PROPOSED ACQUISITION OF WENTWORTH-DOUGLASS HOSPITAL BY THE MASSACHUSETTS GENERAL HOSPITAL

REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS

November 21, 2016

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Introduction

The Charitable Trusts Unit received a notice and submission, filed July 22, 2016, pursuant to RSA 7:19-b, regarding the proposed acquisition of Wentworth-Douglass Hospital (WDH) and certain related entities by the Massachusetts General Hospital (MGH).

The transaction is described in an Agreement for Acquisition of Control dated July 21, 2016 and in a proposed Governance Agreement. It will result in changes in membership among WDH related entities. Specifically, Wentworth-Douglass Health System (WDHS) is the current sole member of WDH, Wentworth-Douglass Physician Corporation (WDPC), Wentworth-Douglass Hospital & Health Foundation (the "Foundation") and Wentworth-Douglass Community Health Corporation ("The Works"). At the closing, MGH will be substituted as the sole member of WDH and WDH will be substituted as the sole member of WDPC, the Foundation and The Works. WDHS will remain independent of MGH until the termination of the Governance Agreement, at which time it will merge into WDH. MGH will hold certain director appointment rights and reserved powers over WDH and WDH will integrate into MGH's system of community hospitals. Unless the context requires otherwise, the term WDH includes WDPC, the Foundation and The Works.

In addition to the July 21, 2016 submission, the Charitable Trusts Unit received from WDH responses dated September 7 and November 17, 2016 to requests for additional information and supplemented by additional materials that further explain those responses. The documentation submitted will be referred to collectively as the "Notice". The Notice constitutes one of the requirements of RSA 7:19-b, II and III, which generally obligates the governing bodies of health care charitable trusts, including WDH and MGH, to satisfy certain minimum standards before they consummate an acquisition transaction.

The Charitable Trusts Unit has completed its review of the Notice. It has taken into consideration the public meetings and the media outreach conducted by the parties leading up to the submission of the Notice. The Director of Charitable Trusts and the Assistant Director of Charitable Trusts also attended a public meeting held in Dover on November 3, 2016. They also met with representatives of Goodwin Community Health Center, Community Partners of Strafford County, the Endowment for Health and the UNH School of Law Health Law and Policy Program. The Charitable Trusts Unit solicited written comments regarding the proposed affiliation through a notice on its web page. Finally, the Charitable Trusts Unit retained the New Hampshire Center for Public Policy Studies (NHCPPS) to assess the effect on cost, quality and access resulting from hospital consolidation in New Hampshire. NHCPPS also analyzed the community benefits efforts of WDH. It issued a preliminary report on October 20, 2016.

Jurisdiction over MGH

MGH is a Massachusetts charitable corporation. As such, the Charitable Trust Unit does not have general jurisdiction over the internal affairs of MGH. *See generally* RSA 293-A:15.05(c) (no regulation of internal affairs of foreign business corporations); *NAACP v. Golding*, 679 A.2d 554, 559 (Md. 1996) (internal affairs doctrine applied to foreign non-profit corporation); Restatement Second of Conflicts of Laws §302(2) (internal affairs doctrine applies to business corporations); Brody, Whose Public? Parochialism and Paternalism in State Charity

Law Enforcement, 79 Ind.L.J. 937, 979 - 984 (2004). However, MGH seeks to obtain significant control over the governance and operations of a New Hampshire charitable organization, which is a matter of considerable interest to this state. RSA 7:19-b is an expression of the state's interest and its provisions require MGH to comply with certain standards should it seek to acquire a New Hampshire hospital.

Massachusetts does review transactions involving its own hospitals, including those where the Massachusetts hospital is the acquirer. Here, the Massachusetts Health Policy Commission has made an initial review of the pending MGH transaction and has decided not to take further action. *See* M.G.L. c.6D §13.

