

**PROPOSED MERGER BETWEEN CENTRAL NEW HAMPSHIRE VNA & HOSPICE  
AND CONCORD REGIONAL VISITING NURSE ASSOCIATION, INC.**

**REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS**

**JANUARY 11, 2021**

I. Introduction

On August 5, 2020, Central New Hampshire VNA & Hospice (“Central VNA”) 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](#)”).<sup>1</sup> Under the proposal, Central VNA would merge with Concord Regional Visiting Nurse Association, Inc. (“Concord VNA”), and Concord VNA would be the surviving entity. This report describes the proposed merger and the CTU’s review and conclusions.

A. The Parties

Central New Hampshire VNA & Hospice

Central VNA was established in 2010 as a result of the merger of Hospice-Laconia Area Inc., based in Laconia, New Hampshire, and Visiting Nurse Association – Hospice of Southern Carroll County and Vicinity, Inc., based in Wolfeboro New Hampshire. Central VNA’s purpose as articulated in its articles of agreement is “to provide or coordinate diversified home and community health care and supportive services for adults, children and families.” *See* Articles of Agreement, Community Health & Hospice, Inc. (August 3, 1998).<sup>2</sup> Central VNA is licensed by the State of New Hampshire and is a Medicare-certified provider of home care and hospice services. Central VNA has approximately 100 employees and offices in Laconia and Wolfeboro. In addition to home care and hospice services, it offers rehabilitation services, pediatric health care, and education and support services to 43 towns in and around Laconia and Wolfeboro. Central VNA 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.

Concord Regional Visiting Nurses Association, Inc.

Concord VNA, formerly known as the Concord District Nursing Association, was established in 1899 when it began offering home health visits to families in Concord, New Hampshire. Today, Concord VNA is a licensed Medicare and Medicaid certified home health and hospice agency serving 44 municipalities in the Capital Region and several communities in the Lakes Region. Concord VNA, which has approximately 400 employees, provides a range of personalized services and programs including home care, hospice, palliative care, personal home services, pediatric and maternal child health services, and wellness programming. Concord VNA

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

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

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.

The sole corporate member of Concord VNA is Capital Region Health Care Corporation (“CRHC”), a charitable, nonprofit corporation within the meaning of RSA 7:21, II (b). CRHC is also the sole corporate member of Concord Hospital and Riverbend Community Mental Health.

## B. The Proposed Merger

### Background

In 2016, the board of trustees of Central VNA participated in a long-term strategic planning retreat at which the board discussed strategies for addressing certain challenges faced by Central VNA, including staffing shortages, clinical capacity issues, and the low reimbursement rate of Medicaid and Medicare programs. The board concluded that an affiliation with another visiting nurse association could help to alleviate these challenges and that Central VNA was in a good position to explore such an avenue because it was financially strong. Following the retreat, Central VNA initiated a process to identify an affiliation partner.

In late 2016, Central VNA entered into discussions about a potential affiliation with a visiting nurse association of a comparable size. Those discussions were suspended in February 2017, when Central VNA’s chief executive officer (“CEO”) announced her resignation, and Central VNA began a search for a new CEO.

In 2019, the board chairs and the CEOs of Central VNA and Concord VNA began discussions about the possibility of a collaboration. There were a number of factors that led to discussions about affiliating, including administrative burdens caused by changes to the Medicare payment system, the consolidation of referral sources as a result of mergers of hospitals and health care systems, and the nursing and labor shortages in the area. In addition, because of the financial condition of Lakes Region General Hospital and the unavailability of certain health care services at the hospital, including labor and delivery, patients began migrating to Concord for their health care. Concord Hospital, which is affiliated with Concord VNA by virtue of their connections to CRHC, generally refers patients to Concord VNA for home care services. As a result, Central VNA has been losing market share to Concord VNA, and Concord VNA has experienced a need for additional staffing in the Lakes Region area.

In November 2019, the boards of both organizations formed a trustee work group to explore an affiliation between Central VNA and Concord VNA. The trustee work group was comprised of the CEOs, some members of the boards, and certain staff members of both organizations. After the trustee work group met on a number of occasions to discuss the alignment of their cultures and the needs and strengths of both organizations, the Central VNA board concluded that Concord VNA would be an ideal partner because of the compatibility of their missions and culture and the ability to coordinate resources to better serve the Lakes Region community.

