

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

**MEDICAL CARE COMMISSION QUARTERLY MEETING
DIVISION OF HEALTH SERVICE REGULATION
809 RUGGLES DRIVE, RALEIGH NC 27603
EDGERTON BUILDING
CONFERENCE ROOM – 026A**

OR

TEAMS Video Conference: [Click here to join the meeting](#)

OR

Dial-IN: 1-984-204-1487 / Passcode: 908 623 771

**February 10, 2023 (Friday)
9:00 a.m.**

Agenda

I. Meeting Opens – Roll Call

II. Chairman’s Comments.....Dr. John Meier

III. Public Meeting Statement.....Dr. John Meier

This meeting of the Medical Care Commission is open to the public but is not a public hearing. Therefore, any discussion will be limited to members of the Commission and staff unless questions are specifically directed by the Commission to someone in the audience.

IV. Ethics Statement.....Dr. John Meier

The State Government Ethics Act requires members to act in the best interest of the public and adhere to the ethical standards and rules of conduct in the State Government Ethics Act, including the duty to continually monitor, evaluate, and manage personal, financial, and professional affairs to ensure the absence of conflicts of interest.

V. North Carolina Board of Ethics Letters.....Dr. John Meier

North Carolina Board of Ethics Letters were received for the following newly appointed member and reappointed members:

- Dr. David C. Mayer (**See Exhibit A/1**)
- Mrs. Eileen C. Kugler – *Reappointment*
- Dr. Robert E. Schaaf – *Reappointment*

VI. Resolution of Appreciation for Former Member.....Dr. John Meier

- Stephen T. Morton (See Exhibit D)

VII. Approval of Minutes (Action Items).....Dr. John Meier

- November 4, 2022 (Medical Care Commission Quarterly Meeting) (See Exhibit A)
- November 2, 2022 (Executive Committee) (See Exhibit B/1)
- November 15, 2022 (Executive Committee) (See Exhibit B/2)
- December 7, 2022 (Executive Committee) See Exhibit B/3)

VIII. Bond Program Activities.....Geary W. Knapp

A. Quarterly Report on Bond Program (See Exhibit B)

B. Notices & Non-Action Items & Technical Rule Changes

November 10, 2022 – Galloway Ridge Series 2014A (Partial Redemption)

- Par Value Redeemed: \$1,195,000
- Funds provided by: Public Finance Authority (Wisconsin)

December 1, 2022 – Wake Forest Baptist Health Series 2019B (Conversion)

- Par Value Outstanding: \$105,905,000
- Converted from Public Offering to Bank Placement

February 9, 2022 – Cone Health Series 2001AB; 2004A; 2011B; 2013ABC (Redemption)

- Par Value Redeemed: \$34,155,000 (Series 2001A)
\$34,155,000 (Series 2001B)
\$41,250,000 (Series 2004A)
\$36,210,000 (Series 2011B)
\$58,775,000 (Series 2013A)
\$ 2,765,000 (Series 2013B)
\$ 1,810,000 (Series 2013C)
- Funds provided by: Public Finance Authority (Wisconsin)

C. DHSR Update.....S. Mark Payne

IX. Bond Project (Action Item)

A. EveryAge (Hickory).....Geary W. Knapp

Resolution: The Commission grants preliminary approval to a transaction for EveryAge to provide funds, to be used, together with other available funds to construct the following:

- 6-story / 95 unit rental independent living community (BellaAge)
- Each unit approximately 1,081 square feet per unit
- Prospective residents will enter into a rental contract with services

ESTIMATED SOURCES OF FUNDS

Principal amount of bonds to be issued	\$38,280,000
Principal amount of bonds to be issued	<u>2,200,000</u>
Total Sources of Funds	\$40,480,000

ESTIMATED USES OF FUNDS

Construction Costs	\$28,002,434
Land Acquisition Cost	2,365,000
Site Utility Development	35,000
Architect Fees	900,000
Contingency	272,566
Moveable Equipment	450,000
Developer Fee	625,000
Prepay Loan	5,000,000
Marketing Costs	500,000
Bond Interest During Construction	1,600,000
Underwriter’s Placement Fee	267,960
Feasibility Fee	20,000
Corporate Counsel Fee	30,000
Bond Counsel Fee	75,000
Trustee & Trustee Counsel Fee	15,000
DHSR Fee	20,000
LGC Fee	8,750
Bank Commitment Fee	95,700
Bank Counsel Fee	50,000
Appraisal	30,000
Swap Advisor Fee	65,000
Mortgage Related Costs	42,590
Virginia Special Counsel Fee	<u>10,000</u>
Total Uses	\$40,480,000

Tentative approval is given with the understanding that the governing board of EveryAge accepts the following conditions:

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.
2. Final financial feasibility must be determined prior to the issuance of bonds.
3. The project must, in all respects, meet requirements of G.S. § 131A (Health Care Facilities Finance Act).
4. The Executive Committee of the Commission is delegated the authority to approve the issuance of bonds for this project and may approve the issuance 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%).

5. The bonds or notes shall be sold 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 residents.
6. 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.
7. The borrower will comply with the Commission’s Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRCs as adopted.
8. The borrower will furnish, prior to the sale of or issuance of the bonds or notes or execution of the leases, evidence that it is in compliance with the covenants of all of its outstanding Medical Care Commission debt.

Based on information furnished by applicant, the project is

- | | | | | | | |
|--|--------------|-----|---------------|----|---------------|-----|
| 1. Financially feasible | <u> ✓ </u> | Yes | <u> </u> | No | <u> </u> | N/A |
| 2. Construction and related costs are reasonable | <u> ✓ </u> | Yes | <u> </u> | No | <u> </u> | N/A |

***See Exhibit E for Compliance Information and Selected Application Information**

X. New Business (Discuss Rules & Fiscal Note) (Action Items)

A. Rules for Initiating Rulemaking Approval

1. **Medical Care Commission Rules**.....N. Pfeiffer
Amendment of one rule
 - Rule: 10A NCAC 13A .0201

(See Exhibits C thru C/2)
2. **Adult Care Home/Family Care Home Rules**..N. Pfeiffer & M. Lamphere
Readoption of 4 rules following Periodic Review of rules (Phase 4);
Amendment of 1 rule

- Rules: 10A NCAC 13F .0702, .1307 & 10A NCAC 13G .0504, .0705, .1301

(See Exhibits C/3 thru C/5)

XI. Refunding of Commission Bond Issues (Action Item).....Geary W. Knapp

Recommended:

WHEREAS the bond market is in a period of generally fluctuating interest rates, and

WHEREAS, in the event of decline of rates during the next quarter, refunding of certain projects could result in significant savings in interest expense thereby reducing the cost of health care to patients, and

WHEREAS, the Commission will not meet again until May 12, 2023 in Raleigh, North Carolina;

THEREFORE, BE IT RESOLVED; that the Commission authorize its Executive Committee to approve projects involving the refunding of existing Commission debt and amend previously approved projects to include refunding components only between this date and May 12, 2023. Refunding projects may include non-Commission debt, and non-material, routine capital improvement expenditures.

XII. Meeting Adjournment

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

**MEDICAL CARE COMMISSION QUARTERLY MEETING
DIVISION OF HEALTH SERVICE REGULATION
809 RUGGLES DRIVE, RALEIGH NC 27603
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TEAMS Video Conference: [Click here to join the meeting](#)

OR

Dial-IN: 1-984-204-1487 / Passcode: 610 014 187#

November 4, 2022 (Friday)

9:00 a.m.

MINUTES

I. Meeting Attendance

MEMBERS PRESENT	MEMBERS ABSENT
John J. Meier, IV, M.D., Chairman Kathy G. Barger Sally B. Cone John A. Fagg, M.D. Bryant C. Foriest Eileen C. Kugler, RN, MSN, MPH, FNP Robert E. Schaaf, M.D. Lisa A. Tolnitch, M.D. Neel G. Thomas, M.D. Jeffrey S. Wilson <u>DIVISION OF HEALTH SERVICE REGULATION STAFF</u> Mark Payne, Director, DHSR/Secretary, MCC Emery Milliken, Deputy Director, DHSR Geary W. Knapp, JD, CPA, Assistant Secretary, MCC Bethany Burgon, Attorney General's Office Jeff Harms, Acting Construction Chief, DHSR Azzie Conley, Chief, Acute & Home Care Licensure Greta Hill, Assistant Chief, Acute & Home Care Licensure Megan Lamphere, Chief, Adult Care Licensure Section	Joseph D. Crocker, Vice-Chairman Paul R.G. Cunningham, M.D. Linwood B. Hollowell, III Ashley H. Lloyd, D.D.S. Karen E. Moriarty Stephen T. Morton

Libby Kinsey, Assistant Chief, Adult Care Licensure Section
 Tameka Riggsbee, Director of Programs, ACLS
 Crystal Abbott, Auditor, MCC
 Alice Creech, Executive Assistant, MCC

OTHERS PRESENT

Brent Conklin, Twin Lakes
 Tad Melton, Ziegler
 Adam Sholar, NC Health Care Facilities Association

II. Chairman’s Comments.....Dr. John Meier

The Chairman thanked the Commission and staff for their attendance, and said the number one priority is the patient and the citizens of North Carolina.

III. Public Meeting Statement.....Dr. John Meier

This meeting of the Medical Care Commission is open to the public but is not a public hearing. Therefore, any discussion will be limited to members of the Commission and staff unless questions are specifically directed by the Commission to someone in the audience.

IV. Ethics Statement.....Dr. John Meier

The State Government Ethics Act requires members to act in the best interest of the public and adhere to the ethical standards and rules of conduct in the State Government Ethics Act, including the duty to continually monitor, evaluate, and manage personal, financial, and professional affairs to ensure the absence of conflicts of interest.

V. North Carolina Board of Ethics Letters.....Dr. John Meier

North Carolina Board of Ethics letters were received for the following members and were noted for a potential conflict of interest:

- **Kathy G. Barger (See Exhibit A/2)**
- **Sally B. Cone (See Exhibit A/3)**
- **Joseph D. Crocker (See Exhibit A/4)**
- **Bryant C. Foriest (See Exhibit A/5)**
- **Linwood B. Hollowell, III (See Exhibit A/6)**
- **Eileen C. Kugler (See Exhibit A/7)**
- **Ashley H. Lloyd, D.D.S. (See Exhibit A/8)**
- **John J. Meier, IV, M.D. (See Exhibit A/9)**
- **Neel G. Thomas, M.D. (See Exhibit A/10)**
- **Jeffrey S. Wilson (See Exhibit A/11)**

VI. Approval of Minutes (Action Items).....Dr. John Meier

- **August 12, 2022** (Medical Care Commission Quarterly Meeting) (See Exhibit A)
- **August 18, 2022** (Executive Committee) (See Exhibit B/1)
- **October 7, 2022** (Medical Care Commission Special Meeting) (See Exhibit A/1)

COMMISSION ACTION: *A motion was made to approve the minutes by Mrs. Kathy Barger, seconded by Mr Bryant Foriest, and unanimously approved.*

VII. Bond Program Activities.....Geary W. Knapp

- A. Quarterly Report on Bond Program (See Exhibit B)**
- B. Notices & Non-Action Items & Technical Rule Changes**

August 1, 2022 – FirsHealth of the Carolinas Series 2017A (Conversion)

- Par Value Outstanding: \$38,090,000
- New Interest Rate

August 16, 2022 – FirsHealth of the Carolinas Series 2017C (Conversion)

- Par Value Outstanding: \$44,860,000
- New Interest Rate and New Holding Period

September 1, 2022 – FirsHealth of the Carolinas Series 2017D (Conversion)

- Par Value Outstanding: \$28,590,000
- New Interest Rate and New Holding Period

September 20, 2022 – FirsHealth of the Carolinas Series 2017B (Conversion)

- Par Value Outstanding: \$29,630,000
- New Interest Rate and New Bank Holder

November 1, 2022 – EveryAge Series 2021B (Refunding to Tax-Exempt)

- Par Value Outstanding: \$3,835,000
- Taxable Series 2021B becomes Tax-Exempt Series 2022B

VIII. Bond Project (Action Item)

- A. Lutheran Retirement Ministries (Burlington).....Geary W. Knapp**

Resolution: The Commission grants preliminary approval for a Lutheran Retirement Ministries of Alamance County (dba Twin Lakes Retirement Community) project to provide funds to be used, together with other available funds, to *construct* the following:

- Stockton Apartments
 - 5 story building with enclosed parking

- 48 total units
- Chapel
- Community Building for apartment residents
- Connector structure

Capital expenditures for the new construction shall be included as listed below, all in accordance with a preliminary application, plans and specifications and participation as follows:

ESTIMATED SOURCES OF FUNDS

Principal amount of bonds to be issued	\$ 58,018,954
Total Sources of Funds	\$ 58,018,954

ESTIMATED USES OF FUNDS

Construction Contracts	\$ 52,579,000
Architect Fees	900,000
Contingency	521,000
Total Moveable Equipment	1,000,000
Bond Interest During Construction	2,246,574
Underwriter’s Placement Fee	232,080
Corporate Counsel Fee	83,000
Bond Counsel Fee	95,000
Swap Advisor Fee	75,000
Trustee Fee	17,500
DHSR Fee	40,000
LGC Fee	8,750
Bank Origination Fee	116,050
Bank Counsel Fee	50,000
Other (Appraisals, Surveys, etc.)	<u>55,000</u>
Total Uses	\$ 58,018,954

Tentative approval is given with the understanding that the governing board of Lutheran Retirement Ministries of Alamance County (dba Twin Lakes Retirement Community) 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 of the bonds or notes.
3. Final financial feasibility must be determined prior to the issuance 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 of bonds for this project and may approve the issuance 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 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 residents.
7. 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.
8. The borrower will comply with the Commission’s Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRCs as adopted.
9. The borrower will furnish, prior to the sale of or issuance of the bonds or notes or execution of the leases, evidence that it is in compliance with the covenants of all of its outstanding Medical Care Commission debt.

Based on information furnished by applicant, the project is:

Financially Feasible: YES

Construction & Related Costs are Reasonable: YES

(See Exhibit F for selected application information, fee schedule and Bond Sale Approval Form)

(See Exhibit G for presentation)

COMMISSION ACTION: *A motion was made to approve the resolution by Mrs. Eileen Kugler, seconded by Mrs. Kathy Barger, and unanimously approved with recusals of Dr. John Fagg, and Dr. John Meier.*

IX. Old Business (Discuss Rules, Fiscal Note, & Comments Submitted) (Action Item)

A. Rules for Adoption

1. **Adult/Family Care Home Rules**.....N. Pfeiffer & M. Lamphere
 Readoption of 2 rules following Periodic Review (Phase 3.5)

- Rules: 10A NCAC 13F .0904 & 10A NCAC 13G .0904

(See Exhibits C thru C/3)

COMMISSION ACTION: *A motion was made to approve the Adult/Family Care Home Rules by Mrs. Eileen Kugler, seconded by Mr. Bryant Foriest, and unanimously approved.*

X. New Business (Discuss Rules & Fiscal Note) (Action Items)

A. Petition for Rulemaking

- 1. Nursing Pool Licensure.....N. Pfeiffer, A. Conley & Greta Hill**
Approve or deny petition received

(See Exhibits D thru D/3)

COMMISSION ACTION: *A motion was made to approve and move forward with rulemaking for items #6 and #8 from the petition and deny the remaining items in the petition by Mrs. Sally Cone, seconded by Mrs. Kathy Barger, and unanimously approved.*

XI. Schedule of 2023 MCC Quarterly Meetings for Adoption (Action Item).....Dr. Meier

- February 9-10, 2023
- May 11-12, 2023
- August 10-11, 2023
- November 2-3, 2023

COMMISSION ACTION: *A motion was made to adopt the Quarterly Meeting Schedule by Mrs. Eileen Kugler, seconded by Mr. Bryant Foriest, and unanimously approved*

XII. Appointment of Two Executive Committee Members (Action Item)..... Dr. John Meier

In accordance with 10A NCAC 13A.0101, the NCMCC’s Chairman shall appoint two members to the Executive Committee to serve for a term of two years or until expiration of his/her regularly appointed term. No member of the Executive Committee, except the Chairman and Vice-Chairman, shall serve more than two two-year terms in succession. The terms are scheduled to expire 12/31/2024.

COMMISSION ACTION: *Dr. John Meier appointed Mrs. Kathy Barger and reappointed Mrs. Sally Cone to serve two-year terms on the Executive Committee (ending 12/31/2024). A motion was made to approve the Executive Committee appointments by Mrs. Eileen Kugler, seconded by Mr. Bryant Foriest, and unanimously approved.*

XIII. Election of Vice-Chairman (Action Item).....Dr. John Meier

In accordance with N.C.G.S. § 143B-168, the NCMCC shall elect from the members a Vice-Chairman to serve for a term of two years (ending 12/31/2024) or until the expiration of his/her regularly appointed term.

Dr. Meier nominated Mr. Joe Crocker to serve another two-year term as Vice-Chairman (ending 12/31/2024). No other nominations were received.

COMMISSION ACTION: *A motion was made to approve the nomination of Mr. Joe Crocker by Dr. John Fagg, seconded by Mrs. Kathy Barger, and unanimously approved.*

XIV. Refunding of Commission Bond Issues (Action Item).....Geary W. Knapp

Recommended:

WHEREAS the bond market is in a period of generally fluctuating interest rates, and

WHEREAS, in the event of decline of rates during the next quarter, refunding of certain projects could result in significant savings in interest expense thereby reducing the cost of health care to patients, and

WHEREAS, the Commission will not meet again until February 10, 2023 in Raleigh, North Carolina;

THEREFORE, BE IT RESOLVED; that the Commission authorize its Executive Committee to approve projects involving the refunding of existing Commission debt and amend previously approved projects to include refunding components only between this date and February 10, 2023. Refunding projects may include non-Commission debt, and non-material, routine capital improvement expenditures.

