



Delaware Auditor of Accounts GASB Entity Determination Analysis Memo Delaware Health Information Network

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To complete our entity determination analysis, the Office of Auditor of Accounts (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(GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 –¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)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 Health Information Network (DHIN) June 30, 2012 Financial Statements*
- *16 Del C c.103, DHIN*
- *By-Laws of DHIN*

NOTE: The analysis below is based on the documents/guidance reviewed, as detailed above. Additional information or legal interpretations of the portions of the Delaware Code reviewed could impact the analysis and impact a decision on the proper accounting treatment for the entity. The decision of what the appropriate accounting treatment is for the entity, based on a review of all applicable guidance/information, is solely the responsibility of management. As such, AOA does not make such conclusions herein.

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.

Application to DHIN

The DHIN is legally separate from the State of Delaware because it is organized as a public-private partnership, which is a not-for-profit body, both politic and corporate (16 Del. C. §10301). If the DHIN is

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



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sued, the State of Delaware shall not assume or be deemed to have assumed any debt or liability of the DHIN as a result of any actions by the entity (16 Del. C. §10308). In addition, all bills, notes, checks, or other negotiable instruments of the DHIN shall be in the name of DHIN. All loans shall be authorized by the vote of the Board of Directors (By-Laws of DHIN, Article IX, Section 2). The DHIN also has the ability to exercise any and all powers available to a corporation organized pursuant to the Delaware General Corporation Law (16 Del. C. §10303 (7)).

Code Excerpts are as follows:

16 Del C. §10301. Purpose.

- (a) The purpose of this subchapter is to create a public instrumentality of this State known as the Delaware Health Information Network (“DHIN”) which is a not-for-profit body both politic and corporate, which shall have the rights, obligations, privileges and purpose to promote the design, implementation, operation and maintenance of facilities for public and private use of health care information in the State. The DHIN shall be the State’s sanctioned provider of health information exchange services.
- (b) It is intended that the DHIN be a public-private partnership for the benefit of all of the citizens of this State.
- (c) The DHIN shall ensure the privacy of patient health care information.

16 Del. C. §10308. No pledge of state credit; no assumption of liability by State.

The DHIN shall have no power, except where expressly granted by separate act of the General Assembly, to pledge the credit or to create any debt or liability of the State or of any other agency or of any political subdivision of the State, and the State shall not assume or be deemed to have assumed any debt or liability of the DHIN as a result of any actions by the DHIN.

By-Laws of DHIN – Article IX – Contracts, Checks, Deposits And Funds

2. **Loans.** No loan shall be contracted on behalf of the DHIN and no negotiable papers shall be issued in its name unless authorized by the vote of the Board of Directors. When authorized by the Board of Directors so to do, any officer or agent of the DHIN may effect approved loans and advances at any time for the DHIN from any bank, trust company or other institution or from any firm or individual, and may make, execute and deliver promissory notes, bonds, or other certificates or evidence of indebtedness of the DHIN with respect thereto. Such authority shall be confined to specific instances. All bills, notes, checks, or other negotiable instruments of the DHIN shall be in the name of the DHIN and shall be signed by an officer of the DHIN or any other person duly authorized by the Board of Directors in such person’s official representative capacity.

16 Del. C. §10303. Powers and duties.

- (7) To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law;



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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.

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 DHIN

There shall be 19 members of the DHIN Board of Directors, all of whom are appointed by the Governor (16 Del. C. §10302).

Code Excerpts are as follows:

16 Del C. §10302. Creation of Delaware Health Information Network.

- (a) There is hereby established the Delaware Health Information Network, which will be managed and operated by a Board of Directors consisting of 19 members. It is intended that the membership of the Board include individuals with various business, technology and healthcare industry skills committed to managing the Corporation in an efficient, effective and competitive manner. The Board shall be comprised of the following members:
- (1) The Director of the Office of Management and Budget or the Director's designee;
 - (2) The Chief Information Officer of the Department of Technology and Information or the Chief Information Officer's designee;
 - (3) The Secretary of the Department of Health and Social Services or the Secretary's designee;



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- (4) The Controller General or the Controller General's designee;
- (5) Six members, appointed by the Governor, including at least 1 person who shall represent the interests of medical consumers and at least 3 with experience and/or expertise in the healthcare industry;
- (6) Three members appointed by the Governor representing hospitals or health systems;
- (7) Three members appointed by the Governor representing physicians;
- (8) One member appointed by the Governor representing businesses or employers; and
- (9) Two members appointed by the Governor representing health insurers or health plans.

