

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**The North Carolina Medical Care Commission  
701 Barbour Drive  
Raleigh, North Carolina**

**MINUTES**

**CALLED MEETING OF THE EXECUTIVE COMMITTEE  
CONFERENCE TELEPHONE MEETING ORIGINATING  
FROM THE COMMISSION'S OFFICE**

**MARCH 12, 2009**

**2:00 P.M.**

**Members of the Executive Committee Present:**

Lucy Hancock Bode, Chairman  
George H.V. Cecil  
Gerald P. Cox  
Charles T. Frock  
Dr. Robert Schaaf

**Members of the Executive Committee Absent:**

Joseph D. Crocker, Vice-Chairman  
Mary L. Piepenbring

**Members of Staff Present:**

Jeff Horton, DHR Acting Director/MCC Acting Secretary  
Christopher B. Taylor, CPA, Assistant Secretary  
Nadine Pfeiffer, DHR Program Manager  
Azzie Conley, Chief, DHR Acute and Home Care Section

**Others Present:**

Kevin Dougherty, McGuire Woods, LLP  
Genia Weeks, BB&T Capital Markets  
Kim Smith, BB& T Capital Markets

1. **Purpose of Meeting**

To consider for approval the issuance of \$35,720,000 North Carolina Medical Care Commission Variable Rate Demand Hospital Revenue Refunding Bonds for Wayne Memorial Hospital and resolutions for Home Care Companion/Sitter Rules.

2. **SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF \$35,720,000 NORTH CAROLINA MEDICAL CARE COMMISSION VARIABLE RATE DEMAND HOSPITAL REVENUE REFUNDING BONDS (WAYNE MEMORIAL HOSPITAL), SERIES 2009-**  
Remarks were made by Chris Taylor, Kevin Dougherty and Kim Smith

**WHEREAS**, the North Carolina Medical Care Commission (the “Commission”) is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “Act”), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities;

**WHEREAS**, each of Wayne Health Corporation (the “Corporation”) and Wayne Memorial Hospital, Inc. (the “Hospital”) is a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina;

**WHEREAS**, the Corporation owns and the Hospital operates health care facilities located in Goldsboro, North Carolina;

**WHEREAS**, the Commission has heretofore issued its Hospital Revenue Bonds (Wayne Memorial Hospital), Series 2006 (Auction Rate Securities) (the “Series 2006 Bonds”), the proceeds of which have heretofore been loaned to the Hospital and the Corporation pursuant to a Loan Agreement, dated as of September 1, 2006, by and among the Commission, the Hospital and the Corporation;

**WHEREAS**, due to the collapse of the auction rate securities market, the Hospital and the Corporation have heretofore entered into a taxable loan transaction with Branch Banking and Trust Company, in the original principal amount of \$35,000,000 (the “Interim Loan”), the proceeds of which have been used to refund all of the Series 2006 Bonds;

**WHEREAS**, the Corporation and the Hospital have made an application to the Commission for a loan for the purposes of providing funds, together with other available funds, to (i) refinance the Interim Loan and (ii) pay (a) certain expenses incurred in connection with the authorization and issuance of the Bonds (as hereinafter defined) and (b) certain expenses incurred in connection with the Interim Loan;

**WHEREAS**, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted by the Executive Committee of the Commission on March 19, 2008, has approved the issuance of the Bonds, subject to compliance by the Corporation and the Hospital with the conditions set forth in such resolution, and the Corporation and the Hospital have complied with such conditions to the satisfaction of the Commission;

**WHEREAS**, on May 22, 2008, the Executive Committee of the Commission adopted a resolution (the “Prior Series Resolution”) entitled “SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF \$35,660,000 NORTH CAROLINA MEDICAL CARE COMMISSION VARIABLE RATE DEMAND HOSPITAL REVENUE REFUNDING BONDS (WAYNE MEMORIAL HOSPITAL), SERIES 2008”;

