



Delaware Auditor of Accounts
GASB Entity Determination Analysis Memo
Delaware Center for Health Innovation
June 30, 2015

Not an FSF User

Blended Component Unit of the Delaware Health Information Network

Governmental Accounting Standards Board (GASB) Statements No. 14, 34, and 61 establish standards for defining and reporting on a government's reporting entity. Management is responsible for determining the reporting entity while preparing the government's financial statements. The Office of Auditor of Accounts (AOA) performed the analysis below to assess the State's reporting entity for audit purposes.

To complete our entity determination analysis, AOA reviewed the following:

- GASB 14, *The Financial Reporting Entity*
- GASB 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (GASB 34 amended GASB 14, ¶9, ¶11, ¶12, ¶19, ¶42, ¶44, ¶50 – ¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, ¶49, ¶56, and ¶57)
- GASB 39, *Determining Whether Certain Organizations Are Component Units*
- GASB 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*
- *AICPA Audit and Accounting Guide – State and Local Governments*, Chapter 3: The Financial Reporting Entity
- *GASB 2011-2012 Comprehensive Implementation Guide*, Chapter 4: The Financial Reporting Entity
- *Delaware Center for Health Innovation* Certificate of Incorporation
- *Delaware Center for Health Innovation* Bylaws
- AOA's Entity Determination Analysis Memo – *Delaware Health Care Commission*

1. The PCU is legally separate. (¶15)¹

According to GASB, an organization has separate legal standing if it is created as a body corporate or a body corporate and politic, or if it otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government.

Generally, corporate powers give an organization the capacity to have a name; the right to sue and be sued in its own name without recourse to a state or local governmental unit; and the right to buy, sell, lease, and mortgage property in its own name.

The corporate powers granted to a separate organization are enumerated in its corporate charter or in the legislation authorizing its creation. A special purpose government (or any other organization) that is *not* legally separate should be considered, for financial reporting purposes, part of the primary government that holds the corporate powers.

¹ Paragraph references are from GASB 14, as amended by GASB 61.

Note: Page 4 was revised on September 28, 2015, to discuss DHIN's substantive authority. Further, box 3 of the flowchart on page 15 was revised regarding the PG's ability to abolish the PCU.



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Application to the Delaware Center for Health Innovation (DCHI)

DCHI is a separate legal entity because it is organized as a charitable nonstock corporation under 8 Del. C. §101. As such, it has the authority necessary to achieve its purposes and shall be permitted to do all things done by a charitable nonstock corporation organized under 8 Del. C. §101, except as prohibited in the Certificate of Incorporation or Bylaws (DCHI Bylaws – Article I, Sections 1.1 and 1.3).

DCHI shall be a membership corporation with the Delaware Health Information Network (DHIN), a not-for-profit body both politic and corporate, as the sole member (DCHI Bylaws – Article II). Prior to exercising any of its authority, DHIN must consult with, but does not require approval from, the Delaware Health Care Commission (the Commission) (DCHI Bylaws – Article II, Section 2.3). According to AOA’s Entity Determination Analysis Memo for the Commission completed for the fiscal year ended June 30, 2015, the Commission is part of the State of Delaware.

Applicable guidance excerpts are as follows:

DCHI Bylaws – Article I

Section 1.1 – Organization

Delaware Center for Health Innovation, Inc. (the "Corporation") is a charitable nonstock corporation organized under the Delaware General Corporation Law (8 Del. C. §§ 101 *et seq.*, referred to herein as the "Act").

Section 1.3 – Authority

Except as otherwise provided in the Certificate or in these Bylaws, the Corporation shall have all the authority necessary to achieve its purposes and shall be permitted to do all things that can be done by a charitable nonstock corporation organized under the Act.

DCHI Bylaws – Article II

Section 2.1 – Sole Member

The corporation shall have a sole member, which shall be Delaware Health Information Network, a not-for-profit body both politic and corporate established pursuant to 16 Del. C. §§10301 *et seq.* (the "Member").

