

**PROPOSED MERGER BETWEEN NEWFOUND AREA NURSING ASSOCIATION  
AND LAKES REGION VISITING NURSE ASSOCIATION**

**REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS**

**APRIL 7, 2021**

I. Introduction

On December 23, 2020, Newfound Area Nursing Association (“NANA”) 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, NANA would merge with Lakes Region Visiting Nurse Association (“LRVNA”), and LRVNA would be the surviving entity. This report describes the proposed merger and the CTU’s review and conclusions.

A. The Parties

Newfound Area Nursing Association

NANA was established in 1960 as a New Hampshire voluntary corporation under RSA 292. NANA’s purpose as articulated in its articles of agreement is, in pertinent part:

to furnish a visiting nurse service in the towns of Bristol, Bridgewater, and New Hampton, and in such other towns as may later join in such service, such service to include ... skilled nursing care at low cost to patients requiring part-time nursing....

*See Notice, Appendix A.*

Since 1960, NANA has expanded its service area to include the towns of Alexandria, Danbury, Groton, Hebron, and Hill. Its office location is in Bristol, New Hampshire, and it currently has approximately 16 employees. NANA is a licensed Medicare and Medicaid certified home health and hospice agency that holds home health care provider and home health agency hospice licenses issued by the New Hampshire Department of Health and Human Services. It offers skilled nursing, physical, occupational and speech therapies, home health aide and homemaker services, medical social services, spiritual and bereavement counseling, hospice massage therapy, and various free community clinics and screenings. NANA 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.

Lakes Region Visiting Nurse Association

LRVNA, formerly known as the “Meredith Public Health Association,” the “Meredith Public Health Nursing Association,” and the “Visiting Nurses of Meredith and Center Harbor,”

---

<sup>1</sup> The Notice may be found on the Department of Justice [website](#).

was established in 1923 as a voluntary corporation under RSA 292. LRVNA is a licensed Medicare and Medicaid certified home health and hospice agency serving 35 towns in the Central and Lakes Region, including 6 towns also served by NANA. LRVNA, which has approximately 70 employees and is based in Meredith, New Hampshire, provides a range of personalized services and programs including home care, hospice, palliative care, personal home services, pediatric and maternal child health services, immunization clinics, and wellness programming. LRVNA 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.

## B. The Proposed Merger

### Background

In recent years, NANA has experienced significant financial and workforce challenges relating to changes in the home health care sector and in the shifting reimbursement system as well as in its ability to retain and recruit qualified nurses and other practitioners. In January 2020, when NANA's executive director abruptly announced her resignation, the board of directors of NANA began discussions with another home health agency about the possibility of entering into an affiliation. In the spring of 2020, the chief executive officer of the other agency began serving as the interim executive director of NANA. After conducting its due diligence, however, the NANA board concluded that the agencies were not compatible in terms of their missions, goals, and structures.

The board of NANA thereafter explored the possibility of affiliating with other home health agencies. The board ultimately concluded that the missions, operations, and cultures of NANA and LRVNA were congruent and began discussions with LRVNA about the possibility of a merger. In September 2020, LRVNA and NANA entered into an Operating Services Agreement, under which LRVNA provides NANA with management and operating services, including the executive services and management expertise of LRVNA's Chief Executive Officer, at no cost. On October 30, 2020, the parties publicly announced their intent to merge.

According to the chair of the NANA board, the board of NANA is convinced that the merger with LRVNA is in NANA's best interests and will allow it to better serve its communities. Since the implementation of the Operating Services Agreement in October, NANA has increased its revenue, bolstered its staff, and strengthened its ability to offer its services by cross-training staff, hiring new professional staff, conducting joint training sessions, and implementing HIPAA-compliant communication tools.

### Summary of the Merger Agreement

Under the Merger Agreement and Plan of Merger, NANA would merge into LRVNA, and LRVNA would be the surviving entity under a new name yet to be determined. The following would be the combined mission of the surviving organization: "Compassionately enabling hospice, health, and healing with dignity at home for the patients and families in New Hampshire's Lakes Region and surrounding communities." *See* January 26, 2021, Response to Request for Additional Information, Attachment 3.1.

