

**BYLAWS**  
**OF**  
**ENDOWMENT FOR HEALTH, INC.**

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**ARTICLE I**  
**ARTICLES OF AGREEMENT**

The name and purposes of this corporation (the "Foundation") shall be as set forth in the Foundation's Articles of Agreement. These Bylaws, the powers of the Foundation and of its Board of Directors (the "Board"), Advisory Council (the "Council"), Directors, Council Members, and Officers and all matters concerning the conduct and regulation of the affairs of the Foundation shall be subject to the Foundation's Articles of Agreement and applicable laws as are in effect and as the same may be amended from time to time.

**ARTICLE II**  
**ORIGINS; INDEPENDENCE; MISSION**

**Section 2.1 Origins**

This Foundation was established to receive the net proceeds of the sale of the assets of New Hampshire-Vermont Health Service d/b/a Blue Cross and Blue Shield New Hampshire ("BCBS-NH") to Anthem Insurance Companies, Inc. (together with its affiliates and any successors, "Anthem") in a transaction subject to the provisions of RSA 7:19-b.

**Section 2.2 Independence**

In accordance with the provisions of RSA 7:19-b, II(f), control of the assets of the Foundation shall at all times remain independent of Anthem.

**Section 2.3 Mission**

In accordance with the provisions of RSA 7:19-b, II(e), the assets of the Foundation shall continue to be devoted to charitable purposes consistent with the charitable objects of BCBS-NH and the needs of the community which it serves. In carrying out those objects, the members of the Board and the Council and the Officers of the Foundation shall give due consideration to the historical mission of BCBS-NH, the substantial public input received in connection with the seven public hearings

conducted during June of 1999 under the auspices of the Office of the Attorney General and the eighth public hearing conducted during September of 1999. Transcripts of those hearings, together with an executive summary thereof, shall be included with the Foundation's permanent records located at its principal office.

### **ARTICLE III**

#### **BOARD OF DIRECTORS**

##### **Section 3.1 Powers; Responsibilities; Accountability**

**3.1.1** The business and affairs of the Foundation shall be managed by the Board who shall have and may exercise all the powers to which the Foundation may be entitled pursuant to applicable law, the Articles of Agreement and the Bylaws of the Foundation.

**3.1.2** The Board shall have ultimate responsibility for the affairs of the Foundation. The Board's role is one of strategic leadership in defining and implementing the vision, mission and core values of the Foundation. It shall adopt policies to ensure the effective stewardship and management of the Foundation's human and financial resources and shall also oversee management's adherence to these policies.

**3.1.3** The Board shall be fully accountable to both the Foundation and the community at large for its stewardship of the Foundation and for the accomplishment of the Foundation's charitable mission and purposes.

##### **Section 3.2 Number of Directors; Appointed and Elected Directors**

**3.2.1** The Board shall consist of no fewer than fifteen (15) and no more than seventeen (17) persons, with the exact number of authorized Directors to be fixed from time to time by resolution of the Board at any annual, regular or special meeting of the Board; provided, notice for such meeting expressly states that one of the purposes of the meeting is to change the number of authorized Directors; and provided further that the approval of seventy percent (70%) of the entire Board shall be required in order to change the number of authorized Directors.

**3.2.2** Subject to the provisions of Sections 3.2.3 and 3.5 hereof, the membership of the Board shall be elected in accordance with the procedures established in Section 3.4 hereof.

**3.2.3** Subject to and accordance with the provisions of Section 5.1 hereof, two (2) members of the Board shall serve by appointment ("Appointed Directors"). The Governor of the State of New Hampshire shall be entitled to appoint two Directors. In addition to the qualifications described in Section 5.1, the Appointed Directors, including those selected in accordance with Section 3.5.3(c) hereof, shall at all times include at least one (1) individual with demonstrated experience and expertise in the area of public health policy. In addition, the appointed Directors, including those selected in accordance with Section 3.5.3(c) hereof; shall at no time include more than one (1) individual who is an officeholder, official or employee of the State of New Hampshire.

### **Section 3.3 Term of Service**

**3.3.1** Directors, other than the initial Directors and the Appointed Directors, shall be elected for terms of three (3) years, such terms to be staggered such that one-third of the total number of Directors (or such number as approximates one-third insofar as practicable) shall be elected or appointed each year. Directors shall hold office until their successors have been duly elected and qualified."

**3.3.2** In the interests of Board diversity, no Director shall serve for more than two (2) consecutive terms of three (3) years, excluding for these purposes Governor Appointments and any term served as an Initial Director<sup>1</sup>. Any Director serving for such period shall stand down for a period of at least one (1) year before being eligible to stand for re-election or re-appointment to the Board.

**3.3.3** The term of any Director elected or appointed to fill a vacancy prior to the expiration of a term due to death, resignation or other cause shall be for the remainder of the term of the Director whose death, resignation, or other cause created the vacancy.

**3.3.4** The term of any Appointed Director shall be one (1) year. Any Appointed Director serving for six (6) consecutive years shall stand down for a period of at least one (1) year before being eligible to stand for re-appointment to the Board.

