

**STATE OF RHODE ISLAND  
DEPARTMENT OF ATTORNEY GENERAL**

**Date: September 1, 2016**

**DECISION**

**In Re: Expedited Review Hospital Conversion Initial Application of Yale-New Haven Health Services Corporation, Lawrence + Memorial Corporation and LMW Healthcare, Inc. d/b/a Westerly Hospital**

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws § 23-17.14-12.1, the expedited review process provided pursuant to the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS.**

**I. BACKGROUND**

In June 2012, the Hospital Conversions Act was modified to allow expedited review for hospital conversions deemed by the Department of Health (“DOH”) to meet certain criteria, including that the acquired hospital is considered a “distressed” hospital. *See* R.I. Gen. Laws § 23-17.14-12.1(a). An expedited review varies greatly from a full review. First, the review time for an expedited review is 90 days, as opposed to 120 days under a full review. *See* R.I. Gen. Laws § 23-17.14-12(e). Second, the information required in the initial application is reduced from the full review initial application. *See generally* R.I. Gen. Laws § 23-17.14-12. And finally, DOH and the Department of Attorney General (“Attorney General”) do not conduct a joint review. DOH conducts an expedited review based upon the process set forth in R.I. Gen. Laws § 23-17.14-12.1 and the Attorney General performs “a review of the proposed transaction as it deems necessary.” *See* R.I. Gen. Laws § 23-17.14-12.1(h).

For efficiency, and as a testament to the cooperative relationship between DOH and the Attorney General, both agencies worked together to draft the Expedited Review Hospital Conversion Initial Application forms that continue to be utilized by the respective agencies. The Attorney General’s application form builds upon the information required in the DOH form, saving the Transacting Parties from duplicative filings. Given the Legislature’s intent that the expedited review process be more limited than a full HCA review, the Attorney General’s form and subsequent review focuses primarily on areas traditionally examined by the Attorney General, such as the disposition of charitable assets and issues with corporate governance and conflict of interests.<sup>1</sup> Accordingly, the first step in traversing the expedited review process through the Department of Attorney General is the filing of an Expedited Review Hospital Conversion Initial Application.

The Transacting Parties filed their Expedited Review Hospital Conversion Initial Application on November 9, 2015 (“AG Initial Application”). The parties (collectively, “Transacting Parties”) to the AG Initial Application are identified below:

- Lawrence + Memorial Corporation (“L+M”) is a Connecticut non-profit corporation that was incorporated on July 10, 1984. L+M is the sole member of a number of subsidiaries that operate acute care hospitals and community based services, including but not limited to the following: LMW Healthcare, Inc., Lawrence + Memorial Hospital, Inc., L&M Physicians Association, Inc., and Visiting Nurse Association of Southeastern Connecticut.
- LMW Healthcare, Inc. d/b/a Westerly Hospital (“Westerly Hospital”), a subsidiary of L+M, is a Rhode Island non-profit corporation incorporated on May 29, 2012. Westerly Hospital operates an acute care community hospital located in Westerly, Rhode Island. Westerly Hospital was previously operated under The Westerly Hospital, Inc., which was incorporated on June 17, 1921 and later dissolved in 2012 during L+M’s acquisition of Westerly Hospital.

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<sup>1</sup> The Attorney General notes that there may be a situation in the future where a more expansive review may be necessary.

- Yale-New Haven Health Services Corporation (“YNHHSC”) is a Connecticut non-stock, tax-exempt corporation incorporated on December 14, 1983 to provide support services to a non-profit network of affiliated health care providers, known, collectively, as the Yale New Have Health System. YNHHSC is the parent corporation to a number of subsidiaries, including but not limited to:
  - Yale-New Haven Hospital, Inc. (“YNHH”) is a Connecticut non-stock, tax-exempt corporation. YNHH is an acute care destination hospital located in New Haven, Connecticut and is the primary teaching hospital for Yale University. YNHH has two main campuses with include a children’s hospital, psychiatric hospital, and a cancer center. YNHH also has several outpatient centers throughout New Haven, North Haven, and Guilford, Connecticut.
  - Bridgeport Hospital (“Bridgeport”) is a Connecticut non-stock, tax-exempt corporation incorporated on March 15, 1878. The corporation is located in Bridgeport, Connecticut and operates an acute care hospital.
  - Greenwich Hospital (“Greenwich”) is a Connecticut non-stock, tax-exempt corporation. The corporation is located in Greenwich, Connecticut and operates an acute care hospital.

*See* Department of Health Expedited Review Hospital Conversion Initial Application (“DOH Initial Application”), Response to Question 1 and Question 6. Certain corporate information was also verified via the Secretary of State websites for Rhode Island and Connecticut.<sup>2</sup>

In its simplest form, the structure of the transaction outlined in the AG Initial Application (the “Proposed Transaction”) is an affiliation whereby YNHHSC will become the ultimate parent of L+M, which is the parent of both L+M Hospital and the Westerly Hospital, pursuant to the parties’ Affiliation Agreement, dated July 17, 2015. As sole corporate member of L+M, YNHHSC will be the corporate parent of all of the Westerly Hospital entities. *See* Affiliation Agreement, Section 2.1, provided at AG Initial Application Exhibit A-1. Although YNHHSC will become the ultimate parent of the Westerly Hospital, “the corporate existence, names, rights, privileges, immunities, powers, franchises, facilities and other licenses, duties and liabilities of

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<sup>2</sup> The dates of YNHH and Greenwich’s registrations with the Connecticut Secretary of State were not available online.

L+M and each L+M Subsidiary, other than [the physician practice], shall be governed by the Board of Trustees or such L+M Subsidiary.” *See id.* at Section 2.2. Further, the Transacting Parties agree that the Westerly Hospital “shall continue to provide the services and commitments it is obligated to provide under the LMW Acquisition-Related Obligations,” which are those obligations associated with L+M acquisition of the Westerly Hospital in 2013. *See id.* at Section 2.1.8(b). The Affiliation Agreement contemplates that L+M and its affiliates will become part of the YNHHSO obligated group at a reasonably determined time after closing. *See id.* at Section 2.10. Finally, the Transacting Parties agree that following closing, the current board members of L+M shall continue to serve out their respective terms. *See id.* at Section 2.1.2. In addition, YNHHSO shall appoint an additional member to the L+M board. *Id.*

With regards to the financial commitment of the Proposed Transaction, YNHHSO commits to deploy “\$300 million in resources in the Yale New Haven Health System’s Eastern Connecticut and Western Rhode Island region over a period of five years.” *See id.* at Section 2.11(a). As part of that commitment, the first \$41 million is committed to the following initiatives in the Eastern Connecticut and Western Rhode Island service area: (1) implementation of new IT programs; (2) implementing new branding; (3) up to \$10 million in value for YNHHSO population health infrastructure; and (4) development of clinical programs and physician recruitment. *See id.* at Section 2.11(b). YNHHSO also commits an aggregate of \$44 million in resources to further support clinical programs and physical recruitment. *See id.* at Section 2.11(c). The first \$85 million commitment is made from YNHHSO resources other than those generated by the L+M affiliates. *Id.* The next \$215 million commitment will include resources generated by the L+M affiliates, and will be made consistent with community need,

mutually agreed upon business and strategic plans, and performance of the L+M affiliates. *See id.* at Section 2.11(d).

## **II. REVIEW CRITERIA**

Pursuant to R.I. Gen. Laws § 23-17.14-12.1(h), the Department of Attorney General “shall perform a review of the proposed transaction as it deems necessary, including, at a minimum, its impact upon the charitable assets of the transacting parties.” The Attorney General has reviewed the information provided in the AG Initial Application. Further, the Attorney General sent almost ninety supplemental follow-up questions to the Transacting Parties to elaborate on information provided in the AG Initial Application. The Attorney General also had access to and reviewed the DOH Initial Application filed by the Transacting Parties, along with the Department’s supplemental follow-up questions and responses.

In addition to reviewing the AG Initial Application submitted by the Transacting Parties and other publically available information, the Attorney General and DOH jointly interviewed the following individuals:

### **Lawrence + Memorial/Westerly Hospital**

- Bruce Cummings, President and Chief Executive Officer
- Seth Van Essendelft, Vice President and Chief Financial and Support Services Officer
- Daniel Rissi, MD, Vice President and Chief Medical Officer
- Nicholas Stahl, CRFE, Executive Director, The Westerly Hospital Foundation

### **Yale-New Haven Health Services Corporation**

- Marna P. Borgstrom, President and Chief Executive Officer
- Vincent Tamaro, Executive Vice President and Chief Financial Officer
- Thomas Balcezak, MD, Chief Medical Officer

- Kevin Walsh, Vice President of Development, YNHH (AG Only)

Unlike a full review under the Hospital Conversions Act, the expedited review does not require a public informational meeting. However, it is the Attorney General's belief that the public's input is vital to this process. Accordingly, a public notice was issued jointly with DOH advertising an informational meeting, as well as soliciting written comments regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting at the Westerly Town Hall on August 2, 2016 from 4 p.m. to 6 p.m.<sup>3</sup> At the meeting, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. While the meeting was well attended, only seven (7) speakers provided public comment. All of the public comments were in favor of the Proposed Transaction. Additionally, the Attorney General received one written comment from a local union, and another written comment from the Town Manager of Westerly, both in favor of the Proposed Transaction.

The AG Initial Application, along with the supplemental information provided, information gathered from the investigation, including publically available information, and information resulting from interviews and public comment, were all considered in rendering this Decision.

### **III. PROCEDURAL HISTORY**

On June 1, 2013, L+M acquired the Westerly Hospital pursuant to the terms of an Asset Purchase Agreement ("APA"). Prior to L+M and the Westerly Hospital entering into the APA, a Special Master had been appointed by the Superior Court to oversee the hospital's operations due to the severe financial state of the hospital. Shortly after the appointment; the Special Master

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<sup>3</sup> The Attorney General would like to thank the representatives of the Town of Westerly for their hospitality and for assisting us with use of the Town Hall.

marketed the hospital to potential purchasers through a four phase process. The Superior Court approved the sale of the assets of the Westerly Hospital to L+M on September 12, 2012. The history of the Special Master's sale process was described in detail in the Attorney General's decision on the expedited hospital conversions review of L+M's acquisition of the Westerly Hospital ("Prior Transaction"). *See Decision dated April 17, 2013, In Re: Expedited Review Hospital Conversion Initial Application of Westerly Hospital Healthcare, Inc., The Westerly Hospital, LMW Healthcare Inc., LMW Physician, Inc. and Lawrence + Memorial Corporation* ("Prior Decision"). On March 20, 2016, the Superior Court ordered that the Special Master be discharged. *See Order dated March 30, 2016, Charles S. Kinney v. Westerly Hospital Healthcare, Inc., et al., WB 2011-0781.*

The Prior Transaction was reviewed, and subsequently approved, under an expedited hospital conversions review by both the Attorney General and DOH. As part of the Attorney General's Prior Decision, the following conditions were imposed:

1. That the Proposed Transaction be implemented as outlined in the AG Initial Application.
2. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement be paid in full prior to closing of the Proposed Transaction.
3. The closing of the Proposed Transaction shall take place by June 1, 2013.
4. A *cy pres* petition be filed and granted prior to closing of the Proposed Transaction. The filing of such *cy pres* petition shall be coordinated with the Attorney General and shall be in accordance with the Conditions outlined in this Decision.
5. L+M shall [continue to] utilize the Westerly Hospital identity and name, nonprofit status and community mission.
6. With input from the Westerly Hospital Foundation, L&M will carry out a broad-based community capital campaign in support of the Westerly Hospital and all such funding will be raised in the Westerly Hospital's name and remain for the benefit of the Westerly Hospital nonprofit and community mission.

