

MERRIMACK, SS

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

STATE OF NEW HAMPSHIRE,
33 Capitol St.
Concord, NH 03301

and

**ATTORNEY GENERAL,
DIRECTOR OF CHARITABLE TRUSTS,**
33 Capitol St.
Concord, NH 03301

Plaintiffs,

v.

EXETER HEALTH RESOURCES, INC.
5 Alumni Dr.
Exeter, NH 03833

and

BETH ISRAEL LAHEY HEALTH, INC.,
20 University Road
Cambridge, MA 02138

Respondents.

Docket No. 217-2023-CV-00325

FINAL JUDGMENT

Plaintiffs State of New Hampshire, by and through its attorneys, the Office of the Attorney General, Consumer Protection and Antitrust Bureau (“State” or “CPAB”) and the Attorney General, Director of Charitable Trusts (“DCT”) (collectively, “Plaintiffs” or “Attorney General”) filed a Complaint on June 14, 2023 against Exeter Health Resources, Inc. (“EHR”) and Beth Israel Lahey Health, Inc. (“BILH”) (collectively, “Respondents”), seeking an

injunction and other relief in this matter pursuant to the New Hampshire Combinations and Monopolies Act, N.H. Rev. Stat. Ann. ch. 356; the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. ch. 358-A; the New Hampshire statutes pertaining to charitable trusts, N.H. Rev. Stat. Ann. Ch. 7, secs. 19–32-*l*; and Section 7 of the Clayton Act, 15 U.S.C. § 18. Plaintiff State, acting through the CPAB enforces state and federal laws designed to protect free and open markets and fair business practices for the benefit of consumers. *See* N.H. Const., Part II, Art. 83; N.H. Rev. Stat. Ann. chs. 356, 358-A; 15 U.S.C. §§ 18, 26.

Plaintiff State, by and through its Attorney General, also brings this action as *parens patriae* on behalf of and to protect the health and welfare of its citizens and the general economy of the State. *See* N.H. Rev. Stat. Ann. chs. 356, 358-A; 15 U.S.C. § 15c. The Complaint alleges that the consummation of the proposed transaction under the Affiliation Agreement and related agreements, whereby BILH acquires EHR's assets, would constitute an unfair method of competition and risk substantially lessening competition in health care markets served by Respondents to the detriment of consumers.

Plaintiff DCT has the common law duty and power to supervise and enforce charitable trusts. *See* RSA 7:19–32-*l*; *see also In re Trust of Mary Baker Eddy*, 172 N.H. 266, 212 A.3d 414, 420 (2019) (“the attorney general (or the DCT, as his representative) has the statutory power and duty to represent the public in the enforcement and supervision of charitable trusts”). The DCT is further required by statute to review any change of control or acquisition transaction of a health care charitable trust to determine compliance with the requirements of N.H. Rev. Stat. Ann. 7:19-b.

Plaintiff State represents that under the circumstances of this case, the entry of this Final Judgment is in the public interest and will provide a remedy for potential alleged harm to free

and fair competition in health care markets in New Hampshire. Plaintiff DCT represents that under the circumstances of this case, the entry of this Final Judgment and compliance therewith will satisfy Respondents' obligations under N.H. Rev. Stat. Ann. 7:19-b. Respondents have denied all allegations and contend that the proposed transaction will result in substantial benefits for New Hampshire consumers. Nonetheless, in order to avoid the time, expense, and uncertainty of litigation, the parties agree that this Final Judgment contains the relief agreed to by Plaintiffs and Respondents pursuant to negotiated terms without trial or adjudication of any issue of fact or law.

NOW THEREFORE, IT IS HEREBY ORDERED that the proposed transaction between Exeter Health Resources, Inc. and Beth Israel Lahey Health, Inc. may proceed without undue delay, subject to their compliance with the conditions that follow.

I. JURISDICTION

Pursuant to N.H. Rev. Stat. Ann 358-A:4, III(a) and agreement with the Respondents, this Court has jurisdiction over the subject matter of the Complaint and this Final Judgment, and over the Respondents named in the Complaint.

II. BACKGROUND

1. EHR is an independent, nonprofit community health care system located in Exeter, New Hampshire and the surrounding communities. Its subsidiary, Exeter Hospital ("EH"), is a Medicare-dependent community hospital consisting of 100 beds and provides comprehensive health care services, including maternity care, cardiovascular, gastroenterology, oncology, orthopedics, general surgery, and emergency care. Core Physicians LLC, a multi-specialty group practice, is also a subsidiary of EHR, along with Rockingham Visiting Nurse Association and Hospice, Inc., a provider of home and hospice care.

2. BILH is a nonprofit, integrated health system with facilities located across Eastern Massachusetts. BILH, one of the largest healthcare systems in New England, is comprised of two academic medical centers and eleven community hospitals across Eastern Massachusetts as well as multiple primary care locations, including in Salem and Seabrook, New Hampshire. BILH further contracts with its own provider network as operational affiliates. BILH delivers the majority of its care in community hospitals and has made efforts to expand local capabilities, such as using teleconsulting programs for select tertiary care services for its community hospitals. BILH also has integrated behavioral health to primary care practice sites across its network and intends to increase access to primary care and behavioral health through growing primary care access at its community hospitals.

3. Respondents are nonprofit corporations exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code.

4. Respondents executed an Affiliation Agreement on June 28, 2022, providing for a change of control of EHR by BILH (the “Affiliation”) subject to regulatory reviews.

5. Respondents notified the CPAB and the DCT of the Affiliation Agreement and filed a notice of a proposed transaction with the DCT on October 4, 2022 (hereinafter, “DCT Notice”). In accordance with RSA 7:19-b, IV (a), the DCT subsequently requested and obtained from the Respondents additional documentation and information regarding the Affiliation Agreement. The additional information and documentation submitted by the Respondents are included in the DCT Notice.

6. Plaintiff State represents that in the circumstances of this case, the terms and remedies described herein are appropriate and in the public interest and is therefore willing to accept this

resolution in lieu of proceeding with an action to permanently enjoin the consummation of the Affiliation.

7. Plaintiff DCT has determined that the Affiliation complies with N.H. Rev. Stat. Ann. 7:19-b, subject to the terms of the DCT Notice and the terms and conditions set forth herein. The Report of the DCT is attached as an exhibit to this Final Judgment.

8. Plaintiffs reviewed and investigated the proposed transaction pursuant to their separate jurisdictions. In Plaintiffs' view, the jointly-filed Complaint and this Final Judgment is the most appropriate and efficient manner to resolve Plaintiffs' concerns with the proposed transaction.

9. Respondents agree to enter into and comply with this Final Judgment so as to avoid significant expense, inconvenience, and uncertainty, and to permit the Affiliation to close without further delay.

10. This Final Judgment governs the conduct and obligations of Respondents, and any successors or assigns upon closing of the proposed transaction under the Affiliation Agreement for the Term of the Final Judgment or unless otherwise specified below or as ordered by this Court.

III. CONSTRUCTION

1. This Final Judgment shall be construed pursuant to the laws of the State of New Hampshire and enforced pursuant to the authority of the Merrimack County Superior Court in the State of New Hampshire. The Final Judgment shall be interpreted in accordance with its fair meaning and not against any party hereto.

2. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of consumer protection and antitrust laws and to protect the competition that Plaintiff State alleges may be lessened by the Affiliation. The Final Judgment also should be interpreted

to allow Respondents to provide the full benefits of the Affiliation to the communities they serve within the State of New Hampshire. All captions are for convenience only and are not deemed a part of the substantive terms of this Final Judgment.

3. This Final Judgment shall not create a private cause of action or confer any right to any Third Party for violation of any state or federal law by any Respondent except that the Attorney General, acting through the CPAB or the DCT, may file an action or motion to enforce this Final Judgment.