### **Section 3.4. Successor and Additional Directors**

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<sup>1</sup> Initial Directors were appointed by the Attorney General's Office for the following Terms: Term Expiration 2000 Moral, Gustavo; Nisbet, Jane; Rhee, Y.B.; Shumway, Donald; and Therriault, Monique; Term Expiration 2001 Abrams, Elizabeth; Chollet, Susan; Howard, Deanna; Peters, Ann; and Tuttle, Georgia; Term Expiration 2002 Dupuis, Sylvio; Kuenning, Tess; Oates, James; Quinn, John; and Wiebusch, Richard.

**3.4.1** Except as provided in Section 3.4.2 hereof, successor Directors and additional Directors shall be nominated and elected in accordance with the procedures set forth in this Section 3.4.1. The Board shall provide the Council with a list of nominees for election as successor or additional Directors, to which the Council may make suggested additions. The Board will elect successor and additional Directors from the slate of nominees selected from the combined list of nominees (the "Nominee List") developed by the Board and the Council.

**3.4.2** Upon the expiration of the term of any Appointed Director, a successor may be appointed in accordance with the provisions of Section 5.1 hereof.

**3.4.3** If the office of any Director is vacant prior to the expiration of his or her term, due to death, resignation or other cause, the remaining Directors by majority vote at a duly called meeting, may elect a successor from the most currently developed Nominee List.

### **Section 3.6 Compensation for Services**

Except as provided in Article IX, Directors shall be precluded from rendering services for compensation to the Foundation in any capacity. However, Directors may be reimbursed for reasonable expenses associated with carrying out their duties as members of the Board in accordance with such policies as may be established by the Board from time to time.

### **Section 3.7 Removal**

A Director may be removed with cause by a vote of a majority of the Directors present and voting at any annual, regular or special meeting (whether present in person or duly represented), provided that the notice for such a meeting of the Directors expressly states that one of the purposes of the meeting is removal of a Director and that a quorum of the Board, excluding the subject director, is present at said meeting.

### **Section 3.8 Resignation**

A Director may resign at any time by delivering written notice of resignation to the Chair of the Board, to a meeting of the Board, or to the Secretary. Such resignation shall be effective upon receipt of such written notice (unless specified to be effective at

a later date) and acceptance thereof shall not be necessary to make it effective unless such notice so states.

### **Section 3.9. Regular, Annual and Special Meetings**

**3.9.1** Regular meetings of the Board may be held at such times as the Board may determine.

**3.9.2** Special meetings of the Board may be held at any time when called by the Chair of the Board or by at least one third (1/3) of the Board.

**3.9.3** An annual meeting of the Board shall be held on a date determined by the Board at such place and time as may be determined by the Chair of the Board or by the Board.

### **Section 3.10 Notice of Meeting**

**3.10.1** All meetings of the Board shall be held at the principal office of the Foundation or at such other locations in the State of New Hampshire as shall be specified in the notice of the meeting. Reasonable notice of the time and place of all meetings shall be given by the Chair of the Board or the Secretary. Notice of a regular meeting need not specify the purpose of the meeting, unless otherwise required by law, the Articles of Agreement of the Foundation, or these Bylaws. However, the purposes for which a special meeting is being called shall be set forth in the notice of that special meeting.

**3.10.2** Except as otherwise expressly provided herein or required by law, it shall be reasonable and sufficient if written notice to a Director is sent by (a) first class U.S. mail at least five (5) days prior to the meeting, (b) overnight private courier at least forty-eight (48) hours prior to the meeting, or (c) electronic transmission at least forty-eight (48) hours before the meeting, addressed to such Director at his or her usual or last known business or residence address.

**3.10.3** Whenever notice of a meeting is required, such notice need not be given to any Director if a written waiver of notice, executed by him or her (or his or her attorney thereunto authorized) before or after the meeting, is filed with the records of the meeting, or to any Director who attends the meeting without protesting the lack of notice prior to the meeting itself or at its commencement.

### **Section 3.11 Quorum**

At any meeting of the Board, a majority of the Directors then in office shall constitute a quorum. Any meeting may be adjourned to a later date or dates by a majority of the votes cast upon the question, whether or not a quorum is present.

### **Section 3.12 Action by Vote**

Each Director shall have one (1) vote. When a quorum is present at any meeting, a majority of the votes properly cast by Directors shall decide any questions, unless otherwise provided by law, the Articles of Agreement or these Bylaws.

### **Section 3.13 Action by Writing**

Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if the entire Board consent to the action in writing and each of the written consents are filed with the records of the meetings of the Board. Such consents shall be treated for all purposes as a vote at a meeting.

### **Section 3.14 Presence through Electronic Means**

Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another at the same time and participation by such means shall constitute presence in person at a meeting.

### **Section 3.15 Proxies**

Directors may vote either in person or by written proxy, which proxies shall be filed before being voted with the Secretary or other person responsible for recording the proceedings of the meeting. Unless otherwise specifically limited by their terms, such proxies shall entitle the holders thereof to vote at any meeting adjourned to a later date; but the proxy shall terminate after the final adjournment of such meeting.

### **Section 3.16 Standard of Care**

**3.16.1** A Director shall perform the duties of a Director, including as a member of any Board committee on which the Director may serve, in good faith, in a manner such Director believes to be in the best interest of the Foundation and with such care, including reasonable inquiry, as an ordinary prudent person in a like situation would use under similar circumstances.

