

October 31, 2023

Donna Jerry
Green Mountain Care Board
89 Main Street
Montpelier, VT 05620

Dear Donna:

Please consider this our letter requesting a jurisdictional determination regarding the VNA & Hospice of the Southwest Region, Inc. (VNAHSR) designation as the home health agency for the Franklin County service area that is currently served by Franklin County Home Health Agency (FCHHA). We submit this letter requesting a determination by the Green Mountain Care Board (Board) that it does not have Certificate of Need jurisdiction where the Commissioner of Disabilities, Aging, and Independent Living (DAIL) intends to reassign a geographic service to an existing designated agency, and the reassignment does not involve the transfer of ownership of an entity, or substantial assets. The reason for the request is that FCHHA will not have the long-term ability to continue to operate at its current capacity given its financial position, and desires to implement an orderly transition by which VNAHSR would employ its patient care staff, and take over service of the 483 current patients.

Based on Green Mountain Care Board, Rule 4.000, the proposed designation of the Franklin County home health service area does not require a Certificate of Need because the applicable criteria at section 4.203 do not apply:

- 1. If a health care facility other than a hospital undergoes a change in ownership, corporate structure or other organizational modification such that a new license from the appropriate state or federal licensing entity is required, such action shall be a new health care project.*
- 2. The transfer or conveyance of an ownership interest in a health care facility other than a hospital that fundamentally changes the financial stability or legal liability of the facility shall be a new health care project.*

The proposed designation does not involve a change in ownership of a health care facility and does not require obtaining a new license. Rather, the proposed designation would modify the service area to be served by VNAHSR. The proposed designation also does not involve the transfer or conveyance of an ownership interest in a health care facility, or a significant proportion of its assets. Therefore, our request here is different than where the Board asserted jurisdiction over the 2017 merger of VNAHSR and Manchester Health Services pursuant to 18 V.S.A. § 9434(a)(3), which involved a transfer of ownership interest. *In re: Merger of Manchester Health Services With VNA & Hospice of the Southwest Region, Inc.* Certificate of Need, Docket No. GMCB-008-17con (April 21, 2017).

VNAHSR is a not for profit tax-exempt organization, which is designated by DAIL to serve as the home health agency for Rutland and Bennington Counties excluding Landgrove, Peru, Winhall, Searsburg,

Stamford and Readsboro. VNAHSR provides essential home care and hospice services including Hi-Tech nursing services, Choices for Care long-term care services and children and families services. VNAHSR has a demonstrated record of accomplishment of providing medically necessary home health and hospice services to all regardless of an individual's ability to pay and to subsidize a wide variety of state sponsored and community supported programs that serve the public good. In 2022, VNAHSR provided over 100,000 visits to over 3,000 residents in our service area.

FCHHA is a not for profit tax exempt organization that has been providing essential home health and hospice services to the residents in Franklin County since 1969. FCHHA provides Choices for Care long-term care services, Hi-Tech nursing services, children and family services, home care and hospice. FCHHA's service area includes all the towns in Franklin County: Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield, Fletcher, Franklin, Georgia, Highgate, Montgomery, Richford, St. Albans City, St. Albans Town, Sheldon and Swanton. Under the proposed arrangement, FCHHA personnel and patients would transfer to VNAHSR and then FCHHA would wind up its affairs by selling its assets, paying its liabilities, and eventually dissolve.

FCHHA has experienced operating losses for the past 20 years. In fiscal years 2018 and 2019 FCHHA incurred total losses of (\$415,294) and (\$170,190), respectively. In both years, FCHHA's auditors issued going concern audit qualifications due to the substantial doubt that FCHHA had the ability to continue to operate. CARES Act funding in FY 2020, FY 2021 and FY 2022, along with Paycheck Protection Program funding and Employee Retention funds, provided cash to enable Franklin County to continue services during the pandemic. However, FCHHA no longer has the resources or access to resources to sustain an independent home health and hospice agency. In FY 2021 and FY 2022, FCHHA had losses of (\$1,148,108) and (\$1,228,788) excluding CARES Act funding and is projected to have a loss of over \$3.3 million in FY 2023.

In the Fall of 2022 and early 2023 FCHHA's Senior Leadership team resigned leaving the agency without a CEO, Director of Quality, or Clinical Director. FCHHA has been unable to fill these positions due to lack of financial resources. Since February 2023 VNAHSR's CEO has been acting as Interim CEO for FCHHA under an interim management services agreement. VNAHSR's CEO has utilized the expertise of her VNAHSR Leadership team to assist Franklin County while the organizations worked toward a solution to ensure the continuation of home health and hospice services in Franklin County.

