

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
JULY 28, 2011
11:00 A.M.**

Members of the Executive Committee Present:

Joseph D. Crocker, Vice-Chairman
Dr. George Binder
Gerald P. Cox
Charles T. Frock
Dr. Robert E. Schaaf

Members of the Executive Committee Absent:

Lucy Hancock Bode, Chairman
Dr. Carl K. Rust

Members of Staff Present:

Drexdal R. Pratt, MCC Secretary, DHSR Director
Christopher B. Taylor, CPA, Assistant Secretary
Alice S. Creech, Bond Program Assistant

Others Present:

Robert Willis, Associate Vice-President/Corporate Controller, Duke University Health Systems
Seth Huffstetler, Robinson Bradshaw & Hinson, P.A.

1. **Duke University Health System - Durham – Christopher B. Taylor**

Executive Committee Action: A motion was made By Mr. Charles Frock, seconded by Dr. George Binder and unanimously approved with Dr. Robert Schaaf abstaining from the vote.

Resolution: The Commission grants preliminary approval to a project for Duke University Health System to effect the conversion of its outstanding North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Duke University Health System) Series 2006 Indexed Put Bonds originally issued in the amount of \$150,715,000 composed of the \$65,355,000 Series 2006A, \$65,360,000 Series 2006B and \$20,000,000 Series 2006C. The Bonds are currently outstanding in the amount of \$145,715,000 (\$63,205,000 Series 2006A, \$63,210,000 Series 2006B and \$19,300,000 Series 2006C). The Bonds will be converted from the indexed put bond mode to a direct purchase mode (non-bank qualified mode). The Bonds are being purchased by Bank of America and will carry an interest rate of 67% of one month LIBOR plus 48 basis points during the initial put period of seven years. The project is in accordance with an application received as follows:

ESTIMATED SOURCES OF FUNDS

Conversion of Series 2006 Bonds	\$145,715,000
Cash and negotiable securities from reserves	<u>145,000</u>
Total Sources	\$145,860,000

ESTIMATED USES OF FUNDS

Conversion of Series 2006 Bonds to direct purchase mode	\$145,715,000
Corporation counsel	26,500
Bond counsel	75,000
Trustee fee	4,000
Bank fees	14,500
Bank counsel	<u>25,000</u>
Total Expenditures	\$145,860,000

Tentative approval is given with the understanding that the governing board of Duke University Health Systems, Inc. accepts the following conditions:

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.
2. Any required certificate of need must be in effect at the time of the issuance or conversion of the bonds or notes.

3. Financial feasibility must be determined prior to the issuance or conversion of bonds.
4. The project must, in all respects, meet requirements of §G.S. 131A (Health Care Facilities Finance Act).
5. The Executive Committee of the Commission is delegated the authority to approve the issuance or conversion of bonds for this project and may approve the issuance or conversion of such greater principal amount of the loan as shall be necessary to finance the project; provided, however, that the amount set forth above shall not be increased by more than ten percent (10%).
6. The bonds or notes shall be sold or converted in such a manner and upon such terms and conditions as will, in the sole judgment of the Executive Committee of the Commission, result in the lowest cost to the facility and its patients.
7. The borrower will provide the Commission annually a copy of the Advocacy Needs Data Initiative (ANDI) form it files with the North Carolina Hospital Association (NCHA) in accordance with a resolution passed by the Commission on February 9, 2007 adopting the NCHA Community Benefits reporting format and methodology for hospitals reporting to the Commission.
8. All health care facilities and services directly or indirectly owned or controlled by the health care organization, including physician practices, shall be available to Medicare and Medicaid patients with no limitations imposed as a result of the source of reimbursement.
9. If public approval of the bonds is required for the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended (“Section 147(f)”), this tentative approval shall constitute the recommendation of the Commission that the Governor of the State of North Carolina (the “Governor”) approve the issuance of such bonds, subject to the satisfaction of the requirements of Section 147(f) concerning the holding of a public hearing prior to the submission of such recommendation to the Governor.