4. Nothing contained in this Final Judgment shall be construed to alter or modify any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law.

5. Nothing contained in this Final Judgment shall be construed to relieve Respondents of the obligation to comply with all state and federal laws, nor shall it be construed as approval by the Attorney General of any business or governance practices of Respondents.

IV. DEFINITIONS

As used in this Final Judgment:

1. “**Affiliate**” means any Person (other than an individual) that through one or more intermediaries controls, is controlled by or is under common control with another Person and includes the power to direct or cause the direction of the management and policies of a Person.

2. “**Affiliation Agreement**” means the contractual agreement by and between BILH and EHR titled Affiliation Agreement, dated June 28, 2022.

3. “**Anti-Tiering or Anti-Steering Clause**” means any written or unwritten agreement, term or practice between a Health Care Provider and a Payor that prohibits the Payor from steering its members to a Hospital or Health Care Provider based on price, access, and/or quality

criteria, such as placing the Health Care Provider in a tiered product based on objective criteria determined by the Payor, or that requires the Payor place the Health Care Provider in a particular tier in a tiered health plan product. This includes a gag clause that would prevent a Payor from disclosing cost, access, or quality information to its enrollees, patients or employers.

4. **“Beth Israel Lahey Health”** or **“BILH”** means Respondent Beth Israel Lahey Health, Inc., a Massachusetts nonprofit corporation with its headquarters in Cambridge, Massachusetts, its successors and assigns, Affiliates, and their respective directors, officers, managers, agents, and employees.

5. **“BILH Mid-Level Provider”** means a Mid-Level Provider who has an employment relationship with BILH, or any BILH Affiliate.

6. **“BILH Physician”** means a Physician who has an employment relationship with BILH, or any BILH Affiliate.

7. **“Closing Date”** means the effective date when the Affiliation is consummated pursuant to the Affiliation Agreement.

8. **“Community Needs Assessment”** means the assessment conducted by EHR, as provided in RSA 7:32-f and 26 U.S.C. § 501(r)(3).

9. **“Designated Receiving Facility”** means a treatment facility which is designated by the commissioner of the New Hampshire Department of Health and Human Services to accept for care, custody, and treatment persons involuntarily admitted to the state mental health services in accordance with RSA 135-C:2, XIV.

10. **“Exeter Health Resources”** or **“EHR”** means Respondent Exeter Health Resources, Inc., a New Hampshire nonprofit corporation with its headquarters in Exeter, New Hampshire, its successors and assigns, subsidiaries and Affiliates, and their respective directors, officers,

managers, agents, and employees. EHR's subsidiaries include Exeter Hospital, Inc. ("EH"), Core Physicians, LLC ("Core"), and Rockingham Visiting Nurse Association and Hospice, Inc.

11. **"EHR Mid-Level Provider"** means a Mid-Level Provider who has an employment relationship with EHR, EH, Core, or RVNA.
12. **"EHR Physician"** means a Physician who has an employment relationship with EHR, EH, Core, or RVNA.
13. **"EHR Service Area"** means the cities and towns served by EHR identified in EHR's most recent Community Benefits Plan Report.
14. **"Exclusivity Clause" or "Exclusive Contract"** means any written or unwritten term, agreement, or practice between a Health Care Provider and a Payor that makes EHR an exclusive provider for a particular Payor in a region, prohibits the Payor from contracting with another Health Care Provider, or provides more favorable rates or terms contingent on not contracting with another Health Care Provider.
15. **"Final Judgment"** means this Final Judgment reflecting the agreement between Plaintiff State of New Hampshire, DCT, and Respondents.
16. **"Health Care Facility"** means any facility located in New Hampshire where Health Care Services are provided, and includes, but is not limited to, ambulatory surgical centers, birthing centers, freestanding emergency rooms, hospitals and specialty hospitals, non-emergency walk-in or urgent care clinics, outpatient clinics, skilled nursing facilities, laboratories, freestanding imaging facilities, and freestanding radiation therapy facilities.
17. **"Health Care Provider"** means a Person who provides Health Care Services, and includes but is not limited to Mid-Level Providers, Physicians, other health care professionals,

practices, networks, and other individuals providing Health Care Services, and Health Care Facilities.

18. **“Health Care Services”** means the provision of health or medical care by a Health Care Provider, including but not limited to inpatient and outpatient hospital services, physician and non-physician professional medical services, outpatient medical services, behavioral and mental health services, and ancillary services including but not limited to, laboratory, pharmacy, and imaging.

19. **“Hospital”** means a licensed acute care or other hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has as a primary function the provision of inpatient services for medical diagnosis, treatment, rehabilitation, and care of the injured, disabled, or those with short-term or episodic health problems or infirmities.

20. **“Material EHR Clinical Affiliations”** means (i) current agreements for Health Care Services between EHR and the following: Massachusetts General Physicians Organization (“MGPO”) Medical Oncology, MGPO Radiation Oncology, Massachusetts General Hospital Pediatric Inpatient / Emergency Department Hospitalist Coverage, and Brigham and Women’s Physicians Organization Maternal and Fetal Medicine, and (ii) any other current clinical affiliation agreement that is comparable in scope to any of the agreements identified in subpart (i) hereto, but excluding professional services agreements for radiology, emergency services, anesthesia, and pathology, and any agreement between Exeter Hospital and Core Physicians.

21. **“Medical Staff Privileges”** means the authorization that EHR or BILH grants to a Physician or Mid-Level Provider to provide Health Care Services at a Health Care Facility based on factors including but not limited to licensing, training, experience, and credentials.
22. **“Mid-Level Provider”** means a non-physician provider who performs professional Health Care Services that can be billed independently from that of a Health Care Facility or Physician, including but not limited to advanced practice registered nurses, physician assistants, physical therapists, licensed clinical social workers, psychologists, and other behavioral health counselors, as applicable.
23. **“Monitor”** means the Person designated by the Attorney General and Respondents to serve and act as independent compliance monitor pursuant to Article VII.1. of this Final Judgment.
24. **“Monitoring Period”** means the Term, subject to the provisions in Article XXIII of this Final Judgment.
25. **“Most Favored Nations Clause”** means any written or unwritten term, agreement, or practice between a Health Care Provider and a Payor that allows the Payor to receive the benefit of a better payment rate, term or condition that the Health Care Provider gives to another Payor, that requires a Payor to pay a Health Care Provider a payment rate at least as high as the highest rate paid by the Payor to any other Hospital or Health Care Provider, or that requires a Health Care Provider to accept a payment rate at least as low as the lowest rate paid to the Health Care Provider by any other Payor.
26. **“Payor”** means any organization or entity that contracts with Health Care Providers and other health care organizations to provide or arrange for the provision of Health Care Services to any person or group of persons and that is responsible for payment to such Health Care

Providers and other health care organizations of all or part of any expense for such Health Care Services, including but not limited to commercial insurance companies, health maintenance organizations, preferred provider organizations, union trust funds, multiple employer trusts and self-insured health plans.

27. **“Payor-Provider Contract”** means a contract or agreement for Health Care Services between a Health Care Provider and a Payor, including but not limited to rates, definitions, terms, conditions, policies, and pricing methodologies (*e.g.*, per diem, discount rate, and case rate) that relates to the payment of or reimbursement for the Health Care Provider’s provision of Health Care Services to the Payor’s members or enrollees.
28. **“Person”** means any individual, partnership, association, corporation, business trust, legal representative, any organized group of persons, or government entity, and any subsidiaries, divisions, groups, or affiliates thereof.
29. **“Physician”** means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
30. **“Population Health Arrangement”** means a Payor-Provider Contract involving capitated or other form of risk sharing taken across a population of defined members.
31. **“Pre-Existing Contract”** means a Payor-Provider Contract between a Payor and a Respondent that is in effect on the date that this Final Judgment is entered.
32. **“Residential Treatment Program”** means a live-in Health Care Facility providing therapy for substance use disorders, mental health treatment, or treatment for other behavioral health conditions.
33. **“Term”** has the meaning set forth in Article XXIII.