**3.16.2** The Board shall avoid speculation in connection with the investment, reinvestment, purchase, acquisition, exchange, sale and management of the Foundation's investments, looking instead to the permanent disposition of the funds, considering the probable income as well as the probable safety of the Foundation's capital. No investment violates this section where it conforms to provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to the Foundation. The Board may adopt a spending policy consistent with the provisions of RSA 292-B, provided however, that in the first instance such spending policy shall comply in all respects with the minimum distributable amount of annual qualifying distributions as required for a private foundation under Internal Revenue Code §4942. If I.R.C. §4942 requires an appropriation in excess of the amount otherwise allowed under RSA 292-B, the distribution requirements of I.R.C. §4942 shall control. However, without the approval of at least seventy percent (70%) of the entire Board and thirty (30) days' prior written notice to the Director of Charitable Trusts, the Board shall not authorize the appropriation of funds in any fiscal year in an amount greater than six percent (6%) of the fair market value of the assets of the Foundation's endowment funds (calculated on the basis of market values determined at least quarterly and averaged over a period of 3 or more years).

### **Section 3.17 Inspection**

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of the Foundation.

### **Section 3.18 Community Outreach and Accountability**

Throughout the year the Board shall strive to undertake community outreach activities. In consultation with, and with support from, the Council, the Board shall establish a varied program of community outreach activities designed to assess community needs, encourage participation by communities and individuals that are intended to benefit from the Foundation's activities, and listen to, and obtain feedback from, members of the community about the Foundation's grant making goals and activities. The Board shall not absolve itself of this responsibility by delegating it to the Council. The Board shall prepare and issue an annual report of its activities for public review, as contemplated by Section 10.6 hereof.

## **ARTICLE IV**

### **ADVISORY COUNCIL**

## **Section 4.1 Advisory Council**

**4.1.1** The Foundation shall have an Advisory Council (“Council”) consisting of no fewer than thirty (30) nor more than forty (40) individuals, whose membership shall reflect the diversity of the State of New Hampshire and diverse healthcare interests, including but not limited to, consumers, healthcare providers, and people affected by lack of affordable access to the healthcare system in New Hampshire and those without health insurance coverage.

**4.1.2** The Council shall include at least one (1) representative from each of the counties of the State of New Hampshire (10 members).

**4.1.3** The Council shall at all times be composed of a majority of individuals who are members of the “general public”. For purposes of this Section 4.1.3, an individual is a member of the “general public” unless such individual (1) is a Director, (2) is engaged in the practice of a health care profession, or (3) is an employee, officer or director of an organization that primarily sells health care services.

**4.1.4** The Council initially shall be comprised of thirty (30) individuals approved by the Probate Court from nominations made by the Attorney General’s Office after consultation with BCBS-NH and shall serve for a term of three (3) years. The Board shall develop a plan for the succession of membership of the Council, which plan shall be submitted in writing to the Attorney General for review and approval prior to its formal adoption. The succession plan shall provide for staggered terms to ensure continuity and shall establish procedures for soliciting recommendations for membership on the Council from, among others, representatives of the charitable, business, medical, social and governmental sectors, and consumer and faith-based groups.

**4.1.5** The Council shall select its own chair and secretary to facilitate contact with the Foundation’s Board.

**4.1.6** The responsibilities of the Council include the following:

- (a) Working in cooperation with the Board each year in selecting a list of candidates for consideration as Board members;
- (b) Serving as one link between the Foundation and the local communities in an effort to determine local healthcare needs; and
- (c) Supporting the Board’s efforts to be accountable to the community.



**4.1.7** The Board shall report to the Council regularly and shall meet with the Council not less than twice annually at such location(s) within the State of New Hampshire as the Board may determine.

**4.1.8** The Board shall provide each member of the Council with the Foundation's Form 990, its audited financial statements, and a summary of the Foundation's outreach activities and community grant report.

**4.1.9** Every Council member shall have the right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of the Foundation, subject to such reasonable conditions as may be established by the Board for purposes of maintaining confidentiality of information relating to the Foundation or its grant applicants.

## **ARTICLE V**

### **QUALIFICATIONS OF MEMBERS OF THE BOARD**

#### **Section 5.1 Qualifications**

**5.1.1** To ensure the membership of the Board is broadly representative of and reflects the depth and diversity of the state-wide community it serves, the following principles, qualities and skills shall be taken into consideration in connection with the nomination, election and appointment of candidates for Board membership.

**5.1.2** The Board as a whole should be seen by the community it serves, the government, and the broader community as capable, experienced and well able to lead the Foundation.

**5.1.3** The membership of the Board should be selected so as to encompass both generic qualities in all Directors and the range of skills, expertise and perspectives needed by the Board to meet its responsibilities.

**5.1.4** The generic qualities in all members of the Board should include: understanding of the distinction between the strategic and policy role of the Board and the day-to-day operational responsibilities of management; capability to provide leadership in connection with the development of the Foundation; commitment to the vision, mission and core values of the Foundation; ability to work as a member of a team; respect for the views of others; recognition of the time commitment needed and willingness to devote the time and energy necessary to perform the role of Director.