Section 2.3 – Action by Member

In exercising its authority pursuant to these Bylaws and the Act, the Member shall be subject to the following:

- (a) The Member's authority may be exercised by the Member's governing body or, if and to the extent provided in the authorizing legislation or organizational documents of the Member, or by resolution of the Member's governing body, by its duly-authorized committees or designees.

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- (b) Prior to exercising any of its authority in relation to the Corporation pursuant to these Bylaws or the Act, the Member shall consult with the Delaware Health Care Commission, an independent public instrumentality established pursuant to 16 Del. C. §§ 9902 *et seq.* (the “Commission”), to ensure that such authority is exercised in a manner consistent with the objectives of both the Member and the Commission in promoting the delivery of cost-effective quality health care to all Delawareans.
- (c) After consultation with the Commission, the Member shall act by executing and delivering to the Corporation a written instrument or instruments (including, by way of example, minutes of the board of directors of the Member) setting forth the action taken and the applicable corporate authorizations or directions from the Member. The action of the Member shall be deemed to have been taken on the dates the written instruments bear unless the instruments provide otherwise.

AOA’s Entity Determination Analysis Memo – *Delaware Health Care Commission*

The Delaware Health Care Commission is not legally separate from the State. The Delaware Code states, “the Commission is constituted an independent public instrumentality and may call upon the Delaware Health Information Network and/or any state agency for assistance...For administrative and budgetary purposes only, the Commission shall be placed within the Department of Health and Social Services, Office of the Secretary” (16 Del. C. §9902 (b)). Further, the statutory language does not give the Commission the corporate powers that would distinguish it as a legally separate entity (e.g. body corporate or body corporate and politic).

3. *The PG appoints the majority of the PCU’s board. (¶22-24)*

According to GASB, if a primary government appoints a simple majority of the organization’s governing board, it usually has a voting majority. However, if financial decisions require the approval of more than a simple majority, the primary government is not accountable for the organization.

For purposes of determining whether accountability exists, a primary government’s appointment authority should be substantive. In some cases the appointment authority of a primary government’s officials may be limited by a nomination process. For example, state statutes or local ordinances may require a primary government to select its appointees from a slate of candidates provided by one or more individuals or groups other than the primary government’s officials or appointees. A primary government’s appointment authority is not substantive if the number of candidates is severely limited by the nominating process, for example, if a primary government must select three appointees from a single slate of five candidates. Additionally, a primary government’s appointment authority may not be substantive if its responsibility is limited to confirming appointments made by individuals or groups other than the primary government’s officials or appointees.

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In most instances, legal provisions for appointment of an organization's officials also provide for continuing appointment authority. However, in the absence of continuing appointment authority, the ability of a primary government to unilaterally abolish an organization also provides the basis for ongoing accountability. Thus, a primary government that creates an organization (creation is tantamount to the initial appointment of the governing body) is accountable for the organization if the primary government can unilaterally abolish it. A primary government is considered to be accountable for an organization as long as continuing appointments are made by the primary government, even if those appointments are made by a subsequent administration.

Application to DCHI

The Board of Directors is appointed by DHIN (the sole member) based on input from the current Board Chair and is made up of not less than 9 and not more than 15 voting members. In addition to the voting Directors, the Executive Director of the Corporation and the Chief Executive Officer of the Member shall serve on an ex officio basis (DCHI Bylaws – Article III, Section 3.2 (a) and (b)).

Although DHIN (the sole member) has the authority to appoint DCHI's Board, DHIN must first consult with, but does not require approval from, the Commission (DCHI Bylaws – Article II, Section 2.3 (b)), which is part of the State of Delaware.

Thus, the primary government (DHIN) is responsible for the appointment of DCHI's Board of Directors.

Regardless of how the Board is appointed, however, DHIN has substantive authority as the *sole member* of DCHI.