As part of VNAHSR's due diligence, it became evident that declining revenue, ongoing Medicare reimbursement cuts, Medicaid losses, and the FCHHA's cost structure and scale would prevent FCHHA from operating as an independent home health and hospice agency. VNAHSR identified the immediate concern that FCHHA would not have sufficient cash on hand to meet the payroll and vendor liabilities on a long term basis. Working with the Department of Vermont Health Access (DVHA), FCHHA secured one million dollars in contingency funding to cover payroll expenses and make special arrangements with vendors. The cash infusion forestalled the immediate crisis, but the cash on hand is not sustainable, necessitating immediate actions to retain staff, and maintain access to home health and hospice services. Limiting further financial losses while maintaining access to home health and hospice services will require, at a minimum, consolidation of back office functions such as billing, payroll, human resources, and quality Improvement with another agency.

VNAHSR's history of successfully merging with struggling Vermont home health and hospice agencies makes it the best candidate to assume the Franklin County service area. VNAHSR merged with Dorset Nursing Association in 2004, Southwestern Vermont Home Health & Hospice in 2014, and Manchester

Health Services in 2017 (Docket No. GMCB-008-17con). All three mergers were necessitated by the same determining factor that the small agencies did not have the economies of scale to be sustainable. VNAHSR successfully integrated these agencies into our operations and has continuously provided ongoing home health and hospice services to the residents in these areas.

VNAHSR has the financial depth and technical skills necessary to serve all patients in our current and potential expanded service area. VNAHSR has a strong balance sheet with overall margins averaging 4.19% over the past 5 years. The five-year average included a 20% deficit in 2022 as the organization adjusted to the post-COVID reduction in volume as patients returned to nursing facilities while the VNA carried higher costs associated with contract staffing while experiencing losses in investment value. Currently, VNAHSR has 349 days of cash, cash equivalents, and investments on hand and our days outstanding in accounts receivable are 23 days which is one of the lowest compared to our peers. Over the past 20 years, VNAHSR has had significant growth in our net assets from \$3.7 million to over \$21 million. This financial position provides evidence that VNAHSR has the financial capacity to assure the continuation of FCHHA's Mission in the Franklin County service area.

The VNAHSR's proposed designation for Franklin County is different than VNAHSR's previous consolidation because VNAHSR will not acquire FCHHA's cash or real property assets or assume its liabilities. Although the boards of directors for VNAHSR and FCHHA contemplated a merger or similar transaction, they ultimately determined that the approach best able to provide services in Franklin County in a financially sustainable manner would be to transfer personnel and patients from FCHHA to VNAHSR and then have FCHHA liquidate its assets and pay its liabilities.

The two organizations have signed the enclosed Term Sheet, and anticipate signing a definitive agreement that will include:

- FCHHA will support VNAHSR's designation as the home health and hospice agency for Franklin County.
- VNAHSR will purchase a limited amount of office equipment, computers, and other items to maintain patient care, and temporarily lease FCHHA's office space until lower-cost space can be identified.
- FCHHA will retain cash, accounts receivable, and buildings.
- FCHHA will retain responsibility for all existing and future liabilities including potential Medicare liabilities, and use its remaining assets, and proceeds from the sale of its property to pay its liabilities and fund future charitable activities.
- VNAHSR will elect one representative from Franklin County to serve on the VNAHSR Board of Directors.
- VNAHSR will hire the FCHHA employees who are needed to provide home health, hospice, and other community based services
- FCHHA will pay CTO accruals to departing employees per FCHHA policies
- FCHHA will voluntarily terminate its provider agreements with payors.
- FCHHA will work with grantors to reassign grants for grant-funded programs to VNAHSR.

VNAHSR CEO and members of the FCHHA Board of Directors have maintained open communication with DAIL Commissioner Monica White and DVHA Commissioner Andrea DeLaBruere to update them on the status of the plan to ensure access to home health and hospice services to residents of Franklin County and continue the care of 483 current patients. Attached is the letter from the Commissioners supporting the proposed agreement between FCHHA and VNAHSR.

Home health and hospice services do not require the purchase of equipment or facilities. This transaction will require VNAHSR to lease office space for FCHHA's 13.0 administrative FTE's as the majority of the FCHHA staff are clinical and are in the field all day. VNAHSR will utilize existing software licenses therefore there will be no costs associated with software. The only cost to VNAHSR will be the purchase of 30 laptops for access to VNAHSR's EMR at a cost of \$60,000. The table below outlines capital and operating costs for year 1, 2 and 3.

