

REDACTED

NOTICE TO THE NEW HAMPSHIRE DIRECTOR OF CHARITABLE TRUSTS
PURSUANT TO NEW HAMPSHIRE RSA 7:19-b

Re: Newfound Area Nursing Association

This Notice and its appendices (the “*Notice*”) are submitted to the New Hampshire Attorney General, Director of Charitable Trusts (the “*Charitable Trusts Director*”) pursuant to New Hampshire RSA 7:19-b (the “*Change of Control Statute*”) by **Newfound Area Nursing Association**, a New Hampshire voluntary corporation (“*NANA*”). This Notice is being submitted in connection with the proposed merger transaction described in Section III below (the “*Transaction*”). In support of this Notice, NANA and **Lakes Region Visiting Nurse Association** (“*LRVNA*”) (collectively, the “*Parties*”) respectfully provide the following information:

I. THE PARTIES

A. NEWFOUND AREA NURSING ASSOCIATION

NANA was established in 1960 as a New Hampshire voluntary corporation under New Hampshire RSA 292. It is exempt from federal income taxation as a charitable organization described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “*Internal Revenue Code*”). The current Articles of Agreement and Bylaws of NANA are attached as Appendix A and Appendix B, respectively.

NANA initially provided home skilled nursing services to the towns of Bristol, Bridgewater, and New Hampton. In 1969, NANA added the town of Alexandria to its service area. Subsequently, NANA expanded its service area to include the towns of Danbury, Groton, Hebron, and Hill.

NANA offers a broad array of Home Health and Hospice services to these communities and is a licensed Medicare and Medicaid certified home health and hospice agency providing a range of services and programs. These services include Skilled Nursing, Physical, Occupational, and Speech Therapies, Home Health Aide and Homemaker services, Medical Social Services, Spiritual and Bereavement Counseling, and Hospice massage therapy. NANA also provides various free community clinics and screenings.

NANA holds two health facility licenses issued by the New Hampshire Department of Health and Human Services, Bureau of Facilities Administration: (1) Home Health Care Provider License #01281; and (2) Home Health Agency Hospice #03935. In addition, NANA holds a waiver from the Centers for Medicare and Medicaid Services relating to the Clinical Laboratory Improvement Amendments (CLIA).

NANA presently operates from its office location in Bristol, New Hampshire, in a building which it owns. The most recent audited financial statements of NANA, and its Form 990 for the year ending December 31, 2019, are attached as Appendix C-1 and Appendix C-2, respectively.

B. LAKES REGION VISITING NURSE ASSOCIATION.

Lakes Region Visiting Nurse Association initially was incorporated in 1923 as the “Meredith Public Health Association” as a voluntary corporation under New Hampshire RSA 292. It is exempt from federal income taxation as a charitable organization described under Section 501(c)(3) of the Internal Revenue Code. The current Articles of Agreement and Bylaws of LRVNA are attached as Appendix D and Appendix E, respectively.

LRVNA currently serves 35 towns in the Central/Lakes Region of New Hampshire. Its business offices are located in Meredith, New Hampshire. LRVNA provides a range of personalized services and programs including home care, hospice, palliative care, personal home services, pediatric and maternal child health services, immunizations clinics, and wellness programming. The most recent audited financial statements of LRVNA, and its Form 990 for the year ending September 30, 2019, are attached as Appendix F-1 and Appendix F-2, respectively.

II. BACKGROUND AND IMPERATIVES FOR THE TRANSACTION

Not unlike similarly situated small home health agencies, for the past several years NANA has found itself confronting challenges as a result of an evolving healthcare industry in general, and a changing home health care sector in particular. NANA has been challenged by a shifting reimbursement landscape moving from fee-for-service to value-based payments including through the recently implemented federal Patient-Driven Groupings Model payment system, which became effective on January 1, 2020. At the same time, the competition for qualified personnel has made it exceedingly difficult for the organization to recruit and retain qualified nurses and other practitioners.