Review of Minimum Standards for Acquisition Transactions

The affiliation contemplated in the Notice meets the definition of an acquisition transaction under RSA 7:19-b, I(a) because it involves a transfer of control of 25 percent or more of the assets of WDH and its affiliates. RSA 7:19-b, II sets forth in six subparagraphs the minimum standards that the board of directors must find to have been met in order to approve a health care acquisition transaction. This report will address each of the standards but organized in a different manner than the statute.

(b) Due Diligence

The Notice describes the extensive process that WDH used to consider its future, the alternatives available and the negotiations that led to the Acquisition Agreement. In making its decision, WDH relied upon the advice of health care and legal experts.

The hospitals reported that they have worked together before. They have engaged in contractual relationships for close to ten years for clinical services, specifically gynecologic oncology, trauma, stroke/neurology, genetics counseling, thoracic surgery and telemedicine psychiatric consultations.

The Notice describes the plan for WDH to become MGH's first "anchor" in New Hampshire and Maine and the "primary focus of MGH clinical program development in the Seacoast Region." The parties plan to improve quality, cost and access to community care in the area and to give residents more opportunities for referrals to MGH. Acquisition Agreement, Sections 1.3 and 1.4. The due diligence of the parties has not documented a likelihood of specific improvements in those metrics, however. That lack of specificity is compounded by the absence of an integration plan, which will not be completed until after the closing. Moreover there is a paucity of good data in New Hampshire on the subject, according to the NHCPPS report. The hospitals plan to conduct certain assessments going forward as part of a multi-year strategic plan to be developed after the closing. Governance Agreement, Section 5.1 and 5.2.

(c) Conflicts of Interest

The Notice states that all conflict of interest transactions involving directors or officers of any hospital have been disclosed and none "affected the [acquisition] Transaction". WDH has provided further assurance that this transaction creates no conflict of interest for any of its directors or officers

However, the governance structure of a health care system lends itself to structural conflicts of interest. In this transaction, no WDH representative is assured a seat on the MGH board of trustees, although WDH is entitled to four representatives on MGH's Community Hospital Committee during the term of the Governance Agreement and thereafter. Governance Agreement, Section 3.5 and Exhibit A. During the term of the Governance Agreement, one-fourth of the WDH board will be "designated" by MGH and three-fourths of the WDH board will be nominated by the WDH board (including the president of the medical staff *ex officio*), approved by the MGH nominating committee and elected by the MGH board of trustees. Governance Agreement, Section 3.1, 3.2. Following the expiration of the Governance Agreement, MGH will ensure that at least two-thirds of the WDH board of directors will consist of members nominated by the WDH board and elected by the MGH board of trustees. Governance Agreement, Section 3.1(g) and Exhibit A.

Under the governance structure of the transaction, it is possible that an officer or trustee of MGH or one of its affiliates may serve as a director of WDH. While there is no per se prohibition of director service on interlocking boards, the practice requires a heightened awareness by those directors to spot financial and/or mission conflicts as they arise and to analyze whether a proposed action will benefit an individual hospital, the system, neither or both. *See* Huberfeld, Tackling the 'Evils' of Interlocking Directorates in Healthcare Nonprofits, 85 Neb.L.Rev. 681 (2007); Hershey and Jarzab, Fiduciary Duties of Interlocking Directors within a Nonprofit Health System, 38 HOSPLW 449 (2005). This issue is discussed further, below, with respect to use of a corporate member.

(d), (e) and (f) Proceeds of Transaction

The transaction is between New Hampshire voluntary corporations and a Massachusetts charitable corporation. WDH and its affiliates will retain their pre- and post-acquisition assets. Governance Agreement, Section 7.1. WDH is permitted to restrict $90,000,000 on its balance sheet for future capital projects to be identified in an initial capital plan, and which will include the implementation of a new electronic medical records system. Governance Agreement, Section 7.3. Future capital projects will require approval of WDH and Partners. Governance Agreement, Section 7.4. WDH will be required to pay Partners annually for a variety of services it receives and may be charged for population health management activities. Governance Agreement, Section 7.5 and 7.6.