COMMISSION ACTION: *A motion was made to authorize the Executive Committee to approve projects involving the refunding of existing debt between this date and February 10, 2023 by Mrs. Sally Cone, seconded by Mrs. Eileen Kugler, and unanimously approved.*

XV. Closed Session.....Dr. John Meier

COMMISSION ACTION: *A motion was made by Mrs. Eileen Kugler to enter in to a closed session, seconded by Mrs. Sally Cone, and unanimously approved.*

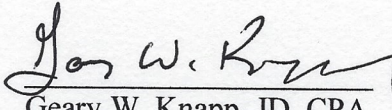
COMMISSION ACTION: *A motion was made to come out of a closed session by Dr. Robert Schaaf, seconded by Mrs. Sally Cone, and unanimously approved.*

COMMISSION ACTION: *A motion was made by Mrs. Eileen Kugler to move forward with rulemaking on the Hospital Licensure Rules (See EXHIBIT E), seconded by Mrs. Sally Cone, and unanimously approved.*

XVI. Meeting Adjournment.....Dr. John Meier

There being no further business the meeting was adjourned at 10:52 a.m.

Respectfully Submitted,


Geary W. Knapp, JD, CPA
Assistant Secretary



STATE ETHICS COMMISSION

**POST OFFICE BOX 27685
RALEIGH, NC 27611
PHONE: 919-814-3600**

Via Email

October 17, 2022

The Honorable Roy A. Cooper III
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

**Re: Evaluation of Statement of Economic Interest Filed by Dr. David C. Mayer
Prospective Appointee to the North Carolina Medical Care Commission**

Dear Governor Cooper:

Our office has received **Dr. David C. Mayer's** 2022 Statement of Economic Interest as a prospective appointee to the **North Carolina Medical Care Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 138A-28(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 138A-13.

We did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The North Carolina Medical Care Commission was created to adopt statewide plans for the construction and maintenance of public and private hospitals, medical centers, and related facilities, including the approval of projects in the amounts of grants-in-aid from funds by both federal and state governments. The Commission is charged with administering the Health Care Facilities Finance Act (N.C.G.S. Chapter 131A) and issues bonds pursuant thereto. In addition, the Commission has the authority to adopt rules, regulations, and standards for the different types of hospitals to be licensed, the operation of nursing homes, the inspection, licensure, and operation of adult care homes, including personnel requirements of staff employed in adult care homes. The Commission also adopts rules providing for the accreditation of facilities that perform mammography and other procedures.

The Act establishes ethical standards for certain public servants and prohibits public servants from: (1) using their positions for their financial benefit or for the benefit of their extended family or business, N.C.G.S. § 138A-31; and (2) participating in official actions from which they or certain associated persons might receive a reasonably foreseeable financial benefit, N.C.G.S. § 138A-36(a). The Act also requires public servants to take appropriate steps to remove themselves from proceedings in which their impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a participant in those proceedings. N.C.G.S. § 138A-36(c).

Dr. Mayer would fill the role of an at-large member on the Commission. He is employed by the UNC School of Medicine which may seek financing through the Commission. Therefore, Dr. Mayer has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues involving the UNC School of Medicine come before the Commission for official action.

In addition to the conflict standards noted above, the Act prohibits public servants from accepting gifts from (1) a lobbyist or lobbyist principal, (2) a person or entity that is seeking to do business with the public servant's agency, is regulated or controlled by that agency, or has financial interests that might be affected by their official actions, or (3) anyone in return for being influenced in the discharge of their official responsibilities. N.C.G.S. § 138A-32. Exceptions to the gifts restrictions are set out in N.C.G.S. § 138A-32(e).

When this letter cites an actual or potential conflict of interest under N.C.G.S. § 138A-24(e), the conflict must be recorded in the minutes of the applicable board and brought to the membership's attention by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act. N.C.G.S. § 138A-15(c).

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 138A-14. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,



Mary Roerden, SEI Unit
State Ethics Commission

cc: Dr. David C. Mayer
Attachment: Ethics Education Guide

NC Medical Care Commission
Quarterly Report on **Outstanding Debt** (End: 2nd Quarter FYE 2023)

	FYE 2022	FYE 2023
Program Measures		
Outstanding Debt	Ending: 6/30/2022 \$5,062,795,270	Ending: 12/31/2022 \$4,947,455,549
Outstanding Series	117¹	121¹
Detail of Program Measures		
Outstanding Debt per Hospitals and Healthcare Systems	Ending: 6/30/2022 \$3,560,138,783	Ending: 12/31/2022 \$3,463,692,729
Outstanding Debt per CCRCs	\$1,502,656,487	\$1,483,762,820
Outstanding Debt per Other Healthcare Service Providers	\$0	\$0
Outstanding Debt Total	\$5,062,795,270	\$4,947,455,549
Outstanding Series per Hospitals and Healthcare Systems	59	59
Outstanding Series per CCRCs	58	62
Outstanding Series per Other Healthcare Service Providers	0	0
Series Total	117	121
Number of Hospitals and Healthcare Systems with Outstanding Debt	11	11
Number of CCRCs with Outstanding Debt	18	18
Number of Other Healthcare Service Providers with Outstanding Debt	0	0
Facility Total	29	29

Exhibit B (Outstanding Balance)

Note 1: For FYE 2023, NCMCC has closed 10 **Bond Series**. Out of the closed Bond Series: 5 were conversions, 4 were new money projects, 0 combination of new money project and refunding, and 1 were refundings. The Bond Series outstanding from FYE 2022 to current represents all new money projects, refundings, conversions, and redemptions.

GENERAL NOTES: Facility Totals represent a parent entity total and do not represent each individual facility owned/managed by the parent entity. CCRCs are licensed by the NC Department of Insurance. "Other Healthcare Service Providers" would include nursing homes, rehabilitation facilities, assisted living, blood donation centers, and hospice facilities. The following parent entities represent the current "other healthcare service providers" with outstanding NC MCC debt: NONE AT THIS TIME

NC Medical Care Commission

Quarterly Report on **History** of NC MCC Finance Act Program (End: 2nd Quarter FYE 2023)

	FYE 2022	FYE 2023
Program Measures		
Total PAR Amount of Debt Issued	Ending: 6/30/2022 \$28,681,980,327	Ending: 12/31/2022 \$28,938,269,475
Total Project Debt Issued (excludes refunding/conversion proceeds) ¹	\$13,517,222,552	\$13,521,081,700
Total Series Issued	694	705
Detail of Program Measures		
PAR Amount of Debt per Hospitals and Healthcare Systems	Ending: 6/30/2022 \$22,868,969,855	Ending: 12/31/2022 \$23,116,044,855
PAR Amount of Debt per CCRCs	\$5,438,715,242	\$5,447,929,390
PAR Amount of Debt per Other Healthcare Service Providers	\$374,295,230	\$374,295,230
Par Amount Total	\$28,681,980,327	\$28,938,269,475
Project Debt per Hospitals and Healthcare Systems	\$10,273,019,674	\$10,273,019,674
Project Debt per CCRCs	\$2,997,188,964	\$3,001,048,112
Project Debt per Other Healthcare Service Providers	\$247,013,915	\$247,013,915
Project Debt Total	\$13,517,222,552	\$13,521,081,700
Series per Hospitals and Healthcare Systems	428	433
Series per CCRCs	227	233
Series per Other Healthcare Service Providers	39	39
Series Total	694	705
Number of Hospitals and Healthcare Systems issuing debt	99	99
Number of CCRCs issuing debt	41	41
Number of Other Healthcare Service Providers issuing debt	46	46
Facility Total	186	186

Exhibit B (History)

Note 1: Project Debt excludes bond proceeds that directly refunded prior NCMCC outstanding issues and conversion par amounts. Project Debt is an accumulation of all new project money, issuance costs (including issuance costs for refundings/conversions (if any)), and refundings of non-NCMCC debt.

GENERAL NOTES: Facility Totals represent each individual facility and do not represent parent entity totals. CCRCs are licensed by the NC Department of Insurance. "Other Healthcare Service Providers" would include nursing homes, rehabilitation facilities, assisted living, blood donation centers, and hospice facilities.

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

**The North Carolina Medical Care Commission
809 Ruggles Drive
Raleigh, North Carolina**

MINUTES

**CALLED MEETING OF THE EXECUTIVE COMMITTEE
CONFERENCE TELEPHONE MEETING ORIGINATING
FROM THE COMMISSION'S OFFICE
NOVEMBER 2, 2022
11:30 A.M.**

Members of the Executive Committee Present:

John J. Meier, IV, M.D., Chairman
Joseph D. Crocker, Vice-Chairman
Sally B. Cone
Bryant C. Foriest
Eileen C. Kugler, RN, MSN, MPH, FNP
Jeffrey S. Wilson

Members of the Executive Committee Absent:

Linwood B. Hollowell, III

Members of Staff Present:

S. Mark Payne, Director, DHSR, Secretary, MCC
Emery E. Milliken, Deputy Director, DHSR
Geary W. Knapp, JD, CPA, Assistant Secretary, MCC
Crystal Watson Abbott, Auditor, MCC
Kathy C. Larrison, Auditor, MCC
Alice S. Creech, Executive Assistant, MCC

Others Present:

Anita Holt, Forest at Duke
Karen Henry, Forest at Duke
Alice Adams, Robinson Bradshaw & Hinson, PA
Charles Bowyer, Robinson Bradshaw & Hinson, PA
Tadd Melton, Ziegler
Adam Garcia, Ziegler

1. **Purpose of Meeting**

To (1) approve U.S. Bank Trust Company, National Association as (a) successor bond trustee for the Series 2017 Bonds and Series 2021 Bonds issued for the benefit of The Forest at Duke, Inc. (the “Corporation”) and (b) successor master trustee under the Corporation’s Master Trust Indenture and (2) authorize the sale of bonds, the proceeds of which are to be loaned to the Corporation.

2. **Resolution of the North Carolina Medical Care Commission approving the (1) appointment of U.S. Bank Trust Company, National Association as successor bond trustee for the Series 2017 Bonds and Series 2021 Bonds issued for the benefit of The Forest at Duke, Inc. (the “Corporation”) and (2) appointment of U.S. Bank Trust Company, National Association as successor master trustee under the Corporation’s Master Trust Indenture.**

Executive Committee Action: *A motion was made to approve resolution by Mr. Joe Crocker, seconded by Mr. Bryant Foriest, and unanimously approved.*

WHEREAS, U.S. Bank National Association (“USB”), a national banking association duly organized and existing under the laws of the United States of America, serves as the master trustee under the Master Trust Indenture, dated as of August 1, 2017 (as amended and supplemented, the “Master Indenture”), between The Forest at Duke, Inc. (the “Corporation”) and USB, as master trustee; and

WHEREAS, the North Carolina Medical Care Commission (the “Commission”), a commission of the Department of Health and Human Services of the State of North Carolina, has issued its Retirement Facilities Refunding Revenue Bonds (The Forest at Duke) Series 2017 (the “2017 Bonds”) pursuant to a Trust Agreement, dated as of August 1, 2017 (the “2017 Trust Agreement,”), between the Commission and USB, as bond trustee, and loaned the proceeds thereof to the Corporation pursuant to a Loan Agreement, dated as of August 1, 2017, between the Commission and the Corporation; and

WHEREAS, the Commission has issued its Retirement Facilities First Mortgage Revenue Bonds (The Forest at Duke Project), Series 2021 (the “2021 Bonds,” and together with the 2017 Bonds, the “Bonds”) pursuant to a Trust Agreement, dated as of June 1, 2021 (the “2021 Trust Agreement,” and together with the 2017 Trust Agreement, the “Trust Agreements”), between the Commission and USB, as bond trustee, and loaned the proceeds thereof to the Corporation pursuant to a Loan Agreement, dated as of June 1, 2021, between the Commission and the Corporation; and

WHEREAS, USB has notified the Corporation and the Commission that USB has transferred (by contribution) substantially all its corporate trust business to U.S. Bank Trust Company, National Association (the “Trust Company”), USB’s direct wholly owned subsidiary, and desires to transfer its (1) administration of the Trust Agreements and (2) administration of the Master Indenture from

USB to the Trust Company, such that the Trust Company will be the successor in interest to USB, as master trustee, under the Master Indenture and the successor in interest to USB, as bond trustee, under each of the Trust Agreements; and

WHEREAS, Section 5.04 of the Master Indenture requires the appointment of any successor master trustee to be approved in writing by Commission and the Secretary of the North Carolina Local Government Commission (the “LGC”); and

WHEREAS, an Obligated Group Representative (as defined in the Master Indenture) wishes to accept the succession of the Trust Company to USB as successor master trustee under the Master Indenture (the “Master Trustee Succession”); and

WHEREAS, Section 9.15 of the Trust Agreements provide that an assignment of substantially all of a bond trustee’s trust business to an assignee that will continue in the trust business is permitted if the assignee is (1) a trust company or bank having the powers of a trust company as to trusts, qualified to do and doing trust business in one or more states of the United States of America, (2) of good standing, (3) having a combined capital and surplus aggregating not less than One Hundred Million Dollars (\$100,000,000) and (4) approved by the Commission and the Corporation; and

WHEREAS, USB is transferring substantially all its corporate trust business to the Trust Company, which meets the qualifications in (1) through (3) of the above paragraph and will continue in the corporate trust business, and the Corporation wishes to accept the succession of the Trust Company to USB as successor bond trustee under both of the Trust Agreements (collectively, the “Bond Trustee Succession”);

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

Section 1. The Master Trustee Succession, including the appointment of the Trust Company as successor master trustee under the Master Indenture, is hereby approved. The Chairman, Vice Chairman, the Secretary and the Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to take such action and to execute and deliver any and all documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the Master Trustee Succession.

Section 2. The Bond Trustee Succession, including the appointment of the Trust Company as successor bond trustee under the Trust Agreements, is hereby approved. The Chairman, Vice Chairman, the Secretary and the Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to take such action and to execute and deliver any and all documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the Bond Trustee Succession.

Section 3. This Resolution shall take effect immediately upon its passage.

3. **Resolution of the North Carolina Medical Care Commission authorizing the issuance of up to \$95,570,000 North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (The Forest at Duke Project), Series 2022A.**

Executive Committee Action: *A motion was made to approve the resolution by Mrs. Eileen Kugler, seconded by Mr. Joe Crocker, and unanimously approved.*

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 (including retirement facilities) and to refund bonds previously issued by the Commission; and

WHEREAS, The Forest at Duke, Inc. (the “Corporation”) is a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and is a “nonprofit agency” within the meaning of the Act; and

WHEREAS, the Corporation has made application to the Commission for a loan for the purpose of providing funds, together with other available funds, to (1) pay all or a portion of the costs of acquiring, constructing and equipping an expansion of and renovation to the Corporation’s existing continuing care retirement community located at 2701 Pickett Road in Durham, North Carolina, known as The Forest at Duke, including but not limited to constructing and equipping approximately 71 new independent living apartments, expanding the community center, constructing additional parking and dining facilities and other related improvements (the “Project”); (2) pay a portion of the interest accruing on the Bonds; and (3) pay certain expenses incurred in connection with the authorization and issuance of the Bonds by the Commission; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted on October 7, 2022, has approved the issuance of the Bonds, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation has complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there have been presented to the officers and staff of the Commission draft copies of the following documents relating to the issuance of the Bonds:

(a) a Trust Agreement, dated as of November 1, 2022 (the “Trust Agreement”), between the Commission and U.S. Bank Trust Company, National Association, as bond trustee (the “Bond Trustee”);

(b) a Loan Agreement, dated as of November 1, 2022 (the “Loan Agreement”), between the Commission and the Corporation;

(c) a Supplemental Indenture for Obligation No. 5, dated as of November 1, 2022 (“Supplement No. 5”), between the Corporation and U.S. Bank Trust Company, National

Association, as master trustee (in such capacity, the “Master Trustee”) under the Master Trust Indenture, dated as of August 1, 2017 (as amended and supplemented, the “Master Indenture”), between the Corporation and U.S. Bank National Association, succeeded by the Master Trustee;

(d) Obligation No. 5, to be dated the date of delivery of the Bonds (“Obligation No. 5”), from the Corporation to the Commission;

(e) a Supplemental Indenture for Obligation No. 6, dated as of November 1, 2022 (“Supplement No. 6,” and together with Supplement No. 5, the “Supplemental Indentures”), between the Corporation and the Master Trustee;

(f) Obligation No. 6, to be dated the date of delivery of the Bonds (“Obligation No. 6,” and together with Obligation No. 5, the “Obligations”), from the Corporation to Truist Commercial Equity, Inc. (the “Purchaser”);

(g) a Second Amendment to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of November 1, 2022 (the “Second Amendment to Deed of Trust”), between the Corporation and the Master Trustee, amending and supplementing the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of August 1, 2017 (as previously amended by the First Amendment thereto, the “Deed of Trust”), from the Corporation to the deed of trust trustee named therein for the benefit of the Master Trustee;

(h) a Continuing Covenants Agreement, dated as of November 1, 2022 (the “Covenants Agreement”), between the Corporation and the Purchaser;

(i) a Contract of Purchase, to be dated as of the date of delivery of the Bonds (the “Purchase Agreement”), between the Local Government Commission of North Carolina (the “LGC”) and the Purchaser, and approved by the Commission and the Corporation; and

(j) an Assignment of Contracts dated as of November 1, 2022 (the “Assignment of Contracts”), made by the Corporation to the Master Trustee; and

WHEREAS, the Commission has determined that the Corporation is financially responsible and capable of fulfilling its obligations under the Loan Agreement, the Master Indenture, the Supplemental Indentures, the Obligations, and the Deed of Trust; and

WHEREAS, the Commission has determined that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

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

Section 1. 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 Master Indenture, the Trust Agreement and the Loan Agreement.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (The Forest at Duke Project), Series 2022A (the “Bonds”), in the aggregate principal amount of up to \$95,570,000, which shall be issued as the Series 2022A-1 Bonds (\$66,070,000) and the Series 2022A-2 Bonds (\$29,500,000) solely for the purpose of having different maturity dates and redemption requirements and being able to track the Qualifying Intermediate-Term Indebtedness (as defined in the Master Indenture) more easily. The 2022A-1 Bonds shall mature on September 1, 2052. The 2022A-2 Bonds shall mature on September 1, 2027. The Bonds shall bear interest at such rates determined in accordance with the Trust Agreement and the 2022A-1 Bonds shall be subject to Sinking Fund Requirements set forth in Schedule 1 hereto. During the initial Direct Purchase Rate Period (which is fifteen (15) years for the 2022A-1 Bonds and to maturity for the 2022A-2 Bonds), the 2022A-1 Bonds will bear interest at 79% of Term SOFR (as defined in the Trust Agreement) plus 1.55% and the 2022A-2 Bonds will bear interest at 79% of Term SOFR plus 1.35%, subject to adjustment under certain circumstances described in the Trust Agreement, including but not limited to taxability, event of default, and corporate tax rate adjustments.