These ongoing challenges were heightened in January 2020, when NANA’s then-Executive Director abruptly announced her resignation. While concerned about its executive leadership, the Board of Directors believed that this development posed an opportunity to address and to analyze the manner in which NANA could best fulfill its mission. As a result, the Board engaged in discussions with another home health agency to enter into a potential alliance. While the initial steps of this partnership appeared to hold promise, upon conducting its due

diligence and review, the Board of Directors determined that NANA's business structure, goals, and mission were not compatible with the other organization.

Although the Board of Directors spent considerable energy in its review of an arrangement that ultimately did not come to fruition, the benefit of having engaged in this exercise crystalized for the Board the significant importance of several factors to any successful merger. First, NANA's real property in Bristol, which the organization owns unencumbered, is integral to NANA's operations and the services it provides to NANA's communities, and as a result a merger must insure its preservation. Second, any affiliation with another organization should result in a combined entity that can and will stand on its own. Third, NANA's crucial community services, including free health clinics and screenings, must continue unabated. Finally, in any alliance, partnership or merger, NANA's qualified staff must be retained. With these salient factors in focus, the NANA Board moved rapidly to examine its options, identify potential partners, select the one that would best serve the interest of its communities – a foremost priority – and bring stability to the organization and security to its staff.

After reviewing the efficacy of partnering with other home health agencies, NANA's Board determined that LRVNA best answered all areas of concern, including its immediate ability to augment NANA's operations. The two organizations promptly initiated discussions to investigate a merger. As part of this process, the NANA Board this fall entered into an Operating Services Agreement through which LRVNA's Chief Executive Officer provides executive services and management expertise to NANA. Appendix G. Since the implementation of the Operating Services Agreement, NANA has increased its revenue, buttressed its existing staff, and stabilized its ability to offer its services, thus cementing the NANA Board's belief that LRVNA is an appropriate merger partner.

The merger will benefit each organization because scale is important. Each Party faces long-term challenges requiring an ability to adjust proactively to a shifting regulatory environment, the increased need for efficient technologies both in the field and in office settings, and competition for an excellent work force. Based upon NANA and LRVNA's due diligence and inquiries conducted to date, both Boards of Directors are confident a merger of their two organizations will enhance the ability of each to successfully surmount these challenges and continue to provide quality care to their constituencies into the future.

The missions and operations of the two organizations align in a manner that will best serve the combined 43 communities in which NANA and LRVNA have a presence. Notably, LRVNA already serves 6 of the 8 communities served by NANA. Both organizations offer compatible services such as free clinics and screenings, provide 24/7 services, and utilize many of the same vendors. The proposed combination will heighten each of the organizations' missions to serve those in need, regardless of ability to pay.

For the past 60 years, NANA has maintained a physical presence in Bristol, New Hampshire. Since 1923, LRVNA has based its own operations in Meredith, and the combined organization will continue operations from each of these offices. NANA strongly believes that a combination with LRVNA will sustain its core mission and result in an enhanced organization poised to continue and to enhance all of the services currently provided and needed in its communities.

III. SUMMARY OF THE TRANSACTION

Attached as Appendix H is the Merger Agreement between NANA and LRVNA dated as of December 10, 2020 (the “*Merger Agreement*”). The material terms of the Merger Agreement and the proposed Transaction (sometimes referred to as the “*Merger*”) are summarized below.

A. MERGER; INTEGRATION.

NANA will merge into LRVNA on the effective date of the Merger (the “*Merger Date*”) as outlined in the form of Plan of Merger attached as Appendix I. Simultaneously, LRVNA will amend its Articles of Agreement and Bylaws to incorporate certain of the Merger Agreement provisions (following such amendments, the “*Combined Entity*”). The Parties envision that their respective missions, resources, leadership, clinical practices, administrative policies, and staff will become fully integrated under the Combined Entity as of the Merger Date.

