

PROPOSED TRANSACTION BETWEEN HOME HEALTH AND HOSPICE CARE AND SOLUTIONHEALTH

REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS

January 27, 2022

I. Introduction

On August 10, 2021, Home Health and Hospice Care (“HHHC”) submitted to the Charitable Trusts Unit of the New Hampshire Department of Justice (“CTU”) a notice of a proposed change of control pursuant to RSA 7:19-b (“[Notice](#)”).¹ Under the proposal, HHHC and SolutionHealth (“SH”) would amend their articles of agreement and bylaws, and SH would become the sole corporate member of HHHC. This report describes the proposed transaction and the CTU’s review and conclusions.

A. The Parties

Home Health and Hospice Care

HHHC’s origins can be traced to 1883 when the women of the Good Cheer Society began visiting the homes of people in Nashua who were ill and impoverished. In December 1973, HHHC was established as a voluntary corporation under RSA 292 when it filed articles of agreement with the New Hampshire Secretary of State under the name, “The Visiting Nurse Association of Nashua.” In January 1989, the organization merged with Merrimack Valley Home Health/Visiting Nurse Association, Inc. and Community Hospice of Greater Nashua to become “Home Health and Hospice Care.” The purpose of the corporation as articulated in its articles of agreement is “to provide community health and hospice services that enhance independence and the quality of life.” *See* Affidavit of Amendment, Home Health and Hospice Care (July 31, 1996).² HHHC holds home health care provider and home health agency hospice licenses with the State of New Hampshire and is a licensed Medicare and Medicaid certified home health and hospice agency.

HHHC currently has approximately 265 employees and 250 volunteers and serves 25 communities throughout Southern New Hampshire and Northern Massachusetts. In addition to home health and hospice services, HHHC offers skilled nursing services; physical, occupational, and speech therapies; medical social services; and spiritual and bereavement counseling. HHHC’s administrative offices are located in a building it owns in Merrimack, New Hampshire. HHHC also owns and operates the Community Hospice House in Merrimack, a 10-suite, free-standing facility that offers skilled healthcare and hospice services for terminally ill patients.

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

SolutionHealth

SH was formed as a voluntary corporation in April 2018 to “be the sole corporate member of each of Elliot Health System and Southern New Hampshire Health System, Inc. and to support or benefit” their subsidiaries, including Elliot Hospital and Southern New Hampshire Medical Center. *See* Articles of Agreement, SolutionHealth (April 30, 2018).³ In addition, SH was established to create a regional healthcare network and integrate certain functions of the hospital systems to allow for “greater coordination of care, implementation of best practices, elimination of inefficiencies, and collaborative regional planning.” *Id.*

Among the entities that are included in SH’s regional healthcare network is the Visiting Nurse Association of Manchester and Southern New Hampshire, Inc. (“VNAMANH”). Its sole corporate member is Elliot Health System. *See* [Affidavit of Amendment](#), Visiting Nurse Association of Manchester & Southern New Hampshire, Inc. (October 23, 2000). VNAMANH offers home health care, hospice care, and palliative care services, bereavement support, and maternal and child services in 42 communities in the Greater Manchester area.

B. The Proposed Transaction

Background

In 2019, as a result of the changing reimbursement methodology, aging demographics, and consolidation of local health care systems, the HHHC board began enhanced discussions about its strategic direction and future. HHHC hired a consultant, and in September 2019, the HHHC board of trustees held a strategic planning retreat at which the board established the following goals, among others: the development of relationships that would allow for strategic affiliation and collaboration discussions; the acquisition of the EPIC electronic medical record system; and the growth of the endowment for HHHC’s Community Hospice House. The challenges presented by the COVID-19 pandemic in 2020 reinforced the HHHC board’s desire to affiliate with a larger health system.

HHHC leadership initiated informal discussions with Harvard-Pilgrim New Hampshire, Dartmouth-Hitchcock, and SH.⁴ The goal of the HHHC board was to identify a potential affiliation or merger partner that: (1) is a New Hampshire nonprofit health system; (2) has a compatible culture and mission to HHHC; (3) serves the same or similar communities; and (4) would enable HHHC to utilize a more sophisticated electronic

³ The Articles of Agreement may be found on the New Hampshire Secretary of State [website](#).

⁴ According to February 4, 2020 HHHC board meeting minutes, representatives of Dartmouth-Hitchcock and Harvard Pilgrim informed HHHC’s president that at that time, they were focused on combination transactions with other entities.

medical record system. The board ultimately concluded that SH met the criteria and approached SH with a proposal to affiliate.