**5.1.5** The membership of the Board should be comprised of individuals with a demonstrated interest in, and understanding of, the community and individuals intended to benefit from the Foundation's activities. The range of skills, expertise and perspectives which should ideally be reflected among members of the Board include: prior experience in governance as a board member; strategic planning experience; understanding of health needs, issues and trends; understanding the diverse needs of the different regions of the State; previous experience in the health field; demonstrated leadership on behalf of needs of consumers, families, people with disabilities and the elderly; understanding of fiscal, financial and legal matters; human resource management; communications and information technology; marketing experience; and government and public relations.

**5.1.6** The Board shall at all times be composed of a majority of individuals who are members of the "general public". For purposes of this Section 5.1.6, an individual is a member of the "general public" unless such individual (1) is an employee, , officer or director of an organization that primarily sells health care services or (2) is engaged in the practice of a health care profession.

**5.1.7** Each Board member shall be required to execute the EH conflict of interest policy on an annual basis. A copy of the current policy is attached in Appendix A.

## **ARTICLE VI**

### **BOARD COMMITTEES**

#### **Section 6.1 Committees of the Board**

The Board may, by resolution adopted by a majority of the Directors then in office, create any committee (standing, special, or ad hoc), appoint persons to serve as members thereof, and change the composition of the committees. Unless otherwise provided by these Bylaws or restricted by law, each committee shall have members who are Directors; and a majority of any committee shall constitute a quorum. Unless the Board otherwise designates, committees shall conduct their affairs in the same manner as is provided in these Bylaws for the Board.

##### **Section 6.1.1 Appointment of Chairs and Members of Committees**

The Chair of the Board will appoint members and Chairs of Committees, subject to ratification or amendment by the Board.

### **Section 6.1.2 Non-Member Participation in Board Committee Meetings**

The Chair of each Committee of the Board may, from time to time, recommend to the Chair of the Board that members of the Advisory Council or others be appointed to serve as Members of that Committee, for a term to expire at the end of Board's election year; except as otherwise provided in these Bylaws, as the number of Board members of each Committee shall always constitute a majority of that Committee. The Chair of the Board shall either approve or disapprove the recommendation, subject to ratification or amendment by Board. Upon approval by the Chair, the persons nominated shall become members of the Committee and shall fully participate in all Committee deliberations but shall not preside over any Committee meetings.

### **Section 6.2.1 Executive Committee**

The Executive Committee shall include the Chair, Vice-Chair, Secretary and Treasurer of the Board of Directors, the immediate past Chair and each of the Committee Chairs. Ratification of this Charge by the Board shall constitute the prior written authorization to exercise the power and authority of the Board between meetings of the Board, provided, however, that all actions taken by the Executive Committee between meetings of the Board shall be presented to the full Board for ratification at the next Board meeting. The Executive Committee shall review the current budget with the President on a quarterly basis and shall review the proposed annual budget for the next fiscal year with the President of the Foundation prior to its presentation to the full Board. The Executive Committee shall not change or adopt any new policies or change policies previously adopted by the full Board.

### **Section 6.2.2 Investment Committee**

The Board has delegated to this Committee authority to implement the Board approved May 1, 2001 Investment Policy and subsequent amendments and authority to manage the Foundation's investment affairs, and has expressly authorized the Investment Committee to have a majority of its members be non-board members. The Committee shall be responsible for reporting to the Board on a regular basis. In carrying out its responsibilities, this Committee and its agents shall act in accordance with the Investment Policy, the provisions of the Foundation's Articles of Agreement and Bylaws, and applicable laws and regulations. The Committee is authorized to delegate investment responsibility and/or investment management responsibility to the Designated Investment Officer, and also is authorized to retain one or more Investment Consultants, Investment Managers and/or Custodians, to assist them in carrying out their responsibilities hereunder. In discharging its authority, the Committee in conjunction with the President can act in the place and stead of the Board and may

receive reports from, enter into agreements with and delegate investment management responsibility or investment responsibility to Investment Consultants, Investment Managers and/or Custodians. The Committee will establish and follow appropriate procedures for the selection of Investment Consultants, Investment Managers and/or Custodians. When delegating discretionary investment authority to the Designated Investment Officer, Investment Managers and/or Custodian(s), the Committee will convey to each the scope of their respective authority, the Foundation's expectations, and the requirement of full compliance with the Investment Policy.

The Committee shall discharge its duties in good faith with the care of an ordinary prudent investor in a like position would exercise under similar circumstances and in a manner the Committee reasonably believes to be in the best interest of the Foundation. The specific responsibilities of the Committee relating to the investment management of the Foundation's assets include:

- Projecting the Foundation's financial needs, and communicating such needs to the Investment Managers on a timely basis.
- Determining the Foundation's risk tolerance and Investment Horizon, and communicating these to the appropriate parties.
- Prudently and diligently selecting qualified investment professionals, including Investment Manager(s), Investment Consultant(s), and Custodian(s).
- Regularly evaluating the performance of the Investment Manager(s) and Custodian(s) to assure adherence to policy guidelines and monitor investment objective progress.
- Developing and enacting proper control procedures, e.g. replacing Investment Manager(s) due to fundamental change in investment management process or failure to comply with established guidelines.
- Delegating, at any time or from time to time, specified rights, powers, duties and authority with respect to the investment and management of the Foundation's financial assets to the Designated Investment Officer.
- Reporting to the Board, on at least a quarterly basis, regarding the status of the Foundation's investments.