WDH and its affiliates plan to transfer their restricted and unrestricted investment assets to the pooled investment accounts managed by MGH's sole member, Partners HealthCare System, Inc. ("Partners"). Acquisition Agreement, Section 5.9.7. Partners applies the Massachusetts version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) for its investment and spending of restricted funds. Partners 2015 Consolidated Financial Statements, Note 16. Unlike Massachusetts, the New Hampshire version of UPMIFA creates a rebuttable presumption of imprudence should a charitable organization appropriate for expenditure in any year more than 7 percent of the fair market value of a restricted fund. RSA 292-B:4, VI. WDH assets in any pooled investment are subject to the New Hampshire version of UPMIFA.

RSA 7:19-b, II(f) states that control of any proceeds from a transaction "shall be independent of the acquirer" if it is other than a New Hampshire charitable organization. While MGH will obtain substantial governance and management control over MGH, discussed further below, strictly speaking there will not be "proceeds" from the transaction that will change hands. Still, that statutory provision reflects a policy concern with the loss of local control over hospital assets to an out-of-state organization.

At the closing, WDH will transfer $5 million to WDHS, which will become an independent organization, but with a majority of its board selected from WDH's locally nominated directors. WDHS will monitor the acquisition for the term of the Governance Agreement and implement a withdrawal, if necessary. Governance Agreement, Section 11. At the conclusion of the term of the Governance Agreement, WDHS will merge into WDH. Id.

(g) Notice and Hearing

The Notice describes the outreach to the communities affected by the proposed transaction and the opportunity for individuals to provide input about the transaction to the boards of directors of the hospitals.

As mentioned previously, the Director of Charitable Trusts and the Assistant Director of Charitable Trusts attended a public meeting in Dover on November 3rd.

The transaction has received uniformly positive comments from Dover area community leaders and users of WDH. Without singling out this transaction, some health care policy analysts have expressed concern about the effect on health care costs resulting from the consolidation of hospitals.

(a), (b) and (e) Best Interests of Organization

The Notice presents an entirely optimistic vision explaining why WDHS seeks this affiliation: to become MGH's anchor in the Seacoast Region which will result in improved health care quality, cost and access for residents. But the Notice contains no discussion of what it calls "the challenges of an evolving health care system."

That issue can be found in the consultants' reports, including Navigant reports to the WDH board of directors dated October 16, 2012 and December 14, 2012 as well as internally produced documents for the WDH board of directors dated January 29, 2013 and March 4, 2013. Those documents describe three main challenges facing hospitals: the increase in health provider consolidation, the emergence of new payment models focusing on population health and the pressures on payments from Medicare and Medicaid. Those documents also describe WDH's methodical assessment of affiliation opportunities by type and by entity, resulting in its decision to negotiate with MGH.

As mentioned above, there is a lack of good data regarding the success of hospital affiliations to address certain of the needs expressed by WDH. The plans of the parties to assess clinical services going forward will emerge as part of a future strategic plan. Governance Agreement, Section 5.1 and 5.2.

(a), (b) and (e) Continuation of Charitable Purposes

(i) Hospitals as Charitable Organizations

WDH and its affiliates (other than The Works) are New Hampshire voluntary corporations as well as charitable organizations registered with the Charitable Trusts Unit. MGH is a Massachusetts charitable corporation registered with the Public Charities Division of the Massachusetts Attorney General's Office. The Internal Revenue Service has determined all of the entities to be public charities classified under §501(c)(3) of the Internal Revenue Code. After the acquisition, WDH and its affiliates will retain their separate status as charitable organizations.