7. L+M, in coordination with the Westerly Hospital Foundation, shall institute procedures at the Westerly Hospital to hold and manage charitable assets appropriately, including to ensure that charitable assets are used in accordance with donor intent.
8. All charitable assets transferred by the Asset Purchase Agreement shall be utilized for the benefit of Westerly Hospital only.
9. Current and future charitable assets of the Westerly Hospital shall not be utilized for projects or programs situated outside the State of Rhode Island without the consent of the Department of Attorney General.
10. The Westerly Hospital Foundation, Inc., and the Westerly Hospital Auxiliary, Inc., not be dissolved or otherwise significantly altered from their current operations for a period of five (5) years without notice to and consent of the Attorney General.
11. The assets of the Westerly Hospital Foundation, Inc. be held by the Westerly Hospital Foundation, Inc., in its own accounts and not those of the Westerly Hospital or LMW Healthcare, Inc. The parties shall have thirty (30) days to comply with this Condition after the Closing.
12. For the next five (5) years, the Attorney General shall be provided notice of any singular or aggregate in any one year of use of \$200,000 in restricted funds, including the amount, use and certification of compliance with the fund's restriction.
13. The Board of Directors<sup>4</sup> of LMW Healthcare, Inc. shall include at least six (6) community directors all of which shall: (i) be independent of and not employed by or affiliated with L+M or its affiliates; and (ii) not be an elected official or an individual that is subject to the Rhode Island Code of Ethics.
14. The Board of Directors of Lawrence + Memorial Corporation shall have two community directors<sup>5</sup> from the Westerly Hospital Service Area who shall (i) be independent of and not employed by or affiliated with L+M or its affiliates; and (ii) not be an elected official or an individual that is subject to the Rhode Island Code of Ethics.
15. For the next three (3) years, the Transacting Parties shall identify any contracts between any of the Transacting Parties and any of the current officers, directors,

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<sup>4</sup> A community director shall be defined as an individual that resides or works within the Westerly Hospital Service Area and has the appropriate skill sets to serve on a hospital's board of directors. The "Westerly Hospital Service Area" is comprised of the following towns in Rhode Island: Westerly; Hopkinton; Charlestown; West Kingston; Wyoming; Carolina; and Wood River Junction and the following towns in Connecticut: Stonington; Groton; and Ledyard. *See Report of the Committee of the Health Services Council on the Application of Lawrence & Memorial Corporation for Change in Effective Control of the Westerly Hospital, April 9, 2013 at Page 1.*

<sup>5</sup> *Id.*



board members or senior management other than employment agreements, including the Special Master, his law firm and its affiliates.

16. All Westerly entities identified subject to Special Mastership shall be wound down and all necessary documents must be filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation. Any assets of these entities remaining prior to dissolution shall be donated to the Westerly Hospital Foundation.
17. For a period of five (5) years, LMW Healthcare Inc. and L+M provide corporate documents requested by the Department of Attorney General to evidence the changes to the boards of such entities required by the AG Initial Application and this Decision. In addition, LMW Healthcare Inc. and L&M shall provide any proposed amendments to their corporate documents 30 days prior to amendment.
18. LMW Healthcare Inc. and L+M shall provide information requested by the Department of Attorney General to determine its compliance with the Conditions contained in this Decision.

*See* Prior Decision, pp. 41-43.

In order to qualify for an expedited hospital conversions review, a Request for Expeditious Review pursuant to R.I. Gen. Laws § 23-17.14-12.1 must be filed with DOH. A Request for Expeditious Review was filed with DOH on July 21, 2015. Pursuant to R.I. Gen. Laws § 23-17.14-12.1(a), parties qualify for expedited review if certain criteria are met. First, both the acquiree and the acquiror must be nonprofit corporations that have directly or indirectly continuously operated at least one licensed hospital for at least 3 prior years. *See* R.I. Gen. Laws § 23-17.14-12.1(a)(1). Secondly, “the acquiree must operate a distressed Rhode Island hospital facing significant financial hardship that may impair its ability to continue to operate effectively without the proposed conversion...” *See* R.I. Gen. Laws § 23-17.14-12.1(a)(2). The Director of the Department of Health is charged with determining whether the subject hospital can be defined as distressed based upon whether its circumstances meet one or more of the following criteria:

- (i) Operating loss for the two (2) most recently completed fiscal years;
- (ii) Less than fifty (50) days cash on hand;

- (iii) Current asset to liability ratio of less than one point five (1.5);
- (iv) Long-term debt to capitalization greater than seventy-five percent (75%);
- (v) Inpatient occupancy rate of less than fifty percent (50%);
- (vi) Would be classified as below investment grade by a major rating agency.

*See* R.I. Gen. Laws § 23-17.14-12.1(a)(2)(i)-(vi). On July 31, 2015, the Director granted the Request for Expedious Review.

As stated above, the AG's Initial Application represents a starting point for the information necessary to address the issues reviewed by the Attorney General in an expedited review. The information requested represents the minimum amount of information required. Because each hospital conversion transaction is unique, additional follow-up questions are asked in response to information included in the AG Initial Application or information generated during the investigation. The AG Initial Application was filed by the Transacting Parties on November 9, 2015.

On December 4, 2015, the Department of Attorney General deemed the AG Initial Application incomplete as several questions required additional information. It is not unusual for an AG Initial Application to be deemed incomplete given the nature and amount of information requested. On January 29, 2016, the Transacting Parties provided the requested information. The Attorney General again required additional information prior to deeming the AG Initial Application complete. This information was requested on February 18, 2016. The Transacting Parties responded on April 11, 2016, and the AG Initial Application was deemed complete on June 10, 2016. A first set of follow-up questions was sent to the Transacting Parties on June 10, 2016, consisting of fifty-two (52) questions. The Transacting Parties responded in writing to this first request as a supplement to the AG Initial Application. During the pendency of the review, two (2) additional sets of supplemental questions were sent and responded to by the Transacting Parties.

In addition to the review by the Attorney General and the DOH, the Proposed Transaction required review by the Connecticut Department of Public Health, Office of Health Care Access (“OCHA”) through the Certificate of Need (“CON”) process.<sup>6</sup> *See* Conn. Gen. Stat. § 19a-638. The Transacting Parties filed their CON application on October 7, 2015. Thereafter, OCHA requested additional information before the application could be deemed complete. OCHA deemed the CON application complete on May 10, 2016.<sup>7</sup> As part of the CON process, two public hearings were held in New London, Connecticut on July 11, 2016 and July 29, 2016. A representative from the Department of the Attorney General attended both meetings. In addition to comments from over fifty (50) members of the public, the Transacting Parties and a group of Intervenors provided testimony and were questioned by OCHA. To date, OCHA has not issued a decision regarding this transaction.<sup>8</sup>

#### **IV. DISCUSSION**

Pursuant to the expedited review process contained in R.I. Gen. Laws § 23-17.14-12.1(h), the Attorney General must perform “a review of the proposed transaction as it deems necessary, including, as a minimum, its impact upon the charitable assets of the transacting parties.”

Although the change to the Hospital Conversion Act regarding expedited review left unclear the intended role of the Attorney General, the Attorney General has looked to other provisions of the

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<sup>6</sup> The Attorney General and DOH have been in frequent communication with OCHA throughout the review processes of all offices.

<sup>7</sup> The dates of filing and acceptance were obtained from OCHA’s website.

<sup>8</sup> On February 25, 2016, Connecticut Governor Daniel Malloy issued Executive Order 51, which (1) established a CON Taskforce; and (2) directed the Connecticut Department of Health (“DPH”) not to make any final decisions on any CON application until January 15, 2017 if it met certain criteria (which this Proposed Transaction meets). If DPH found it necessary to act on an application prior to Taskforce completing its work, the Executive Order requires DPH to make the following findings pursuant to Section 7 of the Order: (a) “that accessibility and cost effectiveness of health care delivery in the region will not be improved;” (b) “the diversity of health care providers and patient choice in the geographic region will be negatively impacted;” and (c) “that health care costs or accessibility to care will be adversely affected due to the consolidation included in the application.” All of the findings must be made if the total hospital health system operating revenue of the hospital systems in the application, when combined, resulting in an amount greater than twenty percent of Connecticut’s total hospital health system operating revenue.

Hospital Conversions Act as guidance and followed a similar practice among all expedited reviews. In deciding what constituted a necessary review by the Attorney General pursuant to the expedited process, the Attorney General first reviewed the criteria necessary for a full review pursuant to the Hospital Conversions Act. Review criteria contained in the Hospital Conversions Act applicable in a full review involving either non-profit or for-profit buyers consists of twenty-one (21) or thirty (30) requirements, respectively. *See* R.I. Gen. Laws §§ 23-17.14-10 and 23-17.14-7. The Attorney General also reviewed the criteria used by DOH in both a full and expedited review process, as well as the Change in Effective Control process.

Thereafter, for efficiency, the Attorney General developed the form used as the Initial Application for the expedited review process. While it is possible that this form may not be appropriate in a particular transaction, the existence of the form helps organize the review and raises the transacting parties' awareness of what information will be required of them on a preliminary basis for the review. This form continues to be used in the expedited review process and requests information that is of traditional focus by the Attorney General in a full review pursuant to the Hospital Conversions Act. The topics below do not reflect all of the information that the Attorney General has reviewed regarding the Proposed Transaction. Further, it is possible that a particular review in the future may include additional topics for Attorney General review. However, for this Proposed Transaction, the Attorney General provides the basis of its review and decision regarding the following general categories: (1) Charitable Assets; (2) Governance; and (3) Conflict of Interest. The statutory criteria contained in the Hospital Conversions Act have been used, as appropriate, for consistency in reviews.

**A. CHARITABLE ASSETS**

The Department of Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island. *See, e.g.*, R.I. Gen. Laws §§ 18-9-1 to 17; *see also* Israel v. National Bd. Of Young Men’s Christian Ass’n, 117 R.I. 614, 618 (1977). In addition, the expedited review section of the Hospital Conversions Act requires that the Attorney General review at a minimum, the Proposed Transaction’s “impact upon the charitable assets of the transacting parties.” *See* R.I. Gen. Laws §23-17.14-12.1(h). The full review process of the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public’s interest in such assets is properly safeguarded. *See, e.g.*, R.I. Gen. Laws § 23-17.14-7(c)(1), (2), (16), and (26).