34. **“Third Party”** means a Person other than Plaintiff, the DCT, the CPAB, the Monitor, or the Respondents.

35. **“Tying Clause,” “Must Have Clause” or “All-or-Nothing Clause”** means any written or unwritten agreement, term, or practice between a Health Care Provider and a Payor that requires the Payor to contract with one or more, or all, of the contracting Health Care Provider’s services, providers, or products in order to contract with any of that Health Care Provider’s services, providers, or products.

36. **“Value-Based Payment Arrangement”** means a Payor-Provider Contract under which a Respondent or their subsidiaries are paid or assume risk based on patient health outcomes or some form of quality metrics, instead of being paid on a fee-for-service basis, including, but not limited to, alternative payment models, shared savings programs, pay for performance, bundled payments, capitation, or accountable care organizations.

V. APPLICABILITY

From the date that this Final Judgment is entered and after the Closing Date, the Final Judgment is binding for the Term on Respondents, and in the case of EHR, all current and future EHR Affiliates. EHR shall not permit any EHR Affiliate or a substantial portion of the assets of EHR or an EHR Affiliate to be acquired by any other Person unless that Person agrees in advance and in writing to be bound by the provisions of this Final Judgment and the Respondents provide written Notice to the Monitor and to the Attorney General.

VI. COMPLIANCE TERMS

1. Capital Commitments to Exeter Health Resources

A. BILH shall make a minimum combined capital commitment to EHR of three hundred seventy-five million dollars (\$375,000,000), comprised of the following:

- (i) During the first through sixth years following the Closing Date, BILH shall make a minimum capital commitment to EHR of two hundred fifty million dollars (\$250,000,000), comprised of (a) approximately one hundred sixty-five million dollars (\$165,000,000) to EHR's inpatient bed recapitalization project, (b) approximately thirty-five million dollars (\$35,000,000) to the implementation of information technology and electronic medical records systems at EHR, and (c) approximately fifty million dollars (\$50,000,000) in additional capital investment;
- (ii) During the seventh through thirteenth years from the Closing Date, BILH shall make a minimum capital commitment to EHR of one hundred twenty-five million dollars (\$125,000,000).

B. *Capital Investment Plans.* No later than one hundred eighty (180) calendar days following the Closing Date, Respondents (with input from the Respondents' Integration Committee (as defined in the Affiliation Agreement)) shall develop a plan, which shall be based on infrastructure and relevant clinical needs, including any identified in EHR's most recent Community Needs Assessment, including timetables and measurable goals and metrics, for the \$50 million of additional capital investment over years one through six as set forth in Section 1.A.(i)(c) hereof (the "Year 1–6 Capital Investment Plan"). Respondents also shall develop a plan, within the sixth year following the Closing Date which shall be based on infrastructure and relevant clinical needs, including any identified in EHR's most recent Community Needs Assessment, including timetables and measurable goals and metrics, for the \$125 million capital investment in years seven through thirteen as set forth in Section 1.A.(ii) hereof (the "Year 7–13 Capital Investment Plan" and with the Year 1–6 Capital Investment Plan, the "Capital Investment Plans"). The Capital Investment Plans shall require approval by the EHR Board of

Trustees (“EHR Board”), and the EHR Board shall review any modifications during the Term. The Capital Investment Plans shall be submitted to the Attorney General and to the Monitor no later than thirty (30) calendar days after EHR Board approval and shall be subject to monitoring as further described in Article VII.3. herein.

C. *EMR Implementation Plan.* Respondents (with input from the Respondents’ Integration Committee) shall develop a plan (the “EMR Implementation Plan”), including timetables and measurable goals and metrics and approved by the EHR Board, for the implementation of the approximately \$35 million information technology and electronic medical records systems commitment to EHR, including a plan for interoperability with existing BILH systems. The EMR Implementation Plan shall be approved by the EHR Board, and the EHR Board shall review any modifications during the Term of the Final Judgment. The EMR Implementation Plan shall be submitted to the Attorney General and the Monitor and shall be subject to monitoring as further described in Article VII.3 herein. BILH shall include in the EMR Implementation Plan provisions under which Lamprey Health Care and Seacoast Community Mental Health Center, as existing collaborators in delivering services with EHR, would be able to securely access information in the EHR medical record system in a manner consistent with applicable law.

D. *Designated Receiving Facility.* EHR shall design, develop, and implement a minimum of ten (10) Designated Receiving Facility (“DRF”) beds on its campus as part of the capital commitment as set forth in Section 1.A.(i). The licensure status of the beds (hospital-based or non-hospital based Residential Treatment Program (“RTP”)) shall be determined by Respondents after completion of a reimbursement, regulatory, and feasibility analysis.

- (i) The DRF unit or facility shall include space to accommodate judicial proceedings for involuntarily committed individuals. EHR shall conduct a review to determine and implement an appropriate admission process to balance the therapeutic needs of patients with unit acuity to maintain a safe and secure environment for both patients and staff.
- (ii) The DRF beds shall be developed either: (a) in existing non-hospital space and licensed as an RTP, and EHR shall open the DRF beds no later than three (3) years after regulatory approval, or (b) as part of its inpatient recapitalization project, and EHR shall open the DRF beds by the end of 2029.
- (iii) In the event of low census or utilization, EHR may utilize the DRF beds for voluntary behavioral health treatment, provided that such use maintains priority to the admission of appropriate involuntarily committed individuals.

E. *Community Benefit Allocation.* During the Term, beginning in the second full fiscal year after the Closing Date, the annual Local Community Benefit Allocation as referenced and defined in section 10.11 of the Affiliation Agreement shall be a minimum of one million dollars (\$1,000,000), shall increase to a minimum of two million dollars (\$2,000,000) by the sixth year following the Closing Date, shall be at least two million dollars (\$2,000,000) through the tenth year following the Closing Date, and shall be administered as set forth in the Affiliation Agreement. Such Local Community Benefit Allocation shall be used in support of community benefit programs and initiatives for purposes of advancing EHR's and EHR Affiliates' charitable missions.

F. *Additional Investments.* Nothing in this Section 1 should be construed as limiting additional investments or commitments by Respondents beyond the capital investments and commitments already set forth herein.

2. Financial Commitment to the State of New Hampshire

A. Respondents shall pay, in addition to the amounts committed to EHR pursuant to Section 1, a sum of money totaling in the aggregate ten million dollars (\$10,000,000) directly to the State of New Hampshire and/or the Office of the Attorney General (“Funds”).

B. The Funds shall be payable in ten equal annual installments of one million dollars (\$1,000,000) with the first installment due on the Closing Date and each subsequent installment payment due on each of the first nine (9) anniversaries of the Closing Date.

C. The Funds shall be held separately from the State’s General Fund and shall be used and dispersed by the State in a manner consistent with applicable law for the benefit of New Hampshire health care consumers. Priority shall be given to developing a health care market research entity or program to conduct studies and publish information regarding the impact of Health Care Provider consolidation in the New Hampshire health care delivery system. If the Funds cannot be used for this identified purpose, or any requisite approvals for such use cannot be obtained, the Funds shall be used for a purpose consistent with the goal of studying, preserving and/or enhancing competition, access, and quality in the New Hampshire health care market. The Attorney General will notify the Respondents, at least fourteen (14) calendar days prior to the scheduled date of transfer, regarding the identity of the recipient(s) to which it (or the State) will transfer the Funds, which may include Health Care Providers, including BILH and EHR, so long as the purpose is consistent with the foregoing.