B. CHARITABLE MISSIONS AND GOVERNANCE.

1. Charitable Missions. The charitable missions of the Parties are compatible, and their respective Boards of Directors have determined that the Merger is in furtherance of such missions. Each Party shall propose for approval by their respective Board of Directors before the Merger Date an amendment to the Articles of Agreement of the Combined Entity which includes an integrated charitable mission statement which is not inconsistent with the existing charitable mission of each Party.

2. Governance. To ensure that the Combined Entity Board of Directors adequately reflects the Parties’ intent to form an integrated organization that respects each Party’s heritage and identity, and to provide each Party with meaningful representation, the initial Combined Entity Board following the Merger Date will consist of eight (8) individuals nominated by LRVNA and two (2) individuals nominated by NANA. The Combined Entity Chief Executive Officer will serve on the Combined Entity Board *ex officio*, without voting rights. The initial officers of the Combined Entity will be nominated by the Combined Entity Board to be elected

as soon as possible and will serve for a term through the 2021 Annual Meeting, to be held in October. The initial chair will be Renee Speltz and at least one officer on this initial slate will be a former member of the NANA Board of Directors.

The Combined Entity Bylaws will require that the following decisions of the Combined Board be approved by an affirmative vote of three-fourths (3/4) of the Combined Entity Directors entitled to vote ("*supermajority vote*"):

i. *Capital Expenditures; Debt.* Any unbudgeted capital expenditure or incurrence of debt, either in a singular instance or in a series of related transactions, in excess of \$100,000;

ii. *Material Change in Clinical Services/Programs.* Except for actions necessitated by regulatory requirements, the material expansion or contraction of any clinical services or programs of the Combined Entity;

iii. *Principal Office Relocation or Closure; Geographic Change in Service Area.* The relocation or closure of any principal office or any existing principal clinical facility of either Party, or the expansion or contraction of the current service areas of NANA and LRVNA, respectively;

iv. *Corporate Reorganization.* The merger or reorganization of the Combined Entity with another organization, or the substitution or elimination of the existing sole corporate member of the Combined Entity;

v. *Dissolution.* The dissolution or other cessation of operations of the Combined Entity;

vi. *Amendment to Governing Documents.* Any amendment to the Articles of Agreement or Bylaws of the Combined Entity which modifies or removes these supermajority voting provisions;

vii. *Hiring and Termination of Chief Executive Officer.* The hiring, evaluation, compensation and/or termination of the Combined Entity's Chief Executive Officer;

viii. *Endowment and Investment Policies.* A material change to the Combined Entity's Endowment and Investment Policies; and

ix. *Material Change in Clinical Services/Programs.* The material expansion, contraction, or initiation of any clinical services or programs of the Combined Entity.

C. NO MONETARY CONSIDERATION.

There is no payment or other financial consideration being exchanged in connection with the Transaction.

D. CHARITABLE ASSETS; MANAGEMENT.

1. Charitable Assets. Although the assets and liabilities of NANA will be combined with those of LRVNA as a result of the Merger, Section 3.1.2 of the Merger Agreement requires that any board-designated or operating reserves of either Party on the Merger Date remain dedicated for use only in the communities served by the respective Party that accumulated the reserves prior to the Merger Date. This section of the Merger Agreement also mandates that all donor restrictions existing prior to the Merger Date be honored and observed by the Combined Entity Board of Directors.

2. Executive Management. The Board of Directors of the Combined Entity will be responsible for appointing, supervising, evaluating and compensating a Chief Executive Officer (“CEO”) who will be professionally qualified to manage the work of the Combined Entity. The Merger Agreement states that the initial CEO of the Combined Entity following the Merger Date will be the current LRVNA Chief Executive Officer, *Kevin Kelly*. In addition to Mr. Kelly, the Merger Agreement provides that the following individuals will serve as the senior management team of the Combined Entity: (a) *Debra Peaslee, RN*: Clinical/Home Care Director; (b) *Tanaya Call, RN*: Hospice Director; and (c) *Mary Elliard, CMA*: Finance Director.