**1. Prior Transaction**

As mentioned above, as part of the Attorney General’s Prior Decision, a number of conditions were put in place. Many of these conditions require ongoing commitments by L+M and the Westerly Hospital, especially in the area of charitable assets. Below are the conditions (numbered as they were in the Prior Decision) related to charitable assets that continue to be relevant:

5. L+M shall [continue to] utilize the Westerly Hospital identity and name, nonprofit status and community mission.
6. With input from the Westerly Hospital Foundation, L+M will carry out a broad-based community capital campaign in support of the Westerly Hospital and all such funding will be raised in the Westerly Hospital’s name and remain for the benefit of the Westerly Hospital nonprofit and community mission.
7. L+M, in coordination with the Westerly Hospital Foundation, shall institute procedures at the Westerly Hospital to hold and manage charitable assets appropriately, including to ensure that charitable assets are used in accordance with donor intent.

8. All charitable assets transferred by the Asset Purchase Agreement shall be utilized for the benefit of Westerly Hospital only.
9. Current and future charitable assets of the Westerly Hospital shall not be utilized for projects or programs situated outside the State of Rhode Island without the consent of the Department of Attorney General.
10. The Westerly Hospital Foundation, Inc., and the Westerly Hospital Auxiliary, Inc., not be dissolved or otherwise significantly altered from their current operations for a period of five (5) years without notice to and consent of the Attorney General.
11. The assets of the Westerly Hospital Foundation, Inc. be held by the Westerly Hospital Foundation, Inc., in its own accounts and not those of the Westerly Hospital or LMW Healthcare, Inc. The parties shall have thirty (30) days to comply with this Condition after the Closing.
12. For the next five (5) years, the Attorney General shall be provided notice of any singular or aggregate in any one year of use of \$200,000 in restricted funds, including the amount, use and certification of compliance with the fund's restriction.

*See* Prior Decision, pp. 41-42.

In May 2014, almost a year after closing of the Prior Transaction, L+M reported compliance with all of the above-referenced conditions. *See* AG Initial Application, Supplemental Exhibit 20. At that time, the Westerly Hospital continued to remain a non-profit with the same mission under the name Westerly Hospital. *Id.* In response to Condition 6, L+M reported that the Foundation renewed its fundraising program and activities soon after closing on June 1, 2013. *Id.* In the year that followed, more than 1,000 gifts were received for the Westerly Hospital and were used for healthcare technology and facility improvements at the Hospital. *Id.* In response to Condition 7, L+M reported that the Hospital and Foundation follow the same gift acceptance process that is used at L+M, which includes maintaining documentation for when and how charitable funds are used. *Id.* Additionally, the Foundation periodically met with the L+M Finance Department to confirm funds are used appropriately. *Id.* With respect to Condition 8 and 9, L+M confirmed that all charitable assets transferred by the APA and all current and future

charitable assets had been utilized solely to benefit the Westerly Hospital. *Id.* All assets of the Foundation continue to be held in Foundation accounts (see Condition 11 above). *Id.* Likewise, as to Condition 10, L+M reported that neither the Foundation or Auxiliary were dissolved or otherwise significantly altered in the year following closing.<sup>9</sup> *Id.* Lastly, as to Condition 12, L+M reported that as of May 2014, there had been no singular or aggregate use of \$200,000 or more in restricted funds since closing. *Id.*

In response to the Attorney General's inquiry about compliance with the above-referenced conditions as part of the current application, L+M has reported continued compliance with all such conditions. *See* AG Initial Application, Response to Question 1. To date, the Westerly Hospital has maintained its name, identity and mission. *See* AG Initial Application, Supplemental Exhibit 52(d). The Foundation continues its fundraising efforts and has been able to increase charitable support dramatically from the levels experienced while the Westerly Hospital was in special mastership.

As mentioned above, these conditions continue to remain applicable and are important to the preservation of the charitable assets of the Westerly Hospital.

## **2. Initial Application**

In the Initial Application, the Transacting Parties make several assertions regarding the charitable assets at the Westerly Hospital. It has been represented in the AG Initial Application that the Proposed Transaction will not impact the management or use of the charitable assets of the Westerly Hospital. *See* AG Initial Application, Response to Question 2. It is further stated that the charitable assets "will continue to be managed and otherwise utilized in the same manner

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<sup>9</sup> The Foundation's Bylaws were amended post-closing on April 28, 2014. L+M asserts that the Foundation was not "otherwise significantly altered from [its] current operations," therefore, there was no notice and consent required of the Attorney General pursuant to Condition 10 if the Prior Decision. *See* Response to Question 1 of AG 1<sup>st</sup> Set of Supplemental Questions.

as they are currently managed and utilized” after closing of the Proposed Transactions. *Id.* Currently, the Westerly Hospital’s charitable assets are “managed and utilized in accordance with donor intent or document governing the assets (when applicable), any other applicable restrictions, and in accordance with the direction and approval of the Board of Directors.” *Id.* The Transacting Parties assert that the charitable assets continue to be managed and utilized in the same manner that was previously approved in the Prior Decision. *Id.*

Post-closing, YNHHSO expects to integrate the Westerly Hospital and the Westerly Hospital Foundation into YNHHSO’s system-wide policies regarding the management of charitable assets. *See* Response to Question 6 of AG 3<sup>rd</sup> Set of Supplemental Questions. This includes “align[ing] all written policies of Westerly Hospital and the Westerly Hospital Foundation to comply with the YNHHSO system policy.” *Id.* However, YNHHSO does not expect this integration to result in any material change to the process currently followed by the Westerly entities. *Id.* The Attorney General has reviewed these policies in detail and is satisfied that the policies as they exist today should result in appropriate management of the Westerly entities’ charitable assets. However, in the event of a proposed change in these policies for the five (5) years after closing, the Attorney General shall be notified in advance as to such changes.

Pursuant to the proposed amended Westerly Hospital bylaws, L+M remains the corporate parent of the Westerly Hospital. YNHHSO, as the sole member of L+M, and ultimate parent, will retain expansive reserved powers over the Westerly Hospital. *See* Exhibit A and B in the Proposed Amended Westerly Hospital bylaws, provided in AG Initial Application Exhibit 2.

With regard to charitable assets, the bylaws specifically include the powers to:

- approve “[a]mendment or restatement of the Mission, Certificate of Incorporation, or the Bylaws of this Corporation or any Affiliate, or any new or revised “doing business as” name (Exhibit A to the Proposed Amended bylaws, Section B).



- [o]versee the Corporation's management and investment of its permanent and temporarily restricted funds (Exhibit A to the Proposed Amended bylaws, Section L).

As the sole member of the Westerly Hospital, L+M, and ultimately YNHHSC, will have the specific ability to oversee the Westerly Hospital's use, management and investment of its permanent and temporarily restricted endowment funds.

### **3. Affiliation Agreement**

The Affiliation Agreement governs the parameters of the relationship between the Transacting Parties with respect to charitable assets. *See* Affiliation Agreement, Section 2.1.9, provided in AG Initial Application Exhibit A-1. That section states:

After the Closing, (i) L+M shall continue to honor any donor restrictions (temporary, permanent or as to purpose on donations made prior to the Closing Date, and (ii) any donor-imposed restrictions (temporary, permanent or as to purpose) on charitable donations made after the Closing Date shall also be honored by L+M.

*Id.*

As stated above, the Affiliation Agreement also makes reference to the ongoing commitments of the Prior Transaction and the conditions imposed by the Prior Decision, including those related to charitable assets. *See id.* at Section 2.1.8 (b). With regard to the Westerly Hospital Foundation and the Westerly Hospital Auxiliary, the Affiliation Agreement does not contemplate amended corporate documents for either subsidiary as a result of this transaction. *See id.*; *see also* Response to Question 12 of AG 2<sup>nd</sup> Set of Supplemental Questions. However, YNHHSC has reported that it is "engaged in a governance streamlining project to align the corporate documents of all affiliated entities, and as part of this project it is anticipated that the corporate documents of the Westerly Hospital Foundation...will be revised over the course of the next year." *See* Response to Question 12 of the 2<sup>nd</sup> Set of Supplemental Questions.

As has been true of other conversions, for a period of time after closing, the Attorney General is notified of certain revisions to corporate documents. This condition continues to remain important, especially in the context of YNHHS's already anticipated changes to these governance structures.<sup>10</sup>

It appears that at the time of this Proposed Transaction, it is the intention of the Transacting Parties that the charitable assets of the Westerly Hospital, and its related entities, will stay with the hospital, continue to be managed as they historically have, and that donor intent will continue to be honored.

#### **4. Charitable Assets of the Westerly Hospital**

The Westerly Hospital has long benefitted from the generosity of the community. While there was a decline in charitable giving to the Westerly Hospital during the Special Mastership, it has since recovered and once again continues to receive a number of charitable gifts each year.

In the AG Initial Application, the Transacting Parties provided information about three entities that hold charitable assets for the benefit of the Westerly Hospital: (1) the Hospital itself; (2) the Westerly Hospital Foundation (also referred to as the "Foundation"); and (3) the Westerly Hospital Auxiliary (also referred to as the "Auxiliary"). Both the Foundation and Auxiliary continue to play a critical role in the ability of the Westerly Hospital to thrive in the area of charitable donations.

##### **a. The Westerly Hospital**

As discussed below, the Foundation holds a number of charitable assets, mostly unrestricted, for the benefit of the Westerly Hospital. The Westerly Hospital also has a variety of

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<sup>10</sup> The Attorney General has put conditions in place to protect Rhode Island charitable assets should such a change be imposed, including the requirement that the Westerly Foundation is organized for the purposes of carrying out its mission for the benefit of the Westerly Hospital and its Rhode Island affiliates.

sources of charitable assets, including restricted accounts and irrevocable trusts. *See* Response to Question 13 of AG 1st Set of Supplemental Questions. Voluminous detailed information regarding the charitable assets of the Westerly Hospital was provided in response to questions posed by the AG Initial Application and resulting follow-up questions. It will not all be outlined in detail herein, but was thoroughly reviewed.

A significant portion of the charitable assets of the Westerly Hospital consists of three (3) trusts (the “Trusts”) that are outlined below. Also, the AG Initial Application identified charitable assets in addition to the Trusts of approximately Five and a half Million Dollars (\$5,500,000).<sup>11</sup> These assets consist of either cash earnings on specific balance funds, accumulated earnings on permanent endowment funds or specific fund balances. Each amount is currently held subject to restriction for a particular purpose or donor intent. Prior to closing the Prior Transaction, the Rhode Island Superior Court entered a *cy pres* order on May 29, 2013, substituting LMW Healthcare, Inc. as the sole beneficiary of these charitable assets. *See Order dated May 29, 2013, Charles S. Kinney v. Westerly Hospital Healthcare, Inc., et al.*, WB 2011-0781. This *cy pres* order also assigned a purpose to certain funds for which no legal documentation existed. *Id.* Since June 1, 2013, there have been no new endowments or restricted charitable assets received by the Hospital. *See* AG Initial Application, Response to Question 1.