3. **Payor-Provider Contracting Restrictions and Terms**

A. *Honor All Pre-Existing Contracts with Payors.* EHR shall honor all Pre-Existing Contracts and shall not seek to terminate or renegotiate the terms of such contracts without cause except as required by scheduled or permitted expiration, renewal, or by mutual agreement of EHR and the applicable Payor. Notwithstanding the foregoing, a Pre-Existing Contract that does not have a fixed expiration date (i.e., an “evergreen” agreement) may be terminated or not renewed in accordance with its terms.

B. *Prohibited Conduct and Contract Terms.* EHR shall not propose, require, or enter into any Payor-Provider Contract, whether directly or through a BILH entity, that includes the following terms or practices, or similar terms or practices that violate the intent or spirit of these prohibitions:

- (i) Anti-Tiering or Anti-Steering Clause
- (ii) Exclusivity Clause or Exclusive Contract
- (iii) Most Favored Nations Clause
- (iv) Tying Clause, Must Have Clause or All-or-Nothing Clause

Provided, however, that (1) EHR may require that (a) a Payor that enters into an agreement with either EH or Core must also enter into an agreement with the other, or (b) a Payor enroll all Core Physicians, with an exception only for generally applicable credentialing issues; (2) the prohibited conduct and contract terms are not applicable to the extent that (a) the otherwise prohibited clauses are requested by a particular Payor to be included as a part of a Payor-Provider Contract, and (b) EHR and the Payor agree that the clause is required for purposes such as a Population Health Arrangement or a Value-Based Payment Arrangement; and (3) this section shall not apply to EHR’s participation in Medicare or Medicaid, or to

Medicare Advantage Payor-Provider Contracts (or portions of Payor-Provider Contracts concerning Medicare Advantage). Further, nothing herein shall prevent either BILH or EHR from refusing to enter into a Payor-Provider Contract that in the sole discretion of BILH or EHR provides insufficient rates of payment or inappropriate business terms.

C. *Prohibitions on Billing Changes.* Respondents will adhere to the following prohibitions on billing changes:

- (i) EHR shall not convert a Payor's payments for the Health Care Services provided by an EHR Physician to hospital-based or provider-based services unless those Health Care Services were billed that way prior to the Closing Date.
- (ii) EHR shall not transfer Health Care Services from Core Physicians' offices to an inpatient setting if doing so would result in higher billings for those Health Care Services without a corresponding medical benefit or other benefit to the patient, provided that if the treating Physician determines that a patient's care is better provided in an inpatient or other setting that may result in higher billings for those services, EHR will follow that order.
- (iii) EHR shall not bill a BILH Physician or BILH Mid-Level Provider as an EHR Physician or EHR Mid-Level Provider, or vice-versa, after the Closing Date if doing so would result in higher billings for the Health Care Service at issue, unless it is reasonably appropriate and necessary for the purposes of (1) delivering the clinical service within the EHR Service Area, or (2) including a BILH Physician or BILH Mid-Level Provider in a New Hampshire Payor's network in accordance with applicable law and Payor policies. Nothing herein shall restrict

the right of any EHR Physician or EHR Mid-Level Provider or BILH Physician or BILH Mid-Level Provider to choose to change employers.

4. Protections for Health Care Providers and Patients

A. *Compliance with New Hampshire State Law on Physician Contract Restrictions.* EHR (and BILH, as applicable) shall comply with state law, N.H. Rev. Stat. Ann. § 329:31-a, which makes certain contract restrictions upon Physicians unenforceable. Respondents shall amend noncompliant existing or form contracts, agreements, and addenda, if any, to comply with N.H. Rev. Stat. Ann. § 329:31-a within ninety (90) calendar days from the Closing Date. Physician contracts, including form contracts, shall be made available to the Monitor for inspection upon request to monitor compliance with this term.

B. *Health Care Provider Referral Patterns.* Neither EHR nor its subsidiaries shall limit their employed or contracted Physicians from exercising their professional judgment to refer patients for services in the best medical interests of the patient, nor from maintaining their existing patient referral practices. This applies to Physicians whom EHR may employ or with whom EHR may contract following the Closing Date, provided that nothing in this Final Judgment shall bar limitations on referrals set forth in Value-Based Payment Arrangements or that are required to meet the goals set forth in Value-Based Payment Arrangements.

C. *Notice Regarding Departing Health Care Providers.* If a Physician or Mid-Level Provider who is employed by EHR or an EHR Affiliate leaves their employment or terminates their agreement to provide Health Care Services for any reason, EHR or the applicable EHR Affiliate shall provide prompt written notice to all patient panels that, at a minimum, (i) informs patients that the provider is leaving (or has left) EHR, (ii) it is the patient's choice whether to

transfer care, and (iii) upon the patient's or provider's request, informs the patients of the provider's new practice location.

D. *Medical Staff Privileges.* Subject to applicable law, EH shall maintain Health Care Providers' current Medical Staff Privileges in accordance with EH's medical staff bylaws and applicable policies, including, but not limited to, Medical Staff Privileges of primary care providers, family practice providers, and certified nurse midwives. It is understood that Medical Staff Privileges are granted and retained based on periodic review and findings of sufficient training, experience, and competence, and may be revoked or limited in individual cases as set forth in EH's medical staff bylaws, EH's policies, and applicable law. Further:

- (i) Following the Closing Date, employment by EHR or an EHR Affiliate shall not be used as a criterion for continuing or granting Medical Staff Privileges at any EHR Healthcare Facility or BILH Healthcare Facility located in New Hampshire, with exceptions for employed Physicians that are principally hospital or inpatient-based (e.g. hospitalists) or where services are subject to an exclusive agreement with Core or a Third-Party physician group (for example, Massachusetts General Physicians Organization for cancer care).
- (ii) Medical Staff Privileges at any other Hospital shall not be used as a criterion for continuing or granting Medical Staff Privileges at any EHR-affiliated Healthcare Facility, with exceptions for employed Physicians that are principally hospital or inpatient-based (e.g., hospitalists) or where services are subject to an exclusive agreement with Core or a Third-Party physician group.
- (iii) EH may amend its medical staff bylaws and policies so long as such amendments do not circumvent this provision.

E. *Non-Discrimination in Provision of Health Care Services.* Respondents shall not discriminate in the provision of Health Care Services to patients at a Health Care Facility, the release and transfer of medical records or information about such patients based upon the identity or affiliation of a patient's Physician or Mid-Level Provider, the patient's health plan, or the patient's utilization of Third-Party Health Care Providers; *provided, however*, that this prohibition shall not require Respondents to credential or offer Medical Staff Privileges to any Health Care Provider who otherwise does not qualify for Medical Staff Privileges or credentials.

F. *Non-Discrimination in Patient Transfer and Duty to Communicate.* Respondents shall not refuse to transfer a patient, whether for diagnosis or treatment, to a Health Care Facility other than a BILH-affiliated facility, if such transfer is requested by the patient, the patient's authorized representative, or the patient's Physician or Mid-Level Provider, provided that the patient is stable, the transfer is medically appropriate and legally permissible, and the proposed Health Care Facility accepts the patient. In connection with any such patient transfer, Respondents shall cooperate with the patient, the patient's authorized representative (if applicable), and the Health Care Facility to which the patient is transferred regarding the release and transfer of such patient's medical records.

G. *Clinical Affiliation Plan.* Within one hundred eighty (180) calendar days after the Closing Date, Respondents (with input from the Respondents' Integration Committee) shall develop a plan (the "Clinical Affiliation Plan") including timetables, and measurable goals and metrics, and any requisite funding, for any transition of existing Material EHR Clinical Affiliations, taking into account factors including any requisite patient notice and care transfers, as well as contingency plans in the event that any existing Material EHR Clinical Affiliations are terminated by a Third Party as a result of the announced or consummated Affiliation. The

Clinical Affiliation Plan shall be submitted to the Attorney General and the Monitor, and subject to monitoring as further described below. Respondents shall provide Notice to the Attorney General if EHR receives notice of termination of any existing Material EHR Clinical Affiliation prior to the Clinical Affiliation Plan being submitted to the Attorney General and Monitor.

