. Although the Huggins board has approved a contract with another provider and plans to transition to new EMR and ERP systems, this process will take many months to accomplish. Huggins is currently negotiating with GraniteOne the terms of that transition. Second, Huggins is currently negotiating with GraniteOne the calculation by which its affiliation costs are determined. The outcome of that negotiation may change, by several hundred thousand dollars, the amount that Huggins will be required to pay GraniteOne.

Because these terms are still actively being negotiated, this requirement will only be satisfied subject to the conditions provided for in this report.

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

The Notice provides vague and occasionally contradictory information as to why the withdrawal is in the best interests of the hospitals and the communities they serve.

First, it outlines the challenges that Huggins and Monadnock are facing in the wake of the COVID-19 pandemic. These challenges include increased staffing costs and difficulty with recruiting.<sup>10</sup> It is not unusual for a Notice to the CTU to identify these and other similar challenges as reasons for entering a change-of-control

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<sup>9</sup> The parties' Affiliation Agreement includes a skeletal dispute resolution clause that focuses solely on venue and choice of law.

<sup>10</sup> The Notice refers to the "different challenges that each hospital faced," but only names challenges that are common to all.

transaction. However, these challenges are more commonly cited as reasons to affiliate, not to withdraw from an affiliation. Apart from “greater flexibility and promptness” and fewer “administrative hurdles,” the Notice did not explain how the hospitals would be better positioned to address these pandemic-related issues independently, rather than as part of a system.

Second, the Notice briefly outlines other sources of increased costs (a shifting payor mix, high technology costs, and expanding government and regulatory mandates) and explains that these increasing costs limited GraniteOne’s ability to invest in system-wide initiatives. Here again, however, there is no explanation as to why the hospitals and their communities are better served by withdrawing from GraniteOne.

Third, the Notice explains that GraniteOne’s efforts to affiliate with Dartmouth-Hitchcock Health (“DHH”) occupied most of the system’s attention and resources for many years. When the State objected to that transaction on antitrust grounds, the GraniteOne hospitals decided to “stop and reassess the benefits” of their affiliation. The Notice does not detail the results of that reassessment. The hospitals represent that this larger affiliation with DHH was important to the hospitals and their ability to serve their communities, but the Notice provides little detail as to why the failure of that larger affiliation should necessarily lead to the hospitals’ withdrawal from their existing affiliation.

Finally, the Notice explains that, because the integration of the GraniteOne hospitals was limited, their withdrawal will not negatively impact the communities they serve.<sup>11</sup> This may be the case, but it is at best an explanation as to why a withdrawal will render the hospitals and their communities no worse off than they are now. It is not a positive case for why the withdrawal will be better for the hospitals and their communities.

Because the hospitals’ reasoning for their withdrawals was not stated with clarity in their Notice, the CTU asked for clarification as part of its request for supplemental information. For example, the CTU asked why Huggins and Monadnock would be better positioned to address rising labor costs, a shifting payor mix, high technology costs, and expanding regulatory mandates as independent hospitals, rather than as part of a system. The hospitals responded—again vaguely—that their individual needs differed, and that they “may” wish to address those needs differently.

Similarly, the CTU’s request for supplemental information asked the Huggins board how it had answered certain questions evaluating its options with respect to remaining in and improving GraniteOne or withdrawing from the affiliation. The response explained the Huggins board’s process by which it answered the questions but provided no explanation as to the conclusions it reached.

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<sup>11</sup> In this section, the Notice explains that “system-wide initiatives were never implemented that would be affected by the withdrawal.” Although Huggins’s use of the GraniteOne EMR and ERP systems may not, strictly speaking, be “system-wide” because it did not involve Monadnock, as explained in Section II.C.2.c above, this initiative will certainly be affected by the withdrawal.