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<sup>11</sup> Total amounts dated as of May 31, 2016. At the request of the Attorney General, the parties consented to this dollar amount from the chart provided in Supplemental Confidential 14 at AGC-SUPP000123 being deemed public.

### **i. The Trusts**

Within the AG Initial Application at Exhibit 3, the Transacting Parties have provided a draft *cy pres* petition<sup>12</sup> (the “Petition”) to be filed with the Superior Court.<sup>13</sup> The doctrine of *cy pres* “substitute[s] another charitable object that approaches the original purpose as closely as possible” when the charitable gift is “impossible, inexpedient, or impracticable of fulfillment.” *See* 88 Am. Jur. Proof of Facts 3d 469 (Originally published in 2006). The Attorney General requires a *cy pres* petition, as is the precedent in prior hospital conversions, because of the significant change in ownership and governance inherent in hospital conversions and this particular transaction’s impact on the people of Rhode Island. The Petition identifies three (3) trusts, namely: (1) the Charles A. Morgan Trust (“Morgan Trust”), (2) the Louise D. Hoxsey Trust *f/b/o* Foundation Fund for a Hospital in Westerly Rhode Island (“Hoxsey Trust”), and (3) the Irene Vose Trust (“Vose Trust”) (collectively, the “Trusts”). The Trusts currently total approximately Four Million Dollars (\$4,000,000).<sup>14</sup>

As outlined in the Petition and evidenced by the documents provided with the AG Initial Application, the Morgan Trust was a bequest to the Westerly Hospital from Charles A. Morgan, with its purpose “for the furnishing of free hospital services to such members of the public as may be in need thereof, and unable, in whole or in part to pay for such service.” *See* Petition,

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<sup>12</sup> A *cy pres* petition is requested by Question 3 of the Initial Application and a draft petition was provided by the parties. The Transacting Parties and the Department of Attorney General will coordinate the filing of a final *cy pres* petition that is consistent with this Decision and the Conditions contained herein.

<sup>13</sup> The *cy pres* petition also acknowledges the continued requirement of LMW Healthcare, Inc. to “maintain the designated naming rights of any past charitable donations absent consent of the Attorney General.” *See* Petition, Para. 51.

<sup>14</sup> Total amounts dated as of May 31, 2016, contained in a chart at Bates Stamp number AGC-SUPP000123 in Supplemental Confidential Exhibit 14. These figures are slightly different than the figures in the draft *cy pres* petition, which was dated as of June 30, 2015, and will be updated at the time of filing. At the request of the Attorney General, the parties consented to this one-page chart being deemed public.

Para. 16. As of June 30, 2015, the funds in the Morgan Trust totaled Four Million One Hundred Eighty-Three Thousand Two Hundred Seventeen Dollars (\$4,183,217). *See id.* at Para. 19.

As outlined in the Petition and evidenced by the documents provided with the AG Initial Application, the Hoxsey Trust was a trust fund established by Louise D. Hoxsey for the purpose “establishment and maintenance of a hospital” in Westerly. *See id.* at Paras. 20 and 22. As of June 30, 2015, the funds in the Hoxsey Trust totaled One Hundred Seventy-Five Thousand Eight Hundred Fifty-Nine Dollars (\$175,859). *See id.* at Para. 24.

As outlined in the Petition and evidenced by the documents provided with the AG Initial Application, the Vose Trust was a trust created by a bequest to the Westerly Hospital from Irene Vose. *See id.* at Para. 25. The Rhode Island Foundation currently serves as the trustee. *See id.* at Para. 26. The net proceeds from the trust are divided annually into three (3) equal parts, one of which is to be paid to the Westerly Hospital “for general hospital purposes”. *See* AG Initial Application, Exhibit 4 at AGC0069. As of June 30, 2015, the funds in the Vose Trust held by the Westerly Hospital totaled Seventy-Two Thousand Three Hundred Sixty-Four Dollars (\$72,364). *See* Petition, Para. 29.

Under the prior *cy pres* Order, LMW Healthcare, Inc. was substituted as a beneficiary of the Trusts in place of the Westerly Hospital. *See id.* at Paras. 18, 23, and 28. The Petition asks the Court to find that after the YNHHS/L+M affiliation, the Westerly Hospital will continue to adhere to its charitable obligations under the prior order. *See* Petition at Requested Relief, Para. 2.

**ii. The Permanent Endowments**

In addition to the Trusts, the Petition also identifies four (4) permanent endowments, namely: (1) the Lefferts Endowment; (2) the Community Endowment; (3) the Schwarz

Endowment; and (4) the Foundation for Health Endowment (“F. Health Endowment”) (collectively, the “Endowments”). As mentioned above, the Endowments currently total approximately Five and a half Million Dollars (\$5,500,000).<sup>15</sup>

As outlined in the Petition and evidenced by the documents provided in the AG Initial Application, in 1958, per the will of Lewis L. Lefferts, the Lefferts Endowment was created “as an Endowment Fund, the net income from which shall be used for the general corporate purposes of [the Westerly Hospital] ...” *See* Petition, Para. 30. As of June 30, 2015, the funds in the Lefferts Endowment totaled \$2,696,264 in permanent endowment funds, and \$1,377, 339 in accumulated earnings on the funds. *See id.* at Para. 32.

As outlined in the Petition and evidenced by the documents provided in the AG Initial Application, the Community Endowment is a perpetual fund which is comprised of a combination of smaller endowments from donors who wished to endow their gifts. *See id.* at Para. 33. Because there was no legal documentation available for this Endowment as the time of L+M’s acquisition of the Westerly Hospital, as part of the prior *cy pres* Order, the designated purpose of Endowment is to be used for the sole purpose of the Westerly Hospital’s operations. *See Order dated May 29, 2013, Charles S. Kinney v. Westerly Hospital Healthcare, Inc., et al., WB 2011-0781.* As of June 30, 2015, the funds in the Community Endowment totaled \$1,103,167. *See* Petition, Para. 35.

As outlined in the Petition and evidenced by the documents provided in the AG Initial Application, the Schwarz Endowment was designated by the Westerly Hospital Board on September 21, 2001, and requires the income be used for general hospital purposes. *See id.* at

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<sup>15</sup> Total amounts dated as of May 31, 2016, contained in a chart at Bates Stamp number AGC-SUPP000123 in Supplemental Confidential Exhibit 14. These figures are slightly different than the figures in the draft *cy pres* petition, which was dated as of June 30, 2015, and will be updated at the time of filing.

Para. 36. As of June 30, 2015, the funds in the Schwarz Endowment totaled \$285,570. *See id.* at Para. 38.

As outlined in the Petition and evidenced by the documents provided in the AG Initial Application, the F. Health Endowment was created by letter dated July 31, 2007, when the Foundation for Health deeded an interest in property to the Westerly Hospital for the benefit of persons affected by renal disease, and the Westerly Hospital agreed to establish a permanent fund. *See id.* at Para. 39. As of June 30, 2015, the value of this Endowment was \$1,298,330. *See id.* at Para. 41.

Under the prior *cy pres* Order, LMW Healthcare, Inc., was substituted as the sole beneficiary of all of the Endowments. *See id.* at Paras. 31, 34, 37, and 40. The Petition asks the Court to find that after the YNHHSC/L+M affiliation, the Westerly Hospital will continue to adhere to its charitable obligations under the prior order as it relates to the Endowments. *See* Petition at Requested Relief, Para. 2.

**iii. The Funds**

Finally, the Petition discusses two funds: (1) the Drake Fund; and (2) the Morgan Donations Fund (collectively, the “Funds”). The Drake Fund was established in 1978 per the will of Katharine Drake to be used by Westerly Hospital to “promote the further and continuing medical education of members of the medical staff of that hospital.” *See* Petition, Para. 42. As of June 30, 2015, the funds in the Drake Fund totaled \$54,229. *See id.* at Petition, Para. 46. The Morgan Donation Fund is a collection of donations that were received over the years to assist Westerly Hospital in free hospital services, and was designated as such by the prior *cy pres* Order. *See id.* at Para 48; *see also* Order dated May 29, 2013, Charles S. Kinney v. Westerly

Hospital Healthcare, Inc., et al., WB 2011-0781. As of June 30, 2015, the funds in this Fund totaled \$6,314. *See* Petition, Para. 50.

Under the prior *cy pres* Order, LMW Healthcare, Inc., was substituted as the sole beneficiary for both of these Funds. *See id.* at Paras. 45 and 49. The Petition asks the Court to find that after the YNHHS/L+M affiliation, the Westerly Hospital will continue to adhere to its charitable obligations under the prior order as it relates to the Endowments. *See* Petition at Requested Relief, Para. 2.

**b. The Foundation**

The Westerly Hospital Foundation is the charitable arm of the Westerly Hospital. Its main purposes are fundraising, oversight of planned giving to the Westerly Hospital, and managing unrestricted donations and gifts for the Westerly Hospital. *See* Response to Question 13 of AG 1st Set of Supplemental Questions. The sole member of the Westerly Hospital Foundation is the Westerly Hospital. *See* Section 2.1 of the Westerly Hospital Foundation bylaws, provided in AG Initial Application Supplemental Exhibit 1. The Foundation generally is operated by a board of directors, and has an executive director and small staff. The Foundation maintains a sizeable account of unrestricted (as to use, not as to hospital) funds, which are acquired through the annual giving fund, large fundraisers, as well as other donor gifts. As of May 31, 2016, the Westerly Hospital Foundation held over Three Million Dollars (\$3,000,000) in charitable assets for the benefit of the Westerly Hospital.<sup>16</sup>

The Westerly Hospital Foundation's unrestricted assets include monies held in a fund previously designated as "Board Designated Funds." *See* Response 8 to AG 3<sup>rd</sup> Set of

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<sup>16</sup> Total amounts dated as of May 31, 2016. At the request of the Attorney General, the parties consented to this dollar amount from the chart provided in Supplemental Confidential Exhibit 13 at Bates Stamp number AGC-SUPP000116 being deemed public.



Supplemental Questions. Through the interview process, it was determined that this fund was originally designated by the Westerly Hospital board for the purposes of capital investments when the Westerly Hospital Foundation was created. The Westerly Hospital Foundation has since transferred these funds into one of their other accounts as part of a consolidation effort and “does not consider or treat the original Board Designated Funds any differently than any other unrestricted funds held by the Foundation.” *Id.* Based on the information provided through the Supplemental Responses and the interviews, these funds are considered unrestricted charitable assets for the benefit of the Westerly Hospital and must be so identified to ensure appropriate use moving forward.

The Westerly Hospital Foundation is a non-profit Rhode Island corporation that was incorporated on June 10, 1999. Its stated purpose is:

- (a) To promote the charitable, educational, and scientific purposes of The Westerly Hospital by coordinating and furthering the delivery of health care.
- (b) To support The Westerly Hospital by encouraging and advancing the provision of quality patient care.
- (c) To acquire, hold, manage, maintain, develop and/or dispose of real and personal property for the benefit of The Westerly Hospital *and its affiliated organizations* so long as they are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- (d) To engage generally in any other educational or charitable activities that may lawfully be carried on by a corporation formed under Chapter 6 of the Rhode Island Non-Profit Corporation Act as now in force or as hereafter amended and that is not inconsistent with the organization’s qualification as an organization exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

See the Westerly Hospital Foundation's Articles of Incorporation, Para. 3A<sup>17</sup> (emphasis added).