The Merger Agreement provides that the assets and liabilities of the two organizations would belong to the combined entity. *See* Merger Agreement, ¶ 3.1.<sup>2</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. 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.* In addition, all 2021 appropriations to NANA by municipalities would be allocated to services in NANA’s current service area. *Id.*, ¶ 3.12.

The Merger Agreement provides that the board of directors for the combined entity would consist of 10 members: the current 8 member LRVNA board of directors plus 2 board members from NANA’s current board. *Id.*, ¶ 3.4. The initial chair of the board of the combined entity would be the current chair of the LRVNA board, and at least one officer would be a member of the NANA board. *Id.*, ¶ 3.6. Subsequent directors would be nominated by a nominating committee and elected by the combined entity board. *Id.*, ¶ 3.5. The agreement states that the parties “desire” that the board of the combined entity would reflect “the diversity of the communities served and be composed of members diverse in age, ethnicity, gender, experience, skills, and geographic representation of the [combined entity’s] service area.” *Id.*

The Merger Agreement states that certain governance decisions would require a supermajority (3/4) vote of the board. *Id.*, ¶ 3.7. For example, a supermajority vote of the board would be required for a change in geographic service area or clinical facility, a merger or reorganization, and the material expansion, contraction, or initiation of any clinical services. *Id.*

Kevin Kelly, currently the CEO of LRVNA, would become the initial CEO of the combined entity. *Id.*, ¶ 3.9. All NANA staff members would be offered positions with the combined entity with updated job descriptions, and staff members who accept their new roles and responsibilities would be employed by the combined entity and given credit for their tenure with NANA. *Id.*, ¶ 3.10. The legal address for the combined entity would be in Meredith, but the combined entity would also maintain NANA’s principal place of business in Bristol. *Id.*, ¶ 3.1.5.

The combined entity would continue NANA’s tradition of awarding \$1,000 in scholarship support to students who plan to enter an allied health field and live in the combined entity’s service area. *Id.*, ¶ 3.12. In addition, the combined entity would continue NANA’s practice of offering free screenings and clinics at its Bristol location. *Id.*, ¶ 3.13.

## 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

---

<sup>2</sup> The Merger Agreement is set forth in the Notice, Appendix H and is posted to the Department of Justice [website](#).

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.

On December 23, 2020, the Charitable Trusts Unit received the Notice, and on December 29, 2020, the Charitable Trusts Unit requested that the parties provide additional information and documentation. The parties provided the information requested on January 26, 2021. The collection of documents submitted by the parties are included in the "Notice."

On March 29, 2021, the Charitable Trusts Unit held a public hearing to obtain input regarding the proposed transaction. In advance of the hearing, the Charitable Trusts Unit issued a news release regarding the hearing, and the parties advertised the hearing on their websites. Because of restrictions implemented to avoid the spread of COVID-19, the public hearing took place remotely using the Zoom videoconference platform. Members of the community could participate via computer, smartphone, or telephone and could submit questions and comments orally or through the Zoom chat feature. According to the log of the videoconference, in addition to the panelists, 8 people joined the videoconference.

The March 29 public hearing involved presentations by Brad Borbridge, CPA, Principal of BerryDunn; Ileana Saros, NANA Board President; Renee Speltz, LRVNA Board Chair; and Kevin Kelly, LRVNA Chief Executive Officer. Mr. Borbridge described the recent challenges faced by visiting nurse associations, including increased regulatory oversight, the expanded provision of hospice and other services, the increased need for visiting nurse services due to expedited and daily hospital discharges, and the scarcity of human resources. He expressed his opinion that combining LRVNA and NANA would assist both agencies in facing those challenges in part, because the merger would enhance their ability to recruit and retain staff and gain economies of scale. He noted that LRVNA has a state-of-the-art electronic medical record system that NANA would not be able to afford on its own.

The presentations by Ms. Saros and Ms. Speltz at the public hearing described the due diligence exercised by the members of the boards of NANA and LRVNA before they voted to approve the transaction. Mr. Kelly shared the basis for his opinion that the merger would allow NANA and LRVNA to better serve their communities. Mr. Kelly noted that since entering into the Operating Services Agreement with LRVNA, NANA has tripled its patient census.

A nurse employed by NANA submitted the only public comment at the hearing. She expressed her support for the merger and her gratitude for the opportunities that the merger would offer to NANA employees.