FCHHA Costs if consolidated with VNAHSR			
	CAPITAL COSTS	OPERATING COSTS	OPERATING MARGIN
Year 1	\$60,000	\$6,248,798	\$320,578
Year 2	\$ -0-	\$6,758,826	\$312,896
Year 3	\$ -0-	\$7,171,514	\$321,480

The operating costs stated above indicate a 35% reduction from FCHHA's current operating costs as an independent home health and hospice agency. This reduction/savings are the result of consolidating administrative functions which reduces salaries and benefits as well as software and costs associated with having their own separate EMR. Salaries and benefits costs are reduced by 31%. In addition there will be no fixed assets therefore there is no depreciation or amortization. These costs are not new costs to the VT home health and hospice system as FCHHA is currently operating in VT.

If approved VNAHSR will start transitioning FCHHA employees to VNAHSR in November. VNAHSR will admit all current FCHHA patients to their services in an uninterrupted manner starting on December 1st. There are limited capital costs associated with this transaction as described above.

This transfer of the FCHHA designated service area to VNAHSR will ensure that a financially sound, community-based non-profit home health and hospice agency will continue to provide comprehensive home and community based services to the residents of Franklin County while providing stable employment for the FCHHA staff who are needed to maintain those services.

Sincerely,



Sara King
Chief Executive Officer

Date: October 27, 2023

TERM SHEET
NON-BINDING

Re: Asset Purchase between VNAHSR & Hospice of the Southwest Region, Inc. (“VNAHSR”) as purchaser, and Franklin County Home Health Agency, Inc. (“FCHHA”), as seller

FCHHA and VNAHSR are both public benefit corporations, organized and existing under the laws of the State of Vermont, with 501c3 tax exempt status.

This Term Sheet does not, and is not intended to, create any legally binding obligation. All obligations or commitments to proceed with a transaction shall be contained only in definitive agreements. The terms of the agreements must be acceptable to both parties. No past or future action, course of conduct or failure to act or relating to the negotiation or terms of the definitive agreements, will give rise to or serve as a basis for any obligation or other liability on the part VNAHSR or FCHHA.

1. VNAHSR will acquire certain of the assets owned by FCHHA (to be more specifically identified in the definitive agreement, such as cell phones, computers and business machines (if not leased), workstations). VNAHSR to take over certain agreed upon contracts like for example, the copier. Leased computers to be used by VNAHSR until all phases of the transfer completed, expected date end of January, 2024 (“Closing Date”). Monthly lease payment to be paid by VNAHSR to FCHHA to be made to the lessor. FCHHA to retain liability for the contracts and leases not assumed by VNAHSR.
2. FCHHA shall retain its cash, accounts receivable, and the buildings.
3. FCHHA shall retain the accounts payable and all liabilities. The obligation to pay all taxes due to the State by FCHHA, including the Medicaid tax, shall remain with FCHHA and must be paid by FCHHA from the proceeds at the time of the sale of the earlier of the two real properties owned by FCHHA. FCHHA shall take commercially reasonable efforts to maximize the value of its retained assets and to liquidate the assets in an orderly manner to provide the funds to pay all retained liabilities, accounts payable and taxes.
4. FCHHA shall acquire tail coverage for any potential insurance claims, to be obtained, and effective, as of the Closing Date
5. VNAHSR will seek designation for the FCHHA service area from the Vermont Department of Disabilities, Aging, and Independent Living (DAIL).
6. FCHHA will support and cooperate with VNAHSR’s efforts to obtain the service area designation from DAIL, and the Green Mountain Care Board’s (GMCB) jurisdictional review, and any potential certificate of need application.
7. The transfer of FCHHA staff to VNAHSR will not be completed until DAIL designates VNAHSR as the home health agency for the FCHHA service area, and the GMCB either declines to assert jurisdiction, or asserts jurisdiction, and issues a certificate of need.
8. The transfer will be phased, with VNAHSR to complete all phases.