The Attorney General finds that the emphasized language in Section (c) above, while it has been part of the articles since inception, is potentially problematic in the context of a larger out-of-state system as the new parent for the Westerly Hospital. The Westerly Hospital Foundation's role has historically been and continues to be for fundraising and assisting the Westerly Hospital. The Attorney General finds that this role is the most appropriate for the Westerly Hospital Foundation. Therefore, the language in the Articles of Incorporation should make clear that the Corporation's purposes are for the benefit of the Westerly Hospital and its Rhode Island affiliates.<sup>18</sup>

Since the Prior Transaction, the Westerly Hospital Foundation has continued to operate in substantially the same manner as it was prior to the Prior Transaction. It continues to have the same staff, which includes one full-time employee and one part-time employee. See Response to Question 12 of AG 2nd Set of Deficiency Questions. As of January 15, 2016, the Westerly Hospital Foundation was governed by a board of directors of twenty-two (22).<sup>19</sup> See AG Initial Application Exhibit 2. For the time period of July 2013 to June 2016, minutes of the board of directors for the Westerly Hospital Foundation were provided and reviewed by the Attorney General. Nicholas Stahl, Executive Director of the Foundation, was also interviewed. As was true in the Prior Decision, the Attorney General finds that continuation of the Westerly Hospital Foundation is in the best interests of Westerly Hospital.

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<sup>17</sup> A copy of the current Articles of Incorporation for the Westerly Hospital Foundation, Inc. was obtained through the Rhode Island Secretary of State's website.

<sup>18</sup> As discussed later in the section entitled *Governance*, the Westerly Hospital Foundation's Articles of Incorporation shall also make clear that upon any dissolution, the assets remain for the benefit of Rhode Island based non-profit corporations.

<sup>19</sup> Two members of the board have resigned since January and have not been replaced. See Response to Question 9 of AG 2nd Set of Supplemental Questions.

**c. The Auxiliary**

In general, the Westerly Hospital Auxiliary is comprised of numerous volunteer members who pay dues to support its mission. The Auxiliary serves several important purposes to the Westerly Hospital, including operation of the gift shop, raising money for medical equipment and supplies requested by the Hospital, providing scholarships and holding a number of annual events and fund raisers in support of the Hospital.<sup>20</sup> The sole member of the Westerly Hospital Auxiliary is the Westerly Hospital. See Section 1 of the Westerly Hospital Auxiliary bylaws, provided in AG Initial Application Supplemental Exhibit 2.

The Westerly Hospital Auxiliary is a Rhode Island non-profit corporation that was incorporated on December 6, 1983. Its stated purpose is:

fostering, encouraging and increasing the community's understanding of The Westerly Hospital, (the "hospital") promoting greater involvement in the services of the hospital, helping provide supplementary financial assistance for hospital projects, giving services to the hospital in cooperation with and support of other volunteers, and assisting the hospital and any charitable organization affiliated with the hospital in such manner as the directors may determine.

See Paragraph 3 of the Westerly Hospital Auxiliary's Articles of Association.<sup>21</sup>

Since the close of the Prior Transaction, the Westerly Hospital Auxiliary has continued to operate as it had done before and is staffed solely by volunteers. See Response to Question 12 of AG 2nd Set of Deficiency Questions. The Westerly Hospital Auxiliary was governed by a board of directors numbering nine (9) in 2015. See AG Initial Application Exhibit 2. As part of the proposed changes to the Westerly Hospital bylaws (see Section entitled *Governance* below), the Auxiliary will be specifically referenced through Section 8.4 of the proposed amended bylaws.

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<sup>20</sup> Assertions in this Section are based upon information provided to the Attorney General in the Prior Transaction, as well as interviews in the current review.

<sup>21</sup> The Articles of Association for the Westerly Hospital Auxiliary were provided in the AG Initial Application for the Prior Transaction.

See AG Initial Application Exhibit A-1. This provision is proposed to be added as “part of the standard templates for bylaws that YNHHS C has been implementing in its other subsidiary hospitals” and “simply describes that Westerly Hospital may have an Auxiliary that has bylaws that would be subject to review and approval by the Westerly Hospital.” See Response 7 to AG 3<sup>rd</sup> Set of Supplemental Questions. The provision does not affect the relationship as it exists today between the Westerly Hospital and the Auxiliary, as the Westerly Hospital board currently has the right to review and approve the Auxiliary bylaws. *Id.*

As was true in the Prior Decision, the Attorney General finds that continuation of the Westerly Hospital Auxiliary is in the best interests of Westerly Hospital.

#### **5. YNHHSC**

As stated above, the proposed acquirer, Yale New Haven Health Services Corporation, Inc., is a Connecticut, non-stock, tax-exempt corporation, which is the parent company to three community hospitals (YNHH, Bridgeport, and Greenwich). YNHHS C maintains system-wide policies to ensure appropriate management of restricted and unrestricted charitable assets of its hospital affiliates. See Response to Question 2 of AG 3<sup>rd</sup> Set of Supplemental Questions. YNHHS C modifies these policies as necessary to comply with applicable laws, regulations, and accounting guidance. *Id.*

Both Bridgeport, which affiliated with YNHHS C in 1996, and Greenwich, which affiliated with YNHHS C in 1997, maintain separate hospital foundations. See Response to Question 19 of AG 1st Set of Supplemental Questions. After the Bridgeport affiliation, its foundation “continued in existence and continued to comply with any restrictions on charitable funds it held.” *Id.* Similarly, when Greenwich joined the Yale-New Haven System, the Greenwich foundation was created, “which is aligned with the hospital and complies with any

restrictions on the unrestricted endowment funds it holds.” *Id.* YNHH does not have an associated foundation, but maintains a development office with approximately twenty employees, which handles all fundraising and charitable giving. This office is run by Vice President Kevin Walsh, who was interviewed in the context of this Proposed Transaction. All philanthropic and charitable affairs of YNHHS community hospitals are kept at the hospital level, and the corporate parent has minimal, if any, involvement. Throughout the YNHHS system, the local hospital boards maintain responsibility for fundraising efforts and support capital needs specific to the individual hospital.<sup>22</sup> *Id.*

Additionally, all of YNHHS community hospitals have auxiliaries supporting charitable initiatives at the respective hospital. Greenwich’s auxiliary was formed in 1906 and has raised over \$8.5 million for the hospital. Bridgeport’s auxiliary was founded in 1959 and has raised over \$4.5 million for the hospital.<sup>23</sup> The history of YNHHS’s auxiliaries indicates that the system has experience with interacting with auxiliaries, and likely understands the value of such an organization. It appears that YNHHS’s local hospital foundations, auxiliaries, and related entities operate today similarly to how the Westerly Hospital Foundation and Westerly Hospital Auxiliary will operate post-closing.

No adverse action against YNHHS has been reported to the Attorney General through the Initial Application process or otherwise through this review process. Further, independent research did not reveal any such information. Additionally, regarding the handling of charitable assets, the Attorney General reviewed YNHHS’s response to this inquiry and determined

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<sup>22</sup> Some of the information in the paragraph as it related to YNHH’s development office was obtained through interviews.

<sup>23</sup> The information in this paragraph was obtained through the YNHHS hospitals’ websites. *See* <https://www.greenwichhospital.org/about/community/auxiliary.aspx>; <https://www.bridgeporthospital.org/about/community/auxiliary.aspx>

nothing reported was relevant to the current transaction and YNHHSO's current ability to properly handle charitable assets.<sup>24</sup>

**6. Disposition of Charitable Assets**

YNHHSO is an established non-profit entity in existence for over thirty (30) years. *See* DOH Initial Application, Response to Question 1. Additionally, many of its hospital affiliates have been in existence for more than 100 years.<sup>25</sup> YNHHSO has system-wide policies in place to ensure appropriate use and management of charitable assets held by its hospitals that appear to be successful. There were no red flags uncovered regarding its management or use of charitable assets through the review process. The disposition of the charitable assets will be governed by the provisions of the Affiliation Agreement, prior Orders of the Court, and the Conditions outlined in this Decision, including certain oversight by the Attorney General. They will also be subject to a *cy pres* petition process that will take place after this Decision is rendered. All of these mechanisms together are designed to ensure that charitable assets are used for their intended purpose and will continue to be utilized to benefit the Westerly Hospital and its Rhode Island affiliates.

**7. Maintenance of the Mission, Agenda and Purpose of the Westerly Hospital**

The full review contained in the Hospital Conversion Act at R.I. Gen. Laws §§ 23-17.14-7(c) (16) and 23-17.14-7(c) (25) (iii) requires consideration of the following:

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a *cy pres* proceeding would be necessary; and

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<sup>24</sup> *See* Response 20 to AG 1st Set of Supplemental Questions for a summary of any investigations, litigation, or other negative action regarding YNHHSO's use of charitable assets.

<sup>25</sup> This information was obtained either through the YNHHSO website or the Connecticut Secretary of State's website.

- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

As with other factors contained within the full review, the Attorney General has chosen to apply these standards in review of the Proposed Transaction.

According to the current articles of incorporation for the Westerly Hospital<sup>26</sup>, the organization's purpose states:

The Corporation is formed and shall be operated exclusively for scientific, educational, and charitable purposes, as qualified under Section 501(c)(3) of the Internal Revenue Code of 1986 (as now in effect or may hereafter be amended) (the "Code"). The purpose is to establish, maintain and carry on an institution with permanent facilities for inpatients and ambulatory patients, with medical services to provide diagnosis and treatment, to carry on all associated services, and to engage in any lawful act or activity for which a corporation may be organized under the Rhode Island Nonprofit Corporation Act, as the same may be amended from time to time.

See AG Initial Application Exhibit 14. More generally included in the information provided in the AG Initial Application, the current mission statement of the Westerly Hospital is to "improve the health of our region." See AG Initial Application Response to Question 2.