**WHEREAS**, subsequent to the adoption of the Prior Series Resolution, a licensure issue arose with respect to certain health care facilities owned and operated by the Corporation and the Hospital, and such licensure issue has now been resolved by the Corporation and the Hospital to the satisfaction of the Division of Health Service Regulation of the North Carolina Department of Health and Human Services;

**WHEREAS**, the Commission has determined that it is desirable to repeal the Prior Series Resolution;

**WHEREAS**, there have been presented at this meeting, draft copies of the following documents relating to the issuance of the Bonds:

(a) the Bond Purchase Agreement, to be dated the date of sale of the Bonds (the “Bond Purchase Agreement”), by and between the Local Government Commission of North Carolina (the “Local Government Commission”) and Scott & Stringfellow, LLC, trading as BB&T Capital Markets (the “Underwriter”), and approved by the Commission, the Corporation and the Hospital;

(b) the Supplemental Indenture for Obligation No. 4, to be dated as of March 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 4”), by and among the Corporation, the Hospital and Branch Banking and Trust Company, as master trustee (the “Master Trustee”), supplementing the Master Trust Indenture, dated as of September 15, 1998 (the “Master Indenture”), by and among the Corporation, the Hospital and the Master Trustee;

(c) the Trust Agreement, to be dated as of March 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “Trust Agreement”), by and between the Commission and Branch Banking and Trust Company, as bond trustee (the “Bond Trustee”), the provisions of which relate to the issuance of and security for the Bonds;

(d) the Loan Agreement, to be dated as of March 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “Loan Agreement”), by and among the Corporation, the Hospital and the Commission, pursuant to which the Commission will lend the proceeds of the Bonds to the Corporation and the Hospital;

(e) Obligation No. 4 of the Corporation and the Hospital, to be dated the date of its delivery (“Obligation No. 4”), to be issued by the Corporation and the Hospital to the Commission;

(f) the Remarketing Agreement, to be dated as of March 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “Remarketing Agreement”), by and among the Commission, the Corporation, the Hospital and Scott & Stringfellow, LLC, trading as BB&T Capital Markets, as Remarketing Agent;

(g) the Letter of Credit and Reimbursement Agreement, to be dated as of March 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “Reimbursement Agreement”), by and among the Corporation, the Hospital and Branch Banking and Trust Company (the “Bank”), pursuant to which the Bank will issue its irrevocable, direct-pay letter of credit, to be dated as of the date of delivery thereof (the “Letter of Credit”);

(h) Supplemental Indenture for Obligation No. 5, to be dated as of March 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 5”), by and among the Corporation, the Hospital and the Master Trustee;

(i) Obligation No. 5, to be dated the date of its delivery (“Obligation No. 5”), to be issued by the Corporation and the Hospital to the Bank; and

(j) the Official Statement of the Commission, dated March 12, 2009 (the “Official Statement”), relating to the Bonds;

**WHEREAS**, the Commission has determined that, taking into account historical financial performance and financial forecasts internally generated by the Corporation and the Hospital, the Corporation and the Hospital are financially responsible and capable of fulfilling their obligations under the Loan Agreement, Obligation No. 4, Supplemental Indenture No. 4, Obligation No. 5 and Supplemental Indenture No. 5; and

**WHEREAS**, the Commission has determined that the public interest will be served by the proposed financing and that, taking into account historical financial performance and financial forecasts internally generated by the Corporation and the Hospital and the Letter of Credit, adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

**NOW, THEREFORE, THE EXECUTIVE COMMITTEE OF THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:**

**Section 1.** The Commission hereby repeals the Prior Series Resolution, and the Prior Series Resolution is superseded in all respects by this Series Resolution.

**Section 2.** Capitalized words and terms used in this Series Resolution and not defined herein shall have the same meanings in this Series Resolution as such words and terms are given in the Trust Agreement and the Loan Agreement.