The Chair of the Board shall be elected from among its members by a majority of the Directors and shall serve a 3-year term. Each member shall serve a 3-year term, with such initial terms being staggered as set by the Governor and each member continuing to serve beyond such term until a successor is appointed. Any member absent without adequate reason for 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, may be removed from the Board with the approval of the Governor upon a recommendation from the Board. The Board, the Delaware Healthcare Association, the Medical Society of Delaware, Delaware State Chamber of Commerce, and other interested organizations may make nonbinding recommendations to the Governor for appointments to the Board.

- (b) No state officer or employee appointed to the Board or serving in any other capacity for the Board shall be deemed to have resigned from public office or employment by reason of such appointment or service. Members of the Board who are serving on January 1, 2011, shall continue to serve until a successor is appointed by the Governor or otherwise designated by the ex officio members.
- (c) The Board is authorized to conduct its business by a majority of a quorum. A quorum is a simple majority of the members appointed.

**6. There is not a financial benefit/burden relationship. (§ 27-33) OR
The PG cannot 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:



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- 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.

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



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accountable for that organization. The following are examples of financial burdens assumed by a primary government in support of certain organizations:

- 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.

Application to DHIN

There is not a financial benefit/burden relationship between DHIN and the State and the State cannot impose its will on the organization.



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A financial benefit/burden relationship does not exist for the following reasons:

1. DHIN has the power to collect, receive, hold, and disburse funds in accordance with the needs of the organization, including user fees set by DHIN (16 Del. C. §10303(a)(11)). As such, DHIN's financial activities are operated as enterprise funds in which costs and expenses of providing services are recovered primarily through user charges. Further, Delaware law is silent on the State's obligation to provide financial support to the organization.
2. The State shall not assume or be deemed to have assumed any debt or liability of DHIN as a result of any actions by DHIN (16 Del. C. §10308).

The State does not have the ability to impose its will on DHIN for the following reasons:

1. The Governor may only suspend or remove a Director for misfeasance, nonfeasance, malfeasance, misconduct, incompetence or non-attendance. Any Director may be recommended for removal for any of the preceding specified reasons by a 2/3 majority vote of all Directors then serving (By-Laws of DHIN, Article IV, Section 8. Removal).
2. The Finance Committee of the DHIN Board of Directors shall have the responsibility for overseeing the development of the budget. The law is silent on the State's ability to modify or approve the budget (By-Laws of DHIN, Article VIII, Section 2. Finance Committee).
3. DHIN has the power to establish reasonable fees or charges for provision of its services to nonparticipant third parties (16 Del. C. §10303 (b)(3)).

By-Laws of DHIN and Code excerpts are as follows:

16 Del C. §10303. Powers and duties.

- (a) In furtherance of the purposes of this subchapter, the DHIN shall have the following powers and duties:
 - (11) To collect, receive, hold and disburse funds in accordance with the needs of the DHIN, including user fees set by the DHIN; ...
- (b) To carry out the above duties, the DHIN is granted all incidental powers, without limitation, including the following:
 - (1) To contract with sufficient third parties and/or employ nonstate employees, without applications of the provisions of Chapters 59, 69, or 70 of Title 29 respectively;
 - (2) To establish a nonappropriated special funds account in its budget in order to receive gifts and donations;
 - (3) To establish reasonable fees or charges for provision of its services to nonparticipant third parties; and



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- (4) To sell or license any copyrighted or patented intellectual property.

16 Del C. §10308. No pledge of state credit; no assumption of liability by State.

The DHIN shall have no power, except where expressly granted by separate act of the General Assembly, to pledge the credit or to create any debt or liability of the State or of any other agency or of any political subdivision of the State, and the State shall not assume or be deemed to have assumed any debt or liability of the DHIN as a result of any actions by the DHIN.

By-Laws of DHIN – Article IV – Board of Directors

8. **Removal.** The Governor may suspend or remove a Director for misfeasance, nonfeasance, malfeasance, misconduct, incompetence or non-attendance. Any Director may be recommended to the Governor for removal for any of the preceding specified reasons by a 2/3 majority vote of all Directors then serving.