5. Facilities, Services, and Programs

A. *Clinical Services Growth Plan.* Within one hundred eighty (180) calendar days after the Closing Date, Respondents (with input from the Respondents' Integration Committee) shall develop a plan (the "Clinical Services Growth Plan"), including timetables and measurable goals and metrics (including but not limited to ambulatory investments and medical staff recruiting/development) and any requisite funding, to expand access to certain key Health Care Services in the EHR Service Area. The Clinical Services Growth Plan shall be based on relevant clinical needs, including any identified in the most recent EHR Community Needs Assessment, and including consultation with applicable clinical affiliates, as appropriate. At a minimum, the Clinical Services Growth Plan shall include plans to expand the following services: (1) primary care; (2) behavioral health services; (3) substance use disorder care; (4) access to health care for low income and disadvantaged populations; (5) maternity care, including labor and delivery; and (6) elder care, including efforts to develop a preferred network of skilled nursing facilities for the aging population. The Clinical Services Growth Plan shall require the approval by the EHR Board, and the EHR Board shall review any modifications during the Term. The Clinical Services Growth Plan shall be submitted to the Attorney General and the Monitor, and subject to monitoring as further described in Article VII.3. The Clinical Services Growth Plan shall include, but not be limited to, the following strategies: (1) enhanced primary care capabilities, which may include expanded office hours and accommodating additional walk-in patients; (2)

embedded licensed clinical social workers in appropriate primary care offices; and (3) use of the Collaborative Care Model in compliance with applicable law, including requirements for billing with the Collaborative Care Model CPT codes.

B. During the Term of the Final Judgment, EHR will maintain the licenses, privileges, and service offerings required for the provision of maternity care, including level I or II maternity care services and level I nursery at EH, and continue to offer all other maternity care at EH, in each case subject to the ability to maintain the necessary volume to ensure care quality and patient safety in accordance with applicable medical, industry and accreditation standards. In the unlikely event that EHR determines that the continuation of such maternity care is not feasible based on the criteria above, Respondents shall provide Notice to the Attorney General upon an EHR Board vote to cease maternity care, including labor and delivery at EH, in accordance with Article XVIII. The Attorney General shall have an opportunity to object within sixty (60) calendar days. Respondents then shall meet with the Attorney General about the proposed plan to discontinue such services within thirty (30) calendar days of the objection. The Attorney General may seek any applicable remedy at law, including but not limited to, restitution, damages, injunctive relief, and attorneys' fees and costs if the discontinuation of maternity care is not based on the criteria set forth above and Respondents proceed with the discontinuation of services.

C. EHR shall continue to have a discharge planning process that arranges for follow-up care, as available and to the extent practicable, for patients with diagnosed mental health or substance use disorders. EHR shall utilize community resource guides when appropriate.

D. BILH will support maintaining EHR's existing community provider relationships, including those with Seacoast Mental Health Center and Lamprey Health Care. BILH will

collaborate with EHR's leadership to determine how these relationships may be enhanced for continued success and growth.

E. EHR shall explore development of crisis mental health and/or other mental health capacity on site in partnership with Seacoast Mental Health Center.

F. Respondents shall operate the ten (10) DRF beds on the EH campus referenced in Article VI.1.D hereof for at least ten (10) years from the date upon which the ten (10) beds become available for patients. In the event the DRF beds become significantly underutilized as either DRF or voluntary behavioral health beds, Respondents may submit a request to the Attorney General to repurpose some or all of the DRF beds consistent with the relevant clinical needs, including any in the most recent EHR Community Needs Assessment. The Attorney General will not unreasonably withhold approval of such a request, provided that Respondents adequately demonstrate that the beds are significantly underutilized as DRF or voluntary behavioral health beds.

6. Governance of Exeter Health Resources

A. As the sole corporate member of EHR, BILH shall serve as a fiduciary of EHR and the EHR Affiliates when exercising its rights pursuant to its reserved powers. *See* N.H. Att'y Gen. Opinion, February 13, 2017.

B. The bylaws of EHR shall be amended and restated as set forth in the DCT Notice and further amended, to the extent they are inconsistent with this Final Judgment.

C. Within three (3) months of initiating concurrent board service, those persons who serve concurrently on the Boards of Trustees of BILH and EHR shall undergo training with respect to their fiduciary duties to each organization and with respect to identifying and resolving any potential conflicts of interest.

D. An EHR representative shall serve on the BILH Board of Trustees (“BILH Board”) for six (6) years following the Closing Date with the same rights and responsibilities as the other trustees of the BILH Board, as follows. In accordance with section 9.1 of the Affiliation Agreement, the EHR Board will appoint one of its Board trustees to the BILH Board for a three (3)-year term (“initial term”). After the initial three (3)-year term has expired, BILH shall appoint individuals to serve on the BILH Board without designation, provided that for one three (3)-year term following the initial term, one BILH trustee shall be a current EHR Board trustee residing in the EHR Service Area who is nominated by EHR and appointed by the BILH Board. The BILH Board shall not unreasonably withhold the appointment of the nominated EHR Board trustees.

E. Notwithstanding BILH’s reserved powers, all EHR trustees appointed by BILH, other than the CEO or the CEO’s designee, shall be members of the communities served by EHR and shall be able to serve as representatives of EHR to such communities, and the majority of EHR trustees shall be “Independent Trustees” as defined in section 3.1.2 of the EHR proposed amended and restated bylaws included with the DCT Notice (hereinafter “Independent Trustees”).

F. Notwithstanding BILH’s reserved powers, during the Term of this Final Judgment, BILH shall not effect or approve any of the following transactions without the affirmative vote of at least a majority of the EHR Independent Trustees then in office, or a greater percentage thereof as may be required by law, EHR’s articles of agreement, or EHR’s bylaws, at a meeting of the EHR Board at which there is a quorum of trustees:

- i. The liquidation or dissolution of EHR or EHR Affiliates;
- ii. Any change of membership, merger, or consolidation of EHR or EHR Affiliates;

- iii. The sale, lease, exchange, or other disposition of all or substantially all of EHR or EHR Affiliates' assets; or
- iv. Discontinuance of a material clinical service or program as set forth in section 10.5(b) of the Affiliation Agreement, which term shall include maternity care, including labor and delivery.

7. Charitable Assets of Exeter Health Resources

A. Notwithstanding BILH's reserved powers over EHR, EHR's unrestricted assets shall be used to support EHR's charitable purposes and the EHR Service Area. EHR's restricted assets shall remain dedicated to their specified charitable purpose(s) and subject to the control of the EHR Board.

B. Notwithstanding BILH's reserved powers over EHR, the net proceeds of the sale of EHR or any EHR Affiliate's real property and other assets owned by EHR or EHR Affiliates on the Closing Date shall remain dedicated to EHR and EHR Affiliates' charitable purposes in the EHR Service Area in New Hampshire.

C. Notwithstanding BILH's reserved powers, any restricted and unrestricted investment assets of EHR or EHR Affiliates that are transferred to the pooled investment accounts managed by BILH will be identified through unitized sub-accounts and will be subject to New Hampshire's version of the Uniform Prudent Management of Institutional Funds Act, RSA 292-B.

D. Upon the liquidation or dissolution of EHR or any EHR Affiliates, or the sale, lease, exchange, or other disposition of all or substantially all of EHR or any EHR Affiliate's assets, the proceeds shall remain dedicated to EHR and EHR Affiliates' charitable purposes in the EHR Service Area in New Hampshire.