**Section 3.** Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of the North Carolina Medical Care Commission Variable Rate Demand Hospital Revenue Refunding Bonds (Wayne Memorial Hospital), Series 2009 in the aggregate principal amount of \$35,720,000 (the “Bonds”) dated as of their original date of issuance and maturing on October 1, 2036.

The Bonds shall be issued as fully registered bonds, initially in the denominations of \$100,000 and any integral multiple of \$5,000 in excess of \$100,000 and thereafter in denominations permitted by the provisions of the Trust Agreement. Commencing on the date of original delivery of the Bonds, the Bonds shall bear interest at an Weekly Rate calculated as provided in the Trust Agreement. Thereafter the Bonds shall bear interest as provided in the Trust Agreement. Interest on the Bonds shall be payable on each Interest Payment Date as provided in the Trust Agreement. Payment of the principal of and interest on the Bonds when due will be additionally secured by the Letter of Credit.

**Section 4.** The Bonds shall be subject to mandatory, extraordinary and optional redemption at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreement. In addition, the Bonds are subject to optional and mandatory tender for purchase at such times, under such circumstances and upon such terms and conditions as are set forth in the Trust Agreement.

**Section 5.** The proceeds of the Bonds shall be applied as provided in Section 210 of the Trust Agreement.

The Commission hereby finds that the use of the proceeds of the Bonds for the purposes described in the preamble to this Series Resolution accomplishes the public purposes set forth in the Act.

**Section 6.** The forms, terms and provisions of the Trust Agreement, the Loan Agreement and the Remarketing Agreement are hereby approved in all respects, and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreement, the Loan Agreement and the Remarketing Agreement in substantially the forms presented to this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, including but not limited to changes, modifications and deletions necessary to incorporate the final terms of the Bonds as shall be set forth in the Bond Purchase Agreement; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 7.** The form, terms and provisions of the Bond Purchase Agreement are hereby approved in all respects and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose is hereby authorized and directed to approve, by execution and delivery, the Bond Purchase Agreement in substantially the form presented to this meeting, together with such changes, modifications, insertions and deletions as the Chairman, Vice Chairman or such member of the Commission, with the advice of counsel, may deem necessary and appropriate; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 8.** The form of the Bonds set forth in the Trust Agreement is hereby approved in all respects and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such form of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be in substantially the form presented to this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary, appropriate and consistent with the Trust Agreement; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 9.** The forms, terms and provisions of Supplemental Indenture No. 4, Obligation No. 4, Supplemental Indenture No. 5, Obligation No. 5, the Reimbursement Agreement and the Letter of Credit are hereby approved in substantially the forms presented at this meeting, together with such changes, modifications and deletions as the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose, with the advice of counsel, may deem necessary and appropriate; and the execution and delivery of the Trust Agreement pursuant to Section 6 of this Series Resolution shall be conclusive evidence of the approval by the Commission of the agreements and instruments set forth in this Section 9.

**Section 10.** The Commission hereby approves the action of the Local Government Commission in awarding the Bonds to the Underwriter in the principal amount of \$35,612,840, less an Underwriter's discount of \$107,160.00.

**Section 11.** Upon their execution in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds and, upon the due and valid execution of the Bond Purchase Agreement, the Trust Agreement, Supplemental Indenture No. 4, Obligation No. 4, the Loan Agreement, the Remarketing Agreement, the Reimbursement Agreement, Supplemental Indenture No. 5, Obligation No. 5 and the Letter of Credit by the proper parties thereto, the Bond Trustee shall deliver the Bonds to the Underwriter against payment therefor, subject to the provisions of Section 210 of the Trust Agreement.