9. VNAHSR will select and elect 1 Director from Franklin County service area to serve on VNAHSR Board of Directors
10. FCHHA will recommend 3 names to VNAHSR Executive Committee for consideration as the member representing Franklin County on the VNAHSR Board of Directors
11. VNAHSR to amend its Bylaws to include in Board composition, representation from its service area territories based on net patient service revenue.
12. VNAHSR to lease the two FCHHA locations (St. Albans and Enosburg) pursuant to a written lease for each, at an agreed upon fair rent, with a 6 month term, with ability of VNAHSR to terminate on 60 days' notice to allow it to find suitable space. VNAHSR to pay utilities, telephone/Internet, fuel, winter snow removal, routine maintenance costs only. If FCHHA sells the locations, each lease will be assigned to the new owner and assumed by the new owner as landlord. New owner has to agree to assume the short term VNAHSR leases.
13. VNAHSR will create "Friends of Franklin County" (or other similarly named) committee to assist with fundraising and development efforts to benefit VNAHSR in Franklin County.
14. If FCHHA establishes a 501c3 legal entity "Friends of Franklin County" with the residual assets of FCHHA on dissolution, any proceeds from fundraising and development efforts it does to benefit VNAHSR will go directly to VNAHSR. The new entity would be responsible for its costs of operations, and be self-sustainable.
15. VNAHSR shall be provided with the medical records of all active patients of FCHHA that VNAHSR will serve as the State designated home health/hospice agency for Franklin County, and all other records necessary to serve those patients in a seamless transition for patient care and care coordination. VNAHSR to scan the records into its system with FCHHA to retain ownership of the records to close out FCHHA and complete any audits.
16. VNAHSR will become responsible for retaining all FCHHA historical medical records upon dissolution of FCHHA NPI's and other Provider numbers, and completion of all audits. The records to be retained pursuant to VNAHSR document retention policy
17. Before the Closing Date, FCHHA shall provide all notices to patients, the public, and required entities as described in the Regulations for the Designation and Operation of Home Health Agencies.
18. VNAHSR will hire FCHHA employees it determines are needed to fulfill the needs of providing home health/hospice and home and community-based services in Franklin County maintaining current seniority and salary
 - VNAHSR will follow all appropriate Federal and State employment requirements for new hires
 - VNAHSR will provide a list of necessary staff to FCHHA. The staff can choose to come to work for VNAHSR. FCHHA will be responsible for required notices to its staff it does not retain. At this time, subject to change, VNAHSR anticipates that it will not be taking approximately 21 FCHHA employees.
 - All liabilities in respect of employees of FCHHA required to be paid or accrued prior to joining VNAHSR shall be paid by FCHHA and/or accrued in full, including, without limitation, premium contributions, accrued wages, taxes, salaries, commissions, vacation time or pay, employee benefit plan payments, remittance and assessments for unemployment insurance, employer health taxes, income taxes,

- payments required under workers' compensation laws and any other laws. VNAHSR shall have no FCHHA employee liabilities.
19. Staff changes will need to be phased as VNAHSR onboards programs. Staffing changes will occur prior to the Closing Date.
 20. Anticipated phased timeline (subject to GMCB non-jurisdictional decision or approval if GMCB exercises jurisdiction):
 - November 19 – Transfer 5 – 6 identified FCHHA Admin staff to VNAHSR to assist with onboarding of programs
 - December 17 – Maternal Child Health, Strong VT Families and Choices for Care programs along with certain identified support staff and management transition to VNAHSR
 - January 28, 2024 – Home Care and Hospice programs and identified transition to VNAHSR
 21. FCHHA will “turn over” existing United Way, Strong Vermont Families and other community, State and Federal grants that are part of the home health/hospice/home and community based services to VNAHSR. VNAHSR will fulfill all current Federal, State and community grants that will be reassigned and transferred from FCHHA to VNAHSR as of the Closing Date. VNAHSR and FCHHA will work together with the grant makers to have the grants reassigned to VNAHSR.
 22. FCHHA shall maintain appropriate staff for collection of its accounts receivables.
 - If FCHHA wants VNAHSR assistance in that effort, there will be a contract with VNAHSR to oversee this process.
 23. FCHHA shall maintain responsibility, and any liability, for the UPIC audit, and all other matters related to claims paid to FCHHA.
 - FCHHA can contract with VNAHSR to assist with further research or additional documentation requests from CMS
 24. FCHHA will file a CMS-855 voluntary termination application with Medicare, and all other necessary paperwork to voluntarily terminate its Medicare, Medicaid, and other third party payor enrollments due to its plan to cease operations.
 - FCHHA can contract with VNAHSR to assist with this process
 25. VNAHSR to be compensated a percentage of the FCHHA collections for its contracted services to cover the cost of the VNAHSR contracted staff (#19, 20 and 21).
 26. FCHHA shall retain all tax liabilities, and file any tax returns, or other tax filings, required to be filed subsequent to the Closing Date on a timely basis, which shall be complete and accurate in all material respects, with all required payments made timely.
 27. FCHHA shall indemnify, reimburse (including costs, expenses and reasonable legal fees), save and hold harmless and defend VNAHSR from any and all claims and liabilities of every nature (i) resulting from the operation and/or conduct of the business of FCHHA prior to the the Closing Date; or (ii) resulting from, relating to or constituting (a) any breach of any representation or warranty of contained in the definitive agreement, or any other agreement or instrument furnished by FCHHA to VNAHSR pursuant to the definitive agreement; (b) any failure to perform any covenant or agreement of FCHHA contained in the definitive agreement, or any agreement or instrument furnished by FCHHA to VNAHSR pursuant to the definitive agreement; or (c) any liabilities of FCHHA not expressly assumed by VNAHSR under the definitive agreement.
 28. As FCHHA is a public benefit corporation, notice of the asset sale will be provided to