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 information provided at the public hearing, 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. NANA 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 NANA would be merged into LRVNA, and LRVNA 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 NANA would merge with another charitable, nonprofit organization, and the surviving entity would honor donor intent with respect to NANA’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, NANA explored the possibility of affiliating with another visiting nurse association but ultimately concluded that an affiliation with LRVNA would be in the best interests of the organization and the communities it serves. At the public hearing, Ileana Saros

described the board's rationale for entering into the agreement to merge with LRVNA. Among other things, she mentioned that the board sought an affiliation partner that would agree to maintain an office in Bristol as a base of operations, continue NANA's programs and services, continue NANA's scholarship program, maintain a 24/7 operation, hire NANA's employees, and serve all in need, regardless of ability to pay. Ms. Saros said that LRVNA agreed to all of the foregoing criteria and offered the best fit for NANA in terms of the interests, goals, and missions. The board also considered that LRVNA is a respected organization and that the partnership would ensure that NANA's assets would continue to be used for charitable purposes and serve the interests of the community.

b. Use of Expert Assistance.

Prior to entering into the letter of intent, the board of NANA consulted with Mr. Borbridge, who provided the board with information concerning visiting nurse associations in general and the suitability of LRVNA as a partner for NANA. In addition, NANA and LRVNA jointly engaged Attorney Andrew B. Eills to serve as transaction counsel. Attorney Eills provided the boards with information and advice concerning their responsibilities under New Hampshire law and drafted the Merger Agreement.

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 chairs of the boards of NANA and LRVNA served as lead negotiators.

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>3</sup>

The NANA board determined that the merger of NANA and LRVNA would further NANA's charitable purpose. The NANA board found that the charitable missions of the two organizations are similar and compatible and would be in the best interests of NANA and the 8 communities it serves. The Merger Agreement provides that the combined entity would continue the current health care services and programs, would offer positions to NANA employees, and would maintain NANA's office in Bristol. The merger would allow the surviving entity to attract and retain a skilled workforce that would be able to offer healthcare services to the communities 24 hours per day/7 days per week, and the surviving entity would serve those in need, regardless of their ability to pay.

---

<sup>3</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).

### **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 O of the Notice, the NANA 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 O. There is no evidence or suggestion to contradict the certification provided by the board members with respect to conflicts of interest and pecuniary benefit transactions.

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

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

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

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

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

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

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

The proposed transaction involves a merger 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. While the Merger Agreement provides that the surviving entity would honor and observe the restrictions of any donor restricted or endowment funds, NANA currently does not have any endowment or other donor restricted funds.

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

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

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

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

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

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

(g) Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust, along with reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

Members of the NANA 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 NANA. *See* Notice, Appendix O. The NANA board sent a letter to members of the communities NANA serves to announce the proposed merger with LRVNA and another letter to extend an invitation to a listening session via videoconference on November 12, 2020. The November 12, 2020 listening session experienced technical issues, and fewer than 25 people logged onto the session. However, the lack of participation is not surprising based on the extremely low level of attendance at the public hearing on March 29, 2021.

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

After reviewing the evidence, the Charitable Trusts Unit concludes that NANA's decision to merge was informed and based on reasonable beliefs that the merger would further its charitable mission and would be in the best interests of the communities NANA serves. The only comment made at the public hearing was 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 NANA 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: NANA 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 NANA or LRVNA 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. In addition, with respect to donor-restricted funds existing prior to the merger date, the combined entity shall honor and observe donor restrictions and use them only for the communities intended to be served at the time the funds were established. NANA currently does not have any endowment or other donor-restricted funds.

### Condition

1. On or before April 30, 2021, LRVNA shall file its community benefits plans in accordance with RSA 7:32-g for fiscal years beginning October 1, 2017, October 1, 2018, October 1, 2019, and October 1, 2020.<sup>4</sup> LRVNA shall thereafter comply with its obligation under RSA 7:32-g to file its community benefits plans with the Charitable Trusts Unit in a timely manner.

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 merger.

---

<sup>4</sup> In accordance with RSA 7:32-g, LRVNA is obligated to annually file with the Charitable Trusts Unit a community benefits plan. LRVNA has not filed a community benefits plan under RSA 7:32-g since May 18, 2018, when it filed its plan for fiscal year beginning October 1, 2016.