### **Section 6.3 Powers and Authority of Committees of the Board**

Board committees may be given all the authority of the Board, except for the powers to:

- (a) Elect directors or remove Directors without cause;
- (b) Fill vacancies on the Board or on any Board committee;
- (c) Amend or appeal these Bylaws or adopt new Bylaws;
- (d) Adopt amendments to the Articles of Agreement of the Foundation;
- (e) Create any other Board committees or appoint the members of any Board committee; or
- (f) Approve any merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of the Foundation.

## **ARTICLE VII**

### **OFFICERS AND AGENTS**

#### **Section 7.1 Officers of the Board**

**7.1.1** The Officers of the Board shall be a Chair, a Vice-Chair, a Treasurer and a Secretary and such other Officers, if any, as the Board may determine. The Board may also have such agents, if any, as the Board may appoint. Except as otherwise provided in this Section 7.1, a person may hold more than one office at the same time.

**7.1.2** The Chair, Vice-Chair, the Treasurer, the Secretary, and such other specified Officers of the Board shall be elected by the Board. Each such Officer shall hold office until the next annual meeting of the Board and until his or her successor is elected and qualified, or until he or she resigns, dies, or is removed from office. Each agent shall retain his or her authority at the pleasure of the Board. If the office of any Officer becomes vacant, the Board may elect a successor to serve the unexpired term. No officer of the Board may serve more than three consecutive terms in any office, except that if an officer is elected to serve an unexpired term of his or her predecessor in office, he or she may serve no more than three consecutive terms following completion of the unexpired term.

**7.1.3** Except as provided in Article IX, the Officers of the Board shall be precluded from rendering services for compensation to the Foundation in any capacity. However, Officers may be reimbursed for reasonable expenses associated with carrying out their duties as Officers of the Board, in accordance with such policies as may be established by the Board from time to time.

## **Section 7.2 Chair of the Board**

The Chair of the Board shall be elected by the Board and shall preside at all meetings of the Board of Directors, except as the Board shall otherwise determine and shall have such other powers and duties as may be determined by the Board. The Chair shall not also be the Treasurer, nor shall the Chair serve as President of the Foundation. The Chair shall be elected by a majority of the entire Board.

## **Section 7.3 Vice-Chair**

The Vice-Chair shall have such duties and powers as designated by the Board or the Chair. In the event of the absence or disability of the Chair of the Board, the Vice-Chair shall preside at all meetings of the Board.

## **Section 7.4 Treasurer**

The Treasurer shall be in charge of the Foundation's financial affairs, funds, securities and valuable papers and shall keep full and accurate records thereof. The Treasurer shall make at least quarterly reports to the Board, one of which shall be an annual report which shall include an accounting of the funds of the Foundation. Annually the Board shall appoint a firm of independent certified public accountants to examine and audit the Foundation's accounts. Reports of annual audit shall be submitted by the Foundation to the Attorney General's Office, Charitable Trust Unit, to the Council and to other governmental entities as are required by law. The Treasurer shall have such other duties and powers as designated by the Board or the Chair.

## **Section 7.5 Secretary**

The Secretary shall record and maintain records of all proceedings of the Board in a book kept for that purpose, which book shall be kept within the State of New Hampshire at the principal office of the Foundation and shall be open at all reasonable times to the inspection of any Director and Council member. Such book or books shall also contain the original, or certified copies, of the Articles of Agreement and Bylaws and names and addresses of all Directors and Council members. If the Secretary is

absent from any meeting of the Board, a temporary Secretary chosen at the meeting shall exercise the duties of the Secretary at the meeting.

### **Section 7.6 President and Agents of the Foundation**

The Directors shall elect a President and such other agents as they may deem appropriate, if any.

**7.6.1** The President shall serve as the chief executive officer/executive director of the Foundation and have general supervision of the business and affairs of the Foundation and shall see that all orders and resolutions of the Board are carried into effect. The President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him or her by these Bylaws or by the Board. The election of any President shall require the approval of a majority of the entire Board.

#### **7.6.2 - 7.6.4 Deleted**

**7.6.5** At no time shall any person who serves as an employee, or member of the governing board of Anthem, or of any New Hampshire or regional Advisory Board to Anthem, simultaneously be eligible for consideration, election or appointment as Director, Officer, President, consultant or as a member of the Foundation's management team, or serve the Foundation in any other paid or compensated capacity.

### **Section 7.7 Removal**

An Officer, the President or any agent may be removed from such capacity with or without cause by a vote of a majority of Directors present and voting at any meeting at which a quorum is present.

### **Section 7.8 Resignation**

An Officer may resign by delivering a written resignation to the Chair or Secretary of the Board, or to a meeting of the Board. Such resignation shall be effective upon receipt (unless specified to be effective at some later date), and acceptance thereof shall not be necessary to make it effective unless it so states.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

### **Section 8.1 Principal Office**

The principal office of the Foundation shall be located at 14 South Street, Concord, New Hampshire 03301.

### **Section 8.2 Fiscal Year**

The fiscal year of the Foundation shall end on September 30 of each year, unless the Board determines otherwise.