The Bonds shall be issued as fully registered bonds in (i) denominations of \$100,000 and any integral multiple of \$5,000 in excess of \$100,000 during any Direct Purchase Rate Period or Weekly Rate Period and (ii) denominations of \$5,000 and any integral multiples thereof during any Long-Term Rate Period or Adjustable Rate Period. While bearing interest at the Weekly Rate, Long-Term Rate or Adjustable Rate, the Bonds shall be issuable in book-entry form as provided in the Trust Agreement. Interest on the Bonds shall be paid at the times and at the rates determined as specified in the Trust Agreement. Payments of principal of and interest on the Bonds shall be made to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

Section 3. The Bonds shall be subject to (i) optional, extraordinary and mandatory redemption, (ii) during any Weekly Rate Period or Adjustable Rate Period, optional tender for purchase, and (iii) mandatory tender for purchase, all at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreement.

Section 4. The proceeds of the Bonds shall be applied as provided in Section 2.10 of the Trust Agreement. The Commission hereby finds that the use of the proceeds of the Bonds for a loan to pay all or a portion of the costs of the Project, fund a portion of the interest on the Bonds and pay certain costs of issuing the Bonds will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Trust Agreement and the Loan Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreement and the Loan Agreement in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, 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 6. The form, terms and provisions of the Purchase Agreement are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) is hereby authorized and directed to execute and deliver the Purchase Agreement in substantially the form presented at this meeting, together with such changes, modifications, insertions and deletions as they, 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 7. The forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such forms 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 forms presented at 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 8. The forms, terms and provisions of the Supplemental Indentures, the Obligations, the Covenants Agreement, the Second Amendment to Deed of Trust and the Assignment of Contracts are hereby approved in substantially the forms presented to this meeting, together with such changes, modifications and deletions as the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission, with the advice of counsel may deem necessary and appropriate; and the execution and delivery of the Trust Agreement as provided in Section 5 of this Series Resolution shall be conclusive evidence of the approval of the documents listed in this Section by the Commission.

Section 9. The Commission hereby approves the action of the Local Government Commission authorizing the private sale of the Bonds to the Purchaser in accordance with the Purchase Agreement at the purchase price of 100% of the principal amount thereof.

Section 10. 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 satisfaction of the conditions set forth in Section 2.10 of the Trust Agreement, the Bond Trustee shall deliver the Bonds to the Purchaser against payment therefor.

Section 11. U.S. Bank Trust Company, National Association is hereby appointed as the initial Bond Trustee for the Bonds.

Section 12. If the Bonds are converted to the Weekly Rate, a Long-Term Rate or an Adjustable Rate, The Depository Trust Company, New York, New York is hereby appointed as the initial Securities Depository of the Bonds, with Cede & Co., a nominee thereof, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

Section 13. S. Mark Payne, Secretary of the Commission, Geary W. Knapp, Assistant Secretary of the Commission, Anthony J. Harms, Acting Chief of the Construction Section of the Division of Health Service Regulation, and Kathy C. Larrison and Crystal Watson-Abbott, Auditors for the Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreement, with full power to carry out the duties set forth therein.

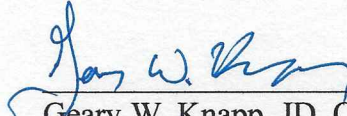
Section 14. The Chairman, Vice Chairman, Secretary, and any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are each hereby authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and 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, and the Purchase Agreement.

Section 15. This Series Resolution shall take effect immediately upon its passage.

4. **Adjournment**

There being no further business, the meeting was adjourned at 11:50 a.m.

Respectfully submitted,



Geary W. Knapp, JD, CPA
Assistant Secretary

Schedule 1

Required Redemption of the 2022A-1 Bonds (\$66,070,000)

<u>Due September 1</u>	<u>Sinking Fund Requirement</u>	<u>Due September 1</u>	<u>Sinking Fund Requirement</u>
2026	\$ 950,000	2040	\$2,305,000
2027	1,210,000	2041	2,420,000
2028	1,260,000	2042	2,525,000
2029	1,340,000	2043	2,645,000
2030	1,415,000	2044	2,760,000
2031	1,485,000	2045	2,890,000
2032	1,560,000	2046	3,020,000
2033	1,695,000	2047	3,160,000
2034	1,770,000	2048	3,300,000
2035	1,850,000	2049	3,455,000
2036	1,930,000	2050	3,610,000
2037	2,020,000	2051	3,775,000
2038	2,115,000	2052*	7,390,000
2039	2,215,000		

* Maturity

The 2022A-2 Bonds are to be paid with initial Entrance Fees from the Project.

Professional Fees Comparison for
The Forest at Duke, Inc.

<u>Professional</u>	<u>Fees Estimated In Preliminary Approval Resolution</u>	<u>Actual Fees</u>
Corporation counsel	\$ 75,000	\$ 90,000
Bond counsel	100,000	80,000
Purchaser counsel	45,000	45,000
Placement agent fee	380,000	382,280
Swap advisor fee	N/A	45,000
Commitment fee	65,000	191,140
Trustee and trustee counsel fees	12,500	12,000
Accountant/feasibility fee	135,000	52,583

NC MCC Bond Sale Approval Form				
Facility Name: The Forest at Duke				
			Revised	
	Time of Preliminary Approval		Preliminary Approval	Time of Final Approval
SERIES: 2022 (Publicly Offered)				
PAR Amount	\$53,030,000.00		N/A	N/A
Estimated Interest Rate	5.50%		N/A	N/A
All-in True Interest Cost	5.65%		N/A	N/A
Maturity Schedule (Interest) - Date	03/01/2023 - 09/01/2053		N/A	N/A
Maturity Schedule (Principal) - Date	09/01/2027 - 09/01/2053		N/A	N/A
Bank Holding Period (if applicable) - Date	N/A		N/A	N/A
Estimated NPV Savings (\$) (if refunded bonds)	N/A		N/A	N/A
Estimated NPV Savings (%) (if refunded bonds)	N/A		N/A	N/A
NOTES:				
			Revised	
	Time of Preliminary Approval		Preliminary Approval	Time of Final Approval
SERIES: Series 2022 (Bank Held)				
PAR Amount	\$29,500,000.00		\$95,570,000.00	\$95,570,000.00
Estimated Interest Rate	4.00%		4.25%	4.34%
All-in True Interest Cost	4.15%		4.40%	4.40%
Maturity Schedule (Interest) - Date	03/01/2023 - 09/01/2026		12/01/2022 - 09/01/2053	12/01/2022 - 09/01/2052
Maturity Schedule (Principal) - Date	09/01/2026 - 09/01/2026		09/01/2026 - 09/01/2053	09/01/2026 - 09/01/2052
Bank Holding Period (if applicable) - Date	N/A		N/A	N/A
Estimated NPV Savings (\$) (if refunded bonds)	N/A		N/A	N/A
Estimated NPV Savings (%) (if refunded bonds)	N/A		N/A	N/A
NOTES:				
- Truist Financial was the bank purchaser.				

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

**The North Carolina Medical Care Commission
809 Ruggles Drive
Raleigh, North Carolina**

MINUTES

**CALLED MEETING OF THE EXECUTIVE COMMITTEE
CONFERENCE TELEPHONE MEETING ORIGINATING FROM THE
COMMISSION'S OFFICE
NOVEMBER 15, 2022
11:30 A.M.**

Members of the Executive Committee Present:

John J. Meier, IV, M.D., Chairman
Joseph D. Crocker, Vice-Chairman
Sally B. Cone
Eileen C. Kugler, RN, MSN, MPH, FNP

Members of the Executive Committee Absent:

Bryant C. Foriest
Linwood B. Hollowell, III
Jeffrey S. Wilson

Members of Staff Present:

S. Mark Payne, Director, DHR, Secretary, MCC
Emery E. Milliken, Deputy Director, DHR
Geary W. Knapp, JD, CPA, Assistant Secretary, MCC
Kathy C. Larrison, Auditor, MCC
Crystal Watson-Abbott, Auditor, MCC

Others Present:

Allen Robertson, Robinson Bradshaw & Hinson, PA
Alice Adams, Robinson Bradshaw & Hinson, PA
Jennifer Temple, Wake Forest Baptist

1. **Purpose of Meeting**

To authorize the execution and delivery of a Supplemental Trust Agreement for the 2019B Bonds issued for the benefit of the Wake Forest Baptist Obligated Group.

2. **Resolution of the North Carolina Medical Care Commission Approving and Authorizing Execution and Delivery of a Supplemental Trust Agreement Relating to the North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Wake Forest Baptist Obligated Group) Series 2019B (the “Bonds”).**

Executive Committee Action: *A motion was made to approve the resolution by Mr. Joe Crocker, seconded by Mrs. Sally Cone, and unanimously approved.*

WHEREAS, the North Carolina Medical Care Commission (the “Commission”), a commission of the Department of Health and Human Services of the State of North Carolina, has issued \$105,905,000 aggregate principal amount of its Health Care Facilities Revenue Bonds (Wake Forest Baptist Obligated Group) Series 2019B (the “Bonds”), all of which are outstanding, pursuant to the terms of a Trust Agreement, dated as of March 1, 2019 (the “Trust Agreement”), between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “Bond Trustee”); and

WHEREAS, the Commission loaned the proceeds from the sale of the Bonds to North Carolina Baptist Hospital (the “Corporation”), Wake Forest University Health Sciences (“Health Sciences”) and Wake Forest University Baptist Medical Center (the “Medical Center,” and together with the Corporation and Health Sciences, the “Borrowers”) pursuant to a Loan Agreement, dated as of March 1, 2019 (the “Loan Agreement”), between the Commission and the Borrowers; and

WHEREAS, the Bonds were initially issued in the Long-Term Rate mode and will be subject to mandatory tender for purchase on December 1, 2022; and

WHEREAS, the Borrowers desire to convert the Bonds to a Direct Purchase Period on December 1, 2022 and remarket the Bonds to Truist Commercial Equity, Inc. (the “Direct Purchaser”); and

WHEREAS, to accomplish the conversion, certain provisions of the Trust Agreement need to be supplemented and amended; and

WHEREAS, Section 11.02 of the Trust Agreement permits the Commission and the Bond Trustee, with the consent of the Direct Purchaser as the Holder (as defined in the Trust Agreement) of 100% of the Bonds, to enter into agreements supplemental to the Trust Agreement to make any amendment to the Trust Agreement; and

WHEREAS, there has been presented at this meeting a draft copy of a Supplemental Trust Agreement, to be dated as of December 1, 2022 (the "Supplement") between the Commission and the Bond Trustee, that would amend and supplement the Trust Agreement to make the changes necessary to accomplish the conversion; and

WHEREAS, the Borrowers have requested that the Commission approve the Supplement and authorize its execution and delivery;

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

Section 1. The form, terms and provisions of the Supplement are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to execute and deliver the Supplement in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of bond counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

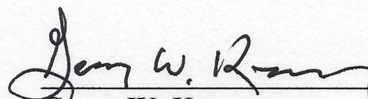
Section 2. The Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) or any duly authorized Commission Representative under the Trust Agreement are authorized and directed to execute and deliver a replacement Bond reflecting the terms of the Supplement to the Direct Purchaser and to take such other action and to execute and deliver any such other documents, certificates, undertakings, agreements or other instruments as they, with the advice of bond counsel, may deem necessary or appropriate to effect the changes made in the Supplement.

Section 3. This Resolution shall take effect immediately upon its passage.

3. Adjournment

There being no further business, the meeting was adjourned at 11:49 a.m.

Respectfully submitted,



Geary W. Knapp
Assistant Secretary

SUPPLEMENTAL TRUST AGREEMENT

By and Between

NORTH CAROLINA MEDICAL CARE COMMISSION

And

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Bond Trustee

Dated as of December 1, 2022

Supplementing the
Trust Agreement
Dated as of March 1, 2019

Relating to

\$105,905,000
Health Care Facilities Revenue Bonds
(Wake Forest Baptist Obligated Group)
Series 2019B

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SUPPLEMENTAL TRUST AGREEMENT

THIS SUPPLEMENTAL TRUST AGREEMENT (this “Supplement”), dated as of December 1, 2022, is made and entered into by and between the **NORTH CAROLINA MEDICAL CARE COMMISSION**, a commission of the Department of Health and Human Services of the State of North Carolina (the “Commission”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association duly organized and existing under the laws of the United States of America, having a corporate trust office in Jacksonville, Florida, which is authorized under such laws to exercise trust powers (The Bank of New York Mellon Trust Company, N.A. and any bank or trust company becoming successor Bond Trustee under the Trust Agreement (as hereinafter defined) being hereinafter referred to as the “Bond Trustee”).

WITNESSETH:

WHEREAS, 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, General Statutes of North Carolina, as amended (the “Act”), to borrow money and to lend the same to any public or nonprofit agency for the purpose of providing funds to finance or refinance all or any part of the cost of health care facilities; and

WHEREAS, Wake Forest University Baptist Medical Center (the “Medical Center”) is a North Carolina nonprofit corporation and a “nonprofit agency” within the meaning and intent of the Act, which owns and operates (in certain cases through controlled affiliates) health care facilities located in the City of Winston-Salem, North Carolina and other locations in the State of North Carolina; and

WHEREAS, Wake Forest University Health Sciences (“Health Sciences”) is a North Carolina nonprofit corporation and a “nonprofit agency” within the meaning and intent of the Act, which owns and operates (in certain cases through controlled affiliates) health care facilities located in the City of Winston-Salem, North Carolina and other locations in the State of North Carolina; and

WHEREAS, North Carolina Baptist Hospital (the “Corporation” and, together with the Medical Center and Health Sciences, the “Borrowers”) is a North Carolina nonprofit corporation and a “nonprofit agency” within the meaning and intent of the Act, which owns and operates (in certain cases through controlled affiliates) health care facilities located in the City of Winston-Salem, North Carolina and other locations in the State of North Carolina; and

WHEREAS, on March 7, 2019, the Commission issued \$105,905,000 aggregate principal amount of its Health Care Facilities Revenue Bonds (Wake Forest Baptist Obligated Group) Series 2019B (the “Bonds”) pursuant to the terms of a Trust Agreement dated as of March 1, 2019 between the Commission and the Bond Trustee (the “Trust Agreement”); and

WHEREAS, the Commission loaned the proceeds of the Bonds to the Borrowers pursuant to a Loan Agreement dated as of March 1, 2019 (the “Loan Agreement”) between the Commission and the Borrowers; and

WHEREAS, since their initial issuance the Bonds have been bearing interest at a Long-Term Rate during a Long-Term Interest Rate Period which ended on November 30, 2022; and

WHEREAS, the Bonds are subject to mandatory tender for purchase on December 1, 2022; and

WHEREAS, the Borrowers desire to convert the Bonds to a Direct Purchase Period on December 1, 2022 and engaged Kaufman, Hall & Associates, LLC (“Kaufman Hall”) to conduct a competitive bidding process for a purchaser of the Bonds and have appointed Kaufman Hall to serve as Market Agent (as defined in the Trust Agreement) in connection with the Direct Purchase Period beginning on December 1, 2022; and

WHEREAS, based on the responses to the requests for proposal received by the Borrowers, the Borrowers desire to remarket the Bonds to Truist Commercial Equity, Inc. (the “Direct Purchaser”); and

WHEREAS, during the Direct Purchase Period beginning on December 1, 2022, the Bonds will bear interest at the Direct Purchase Rate (as defined the Trust Agreement), and the Borrowers have requested that certain provisions of the Trust Agreement be amended to facilitate use of the SIFMA Index as the Direct Purchase Index (as each such term is defined in the Trust Agreement); and

WHEREAS, the Trust Agreement also provides that a number of the provisions that will be applicable during the Direct Purchase Period may be specified in a Supplemental Trust Agreement; and

WHEREAS, Section 11.02 of the Trust Agreement permits the Commission and the Bond Trustee, with the consent of the Direct Purchaser as the Holder of 100% of the Bonds, to enter into agreements supplemental to the Trust Agreement to make any amendment to the Trust Agreement; and

WHEREAS, the Borrowers have requested that the Commission and the Bond Trustee enter into this Supplement; and

WHEREAS, under the Constitution and laws of the State of North Carolina, including the Act, the Commission is authorized to enter into this Supplement and to do or cause to be done all the acts and things herein provided or required to be done as hereinafter covenanted; and

WHEREAS, all acts and things necessary to constitute this Supplement a valid indenture and agreement according to its terms have been done and performed;

NOW, THEREFORE, in consideration of the premises, the Commission covenants and agrees with the Bond Trustee, for the benefit of the Holders from time to time of the Bonds, as follows:

Section 1. Definitions. For the purposes hereof, unless the context otherwise indicates, all capitalized terms used herein which are defined in the Trust Agreement shall have the meanings assigned to them therein.