(ii) Compatibility of Charitable Purposes

WDH was created as an instrumentality of the City of Dover by legislative act in 1905. The legislation was amended over the years, with WDH becoming a fully private charitable organization in 1981. As set forth in its charter, the charitable purpose of WDH is intended for "acquiring, erecting, establishing, equipping, and maintaining a hospital in the City of Dover." Its current by-laws add that WDH shall participate "to improve the health status of the communities served and to provide community benefits appropriate to its designation as a non-profit hospital." WDH's governing documents express no specific religious or healing orientation.

MGH was created by a Massachusetts legislative act in 1810. Its charter, as amended, states that it "provide[s] a comprehensive health care system for all persons, including without limitation hospital and other health care services for sick and insane persons…" Its charitable purposes are broader than WDH in that they include education, research, mental health and the operation of a health care system. Like WDH, MGH's charitable purpose expresses no specific religious or healing orientation.

While MGH's charitable purpose is more expansive than WDH's, their primary purposes are compatible: the operation of a hospital. Still, MGH's broader purpose, implemented through its participation in Partners, includes operation of a "comprehensive health care system". That is proposed also to become a purpose of WDH. Amended WDH Articles of Agreement, Article 2.1(e) and (f). The ability of a charitable organization to expand its purpose through amendment is discussed in the next section.

(iv) Participation of WDH in a System

As discussed above, the transaction contemplates that WDH will become a part of the Partners health system, and not simply the subject of an acquisition by MGH. The participation by WDH in a system does mean some expansion of its charitable purposes. WDH's current affiliated entities, including WDHS, represent a collection of hospital-related services based in Dover. They do not constitute what is typically considered to be a health system representing multiple hospitals with some geographic range.

Charitable organizations may expand their purposes without court oversight, with some limits, so long as it is not inconsistent with their prior purposes. *See generally Queen of Angels*

Hospital v. Younger, 66 Cal. App. 359, 368 – 71 (Cal.App. 1977); Restatement of the Law of Charitable Organizations (Tent. Draft No. 1, 2016) §2.02, Comment (e) and Reporters' Note 17; §3.01(a), Comment (b) and (c); §3.04(a), Comment (b) and (c). There are limits, however, to the use of pre-affiliation assets for the support of the expanded mission. *See generally* Restatement of Charitable Organizations §3.01(b), Comment (e), citing *Attorney General v. Hahnemann Hospital*, 494 N.E.2d 101, 1021 (Mass. 1987).

The transaction addresses those limits through the provisions of Section 7.1 of the Governance Agreement. The section states that the current and future assets of WDH and its affiliates "shall remain the property of WDH… and shall be devoted to the charitable purposes of WDH." Still, Sections 7.2 through 7.7 of the Governance Agreement make it clear that WDH assets will be used to benefit WDH in accordance with system priorities and through system projects. Proposed WDH Amended By-laws Section 4.1.1(f) contemplates that the WDH board of directors shall approve all fund transfers to MGH or Partners for system initiatives that provide comparable benefits to WDH. MGH has committed in general to preserve WDH as an acute care hospital and to honor its mission. Governance Agreement, Exhibit A, Section 1. But MGH has not made specific commitments for the period after the expiration of the Governance Agreement concerning the use of WDH assets for system purposes.

(v) Use of Corporate Member

The proposed acquisition takes its form in contracts and governing documents. The articles of agreement of WDH will be amended to make MGH the sole member. The membership rights of MGH are documented in the amended by-laws of WDH. They include the voting rights of MGH, discussed in the Conflicts of Interest section above, and a number of reserved rights, including MGH approval of budgets, capital projects, clinical program changes and compensation policies. Amended By-laws, Section 3.1. 4.2.2. MGH, through a two-thirds vote of its board of directors and after consultation, can impose on WDH a capital and operating budget. Amended By-laws, Section 4.2.2(a) and (b). Two-thirds of the WDH appointed directors including at least three of the MGH designated directors must also approve any amendments to the WDH by-laws. Amended by-laws, Article XI. By way of summary, MGH, as the member, is given the tremendous "responsibility and authority to oversee the affairs, funds and other property of [WDH]." Amended by-laws, Section 4.2.1.