Because the hospitals' written materials offered little explanation as to why the withdrawal was in their best interests, this topic was a central focus of the CTU's discussions with the hospitals' boards. Through these discussions, a much more straightforward rationale for the withdrawal emerged. Both hospitals' boards spoke at length about the high costs of participating in GraniteOne in terms of finances and staff time.<sup>12</sup> Both hospitals explained that they had joined GraniteOne believing that the time and money they put into GraniteOne would produce benefits that were commensurate with those contributions. Ultimately, however, they found that participating in GraniteOne cost them far more than it benefitted them. They derived more benefit from the various service contracts they have with CMC and other providers than they did from participation in the GraniteOne system.

This issue is alluded to in the Notice but does not feature prominently—certainly not to the extent that the boards focused on it during their discussions with the CTU. It provides a clear and compelling reason why withdrawal from GraniteOne and focusing on service contracts over an affiliation are in the best interests of the hospitals and the communities they serve. Making the hospitals' reasons for withdrawing clear from the outset would have facilitated the CTU's review. Nevertheless, based upon the combination of the Notice, the responses to the CTU's request for supplemental information, and the boards' conversations with the CTU, Huggins and Monadnock have provided an adequate explanation for how they concluded that the withdrawal is in the best interests of the hospitals and the communities they serve.

It is central to the parties' explanation, however, that their communities will not be negatively affected by the withdrawal. Thus, this factor will only be satisfied subject to the conditions laid out in this report.

### 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;

The members of the Huggins and Monadnock Boards confirmed in an April 30, 2023, certification to the CTU that “[a]ny conflict of interest, or any pecuniary benefit transaction as defined in RSA Chapter 7, has been disclosed and has not affected the decision to approve the Withdrawal and Dissolution. We are not aware that there are any conflicts of interest.”<sup>13</sup> 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. The requirement of RSA 7:19-b, II(c) are satisfied.

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<sup>12</sup> Although not cited as a reason for the withdrawal, these many hundreds of thousands of dollars of payments are accounted for on the hospitals' financial statements submitted with their Notice.

<sup>13</sup> This Certification was appended to the Notice and is posted to the [CTU's website](#).

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

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

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

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

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;

By withdrawing from GraniteOne, Huggins and Monadnock will regain full control of their charitable assets. Their decisions with respect to their general charitable assets will be required by law to be consistent with each hospital's charitable purpose.

Both Huggins and Monadnock also hold certain donor-restricted funds. When GraniteOne formed, the CTU noted concerns regarding both hospitals' accountings of these funds. It was a condition of the CTU's report on that affiliation that both hospitals resolve the CTU's concerns. Both did in 2017. As part of its review of this transaction, the CTU obtained updated accountings of Huggins's and Monadnock's donor-restricted funds. These accountings were consistent with what would be expected, based upon their reported values in 2017 and the hospitals' investment policies.

The parties have satisfied the requirements of this section.

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

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

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

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

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

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

Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust,

along with reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

On May 25 and June 1, 2023, the parties published notices of the proposed disaffiliation in newspapers with circulation in the Huggins and Monadnock service areas. These notices informed the public of the parties' public listening session. On June 12, 2023, the parties posted to the GraniteOne website and to the websites of Huggins, Monadnock, and CMC, documents relating to the proposed disaffiliation and information on accessing the listening session.

The parties held a virtual public listening session on June 12, 2023, at 4:00 pm. Twenty-nine people attended. The majority of the attendees were board members, speakers, staff members, or others professionally affiliated with Huggins or Monadnock. The parties estimated that only 11 of the participants were community members.

Members of the public posed three questions regarding the transaction: how long the parties expected the disaffiliation to take, whether the disaffiliation would impact the types of insurance that Huggins and Monadnock would accept, and whether CMC's cardiologist would continue to service Huggins. The presenters explained the CTU's 180-day statutory review period and represented that the disaffiliation would not impact the insurance plans accepted by Huggins and Monadnock, and that CMC's cardiologist services would continue to be available at Huggins.

As of the parties' August 30, 2023, response to the CTU's request for supplemental information, no additional public questions or comments have been received.