After months of discussions between the leadership teams of HHC and SH, SH proposed that HHC, along with VNAMS NH, become members of a new post-acute care division of SH. HHC would remain a free-standing home health agency but would become a part of the SH network, creating efficiencies, integrating many of its administrative and technical functions, and providing HHC with access to SH's EPIC electronic medical record system.

On February 4, 2021, HHC and SH entered into a non-binding letter of intent to memorialize their intent to enter into a combination transaction under which SH would become the sole corporate member of HHC, and HHC would be integrated into SH's regional healthcare network.⁵ The parties issued a joint media release regarding the proposed transaction and posted it on their respective websites, and on March 18, 2021, the parties conducted a listening session via videoconference.⁶ Approximately 50 people registered to attend the listening session, including 9 of the 21 members of the HHC board. Several attendees asked questions about the transaction, including questions about its impact on patient choice, staffing, healthcare services, and HHC's investments.

On June 1, 2021, the HHC board voted 17-0 (with one abstention) to approve the Combination Agreement by and between SH and HHC ("Combination Agreement"). Thereafter, the boards of Elliot Health System, Southern New Hampshire Health System, and SH also approved the Combination Agreement,⁷ and on July 12, 2021, HHC and SH entered into the Combination Agreement.

Summary of the Combination Agreement

Under the terms of the Combination Agreement, SH and HHC would amend their articles of agreement and bylaws to establish SH as the sole corporate member of HHC.⁸ While HHC would remain a separate corporation with its own board of directors and would continue to carry out its existing charitable mission, HHC, along with VNAMS NH, would be integrated into SH's post-acute care division.⁹

⁵ The letter of intent was approved not only by the boards of HHC and SH, but also the boards of Southern New Hampshire Health System and Elliot Health System.

⁶ At the time of the listening session, New Hampshire Governor Sununu's Executive Order 2020-04, declaring a state of emergency due to the COVID-19 pandemic, was still in effect. See [Executive Order 2021-04](#).

⁷ The board votes took place on June 8, 2021 (Southern New Hampshire Health System), June 17, 2021 (Elliot Health System), and June 24, 2021 (SH).

⁸ Stephanie Wolf-Rosenblum, MD was present for the discussion but abstained from the vote because she is an employee of an affiliate of SH. Dr. Wolf-Rosenblum previously participated in the discussion about whether the board should approve the February 4, 2021 letter of intent, but abstained from that vote as well.

⁹ VNAMS NH is in the process of amending its governing documents to establish SH as its sole corporate board member. VNAMS NH is not required to file a notice with the CTU under RSA 7:19-b. The changes would not constitute a change of control within the meaning of the statute because SH is the sole corporate member of VNAMS NH's current sole corporate member, Elliot Health System.

The following are some of the significant terms of the Combination Agreement:

1. HHHC's Board of Directors: The HHHC board would continue to have the same structure and membership. The members of the HHHC board would continue to be nominated and appointed by the HHHC board, but their appointment would be subject to approval by the SH board.
2. Shared Decision-Making with SH Board: Certain "major matters" would require approval of both the HHHC board and the SH board, including amending HHHC's articles of agreement and bylaws; dissolving; forming an HHHC affiliate; merging with another entity; and adding, eliminating, or materially modifying clinical service programs.
3. Exclusive SH Authority: The SH board would have the exclusive authority to approve certain activities of HHHC, including the development of HHHC's annual operating and capital budgets; the adoption of compensation and benefit programs; the development of information technology systems; the development of financial accounting systems; the engagement of financial auditors; and the adoption or modification of HHHC's financial or investment management policies (except with respect to policies relating to the HHHC Community Hospice House Endowment Fund or HHHC's Board-restricted funds).
4. HHHC Retained Authority: The HHHC board would retain all corporate powers except those expressly reserved to the SH board. The Agreement specifically states that the HHHC board would retain authority over its volunteer program, community benefits plan, philanthropic activities, Community Hospice House, and the financial and investment management policies related to the Community Hospice House Endowment Fund. In addition, it would retain decision-making authority related to HHHC's board-restricted funds.
5. SH Shared Services: SH would provide management, administrative, and support services with respect to the operation and activities of HHHC, and the parties would migrate to a common IT platform. The cost of SH's services would be determined based on a percentage of net patient service revenue.
6. HHHC's Real Property: In the event that the property which is the current headquarters of HHHC's operations is sold, the sale proceeds would be distributed into the HHHC Community Hospice House Endowment Fund. In the event that the parties desire to expand capacity at its Community Hospice House on property owned by HHHC, SH would fund capital improvements related to the expansion, subject to approval by SH's board and provided that it is consistent with the strategic plans and goals of SH's post-acute care division.