Corporate membership has now become the preferred method to structure hospital affiliations. This construct provides control while preserving pre-existing health insurance contracts, Medicare reimbursement rates and local identity. It may also avoid some Attorney General oversight and court approval. *See* Reiser, Decision-Makers without Duties: Defining the Duties of Parent Corporations Acting as Sole Corporate Members in Nonprofit Health Care Systems, 53 Rutgers L.Rev. 979, 988 - 91 (2001).

Simply stated, MGH, as the sole member of WDH, will hold considerable power. The breadth of that power requires serious consideration of the responsibility that comes with its exercise. Traditionally, members of a charitable organization exercise their rights in their own interest, bringing a layer of democracy to the entity. *See* Klimon, Re-membering the Nonprofit – Uses of Memberships in Corporate Governance, Taxation of Exempts November 2012 at 22. That model works well where a group of individuals serve as members. But where another

corporate entity exercises authority over a charitable organization by use of its controlling membership, the member owes a fiduciary duty to act in the best interest of the organization, and not just in the interest of the member. *See generally* RSA 7:19-a, IX (charitable organization transactions with member must be "fair" to organization); *Lifespan Corp. v. New England Medical Center*, 731 F.Supp.2d 232, 239 - 41 (D.R.I. 2010); Restatement of Charitable Organizations §2.01, Comment (c); Hesse and Szabo, The Fiduciary Duty of a Charitable Corporation's Sole Corporate Member: New Law and New Questions, 7 Boston Health L.Rep., Winter 2012 at 4; Decision-Makers without Duties, 53 Rutgers L.Rev. at 1013 - 26.

The controlling member's fiduciary duties pertain to its exercise of its director appointment and reserved powers just as a trust protector's fiduciary duties pertain to its granted powers. *See* RSA 564-B:7-711; 12-1202 (trust protector of directed trust is a fiduciary as to granted powers). And since the controlling member exercises those powers through its board of directors, the corresponding fiduciary duties apply to that same body.

Issues may arise when the corporate member exercises its power in a way that benefits one hospital at the expense of another. This situation is complicated further when a director of the corporate member also sits on the board of a member hospital. While recusal of a member or a director may occasionally be appropriate, at some point the practice would imperil the success of the system project. Tackling the 'Evils', 85 Neb.L.Rev. at 716 – 32. Upfront disclosure, clearer governance and other mission documents, identification of congruence vs. conflict of interest and attention to which hospital is taking what action may permit a member or director to observe fiduciary duties within a hospital system. Id. *See* Fiduciary Duties of Interlocking Directors, 38 HOSPLW at 449.

In this transaction MGH's fiduciary duties are effectively acknowledged in WDH's proposed amended by-laws and the Governance Agreement. "[MGH] shall at all times exercise its responsibility and authority in a manner that is consistent with the Articles and these Bylaws and with applicable law including, without limitation, New Hampshire Charitable Trust Law." Amended By-laws, Section 4.2.1. Moreover, "[c]onsistent with the vision and values described herein and with New Hampshire charitable trust laws and regulations, including [RSA] 7-19-b, MGH agrees that it will exercise its 'Reserved Powers'… over WDH in a manner that will continue, consistent with past policies and practices, to honor WDH's charitable mission and values and to fulfill the healthcare needs of the communities that WDH serves, including the poor and underserved residents of those communities." Governance Agreement, Section 2.5.