Section 2. Amendments to Trust Agreement Requiring Holder Consent.

(a) The definition of “Index Reset Date” in Section 1.01 of the Trust Agreement is hereby deleted and the following is substituted therefor:

“Index Reset Date” means, with respect to any Direct Purchase Period, either the first calendar day of each month or the first Business Day of each calendar month or as may be otherwise established in the applicable Supplemental Trust Agreement or Bondholder Agreement.

(b) The definition of “SIFMA Index” in Section 1.01 of the Trust Agreement is hereby deleted and the following is substituted therefor:

“SIFMA Index” means, for any Direct Purchase Rate Determination Date, the rate determined based upon the level of the index which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data and meet specific criteria established from time to time by SIFMA, or successor thereto, and issued on Wednesday of each week, or if any Wednesday is not a U.S. Government Securities Business Day, the next succeeding U.S. Government Securities Business Day which index currently is known as The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index, or any successor to such index. If the SIFMA Index is no longer published or is otherwise not available at such time for any reason, then “SIFMA Index” shall mean the prevailing rate determined by the Direct Purchaser for tax-exempt state and local government bonds meeting criteria determined in good faith by the Direct Purchaser to be comparable under the circumstances to the criteria used by SIFMA to determine the SIFMA Index immediately prior to the date on which SIFMA ceased publication of the SIFMA Index or said rate otherwise became unavailable. In connection with the implementation of any such successor rate, the Direct Purchaser will have the right in good faith to direct the Commission and the Bond Trustee to make, and the Commission and the Bond Trustee agree to make, any conforming, technical, administrative or operational changes to the Bonds and this Trust Agreement as may be appropriate to reflect the adoption and administration thereof and, notwithstanding anything to the contrary herein or in any other loan document, any amendments to the Bonds or this Trust Agreement implementing such conforming changes will become effective upon notice to the Borrowers without any further action or consent of the Borrowers. If at any time the SIFMA Index or any successor rate is less than zero, such rate shall be deemed to be zero for the purposes of the Bonds and this Trust Agreement.

(c) Section 4.12(c) of the Trust Agreement is hereby deleted and the following is substituted therefor:

(c) [Reserved]; or

Section 3. Terms and Provisions Applicable to Direct Purchase Period.

The following terms and provisions shall be applicable to the Bonds during the Direct Purchase Period beginning on December 1, 2022:

(a) The Bonds shall bear interest at the Direct Purchase Rate, which shall be equal to the sum of (i) the Applicable Factor multiplied by the Direct Purchase Index plus (ii) the Applicable Spread; provided, however, upon a Determination of Taxability, the Bonds shall bear interest at the Taxable Rate from and after the Date of Taxability; provided, further, upon the occurrence and during the continuation of an Event of Default, the Bonds shall bear interest at the Default Rate.

- The Direct Purchase Index shall be the SIFMA Index.
- The Applicable Factor shall be 100%.
- The Applicable Spread shall be 0.616%; provided, however, if any time after December 1, 2022 there should be any change in the Direct Purchaser Tax Rate” then the Applicable Spread shall be adjusted, effective as of the effective date of any such change in the Direct Purchaser Tax Rate, by multiplying the Applicable Spread by a fraction, the denominator of which is one hundred percent (100%) minus the Direct Purchaser Tax Rate in effect on December 1, 2022, and the numerator of which is one hundred percent (100%) minus the Direct Purchaser Tax Rate after giving effect to such change.

“Date of Taxability” means the earliest date as of which interest on the Bonds shall have been determined to be includable in the gross income of the Direct Purchaser pursuant to a Determination of Taxability.

“Default Rate” means the greater of (i) a fluctuating interest rate equal to 2.00% per annum above the Prime Rate in effect from time to time and (ii) 6.00% per annum.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

(i) on that date when a Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when the Direct Purchaser or prior Direct Purchaser notifies the Commission and the Borrowers that it has received a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that an Event of Taxability has occurred unless, within 180 days after receipt by the Commission and the Borrowers of such notification from such Direct Purchaser or prior Direct Purchaser, the Commission or the Borrowers shall deliver to each Direct Purchaser and prior Direct Purchaser (A) a ruling or determination letter issued to or on behalf of the Commission or the Borrowers by the Commissioner or any

District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) or (B) a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the Commission or a Borrower shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings by the Commission or such Borrower, or upon any review or audit of the Commission or a Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on that date when the Commission or a Borrower shall receive notice from any Direct Purchaser or prior Direct Purchaser that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Direct Purchaser or prior Direct Purchaser the interest on the Bonds due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) above unless the Commission and the Borrowers have been afforded the opportunity, at the sole expense of the Borrowers, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from any Direct Purchaser or prior Direct Purchaser, the Borrowers shall immediately reimburse such Direct Purchaser or prior Direct Purchaser for any payments such Direct Purchaser or prior Direct Purchaser shall be obligated to make as a result of the Determination of Taxability during any such contest.

“Direct Purchaser Tax Rate” means the maximum marginal rate of Federal income tax applicable to the taxable income of the Direct Purchaser.

“Event of Taxability” means a change in law or fact or the interpretation thereof; or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Commission or a Borrower, or the failure to take any action by the Commission or a Borrower, or the making by the Commission or a Borrower of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Bonds) which has the effect of causing interest paid or payable on the Bonds to become includable, in whole or in part, in the gross income of a Direct Purchaser or any prior Direct Purchaser for federal income tax purposes.

“Prime Rate” means the interest rate announced by Truist Bank from time to time as its prime rate. Any change in the Prime Rate shall be effective as of the date such change is announced by Truist Bank.

“Taxable Rate” means the interest rate equal to the Direct Purchase Rate divided by (1.00 minus the Direct Purchaser Tax Rate in effect on December 1, 2022).

(b) The Calculation Agent shall determine the Direct Purchase Rate on each Direct Purchase Rate Determination Date to become effective on the immediately succeeding Index Reset Date during the Direct Purchase Period, and interest shall accrue at such rate for each day during the Interest Accrual Period commencing on the Index Reset Date; provided, however, if the Direct Purchase Rate is not determined by the Calculation Agent on any Direct Purchase Rate Determination Date, the rate of interest borne on the Bonds shall be the rate in effect for the immediately preceding Index Reset Date until the Calculation Agent next determines the Direct Purchase Rate in accordance with the provisions hereof. Interest on the Bonds shall be payable on each Interest Payment Date for each applicable Interest Accrual Period, commencing on the Interest Accrual Date preceding such Interest Payment Date.

- The Direct Purchaser shall be the Calculation Agent.
- The Direct Purchase Date Determination Date shall be Wednesday of each week, or if any Wednesday is not a U.S. Government U.S. Government Securities Business Day, the next succeeding U.S. Government Securities Business Day.
- “U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday, or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.
- “Index Reset Date” means Thursday of each week. For purposes of clarity, should the Direct Purchase Rate Determination Date be Thursday by reason of Wednesday being a non U.S. Government Securities Business Day, the Index Reset Date will be the same Thursday.
- “Interest Accrual Date” means December 1, 2022 and thereafter the first Business Day of each calendar month.
- “Interest Accrual Period” means (i) with respect to the calculation of interest, the period that begins on an Index Reset Date and ends on the next Index Reset Date, and (ii) with respect to the amount of interest payable on an Interest Payment Date, the amount of interest which has accrued since the immediately preceding Interest Payment Date.
- “Interest Payment Date” shall mean the first Business Day of each calendar month, commencing on January 3, 2023.

(c) Interest shall be computed on the basis of a 360-day year and the actual number of days elapsed.

(d) The Direct Purchase Period beginning on December 1, 2022 shall end on Sunday, December 2, 2029, and the Direct Purchase Mandatory Purchase Date shall be Monday, December 3, 2029.

(e) The Direct Purchase Period Earliest Redemption Date shall be December 30, 2022.

(f) The Borrowers hereby appoint Kaufman Hall to serve as Market Agent in connection with the Direct Purchase Period beginning on December 1, 2022.

(g) The Borrowers hereby direct pursuant to Section 4.14(a) of the Trust Agreement that the Bonds be remarketed to Truist Commercial Equity, Inc. upon their mandatory tender on December 1, 2022.

Section 4. Ratification of Trust Agreement; Consents. As supplemented hereby, the Trust Agreement is in all respects ratified and confirmed and the Trust Agreement as so supplemented hereby shall be read, taken and construed as one and the same instrument. By their signatures below, the Borrowers and the Direct Purchaser approve and consent to the terms of this Supplement.

Section 5. Severability. If any provision of this Supplement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case and any jurisdiction or jurisdictions or in all jurisdictions, or in all cases, because it conflicts with any other provision or provisions hereof or any constitution, statute, rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, sections or subsections contained in this Supplement shall not affect the remaining portions of this Supplement or any part thereto.

Section 6. Counterparts. This Supplement (and the consents of the Borrowers and the Direct Purchaser and the certification of the Market Agent) may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

Section 7. Governing Law. This Supplement shall be governed by and construed in accordance with the laws of the State of North Carolina.

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IN WITNESS WHEREOF, the North Carolina Medical Care Commission has caused this Supplement to be signed in its name and on its behalf by its Assistant Secretary, and The Bank of New York Mellon Trust Company, N.A. has caused these presents to be signed in its name and on its behalf by one of its duly authorized officers, all as of the date first written above.

**NORTH CAROLINA MEDICAL CARE
COMMISSION**

By: _____
Assistant Secretary

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Bond Trustee**

By: _____
Vice President

**WE APPROVE AND CONSENT TO THE TERMS
AND PROVISIONS OF THIS SUPPLEMENT
AND WAIVE NOTICE OF THE PROPOSED
EXECUTION OF THIS SUPPLEMENT:**

BORROWERS:

WAKE FOREST UNIVERSITY BAPTIST MEDICAL CENTER,
a North Carolina nonprofit corporation

By: _____
Bradley A. Clark
Treasurer

WAKE FOREST UNIVERSITY HEALTH SCIENCES,
a North Carolina nonprofit corporation

By: _____
Bradley A. Clark
Treasurer

NORTH CAROLINA BAPTIST HOSPITAL,
a North Carolina nonprofit corporation

By: _____
Bradley A. Clark
Treasurer

**WE APPROVE AND CONSENT TO THE TERMS
AND PROVISIONS OF THIS SUPPLEMENT
AND WAIVE NOTICE OF THE PROPOSED
EXECUTION OF THIS SUPPLEMENT:**

DIRECT PURCHASER:

TRUIST COMMERCIAL EQUITY, INC.

By: _____
Vice President

In the judgment of the Market Agent, having due regard for prevailing market conditions for bonds or other securities the interest comparable as to credit and maturity to the Bonds, the interest rate at which the Direct Purchaser has agreed to purchase the Bonds as set forth in the Supplement above is necessary, but does not exceed the interest rate necessary, to enable the Bonds to be placed at a price of par on the Conversion Date.

KAUFMAN, HALL & ASSOCIATES, LLC,
as Market Agent

By: _____
Name: _____
Title: _____

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

**The North Carolina Medical Care Commission
809 Ruggles Drive
Raleigh, North Carolina**

MINUTES

**CALLED MEETING OF THE EXECUTIVE COMMITTEE
CONFERENCE TELEPHONE MEETING ORIGINATING FROM THE
COMMISSION'S OFFICE
DECEMBER 7, 2022
11:30 A.M.**

Members of the Executive Committee Present:

John J. Meier, IV, M.D., Chairman
Joseph D. Crocker, Vice-Chairman
Sally B. Cone
Bryant C. Foriest
Linwood B. Hollowell, III
Eileen C. Kugler, RN, MSN, MPH, FNP
Jeffrey S. Wilson

Members of the Executive Committee Absent:

None

Members of Staff Present:

S. Mark Payne, Director, DHSR/Secretary, MCC
Emery E. Milliken, Deputy Director, DHSR
Geary W. Knapp, JD, CPA, Assistant Secretary, MCC
Crystal Watson-Abbott, Auditor, MCC
Kathy C. Larrison, Auditor, MCC
Alice S. Creech, Executive Assistant, MCC

Others Present:

J. Brent Conklin, Twin Lakes
Tad Melton, Ziegler
Adam Garcia, Ziegler
Jeff Poley, Hawkins Delafield & Wood, LLP

1. Purpose of Meeting

To (1) authorize the execution and delivery of a Consolidated Amendment of Bond Documents for the 2019B Bonds issued for the benefit of the Lutheran Retirement Communities of Alamance County, North Carolina d/b/a Twin Lakes. And (2) to authorize the sale of bonds, the proceeds of which are to be loaned to the Corporation.

2. Resolution of the North Carolina Medical Care Commission Approving and Authorizing Execution and Delivery of a Consolidated Amendment of Bond Documents Relating to the North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Twin Lakes Community) Series 2019B Series 2019B (the “Bonds”).

***Executive Committee Action:** A motion was made to approve the resolution by Mr. Joe Crocker, seconded by Mrs. Sally Cone, and unanimously approved.*

WHEREAS, the North Carolina Medical Care Commission (the “Commission”), a commission of the Department of Health and Human Services of the State of North Carolina, has issued \$23,025,000 aggregate principal amount of its Retirement Facilities First Mortgage Revenue Bonds (Twin Lakes Community) Series 2019B (the “Bonds”), pursuant to the terms of a Trust Agreement, dated as of October 1, 2019 (the “Trust Agreement”), between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “Bond Trustee”); and

WHEREAS, the Commission loaned the proceeds from the sale of the Bonds to Lutheran Retirement Communities of Alamance County, North Carolina d/b/a Twin Lakes (“Borrower”) pursuant to a Loan Agreement, dated as of October 1, 2019 (the “Loan Agreement”), between the Commission and the Borrower; and

WHEREAS, the interest rate applicable to the Bonds is currently based upon LIBOR and, in contemplation of the cessation of LIBOR on June 30, 2023, the Borrower, the Commission, the Bond Trustee and Truist Commercial Equity, Inc., successor to BB&T Community Holdings Co. (the “Holder”) desire to amend the Trust Agreement, the Bonds, the Loan Agreement and each of the other documents executed in connection with the issuance of the Bonds (collectively, the “Bond Documents”) to provide for, in the manner as described herein, the replacement of LIBOR upon its cessation; and

WHEREAS, to accommodate the cessation of LIBOR, certain provisions of the Bond Documents need to be amended; and

WHEREAS, there has been presented at this meeting a draft copy of a Consolidated Amendment of Bond Documents, to be dated as of the date of delivery thereof (the “Amendment”) between the Commission, the Borrower, the Holder and the Bond Trustee, that would amend Bond Documents to make the changes necessary to accommodate the cessation of LIBOR; and

WHEREAS, the Borrower had requested that the Commission approve the Amendment and authorize its execution and delivery;

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

Section 1. The form, terms and provisions of the Amendment are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to execute and deliver the Amendment in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of bond 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 2. The Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) or any duly authorized Commission Representative under the Trust Agreement are authorized and directed to execute and deliver any such other documents, certificates, undertakings, agreements or other instruments as they, with the advice of bond counsel, may deem necessary or appropriate to effect the changes made in the Amendment.

Section 3. This Resolution shall take effect immediately upon its passage.