By-Laws of DHIN – Article VIII – Committees of the Board

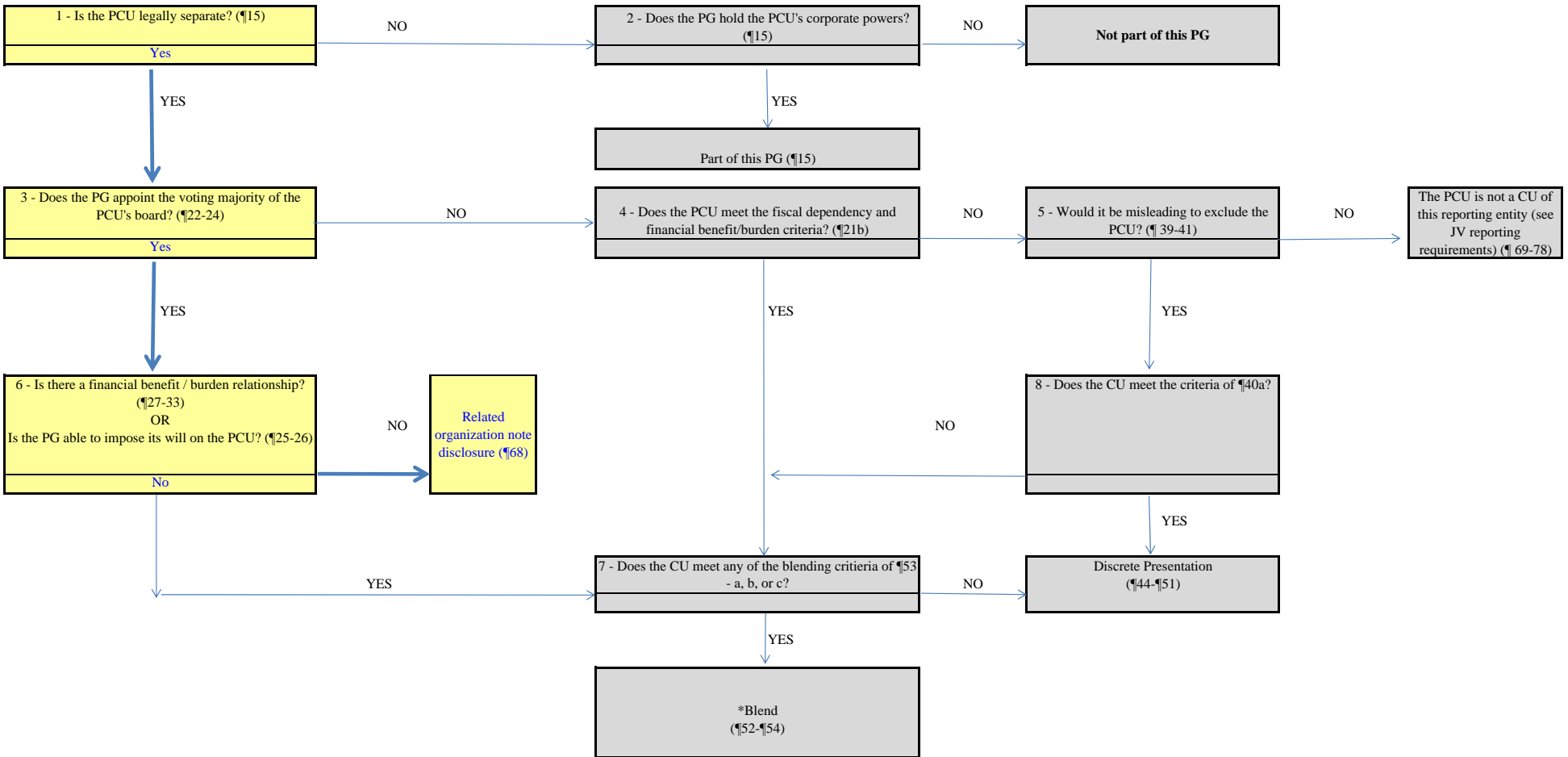
2. **Finance Committee.** There shall be a Finance Committee, which shall be presided over by the Board Treasurer and may consist of up to five (5) additional members of the Board of Directors as well as up to five (5) other individuals who have indicated an interest in the purpose and mission of the DHIN and have specific expertise to benefit the furtherance of the roles and responsibilities of the Finance Committee. All non-Director members of the Committee shall be appointed by the Board Chair with the consent of a majority of the Board.

The Finance Committee shall have responsibility for overseeing the development of the budget; ensuring accurate tracking/monitoring/accountability for funds; ensuring adequate financial controls; and planning and supporting audits of all major functions, e.g., finances, programs or organization; and coordinating with the Strategic Planning Committee. The Finance Committee will work with the Executive Director (or other DHIN employee(s) as determined appropriate by the Board) to accomplish its objectives.

**Delaware Auditor of Accounts
 GASB Determination Analysis Flowchart
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See below for GASB 61 flowchart analysis (refer to the entity determination analysis memo that expands of the guidance used to answer each question in the flowchart below).

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



*Note: A potential component unit for which a primary government is financially accountable may be fiscally dependent on and have a financial benefit or burden relationship with another government. An organization should be included as a component unit of only one reporting entity. Professional judgement should be used to determine the most appropriate reporting entity (§21b and §34-§38). A primary government that appoints a voting majority of the governing board of a component unit of another government should make the disclosures required by §68 for related organizations.

PCU = Potential Component Unit
 PG = Primary Government

CU = Component Unit
 JV = Joint Venture