Applicable guidance excerpts are as follows:

DHCI Bylaws – Article III

Section 3.2 – Composition and Qualifications

(a) *Voting Directors.* The Board of Directors shall consist of not less than nine (9) and not more than fifteen (15) voting Directors, as may be determined and appointed by the Member based on input from the current Board Chair. Insofar as the achievement of the Corporation's purpose is believed to require an inclusive multi-stakeholder approach, the Board shall at all times include:

- (i) At least one (1) representative of patient or consumer groups; and
- (ii) At least two (2) practicing physicians;
- (iii) At least one (1) practicing non-physician clinician;
- (iv) The Chair of the Delaware Health Care Commission;
- (v) At least two (2) member with expertise in hospital/health system administration;
- (vi) At least (1) member with experience in administration of a community health provider;
- (vii) The Secretary of the State of Delaware Department of Health and Social Services;
- (viii) At least one (1) member with expertise in health care payor administration;

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- (ix) At least one (1) member with expertise in purchasing health care coverage for employers;
- (x) At least one (1) representative of an institution of higher education; and
- (xi) The Director of the Delaware Office of Management and Budget.

(b) *Non-Voting Directors.* In addition to the voting Directors described above, the Board shall also include the following individuals, who shall serve on an *ex officio*, non-voting basis:

- (i) The Executive Director of the Corporation; and
- (ii) The Chief Executive Office of the Member.

DCHI Bylaws – Article II

Section 2.2 – Authority Reserved to Member

Notwithstanding the broad general authority vested in the Board of Directors of the Corporation as provided in Article III below, action as to the matters set forth below shall require the approval of the Member, to be exercised in the manner described in Section 2.3 below:

- (a) Appointment of the Directors of the Corporation, as provided in Section 3.2 below;
- (b) Removal of one or more Directors of the Corporation for cause, as provided in Section 3.4(a) below;
- (c) Incurrence of any long-term borrowing or indebtedness of the Corporation;
- (d) Adoption of any plan of merger, consolidation or dissolution involving the Corporation, or the sale of all or substantially all of the Corporation's assets; and
- (e) Approval of any amendment of the Certificate or these Bylaws, based on the recommendation of the Board of Directors.

Section 2.3 – Action by Member

In exercising its authority pursuant to these Bylaws and the Act, the Member shall be subject to the following:

- (a) The Member's authority may be exercised by the Member's governing body or, if and to the extent provided in the authorizing legislation or organizational documents of the Member, or by resolution of the Member's governing body, by its duly-authorized committees or designees.
- (b) Prior to exercising any of its authority in relation to the Corporation pursuant to these Bylaws or the Act, the Member shall consult with the Delaware Health Care Commission, an independent public instrumentality established pursuant to 16 Del. C. §§ 9902 *et seq.* (the "Commission"), to ensure that such authority is exercised in a manner consistent with the objectives of both the

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Member and the Commission in promoting the delivery of cost-effective quality health care to all Delawareans.

- (c) After consultation with the Commission, the Member shall act by executing and delivering to the Corporation a written instrument or instruments (including, by way of example, minutes of the board of directors of the Member) setting forth the action taken and the applicable corporate authorizations or directions from the Member. The action of the Member shall be deemed to have been taken on the dates the written instruments bear unless the instruments provide otherwise.

AOA's Entity Determination Analysis Memo – Delaware Health Care Commission

The Delaware Health Care Commission is not legally separate from the State. The Delaware Codes states that “the Commission is constituted an independent public instrumentality and may call upon the Delaware Health Information Network and/or any state agency for assistance...For administrative and budgetary purposes only, the Commission shall be placed within the Department of Health and Social Services, Office of the Secretary” (16 Del. C. §9902 (b)). Further, the statutory language does not give the Commission the corporate powers that would distinguish it as a legally separate entity (e.g. body corporate or body corporate and politic).