8. Charity Care Policies

A. EH will retain a financial assistance policy for the provision of care to disadvantaged patients that is no less generous than the written policies of EH immediately prior to the Closing Date. In addition, EH shall not defer, deny, or require a payment before providing medical necessary care because of nonpayment of one or more bills for previously covered care. Patients with unpaid balances who otherwise meet the criteria for financial assistance and apply for financial assistance will be eligible to receive care under the financial assistance policy.

B. Core will retain a financial assistance policy no less generous than the written policy in place as of the Closing Date. In addition, patients who apply for and are determined eligible for financial assistance under the policy shall not be financially responsible for any services received from Core up to six months prior to the determination of eligibility. Before referring bills to collection, Core shall provide patients with the financial assistance policy and shall offer assistance to patients in completing the application.

VII. TRANSPARENCY, REPORTING AND MONITORING

In order to facilitate monitoring, compliance review, and the study and research pertaining to Health Care Services and Health Care Providers in New Hampshire, Respondents shall commit to the following terms set forth below.

1. Monitor Appointment and Retention

A. The Attorney General and Respondents agree to appoint Grant Thornton to serve as the Independent Compliance Monitor (hereinafter, and throughout this Final Judgment, “Monitor”) pursuant to the terms and conditions set forth in this Final Judgment.

B. No later than thirty (30) calendar days after the entry of Final Judgment, Respondents shall retain and enter into a formal written engagement agreement with the Monitor

(herein after “Monitor Agreement”) to perform the duties set forth in this Final Judgment and on terms consistent with this Final Judgment. The terms of the engagement shall be subject to review and approval by the Attorney General, which such approval will not be unreasonably withheld. Respondents shall designate the Attorney General as a third-party beneficiary to their engagement agreement with the Monitor.

C. In consultation with the Respondents and the Attorney General, the Monitor shall develop a proposed scope of work for the first year following the Closing Date consistent with the obligations of this Final Judgment, and an associated budget within thirty (30) calendar days after the engagement, and thereafter on an annual basis for the term of the Monitoring Period no later than sixty (60) calendar days following each anniversary of the Closing Date.

D. BILH shall be solely responsible for payment of all fees and expenses of the Monitor and the Monitor’s staff to perform the duties set forth in this Final Judgment. Respondents shall compensate the Monitor, and any individuals or firms hired to assist the Monitor: (i) promptly and on reasonable and customary terms commensurate with the individual’s or firm’s experience and responsibilities; and (ii) consistent with the Monitor’s scope of work.

2. Monitor Duties and Responsibilities

A. Throughout the Monitoring Period, the Monitor shall have authority and responsibility to monitor the Respondents’ compliance with all aspects of the Final Judgment, including but not limited to inspecting records; requiring BILH and EHR to produce documents and information including confidential documents (subject to appropriate confidentiality protections), and to make individuals available for interviews; meeting with the Respondents

together or separately; and periodically surveying or requesting information from Payors, as the Monitor deems necessary.

B. Respondents shall cooperate with the Monitor in the performance of his or her work and shall take no action that reasonably could be expected to interfere with or impede the Monitor's ability to timely monitor compliance with the Final Judgment.

C. Respondents waive any confidentiality obligations owed to them on the part of any Third Party who has records or other information of Respondents that is relevant to the Respondents' compliance with this Final Judgment.

D. The Monitor Agreement shall provide that the Monitor shall not disclose nonpublic information to any Third-Party Payor or competitor of Respondents.

E. The Monitor Agreement shall provide that the Attorney General may request access to, and the Monitor shall provide access to, any documents or information relating to the Respondents' compliance with the terms herein, including, but not limited to, confidential information obtained from Respondents in the course of regular or ad hoc reporting to the Monitor, to the CPAB or to the DCT, where appropriate.

F. The Attorney General may contact the Monitor at any time during the Monitoring Period to discuss the Respondents' compliance with the Final Judgment, including concerns that Respondents may not be complying with the terms of this Final Judgment.

G. If, during the Monitoring Period (i) the Monitor becomes unable to perform its obligations or (ii) if the Attorney General, in its sole reasonable discretion, determines that the Monitor cannot reasonably fulfill its obligations to monitor compliance with the Final Judgment to the satisfaction of the Attorney General, and the Attorney General's underlying concerns remain uncured within sixty (60) calendar days following the Attorney General's notification to

Respondents of such determination, the Attorney General and Respondents shall attempt to agree upon a new Monitor. Respondents shall propose a candidate within thirty (30) calendar days of such notification by the Attorney General, and the proposed candidate shall be subject to the final approval of the Attorney General. Respondents shall submit to the Attorney General sufficient supporting material to demonstrate the candidate's qualifications and willingness to serve as monitor. If the Attorney General does not approve the Respondents' proposed candidate, Respondents shall propose another candidate within thirty (30) calendar days. This process shall continue until a candidate is approved.

H. Beginning with the one-year anniversary of entry of this Final Judgment, and thereafter each year during the Term of this Final Judgment, the Monitor will prepare an annual report to be provided to the Attorney General, who will in turn provide that report to the public; provided, however, Respondents shall be given Notice thirty (30) calendar days in advance to submit any comments or objections to any aspect of the Monitor's report to the Attorney General and to the Monitor before the report is made public, including whether Respondents assert an applicable exemption under N.H. Rev. Stat. Ann. 91-A for any information in the report. The Attorney General shall redact any information reasonably asserted by Respondents that is within an applicable exemption.

3. **Annual Reporting to Monitor.** Respondents shall provide to the Monitor, on or before March 31st of each year, annual reporting on Respondents' compliance with the Terms of this Final Judgment that includes, at a minimum, the following sections, with details to be determined through the scope of work developed by the Monitor in consultation with Respondents and the Attorney General. The Monitor will prepare an annual report to the Attorney General on the following matters and each report shall be considered a public record

under the New Hampshire Right-to-Know Law, N.H. Rev. Stat. Ann. 91-A subject to any redactions pursuant to Section 2.H. above.

A. **Respondents' Plans:** Performance results and compliance, including progress with respect to timetables, measurable goals and metrics, and requisite funding as applicable, and any material deviations from or changes to, the Capital Investment Plans, the EMR Implementation Plan, the Clinical Affiliation Plan, and the Clinical Services Growth Plan. Material deviations shall include but are not limited to: changes that result in more than a 10% decrease in the financial commitment to a capital project or service line identified in Respondents' Plans; removing, replacing or failing to complete a planned capital project or service line identified in Respondents' Plans; or any change in the EMR Implementation Plan that would result in EH, Core, or RVNA not having at least the same EMR functionality as other BILH community hospitals, physician groups or home health agencies, as applicable; and removing, replacing or failing to complete any planned capability for the EMR system identified in Section 10.1 of the Affiliation Agreement or in the EMR Implementation Plan.

B. **Inpatient Bed Recapitalization:** Performance results of the approximately \$165 million capital commitment for inpatient bed recapitalization as set forth in Article VI.1.A.(i) herein.

C. **Cost Savings:** Analyses with financial data detailing cost savings as a result of reduction of redundant operations, improved efficiencies related to patient care, and shifting sites of care.

D. **Community-Based Care:** Performance results with respect to keeping care in the EHR Service Area.

E. **Payors/Contracting:** Prohibited contract terms and practices described above in Article VI.3. Monitor may inspect Payor-Provider Contracts to confirm compliance. EHR shall report on its participation in Value-Based Payment Agreements and steering/tiering initiatives.

F. **Physicians and Medical Staff:** Prohibited contract terms and practices; hiring of additional Physicians across key specialties after the Closing Date, with option of Monitor to inspect additional/new professional services agreements for compliance with law regarding non-competition provisions.

G. **Service Offerings:** Report on current service offerings, cessation of material services and closure of facilities, and on the utilization of the ten (10) DRF beds.