The combination transaction is subject to the consent, authorization, or non-objection by the CTU.

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 CTU received the Notice on August 10, 2021. After reviewing the Notice, on August 17, 2021, the CTU requested that HHHC and SH provide additional information and documentation. The parties provided the requested information and documentation on September 13, 2021. *See* [NH DOJ Website](#). The collection of documents submitted by the parties are included in the "Notice."

On October 28, 2021, the Attorney General's office issued a media release inviting public comment on the proposed transaction and announcing a public hearing on November 18, 2021, at the Courtyard by Marriott in Nashua. The hearing was also made available to the public by a videoconference platform. Approximately 10 people attended the hearing in person, and approximately 45 people attended the hearing remotely. Representatives of the parties discussed their motivations for the proposed transaction and their conclusions regarding the benefits of the proposed transaction to the parties and the communities they serve. No comments from the public were submitted at the public hearing.

Following the public hearing, the CTU reached out to a number of stakeholders with an interest in home health care in the Nashua and Manchester area, including local hospitals and medical clinics. HHHC is a significant referral source for all of the hospitals and some medical clinics in southern New Hampshire, and they rely on HHHC (and VNA of Manchester) to provide home care to their discharged patients. HHHC is different from other agencies that offer home health care in the area because it operates one of only two nonprofit hospice care houses in the state and offers an Advanced Illness Management ("AIM") program.

In accordance with RSA 7:19-b, IV (b), the Charitable Trusts Unit also provided notification about the proposed transaction 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, information presented at the public hearing, and information and documentation submitted to and obtained 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 transaction, subject to the representations and conditions set forth in this report.

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

The Combination Agreement under review constitutes a change of control under RSA 7:19-b. HHHC 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 SH would become the sole corporate member of HHHC and would have certain powers over HHHC, including, but not limited to, the power to approve the appointment of the members of HHHC’s board. *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 Trusts 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 Combination Agreement does not implicate the doctrines of *cy pres*, deviation, or termination in accordance with RSA 7:19-b, VI (b) because HHHC would retain its corporate identity and charitable mission, the proposed transaction involves another charitable, nonprofit organization, and HHHC would continue to hold and manage its donor-restricted endowment 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

Among other reasons, the HHHC board concluded that SH was an appropriate partner because their charitable missions are compatible, and SH would offer HHHC the opportunity to access the EPIC electronic medical records system. In addition, HHHC has had a long relationship with SH in that at one time, HHHC was located on the campus of Southern New Hampshire Hospital, and over the years, the hospital has provided HHHC with financial and IT support. Approximately 40% of HHHC admissions are through referrals from SH.

b. Use of Expert Assistance

The HHHC board consulted with its outside accounting firm, Berry Dunn, which provided an analysis of the due diligence documents produced by SH. The HHHC board also consulted with its outside general counsel, Jason Gregoire, Esq. of Sheehan Phinney, who provided the board with guidance and advice and negotiated the Combination Agreement and related governance documentation on behalf of HHHC. In addition, the HHHC board used the services of Helms & Company, which facilitated the September 2019 board retreat and produced a follow up strategic planning report.

c. Negotiating the Terms and Conditions

HHHC sent extensive due diligence requests to SH on financial, legal, organizational, tax, employment, real estate, and patient and employee satisfaction matters. The HHHC board established a Work Group to work with HHHC's CEO, legal counsel, and financial representatives to review the due diligence responses and negotiate the letter of intent and Combination Agreement.

At each of the monthly HHHC board meetings between December 20, 2020 and June 1, 2021, the board discussed the proposed transaction with SH. The minutes of the meetings reflect an engaged board that debated the benefits and drawbacks of the transaction and approved the transaction only after extensive deliberation.

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).¹⁰

¹⁰ 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).

At the public hearing, representatives of the HHHC board said that they believed that the transaction would improve care to southern New Hampshire patients by, among other things, using technology to share patient information, to coordinate care, to enhance access, and to enhance care quality. Representatives of HHHC also said that combining with SH would promote a coordinated focus on improving wellness and care outcomes for patients.

The parties were asked at the public hearing whether patients of SH will be prioritized over patients of non-SH medical practices and hospitals when the need for visiting nurse services from HHHC exceeds the availability of nursing providers. The representative of HHHC said that HHHC would continue to serve patients of all area hospitals and medical practices but recognized the challenges associated with staffing shortages. The HHHC representative did not indicate whether HHHC would prioritize patients of SH when limited staffing was available.