### **Section 8.3 Execution of Papers**

Except as the Board may generally or in particular cases authorize the execution thereof in some other manner or consistent with current policy all deeds, leases, transfers, contracts, bonds, notes, checks, drafts and other obligations made, accepted, or endorsed by the Foundation shall be signed by the Chair, the President, Vice President, Secretary or Treasurer.

#### **Section 8.3.1 Electronic Transfers**

Notwithstanding, only the President or the President's designee may authorize electronic transfers of funds between accounts held by or for the benefit of the Endowment, provided that the President or the President's designee shall maintain documentation of each transfer.

### **Section 8.4 Governing Law**

In all matters not specified in these Bylaws, or in the event these Bylaws shall not comply with applicable law, the laws of the State of New Hampshire as then in effect shall apply.

### **Section 8.5 Nondiscrimination Policy**

The policy of the Foundation prohibits discrimination on the basis of age, sex, religion, race, color, creed, sexual orientation, physical or mental disability, national or ethnic origin, or marital or parental status in the recruitment and employment of employees, in the awarding and acceptance of grants and funds, and in the operation of all programs and services; provided, however, that nothing herein to the contrary shall limit or restrict the Foundation from awarding grants or other financial support to programs and services designed to meet the special health needs of specific populations or groups of New Hampshire citizens.

### **Section 8.6 Indemnification of Officers and Directors**



**8.6.1** The Foundation may indemnify any person who was or is a party to any pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director or Officer of the Foundation, against expense (including attorney fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding, but only if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Foundation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Subject to the foregoing and to the provisions of 8.6.3 hereof, the Foundation may indemnify any such person in such circumstances to the fullest extent permitted by law. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that the person (a) did not act in good faith and in a manner which he or she reasonably believed to be in the best interests of the Foundation and/or, (b) with respect to any criminal action or proceeding, had reasonable cause to believe his or her conduct was lawful.

**8.6.2** Notwithstanding anything in this Section 8.6 to the contrary, the Foundation shall not indemnify any Director or Officer in connection with a proceeding by or in the right of the Foundation; or in connection with any other proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her.

**8.6.3** To the extent that a Director or Officer of the Foundation has been wholly successful on the merits in defense of any action, suit, or proceeding referred to in this Section 8.6, he or she shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him or her in connection therewith to the fullest extent permitted by law.

**8.6.4** Expenses (including attorney fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Foundation in advance of the final disposition of such action, suit, or proceeding as authorized in this Section 8.6 if:

- (a) the Director or Officer furnishes to the Foundation a written affirmation of his or her good faith belief that he or she has met the standard of conduct required herein;

- (b) the Director or Officer furnishes to the Foundation a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct required herein; and
- (c) a determination in accordance with the terms of RSA 293-A:8.50-58 is made that the facts then known to those making the determination would not preclude indemnification.

The undertakings required by this Section 8.6.4 must be an unlimited general obligation of the director or officer, but need not be secured, and may be accepted without reference to financial ability to pay.

**8.6.5** The indemnification provided by this Section 8.6 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, or vote of disinterested Directors, or otherwise, and any procedure provided for by any of the foregoing, both as to action in his or her official capacity and as to action in another capacity (held at the express request of the Foundation) while holding such office, and shall continue as to a person who has ceased to be a Director or Officer and shall inure to the benefit of heirs, executors, and administrators of such a person.

**8.6.6** The Foundation may purchase and maintain insurance on behalf of any person who is or was a Director or Officer of the Foundation against liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify him or her against such liability under provisions of this Section 8.6.

**8.6.7** All references herein to (i) the Code shall be deemed to refer to the Internal Revenue Code of 1986, as now in force or hereafter amended, (ii) the RSA shall be deemed to refer to said statutes as now in force or hereafter amended, and (iii) particular sections of the Code or the RSA shall be deemed to refer to similar or successor provisions hereafter adopted.

## **ARTICLE IX**

### **PROHIBITED TRANSACTIONS; CONFLICT OF INTEREST**

#### **Section 9.1 Loans**

The Foundation shall not make any loan of money or property to, or guarantee the obligation of, any Director, Council Member, Officer or agent.

### **Section 9.2 Sale of Real Estate**

The Foundation shall not sell, lease, purchase, or convey any real estate or interest in real estate to or from a Director, Council Member or Officer of the Foundation without the prior approval of the probate court; provided, however, that this section shall not prohibit the Foundation from accepting a bona fide gift of an interest in real estate by a Director, Council Member or Officer.

### **Section 9.3 Pecuniary Benefit Transactions**

Except as provided in Section 9.4 hereof, the Board shall not approve, or permit the Foundation to engage in, any pecuniary benefit transaction. A pecuniary benefit transaction is a transaction to which the Foundation is a party and in which one or more of its Directors has a direct or indirect financial interest in excess of \$500 on an annual aggregate basis. A Director shall be deemed to have an indirect interest in any pecuniary benefit transaction involving a person or entity of which a Director, or a member of the immediate family of a Director, is a proprietor, partner, employee, or officer. The following shall not be considered pecuniary benefit transactions:

- (a) Reasonable compensation for services of a President, and expenses incurred in connection with official duties of a Director or Officer;
- (b) A benefit provided to a Director, Council Member or Officer or member of the immediate family thereof if: (1) the benefits are provided or paid as part of programs, benefits, or payments to members of the general public; (2) the Foundation has adopted written eligibility criteria for such benefit in accordance with its bylaws and applicable laws; and (3) the Director, Council Member, Officer or family member meets all of the eligibility criteria for receiving such benefit; and
- (c) A continuing transaction entered into by the Foundation, merely because a person with a financial interest therein subsequently becomes a Director, Council Member or Officer of the Foundation.

