
§§ 7:19-b & 7:20: Attorneys General, Director of Charitable Trusts, and County Attorneys – Director of Charitable Trusts


I. In this section:

(a) "Acquisition transaction" or "acquisition" means transfer of control, direct or indirect, of a health care charitable trust, or of 25 percent or more of the assets thereof, including, but not limited to, purchases, mergers, leases, gifts, consolidations, exchanges, joint ventures, or other transactions involving transfer of control or of 25 percent or more of assets. However, changes in membership of the governing body of a health care charitable trust occurring through regular election or filling of vacancies in accordance with the bylaws thereof do not of themselves constitute acquisition transactions within the meaning of this section.

(b) "Acquirer" means a person acquiring control, direct or indirect, of a health care charitable trust, or of 25 percent or more of the assets thereof.

(c) "Control" of a health care charitable trust means the power to elect a majority or more of the membership of the governing body thereof, or otherwise to direct the affairs thereof.

(d) "Health care charitable trust" means a charitable trust organized to provide health care services including, but not limited to, hospitals, community health services, and medical-surgical or other diagnostic or therapeutic facilities or services, or a charitable trust operating as a health insurer or health maintenance organization. "Health care charitable trust" shall not include any testamentary or inter vivos trust which is not organized to provide health care services.

II. The governing body of a health care charitable trust, or any other persons having authority to direct the affairs of a health care charitable trust, shall not approve the acquisition thereof unless the governing body has acted in good faith and in a manner consistent with its fiduciary duties to the health care charitable trust, and unless the following minimum standards are met:

(a) The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law;

(b) Due diligence has been exercised in selecting the acquirer, in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the proposed transaction, and in determining that the transaction is in the best interest of the health care charitable trust and the community or communities which it serves, including the community's or communities' need for access to quality and affordable physical and mental health care services;

(c) Any conflict of interest, or any pecuniary benefit transaction as defined in this chapter, has been disclosed and has not affected the decision to engage in the transaction;

(d) The proceeds to be received on account of the transaction constitute fair value therefor;
(e) The assets of the health care charitable trust and any proceeds to be received on account of the transaction shall continue to be devoted to charitable purposes consistent with the charitable objects of the health care charitable trust and the needs of the community or communities which it serves, including the community's or communities' need for access to quality and affordable physical and mental health care services;

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

(g) Reasonable public notice of the proposed transaction and its terms has been provided to the community or communities served by the health care charitable trust, including, but not limited to, transaction documents and an analysis of how the transaction will meet the community's or communities' need for access to quality and affordable physical and mental health care services, along with reasonable and timely opportunity for such community, through well-noticed public hearings and other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

III. Notice of a proposed acquisition transaction shall be given to the director of charitable trusts in writing to be received by the director no less than 180 days before consummation of the transaction. Such notice shall identify all parties to the transaction; shall set forth all material terms thereof, including, without limitation, any changes in control or ownership of assets, any acquisition price, any change in the capital structure and management, and any and all compensation paid or to be paid in connection therewith; shall include a copy of the minutes and other documents evidencing the decision of the governing body of the health care charitable trust, including documentation of steps taken to comply with paragraph II(g) of this section and any changes in the proposed transaction resulting therefrom, any relevant community needs assessment developed by the health care charitable trust, data and analysis demonstrating how the transaction will meet the community's or the communities' need for access to quality and affordable physical and mental health care services, and a copy of the acquisition agreement and financial statements of all parties; and shall include a certification signed by those members of the governing body or other person approving the acquisition on behalf of the health care charitable trust that the standards set forth in paragraph II of this section have been considered in good faith and complied with, together with such explanations and other documentation as may be necessary to demonstrate such compliance. The notice shall also include a statement from the acquirer specifying the manner in which it proposes to continue to fulfill the charitable objects of the health care charitable trust. Any information submitted pursuant to this section shall be subject to RSA 91-A.

IV. (a) Within a reasonable time, not to exceed 180 days after receipt of the notice specified in the preceding paragraph, the director shall determine compliance with the standards set forth in paragraph II of this section and shall notify the parties either that the director will take no further action with respect thereto, or that the director objects to the transaction on specified grounds. Within 90 days following receipt of the notice specified in the preceding paragraph, the director may require submittal of such additional information as may be reasonably necessary to make such a determination. In making such a determination, the director shall accept public comment and may conduct public hearings relating thereto within the time specified in this paragraph and may direct the health care charitable trust to publish notice thereof in a manner reasonably specified by the director. Such hearing may be conducted informally or in conformity with RSA 541-A, at the discretion of the director. The expenses of such public hearing shall be paid for by the parties to the proposed transaction, after consultation with the parties. Where the acquisition transaction involves assets, the fair value of which are in excess of $5,000,000, after consultation with the parties, the director may employ, at the
parties’ expense, expert assistance, including independent counsel and independent financial advisors that are reasonably necessary to make the determination specified in this paragraph.

(b) The director shall seek input and advice from the commissioner of the department of health and human services and the insurance commissioner and may obtain from them confidential health care data and information in performing his or her functions under this section.

V. In addition to all other powers conferred by statute or common law, the director may bring judicial proceedings to enjoin consummation of any acquisition transaction in which notice has not been provided in accordance with paragraph III of this section. Any acquisition transaction which has been consummated following the effective date of this section without such notice having been provided, or any acquisition transaction of which such notice was deceptive or materially inaccurate, shall be voidable through appropriate judicial proceedings instituted by the director of charitable trusts.

VI. (a) Nothing in this section shall derogate from authority of the attorney general, or the rights of others, provided by common law or other statute.

(b) This section shall not supplant or restrict the general powers of the probate courts with respect to charitable trusts pursuant to RSA 498, RSA 547:3 through 547:3-h, RSA 564-B:2-203, article 4 of RSA 564-B, or at common law. Nor do the standards set forth in paragraph II of this section supplant or restrict the standards that may lawfully be applied in connection with the doctrines of cy pres, deviation, and termination as applicable by the probate courts of this state in such proceedings.

(c) Notwithstanding the provisions of this section, the commissioner of insurance retains full jurisdiction to regulate any charitable trust operating as a health insurer or health maintenance organization, including through the application of RSA 401-B. If the insurance commissioner determines that an acquisition or acquisition transaction otherwise subject to the provisions of this section is necessary to avoid the future impairment or insolvency of either or both of the merging health insurers or health maintenance organizations, the commissioner may waive any of the provisions of this section.

§ 7:20. Director of Charitable Trusts.

The director of charitable trusts shall be appointed in the same manner as an assistant attorney general under RSA 7:16. The director, under the supervision of the attorney general, shall have and exercise all the common law and statutory rights, duties, and powers of the attorney general in connection with the supervision, administration, and enforcement of charitable trusts, charitable solicitations, and charitable sales promotions.