Technically, as a result of the Proposed Transaction, the Westerly Hospital will become a subsidiary of YNHHS. YNHHS's corporate purpose is stated as:

The nature of the activities to be conducted, or the purposes to be promoted or carried out by the corporation shall be exclusively charitable, scientific and educational within the meaning of Section 501(c)(3) of the Code (as defined in paragraph 8 hereof) and shall include the following:

- A. To benefit and carry out the purposes of, to perform the functions of, and uphold, promote and further the welfare, programs and activities of an integrated health care delivery system known as the Yale New Haven Health System (the "System") and its affiliates, including Bridgeport Hospital ("BH"), Greenwich Hospital ("GH"), Yale-New Haven Hospital ("YNHH"), Northeast Medical Group, Inc. ("NEMG") and

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<sup>26</sup> As discussed in Section 3 above and later in the Section entitled *Governance*, the corporate documents for the Westerly Hospital and the Westerly Hospital Foundation shall make clear that the purposes of both entities and the assets of both entities are for the benefit of Rhode Island entities.

such other organizations as may become affiliates of the System from time to time;

- B. To engage directly in, and collaborate with, BH, GH and YNHH and with NEMG and Yale University and other hospitals and health care institutions and other organizations in, the institution, development and maintenance of programs directed toward improving the efficiency and reducing the cost of health care services while maintaining a high quality of such care;
- C. To collaborate with Yale University and with other colleges and schools in the institution, development and maintenance of educational programs for health professionals and for the public, including programs of medical and nursing education, continuing education, graduate medical education and community health education;
- D. To collaborate with BH, GH, and YNHH, with Yale University and with other hospitals, health care institutions, colleges and school in the initiation, development and maintenance of programs and scientific research related to the care of the sick and injured;
- E. To initiate, develop, operate and maintain, directly and in collaboration with BH, GH, and YNHH, and with other hospitals and health care institutions and organizations, programs for the delivery of health care services through one or more separate corporations;
- F. To acquire, improve, hold and lease any real or personal property useful to the accomplishment of the purposes of this corporation;
- G. To own and operate facilities, directly and in collaboration with BH, GH, and YNHH, and with other hospitals and health care institutions and organizations, to achieve the purposes of the corporation;
- H. To receive and accept public and private gifts, trusts, donations, grants, loans and other sources of funding to promote the purposes of this corporation; and generally to do and perform such other acts and to exercise such other powers as may be authorized or permitted under the laws of the State of Connecticut to promote and attain the purposes set forth herein; and
- I. To engage in any lawful act or activity for which a corporation may be organized under the Connecticut Revised Nonstock Act in furtherance of the foregoing.



See AG Initial Application Exhibit 14. More generally, the mission of the YNHHS is that the system is “committed to innovation and excellence in patient care, teaching, research and service to our communities.” See AG Initial Application Response to Question 2.

Accordingly, the Westerly Hospital in its entirety, along with its affiliated entities, will come under the control of a Connecticut non-profit corporation, which is currently the parent of three (3) non-profit hospitals and a number of other non-profit subsidiaries. YNHHS and its three hospital affiliates all have similar corporate purposes to L+M and its hospital affiliates. The Affiliation Agreement further recognizes the shared values of both YNHHS and L+M, and that the Proposed Transaction will “(i) further the commitment of YNHHS to support the delivery of high quality, cost-effective and accessible health care services in the region; and (ii) allow both L+M and YNHHS to further their charitable missions and shared vision for the changing health care marketplace.” See Affiliation Agreement, Recitals Section D and Section E, provided in AG Initial Application Exhibit A-1.

Given the information outlined above, the Proposed Transaction is in keeping with the original purposes of the existing hospital.

## **B. GOVERNANCE**

### **1. Board Decision to Affiliate**

A full review pursuant to the Hospital Conversions Act requires a review of the actions of the board of directors of the existing hospital.<sup>27</sup> In addition, the expedited review requires DOH to review information regarding the Transacting Parties’ board of directors and their decision to propose conversion. See R. I. Gen. Laws § 23-17.14-12.1(b)(5). In a full review, the Act requires review of the decisions leading up to a conversion to ascertain whether the directors

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<sup>27</sup> See e.g., R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).

fulfilled their fiduciary duties to the hospital. *See* Footnote 27. Similarly, in an expedited review, the Transacting Parties are required to submit an application to DOH that provides “all documents, reports, meeting minutes and presentations relevant to the transacting parties’ board of directors’ decision to propose the conversion,” as well as “copies of reports analyzing the proposed conversion during the past three (3) years, including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts.” *See* R.I. Gen Laws § 23-17.14-12.1(b)(5) and (b)(8). Although DOH is charged with the full review of the Proposed Transaction in this expedited review process, the Attorney General has decided, as was done in the past, at a minimum, to review the various boards’ actions leading up to the Proposed Transaction in an expedited review.

The board minutes as required by statute were requested by the DOH Initial Application. *See* R.I. Gen. Laws § 23-17.14-12.1(b)(5); *see also* DOH Initial Application Question 7 and Confidential Exhibit 7.<sup>28</sup> The minutes provided include information relative to each board’s decision to propose the transaction. Reports analyzing the Proposed Transaction were provided in the DOH Initial Application outlining the Proposed Transaction, including the process that the YNHHS and L+M boards went through to identify the proposed affiliation as beneficial to both parties. *See* R.I. Gen. Laws § 23-17.14-12.1(b)(8); *see also* DOH Initial Application Question 10, Exhibit 10, and Confidential Exhibit 10.<sup>29</sup> After review of the board minutes and other documents provided in both the AG and DOH Initial Applications, the Attorney General is satisfied that the L+M and the Westerly Hospital Boards fulfilled their fiduciary duties to the Westerly Hospital in seeking affiliation with YNHHS. Further, the Attorney General

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<sup>28</sup> These minutes were determined to be confidential in accordance with R.I. Gen. Law § 23-17.14-32.

<sup>29</sup> One of the reports was included in the public version of the DOH Initial Application. The remaining reports were determined to be confidential in accordance with R.I. Gen. Laws § 23-17.14-32.

determines that the boards and leadership of L+M found an alliance with another hospital system, specifically a non-profit system, to be the only reasonable alternative for the hospital's continued survival.

## **2. Affiliation with YNHHS**

As a result of the various boards' decision making, the Affiliation Agreement was executed on July 17, 2015. Pursuant to the Affiliation Agreement, YNHHS will become the sole member of L+M, thereby making YNHHS the ultimately corporate parent of the Westerly Hospital and its subsidiaries, which include the Westerly Hospital Foundation, the Westerly Hospital Auxiliary, and the Westerly Hospital Energy Company, LLC. *See* Affiliation Agreement, Sections 2.1.1 and 2.1.5, provided in AG Initial Application Exhibit A-1. In order to complete the Proposed Transaction, YNHHS, L+M, and the Westerly Hospital, will amend and restate their governing documents as contemplated in Section 2.1.1 and Section 2.1.5 of the Affiliation Agreement. Section 2.1.1 states, in pertinent part:

The Certificate of Incorporation and Bylaws of L+M shall be amended to appoint YNHHS as the sole corporate member of L+M. As the sole member, YNHHS will have certain retained and reserved powers consistent with the structure established for membership in the YNHHS Obligated Group and will be accorded the direct authority, as the sole member of an on behalf of L+M as the sole member of the L+M Subsidiaries, to exercise with respect to the L+M Subsidiaries the same retained and reserved powers as are accorded to YNHHS as the sole member of L+M, all of described in more detail in the L+M Amended Certificate of Incorporation and the L+M Amended Bylaws (each as defined below).

The Attorney General reviewed the proposed corporate governance of the Transacting Parties after the completion of the Proposed Transaction, including the conversion's impact on the articles of incorporation and bylaws the board of directors, as well as any other management structures in place at YNHHS.<sup>30</sup>

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<sup>30</sup> *See e.g.*, R. I. Gen. Laws §§ 23-17.14-7(c)(25) (i), (v), (vi), (vii), (viii), and (ix).

**a. Articles of Incorporation and Bylaws**

One area that must be examined are any amendments proposed to the articles of incorporation and bylaws as a result of the Proposed Transaction. There are no new entities created or dissolved as a result of the Proposed Transaction, however, all of the Transacting Parties' governance documents will be changed.

The Transacting Parties propose that the Westerly Hospital's articles of incorporation will be amended to include the following language to Section 3, which outlines the purposes for which the corporation is organized:

In furtherance of the foregoing, the Corporation shall (i) participate as an integral part of the integrated health care delivery system known as the Yale New Haven Health System (the "System"), which System provides, through its affiliates, comprehensive, cost effective, advanced patient care characterized by safety and clinical and service quality; and (ii) fund and promote activities and programs of the System, including activities and programs of its affiliates, consistent with and in further of the Corporation's charitable purposes and the charitable purposes of all System affiliates.

*See* AG Initial Application Exhibit A-1. This language will be in addition to the already listed corporate purposes. While this is the only amendment to the articles of incorporation, the following language will continue to remain:

In the event of the liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary or by operation of law, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to one of more organizations which are then qualified under Section 501(c)(3) of the Code to be used in such manner as will best accomplish the general purposes for which this Corporation was formed, to be determined in the discretion of the Board of Directors.

*See* Section 4(d) of the Westerly Hospital Articles of Incorporations, dated May 29, 2012.<sup>31</sup>

While this language may not have not previously raised concerns when LMW Healthcare, Inc.

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<sup>31</sup> A copy of the current Articles of Incorporation for the Westerly Hospital was obtained through the Rhode Island Secretary of State's website.

was initially incorporated in 2012, the Proposed Transaction contemplates that the Westerly Hospital becomes part of a much larger, predominately out-of-state system. Therefore, the Attorney General believes it is necessary to put the proper mechanisms in place to preserve the assets of this Rhode Island hospital for the benefit of other Rhode Island charities in the event of a dissolution. As such, the language in Section 4(d) should make clear that in the event of a dissolution of the Westerly Hospital, all remaining assets shall be distributed to one or more Rhode Island based non-profit corporations.<sup>32</sup>

The Transacting Parties have submitted the current and proposed bylaws for the Westerly Hospital. *See* AG Initial Application Exhibit A-1. In addition, the relevant corporate documents have been provided for YNHHS and L+M. *Id.* The Transacting Parties assert that the governance structure of the Westerly Hospital will “remain substantially similar to its current structure,” specifically that the “existing authority of Westerly Hospital’s board will remain substantially the same with the exception that those powers that today are reserved to the L+M Corporation Board as Westerly Hospital’s sole member and the power set forth in the bylaws will also become subject to YNHHS approval as well.” *See* AG Initial Application, Response to Question 14. In reviewing the proposed amended governance documents, there does not appear to be a substantial change in the day-to-day operations of the Westerly Hospital.

**b. Board Composition**

The Hospital Conversions Act includes several provisions requiring analysis of the composition of the new board.<sup>33</sup> The post-conversion board composition for the Westerly Hospital and L+M is addressed in both the Affiliation Agreement and the respective bylaws of

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<sup>32</sup> The language regarding dissolution of the Westerly Hospital will also be required for the Westerly Hospital Foundation’s Articles of Incorporation, for the same reasons as discussed above.

<sup>33</sup> *See e.g.*, R. I. Gen. Laws §§ 23-17.14-7(c)(25)(vi), (vii), (viii) and (ix).