3. **Resolution of the North Carolina Medical Care Commission authorizing the issuance of up to \$58,100,000 North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Twin Lakes Community), Series 2022A**

Executive Committee Action: *A motion was made to approve the resolution Mrs. Sally Cone, seconded by Mr. Bryant Foriest, and unanimously approved.*

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 (including retirement facilities) and to refund bonds previously issued by the Commission; and

WHEREAS, Lutheran Retirement Ministries of Alamance County, North Carolina d/b/a Twin Lakes Community (the “Corporation”) is a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and is a “nonprofit agency” within the meaning of the Act; and

WHEREAS, the Corporation has made application to the Commission for a loan for the purpose of providing funds, together with other available funds, to (1) pay all or a portion of the

cost of acquiring, constructing and equipping an expansion of and renovation to the Corporation's existing continuing care retirement community located at 3815 Wade Coble Drive, Burlington, North Carolina 27215, known as Twin Lakes, including but not limited to (a) constructing and equipping approximately 48 new independent living apartments, a community building, a meditation/memorial building, a connector structure and other related improvements, and (b) pay directly related working capital related thereto (collectively, the "Project"); (2) pay a portion of the interest accruing on the Bonds; and (3) pay certain expenses incurred in connection with the authorization and issuance of the Bonds by the Commission; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted on November 4, 2022, has approved the issuance of the Bonds, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation has complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there have been presented to the officers and staff of the Commission draft copies of the following documents relating to the issuance of the Bonds:

(a) a Trust Agreement, dated as of December 1, 2022 (the "Trust Agreement"), between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the "Bond Trustee");

(b) a Loan Agreement, dated as of December 1, 2022 (the "Loan Agreement"), between the Commission and the Corporation;

(c) a Supplemental Indenture for Obligation No. 12, dated as of December 1, 2022 ("Supplement No. 12"), between the Corporation and The Bank of New York Mellon Trust Company, N.A., as master trustee (in such capacity, the "Master Trustee") under the Amended and Restated Master Trust Indenture, dated as of October 1, 2019 (as amended and supplemented, the "Master Indenture"), between the Corporation and the Master Trustee;

(d) Obligation No. 12, to be dated the date of delivery of the Bonds ("Obligation No. 12"), from the Corporation to the Commission;

(e) a Supplemental Indenture for Obligation No. 13, dated as of December 1, 2022 ("Supplement No. 13," and together with Supplement No. 12, the "Supplemental Indentures"), between the Corporation and the Master Trustee;

(f) Obligation No. 13, to be dated the date of delivery of the Bonds ("Obligation No. 13," and together with Obligation No. 12, the "Obligations"), from the Corporation to Truist Commercial Equity, Inc. (the "Purchaser");

(g) a First Amendment to Amended and Restated Deed of Trust, dated as of December 1, 2022 (the "First Amendment"), between the Corporation and the Master Trustee, amending and supplementing the Amended and Restated Deed of Trust, dated as of October 1, 2019 (as amended by the First Amendment, the "Deed of Trust"), from the Corporation to the deed of trust trustee named therein for the benefit of the Master Trustee;

(h) a Continuing Covenants Agreement, dated as of December 1, 2022 (the “Covenants Agreement”), between the Corporation and the Purchaser;

(i) a Contract of Purchase, to be dated as of the date of delivery of the Bonds (the “Purchase Agreement”), between the Local Government Commission of North Carolina (the “LGC”) and the Purchaser, and approved by the Commission and the Corporation; and

(j) an Assignment of Contracts dated as of December 1, 2022 (the “Assignment of Contracts”), made by the Corporation to the Master Trustee; and

WHEREAS, the Commission has determined that the Corporation is financially responsible and capable of fulfilling its obligations under the Loan Agreement, the Master Indenture, the Supplemental Indentures, the Obligations, and the Deed of Trust; and

WHEREAS, the Commission has determined that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

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

Section 1. 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 Master Indenture, the Trust Agreement and the Loan Agreement.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Twin Lakes Community), Series 2022A (the “Bonds”), in the aggregate principal amount of up to \$58,100,000, which shall be issued as the Series 2022A-1 Bonds (\$45,100,000) and the Series 2022A-2 Bonds (\$13,000,000) solely for the purpose of having different maturity dates and redemption requirements and being able to track the Qualifying Intermediate-Term Indebtedness (as defined in the Master Indenture) more easily. The 2022A-1 Bonds shall mature on January 1, 2053. The 2022A-2 Bonds shall mature on January 1, 2028. The Bonds shall bear interest at such rates determined in accordance with the Trust Agreement and the 2022A-1 Bonds shall be subject to Sinking Fund Requirements set forth in Schedule 1 hereto. During the initial Direct Purchase Rate Period (which is fifteen (15) years for the 2022A-1 Bonds and to maturity for the 2022A-2 Bonds), the 2022A-1 Bonds will bear interest at 79% of Term SOFR (as defined in the Trust Agreement) plus 1.1850% and the 2022A-2 Bonds will bear interest at 79% of Term SOFR plus 1.0665%, subject to adjustment under certain circumstances described in the Trust Agreement, including but not limited to taxability, event of default, and corporate tax rate adjustments.

The Bonds shall be issued as fully registered bonds in means while the Bonds bear interest at (i) the Direct Purchase Rate, in denominations \$1.00, (ii) the Weekly Rate, in denominations \$100,000 and any integral multiple of \$5,000 in excess of \$100,000; and (iii) the Long-Term Rate, in denominations \$5,000 and any integral multiple thereof. While bearing interest at the Weekly Rate or Long-Term Rate, the Bonds shall be issuable in book-entry form as provided in the Trust

Agreement. Interest on the Bonds shall be paid at the times and at the rates determined as specified in the Trust Agreement. Payments of principal of and interest on the Bonds shall be made to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

Section 3. The Bonds shall be subject to (i) optional, extraordinary and mandatory redemption, (ii) during any Weekly Rate Period or Adjustable Rate Period, optional tender for purchase, and (iii) mandatory tender for purchase, all at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreement.

Section 4. The proceeds of the Bonds shall be applied as provided in Section 2.10 of the Trust Agreement. The Commission hereby finds that the use of the proceeds of the Bonds for a loan to pay all or a portion of the costs of the Project, fund a portion of the interest on the Bonds and pay certain costs of issuing the Bonds will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Trust Agreement and the Loan Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreement and the Loan Agreement in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, 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 6. The form, terms and provisions of the Purchase Agreement are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) is hereby authorized and directed to execute and deliver the Purchase Agreement in substantially the form presented at this meeting, together with such changes, modifications, insertions and deletions as they, 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 7. The forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such forms 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 forms presented at 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 8. The forms, terms and provisions of the Supplemental Indentures, the Obligations, the Covenants Agreement, the First Amendment and the Assignment of Contracts are hereby approved in substantially the forms presented to this meeting, together with such changes, modifications and deletions as the Chairman or Vice Chairman (or any member of the Commission

designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission, with the advice of counsel may deem necessary and appropriate; and the execution and delivery of the Trust Agreement as provided in Section 5 of this Series Resolution shall be conclusive evidence of the approval of the documents listed in this Section by the Commission.

Section 9. The Commission hereby approves the action of the Local Government Commission authorizing the private sale of the Bonds to the Purchaser in accordance with the Purchase Agreement at the purchase price of 100% of the principal amount thereof.

Section 10. 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 satisfaction of the conditions set forth in Section 2.10 of the Trust Agreement, the Bond Trustee shall deliver the Bonds to the Purchaser against payment therefor.

Section 11. The Bank of New York Mellon Trust Company, N.A. is hereby appointed as the initial Bond Trustee for the Bonds.

Section 12. If the Bonds are converted to the Weekly Rate, a Long-Term Rate or an Adjustable Rate, The Depository Trust Company, New York, New York is hereby appointed as the initial Securities Depository of the Bonds, with Cede & Co., a nominee thereof, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

Section 13. S. Mark Payne, Secretary of the Commission, Geary W. Knapp, Assistant Secretary of the Commission, Anthony J. Harms, Acting Chief of the Construction Section of the Division of Health Service Regulation, and Kathy C. Larrison and Crystal Watson-Abbott, Auditors for the Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreement, with full power to carry out the duties set forth therein.

Section 14. The Chairman, Vice Chairman, Secretary, and any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are each hereby 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, and the Purchase Agreement.

Section 15. This Series Resolution shall take effect immediately upon its passage.

Schedule 1

Required Redemption of the 2022A-1 Bonds (\$45,100,000)

<u>Due January 1</u>	<u>Sinking Fund Requirement</u>	<u>Due January 1</u>	<u>Sinking Fund Requirement</u>
2026	\$ 150,000	2040	\$1,515,000
2027	900,000	2041	1,575,000
2028	935,000	2042	1,640,000
2029	960,000	2043	1,710,000
2030	1,010,000	2044	1,780,000
2031	1,050,000	2045	1,850,000
2032	1,095,000	2046	1,930,000
2033	1,135,000	2047	2,010,000
2034	1,185,000	2048	2,090,000
2035	1,235,000	2049	2,175,000
2036	1,285,000	2050	2,270,000
2037	1,335,000	2051	2,450,000
2038	1,395,000	2052	2,510,000
2039	1,455,000	2053*	4,470,000

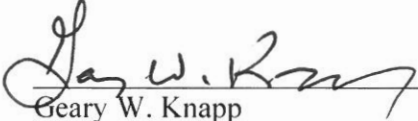
* Maturity

The 2022A-2 Bonds are to be paid with initial Entrance Fees from the Project.

4. Adjournment

There being no further business, the meeting was adjourned at 11:51 a.m.

Respectfully submitted,

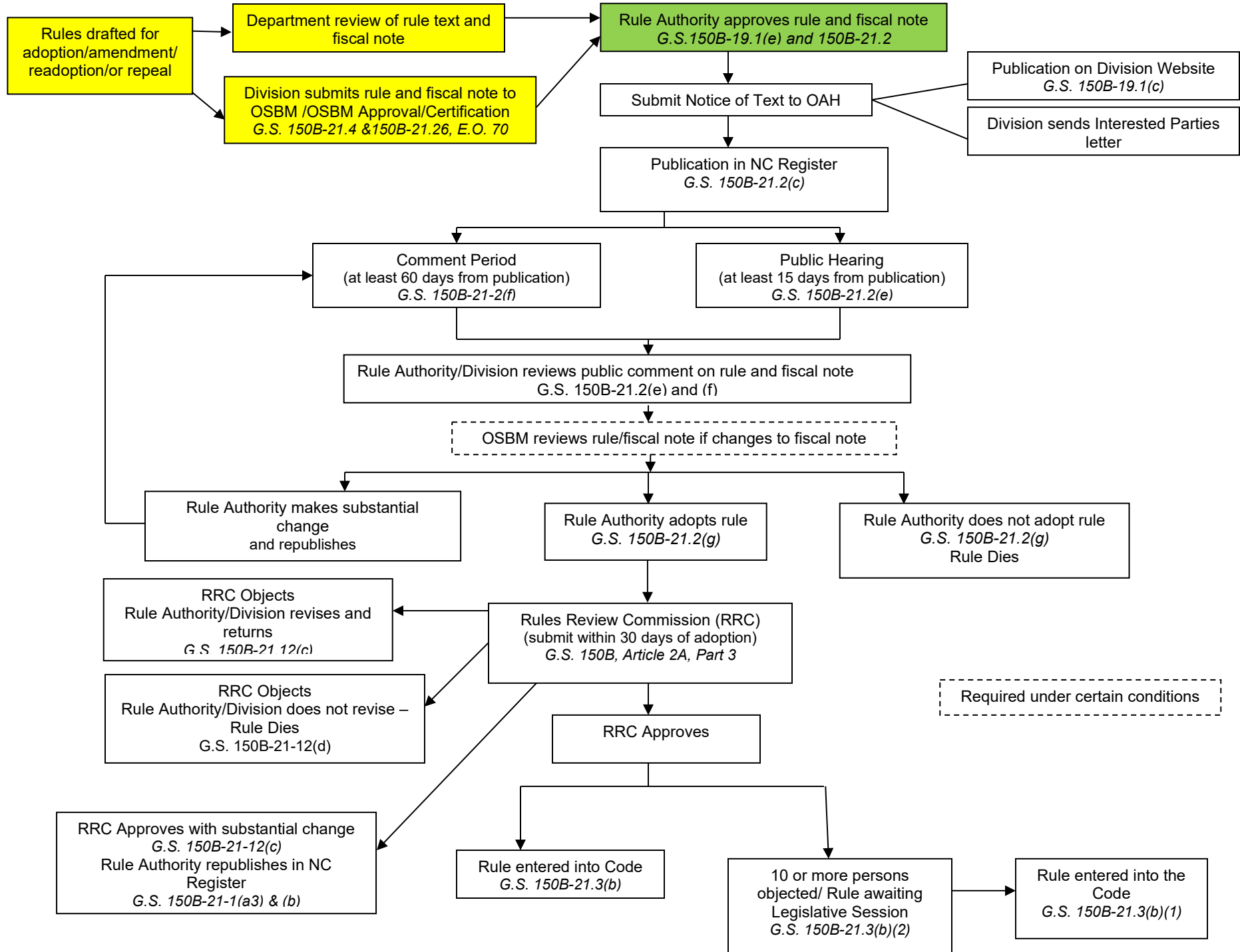


Geary W. Knapp
Assistant Secretary

NC MCC Bond Sale Approval Form						
Facility Name: Twin Lakes						
	Time of Preliminary Approval	Time of Mailing POS (if applicable)	Time of Final Approval	Total Variance	Explanation of Variance	
SERIES: Series 2022 (Bank Held)						
PAR Amount	\$58,018,954.00	N/A	\$58,100,000.00	\$81,046.00	Refined final project budget	
Estimated Interest Rate	4.50%	N/A	4.00%	-0.50%	Market Rate Improvements	
All-in True Interest Cost	4.65%	N/A	4.12%	-0.53%	Market Rate Improvement	
Maturity Schedule (Interest) - Date	01/01/2023 - 09/30/2053	N/A	01/01/2023 - 12/01/2052		Refinement based on project dynamics and bank approval parameters	
Maturity Schedule (Principal) - Date	09/30/2024 - 09/30/2053	N/A	11/01/2024 - 12/01/2052		Refinement based on project dynamics and bank approval parameters	
Bank Holding Period (if applicable) - Date	15 Years	N/A	15 Years			
Estimated NPV Savings (\$) (if refunded bonds)	N/A	N/A	N/A			
Estimated NPV Savings (%) (if refunded bonds)	N/A	N/A	N/A			
NOTES:						
Twin Lakes is currently "BBB" rated by Fitch (affirmed 12/02/22). The Series 2022 bank placement will not be rated, but the rating remains outstanding on outstanding bond:						

Process for Medical Care Commission to Initiate Rulemaking

Exhibit C



1 10A NCAC 13A .0201 is proposed for amendment as follows:

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SECTION .0200 - RULEMAKING

4

5 10A NCAC 13A .0201 PETITIONS

6 (a) Any person wishing to submit a petition requesting the adoption, ~~amendment~~ amendment, or repeal of a rule by
7 the North Carolina Medical Care Commission shall ~~address~~ submit the petition addressed to Office of the Director,
8 Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

9 (b) The petition shall contain the following information:

10 (1) ~~either a draft of the text of the proposed rule or a summary of its contents~~ rule(s) for adoption or
11 amendment and the statutory authority for the agency to promulgate the ~~rule~~; rule(s);

12 ~~(2) reason for proposal;~~

13 ~~(3)~~(2) a statement of the effect on existing rules or orders;

14 ~~(4) any data supporting the proposal;~~

15 ~~(5)~~(3) a statement of the effect of the proposed rule rule(s) on existing practices in the area involved,
16 including cost factors, if known; and

17 ~~(6) names of those most likely to be affected by the proposed rule, with addresses, if known;~~

18 ~~(7)~~(4) the name(s) and address(es) of petitioner(s).

19 (c) The petitioner may include the following information within the request:

20 (1) documents and any data supporting the petition;

21 (2) a statement of the reasons for adoption of the proposed rule(s), amendment or the repeal of an
22 existing rule(s);

23 (3) a statement explaining the costs and computation of the cost factors, if known; and

24 (4) a description, including the names and addresses, if known, of those most likely to be affected by
25 the proposed rule(s).

26 ~~(e)~~(d) The Chairman of the North Carolina Medical Care Commission will determine, Commission, based on a study
27 review of the facts stated in the petition, whether the public interest will be served by granting the petition. He will
28 consider all the contents of the submitted petition, plus any additional information he deems relevant. shall consider
29 the following in the determination to grant the petition:

30 (1) whether the North Carolina Medical Care Commission has authority to adopt the rule(s);

31 (2) the effect of the proposed rule(s) on existing rules, programs and practices;

32 (3) probable costs and cost factors of the proposed rule(s);

33 (4) the impact of the rule on the public and the regulated entities; and

34 (5) whether the public interest will be served by granting the petition.

35 ~~(d)~~ Within 30 days of submission of the petition, the Chairman will render a final decision. If the decision is to deny
36 the petition, the Chairman will notify the petitioner in writing, stating the reasons for the denial. If the decision is to

1 ~~approve the petition, the Chairman will initiate a rulemaking proceeding by issuing a rulemaking notice, as provided~~
2 ~~in these rules.~~

3 (e) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the
4 petitioner by the Chairman of the North Carolina Medical Care Commission.

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6 *History Note: Authority G.S. 143B-165; 150B-20;*

7 *Eff. February 1, 1976;*

8 *Readopted Eff. December 19, 1977;*

9 *Amended Eff. November 1, 1989;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22,*

11 *~~2015- 2015~~;*

12 *Amended Eff. October 1, 2023.*

**Fiscal Impact Analysis
Permanent Rule Amendment without Substantial Economic Impact**

Rulemaking Authority Proposing Rule Change:

North Carolina Medical Care Commission

Agency Contact Persons

Nadine Pfeiffer, DHSR Rules Review Manager – (919) 855-3811

Emery Milliken, Deputy Director, Health Service Regulation – (919) 855-3958

Impact Summary

Federal Government: No
State Government: Yes, minimal
Local Government: No
Private Entities: Yes, minimal
Substantial Impact: No

N.C. Administrative Code Citations and Titles of Rule Change

**See proposed text in the Appendix*

10A NCAC 13A .0201 Petitions (Amendment)

Authorizing Statutes

N.C. G.S. 143B-165

N.C. G.S. 150B-20

Background and Rationale for Rule Amendment

The rulemaking procedures in Subchapter 10A NCAC 13A apply to the rulemaking authority of the North Carolina Medical Care Commission (Commission) granted by G.S. 143B-165. Rules are required in the N.C. Administrative Code pursuant to G.S. 150B-20 for the procedure for submitting a rule petition to an Agency and the procedure an Agency follows in considering a rulemaking petition. There are 1717 rules the Division of Health Service Regulation (DHSR) has jurisdiction over in the N.C. Administrative Code. Of that number, the Commission has rulemaking authority for 736 rules. The remaining 981 rules are under the rulemaking authority of the Director, DHSR through Directive II-24 from the Department of Health and Human Services, the N.C. Radiation Protection Commission, the N.C. Social Services Commission, and the N.C. Mental Health Commission.

As discussed in the fiscal analysis, this rule is proposed for amendment to provide clarity, remove ambiguity, remove language restating statute, and make technical changes to the text.

Rules Summary

Rule .0201 – Petitions

The Agency is proposing to amend this rule to revise, update and clarify the procedure for the requirements for a rule petition submission and for rule petition approval by the Commission. The rule has been reorganized to identify items the petitioner may include in the petition but are not required to submit. The requirement for the timeframe of rendering of a final decision by the Commission Chairman of a petition submission was removed because it is governed by statute in G.S. 150B-20. In addition, other language restating the requirements in G.S. 150B-20 has been removed. By clarifying the requirements for rule petition submission and rule petition approval in the proposed rule, it removes the ambiguity in the rule for the submission of rule petitions to the Office of the Director, DHSR for rulemaking by the Commission.

Fiscal Impact to State Government and the Regulated Community

The proposed rule is clarifying the process for Medical Care Commission rulemaking petitions. The factors listed in the proposed rule have been used in consideration of rule petition approvals and are not new in the determination used to grant a rule petition. As such, there will be no change to the quality of review or the outcome of petitions.