6. There is not a financial benefit/burden relationship. (¶ 27-33) The PG is able to impose its will on the PCU. (¶25-26)

Financial Benefit to or Burden on a Primary Government

According to GASB, an organization can provide a financial benefit to, or impose a financial burden on, a primary government in a variety of ways. The benefit or burden may result from legal entitlements or obligations, or it may be less formalized and exist because of decisions made by the primary government or agreements between the primary government and a component unit. If a primary government appoints a voting majority of an organization's officials or if the organization is fiscally dependent on the primary government *and* there is a potential for those organizations either to provide specific financial benefits to, or to impose specific financial burdens on, the primary government, the primary government is financially accountable for those organizations. An organization has a financial benefit or burden relationship with the primary government if, for example, *any one* of these conditions exists:

- a. The primary government is legally entitled to or can otherwise access the organization's resources.
- b. The primary government is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, the organization.
- c. The primary government is obligated in some manner for the debt of the organization.

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Exchange transactions between organizations and the primary government should not be considered manifestations of a financial benefit or burden relationship. In an exchange transaction, such as a purchase or sale of goods or services, each participant (the government or its employees rather than the citizenry) directly receives and sacrifices value. For example, funding by a primary government for higher education is not equivalent to purchasing educational services and would be considered a manifestation of a financial burden on the primary government.

The effect of the financial benefits or burdens on the primary government can be either direct or indirect. A direct financial benefit or burden occurs when the primary government itself is entitled to the resources or is obligated for the deficits or debts of the organization. An indirect benefit or burden exists if one or more of the primary government's component units is entitled to the resources or is obligated for the deficits or debts of the organization. For purposes of this Statement, a financial benefit or burden relationship exists if the primary government is either directly or indirectly entitled to the resources or is either directly or indirectly obligated for the deficits or debts of an organization.

Legally Entitled to or Can Otherwise Access the Organization's Resources. The ability to access the resources of an organization—not necessarily whether there was an actual transaction during the period—is the important factor for determining when a primary government is entitled to an organization's resources. However, the ability to access the resources of an organization should be judged in light of the organization as a going concern; that is, a residual interest in the net assets of an organization in the event of dissolution is not equivalent to being entitled to its resources. If a primary government appoints a voting majority of an organization's officials *and* is legally entitled to or can otherwise access the organization's resources, the primary government is financially accountable for that organization.

Resources may flow from a component unit to a primary government for several reasons. Some organizations may operate activities, such as off-track betting or lotteries, for the principal purpose of generating net revenues that are accessible to the primary government. These organizations provide financial benefits to the primary government. Other organizations may operate activities (for example, public utilities) for the purpose of providing basic public services and charge rates sufficiently high to also provide a financial benefit to the primary government. These benefits may be characterized as "payments in lieu of taxes" or "contributions," or they may simply be amounts remitted on request of the primary government. These organizations also provide financial benefits to the primary government.

Legally Obligated or Has Otherwise Assumed the Obligation to Finance the Deficits of, or Provide Financial Support to, the Organization. A primary government may be obligated to finance the deficits of, or provide financial support to, an organization in different ways. It could be legally obligated to do so, or it may choose to do so for a variety of reasons. If a primary government appoints a voting majority of an organization's officials *and* is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, that organization, the primary government is financially accountable for that organization. The following are examples of financial burdens assumed by a primary government in support of certain organizations:

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- a. Some organizations provide public services financed by user charges that are not expected to be sufficient to sustain their operations. This situation often results from providing services such as mass transit, higher education, and healthcare. In these cases, public policy may dictate that a state or local government provide financial support to the organization to increase the availability and affordability of the service to a broader segment of the citizenry. Examples of support include annual appropriations to help meet operating expenditures/expenses, periodic capital grants, and direct payment of capital expenditures or debt service.
- b. A primary government may assume an obligation to finance the deficits of an organization. These deficits may or may not be expected to recur annually. A financial burden exists if the primary government is obligated to finance an organization's deficits even though there has not been, and may never be, a deficit to subsidize.