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 Notice includes a RSA 7:19-b, III Standards Certification signed by all of the members of the HHHC board. *See* Notice, Appendix Q. The Certification contains the statement “[a]ny conflict of interest has been disclosed and has not affected the decision to enter into the Transaction, and the Transaction does not constitute or establish a pecuniary benefit transaction as defined in RSA 7:19-a.” *Id.*

RSA 7:19-a defines a “pecuniary benefit transaction” as a transaction with a charitable trust in which a director officer, or trustee of the charitable trust has a financial interest, direct or indirect.” RSA 7:19-a, I (c). “An ‘indirect’ financial interest arises where the transaction involves a person or entity of which a director, officer, or trustee, ...is a proprietor, partner, employee, or officer.” RSA 7:19-a, I (b).

Pecuniary benefit transactions are not prohibited under state law, provided that certain conditions are met. For example, a pecuniary benefit transaction is not prohibited, if it is in the best interest of the charity and the transaction receives affirmative votes from at least a 2/3 majority of disinterested board members after full and fair disclosure of the material facts of the transaction “[w]ithout participation, voting, or presence of any director, officer, or trustee with a financial interest in the transaction or who has had a pecuniary benefit transaction with the charitable trust in the same fiscal year....” RSA 7:19-a, II.

Dr. Stephanie Wolf-Rosenblum is a member of the HHHC board and an employee of Foundation Medical Partners, an affiliate of SH. While Dr. Wolf-Rosenblum abstained from voting on the letter of intent, the minutes of the meetings reflect that she

not only was present for the discussion and vote, she participated in the discussion. *See* Notice, Appendix L-2. Indeed, the minutes of the January 5, 2021 meeting state as follows: “Motion carried unanimously except [Dr. Wolf-Rosenblum] who said she approved the LOI but could not vote because she is an employee of Southern New Hampshire Hospital.” *Id.*

The minutes of the June 1, 2021 HHHC board meeting at which the board voted to approve the Combination Agreement reflect that Dr. Wolf-Rosenblum was absent from the meeting. *See* Notice, Appendix L-7. Strangely, the minutes also reflect that when the board voted on the resolutions to approve the transaction, a roll call was conducted, and Dr. Wolf-Rosenblum responded that she had read the resolutions but abstained from the vote. *Id.* Dr. Wolf-Rosenblum also signed the RSA 7:19-b, III Standards Certification, certifying that the transaction complies with RSA 7:19-b, including that it is in the best interest of HHHC and the communities it serves. *See* Notice, Appendix Q.

Because Dr. Wolf-Rosenblum is not a director, officer, or employee of SH and does not otherwise have a direct or indirect financial interest in the proposed transaction, the transaction is not a “pecuniary benefit transaction” within the meaning of RSA 7:19-a. *See* RSA 7:19-a. Moreover, in light of the disclosure of her “interest” and her exclusion from the vote on the Combination Agreement, there is no evidence or suggestion that a conflict of interest or pecuniary benefit transaction involving any board members affected the decision to enter into the transaction with SH.

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

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;

Under the terms of the proposed transaction, HHHC would maintain its separate corporate identity and charitable purpose and would continue to have decision-making authority over its donor-restricted and board-restricted funds. In the event of the sale of

HHHC's headquarters, the proceeds would be distributed into the Community Hospice House Endowment Fund, over which HHHC would have decision-making authority.

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.

As discussed above, on March 18, 2021, the parties conducted a listening session via videoconference attended by approximately 50 people. Several attendees of the listening session asked questions about the transaction, including questions about its impact on patient choice, staffing, healthcare services, and HHHC's investments. In addition to the listening session, the HHHC and SH leadership met with staff, donors, community partners, and other health care providers regarding the combination. HHHC prepared written communications regarding the proposed transaction to patients and families, volunteers, and staff, and posted information on its website and social media.

III. CONCLUSIONS AND DETERMINATION

After reviewing the evidence, the Charitable Trusts Unit concludes that HHHC has substantially complied with the minimum standards for changes of control set forth in RSA 7:19-b, II. However, 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: HHC and SH 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 transaction 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 HHC or SH contemplated as part of the Combination Agreement.

Conditions

1. Access to HHC Services: Following the closing of the Combination Agreement, HHC shall make available all of its services, including but not limited to, home health care, AIM, hospice care, care at Community Hospice House, and skilled nursing care, to non-SH patients on the same terms and conditions as the services are available to SH patients and shall not give priority to SH patients in terms of access or types of services offered.
2. Merger with VNA of Manchester: HHC shall notify the Director of Charitable Trusts 60 days prior to entering into a merger or combination agreement with VNA of Manchester. In the event that HHC merges or enters into a combination agreement with VNA of Manchester, the condition set forth above with respect to access to services shall apply to the surviving entity.

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.