In the last five years (10/1/18 -10/1/22), there have been two rule petitions submitted to DHSR for the rulemaking authority of the Commission, both of them submitted in the year 2022. In clarifying the requirements for petition submission in the proposed rule amendment, no additional requirements were added for the petitioner to address. Of the optional items listed in the rule, it is up to the discretion of the petitioner to include any or all the items listed the submitted petition for Commission consideration. Clarifying the determination factors for granting the petition enables a fair and equitable process for the Commission to consider petitions submitted. Petitioners and Commissioners may receive an incremental benefit in the form of time savings from the petition submission requirements being easier to understand.

The proposed rule shifts the responsibility for a petition determination from solely that of the Commission Chair to that of the entire Commission. In theory, this change has the potential to make the petition process more burdensome in that it requires a determination from the full Commission rather than just the Chair. It could also produce a benefit in that it will enable more transparency and diverse input from Commission members. However, costs and benefits associated with this change would be realized only if the Chair discontinues the current practice of deferring petition determinations to the entire Commission. This appears to be a discretionary outcome; as such, these potential costs and benefits may not be realized.

There will be no change in the amount of time for a petition determination by the Commission because according to G.S. 150B-20, a decision must be made within 120 days of receipt of a petition. The Commission holds regularly scheduled quarterly meetings, and as business needs arise, may hold special meetings in between the quarterly meetings. In the last five years, the petition determination decisions have been accommodated on the Commission meeting agendas for one regularly scheduled quarterly meeting and one special Commission meeting.

Impact Summary

As measured from the baseline conditions, there are no quantifiable economic costs or benefits associated with the proposed rule amendments. The amendments are for the purpose of providing clarity and consistency with Statute. While these amendments will not result in a change to the

baseline regulatory condition, they could have a positive economic impact to the regulated community and the State agency in terms of time savings. These impacts are expected to be negligible. The amendments could also result in a potential cost to the Commission, but such a cost would be realized only if the Commission Chair discontinues the current practice of deferring petition determinations to the full Commission. This appears to be a discretionary outcome; as such, this potential cost may not be realized.

Appendix: Proposed Rule Text

10A NCAC 13A .0201 is proposed for amendment as follows:

SECTION .0200 - RULEMAKING

10A NCAC 13A .0201 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, ~~amendment~~ amendment, or repeal of a rule by the North Carolina Medical Care Commission shall ~~address~~ submit the petition addressed to Office of the Director, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

(b) The petition shall contain the following information:

- (1) ~~either a draft of the text of the proposed rule or a summary of its contents~~ rule(s) for adoption or amendment and the statutory authority for the agency to promulgate the ~~rule~~; rule(s);
- ~~(2) reason for proposal;~~
- ~~(3)~~(2) a statement of the effect on existing rules or orders;
- ~~(4) any data supporting the proposal;~~
- ~~(5)~~(3) a statement of the effect of the proposed rule rule(s) on existing practices in the area involved, including cost factors, if known; and
- ~~(6) names of those most likely to be affected by the proposed rule, with addresses, if known;~~
- ~~(7)~~(4) the name(s) and address(es) of petitioner(s).

(c) The petitioner may include the following information within the request:

- (1) documents and any data supporting the petition;
- (2) a statement of the reasons for adoption of the proposed rule(s), amendment or the repeal of an existing rule(s);
- (3) a statement explaining the costs and computation of the cost factors, if known; and
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

~~(e)~~(d) The ~~Chairman of the North Carolina Medical Care Commission will determine, Commission,~~ based on a study review of the facts stated in the petition, ~~whether the public interest will be served by granting the petition. He will consider all the contents of the submitted petition, plus any additional information he deems relevant. shall consider~~ the following in the determination to grant the petition:

- (1) whether the North Carolina Medical Care Commission has authority to adopt the rule(s);
- (2) the effect of the proposed rule(s) on existing rules, programs and practices;
- (3) probable costs and cost factors of the proposed rule(s);
- (4) the impact of the rule on the public and the regulated entities; and
- (5) whether the public interest will be served by granting the petition.

~~(d) Within 30 days of submission of the petition, the Chairman will render a final decision. If the decision is to deny the petition, the Chairman will notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Chairman will initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these rules.~~

(e) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Chairman of the North Carolina Medical Care Commission.

*History Note: Authority G.S. 143B-165; 150B-20;
Eff. February 1, 1976;
Readopted Eff. December 19, 1977;
Amended Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22,
~~2015.~~ 2015;
Amended Eff. October 1, 2023.*

1 10A NCAC 13F .0702 is proposed for readoption with substantive changes as follows:

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10A NCAC 13F .0702 DISCHARGE OF RESIDENTS

~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.~~

~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(3) the safety of other individuals in the facility is endangered;~~
- ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;~~
- ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or~~
- ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or~~
- ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;~~
- ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;~~
- ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or~~
- ~~(4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~

~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) — The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) — A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
8 ~~of Discharge is dated.~~

9 ~~(3) — Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
13 ~~Services.~~

14 ~~(4) — A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
19 ~~from the facility as evidenced by:~~

20 ~~(1) — notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) — explaining to the resident and responsible person or legal representative why the discharge is~~
22 ~~necessary;~~

23 ~~(3) — informing the resident and responsible person or legal representative about an appropriate discharge~~
24 ~~destination; and~~

25 ~~(4) — offering the following material to the caregiver with whom the resident is to be placed and providing~~
26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) — a copy of the resident's most current FL 2;~~

28 ~~(B) — a copy of the resident's most current assessment and care plan;~~

29 ~~(C) — a copy of the resident's current physician orders;~~

30 ~~(D) — a list of the resident's current medications;~~

31 ~~(E) — the resident's current medications;~~

32 ~~(F) — a record of the resident's vaccinations and TB screening;~~

33 ~~(5) — providing written notice of the name, address and telephone number of the following, if not provided~~
34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) — the regional long term care ombudsman; and~~

36 ~~(B) — the protection and advocacy agency established under federal law for persons with~~
37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
10 ~~the required notice period.. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
20 ~~Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S.~~
24 ~~131D-4.8:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;~~

27 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
28 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
29 ~~nurse practitioner;~~

30 ~~(3) the safety of the resident or other individuals in the facility is endangered;~~

31 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
32 ~~physician, physician assistant, or nurse practitioner;~~

33 ~~(5) the resident has failed to pay the costs of services and accommodations by the payment due date~~
34 ~~according to the resident's contract after receiving written notice of warning of discharge for failure~~
35 ~~to pay; or~~

36 ~~(6) the discharge is mandated under G.S. 131D-2.2(a).~~

37 ~~(c) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
2 be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home
3 Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health
4 Benefits, on the internet website [6 \(2\) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing
7 Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the
8 resident's responsible person or legal representative and the individual identified upon admission to
9 receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of
10 Discharge is dated.](https://policies.ncdhhs.gov/divisional/health-benefits-nc-</u>
5 <u>medicaid/forms.</u></p></div><div data-bbox=)

11 (3) Provide the following material in accordance with the Health Insurance Portability and
12 Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:

13 (A) a copy of the resident's most current FL-2;

14 (B) a copy of the resident's current physician's orders, including medication order;

15 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
16 (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms
17 shall not invalidate the discharge.

18 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
19 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
20 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
21 record.

22 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
23 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

24 (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met
25 in the facility under Subparagraph (b)(1) of this Rule; or

26 (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

27 (e) The following shall be documented in the resident record and shall be made available upon request to potential
28 discharge locations:

29 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
30 Paragraph (b) of this Rule:

31 (A) documentation by physician, physician assistant or nurse practitioner as required in
32 Paragraph (b) of this Rule;

33 (B) the condition or circumstance that endangers the health or safety of the resident being
34 discharged or endangers the health or safety of individuals in the facility, and the facility's
35 action taken to address the problem prior to pursuing discharge of the resident;

36 (C) written notices of warning of discharge for failure to pay the costs of services and
37 accommodations; or

1 (D) the specific health need or condition of the resident that the facility determined could not
2 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
3 contract signed upon the resident’s admission to the facility; and

4 (2) any known intervention of law enforcement with the resident due to threatening behavior or violence
5 toward self or others.

6 (f) The facility shall document contacts with possible discharge locations and responses and make available this
7 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
8 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the
9 purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident”
10 may be the same person as the resident’s legal representative or responsible person as identified in the resident’s
11 record.

12 (g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge
13 from the facility as evidenced by:

14 (1) explaining to the resident and responsible person or legal representative and the individual identified
15 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
16 is necessary;

17 (2) informing the resident and responsible person or legal representative and the individual identified
18 upon admission to receive a copy of the discharge notice on behalf of the resident about an
19 appropriate discharge destination; and

20 (A) If at the time of the discharge notice the discharge destination is unknown or is not
21 appropriate for the resident, the facility shall contact the local adult care home resident
22 discharge team to assist with placement; and

23 (B) The facility shall inform the resident and the resident’s legal representative of their right to
24 request the Regional Long-Term Care Ombudsman to serve as a member of the adult care
25 home resident discharge team; and

26 (3) offering the following material to the caregiver with whom the resident is to be placed and providing
27 this material as requested prior to or upon discharge of the resident:

28 (A) a copy of the resident's most current FL-2;

29 (B) a copy of the resident's most current assessment and care plan;

30 (C) a list of referrals to licensed health professionals, including mental health;

31 (D) a copy of the resident's current physician orders;

32 (E) a list of the resident's current medications;

33 (F) the resident's current medications; and

34 (G) a record of the resident's vaccinations and TB screening;

35 (4) providing written notice of the name, address and telephone number of the following, if not provided
36 on the discharge notice required in Paragraph (c) of this Rule:

37 (A) the regional long-term care ombudsman; and

1 (B) the protection and advocacy agency established under federal law for persons with
2 disabilities;

3 (5) providing the resident, responsible party or legal representative and the individual identified upon
4 admission who received a copy of the discharge notice on behalf of the resident with the discharge
5 location as determined by the adult care home resident discharge team, if convened, at or before the
6 discharge hearing, if the location is known to the facility.

7 (h) If an appeal hearing is requested:

8 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
9 person, and the Hearing Unit copies of all documents and records that the facility intends to use at
10 the hearing at least five working days prior to the scheduled hearing; and

11 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
12 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

13 (i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written
14 notice from the resident or responsible person which means the resident or responsible person may be charged for the
15 days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the
16 required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would
17 jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the
18 resident or responsible person shall be established in the resident contract or the house rules provided to the resident
19 or responsible person upon admission.

20 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
21 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
22 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
23 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
24 requirements in this Rule apply.

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26 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; ~~131D-4.5~~; 131D-21; 143B-165;*

27 *Eff. January 1, 1977;*

28 *Readopted Eff. October 31, 1977;*

29 *Temporary Amendment Eff. July 1, 2003;*

30 *Amended Eff. July 1, 2004. 2004:*

31 *Readopted Eff. October 1, 2023.*

1 10A NCAC 13F .1307 is proposed for re adoption without substantive changes as follows:

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3 **10A NCAC 13F .1307 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN**

4 In addition to the requirements in Rules ~~13F~~ .0801 and ~~13F~~ .0802 of this Subchapter, the facility shall assure the
5 following:

6 (1) Within 30 days of admission to the special care unit and quarterly thereafter, the facility shall
7 develop a written resident profile containing assessment data that describes the resident's behavioral
8 patterns, self-help abilities, level of daily living skills, special management needs, physical abilities
9 and disabilities, and degree of cognitive impairment.

10 (2) The resident care plan as required in Rule ~~13F~~ .0802 of this Subchapter shall be developed or revised
11 based on the resident profile and specify programming that involves environmental, social and
12 health care strategies to help the resident attain or maintain the maximum level of functioning
13 possible and compensate for lost abilities.

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15 *History Note: Authority G.S. 131D-2.16; 131D-4.5; 131D-4.6; 131D-8; 143B-165;*
16 *Temporary Adoption Eff. December 1, 1999;*
17 *Eff. July 1, ~~2000~~ 2000;*
18 *Readopted Eff. October 1, 2023.*

1 10A NCAC 13G .0504 is proposed for amendment as follows:

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3 **10A NCAC 13G .0504 COMPETENCY EVALUATION AND VALIDATION FOR LICENSED HEALTH**
4 **PROFESSIONAL SUPPORT TASKS**

5 (a) When a resident requires one or more of the personal care tasks listed in Subparagraphs (a)(1) through (a)(28) of
6 Rule .0903 of this Subchapter, the task may be delegated to non-licensed staff or licensed staff not practicing in their
7 licensed capacity after a licensed health professional has validated the staff person is competent to perform the task.

8 (b) The licensed health professional shall evaluate the staff person's knowledge, skills, and abilities that relate to the
9 performance of each personal care task. The licensed health professional shall validate that the staff person has the
10 knowledge, skills, and abilities and can demonstrate the performance of the task(s) prior to the task(s) being performed
11 on a resident.

12 ~~(b)~~ (c) Evaluation and validation of competency shall be performed by the following licensed health professionals in
13 accordance with his or her North Carolina occupational licensing laws:

14 (1) A registered nurse shall validate the competency of staff who perform any of the personal care tasks
15 specified in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter;

16 (2) In lieu of a registered nurse, a licensed respiratory care practitioner may validate the competency of
17 staff who perform personal care tasks specified in Subparagraphs (a)(6), (11), (16), (18), (19), and
18 (21) of Rule .0903 of this Subchapter;

19 (3) In lieu of a registered nurse, a licensed pharmacist may validate the competency of staff who perform
20 the personal care tasks specified in Subparagraph (a)(8) and (11) of Rule .0903 of this Subchapter.
21 An immunizing pharmacist may validate the competency of staff who perform the personal care
22 task specified in Subparagraph (a)(15) of Rule .0903 of this Subchapter; and

23 (4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the
24 competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22)
25 through (a)(27) of Rule .0903 of this Subchapter.

26 ~~(c)~~ (d) If a physician certifies that care can be provided to a resident in a family care home on a temporary basis in
27 accordance with G.S. 131D-2.2(a), the facility shall ensure that the staff performing the care task(s) authorized by the
28 physician are competent to perform the task(s) in accordance with Paragraphs ~~(a)~~ (b) and ~~(b)~~ (c) of this Rule. For the
29 purpose of this Rule, "temporary basis" means a length of time as determined by the resident's physician to meet the
30 care needs of the resident and prevent the resident's relocation from the family care home.

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32 *History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
33 *Temporary Adoption Eff. September 1, 2003;*
34 *Eff. July 1, 2004;*
35 *Readopted Eff. October 1, 2022. 2022;*
36 *Amended Eff. October 1, 2023.*

1 10A NCAC 13G .0705 is proposed for readoption with substantive changes as follows:

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10A NCAC 13G .0705 DISCHARGE OF RESIDENTS

~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.~~

~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(3) the safety of other individuals in the facility is endangered;~~
- ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;~~
- ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or~~
- ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or~~
- ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;~~
- ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;~~
- ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or~~
- ~~(4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~

~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) — The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) — A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
8 ~~of Discharge is dated.~~

9 ~~(3) — Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
13 ~~Services.~~

14 ~~(4) — A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
19 ~~from the facility as evidenced by:~~

20 ~~(1) — notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) — explaining to the resident and responsible person or legal representative why the discharge is~~
22 ~~necessary;~~

23 ~~(3) — informing the resident and responsible person or legal representative about an appropriate discharge~~
24 ~~destination; and~~

25 ~~(4) — offering the following material to the caregiver with whom the resident is to be placed and providing~~
26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) — a copy of the resident's most current FL 2;~~

28 ~~(B) — a copy of the resident's most current assessment and care plan;~~

29 ~~(C) — a copy of the resident's current physician orders;~~

30 ~~(D) — a list of the resident's current medications;~~

31 ~~(E) — the resident's current medications; and~~

32 ~~(F) — a record of the resident's vaccinations and TB screening.~~

33 ~~(5) — providing written notice of the name, address and telephone number of the following, if not provided~~
34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) — the regional long term care ombudsman; and~~

36 ~~(B) — the protection and advocacy agency established under federal law for persons with~~
37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
10 ~~the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
20 ~~Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S.~~
24 ~~131D-4.8:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;~~

27 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
28 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
29 ~~nurse practitioner;~~

30 ~~(3) the safety of the resident or other individuals in the facility is endangered;~~

31 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
32 ~~physician, physician assistant, or nurse practitioner;~~

33 ~~(5) the resident has failed to pay the costs of services and accommodations by the payment due date~~
34 ~~according to the resident's contract after receiving written notice of warning of discharge for failure~~
35 ~~to pay; or~~

36 ~~(6) the discharge is mandated under G.S. 131D-2.2(a).~~

37 ~~(c) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
2 be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home
3 Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health
4 Benefits, on the internet website [6 \(2\) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing
7 Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the
8 resident's responsible person or legal representative and the individual identified upon admission to
9 receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of
10 Discharge is dated.](https://policies.ncdhhs.gov/divisional/health-benefits-nc-</u>
5 <u>medicaid/forms.</u></p></div><div data-bbox=)

11 (3) Provide the following material in accordance with the Health Insurance Portability and
12 Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:

13 (A) a copy of the resident's most current FL-2;

14 (B) a copy of the resident's current physician's orders, including medication order;

15 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
16 (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall
17 not invalidate the discharge.

18 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
19 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
20 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
21 record.