### **Section 9.4 Approval**

The Foundation may engage in a pecuniary benefit transaction if all of the following conditions are met:

**9.4.1** The transaction is for goods or services purchased or benefits provided in the ordinary course of the business of the Foundation, for the actual or reasonable value of the goods or services or for a discounted value, and the transaction is fair to the Foundation.

**9.4.2** The transaction receives affirmative votes from at least a two-thirds majority of all the disinterested members of the Board, which majority shall also equal or exceed any quorum requirement specified in these Bylaws after full and fair disclosure of the material facts of the transaction to the Board and after notice and full discussion of the transaction by the Board.

**9.4.3** Without participation, voting, or presence of any Director or Officer with a financial interest in the transaction or who has had a pecuniary benefit transaction with the charitable trust in the same fiscal year, except as the Board may require to answer questions regarding the transaction; and a record of the action on the matter is made and recorded in the minutes of the Board.

**9.4.4** The Foundation maintains a list of disclosing each and every pecuniary benefit transaction, including the names of those to whom the benefit accrued and the amount of the benefit, and keeps such list available for inspection by members of the Board and the Council. The list shall also be reported to the Director of Charitable Trusts each year as part of the Foundation's annual report required under RSA 7:28.

**9.4.5** If the transaction, or the aggregate of transactions with the same Director or Officer within one fiscal year, is in the amount of \$5,000 or more, the Foundation publishes notice thereof in a newspaper of general circulation in the state, and gives written notice to the Director of Charitable Trusts, before consummating the transaction. At a minimum, such notice shall state that it is given in compliance with this section and shall include the name of the Foundation, the name of any Director or Officer receiving pecuniary benefit from the transaction, the nature of the transaction, and the specific dollar amount of the transaction.

## **Section 9.5 Compliance with Private Foundation Rules**

Any provision of these Bylaws or the Articles of Agreement of the Foundation to the contrary notwithstanding, so long as the Foundation is deemed to be a "private

foundation” as defined in Section 509 of the Internal Revenue Code of 1986, as amended (the “Code”), the Foundation:

**9.5.1** Shall distribute its income for each taxable year (and principal, if necessary) at such time and in such manner as not to subject the Foundation to tax under Section 4942 of the Code;

**9.5.2** Shall not approve of, or engage in, any act of self-dealing as defined in subsection (d) of Section 4941 of the Code;

**9.5.3** Shall not retain any excess business holdings as defined in subsection (c) of Section 4943 of the Code;

**9.5.4** Shall not make any investments in such a manner as to subject this Foundation to tax under Section 4944 of the Code; and

**9.5.5** Shall not make any taxable expenditure as defined in subsection (d) of Section 4945 of the Code.

## **Section 9.6 Conflict of Interest Provisions**

A conflict of interest or an appearance of a conflict of interest may arise when a Director has a direct or indirect interest in another entity which enters into a transaction with the Foundation, including, but not limited to, applications for grant or loan support. Direct or indirect interest includes any legal, equitable or fiduciary interest or position in an entity by a Director or a member of a Director's family. Any such interest shall be disclosed and made a matter of record at the time of election to the Board and maintained through an annual procedure and when the interest becomes a matter of Board action. No Director having a conflict of interest in any matter shall be counted in determining the quorum for the meeting, nor present when the matter is discussed or voted on. Meeting minutes shall reflect that the disclosure was made, that the Director abstained and was not present during the discussion or vote, and that a quorum existed not counting such Director. The conflict-of-interest provisions of this Section 9.6 shall be in addition to and not in lieu of the applicable provisions of New Hampshire law regarding conflicts of interest.

Applications for grants from agencies or organizations that employ members of the Board of Directors of the Endowment for Health in a managerial capacity will not be accepted during, and for one year after, the term of office of the Board member. Notwithstanding the foregoing, in the case of institutional or governmental applicants,

applications for grants from departments, divisions or programs other than the department, division or program in which the Board member is employed in a managerial capacity may be accepted, provided that the Board member has no involvement in the application and receives no direct or indirect personal financial benefit from any grant awarded.

## ARTICLE X

### GRANTS ADMINISTRATION

#### **Section 10.1 Purpose of Grants**

The Foundation shall have the power to make grants and contributions and to render other financial assistance for the purposes expressed in the Foundation's Articles of Agreement.

#### **Section 10.2 Grant Responsibility**

The Board shall have control over grants, contributions, and other financial assistance given by the Foundation. The Board shall oversee the solicitation, review, and decision-making regarding all grants and contributions. The Board shall provide to the public annually a list of grant awards and contributions made by the foundation.