Some organizations' operations are fully or partially funded by revenues generated through tax increment financing. Legally separate development or redevelopment authorities sometimes receive the incremental taxes that result from a tax increment financing arrangement. When this is done, *a taxing government temporarily waives its right to receive the incremental taxes from its own levy*. The incremental taxes instead are remitted to the separate organization. For purposes of this Statement, this type of tax increment financing should be considered evidence of an obligation to provide financial support to an organization (a financial burden), regardless of whether the primary government collects the taxes and remits them to the organization or the incremental taxes are paid directly to the organization.

Obligated in Some Manner for the Debt of an Organization. An obligation for the debt of an organization is similar to the notion that a primary government may be obligated for future operating deficits. The obligation can be either expressed or implied. A primary government is obligated in some manner for the debt of an organization if (a) it is legally obligated to assume all or part of the debt in the event of default or (b) it *may* take certain actions to assume secondary liability for all or part of the debt, *and* the government takes, or has given indications that it will take, those actions. Conditions that indicate that a primary government is obligated in some manner include:

- a. The primary government is *legally obligated* to honor deficiencies to the extent that proceeds from other default remedies are insufficient.
- b. The primary government is *required* to temporarily cover deficiencies with its own resources until funds from the primary repayment source or other default remedies are available.
- c. The primary government is *required* to provide funding for reserves maintained by the debtor organization, or to establish its own reserve or guarantee fund for the debt.
- d. The primary government is *authorized* to provide funding for reserves maintained by the debtor organization or to establish its own reserve or guarantee fund *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)

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- e. The primary government is *authorized* to provide financing for a fund maintained by the debtor organization for the purpose of purchasing or redeeming the organization's debt, or to establish a similar fund of its own, *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)
- f. The debtor government explicitly indicates by contract, such as the bond agreement or offering statement, that in the event of default the primary government *may* cover deficiencies although it has no legal obligation to do so. That is, the bond offering statement may specifically refer to a law that authorizes the primary government to include an appropriation in its budget to provide funds, if necessary, to honor the debt of the organization.
- g. Legal decisions within the state or previous actions by the primary government related to actual or potential defaults on another organization's debt make it *probable* that the primary government will assume responsibility for the debt in the event of default.

If a primary government appoints a voting majority of an organization's officials *and* is obligated in some manner for the debt of that organization, the primary government is financially accountable for that organization.

Imposition of Will

A primary government that is accountable for an organization because it appoints a voting majority of that organization's governing body frequently has the ability to affect that organization's operations. Sometimes, however, based on the provisions of law or contract, the primary government has little influence over the organization's operations. Certain conditions indicate the primary government's ability to affect the day-to-day operations of an organization. These conditions are referred to in this Statement as a government's ability to impose its will on an organization. If a primary government appoints a voting majority of an organization's officials *and* has the ability to impose its will on the organization, the primary government is financially accountable for that organization.

A primary government has the ability to impose its will on an organization if it can significantly influence the programs, projects, activities, or level of services performed or provided by the organization. The existence of any one of the following conditions clearly indicates that a primary government has the ability to impose its will on an organization:

- a. The ability to remove appointed members of the organization's governing board at will.
- b. The ability to modify or approve the budget of the organization.
- c. The ability to modify or approve rate or fee changes affecting revenues, such as water usage rate increases.

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- d. The ability to veto, overrule, or modify the decisions (other than those in b and c) of the organization's governing body.
- e. The ability to appoint, hire, reassign, or dismiss those persons responsible for the day-to-day operations (management) of the organization.

Other conditions may also indicate that a primary government has the ability to impose its will on an organization. In determining whether imposition of will exists, a distinction should be made between substantive approvals and ministerial (or compliance) approvals as discussed in paragraphs 17 and 18.