L+M, the Westerly Hospital, and YNHHS. Article 2.1.2 of the Affiliation Agreement provides that post-closing the L+M board members shall remain on the board for the remainder of their respective terms. *See* AG Initial Application Exhibit A-1. Additionally, YNHHS will appoint one additional member to both the L+M board and the Westerly Hospital board.<sup>34</sup> *Id.* Likewise, for at least six (6) years post-closing, Article 2.1.3 of the Affiliation Agreement provides that the Chair of the L+M board shall sit on the YNHHS board as a voting member.<sup>35</sup> *Id.* Article 2.1.3 explains as follows:

As of the Closing Date and through at least the sixth anniversary of the Closing Date, the person who serves from time to time as the Chair of the Board of L+M shall be elected as a voting member of the Board of Trustees of YNHHS, and such person shall be provided with the opportunity to be a member of the YNHHS Nominating and Governance Committee; provided, however, that in the event that after the Closing Date and during the Initial Period YNHHS becomes the sole member of a health care organization or health system of similar size, revenue and scope of clinical services to L+M which YNHHS is not the member as of the Effective Date and such new health organization or health system is provided greater rights with respect to representation on the Board of Trustees of YNHHS than L+M is afforded pursuant to this Affiliation Agreement, L+M shall be provided with the same or substantially similar rights with respect to representation on the Board of Trustees of YNHHS as are afforded to such health care organization or health system.

*Id.* YNHHS has stated that this provision is “akin to a ‘most favored nations’ clause: if another hospital affiliated with YNHHS[C] over the five-year period following the closing, and if that hospital is guaranteed a seat on the YNHHS board for a period longer

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<sup>34</sup> YNHHS has not yet determined who the appointed board member will be. *See* Response to Question 14, AG Initial Application.

<sup>35</sup> YNHHS has explained that “[a]s compared to the time when the Yale New Haven Health System founding members...joined Yale New Haven Health (1996 and 1997), it is now best practice for health systems to have a competency-based, rather than constituency-based, board of trustees,” which explains why L+M will have the right to appoint a member to the YNHHS board, as opposed to having an ex-officio member serving on the board. *See* Response 3 to AG 1st Set of Supplemental Questions.

than six years, then L+M shall be provided with the same or substantially similar rights of representation.”<sup>36</sup> See AG Initial Application, Response to Question 14.

Unlike YNHHSC’s other affiliated hospitals, because L+M will remain the parent of the Westerly Hospital, “the Westerly Hospital’s representation in the YNHHSC governance structure will be via L+M Corporation, its parent organization.” *Id.* There are currently no plans to merge the L+M Corporation out of existence so that YNHHSC would be the direct parent of the Westerly Hospital. See Response to Question 7 of AG 1st Set of Supplemental Questions. However, in the event that such a merger would occur, YNHHSC’s relationship with the Westerly Hospital would be substantially the same as its other hospital affiliates, which are currently provided a representative on the YNHHSC board through the bylaws. See Section 3.2(b) of the YNHHSC proposed amended bylaws, provided in AG Initial Application Exhibit A-1. Therefore, the Westerly Hospital should also be provided such a representative if the L+M Corporation is merged out of existence and YNHHSC maintains the current board structure.

Among one of the changes proposed to the Westerly Hospital’s bylaws is the number of trustees on the board. See AG Initial Application Exhibit 14. Per Section 3.3 of the Westerly Hospital’s proposed amended bylaws, “the Board shall consist of no fewer than six (6) nor more than twelve (12) Trustees, such number to be determined time to time by the Member.” *Id.* The board will continue to have five (5) ex-officio members, and the President of YNHHSC (or his or her designee) will now sit on the board as ex-officio. *Id.*

There are a number of conditions from the Prior Decision that relate to the Westerly Hospital’s board structure, specifically the maintenance of local representation on the board. See

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<sup>36</sup> It should be noted that the Initial Period as defined in the Affiliation Agreement is five years, although other provisions in the Affiliation Agreement are subject to a six-year time frame. YNHHSC has explained this difference is due to the three-year terms of the board of directors.

Prior Decision, Conditions 13 and 14. YNHHSOC asserts that the “Westerly Hospital’s governance will remain subject to and in compliance with the conditions of approval regarding locally based directors as set forth in the Rhode Island Attorney General’s approval of L+M’s hospital conversion act application dated April 17, 2013.” *See* AG Initial Application, Response to Question 14.

The Attorney General is satisfied with the board composition of the Westerly Hospital to be instituted post-conversion. The Attorney General continues to recognize the importance of maintaining local representation on the Westerly Hospital board, especially with an out-of-state parent. While the Attorney General is assured that as described in the Affiliation Agreement and as proposed in the amended bylaws, that at least initially, the board structure of L+M and the Westerly Hospital will remain intact and that the Westerly Hospital will be represented, through L+M, on the YNHHSOC board, appropriate conditions will be put in place to ensure the continuance of a locally represented board.

**c. YNHHSOC System-Wide Policies, Assessments, and Fees**

The Affiliation Agreement contemplates that L+M will adopt YNHHSOC’s system-wide policies and procedures within a reasonable time post-closing. *See* Affiliation Agreement, Section 2.5, provided in AG Initial Application Exhibit A-1. Additionally, as it does for its other affiliates, YNHHSOC will provide management services to L+M and its affiliates, which will be assessed to the L+M affiliates using a formula consistent with the other affiliates in the YNHHSOC system. *See id.* at Section 2.8. The Attorney General has reviewed the policies related to these assessments and inquired in-depth about these fees in supplemental questions and during the interview process.



There are two primary annual fees that YNHHS assesses to its hospital affiliates: (1) the annual assessment services fee; and (2) annual shared services fee. The annual assessment services fee, which accounts for services that are integrated among YNHHS affiliates, is assessed at 1.25% of revenue applicable to all delivery networks within the Yale New Haven Health System. *See* Response 6 to AG 1st Set of Supplemental Questions. The shared services fee is different in that each hospital is assessed based on various direct services provided to the respective hospital, which services are provided based on the individual needs and requests of the hospital. *See* Response 14 to AG 3<sup>rd</sup> Set of Supplemental Questions. These fees will be assessed to the Westerly Hospital in the same manner as is used for YNHHS's other hospital affiliates. *See* Response 6 to AG 1<sup>st</sup> Set of Supplemental Questions. Neither of these fees are determined using the unrestricted or restricted charitable assets of the hospitals. *See* Response 14 to AG 3<sup>rd</sup> Set of Supplemental Questions. Further, YNHHS has asserted that these fees will not be determined using the Westerly Hospital Foundation's funds, nor paid by such funds. *Id.* YNHHS has explained that the centralization of core services, such as planning, budgeting, legal, and infrastructure, proves cost-effective and provides efficiencies throughout the system.<sup>37</sup>

The Attorney General does not have concerns about the imposition of these fees on the Westerly Hospital, as they are described in the AG Initial Application. The sharing of these types of services appears to be beneficial to the individual hospitals and the system as a whole and are projected to provide cost savings for the Westerly Hospital in these areas.

### **C. CONFLICTS OF INTEREST**

Several provisions of the Hospital Conversions Act governing a full review deal with conflicts of interest that are applicable in an expedited review.<sup>38</sup> The expedited review also

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<sup>37</sup> Some of the information in this paragraph was obtained through interviews.

<sup>38</sup> *See e.g.*, R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22) and (25) (iv).

requires information regarding conflicts of interest, including conflict of interest policies and “copies of current conflict of interest forms from all incumbent or recently incumbent officers, members of the board of directors or trustees and senior managers of the transacting parties.” See R.I. Gen. Laws §§ 23-17.14-12.1(b)(6) and (9). The Attorney General has reviewed the criteria in the Act to determine whether the Transacting Parties and their consultants have avoided conflicts of interest.

### **1. Conflict Policies and Conflict of Interest Statements**

Both L+M and YNHHSO provided their corporate conflict of interest policies in the AG Initial Application. See AG Initial Application Supplemental Exhibit 30. Additionally, certain individuals associated with the Transacting Parties were required to submit conflict of interest forms. See AG Initial Application Question 11. These included officers, directors and senior management for YNHHSO, L+M, Westerly Hospital, as well as the Westerly Hospital Foundation and the officers of the Westerly Hospital Auxiliary. *Id*; see also Question 33 of AG 1<sup>st</sup> Set of Supplemental Questions. Individuals completing the conflict of interest forms were asked to supply information to determine conflicts of interest such as their affiliation with the Transacting Parties, their relationships with vendors, and their future involvement with the Transacting Parties. L+M/Westerly submitted seventy-seven (77) executed conflict of interest forms and YNHHSO submitted sixty-one (61) forms. All forms submitted were signed and notarized. After reviewing all forms, the Attorney General determines that none of the submitted materials revealed any conflict of interest.

### **2. Consultants**

In reviewing the Hospital Conversion Act filings of both agencies, the Attorney General reviewed information regarding use of consultants. The Transacting Parties submitted thirteen

(13) conflict of interest forms from experts and consultants. *See* AG Initial Application, Response to Question 11. Many of these experts and consultants were engaged to provide expert analysis for the Proposed Transaction. Additionally, the Transacting Parties jointly engaged Deloitte Transactions & Business, Inc. (“Deloitte”) to provide financial services related to the Proposed Transaction. *See* AG Initial Application, Supplemental Exhibit 37. The Transacting Parties’ agreement with Deloitte was submitted to and review by the Attorney General. *Id.* No conflict related issues concerning the consultants arose over the course of the Attorney General’s review and none of the conflict of interest statements submitted to the Attorney General disclosed any areas of concern.

### **3. Dual Representation of the Transacting Parties**

Prior to the submission of the AG Initial Application, the Attorney General learned that L+M and YNHHS entered into a joint representation agreement with Nixon Peabody, LLC (“Nixon Peabody”), whereby the Transacting Parties would be jointly represented by Nixon Peabody for the Rhode Island regulatory review. This transaction is the first instance where both the acquiror and the acquiree are represented by the same law firm for the purpose of the Hospital Conversion Act review. The Attorney General initially had concerns that certain aspects of the Hospital Conversion Act review were not conducive to the Transacting Parties’ agreement with Nixon Peabody. Therefore, after a meeting between the Attorney General, Nixon Peabody, the President and General Counsel for YNHHS, and the President and General Counsel for L+M, a Representation Agreement (“Agreement”) was entered into to address the Attorney General’s concerns.<sup>39</sup> In essence, the Agreement allowed the Attorney General to engage in direct contact, at the Attorney General’s discretion, with either Transacting Party

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<sup>39</sup> The Attorney General notes that there may be a situation in the future where dual representation is not appropriate for the regulatory review process under the HCA.

during the expedited Hospital Conversions Act review of the Proposed Transaction. The Agreement also included provisions regarding specific events of the review process (e.g. interviews and meetings regarding proposed conditions of the decision). Finally, the Agreement imposed an obligation for the General Counsel of YNHHS and the General Counsel of L+M to attend a meeting with the Attorney General once the Application was deemed complete. This meeting occurred on July 6, 2016.

Both the Transacting Parties and Nixon Peabody fulfilled their obligations under the Agreement throughout the process. The Attorney General does not have additional concerns about the dual representation of the Transacting Parties, which is largely due to the Agreement that was put in place initially. The purpose of the Agreement was to maintain transparency and ensure that the Attorney General would be provided all of the information needed to perform an appropriate review of the Proposed Transaction. Other than the dual representation agreement as discussed above, no other significant issues arose regarding conflict of interest were revealed in the hospital conversion expedited review process.