The organizations considered various affiliation structures but determined that a merger would be the most beneficial to both organizations, in part, because such organizational

integration would facilitate referrals between the parties. On March 19, 2020, Central VNA and Concord VNA signed a non-binding letter of intent to merge. The parties established a [website](#) on which they posted the proposed merger agreement and other information about the proposed merger, and on June 3, 2020, they held via Zoom videoconference a public listening session about the proposal that was “attended” by approximately 140 people. Attendees asked questions and made comments, the majority of which were supportive of the proposed merger. On July 1, 2020, the parties entered into a merger agreement, and on September 23, 2020, and October 13, 2020, the boards of Central VNA and Concord VNA, respectively, approved the proposed merged entity’s unified mission statement, board of trustees, articles of agreement, and bylaws.<sup>3</sup>

### Summary of the Merger Agreement

As discussed above, under the Merger Agreement, Central VNA would merge into Concord VNA, and Concord VNA will be the surviving entity. The name of the organization would remain, “Concord Regional Visiting Nurse Association, Inc.,” and its combined mission would be to “enhance dignity and independence for people by delivering quality health care and promoting wellness in homes and communities through all stages of life.” *See* October 2, 2020, Response to Request for Additional Information, Attachment C.<sup>4</sup> CRHC would continue to be the sole corporate member of Concord VNA.

The proposed Merger Agreement provides that the assets and liabilities of the two organizations would belong to the combined entity. *See* Merger Agreement, ¶ 3.1 (pp. 4-6).<sup>5</sup> However, with respect to donor-restricted funds existing before the merger, the combined entity would honor, assume responsibility for, and continue the maintenance, support, preservation, and management of the donor-restricted assets. *Id.*, ¶ 3.1.2 (p. 5). Any board-restricted or other operating reserves existing on the effective date of the merger would be used only for the communities served by the party that accumulated the reserves. *Id.*

The Merger Agreement provides for a 24 month “integration period.” *Id.*, ¶ 3.7 (p. 7). During this period of time, the board of trustees for Concord VNA would be comprised of 21 trustees: 14 trustees appointed by Concord VNA and 7 trustees appointed by Central VNA. *Id.*, ¶¶ 3.4, 3.5, 3.6 (p. 5-6). Thereafter, the trustees would have staggered terms of between 1 and 3 years, and the number of board seats, and nomination and election of trustees, would be determined by the board.<sup>6</sup> *Id.* A supermajority vote of 75% would be required for certain decisions, including a material change in programs, changes to the principal offices, geographic changes in services, and use of board designated funds. *Id.*, ¶ 3.8 (pp. 7-8). In addition, during the integration period, a supermajority vote would be required for decisions to hire, evaluate, compensate, and terminate the chief executive officer, for the approval of operating and capital budgets, and for any material change in the endowment and investment policies. *Id.*, ¶ 3.9 (p. 8).

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<sup>3</sup> The board of CRHC, the sole corporate member of Concord VNA, also voted to approve the merger agreement, including the appendices.

<sup>4</sup> The October 2, 2020, Response to Request for Additional Information may be found on the Department of Justice [website](#).

<sup>5</sup> The Merger Agreement is set forth in the Notice, Appendix G (page 192 of the Notice), and posted to the Department of Justice [website](#).

<sup>6</sup> After the initial integration period, the board would consist of between 15 and 21 trustees.

Beth Slepian, currently the CEO of Concord VNA, would become the CEO of the combined entity. *Id.*, ¶ 3.11 (pp. 8-9). Lisa Dupuis, currently the CEO of Central VNA, would become the Chief Operating Officer of the combined entity. *Id.* Ms. Slepian and Ms. Dupuis would develop an integration plan for the senior leadership of the combined entity. *Id.* The legal address for the combined entity would be in Concord, but the combined entity would “endeavor” to maintain three principal places of business: one in the Capital Region and two in the Lakes Region. *Id.*, ¶ 3.1.5 (p. 5).