Application to DCHI

There is not a financial relationship between the State of Delaware, DHIN, and DCHI. We did not identify any appropriations provided to DCHI in the State of Delaware Operating Budget for Fiscal Year 2015. According to the October 16, 2013, meeting minutes from the DHIN Board of Directors, grant funding will be used to pay for any staff. No DHIN funds would be used; instead, DCHI will use the Center for Medicare and Medicaid Innovation (CMMI) or private funding. CMMI is part of the Federal Department of Health and Human Services.

Further, there is also no indication that DHIN is legally entitled to DCHI's resources, or that the DHIN is obligated to finance the deficits of, or provide financial support to, DCHI. Upon dissolution, DCHI's assets are to be distributed to DHIN or to an appropriate public or governmental body or an organization described in Internal Revenue Code 501(c)(3) that, in either case, has purposes consistent with those of DCHI, as the board of directors may determine (DCHI Certificate of Incorporation – Article VIII). However, GASB 61 states, "the ability to access the resources of an organization should be judged in light of the organization as a going concern; that is, a residual interest in the net assets of an organization in the event of dissolution is not equivalent to being entitled to its resources."

DHIN, as the primary government, is able to impose its will on DCHI because DHIN is the sole member of DCHI. DHIN's authority may be exercised by DHIN's governing body. Further, DHIN can remove a voting Director from office at any time, "based on the existence of cause, as determined by DHIN in its discretion" (DCHI Bylaws – Article III, Section 3.4(a)).

Applicable guidance excerpts are as follows:

DCHI Bylaws – Article II

Section 2.2 – Authority Reserved to Member

Notwithstanding the broad general authority vested in the Board of Directors of the Corporation as provided in Article III below, action as to the matters set forth below shall require the approval of the Member, to be exercised in the manner described in Section 2.3 below:

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- (a) Appointment of the Directors of the Corporation, as provided in Section 3.2 below;
- (b) Removal of one or more Directors of the Corporation for cause, as provided in Section 3.4(a) below;
- (c) Incurrence of any long-term borrowing or indebtedness of the Corporation;
- (d) Adoption of any plan of merger, consolidation or dissolution involving the Corporation, or the sale of all or substantially all of the Corporation's assets; and
- (e) Approval of any amendment of the Certificate or these Bylaws, based on the recommendation of the Board of Directors.

Section 2.3 – Action by Member

In exercising its authority pursuant to these Bylaws and the Act, the Member shall be subject to the following:

- (a) The Member's authority may be exercised by the Member's governing body or, if and to the extent provided in the authorizing legislation or organizational documents of the Member, or by resolution of the Member's governing body, by its duly-authorized committees or designees.
- (b) Prior to exercising any of its authority in relation to the Corporation pursuant to these Bylaws or the Act, the Member shall consult with the Delaware Health Care Commission, an independent public instrumentality established pursuant to 16 *Del. C.* §§ 9902 *et seq.* (the "Commission"), to ensure that such authority of exercised in a manner consistent with the objectives of both the Member and the Commission in promoting the delivery of cost-effective quality health care to all Delawareans.
- (c) After consultation with Commission, the Member shall act by executing and delivering to the Corporation a written instrument or instruments (including, by way of example, minutes of the board of directors of the Member) setting forth the action taken and the applicable corporate authorizations or directions from the Member. The action of the Member shall be deemed to have been taken on the dates the written instruments bear unless the instruments provide otherwise.

DCHI Bylaws – Article III

Section 3.4 – Resignation or Removal; Vacancy

- (a) Resignation or Removal. A Director may resign at any time by filing a written resignation with the Secretary. A voting Director may be removed from office at any time either: (i) by the Board, based on such Director's demonstrated failure to comply with attendance standards or other governance policies as established by the Board from time to time; or (ii) by the Member, based on the existence of cause as determined by the Member in its discretion.