**Section 12.** The Commission hereby authorizes and approves the use and distribution of the Official Statement, in connection with the sale of the Bonds, and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose is hereby authorized to execute, on behalf of the Commission, the Official Statement; and such execution shall be conclusive evidence of the approval thereof by the Commission. The Commission hereby approves and authorizes the distribution and use of copies of the Official Statement, the Trust Agreement, the Master Indenture, Supplemental Indenture No. 4, Obligation No. 4, the Loan Agreement, the Remarketing Agreement, the Reimbursement Agreement, Supplemental Indenture No. 5, Obligation No. 5 and the Letter of Credit by the Underwriter in connection with such sale.

**Section 13.** The Depository Trust Company (“DTC”), New York, New York, is hereby appointed as the initial Securities Depository for the Bonds, with Cede & Co., as nominee of DTC, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

**Section 14.** Christopher B. Taylor, C.P.A., Assistant Secretary to the Commission, and William L. Warren, Chief of the Construction Section of the Division of Health Service Regulation, are each hereby appointed a Commission Representative as that term is defined in the Trust Agreement and the Loan Agreement, with full power to carry out the duties set forth therein.

**Section 15.** The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Assistant Secretary of the Commission are authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Trust Agreement, the Loan Agreement, the Bond Purchase Agreement, the Official Statement, the Master Indenture, Supplemental Indenture No. 4, Obligation No. 4, the Remarketing Agreement, the Reimbursement Agreement, Supplemental Indenture No. 5, Obligation No. 5 and the Letter of Credit.

**Section 16.** This Series Resolution shall take effect immediately upon its passage.

3. **Home Care Companion, Sitter, Respite Services Rules**- Remarks were made by Jeff Horton, Nadine Pfeiffer and Azzie Conley.

Chris Taylor turned the meeting over to Jeff Horton, Nadine Pfeiffer, and Azzie Conley. Nadine refreshed the Commission members that the purpose for bringing the four Home Care rules before the Executive Committee was to request permission for adoption of the rules to initiate rulemaking, publish the rules in the N.C. Register, hold a public hearing and accept public comments for 60 days and then bring the rules back to the Commission for final adoption. Nadine explained these same rules were discussed at the Executive Committee’s meeting on February 18, 2009, when the Commission members requested a rewrite of rule 13J .1503, which had been completed. Gerald Cox said he was satisfied with the language of the rewritten rule.

Gerald Cox questioned the meaning of some language in rule 13J .1502(b). Azzie Conley explained the intent and following discussion among the Commissioners and DHSR staff, substitute language was agreed upon by all to simplify the rule. The words “instructions for client care” will be deleted and the words “the service plan” will be added to paragraph (b) of the rule.

Discussion ensued between the Commissioners, Commission Chairman, Jeff Horton, and Nadine Pfeiffer regarding the wording of “non-hands-on care”, the intent of the regulations, the types of services provided by the agencies providing companion services, the definition of “hands-on care” in the current Home Care licensure rules, and current practices of both Home Care agencies and Companion, Sitter Service Agencies. Consensus was reached at “non-hands-on care” being an appropriate term for use in these new rules.

George Cecil voiced concern over rule 13J .1503 regarding the rewritten requirements for the agency director. Following discussion among the Commissioners and the Commission Chairman, there was consensus that these requirements, as outlined in the rewritten rule, were adequate.

There were no other concerns or comments voiced regarding the rules. Lucy Bode asked for a motion to adopt the rules with the rewrite to rule 13J .1502 as agreed upon during this Executive Committee meeting.

**Executive Committee Action:** Motion was made by Gerald Cox, seconded by Charles Frock and unanimously approved.

4. **10A NCAC 13J .1501 is proposed for adoption as follows:**

**SECTION .1500 – COMPANION, SITTER AND RESPITE SERVICES**

**10A NCAC 13J .1501 - DEFINITIONS**

The following definitions shall apply throughout this Section:

(1) “Companion, sitter or respite services personnel” means an individual as used in G.S. 131E-136, who spends time with or provides non hands on care services for clients.