22 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
23 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

24 (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met
25 in the facility under Subparagraph (b)(1) of this Rule; or

26 (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

27 (e) The following shall be documented in the resident record and shall be made available upon request to potential
28 discharge locations:

29 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
30 Paragraph (b) of this Rule:

31 (A) documentation by physician, physician assistant or nurse practitioner as required in
32 Paragraph (b) of this Rule;

33 (B) the condition or circumstance that endangers the health or safety of the resident being
34 discharged or endangers the health or safety of individuals in the facility, and the facility's
35 action taken to address the problem prior to pursuing discharge of the resident;

36 (C) written notices of warning of discharge for failure to pay the costs of services and
37 accommodations; or

1 (D) the specific health need or condition of the resident that the facility determined could not
2 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
3 contract signed upon the resident’s admission to the facility; and

4 (2) any known intervention of law enforcement with the resident due to threatening behavior or violence
5 toward self or others.

6 (f) The facility shall document contacts with possible discharge locations and responses and make available this
7 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
8 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the
9 purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident”
10 may be the same person as the resident’s legal representative or responsible person as identified in the resident’s
11 record.

12 (g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge
13 from the facility as evidenced by:

14 (1) explaining to the resident and responsible person or legal representative and the individual identified
15 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
16 is necessary;

17 (2) informing the resident and responsible person or legal representative and the individual identified
18 upon admission to receive a copy of the discharge notice on behalf of the resident about an
19 appropriate discharge destination; and

20 (A) If at the time of the discharge notice the discharge destination is unknown or is not
21 appropriate for the resident, the facility shall contact the local adult care home resident
22 discharge team to assist with placement; and

23 (B) The facility shall inform the resident and the resident’s legal representative of their right to
24 request the Regional Long-Term Care Ombudsman to serve as a member of the adult care
25 home resident discharge team; and

26 (3) offering the following material to the caregiver with whom the resident is to be placed and providing
27 this material as requested prior to or upon discharge of the resident:

28 (A) a copy of the resident's most current FL-2;

29 (B) a copy of the resident's most current assessment and care plan;

30 (C) a list of referrals to licensed health professionals, including mental health;

31 (D) a copy of the resident's current physician orders;

32 (E) a list of the resident's current medications;

33 (F) the resident's current medications; and

34 (G) a record of the resident's vaccinations and TB screening;

35 (4) providing written notice of the name, address and telephone number of the following, if not provided
36 on the discharge notice required in Paragraph (c) of this Rule:

37 (A) the regional long-term care ombudsman; and

1 (B) the protection and advocacy agency established under federal law for persons with
2 disabilities.

3 (5) providing the resident, responsible party or legal representative and the individual identified upon
4 admission who received a copy of the discharge notice on behalf of the resident with the discharge
5 location as determined by the adult care home resident discharge team, if convened, at or before the
6 discharge hearing, if the location is known to the facility.

7 (h) If an appeal hearing is requested:

8 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
9 person, and the Hearing Unit copies of all documents and records that the facility intends to use at
10 the hearing at least five working days prior to the scheduled hearing; and

11 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
12 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

13 (i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written
14 notice from the resident or responsible person which means the resident or responsible person may be charged for the
15 days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the
16 required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would
17 jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the
18 resident or responsible person shall be established in the resident contract or the house rules provided to the resident
19 or responsible person upon admission.

20 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
21 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
22 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
23 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
24 requirements in this Rule apply.

25
26 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;*
27 *Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
28 *Eff. April 1, 2001;*
29 *Temporary Amendment Eff. July 1, 2003;*
30 *Amended Eff. July 1, 2004. 2004;*
31 *Readopted Eff. October 1, 2023.*

1 10A NCAC 13G .1301 is proposed for readoption without substantive changes as follows:

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SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

4

10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

6 (a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent
7 to the resident's body that the resident cannot remove easily and ~~which~~ that restricts freedom of movement or normal
8 access to one's body, shall be:

9 (1) used only in those circumstances in which the resident has medical symptoms that warrant the use
10 of restraints and not for discipline or convenience purposes;

11 (2) used only with a written order from a physician except in emergencies, according to Paragraph (e)
12 of this Rule;

13 (3) the least restrictive restraint that would provide safety;

14 (4) used only after alternatives that would provide safety to the resident and prevent a potential decline
15 in the resident's functioning have been tried and documented in the resident's record.

16 (5) used only after an assessment and care planning process has been completed, except in emergencies,
17 according to Paragraph (d) of this Rule;

18 (6) applied correctly according to the manufacturer's instructions and the physician's order; and

19 (7) used in conjunction with alternatives in an effort to reduce restraint use.

20 Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing
21 mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance
22 abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed
23 lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering
24 fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and
25 providing supportive devices such as wedge cushions.

26 (b) The facility shall ask the resident or resident's legal representative if the resident may be restrained based on an
27 order from the resident's physician. The facility shall inform the resident or legal representative of the reason for the
28 request and the benefits of restraint use and the negative outcomes and alternatives to restraint use. The resident or
29 the resident's legal representative may accept or refuse restraints based on the information provided. Documentation
30 shall consist of a statement signed by the resident or the resident's legal representative indicating the signer has been
31 informed, the signer's acceptance or refusal of restraint use and, if accepted, the type of restraint to be used and the
32 medical indicators for restraint use.

33 Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability
34 to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact.

35 (c) In addition to the requirements in Rule ~~43F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and
36 care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph
37 (a)(5) of this Rule shall meet the following requirements:

- 1 (1) The assessment and care planning shall be implemented through a team process with the team
2 consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the
3 resident's responsible person or legal representative. If the resident or resident's responsible person
4 or legal representative is unable to participate, there shall be documentation in the resident's record
5 that they were notified and declined the invitation or were unable to attend.
- 6 (2) The assessment shall include consideration of the following:
7 (A) medical symptoms that warrant the use of a restraint;
8 (B) how the medical symptoms affect the resident;
9 (C) when the medical symptoms were first observed;
10 (D) how often the symptoms occur;
11 (E) alternatives that have been provided and the resident's response; and
12 (F) the least restrictive type of physical restraint that would provide safety.
- 13 (3) The care plan shall include the following:
14 (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to
15 reduce restraint time once the resident is restrained;
16 (B) the type of restraint to be used; and
17 (C) care to be provided to the resident during the time the resident is restrained.
- 18 (d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:
19 (1) The order shall indicate:
20 (A) the medical need for the restraint;
21 (B) the type of restraint to be used;
22 (C) the period of time the restraint is to be used; and
23 (D) the time intervals the restraint is to be checked and released, but no longer than every 30
24 minutes for checks and two hours for releases.
- 25 (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify
26 the resident's physician of the order within seven days.
- 27 (3) The restraint order shall be updated by the resident's physician at least every three months following
28 the initial order.
- 29 (4) If the resident's physician changes, the physician who is to attend the resident shall update and sign
30 the existing order.
- 31 (5) In emergency situations, the administrator or administrator-in-charge shall make the determination
32 relative to the need for a restraint and its type and duration of use until a physician is contacted.
33 Contact with a physician shall be made within 24 hours and documented in the resident's record.
- 34 (6) The restraint order shall be kept in the resident's record.
- 35 (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's
36 record and include the following:
37 (1) restraint alternatives that were provided and the resident's response;

- 1 (2) type of restraint that was used;
- 2 (3) medical symptoms warranting restraint use;
- 3 (4) the time the restraint was applied and the duration of restraint use;
- 4 (5) care that was provided to the resident during restraint use; and
- 5 (6) behavior of the resident during restraint use.

6 (f) Physical restraints shall be applied only by staff who have received training according to Rule .0506 of this
7 Subchapter and been validated on restraint use according to Rule .0504 of this Subchapter.

8

9 *History Note:* *Authority G.S. 131D-2.16; 143B-165;*
10 *Temporary Adoption Eff. July 1, 2004;*
11 *Temporary Adoption Expired March 12, 2005;*
12 *Eff. June 1, ~~2005~~ 2005;*
13 *Readopted Eff. October 1, 2023.*

DHSR Adult Care Licensure Section
Fiscal Impact Analysis
Permanent Rule Readoption and Amendment without Substantial Economic Impact

Agency: North Carolina Medical Care Commission

Contact Persons: Nadine Pfeiffer, DHSR Rules Review Manager, (919) 855-3811
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Impact:

Federal Government: No
State Government: No
Local Government: No
Private Entities: Yes
Substantial Impact: No

Titles of Rule Changes and N.C. Administrative Code Citation

Rule Readoptions (*See proposed text of these rules in Appendix*)

10A NCAC 13F .0702 Discharge Of Residents

10A NCAC 13F .1307 Special Care Unit Resident Profile And Care Plan

10A NCAC 13G .0504 Competency Evaluation and Validation For Licensed Health Professional Support Tasks

10A NCAC 13G .0705 Discharge Of Residents

10A NCAC 13G .1301 Use Of Physical Restraints And Alternatives

Authorizing Statutes: 131D-2.1; 131D-2.16; 131D-4.5;143B-165

Introduction and Background

The agency is proposing changes to update the Discharge of Residents rule language to be consistent with the existing requirements in N.C. Gen. Stat. 131D-4.8 that were established in 2011, to reformat the rule to be in a more chronological order, and to ensure the requirements are clear and unambiguous. Technical changes were also made to include additional documentation requirements for discharge preparation. The proposed changes will generate minimal costs and/or benefits for adult care homes and family care homes. The proposed changes will have limited fiscal impact on facilities as most changes have no substantial costs associated and some are already required in statute.

The proposed changes will have no impact on the Adult Care Licensure Section. The agency does not anticipate any additional impact on state government or local government (i.e. county Departments of Social Services who monitor and conduct complaint investigations in adult care homes and family care homes) beyond their current job requirements to implement, monitor, or regulate the proposed amendments.

[1]

Under the authority of G.S. 150B-21.3A, Periodic review of existing rules. The North Carolina Medical Care Commission and Rule Review Commission approved the Subchapter reports with classifications for the rules under 10A NCAC 13F Licensing of Adult Care Homes of Seven or More Beds and 10 NCAC 13G Licensing of Family Care Homes. The rules were classified in the reports as necessary with substantive public interest. Rules 10A NCAC 13F .0702 and 13G .0705 are being presented for readoption with substantive changes. The following rules were identified for readoption without substantive changes: 10A NCAC 13F .1307 and 13G .1301. Rule 13G .0504, has been amended for clarity and it doesn't affect the fiscal analysis. This rule was part of the fiscal analysis in the package for the Phase 3 readoption rules.

Rules Summary and Anticipated Fiscal Impact

10A NCAC 13F .0702 and 13G .0705 Discharge of Residents: These rules outline facilities’ requirements and procedures for a proper and safe discharge of residents. These rules were modified to update the language and to be consistent with the existing requirements in N.C. Gen. Stat. 131D-4.8. Technical changes were also made to this rule to be consistent with current rule writing styles. Revisions were also made to include additional documentation requirements for discharge preparation.

1. Paragraphs (b), (c), and (g) include language consistent with N.C. Gen. Stat. 131D-4.8. The current statute also identifies “the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident” as an additional individual involved in the discharge process, the language was updated to include this individual, and a definition was also included to provide clarity. The proposed changes also include additional requirements in (g)(2)(A) and (g)(2)(B), as outlined in the statute, requiring the facility to request to convene the adult care home resident discharge team to assist with placement if the discharge location is unknown, as well as the facility requirement to inform the resident and/or their representative of their right to request the Long Term Care Ombudsman to serve as a member of the adult care home resident discharge team. The resident discharge team may be led by county Adult Home Specialists who are employed by the local department social services to monitor adult and family care homes or a staff person from the Local Management Entity/Managed Care Organization (LME/MCO).

Facilities have been required to meet the requirements of 131D-4.8. since 2011; the proposed rule amendments will better align the rule with the existing statute. Updating the rule to align with the statute provides clarity for regulated providers and the public and alleviates facilities of the burden of referencing both the rule and the statute. According to 2022 facility license renewal data, there are 553 adult care homes and 535 family care homes operating in North Carolina. Review of the data provided by the North Carolina Division of Health Service Regulation; Adult Care Licensure Section reveals a substantial amount of discharges completed annually in facilities (Table 1). While facility-initiated discharges are represented in Table 1, it is important to note that this data is inclusive of the total number of discharges reported to the agency annually, which also includes resident-initiated discharges and resident hospitalizations that resulted in a level of care change resulting in the resident not returning to the facility. Therefore, the total number of discharges represented in Table 1 would not need to meet the requirements of the proposed rule.

Table 1. Number of Annual Discharges by Facility Type

Year	Facility Type		Total
	Adult Care Home	Family Care Home	
2019	9,678	662	10,340
2020	9,927	584	10,511
2021	8,402	504	8,906

2022	7,027	481	7,508
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Source: Division of Health Service Regulation Enterprise Licensing Database, Adult Care Home & Family Care Home License Renewal Data

2. The agency proposes that facilities also document any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others and make this information available to potential discharge locations upon request. The agency also proposes the facility document contacts with possible discharge locations and responses and make the documentation available to the resident, or legal representative upon request.

Rationale: The rules as currently written do not require facilities to document information regarding the resident interactions with law enforcement or threatening or violent behaviors which often results in the receiving facility being unaware of this information prior to admission. The intent of this proposed change was to allow the receiving facility to be informed upon request of the resident’s known intervention involving law enforcement. This would enable the receiving facility to make a determination as to whether admission of a resident would cause potential harm or disruption to the current residents, and to plan for how to address behaviors and potential future law enforcement interaction should the facility choose to admit the resident. This information would be documented by staff and would only be available upon request of the receiving facility. This will require facility staff to spend a small amount of time to document resident interactions with law enforcement. This additional time is expected to be minimal and will be performed by existing staff as part of their regular job duties.

These rules as currently written do not require facilities to document their efforts to find another placement during the discharge process. The proposed rule language now includes this documentation and also makes it available upon request to the resident to show the efforts done to find another placement. This requirement displays the effort of facilities actions to find a safe discharge location. This will require facility staff to spend a small amount of time to document their efforts to find another placement for a resident. This additional time is expected to be minimal and will be performed by existing staff as part of their regular job duties.

3. These rules as currently written provide a mailing address for copies of The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form. The proposed language removes the mailing address and provides an updated internet address where the forms can be found at no cost.

Fiscal Impact: There are no additional costs to implement the changes included to align with G.S. 131D-4.8 as facilities have been required to comply since 2011. There will be no additional costs with including the documentation of any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others. This information is already documented as required in section 13F .1212/13G. 1213 Reporting of Incidents and Accidents. Facilities will have minimal impact due to the additional time it will require for existing staff to document potential discharge locations and responses. The impact is expected to be minimal as staff are already documenting reasons for discharge and any additional information as indicated in Paragraph (e).

Appendix

10A NCAC 13F .0702 is proposed for reoption with substantive changes as follows:

10A NCAC 13F .0702 DISCHARGE OF RESIDENTS

~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.~~

~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(3) the safety of other individuals in the facility is endangered;~~
- ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;~~
- ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or~~
- ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

~~(c) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or~~
- ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;~~
- ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;~~
- ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or~~
- ~~(4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~

~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

- ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is~~

~~dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.~~

~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.~~

~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.~~

~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:~~

~~(1) notifying staff in the county department of social services responsible for placement services;~~

~~(2) explaining to the resident and responsible person or legal representative why the discharge is necessary;~~

~~(3) informing the resident and responsible person or legal representative about an appropriate discharge destination; and~~

~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:~~

~~(A) a copy of the resident's most current FL-2;~~

~~(B) a copy of the resident's most current assessment and care plan;~~

~~(C) a copy of the resident's current physician orders;~~

~~(D) a list of the resident's current medications;~~

~~(E) the resident's current medications;~~

~~(F) a record of the resident's vaccinations and TB screening;~~

~~(5) providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (e) of this Rule:~~

~~(A) the regional long term care ombudsman; and~~

~~(B) the protection and advocacy agency established under federal law for persons with disabilities.~~

~~(g) If an appeal hearing is requested:~~

~~(1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and~~

~~(2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.~~

~~Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.~~

~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician documented level of care change for the resident, the discharge requirements in this Rule apply.~~

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S. 131D-4.8:

- (1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (2) the health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the facility, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (3) the safety of the resident or other individuals in the facility is endangered;
- (4) the health of the resident or other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner;
- (5) the resident has failed to pay the costs of services and accommodations by the payment due date according to the resident's contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2.2(a).

(c) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms>.
- (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative and the individual identified upon admission to receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of Discharge is dated.
- (3) Provide the following material in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's current physician's orders, including medication order;
- (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge.

(5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.

(d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
- (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

(e) The following shall be documented in the resident record and shall be made available upon request to potential discharge locations:

- (1) The reason for discharge to include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:
 - (A) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
 - (B) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
 - (C) written notices of warning of discharge for failure to pay the costs of services and accommodations;
or
 - (D) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility; and
- (2) any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others.

(f) The facility shall document contacts with possible discharge locations and responses and make available this documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the purposes of this rule, "the individual identified upon admission to receive a discharge notice on behalf of the resident" may be the same person as the resident's legal representative or responsible person as identified in the resident's record.

(g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:

- (1) explaining to the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge is necessary;
- (2) informing the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident about an appropriate discharge destination; and
 - (A) If at the time of the discharge notice the discharge destination is unknown or is not appropriate for the resident, the facility shall contact the local adult care home resident discharge team to assist with placement; and

(B) The facility shall inform the resident and the resident's legal representative of their right to request the Regional Long-Term Care Ombudsman to serve as a member of the adult care home resident discharge team: and

(3) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:

(A) a copy of the resident's most current FL-2;

(B) a copy of the resident's most current assessment and care plan;

(C) a list of referrals to licensed health professionals, including mental health;

(D) a copy of the resident's current physician orders;

(E) a list of the resident's current medications;

(F) the resident's current medications; and

(G) a record of the resident's vaccinations and TB screening;

(4) providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (c) of this Rule:

(A) the regional long-term care ombudsman; and

(B) the protection and advocacy agency established under federal law for persons with disabilities;

(5) providing the resident, responsible party or legal representative and the individual identified upon admission who received a copy of the discharge notice on behalf of the resident with the discharge location as determined by the adult care home resident discharge team, if convened, at or before the discharge hearing, if the location is known to the facility.