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DCHI Certificate of Incorporation – Article VIII

Upon dissolution of the Corporation, the board of directors shall, after paying or making provision for the payment of all liabilities of the Corporation, distribute all of the assets of the Corporation to the Member or to an appropriate public or governmental body or an organization described in Code Section 501(c)(3) that, in either case, has purposes consistent with those of the Corporation, as the board of directors may determine. Any of such assets not so disposed of shall be disposed of by a court of competent jurisdiction in the county or district where the Corporation is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, which are organized and operated exclusively for such purposes.

7. The CU meets the blending criteria of ¶53, a, b. or c.

According to GASB, a component unit should be included in the reporting entity financial statements using the blending method in any of these circumstances:

- a. The component unit's governing body is substantively the same² as the governing body of the primary government *and* (1) there is a financial benefit or burden relationship between the primary government and the component unit, as described in paragraphs 27–33, or (2) management of the primary government has operational responsibility for the component unit. Management of a primary government has operational responsibility for a component unit if it manages the activities of the component unit in essentially the same manner in which it manages its own programs, departments, or agencies.

Management, for purposes of this determination, consists of the person(s), below the level of the governing board, responsible for the day-to-day operations of the primary government (for example, a county executive or city manager).

- b. The component unit provides services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefits the primary government even though it does not provide services directly to it. The essence of this type of arrangement is much the same as an internal service fund – the goods or services are provided to the government itself rather than to the citizenry. Usually the services provided by a blended component unit are financing services provided solely to the primary government. For example, a building authority may be created to finance the construction of office buildings for the primary government. However, a

² “Substantively the same” means sufficient representation of the primary government’s entire governing body on the component unit’s governing body to allow complete control of the component unit’s activities. To illustrate, the board of a city redevelopment authority may be composed entirely of the city council and the mayor, serving *ex officio*. The primary government is, essentially, serving as the governing body of the component unit. On the other hand, the board of a public housing authority composed of the city mayor and two council members (from a total of ten) ordinarily would not be substantively the same as the city’s governing body. This criterion will rarely, if ever, apply to a state government because of the impracticality of providing sufficient representation of the state’s entire governing body.

Note: Page 4 was revised on September 28, 2015, to discuss DHIN’s substantive authority. Further, box 3 of the flowchart on page 15 was revised regarding the PG’s ability to abolish the PCU.



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component unit that provides services to more than just the primary government should also be blended if the services provided to others are insignificant to the overall activities of the component unit. Other component units that should be blended are those that exclusively, or almost exclusively, benefit the primary government by providing services indirectly; for example, a component unit that provides services on behalf of the primary government to its employees rather than directly to the primary government itself.

- c. The component unit's total debt outstanding, including leases, is expected to be repaid entirely or almost entirely with resources of the primary government. Repayment generally occurs through a continuing pledge and appropriation by the primary government to the component unit that, in turn, pledges those appropriation payments as the primary source of repayment for its debt.

Application to DCHI

Based on review and consideration of all of the guidance above, including the criteria of ¶53(a) through (c), we conclude the following:

- a. The governing body of DCHI is not substantially the same as that of DHIN. Further, there is not a financial relationship between the DHIN and DCHI.
- b. Per Article III of their Certificate of Incorporation, "The Corporation at all times shall be organized and operated exclusively ... to support and benefit the State of Delaware and the citizens thereof by furthering the efforts of the Delaware Health Care Commission... and the Delaware Health Information Network." We conclude that DCHI provides services entirely, or almost entirely, to DHIN.
- c. The debt of DCHI is not expected to be repaid with the resources of DHIN.