E. CONTINUED PLANNING; CONDITIONS TO CLOSING; MERGER EFFECTIVE DATE.

1. NANA Employees, Scholarship Program, and 2021 Municipal Appropriations.

(a) The Merger Agreement specifically states that all NANA employees will be provided with updated job descriptions outlining their roles and responsibilities in the Combined Entity, and those who accept such employment shall be employed by the Combined Entity and will be given credit for their tenure as NANA employees.

(b) NANA has prided itself on its long-standing scholarship program by which it awards at least \$1,000 in scholarship support to students in NANA’s service area who plan to enter the field of health care. Under the Merger Agreement, this program will continue in the same or similar manner as currently administered by NANA.

(c) The Merger Agreement requires that all 2021 municipal appropriations NANA would have received shall be allocated to the communities in NANA's traditional service area.

2. Conditions to Closing. The proposed Merger is conditioned upon the following:

(a) *Regulatory Approvals.* The Merger must be approved by the New Hampshire Director of Charitable Trusts under New Hampshire RSA 7:19-b, and be reviewed by the New Hampshire Attorney General, Consumer Protection and Antitrust Bureau.

(b) *Remaining Due Diligence.* The completion by each Party, and receipt of satisfactory results, of any updated due diligence into various operational, legal, financial, tax, administrative, political and other issues and matters occurring between the Effective Date of the Merger Agreement and the Merger Date which may impact the successful consummation of the Merger.

(c) *Additional Board Votes.* To the extent that any material modifications are required to the Merger Agreement or any of the documents attached as exhibits as a result of the regulatory review and/or public hearings under New Hampshire RSA 7:19-b, then such modifications must be approved and the Merger Agreement ratified by the respective boards of NANA and LRVNA.

3. Merger Effective Date. The Merger will become effective upon the filing of the Certificate of Merger with the New Hampshire Secretary of State, which filing will occur within thirty (30) days of the date on which all of the conditions precedent to the Merger have been satisfied, or such other date as may be agreed upon by the Parties. The Parties seek to complete the Transaction by February 1, 2021.

IV. FULFILLMENT OF FIDUCIARY AND STATUTORY DUTIES

A. FURTHERANCE OF THE CHARITABLE MISSION

1. Charitable Mission Supported and Furthered. A primary fiduciary role of the NANA Board of Directors is to ensure that the proposed Transaction furthers the organization's charitable mission. The NANA Board's due diligence revealed that LRVNA has a very similar and compatible mission with that of NANA. In the Merger Agreement, both parties acknowledge their mutual goal of furthering their charitable missions through the Combined Entity and make it a guiding principle in their ongoing relationship. See Appendix H, Merger Agreement Preamble and Sections 1.1 and 2.3, respectively. As noted above, and as required by Section 3.2 of the Merger Agreement, the Parties will convene to prepare a combined, unified

mission statement which will perpetuate and further the mission of NANA as well as that of LRVNA. The Merger Agreement also directs the Combined Entity to “utilize its combined assets and resources in furtherance of the combined mission of the Parties” following the Merger. See Appendix H, Merger Agreement Section 3.1.2.

2. Meeting Community Needs. In determining that the proposed Transaction is in the best interest of NANA, the NANA Board of Directors also concluded that the Transaction and establishment of the Combined Entity will be in the best interest of the 8 communities that it serves. By merging with LRVNA, NANA will avail itself of LRVNA’s particular management strengths and operational skills, and skilled workforce, and these will assist NANA with the augmentation of its services.