## 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. Although RSA 7:19-b, IV requires that the Director make his or her determination within a reasonable time not to exceed 180 days after receipt of a notice of a proposed acquisition transaction, the deadline for review of the Notice was suspended in accordance with the Governor’s [Emergency Order #29](#), Exhibit B, issued as a result of the COVID-19 pandemic.

After receiving and reviewing the Notice on August 5, 2020, the Charitable Trusts Unit requested that Central VNA and Concord VNA provide additional information and documentation, which the parties provided on October 2, 2020 and October 14, 2020. The collection of documents submitted by the parties are included in the “Notice.”

On December 1, 2020, the Attorney General’s office issued a media release inviting public comment on the proposed merger and announcing a public hearing on December 15, 2020 via Zoom videoconference. During the public hearing, which was “attended” by 85 people, Kevin Stone, Senior Consultant at Helms & Company, Inc., testified about the environmental and local factors that led to discussions about a merger and the benefits of the proposed merger between the organizations. The chairs of the boards of Central VNA and Concord VNA also testified at the public hearing about the reasons why the boards determined that a merger would be in the best interests of the organizations and the communities they serve. The public comments submitted at the hearing were overwhelmingly supportive of the proposed merger. No public comments other than the comments submitted at the public hearing have been submitted to the Charitable Trusts Unit.

On December 21, 2020, the Director of Charitable Trusts and Assistant Director of Charitable Trusts met via Zoom videoconference with members of the board of directors of Central VNA, two of whom served as members of the trustee work group. The members demonstrated a clear understanding of the terms of the Merger Agreement and expressed their strong support. They mentioned that both organizations come together from positions of strength, offer complementary resources and assets, and have similar missions and commitments to the communities that they serve. They did not express any reservations about the merger.

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. Central VNA 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 Central VNA would be merged into Concord VNA, and Concord VNA would be the surviving entity. *See* RSA 7:19-b, I (a).

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 consumer protection and antitrust laws. In addition, the merger agreement does not implicate the doctrines of *cy pres*, deviation, or termination in accordance with RSA 7:19-b, VI (b) because Central VNA would merge with another charitable, nonprofit organization, and the surviving entity would honor donor intent with respect to Central VNA’s donor restricted funds.

##### **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, Central VNA explored the possibility of affiliating with another visiting nurse association. The Central VNA board ultimately concluded that an affiliation with Concord VNA would be in the best interests of the organization and the communities it serves. In reaching this conclusion, the board considered what it determined to be the comparable “cultures” of both organizations, the proximity of their services areas, the comparable approaches to care delivery, and the past experiences of collaboration between the entities. The Central VNA board also considered that many home health organizations are for-profit institutions focused on shareholder profit. As a nonprofit organization, on the other hand, Concord VNA is focused on its charitable mission and the needs of its community.

At the public hearing, one former Central VNA board member testified that while he initially was concerned that Central VNA would be “swallowed up” by the larger Concord VNA, he was reassured by the professionalism and sense of collegiality he experienced while serving on the trustee work group with members of the Concord VNA board. The chair of the Concord VNA board testified that the speed at which the parties were able to agree on a unified mission statement demonstrates how aligned their missions are.

b. Use of Expert Assistance.

In developing the merger agreement, Central VNA and Concord VNA jointly engaged Simone Healthcare Consultants, a national healthcare consulting firm based in Connecticut, to assess the financial costs and projected financial implications of the merger, provide integration advice regarding the structure of the combined entity, and develop a work plan for integrating the two entities. They also engaged Mr. Stone to evaluate the potential benefits and community impact of the proposed merger, and they retained Montagne Communications to assist them with public communications regarding the transaction. In addition to the foregoing experts, the Board of Trustees of Central VNA consulted with its outside general counsel, Mark S. McCue, Esq., of Hinckley Allen & Snyder, PLLC, who provided the board with guidance and advice and negotiated the merger agreement and related governance documentation on behalf of Central VNA.

c. Negotiating the Terms and Conditions.

The Merger Agreement and the proposed unified mission statement, composition of the board of trustees, and governing documents were the result of months of negotiations between the parties. The trustee work group began meeting in November 2019, and continued meeting until September 2020, after they completed negotiations concerning the governing documents.