(h) If an appeal hearing is requested:

(1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and

(2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

(i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

(j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule apply.

*History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; ~~131D-4.5~~; 131D-21; 143B-165;
Eff. January 1, 1977;*

Readopted Eff. October 31, 1977;

Temporary Amendment Eff. July 1, 2003;

Amended Eff. July 1, ~~2004~~, 2004;

Readopted Eff. October 1, 2023.

10A NCAC 13F .1307 is proposed for readoption without substantive changes as follows:

10A NCAC 13F .1307 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN

In addition to the requirements in Rules ~~13F~~ .0801 and ~~13F~~ .0802 of this Subchapter, the facility shall assure the following:

- (1) Within 30 days of admission to the special care unit and quarterly thereafter, the facility shall develop a written resident profile containing assessment data that describes the resident's behavioral patterns, self-help abilities, level of daily living skills, special management needs, physical abilities and disabilities, and degree of cognitive impairment.
- (2) The resident care plan as required in Rule ~~13F~~ .0802 of this Subchapter shall be developed or revised based on the resident profile and specify programming that involves environmental, social and health care strategies to help the resident attain or maintain the maximum level of functioning possible and compensate for lost abilities.

History Note: Authority G.S. 131D-2.16; 131D-4.5; 131D-4.6; 131D-8; 143B-165;

Temporary Adoption Eff. December 1, 1999;

Eff. July 1, ~~2000~~, 2000;

Readopted Eff. October 1, 2023.

10A NCAC 13G .0504 is proposed for amendment as follows:

10A NCAC 13G .0504 COMPETENCY EVALUATION AND VALIDATION FOR LICENSED HEALTH PROFESSIONAL SUPPORT TASKS

(a) When a resident requires one or more of the personal care tasks listed in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter, the task may be delegated to non-licensed staff or licensed staff not practicing in their licensed capacity after a licensed health professional has validated the staff person is competent to perform the task.

(b) The licensed health professional shall evaluate the staff person's knowledge, skills, and abilities that relate to the performance of each personal care task. The licensed health professional shall validate that the staff person has the knowledge, skills, and abilities and can demonstrate the performance of the task(s) prior to the task(s) being performed on a resident.

~~(b)~~ (c) Evaluation and validation of competency shall be performed by the following licensed health professionals in accordance with his or her North Carolina occupational licensing laws:

- (1) A registered nurse shall validate the competency of staff who perform any of the personal care tasks specified in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter;
- (2) In lieu of a registered nurse, a licensed respiratory care practitioner may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(6), (11), (16), (18), (19), and (21) of Rule .0903 of this Subchapter;

- (3) In lieu of a registered nurse, a licensed pharmacist may validate the competency of staff who perform the personal care tasks specified in Subparagraph (a)(8) and (11) of Rule .0903 of this Subchapter. An immunizing pharmacist may validate the competency of staff who perform the personal care task specified in Subparagraph (a)(15) of Rule .0903 of this Subchapter; and
- (4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22) through (a)(27) of Rule .0903 of this Subchapter.

~~(e)~~ (d) If a physician certifies that care can be provided to a resident in a family care home on a temporary basis in accordance with G.S. 131D-2.2(a), the facility shall ensure that the staff performing the care task(s) authorized by the physician are competent to perform the task(s) in accordance with Paragraphs ~~(a)~~ (b) and ~~(b)~~ (c) of this Rule. For the purpose of this Rule, "temporary basis" means a length of time as determined by the resident's physician to meet the care needs of the resident and prevent the resident's relocation from the family care home.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;
 Temporary Adoption Eff. September 1, 2003;
 Eff. July 1, 2004;
 Readopted Eff. October 1, 2022- 2022;
 Amended Eff. October 1, 2023.*

10A NCAC 13G .0705 is proposed for readoption with substantive changes as follows:

10A NCAC 13G .0705 DISCHARGE OF RESIDENTS

~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.~~

~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- ~~(1) — the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(2) — the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(3) — the safety of other individuals in the facility is endangered;~~
- ~~(4) — the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;~~
- ~~(5) — failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or~~
- ~~(6) — the discharge is mandated under G.S. 131D 2(a1).~~

~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- ~~(1) — the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or~~
 - ~~(2) — reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~
- ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:~~
- ~~(1) — documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;~~
 - ~~(2) — the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;~~
 - ~~(3) — written notices of warning of discharge for failure to pay the costs of services and accommodations; or~~
 - ~~(4) — the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~
- ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~
- ~~(1) — The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~
 - ~~(2) — A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.~~
 - ~~(3) — Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.~~
 - ~~(4) — A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.~~
- ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:~~
- ~~(1) — notifying staff in the county department of social services responsible for placement services;~~
 - ~~(2) — explaining to the resident and responsible person or legal representative why the discharge is necessary;~~
 - ~~(3) — informing the resident and responsible person or legal representative about an appropriate discharge destination; and~~
 - ~~(4) — offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - ~~(A) — a copy of the resident's most current FL-2;~~
 - ~~(B) — a copy of the resident's most current assessment and care plan;~~
 - ~~(C) — a copy of the resident's current physician orders;~~~~

- ~~(D) — a list of the resident's current medications;~~
- ~~(E) — the resident's current medications; and~~
- ~~(F) — a record of the resident's vaccinations and TB screening.~~

~~(5) — providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (e) of this Rule:~~

- ~~(A) — the regional long term care ombudsman; and~~
- ~~(B) — the protection and advocacy agency established under federal law for persons with disabilities.~~

~~(g) If an appeal hearing is requested:~~

- ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and~~
- ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.~~

~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician documented level of care change for the resident, the discharge requirements in this Rule apply.~~

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S. 131D-4.8:

- (1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (2) the health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the facility, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (3) the safety of the resident or other individuals in the facility is endangered;
- (4) the health of the resident or other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner;
- (5) the resident has failed to pay the costs of services and accommodations by the payment due date according to the resident's contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2.2(a).

(c) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms>.
 - (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative and the individual identified upon admission to receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of Discharge is dated.
 - (3) Provide the following material in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's current physician's orders, including medication order;
 - (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge.
 - (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.
- (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:
- (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
 - (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.
- (e) The following shall be documented in the resident record and shall be made available upon request to potential discharge locations:
- (1) The reason for discharge to include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:
 - (A) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
 - (B) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
 - (C) written notices of warning of discharge for failure to pay the costs of services and accommodations;
or
 - (D) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility; and
 - (2) any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others.

(f) The facility shall document contacts with possible discharge locations and responses and make available this documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident” may be the same person as the resident’s legal representative or responsible person as identified in the resident’s record.

(g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:

- (1) explaining to the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge is necessary;
- (2) informing the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident about an appropriate discharge destination; and
 - (A) If at the time of the discharge notice the discharge destination is unknown or is not appropriate for the resident, the facility shall contact the local adult care home resident discharge team to assist with placement; and
 - (B) The facility shall inform the resident and the resident’s legal representative of their right to request the Regional Long-Term Care Ombudsman to serve as a member of the adult care home resident discharge team; and
- (3) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's most current assessment and care plan;
 - (C) a list of referrals to licensed health professionals, including mental health;
 - (D) a copy of the resident's current physician orders;
 - (E) a list of the resident's current medications;
 - (F) the resident's current medications; and
 - (G) a record of the resident's vaccinations and TB screening;
- (4) providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (c) of this Rule:
 - (A) the regional long-term care ombudsman; and
 - (B) the protection and advocacy agency established under federal law for persons with disabilities.
- (5) providing the resident, responsible party or legal representative and the individual identified upon admission who received a copy of the discharge notice on behalf of the resident with the discharge location as determined by the adult care home resident discharge team, if convened, at or before the discharge hearing, if the location is known to the facility.

(h) If an appeal hearing is requested:

- (1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and

(2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

(i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

(j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule apply.

*History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;
Temporary Adoption Eff. January 1, 2000; December 1, 1999;
Eff. April 1, 2001;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. July 1, ~~2004~~. 2004;
Readopted Eff. October 1, 2023.*

10A NCAC 13G .1301 is proposed for readoption without substantive changes as follows:

SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

(a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily and ~~which~~ that restricts freedom of movement or normal access to one's body, shall be:

- (1) used only in those circumstances in which the resident has medical symptoms that warrant the use of restraints and not for discipline or convenience purposes;
- (2) used only with a written order from a physician except in emergencies, according to Paragraph (e) of this Rule;
- (3) the least restrictive restraint that would provide safety;
- (4) used only after alternatives that would provide safety to the resident and prevent a potential decline in the resident's functioning have been tried and documented in the resident's record.
- (5) used only after an assessment and care planning process has been completed, except in emergencies, according to Paragraph (d) of this Rule;
- (6) applied correctly according to the manufacturer's instructions and the physician's order; and
- (7) used in conjunction with alternatives in an effort to reduce restraint use.

Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and providing supportive devices such as wedge cushions.

(b) The facility shall ask the resident or resident's legal representative if the resident may be restrained based on an order from the resident's physician. The facility shall inform the resident or legal representative of the reason for the request and the benefits of restraint use and the negative outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the resident's legal representative indicating the signer has been informed, the signer's acceptance or refusal of restraint use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact.

(c) In addition to the requirements in Rule ~~43F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph (a)(5) of this Rule shall meet the following requirements:

- (1) The assessment and care planning shall be implemented through a team process with the team consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the resident's responsible person or legal representative. If the resident or resident's responsible person or legal representative is unable to participate, there shall be documentation in the resident's record that they were notified and declined the invitation or were unable to attend.
- (2) The assessment shall include consideration of the following:
 - (A) medical symptoms that warrant the use of a restraint;
 - (B) how the medical symptoms affect the resident;
 - (C) when the medical symptoms were first observed;
 - (D) how often the symptoms occur;
 - (E) alternatives that have been provided and the resident's response; and
 - (F) the least restrictive type of physical restraint that would provide safety.
- (3) The care plan shall include the following:
 - (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to reduce restraint time once the resident is restrained;
 - (B) the type of restraint to be used; and
 - (C) care to be provided to the resident during the time the resident is restrained.

(d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

- (1) The order shall indicate:
 - (A) the medical need for the restraint;
 - (B) the type of restraint to be used;
 - (C) the period of time the restraint is to be used; and

- (D) the time intervals the restraint is to be checked and released, but no longer than every 30 minutes for checks and two hours for releases.
 - (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify the resident's physician of the order within seven days.
 - (3) The restraint order shall be updated by the resident's physician at least every three months following the initial order.
 - (4) If the resident's physician changes, the physician who is to attend the resident shall update and sign the existing order.
 - (5) In emergency situations, the administrator or administrator-in-charge shall make the determination relative to the need for a restraint and its type and duration of use until a physician is contacted. Contact with a physician shall be made within 24 hours and documented in the resident's record.
 - (6) The restraint order shall be kept in the resident's record.
- (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's record and include the following:
- (1) restraint alternatives that were provided and the resident's response;
 - (2) type of restraint that was used;
 - (3) medical symptoms warranting restraint use;
 - (4) the time the restraint was applied and the duration of restraint use;
 - (5) care that was provided to the resident during restraint use; and
 - (6) behavior of the resident during restraint use.
- (f) Physical restraints shall be applied only by staff who have received training according to Rule .0506 of this Subchapter and been validated on restraint use according to Rule .0504 of this Subchapter.

*History Note: Authority G.S. 131D-2.16; 143B-165;
Temporary Adoption Eff. July 1, 2004;
Temporary Adoption Expired March 12, 2005;
Eff. June 1, ~~2005~~, 2005;
Readopted Eff. October 1, 2023.*



**THE NORTH CAROLINA
MEDICAL CARE COMMISSION
RESOLUTION OF APPRECIATION**

STEPHEN T. MORTON

WHEREAS, Stephen T. Morton was a member of the North Carolina Medical Care Commission from July 28, 2018 until November 16, 2022; and

WHEREAS, Mr. Morton served with a devotion of interest far beyond the call of duty with the highest integrity, graciousness, and efficiency; and

WHEREAS, during Mr. Morton's tenure, the Medical Care Commission assisted many hospitals and other health care facilities with tax exempt bond financing; and

WHEREAS, during Mr. Morton's tenure, significant program rules were revised and/or adopted to ensure the quality of health services to the people of North Carolina; and

NOW, THEREFORE, BE IT RESOLVED that the North Carolina Medical Care Commission does hereby record its great appreciation for the services of Mr. Morton; and

BE IT RESOLVED, FURTHER, that this resolution be recorded in the permanent minutes of the Commission.

Resolved this the 10th day of February 2023.

John J. Meier, IV, M.D., Chairman

ATTEST:

S. Mark Payne, Secretary

EXHIBIT E

Compliance Summary:

- **Compliant with NCMCC Compliance Policy**

1) Does Organization have a formal post tax issuance compliance policy?

No- while we don't have a formal written policy in our policy manual for this, it is our practice to regularly review with bond counsel all of the required post issuance requirements and applicable covenant compliance and reporting.

2) Who in the Organization will be designated to ensure appropriate compliance with the issuance?

Tammy Jones – CFO

3) What is the Organization's compliance monitoring plan?

Quarterly review by CFO and CEO with Finance Committee

4) How will the Organization report compliance deficiencies to leadership and the Board?

Our compliance officer, along with CEO and CFO provide quarterly reporting to the Board of Directors as well as reporting any interim concerns that may arise.

Selected Application Information:

1) Information from FYE 2022 (9/30 Year End) Audit of EveryAge

Net Income (Loss)	\$(11,155,696)
Operating Revenue	\$ 72,462,364
Operating Expenses	\$ 73,041,615
Net Cash provided by Operating Activities	\$ 4,323,448
Unrestricted Cash	\$ 3,725,758
Change in Cash	\$ 2,497,942

***Net Loss due to over \$12,000,000 in investment return

2) Ratings:

None

3) Community Benefits (FYE 2022):

Per N.C.G.S § 105 – 9.29% (Eligible for 100% property tax exclusion)

- Total Community Benefits and Charity Care - \$4,175,936

4) Long-Term Debt Service Coverage Ratios (EveryAge):

Actual FYE 2022	1.59 (Obligated Group)
Forecasted FYE 2023	1.97
Forecasted FYE 2024	2.08
Forecasted FYE 2025	2.14
Forecasted FYE 2026	2.27
Forecasted FYE 2027	2.13

5) Transaction Participants:

Bond Counsel:	McGuireWoods LLP
Underwriter/Placement Agent:	B.C. Ziegler and Company
Underwriter Counsel:	TBD
Bank Purchaser:	Truist
Bank Counsel:	Moore & Van Allen
Trustee:	TBD
Accountant (AUP Forecast):	TBD.

6) Other Information:

(a) Board diversity

Male:	15
<u>Female:</u>	<u>4</u>
Total:	19

Caucasian:	15
<u>African American:</u>	<u>4</u>
	19

(b) Diversity of residents (Abernathy Laurels & Piedmont Crossings)

Male:	184
<u>Female:</u>	<u>456</u>
Total:	640

Caucasian:	631
Hispanic:	3
Asian:	1
<u>African American:</u>	<u>5</u>
	640

(c) Fee Schedule – Attached (Page E3)

(d) MCC Bond Sale Approval Policy Form – Attached (Page E4)

Unit Type	Bedroom	Gross Sq Feet	Unit Count	Monthly Service Fee	
				Regular	Premium
A1	1	817	11	\$ 2,042.50	\$ 2,246.75
A1 Alt	1	966	3	\$ 2,415.00	\$ 2,656.50
A2	1	899	20	\$ 2,247.50	\$ 2,472.25
A2 Alt	1	962	3	\$ 2,405.00	\$ 2,645.50
A2 Type A	1	899	2	\$ 2,247.50	\$ 2,472.25
A3	1	1,115	4	\$ 2,787.50	\$ 3,066.25
B1	2	1,186	30	\$ 2,965.00	\$ 3,261.50
B1 Alt	2	1,247	3	\$ 3,117.50	\$ 3,429.25
B1 Type A	2	1,186	3	\$ 2,965.00	\$ 3,261.50
B2	2	1,337	12	\$ 3,342.50	\$ 3,676.75
B3	2	<u>1,189</u>	4	\$ 2,972.50	\$ 3,269.75
Total/Weighted Avg		1,081	95	\$ 2,984.00	

Notes:

Community Fee paid upon entry \$ 5,000

2nd person fee (assumed on 25%) \$ 400

Weighted average of \$2,984 includes 2nd person fee

NC MCC Bond Sale Approval Form	
Facility Name: EveryAge (BellaAge Hickory)	
	Time of Preliminary Approval
SERIES A:	
PAR Amount	\$33,280,000.00
Estimated Interest Rate	4.50%
All-in True Interest Cost	4.75%
Maturity Schedule (Interest) - Date	Monthly
Maturity Schedule (Principal) - Date	Monthly
Bank Holding Period (if applicable) - Date	15 years
Estimated NPV Savings (\$) (if refunded bonds)	NA
Estimated NPV Savings (%) (if refunded bonds)	NA
NOTES:	
	Time of Preliminary Approval
SERIES B:	
PAR Amount	\$5,000,000.00
Estimated Interest Rate	4.50%
All-in True Interest Cost	4.75%
Maturity Schedule (Interest) - Date	Monthly
Maturity Schedule (Principal) - Date	Monthly
Bank Holding Period (if applicable) - Date	15 years
Estimated NPV Savings (\$) (if refunded bonds)	\$600,000
Estimated NPV Savings (%) (if refunded bonds)	12.00%
NOTES:	
Refunding is approximately \$5 million of the Series 2021 transaction	