The use of a corporate member with voting rights and reserved powers does diminish considerably the independent authority of WDH. Some counterbalance exists in that there will be a sharing of power among co-fiduciaries and not simply a delegation of power to MGH. Still, the extent of MGH's rights and powers as sole member does come closer to the level requiring court approved deviation due to a substantial change in the "administrative mechanism" of the charitable organization. *See*, *In re Certain Scholarship Funds*, 133 N.H. 227, 240 (1990) (Brock, C.J., dissenting); *Jacobs v. Bean*, 99 N.H. 239, 241 (1954); RSA 547:3-c. Whether such approval is required in the context of a specific health care organization acquisition depends on an interpretation of the common law and statutes applied to a complex transaction. *See*, RSA 7:19-b, VI(b). Here, the Director determines that the transfer of control is not of such a magnitude that probate court approval for deviation is required.

(b) and (e) Best Interest of Community

(i) Community Benefits

The board of directors of WDH is expected to determine whether the transaction is in the best interest of the community, as well as in its own best interest. The statute does not define "best interest", but it likely includes issues identified in the health needs assessment and addressed in the community benefits that WDH measures and report to the Charitable Trusts Unit pursuant to RSA 7:32-c – 32-*l*.

WDH completed a community health needs assessment in 2013. It identified needs for increased mental health services, access to medical care (primary care services and transportation) and health related education. The report recommended specific programmatic and spending priorities arising from those needs. For instance, with respect to mental health, the report recommended increased staffing to provide behavioral health services at Wentworth Health Partners and improved behavioral health services at the emergency department.

Unfortunately WDH's annual community benefits reports do not reflect prioritization of spending in accordance with those identified needs. For instance the spending attributable to mental health services seems relatively insignificant, given the priority placed upon it in the needs assessment. WDH counters that it has increased its annual investment in mental health services from $357,000 in 2014 to $2,652,737 projected in 2017. It states that much of that increased spending has not been reflected in its community benefits reports. WDH maintains that this increased spending supports its newly established behavioral health line of service with 18 employees. It also is participating in the regional Integrated Delivery Network for substance abuse services pursuant to the so-called Medicaid Section 1115 waiver program.

The annual community benefits reports do permit a comparison among New Hampshire hospitals in terms of the amount paid and the relative effort. The NHCPPS study showed that in 2014 WDH spent 7.0% of operating expense for total community benefits (including Medicaid shortfall). That compares with a statewide average of 12.1%. The report places WDH next to the bottom among larger (i.e. non-critical access) hospitals in New Hampshire in terms of community benefits spending effort. WDH also reports that it did not credit the DSH payments it received against its Medicaid shortfall number, and it did include in the shortfall amount the MET payment it made to the state. Not all hospitals use those techniques to enhance their Medicaid shortfall amount.

WDH has challenged the NHCPPS numbers on several fronts. First, it notes that unlike some hospitals, WDH does not include its subsidy of its primary care medical practices as a community benefit. Had it done so, WDH reports that its percentage would rise to 14.1% of operating expenses. WDH also points to its comparatively generous charity care program. The NHCPPS report shows that in 2014, WDH provided charity care services equal to 2.3% of its operating expenses, well above average and the second highest in New Hampshire among non-critical access hospitals. And WDH presented a New Hampshire Hospital Association spread sheet for fiscal year 2015 showing that WDH provided charity care services equal to 5.2% of its net operating revenue, well above the statewide average of 3.1% and third highest among New Hampshire hospitals.

On October 3, 2016, WDH adopted a new community health needs assessment and implementation plan for the years 2017 through 2019. The needs assessment identified priority areas for action, including mental illness, substance abuse, access to primary medical and dental care, and affordability of care. The implementation plan proposes action items, outcome measures, program evaluations and collaboration opportunities for most of the priority areas

WDH certainly is engaged in community health efforts in the Dover area apart from its delivery of charity care and its participation in Medicaid. Its reporting may not reflect all community efforts, in part because WDH may prefer to deliver these services largely through its own organization. WDH can improve the level of its engagement with other providers in its region, especially those providers that serve disadvantaged populations. The implementation plan for 2017 – 2019 identifies promising areas for WDH to collaborate with other organizations to help meet emerging community needs.