The NANA Board of Directors also ensured that the Transaction will be in the best interest of the communities in its service area by ensuring in its negotiations the inclusion of certain provisions of the Merger Agreement. Section 2.1 establishes the guiding principle that the “healthcare needs of the communities served by the Parties are paramount, and the Combined Entity will be designed and operated to best address the needs of the residents of the communities being served.” Section 1.3 of the Merger Agreement requires the Combined Entity to “continue the current Healthcare Services and programs of both Parties following the Merger.” Section 3.1.5 of the Merger Agreement requires the Combined Entity to maintain NANA’s principal place of business at 214 Lake Street, Bristol, New Hampshire. These requirements are reinforced by the governance structure of the Combined Entity, which requires a three-fourths (3/4) supermajority vote of the Combined Entity Board of Directors to make any material changes in clinical programming or to relocate or close an existing principal office. See Appendix H, Merger Agreement Sections 3.7.8 and 3.7.2, respectively.

B. STEWARDSHIP OF CHARITABLE ASSETS

Another primary fiduciary role of the NANA Board of Directors is to serve as good stewards of NANA’s charitable assets. The NANA Board fulfilled this role by negotiating provisions of the Merger Agreement that protect its charitable assets, and by reviewing the financial statements and condition of LRVNA.

1. Dedication of Charitable Assets to Mission. As noted above, the Merger Agreement requires that any board-established or operating reserves existing on the Merger Date be dedicated exclusively for the benefit of the communities in the service area of the Party that accumulated those reserves before the Merger, and that the combined assets and resources of the Combined Entity be used in furtherance of the combined mission of the Parties. See Appendix H, Section 3.1.2. These requirements also will be stated and perpetuated in the amended governance documents of the Combined Entity.

2. Endowment Funds Retained. Section 3.1.2 requires the Combined Entity Board of Directors to honor and support any of the charitable assets of NANA, and any NANA board-restricted or other operating reserves existing on the Merger Date will be identified and will be used only for the communities served by NANA prior to the Merger, and such obligations will be stated and perpetuated in the amended governance documents of the Combined Entity. NANA does not currently possess any donor-restricted funds. NANA negotiated additional protections by requiring that any changes to the endowment and investment policy of the Combined Entity be approved by a supermajority vote of the Combined Entity Board of Directors. See Appendix G, Merger Agreement Section 3.7.7.

3. Combined Entity Financials. Both NANA and LRVNA have engaged as their accountants BerryDunn, an accounting firm known for its expertise in healthcare and, in particular, home health agency accounting, to prepare annual financial statements and the organizations' IRS Form 990s. The Combined Entity will continue to enjoy the services provided by BerryDunn.

C. DUTY OF CARE: DUE DILIGENCE

1. Board Involvement. Since the NANA Board's initial consideration early in 2020 of a proposed partnership with another home health agency, the Directors have engaged in extensive discussions and review of the path NANA should take to best serve its communities. While the initial exploration of an alliance did not result in finding a strategic partner, that effort established the groundwork for NANA's evaluation of a merger with LRVNA. Indeed, the lessons learned through the Board of Directors' engagement in that process effectively positioned the Board to be able to clearly articulate the necessary conditions for a merger with LRVNA. Attached as Appendix J - Confidential [REDACTED] [REDACTED] [REDACTED].

2. Notification and Input of Communities Served. As required by New Hampshire RSA 7:19-b(II)(g), NANA has communicated to the public the proposed Transaction and its terms, together with an analysis of how it will benefit the communities in NANA's service area. Together with LRVNA, the Parties issued a joint press release on October 30, 2020 notifying the public of their intent to merge and posted it on their respective websites. A copy of the press release is attached as Appendix K. NANA also contacted personally a number of key stakeholders about the proposed Transaction, including staff, donors, community partners, and peer organizations.