(2) “Non Hands on Care Services” means basic home management tasks, shopping, meal preparation, transportation, companion services, socialization, medication reminders, and other services that do not require the service provider to use “hands on care” as defined in Rule. 0901 of this Subchapter and which do not require training or verification of skills by a Registered Nurse.

(3) “Respite Care” means planned or emergency care provided to an individual in order to provide temporary relief to the family caregiver.

*History Note: Authority G.S. 131E-140;*

*Eff. January 1, 2010.*

5. **10A NCAC 13J .1502 is proposed for adoption as follows:**

**10A NCAC 13J .1502 SCOPE OF SERVICES**

(a) If an agency provides In-home companion, sitter or respite services, the services shall be provided in accordance with the client's plan of care. Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply, for those clients, with the companion or sitter service level rules

contained in 10A NCAC 06A and 10A NCAC 06X which are hereby incorporated by reference with all subsequent amendments. All other agencies providing companion and sitter services shall comply with the provisions of the Rules in this Section unless exempt from these rules.

(b) Companion, sitter or respite services personnel shall follow instructions for client care written by personnel required by agency policy for the services provided.

History Note: Authority G.S. 131E-140;

Eff. January 1, 2010.

**6. 10A NCAC 13J .1503 is proposed for adoption as follows:**

**10A NCAC 13J .1503 - AGENCY MANAGEMENT AND SUPERVISION**

Notwithstanding the requirements in Rule .1001 of this Subchapter, the agency shall meet the following requirements:

(1) The agency shall designate an individual to serve as agency director. The agency director shall have the authority and responsibility for administrative direction of the agency. The agency director shall be a high school graduate, or be certified under the G.E.D. Program, and shall meet one or more of the following qualifications:

(a) shall be a health care practitioner as defined in G.S. 90-640(a); or

(b) shall have one year experience in home care, companion, sitter or respite services, or any other provider licensed pursuant to G.S. 131E or G.S. 122C.

(2) The agency shall designate a person responsible for supervising non hands on care services that is provided by the agency either directly or by contract. This individual may be the supervisor for the companion, sitter or respite services and may also serve as the agency director.

History Note: Authority G.S. 131E-140;

Eff. January 1, 2010.

**7. 10A NCAC 13J .1504 is proposed for adoption as follows:**

**10A NCAC 13J .1504 - SUPERVISION AND COMPETENCY OF COMPANION, SITTER AND RESPITE SERVICES**

In addition to the requirements in Rule .1110 of this Subchapter, an agency providing In-home companion, sitter or respite care services shall meet the following requirements:

(1) Each agency shall have documentation that its companion and sitters are competent to perform client care tasks or activities to which they are assigned. Such individuals shall



perform delegated activities under the supervision of a supervisor designated by agency policy for the services assigned.

- (2) The agency designated supervisor shall supervise the companion and sitter staff by contacting the client receiving care every three months and by making a supervisory visit to each client's place of residence at least every six months, with or without the companion and sitter's presence, and at least annually, while the companion or sitter is in the home providing services to the client.
- (3) The supervisory visit shall include a review of the client's general condition, monitoring progress and response to the services provided by the companion or sitter, and updates to the plan of care as needed.
- (4) Documentation of supervisory visits shall be maintained in the agency's records and shall contain the following:
  - (a) date of visit;
  - (b) findings of visit; and
  - (c) signature of person performing the visit.
- (5) The agency designated supervisor conducting a supervisory contact for a companion, sitter or respite provider may simultaneously conduct the quarterly case review as required in Rule .1202 of this Subchapter.
- (6) The agency directed supervisor shall be available for supervision, on-site where services are provided when necessary, during the hours that companion, sitter or respite services are provided.

*History Note: Authority G.S. 131E-140;*

*Eff. January 1, 2010.*

## **8. Adjournment**

There being no further business, the meeting was adjourned at 2:30 p.m.

Respectfully submitted,

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Christopher B. Taylor, CPA  
Assistant Secretary

Date: March 12, 2009