(ii) Affiliation Benefits

There are three outcomes that are measured in any health care system: cost, quality and access. If the transaction improves these metrics, then the outcome would be in the best interest of the community. Here, WDH predicts improvement in all three areas. While this is laudable, the best indicator of the future is the experience of past hospital affiliations. Regrettably, according to NHCPPS, the available literature offers limited guidance. It does not show whether recent hospital consolidations have affected quality. Price increases may be associated with some affiliations, although that does not seem to be the case with cross-market mergers unless there is payer (insurer) overlap. Here, there seems to be little insurer overlap between WDH and MGH. Finally, there is evidence that greater competition increases the access component of population health initiatives. Consolidation does not seem to affect the broader provision of community benefits.

While WDH and MGH have indicated that they plan to assess clinical services going forward, the scope and methodology are not set forth specifically in the transaction documents. No assessment tool has been identified as of yet.

Conclusions and Determination

The Notice, the meetings, the outreach and the research indicate that WDH and MGH have complied with the minimum standards set forth in RSA 7:19-b, II for an acquisition transaction, subject to the representations and conditions set forth below. The information presented described how far-reaching changes are taking place in the delivery of and payment for healthcare. The Notice also described the process that the WDH board of directors used to explore alternatives. In the end, WDH chose to be acquired by MGH given its reputation, the history of clinical affiliation between the hospitals, MGH's experience with other acquisitions and the opportunity for better access to specialty services.

WDH is not alone. Hospitals in New Hampshire have decided in recent years that the future lies in greater consolidation. The jury is still out on whether these affiliations will in the end deliver net benefits to the communities served by these hospitals. Better data is needed to evaluate how access, quality and cost may change. The information available now is mixed, and

on balance cannot refute the conclusions reached by WDH in its due diligence: that the pending transaction is in the best interest of the hospital and the Dover area.

Still, this review has identified some concerns with the Notice and some matters that require further clarification and oversight. Accordingly, the Director of Charitable Trusts will take **no further action** with respect to the transaction, subject to the following representations, conditions and guidance.

Representations

(i) The transaction will comply with the terms of the Agreement for Acquisition of Control and the statements made in the Notice.

(ii) There are no conflicts of interest or pecuniary benefit transactions involving directors or officers of WDH or its affiliates contemplated as part of the transaction.

Conditions

(i) Those persons who will serve concurrently on the boards of directors of WDH and MGH or the affiliates of MGH will receive training and written materials with respect to the heightened awareness of mission and potential conflicts required for such service;

(ii) Before the closing, the proposed Amended By-laws of WDH will be changed (1) to include a set of standards, substantially in the form attached as Exhibit A to this report, to be used in the selection of directors of WDH, and (2) to require the MGH nominating committee and the MGH board of trustees to apply those standards in considering any proposed WDH director and, should such MGH committee or board not approve a proposed candidate, to explain to the WDH board its reasoning with reference to those standards;

(iii) For a period of five years from the closing the parties will notify the Director of Charitable Trusts should a dispute arise that requires dispute resolution pursuant to Section 7.2 of the Acquisition Agreement or Section 13.2 of the Governance Agreement;

(iv) Within one year from the closing WDH and MGH will create a plan for annually assessing and reporting to the Director of Charitable Trusts the access to and quality and cost of WDH clinical services, such plan and report to be in a form reasonably acceptable to the Director of Charitable Trusts. The hospitals will thereafter deliver to the Director of Charitable Trusts a copy of the assessment report annually for a period of five years from the closing;

(v) For a period of five years from the closing, WDH will provide the Director of Charitable Trusts with not less than 60 days advance notice before WDH enters into a contract that Partners has negotiated jointly on behalf of WDH and one or more other Partners provider organizations with any commercial payer that offers plans in both New Hampshire and Massachusetts;