As a result of the Governor of New Hampshire's declaration of a state of emergency in connection with the coronavirus pandemic and his issuance of related emergency orders which

required citizens to stay at home and not to congregate, the Parties elected to conduct a so-called “Listening Session” using the Google/YouTube webinar platform. On October 28, 2020 NANA and LRVNA mailed a joint notice of the Merger and of the virtual public “Listening Session” to discuss the Merger to over 4000 separate addressees located within their communities (“*Joint Notice*”). The parties also posted the Joint Notice on their websites. On November 12, 2020, the Parties conducted the Listening Session to describe and discuss the impetus for the proposed Transaction. 36 pre-registered for the session which ran from 4:15 pm to approximately 5:00 pm and was attended by 25 individuals, although as of November 30, 2020 total views of the Listening Session available on the LRVNA website, NANA website, and the parties’ respective Facebook pages measured 193. In addition to the press release and announcements on the Parties’ websites, the Parties sent press releases to the following publications: the Laconia Daily Sun, Concord Monitor, the Union Leader, the Conway Daily Sun, the Valley News, and the Record Enterprise. The Board Chairs and Chief Executive Officer of LRVNA presented the details of the proposed Transaction and its benefits and answered audience questions. A copy of the (i) Listening Session Live Stream transcript with questions and answers is attached as Appendix L-1. Prior to and since the Listening Session, NANA and LRVNA have received letters in support of the merger, contained in Appendix U.

The NANA Board of Directors posted a link to the YouTube video of the complete Listening Session, available at <https://www.newfoundareanursingassociation.org/>. Those NANA Board members who were unable to attend the live Listening Session viewed the video of it on NANA’s website.

3. Decision-Making Process. The NANA Board of Directors exercised its fiduciary duty of due care in identifying and evaluating LRVNA as an affiliation partner and in negotiating the terms of the Merger Agreement in connection with the proposed Transaction.

On December 10, 2020 the NANA Board assembled to review the proposed merger and deliberate on whether to enter into the Merger Agreement. During its deliberations and discussion of the proposed Merger, the NANA Board of Directors discussed the public feedback received from the Listening Session and the questions submitted and concluded that the proposed Merger Agreement adequately addressed the public input. Following active deliberation and questioning, the NANA Directors unanimously approved Resolutions to merge, and the Merger Agreement and authorized the filing of this Notice. A copy of the NANA Board of Directors’ Adopted Resolutions is attached as Appendix L-2. A copy of the NANA Board of Directors’ December 10, 2020 meeting minutes is attached as Appendix M.

4. Transaction Permitted by Law. The proposed Transaction is permitted by applicable law, specifically New Hampshire RSA 292:7, subject to the receipt of regulatory approvals described in Section III(E)(2)(a) of this Notice. Given the compatibility of the Parties’

charitable missions and organizational structures, the proposed Transaction does not require approval from a New Hampshire probate court.

D. DUTY OF LOYALTY

The NANA Board of Directors observed its duty of loyalty in considering and approving the Merger Agreement. No conflicts of interest were identified, and the proposed Merger does not constitute a pecuniary benefit transaction.

V. TRUSTEE CERTIFICATION

Attached as Appendix O is the certification of the Directors of NANA who voted on the Transaction affirming that the standards set forth in New Hampshire RSA 7:19-b(II) have been considered in good faith and met.

VI. STATEMENT OF LRVNA

LRVNA is an “acquirer” as that term is defined by New Hampshire RSA 7:19-b(1)(b) as the surviving legal entity of the Transaction. As required by New Hampshire RSA 7:19-b(III), attached as Appendix P is a statement of LRVNA specifying the manner in which it proposes to continue to fulfill the charitable objects of NANA. The minutes of LRVNA’s special meetings of its Home Health Care Board of Directors and Hospice Board of Directors, held on December 9, 2020 to deliberate the Merger, are attached as Appendix Q and Appendix R, respectively. The adopted resolutions of the LRVNA Boards of Directors for Home Health and Hospice are attached as Appendix S and Appendix T, respectively.

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10th Respectfully submitted by the duly authorized representative of the undersigned this
day of December 2020.

NEWFOUND AREA NURSING ASSOCIATION

By: 
Heana N. Saros
Board President, duly authorized