## V. CONCLUSION

This is the third Hospital Conversions Act expedited review that the Attorney General has conducted in the past three years. The Attorney General and the Department of Health chose to work together on this review, as has been the past practice, to the significant benefit of the parties. Without this voluntary cooperation, this process could prove to be burdensome, inefficient and possibly contradictory. The Attorney General has endeavored to make the expedited review process work in the most practical way possible and has utilized the statutory provisions of a full review as appropriate for consistency.

As this review comes to a close, the Attorney General expects to begin another Hospital Conversions Act review by year's end. This is consistent with a pattern over the last five years, where the Attorney General is frequently reviewing expedited and full HCA applications, often at the same time. This demonstrates the continued importance of these reviews to the State of Rhode Island as a whole, and especially to the communities that are served by the hospitals involved. This is even more evident in the case of the Westerly Hospital, which is under its second expedited review in the last approximately three (3) years. It is clear that as healthcare evolves, community hospitals struggle to survive, even with a parent system. Hopefully, with the help of the partnership with YNNHSC, a well-renowned and successful system, the Westerly Hospital will continue to improve and remain a lasting community asset.

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS**. The conditions are outlined below.

## **VI. CONDITIONS**

1. That the Proposed Transaction be implemented as outlined in the AG Initial Application, except as required for compliance with the Conditions herein.
2. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement be paid in full prior to closing of the Proposed Transaction.
3. That the Proposed Transaction must be approved by the Connecticut Office of Health Care Access ("OCHA").
4. That the closing of the Proposed Transaction shall take place within no more than thirty (30) days of approval by OCHA, but in no event later than December 1, 2016, unless the Transacting Parties have obtained an extension from the Attorney General.
5. A *cy pres* petition be filed prior to the closing of the Proposed Transaction, and must be granted within thirty (30) days of the closing. The filing of such *cy pres* petition shall be coordinated with the Attorney General and shall be in accordance with the Conditions outlined in this Decision.

6. LMW Healthcare, Inc. d/b/a Westerly Hospital (hereinafter in these Conditions referred to as “Westerly Hospital”) shall retain its identity and name, nonprofit status and community mission, but may be identified as a YNHHSO affiliate.
7. The Westerly Hospital Foundation, Inc. (hereinafter in these Conditions referred to as “Westerly Hospital Foundation”), together with Westerly Hospital, shall proceed with its efforts to carry out a broad-based community capital campaign in support of Westerly Hospital, and all such funding will be raised in Westerly Hospital’s name and remain for the benefit of Westerly Hospital’s nonprofit and community mission. YNHHSO shall support these efforts.
8. YNHHSO will work in good faith to help address the capital needs of Westerly Hospital through the resource commitment contemplated by the Affiliation Agreement, the community capital campaign as referenced in Condition #7 above, and L+M’s outstanding capital commitment to Westerly Hospital, which is approximately \$8.8 million as of September 2016. The Transacting Parties recognize that Westerly Hospital has a minimum capital need in the next five (5) years of approximately \$60 million.
9. In connection with the \$300 million resource commitment as referenced in the Affiliation Agreement, for the five (5) years after closing, YNHHSO shall provide an annual capital report to the Attorney General which shall include the total amount of expenditures to date, the amount allocated to Westerly Hospital, the specific purpose of each expenditure, and the overall total amount of the resource commitment as of that date showing the differential between the total to date and the outstanding commitment remaining. These reports shall include any and all supporting documentation used to justify the expenditures (e.g. master facilities plans, strategic plans, etc.).
10. For the five (5) years after closing, YNHHSO shall provide sixty (60) days’ written notice to the Attorney General of any new or amended spending policies regarding the use and management of charitable assets to the extent the policies affect: (1) the YNHHSO system as a whole; or (2) Westerly Hospital and/or the Westerly Hospital Foundation.
11. All charitable assets currently owned by Westerly Hospital and Westerly Hospital Foundation, including the proceeds from the sale of any such assets, shall be utilized for the benefit of Westerly Hospital and its Rhode Island affiliates only.

12. Future charitable assets of Westerly Hospital and Westerly Hospital Foundation, including the proceeds from the sale of any such assets, shall not be utilized for projects or programs situated outside the State of Rhode Island without the consent of the Attorney General.
13. All Board Designated Funds (as such funds were described as held by Westerly Hospital Foundation as of June 30, 2016) currently held by Westerly Foundation, shall be considered unrestricted charitable assets of Westerly Hospital Foundation and shall be indicated as such in the financial records of Westerly Hospital Foundation.
14. Westerly Hospital's Articles of Incorporation shall be amended to provide that upon a dissolution of Westerly Hospital, any and all charitable assets shall be disposed of to one or more 501(c)(3) organizations in the State of Rhode Island. A copy of the amended Articles of Incorporation shall be provided to the Attorney General at least ten (10) days prior to the date that the Transacting Parties intend to file such amendment. This Condition shall be completed within thirty (30) days of closing.
15. Westerly Hospital Foundation's Articles of Incorporation shall be amended to provide the following:
  - a. That Westerly Hospital Foundation's purposes are exclusively for the benefit of Westerly Hospital and its Rhode Island affiliates; and
  - b. That upon a dissolution of Westerly Hospital Foundation, any and all assets shall be disposed of to Westerly Hospital, so long as it continues to be a 501(c)(3) organization, or if not, to one or more 501(c)(3) organizations in the State of Rhode Island.

A copy of the amended Articles of Incorporation shall be provided to the Attorney General at least ten (10) days prior to the date that the Transacting Parties intend to file such amendment. This Condition shall be completed within thirty (30) days of closing.

16. For the five (5) years after closing, Westerly Hospital Foundation and the Westerly Hospital Auxiliary, Inc. (hereinafter referred to in these Conditions as "Westerly Hospital Auxiliary") shall not be dissolved or otherwise significantly altered from their current operations without notice to and consent of the Attorney General. Thereafter, Westerly Hospital Foundation and Westerly Hospital Auxiliary shall not be dissolved or otherwise significantly altered from their current operations if YNHHS's other hospital affiliates continue to maintain similar entities, and YNHHS shall provide sixty (60) days' written notice to the Attorney General in the event of any such dissolution or significant alternation of current operations.

17. For the five (5) years after closing, Westerly Hospital Foundation's Stewardship Report, or its equivalent, and a report of Westerly Hospital's use of its charitable assets shall be provided to the Attorney General on an annual basis.
18. Any and all annual assessment fees and/or shared services fees assessed to Westerly Hospital by YNHHSO shall neither be calculated based on or paid from the restricted funds of Westerly Hospital or the charitable assets of Westerly Hospital Foundation.
19. YNHHSO shall provide sixty (60) days' written notice to the Attorney General of any amendments to the annual assessment fee and/or shared services fees' policies, or the adoption of other types of assessments or mechanisms (e.g., subsidies or loans between or among system members).
20. For the five (5) years after closing, the Board of Directors of Westerly Hospital shall include a majority of community directors<sup>40</sup>, a majority of whom shall be Rhode Island residents, and all of whom shall: (1) be independent of and not employed by or affiliated with YNHHSO or its affiliates; and (2) not be an elected official or an individual that is subject to the Code of Ethics.
21. For the five (5) years after closing, or until such time as L+M is dissolved, if such dissolution occurs prior to the expiration of five (5) years after closing, the Board of Directors of L+M shall include at least two (2) community directors<sup>41</sup> who shall: (1) be independent of and not employed by or affiliated with YNHHSO or its affiliates; and (2) not be an elected official or an individual that is subject to the Code of Ethics.
22. Within ten (10) days of the appointment, YNHHSO shall provide written notice of the name(s) of the YNHHSO representative initially appointed to sit on the Boards of L+M and Westerly Hospital to the Attorney General.
23. YNHHSO shall provide sixty (60) days' written notice to the Attorney General prior to any dissolution of the L+M Corporation. In the event of such a dissolution, YNHHSO shall, through their bylaws, give Westerly Hospital a representative on the YNHHSO board, for so long as the other hospital affiliates in the YNHHSO system continue to be so represented.

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<sup>40</sup> A community director shall be defined as an individual that resides or works within the Westerly Hospital Service Area and has the appropriate skill sets to serve on a hospital's board of directors. The "Westerly Hospital Service Area" is comprised of the following towns in Rhode Island: Westerly; Hopkinton; Charlestown; West Kingston; Wyoming; Carolina; and Wood River Junction and the following towns in Connecticut: Stonington; Groton; and Ledyard.

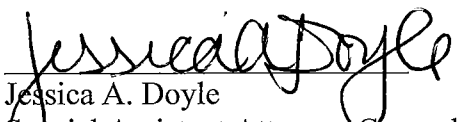
<sup>41</sup> *Id.*



24. YNHHS shall provide sixty (60) days' written notice to the Attorney General prior to Westerly Hospital becoming part of the YNHHS Obligated Group, or of any amendment to the YNHHS Obligated Group Agreement or policies in place at the time of closing. To the extent amendments are made prior to Westerly Hospital becoming part of the YNHHS Obligated Group, Westerly Hospital shall not join the YNHHS Obligated Group without the consent of the Attorney General.
25. For the three (3) years after closing, the Transacting Parties shall notify the Attorney General, in writing, and provide a description of, any contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management other than employment agreements.
26. For the five (5) years after closing, Westerly Hospital, Westerly Hospital Foundation, Westerly Hospital Auxiliary, L+M, and YNHHS, shall provide the Attorney General with a copy of any proposed amendments to their corporate documents within a reasonable amount of business days prior to the effective date of such amendment, and use best efforts to provide sixty (60) days prior notice of any such amendment.
27. Westerly Hospital, Westerly Hospital Foundation, L+M, and YNHHS shall provide information requested by the Attorney General to determine its compliance with the Conditions contained in this Decision.
28. Until closing, Westerly Hospital, Westerly Hospital Foundation, L+M, and YNHHS shall provide to the Attorney General any amendments to the Affiliation Agreement and any updated responses to the AG Initial Application and the Supplemental Questions.

The Attorney General's **APPROVAL WITH CONDITIONS** is contingent upon the satisfaction of the Conditions. The Attorney General shall enforce compliance with these Conditions pursuant to the Hospital Conversions Act including R.I. Gen. Laws § 23-17.14-30.

  
Peter F. Kilmartin  
Attorney General  
State of Rhode Island

  
Jessica A. Doyle  
Special Assistant Attorney General

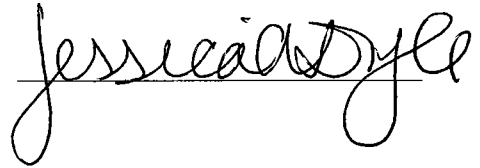
**NOTICE OF APPELLATE RIGHTS**

**Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in the Superior Court.**

**CERTIFICATION**

I hereby certify that on this 1<sup>st</sup> day of September, 2016, a true copy of this Decision was sent via electronic and first class mail to counsel for the Transacting Parties:

Stephen Zubiago, Esq.  
Nixon Peabody  
One Citizens Plaza, 5<sup>th</sup> Floor  
Providence, RI 02903

A handwritten signature in black ink, appearing to read "Jessica Dyle". The signature is written in a cursive style with a horizontal line underneath the name.