Applicable Guidance Excerpts as Follows:

DCHI Certificate of Incorporation – Article III

The Corporation at all times shall be organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), including specifically to support and benefit the State of Delaware and the citizens thereof by furthering the efforts of the Delaware Health Care Commission, an independent public instrumentality established pursuant to 16 Del. C. §§ 9902 *et seq.* (the "Commission"), and the Delaware Health Information Network, a not-for-profit body both politic and corporate established pursuant to 16 Del. C. §§ 10301 *et seq.* (the "DHIN"), to promote the delivery of cost-effective quality health care to all Delawareans. To the extent consistent with the foregoing, the Corporation shall seek to develop, facilitate and oversee the implementation of collaborative efforts aimed at transforming the delivery of health care services in the State of Delaware. In furtherance of the foregoing, the Corporation shall be authorized to carry out such other acts and to undertake such other

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activities as may be necessary, appropriate, or desirable in furtherance of, or in connection with, the conduct, promotion, or attainment of the foregoing purposes.

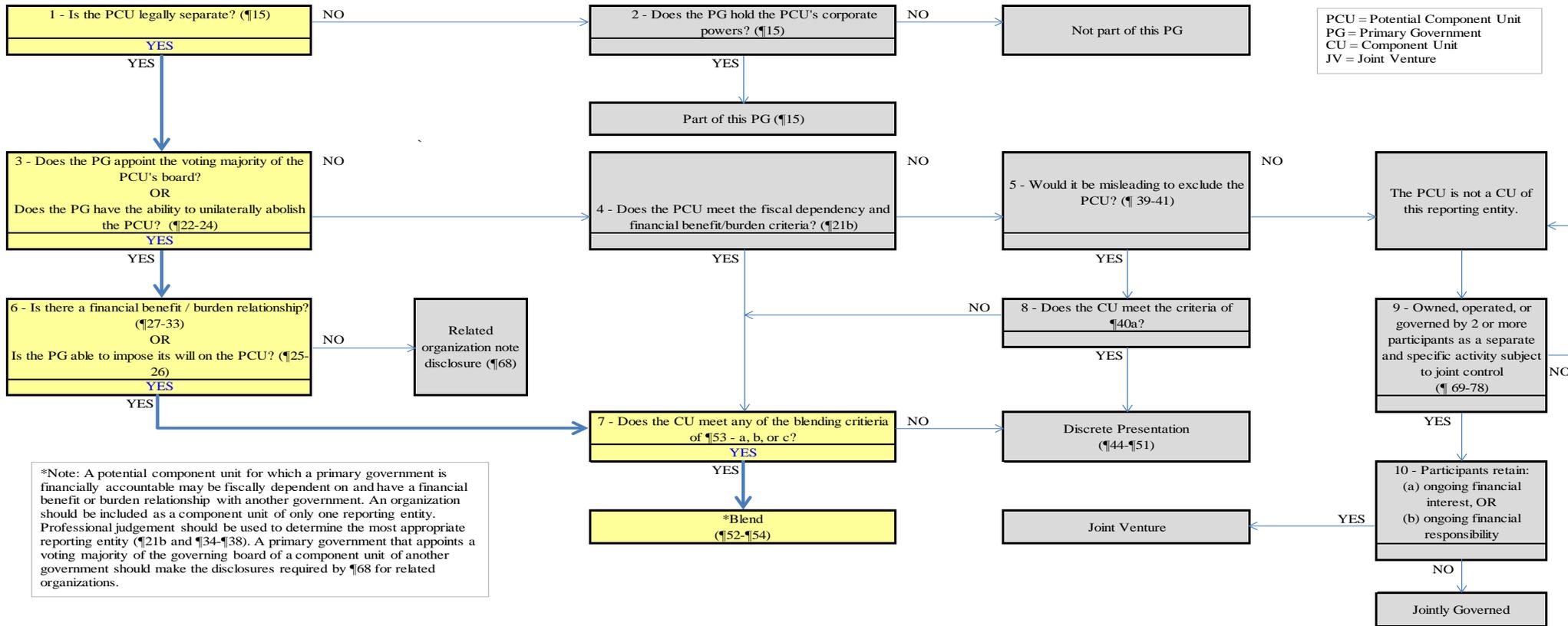
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