(vi) From the closing until the effective date of WDH's next community health needs assessment to be completed in 2019, WDH and MGH will make the following community benefit spending commitments:

a) require no qualifications more stringent than those currently in place for individuals to receive financial assistance for the delivery of health care services
b) complete the 2016 community health needs assessment implementation strategy
c) expand behavioral health (mental health and substance mis-use) services beyond that committed in the 2016 assessment implementation strategy and beyond current levels of service by adding an additional 8 full time equivalent mental health professionals by 2018
d) maintain or increase the level of community benefit spending from fiscal year 2015;

(vii) For a period of five years from the closing, MGH will provide the Director of Charitable Trusts with not less than 60 days advance notice of (1) any proposed financing by Partners or any of its affiliates (other than WDH or its affiliates) that will obligate or will use the pre-affiliation assets of WDH or any of its affiliates for the support of the Partners (or affiliates) financing, whether by means of a WDH (or affiliate) guaranty, a security interest in such assets or otherwise; and (2) any proposed financing by WDH or any of its affiliates where some or all of the proceeds of such financing will be made available to Partners or any of its affiliates (other than WDH or its affiliates);

(viii) Any restricted and unrestricted investment assets of WDH and its affiliates that are transferred to the pooled investment accounts managed by Partners will be identified through unitized sub-accounts and will be subject to New Hampshire's version of UPMIFA, RSA 292-B;

(ix) MGH will register and report annually to the Charitable Trusts Unit pursuant to RSA 7:28 as a non-resident charitable organization; it being acknowledged that MGH's governance and management activities in New Hampshire described in the transaction do not meet the definition of a "health care charitable trust" for purposes of RSA 7:32-c – 32-*l*; and

(x) The hospitals will give notice to the Director of Charitable Trusts of the completion of the closing of the transaction.

Guidance

(i) The Director of Charitable Trusts expects that MGH will act as a fiduciary toward WDH when exercising its voting rights and reserved powers. This expectation, which applies generally to charitable corporation membership arrangements, is discussed in the section of this report entitled "Use of a Corporate Member."

This no further action report concerns the review of the Charitable Trusts Unit under RSA 7:19-b and does not implicate the jurisdiction of any other section of the New Hampshire Department of Justice which may also have a role in reviewing this proposed affiliation, including that of the anti-trust section.

Exhibit A

WDH Trustee* Selection Criteria

All candidates being considered for nomination and election to the WDH Board of Trustees should possess the following characteristics:

1. Employment, professional status or personal experience that reflect a record of personal and professional accomplishment.

2. Well-regarded in the communities served by the Hospital, with a long-term, good reputation for high ethical standards.

3. Absence of conflicts of interest as defined in the Partners Code of Conduct and Conflict of Interest Polities, unless any such conflict is required pursuant to such policies.

4. An understanding and commitment to the mission of the Hospital and of the Partners System.

5. Willingness and availability to contribute time and energy to the Hospital's Board and its committees.

When considering candidates for nomination and election to the WDH Board of Trustees, the goal of the MGH Nominating and Governance Committee and the MGH Board of Trustees should be a WDH Board whose members demonstrate a balance of the following characteristics:

6. Knowledge in fields such as clinical care, finance, government and community affairs, education, research and technology, philanthropy and information systems.

7. Enhances the Hospital's and Partners' commitment to diversity.

8. Demonstrates a strategic perspective and an awareness of the dynamics of the complex and ever-changing healthcare environment and the need to participate and capitalize on opportunities that enhance the mission, vision and principles of the Hospital and of the Partners System.

9. Service and experience with other boards of directors/trustees with a record of preparation, attendance, participation, interest and initiative.

10. Willing and enthusiastic promoter of the Hospital and of the Partners System.

11. Geographic residence or other connection to the area served by the Hospital.

12. Connections with public and influential community organizers and stakeholders important to the Hospital and/or the Partners System.

* The governing bodies of New Hampshire voluntary corporations are known as boards of directors. RSA Chapter 292. An organization may internally refer to that body using a different term.