- the Vermont Attorney General Office as required by the Vermont not for profit statute.
29. The Interim Services of VNAHSR to FCHHA shall end as of the Closing date. Any ongoing services, assistance shall be documented in new contractual obligations between FCHHA and VNAHSR.
 30. Closing Date to occur on VNAHSR being designated by the DAIL for the FCHHA service area, any required GMCB and Vermont Attorney General approval is obtained, the terms of the Definitive Agreement are fulfilled.
 31. At the end of UPIC audit, FCHHA Board will likely move to dissolve. Remaining assets, if any, after all liabilities are paid, will need to be transferred pursuant to the FCHHA Bylaws. As VNAHSR's purpose, goals and functions are consistent with those of FCHHA, and VNAHSR will be providing the home health/hospice and home and community based services to Franklin County, VNAHSR would be open to taking over those assets if the Board so designates, with a due diligence review. This is not a condition. The decision on where the assets, if any, transfer, is solely with the FCHHA Board.
 32. Moving forward requires Board approval of both the FCHHA and VNAHSR Boards.
 33. On Board approval to proceed, the Definitive Agreement to be prepared and entered into by the parties prior to the first transition phase, and a target final transition as of January 31, 2024. The Definitive Agreement to have customary provisions in an asset purchase agreement, including, without limitation, customary representations and warranties.

Approved by VNAHSR BOD on October 28, 2023

Approved by FCHHA BOD October 30, 2023

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**AGENCY OF HUMAN SERVICES
DEPARTMENT OF DISABILITIES, AGING, AND INDEPENDENT LIVING
& DEPARTMENT OF VERMONT HEALTH ACCESS**

October 30, 2023

Donna Jerry
Green Mountain Care Board (GMCB)
89 Main Street
Montpelier, VT 05620

Dear Donna,

This letter is written to express our full support for the Visiting Nurses Association and Hospice of the Southwest Region (VNAHSR) to expand its territory into the region currently served by Franklin County Home Health Agency (FCHHA), effective December 1, 2023.

The Department of Disabilities, Aging, and Independent Living (DAIL) and the Department of Vermont Health Access (DVHA) have had multiple conversations with both VNAHSR and FCHHA, and we firmly believe that this action is the best option to ensure continuation of home health and hospice services in Franklin County. VNAHSR CEO Sara King has served as an interim CEO capacity for FCHHA since early this year. Expansion of VNAHSR territory into that which is currently covered by FCHHA will result in lowered administrative costs and will ensure long term stability and viability for home health care and hospice services in the Franklin County region.

While fully supporting VNAHSR's application to the Board for a Certificate of Need, DAIL also notes that it also possesses the legal authority to grant the requested relief (i.e., to expand the VNAHSR's geographic service area).ⁱ

We would be happy to discuss, should the GMCB have questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Monica White".

Monica White
DAIL Commissioner

A handwritten signature in blue ink that reads "Andrea DeLaBruere".

Andrea DeLaBruere
DVHA Commissioner

ⁱ Act No. 83 (2010), and as amended through Act No. 65 (2013), first provided, “...(f) Nothing in this section shall be construed to prevent existing home health agencies from seeking approval from the [GMCB] **or** [DAIL] to expand or contract their designated geographical regions....” (Emphasis added.) Even though the Legislature later amended 18 V.S.A. § 9446 (see 2018, No. 167 (Adj. Sess.), § 6) to grant the GMCB the authority to modify the terms of a CON relating to the boundaries of an agency’s geographic service area, the Legislature subsequently affirmed DAIL’s ongoing authority to receive requests from, and issue approvals to, agencies wishing to “expand or contract their designated geographical regions,” when it extended the moratorium until January 1, 2025, through Act No. 5 (2019).