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 (Tent. Draft No. 1, 2016).<sup>7</sup>

The Central VNA board determined that the merger of Central VNA and Concord VNA would further Central VNA’s charitable purpose to “provide or coordinate diversified home and community health care and supportive services for adults, children and families.” The Central VNA board found that the charitable missions of the two organizations are similar and compatible and that merging with Concord VNA would ensure that the needs for such services in the Lakes Region could continue to be met, as the merger would result in the reduction of administrative costs, address Central VNA’s workforce challenges, and enhance the services it offers to the community.

The Central VNA board also considered the analysis and affiliation community impact assessment prepared by Mr. Stone. See Notice, Appendix I. Mr. Stone found that a merger between the two entities would benefit them by, among other things, creating opportunities for the organizations to share administrative resources which could reduce overhead costs, to improve the use of its existing resources by providing employees with enhanced education, the capacity for career growth, and the flexibility to meet their needs, and to increase the depth of their clinical expertise. Mr. Stone also found that the merger would enhance community services by expanding certain clinical specialty services with which Concord VNA has resources and experience, such as behavioral health and palliative care, and community education into the Lakes Region, by improving the ability for the organizations to handle referral requests, and to better serve Lakes Region patients who seek care from Concord Hospital.

### **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;

In paragraph 3 of Appendix X of the Notice, the Central VNA board certified that any conflict of interest was disclosed and did not affect the decision to enter into the merger transaction and that the merger transaction does not constitute a pecuniary benefit transaction under RSA 7. See Notice, Appendix X. 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:

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<sup>7</sup> 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).

(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 between charitable organizations, and the resulting organization would be a charity with a unified charitable mission. The Merger Agreement provides that any board-designated or operating reserves existing on the merger date would remain dedicated for use in the communities served by the organization that accumulated those funds. In addition, with respect to donor-restricted funds existing prior to the merger date, the Merger Agreement provides that the surviving entity would honor and observe the donor restrictions.

#### **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.

Members of the Central VNA board certified that prior to voting to approve the Merger Agreement, reasonable notice of the proposed transaction and an opportunity for input were



provided to the communities served by Central VNA. *See* Notice, Appendix X. The notice and opportunity for input included the listening session held via Zoom videoconference on June 3, 2020, and attended by an impressive number of people (approximately 140). At that session, attendees were able to (and did) ask questions and submit comments. Attendees included employees of Central and Concord VNA and representatives of other health care organizations in the area.

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

After reviewing the evidence, the Charitable Trusts Unit concludes that Central VNA's decision to merge was informed and based on reasonable beliefs that the merger would further Central VNA's charitable mission and would be in the best interests of the Lakes Region communities. The comments made at the public hearing were uniformly supportive of the merger, and the Charitable Trusts Unit neither received nor was made aware of any opposition to the proposed transaction.

Although the Charitable Trusts Unit has concluded that Central VNA 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: Central VNA represents 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 Central VNA or Concord VNA contemplated as part of the Merger Agreement.
3. Donor Restricted Assets and Funds: Board-designated or operating reserves existing on the merger date would remain dedicated for use in the communities served by the organization that accumulated those funds, subject to the power of the board of trustees to authorize, by super-majority vote under the revised bylaws, the use of such reserves for activities which benefit the communities served by both organizations prior to the merger. In addition, with respect to donor-restricted funds existing prior to the merger date, the donor restrictions shall be honored and observed and used only for the communities intended to be served at the time the funds were established.

## Conditions

1. The bylaws shall be amended to reflect that at least one third of the membership of the board of trustees of the surviving entity, Concord Regional Visiting Nurse Association, Inc., shall reside, work, or receive services in, or otherwise be representative of the interests of, a community currently served by Central VNA, unless at the time of any trustee election, there are an insufficient number of candidates available to meet the one-third requirement despite the best recruitment efforts of the surviving entity. The foregoing condition will not apply during the 24-month Integration Period.
2. The surviving entity, Concord Regional Visiting Nurse Association, Inc., shall engage an organizational consultant within twelve months of the merger to assist the organizations with a cultural evaluation and integration plan.

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 or any other state agency that may have a role in reviewing the proposed plan of reorganization.