H. **Charity Care:** On an annual basis, EHR shall submit a report to the DCT regarding its spending and programming for charity care (as defined in N.H. Rev. Stat. Ann. § 7:32-d, I) and for meeting relevant community needs as identified in EHR's Community Needs Assessment (described in N.H. Rev. Stat. Ann. § 7:32-f). The report shall include information regarding spending of the Local Community Benefit Allocation, as described in Article VI.1.E.

4. **Data Submission to New Hampshire All Payor Claims Database**

A. Respondents shall submit, or shall cause its third-party administrator to submit, in a timely, complete, and accurate manner all Payor claims and related data and information to New Hampshire Comprehensive Health Care Information System ("NH CHIS") consistent with N.H. Rev. Stat. Ann. § 420-G:11, related regulations including N.H. Code Admin R. Ins. 4005.03, guidance, and reporting forms (including any amendments or updates thereto) with respect to its self-funded employer sponsored plans, with any historical gaps since the beginning of 2016. Submissions shall include: (i) all data specific therein for EHR and any subsidiaries,

with all employees and membership of the self-insured health benefit plan(s); and (ii) Group Identification information.

B. No later than six (6) months after the Closing Date, Respondents shall execute any and all opt-in forms (*e.g.*, All-Payer Claims Database Indication of Intent for Private Employers Offering Self-funded Health Coverage in New Hampshire) and all necessary agreements with any Third Party to submit any historical claims and ongoing claims data to NH CHIS.

C. Timely, accurate, and complete reporting and submissions for this Section shall include but is not limited to: (i) submission, standardized formatting, and compliance standards of NH CHIS under state law; and (ii) diligently interfacing with any Third Party for any agreements and other communication necessary for compliance.

5. **Annual Submissions of Health Care Provider and Facility Information.** Respondents shall annually submit to the Attorney General as a public record:

A. A list of Health Care Providers on EH's medical staff, as reasonably available, with at least those employed by EHR, Core, and other Affiliates listing the following information: (a) including both first and last name; (b) practitioner NPI that is valid and non-duplicative (*i.e.*, unique value); (c) primary service location address for patients (including facility type such as hospital, urgent care, professional practice, ambulatory surgical center, or other); (d) any billing NPIs used to submit claims for each identified individual Health Care Provider at any time during year; (e) specialty assignment designation based on the Health Care Provider's predominant area of actual practice; and (f) designation of employed or affiliated, whichever is applicable during the submission set;

B. A list of licensed Health Care Facilities located in New Hampshire that EHR or BILH owns, controls, or submits billing claims to Payors on behalf, and such list shall include: (a) the corporate and d/b/a name; (b) physical location/address; (c) New Hampshire facility license number; (d) facility NPI that is valid and non-duplicative (i.e. unique value); and (e) the primary Health Care Services currently offered at the Health Care Facility; and

C. A description of material expansions, relocations, or closures of locations or sites of Health Care Services, owned or controlled by Respondents in New Hampshire, including the date of closure or relocation.

6. **DCT Reporting.** BILH shall register and report annually to the DCT pursuant to N.H. Rev. Stat. Ann. § 7:28 as a non-resident charitable trust organization to the extent required by law and shall comply with N.H. Rev. Stat. Ann. § 7:19-32-1 with respect to its activities in New Hampshire. Additionally, for a period of five (5) years from the Closing Date, Respondents will notify the DCT should a dispute arise that requires dispute resolution pursuant to section 13.18 of the Affiliation Agreement.

XII. CONFIDENTIALITY

1. Respondents understand that materials submitted to the Monitor and the materials submitted to the Attorney General after the Closing Date shall be available to the public in accordance with state law, including the New Hampshire Right-to-Know Law, N.H. Rev. Stat. Ann. § 91-A. Respondents may request confidential, nonpublic treatment of any portion of their submission materials that they consider in good faith to be confidential, containing trade secrets, or commercially sensitive information not subject to public release consistent with applicable law.

2. To the full extent permitted by law, the Attorney General will treat and maintain all confidential submission materials clearly designated and marked by Respondents as confidential in accordance with and within pertinent exemptions from public disclosure provided in N.H. Rev. Stat. Ann. § 91-A. In the event the Attorney General receives a public records request that calls for the disclosure of Respondents' submission materials designated and marked confidential, the Attorney General will notify Respondents as soon as reasonably practicable upon receipt of any such request and the Attorney General's legal position with respect to such request. The Attorney General further agrees to not produce any such records until at least fifteen (15) calendar days after having given Notice of the request to Respondents, to enable them reasonable time to seek judicial review or otherwise make arrangements to secure confidential treatment of the submission materials.

XIII. NOTICE OBLIGATIONS

1. Notice of Consummation

Respondents shall not effectuate or consummate the Affiliation until this Final Judgment is entered by the Court. Within three (3) calendar days following the Closing Date, Respondents shall provide written notice of the Closing Date, together with a copy of the executed transaction documents to the Attorney General.

2. Notice of Final Judgment

A. No later than seven (7) calendar days after the Closing Date, Respondents shall publicly post on the websites of EHR and BILH a copy of this Final Judgment after it is entered by the Court and throughout the Term of this Final Judgment;

B. Respondents shall no later than thirty (30) calendar days after the Closing Date:

- (i) Provide a copy of this Final Judgment to the Board of Trustees and statutory officers for each Respondent, and shall provide the Final Judgment to newly appointed Board members, appointed during the Term, upon commencement of each Board member's term of office;
- (ii) Provide a summary of the terms of the Final Judgment to EHR's executive management employees and Core Physicians, including Core's Physicians annually; and
- (iii) Provide a copy of this Final Judgment at Closing to any Payor that has a Pre-Existing Contract with a Respondent.

XIV. COMPLIANCE INSPECTION

If the Attorney General has a reasonable belief that the Respondents are not in compliance with this Final Judgment or related orders, and upon written request of the Attorney General, with reasonable notice (at least fourteen (14) calendar days) to Respondents, Respondents must permit (subject to legally recognized privileges) the Attorney General, including any retained agents or consultants:

1. To have reasonable access during Respondents' and/or their subsidiaries' regular business hours to inspect and copy, or at the option of the Attorney General, to require Respondents and/or their subsidiaries to provide electronic copies of books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Respondents and/or their subsidiaries relating to compliance with the terms of this Final Judgment; and
2. To interview Respondents' or their subsidiaries' officers, employees, or agents.

XV. NO RETALIATION

Respondents shall amend within thirty (30) calendar days of the Closing Date their whistleblower policies to include good faith reports made to the Attorney General by any director, officer, or employee of alleged noncompliance with any terms of this Final Judgment, including compliance monitoring, and to bar retaliation against any person with respect to such reports. Retaliation includes, but is not limited to, conduct that impedes or prevents any Person from providing information to the Monitor or the Attorney General or their agents related to the terms of this Final Judgment.

XVI. ENFORCEMENT, VIOLATION, AND CURE

1. Respondents agree that the Attorney General shall have the standing and authority to enforce BILH's post-closing commitments and covenants contained in the Affiliation Agreement for the benefit of EHR; provided that nothing herein shall affect any rights or obligations of the EHR Board under the Affiliation Agreement.

2. The Attorney General shall have exclusive jurisdiction to seek court enforcement of this Final Judgment against Respondents. If the Attorney General believes there has been a violation of this Final Judgment, the Attorney General shall provide Respondents advanced Notice thereof and grant a reasonable opportunity to cure any such alleged violation. If such alleged violation is not cured by Respondents within sixty (60) calendar days of the date Respondents receive the Notice, the Attorney General may thereafter seek to undertake appropriate remedial action. The sixty-day period shall be extended upon Respondents' written request at the Attorney General's discretion in circumstances where Respondents provide an explanation as to why sixty days is inadequate to cure the alleged violation. These time periods may be adjusted in the event of exigent circumstances, as determined by the Attorney General.