#### **Section 10.3 - 10.6 Deleted**

## ARTICLE XI

### AMENDMENTS TO THE BYLAWS

Unless otherwise provided, these Bylaws may be amended or repealed, and new Bylaws may be adopted in whole or in part, by the affirmative vote of a majority of the Directors of the Foundation then in office; provided, however, that thirty (30) days notice of the time and place of the meeting is given by the Chair of the Board or Secretary and the Bylaws of the Foundation may not be amended in a manner inconsistent with the Foundation's Articles of Agreement, applicable New Hampshire law or the requirements for maintaining the Foundation's qualification as a tax-exempt organization for federal income tax purposes. Anything to the contrary herein, any amendment to a provision of these Bylaws which contemplates or requires the approval of the Director of Charitable Trusts and/or the Probate Court shall require the approval of the Director of Charitable Trusts and/or the Probate Court as the case may be.

Amendment History:

- May 1, 2000 Amended Article III, Section 3.3.1; Article III, Section 3.4.1; and Article III, Section 3.4, by adding a new Section 3.4.3
- October 2, 2000 Amend Article IV, amending Section 4.1.9 by replacing the word "reasonable cancellation" with "reasonable conditions"
- October 2, 2000 Amend Article VI, by adding new Section 6.1.1 and Section 6.1.2
- October 2, 2000 Amend Article VII, by amending Section 7.6.5 by adding the word "election" after "consideration" on the third line, and deleting the words "counsel member" and the word "agent" on the fourth line.
- January 7, 2002 Amend Article VII, by amending Section 7.1.2 by adding the following sentence to the end of the section: "No officer of the Board may serve more than three consecutive terms in any office, except that if an officer is elected to serve an unexpired term of his or her predecessor in office, he or she may serve no more than three consecutive terms following completion of the unexpired term."
- September 23, 2003 Amend Article III, Section 3.16.2 by deleting the following language:  
"The Board may adopt a spending policy consistent with the provisions of RSA 292-B; provided, however, that without the approval of a least seventy percent (70%) of the entire Board and thirty (30) days' prior written notice to the Director of Charitable Trusts, the Board shall not authorize the "appropriation of appreciation" (as that term is contemplated in RSA 292-B:6) in any fiscal year in an amount greater than three percent (3%) of the fair market value of the assets of the Foundation's endowment fund during such fiscal year nor shall the Board authorize the "appropriation of appreciation" in any period of three (3) consecutive fiscal years in an amount greater than five percent (5%) of the fair market value of the assets of the Foundation's endowment fund. For purposes of this Section 3.16, the fair market value of the assets of the Foundation's endowment fund shall be determined in accordance with the provisions of RSA 292-B:6."

Such language shall be replaced with the following language:

" The Board may adopt a spending policy consistent with the provisions of RSA 292-B, provided however, that in the first instance such spending policy shall comply in all respects with the minimum distributable amount of annual qualifying distributions as required for a private foundation under Internal Revenue Code §4942. If I.R.C. §4942 requires an appropriation in excess of the amount otherwise allowed under RSA 292-B, the distribution requirements of I.R.C. §4942 shall control. However, without the approval of at least seventy percent (70%) of the entire Board and thirty (30) days' prior written notice to the Director of Charitable Trusts, the Board shall not authorize the appropriation of funds in any fiscal year in an amount greater than six percent (6%) of the fair market value of the assets of the Foundation's endowment funds (calculated in accordance with the regulations governing the valuation of assets pursuant to I.R.C. §4942)."

March 21, 2005 Amend Article VI, Section 6.1.2 by deleting the words "so long" in the fourth line and replacing with "except as otherwise provided in these Bylaws as the number of."

March 21, 2005 Amend Article VI, Section 6.1 by changing Section number to Section 6.1.1 and deleting the following paragraph "The Board may also appoint an Executive Committee. In its discretion, and only by prior written authorization, the Board may grant to the Executive Committee the powers and authority of the Board itself during periods between Board meetings; provided, however, that the Executive Committee may exercise only the powers and authority specifically granted in such written authorization, subject to any and all conditions, limitations or restrictions provided therein; and provided further that in no event shall the Executive Committee be granted powers or authority in contravention of any of the provisions these Bylaws, including without limitation, Section 6.3 hereof or any of the provisions of the Foundation's Articles of Agreement or applicable law." The new paragraph will read "The Executive Committee shall include the Chair, Vice-Chair, Secretary and Treasurer of the Board of Directors, the immediate past Chair and each of the Committee Chairs. The Executive Committee shall review the current budget with the President on a quarterly basis and shall review the proposed annual budget for the next fiscal



year with the President of the Foundation prior to its presentation to the full Board. The Executive Committee shall not change or adopt any new policies or change policies previously adopted by the full Board."

Such language will be replaced with the following language. "The Executive Committee shall include the Chair, Vice-Chair, Secretary and Treasurer of the Board of Directors, the immediate past Chair and each of the Committee Chairs. Ratification of this Charge by the Board shall constitute the prior written authorization to exercise the power and authority of the Board between meetings of the Board, provided, however, that all actions taken by the Executive Committee between meetings of the Board shall be presented to the full Board for ratification at the next Board meeting. The Executive Committee shall review the current budget with the President on a quarterly basis and shall review the proposed annual budget for the next fiscal year with the President of the Foundation prior to its presentation to the full Board. The Executive Committee shall not change or adopt any new policies or change policies previously adopted by the full Board.