Based on information furnished by applicant, the project is -

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|--|-------------------------------------|-----|--------------------------|----|-------------------------------------|-----|
| 1. Financially feasible | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A |
| 2. Construction and related costs are reasonable | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> | N/A |

Duke University Health System, Inc. and Affiliates FYE 6/30/10

Operating Income	\$209,114,000
Increase (decrease) in unrestricted net assets	\$168,819,000
Increase (decrease) in net assets	\$180,327,000
Net cash provided by operating activities	\$269,458,000
Net increase (decrease) in cash and cash equivalents	(\$12,575,000)

Duke University Health System Community Benefits per ANDI Report FYE 6/30/2010

Community Benefits	\$246,253,716
Bad Debt	<u>11,991,229</u>
Total	\$258,244,945

Long Term Debt Coverage Ratio (Based on MADS)

FYE 2010 Actual	8.58
2011 Forecasted	6.95
2012 Forecasted	5.71
2013 Forecasted	6.03

- Resolution Approving Amendments to the Trust Agreements for the North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Duke University Health System) Series 2006, consisting of Series 2006A, Series 2006B and Series 2006C, to Add a Right to Purchase in Lieu of Redemption** – Remarks were made by Seth Huffstetler

Executive Committee Action: A motion was made By Mr. Charles Frock, seconded by Dr. George Binder and unanimously approved with Dr. Robert Schaaf abstaining from the vote.

WHEREAS, on November 15, 2006, the North Carolina Medical Care Commission (the “Commission”), a commission of the Department of Health and Human Services of the State of North Carolina, issued \$150,715,000 aggregate principal amount of its Health Care Facilities Revenue Bonds (Duke University Health System) Series 2006, consisting of (i) \$65,355,000 aggregate principal amount of Series 2006A (the “2006A Bonds”), \$63,205,000 principal amount of which remains outstanding, (ii) \$65,360,000 aggregate principal amount of Series 2006B (the “2006B Bonds”), \$63,210,000 principal amount of which remains outstanding and

(iii) \$20,000,000 aggregate principal amount of Series 2006C (the “2006C Bonds” and collectively with the 2006A Bonds and the 2006B Bonds, the “Bonds”), \$19,300,000 principal amount of which remains outstanding; and

WHEREAS, the Bonds were issued pursuant to three Trust Agreements, each dated as of November 1, 2006 (each, a “Trust Agreement” and collectively, the “Trust Agreements”), and each between the Commission and The Bank of New York Trust Company, N.A., now known as The Bank of New York Mellon Trust Company, N.A. (the “Bond Trustee”); and

WHEREAS, the Commission has loaned the proceeds from the sale of the Bonds to Duke University Health System, Inc. (the “Corporation”) pursuant to the Loan Agreement for each series of the Bonds, each dated as of November 1, 2006, between the Commission and the Corporation; and

WHEREAS, Section 1101 of each of the Trust Agreements permits the Commission and the Bond Trustee, without the consent of any Holder (as defined in each Trust Agreement), to enter into agreements supplemental to each of the Trust Agreements to make any change that is determined by the Bond Trustee to be not materially adverse to the interests of the Holders; and

WHEREAS, the Corporation has requested that the provisions in Article III of each of the Trust Agreements be amended to permit the Bonds to be purchased in lieu of redemption; and

WHEREAS, there has been presented at this meeting a draft of the form of First Supplemental Trust Agreement between the Commission and the Bond Trustee that will amend each of the Trust Agreements to permit the Bonds to be purchased in lieu of redemption;

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE:

Section 1. Capitalized terms used in this resolution that are not defined in this resolution shall have the meanings given to them in the Trust Agreements.

Section 2. The form, terms and provisions of the First Supplemental Trust Agreement, in the form presented at this meeting, 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 Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver with respect to each series of the Bonds a First Supplemental Trust Agreement in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization thereof by the Commission.

Section 3. The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission, the Secretary 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, agreements or other instruments, as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated herein.

Section 4. This resolution shall take effect immediately upon its passage.

3. Executive Committee Closed Session

A motion was made by Dr. George Binder to enter into a closed Executive Session for the purpose of discussing the Samaritan Housing issue. Mr. Drexdal Pratt left the room and the other parties left the call. A motion was made by Dr. George Binder to come out of the closed Executive Session and was seconded by Mr. Charles Frock.

4. Adjournment

There being no further business, the meeting was adjourned at 11:14 a.m.

Respectfully Submitted,

Christopher B. Taylor, C.P.A.
Assistant Secretary