3. Any Person who believes they have been aggrieved by a violation of this Final Judgment may file a complaint with the Attorney General for review. If, after the Attorney General's review (including any findings, evaluation, and recommendation by the Monitor), the Attorney General believes either a violation of the Final Judgment has occurred or additional information is needed to evaluate the complaint, the Attorney General may, in his or her discretion, forward a copy of the complaint to the Respondents for a response. If, after receiving and reviewing the response, the Attorney General believes a violation of the Final Judgment has occurred, it shall so advise the Monitor and the Respondents, give time to cure and take necessary action. No other Person or entity shall have the right to enforce the Final Judgment other than the Attorney General.

4. The Attorney General retains and reserves all rights to seek an order of contempt and appropriate legal and equitable relief from the Court. Respondents agree that in a civil contempt action, a motion to show cause, or a similar action brought by the Attorney General regarding an alleged violation of this Final Judgment, the Attorney General may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence. If the Court determines that the Respondents violated this Final Judgment, the Court may require payment of the Attorney General's costs of investigation and enforcement, including legal fees, expenses and court costs.

XVII. FEES AND COSTS

Within sixty (60) calendar days after the Closing Date, Respondents shall directly pay the Attorney General's retained consultants for the reasonable fees and costs incurred by the CPAB related to its investigation of this matter, but not to exceed \$565,000.00 for consultant fees and costs, pursuant to N.H. Rev. Stat. Ann. § 356:10, VI, and pay the Attorney General \$250,000.00

for CPAB's fees and costs, pursuant to N.H. Rev. Stat. Ann. §§ 356:4-b, 358-A:6, IV. Within sixty (60) calendar days after the Closing Date, Respondents shall directly pay the DCT's retained consultant costs if not already paid.

XVIII. NOTICE

1. Any notice, demand, or communication required, permitted, or desired to be given hereunder, shall be in writing and deemed effectively given when mailed by prepaid certified or registered mail, return receipt requested, addressed as follows, with courtesy copies sent contemporaneously by email ("Notice"):

If to the Attorney General:

Department of Justice
Office of the Attorney General
c/o Charitable Trusts Unit and Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, New Hampshire 03301

With copy by email to:

Diane Murphy Quinlan, Director of Charitable Trusts
Diane.M.Quinlan@doj.nh.gov

Alexandra C. Sosnowski, Assistant Attorney General
Consumer Protection and Antitrust Bureau
Alexandra.C.Sosnowski@doj.nh.gov

If to Independent Compliance Monitor:

Grant Thornton
171 N Clark Street
Chicago, IL 60601

If to Respondent BILH:

Beth Israel Lahey Health, Inc.
20 University Road
Cambridge, MA 02138

With copy by email only to:

Jamie Katz, General Counsel
jamie.katz@bilh.org

If to Respondent EHR:

Exeter Health Resources, Inc.
5 Alumni Dr.
Exeter, NH 03833
ATTN: President

With copy by email only to:

David S. Szabo, Esq.
david.szabo@lockelord.com

2. Respondents shall provide the Attorney General with ten (10) calendar days advance Notice of any changes to designated Notice contacts.

XIX. AVERMENT OF TRUTH AND FURTHER ASSURANCES

1. Respondents have averred that, to the best of their knowledge, the information they have provided to the Attorney General, the CPAB, and the DCT in connection with the Attorney General's investigation of the Affiliation is true in all material respects.
2. Respondents shall cooperate and take such actions as may be reasonably requested by the Monitor, by the Attorney General, the CPAB, and the DCT in order to carry out the provisions and purposes of this Final Judgment.

XX. ENTIRE AGREEMENT OF THE PARTIES

The terms of this Final Judgment contain the entire agreement of Respondents hereto, and there are no agreements or representations which are not set forth herein. No other promises, representations, inducements, or agreements of any nature have been made or entered into by Respondents. Respondents acknowledge that this Final Judgment constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be

legally insufficient or unenforceable then the remaining provisions shall be construed in order to effectuate the purposes hereof and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

XXI. MODIFICATION

If the Attorney General or Respondents believe that modification of this Final Judgment would be in the public interest, the requesting party shall give Notice to the other party and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly modify the Final Judgment and present the modification for approval and entry by the Court. If the parties cannot agree on a modification, the requesting party may request the intervention of the Monitor before petitioning the Court to modify this Final Judgment.

XXII. RETENTION OF JURISDICTION

This Final Judgment shall remain in full force and effect until further order of the Court, subject to Article XXIII hereof. During the Term of this Final Judgment, this Court shall retain jurisdiction to enable any party to the Final Judgment to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification, and enforcement of this Final Judgment.

XXIII. TERM OF THE FINAL JUDGMENT

This Final Judgment will expire ten (10) years from the date it is entered or the Closing Date, whichever is later (the "Term"). Any provision of this agreement not otherwise required by applicable law shall only be applicable for the Term. The Term may be otherwise modified by mutual agreement of Respondents and the Attorney General, with approval of the Court; provided, that the Attorney General may, after seven (7) years, reduce the Term for certain commitments hereunder, to be determined in the in the sole discretion of the Attorney General

(which may, but is not required, to consider any recommendations of the Monitor), if Respondents can adequately demonstrate in the sole discretion of the Attorney General, Respondents' overall compliance with this Final Judgment throughout the Term. The Attorney General will not unreasonably withhold approval of such modification. Notwithstanding the foregoing, reporting and monitoring shall in all cases continue beyond the Term with respect to (a) the Capital Investment Plans until all projects are complete through the thirteenth year following the Closing Date, and (b) the utilization of the DRF beds for ten years from the date the DRF beds are first available for clinical use.

XXIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest based on the record before the Court.

Signatures on the next pages.

AGREED TO AND ENTRY OF THIS FINAL JUDGMENT IS REQUESTED BY:

On behalf of the State of New Hampshire

By its attorney,

JOHM M. FORMELLA
ATTORNEY GENERAL



Brandon H. Garod
Senior Assistant Attorney General
Consumer Protection and Antitrust Bureau
New Hampshire Department of Justice
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
Brandon.H.Garod@doj.nh.gov

Date: 06/14/2023



Alexandra C. Sosnowski
Assistant Attorney General
Consumer Protection and Antitrust Bureau
New Hampshire Department of Justice
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
Alexandra.C.Sosnowski@doj.nh.gov

Date: 6/14/2023

On behalf of the Attorney General,
Director of Charitable Trusts

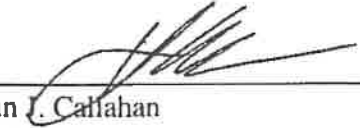


Diane M. Quinlan
Director of Charitable Trusts
New Hampshire Department of Justice
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
Diane.M.Quinlan@doj.nh.gov

Date: 6/14/2023

On Behalf of Defendant Exeter Health Resources, Inc.

By: _____


Kevin J. Callahan
President and CEO
Exeter Health Resources, Inc.
5 Alumni Dr.
Exeter, NH 03833
KCallahan@ehr.org

On Behalf of Defendant Beth Israel Lahey Health, Inc.


By: _____

Kevin Tabb, M.D.
President and CEO
Beth Israel Lahey Health, Inc.
20 University Road
Cambridge, MA 02138
Kevin.Tabb@bilh.org

On Behalf of Defendant Exeter Health Resources, Inc.

By: _____
Kevin J. Callahan
President and CEO
Exeter Health Resources, Inc.
5 Alumni Dr.
Exeter, NH 03833
KCallahan@ehr.org

On Behalf of Defendant Beth Israel Lahey Health, Inc.

By:  _____
Kevin Tabb, M.D.
President and CEO
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Approved and So Ordered



Honorable Amy L. Ignatius

June 29, 2023

Clerk's Notice of Decision
Document Sent to Parties
on 06/30/2023