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

After reviewing the evidence, the CTU concludes that Huggins and Monadnock's decisions to withdraw from GraniteOne were informed and based on reasonable beliefs that the disaffiliation would further their respective charitable missions and would be in the best interests of the communities they serve.

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

#### **A. Representations**

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

Huggins and Monadnock represent that the statements and documents made or provided in the Notice and the documents thereafter submitted to the CTU are true and correct. They further represent that the disaffiliation will be implemented in

accordance with the Notice and documents submitted in response to the CTU's requests for information.

2. Conflicts of Interest:

There are no conflicts of interest or pecuniary benefit transactions involving directors or officers of Huggins or Monadnock contemplated as part of the transaction.

**B. Conditions**

1. Contractual Benefits to Huggins Community

For a period of three years following the disaffiliation, Huggins will not terminate or allow the expiration of any of its contracts with CMC in effect at the time of the dissolution and listed in Exhibit C to the parties' August 30, 2023, response to the CTU's request for supplemental information unless it has in place an alternative arrangement or successor contract with another party that will result in no loss of services or benefits to its served community.

In the event that CMC terminates or refuses to renew one of these contracts, Huggins will exercise its best efforts to put in place a successor contract that will eliminate or minimize any potential negative impact on its served community.

If Huggins determines that any of these contracts is no longer required by Huggins's served community, Huggins will not terminate the contract or allow it to expire without first giving the CTU 30 days' notice and an opportunity to object to the termination or expiration of the contract.

2. Disposition of Unresolved Matters between Huggins and GraniteOne

Huggins will not effectuate its withdrawal from GraniteOne, and GraniteOne will not dissolve, until the parties have reached agreement on the terms of Huggins's transition from the GraniteOne-hosted EMR and ERP systems (including infrastructure) to its new EMR and ERP systems, and the resolution of any outstanding affiliation costs. Huggins will provide to the CTU a written explanation of the material terms of these agreements.

3. Contractual Benefits to Monadnock Community

For a period of three years following the disaffiliation, Monadnock will not terminate or allow the expiration of any of its contracts with CMC in effect at the time of the dissolution and listed in Exhibit D to the parties' August 30, 2023, response to the CTU's request for supplemental information unless it has in place an alternative arrangement or successor contract with another party that will result in no loss of services or benefits to its served community.

In the event that CMC terminates or refuses to renew one of these contracts, Monadnock will exercise its best efforts to put in place a successor contract that will eliminate or minimize any potential negative impact on its served community.

If Monadnock determines that any of these contracts is no longer required by Monadnock's served community, Monadnock will not terminate the contract or allow it to expire without first giving the CTU 30 days' notice and an opportunity to object to the termination or expiration of the contract.

#### 4. Charity Care

For a period of three years following the disaffiliation, no changes will be made to the Huggins or Monadnock charity care policies that would render them any less generous than the policies currently in place.

#### 5. Community Benefit Spending

For a period of three years following the disaffiliation, Huggins and Monadnock will maintain a level of community benefit spending that is proportionate to or greater than its current ratio of community benefit spending to net patient service revenue.

#### 6. Notification of Disputes

Huggins and Monadnock will give notice to the CTU in the event a dispute arises among any of the hospitals and/or GraniteOne that could result in a material change to the terms of the disaffiliation as those terms have been communicated to the CTU in the Notice, responses to the CTU's request for supplemental information, or meetings with the hospitals' boards of directors.

#### 7. Closing

Huggins and Monadnock will give notice to the CTU upon completion of their respective withdrawals from GraniteOne.

#### 8. Reporting

Together with their respective NHCT-12 annual reports to the CTU for fiscal years 2024, 2025, and 2026, Huggins and Monadnock will provide a letter attesting to their compliance with Conditions 4 and 5. The letter will also identify (for Huggins) any contracts described in Condition 1 that are no longer in effect and (for Monadnock) any contracts described in Condition 3 that are no longer in effect.

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