

**STATE OF NORTH CAROLINA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NORTH CAROLINA MEDICAL CARE COMMISSION MEETING**

**DIVISION OF HEALTH SERVICE REGULATION  
701 BARBOUR DRIVE  
RALEIGH NC 27603**

**August 14, 2009**

**TABLE OF CONTENTS**

<b>May 8, 2009 Minutes.....</b>	<b>Exhibit A</b>
<b>Quarterly Report on Bond Program.....</b>	<b>Exhibit B</b>
<b>Report on Community Benefits.....</b>	<b>Exhibit B/1</b>
<b>Report on Continuing Care Retirement Communities.....</b>	<b>Exhibit B/2</b>
<b><u>Executive Committee Minutes:</u></b>	
<b>June 18, 2009.....</b>	<b>Exhibit B/3</b>
<b>July 9, 2009 .....</b>	<b>Exhibit B/4</b>
<b><u>New Business:</u></b>	
<b>Maryfield Resolution.....</b>	<b>Exhibit C</b>
<b><u>Bond Projects</u></b>	
<b>Cypress Glen Retirement Community.....</b>	<b>Exhibit D &amp; H</b>
<b>Duke Hospital.....</b>	<b>Exhibit E &amp; H</b>
<b>Penick Home.....</b>	<b>Exhibit F &amp; H</b>
<b>DePaul.....</b>	<b>Exhibit G &amp; H</b>

**Meeting Adjourned**

STATE OF NORTH CAROLINA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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MEDICAL CARE COMMISSION QUARTERLY MEETING

DIVISION OF HEALTH SERVICE REGULATION  
701 BARBOUR DRIVE  
RALEIGH NC 27603

August 14, 2009

9:00 A.M.

AGENDA

- I. **MEETING OPENS**
- II. **CHAIRPERSON'S COMMENTS** - Mrs. Bode will comment on matters of importance to the Commission. *Question: Does anyone have any conflict of interest with any agenda item before the Commission today?*
- III. **APPROVAL OF MINUTES** from the May 8, 2009 meeting. (**attached as Exhibit A**).
- IV. **DIVISION DIRECTOR'S REPORT** - Mr. Horton will report on matters of interest to the Commission.

Other items to report on are listed below (see **Exhibits B –B/4**):

1. Quarterly Report on Bond Program (**attached as Exhibit B**).
2. Report on Community Benefits (**attached as Exhibit B/1**).
3. Report on Continuing Care Retirement Communities (**attached as Exhibit B/2**).
4. The Executive Committee held telephone conference meetings on the following dates:

**June 18, 2009** – To authorize a letter of credit and remarketing agent for Lutheran Retirement Ministries and to authorize the financing of certain health care equipment for the benefit of Mission Hospital, Inc. pursuant to a master lease and sublease agreement. (**attached as Exhibit B/3**).

**July 9, 2009** – To authorize amendments to the Duke University Health System 2005 Bonds, including a confirming liquidity facility for the 2005C Bonds and the additional of an interest rate mode to all or some of the series of 2005 Bonds. To consider a resolution authorizing the issuance and sale of bonds, the proceeds of which will be loaned to WakeMed and information for the discussion of Bank Qualified Bonds Tax-Exempt Debt. (**attached as Exhibit B/4**).

V. **NEW BUSINESS**

1. **Maryfield Resolution - Approving and Authorizing the execution and delivery of the Second Amendatory Trust Agreement, dated as of August 1, 2009, between the North Carolina Medical Care Commission (the "Commission") and The Bank of New York Mellon Trust Company, N.A., as Trustee, relating to the Trust Agreement, dated as of December 1, 2005 (the "2005C Trust Agreement"), between the Commission and the Trustee providing for the issuance of \$24,000,000 North Carolina Medical Care Commission Variable Rate Health Care Facilities First Mortgage Revenue Bonds (Pennybyrn at Mayfield Project), Series 2005C (the "Series 2005C Bonds") and the transactions contemplated thereby. (attached as Exhibit C).**

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 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; and

WHEREAS, Mayfield, Incorporated (the "Corporation") is a North Carolina nonprofit corporation and a "non-profit agency" within the meaning and intent of the Act, which owns and operates a continuing care facility for the elderly in High Point, North Carolina; and

WHEREAS, the Commission has made a loan to the Corporation for the purpose of providing funds, together with other available funds, to pay a portion of the cost of the Project (as defined in the 2005C Trust Agreement) and other purposes permitted by the Act; and

WHEREAS, the Corporation has informed the Commission that Bank of America, N.A., as the provider of the letter of credit supporting the Series 2005C Bonds (the "Credit Provider"), has agreed to certain amendments to the 2005C Trust Agreement and the Reimbursement Agreement, dated as of December 1, 2005, between the Credit Provider and the Corporation, relating to the distribution of certain entrance fees of the Corporation to allow for the Corporation to retain a portion of such initial entrance fees to alleviate certain unforeseen cash flow issues; and

WHEREAS, the Commission has determined that the public interest will be best served by approving, executing and delivering the Second Amendatory Agreement and approving the transactions described therein; and

WHEREAS, there have been presented at this meeting draft copies of the following documents:

(a) Second Amendatory Trust Agreement, to be dated as of August 1, 2009 (the "Second Amendatory Agreement"), between the Commission and The Bank of New York Mellon Trust Company, N.A., as trustee (the "2005C Bond Trustee"), relating to the Series 2005C Bonds;

(b) Second Amendment to Reimbursement Agreement, to be dated as of August 1, 2009 (the "Second Amendment"), between the Credit Provider and the Corporation; and

WHEREAS, the Commission has determined that the public interest will be served by the approval, execution and delivery of the Second Amendatory Agreement and the transactions contemplated by such Second Amendatory Agreement and the Second Amendment;

NOW, THEREFORE, BE IT RESOLVED by the Commission as follows:

**Section 1.** Capitalized terms used in this Resolution and not defined herein shall have the meanings given such terms as given in the 2005C Trust Agreement.

**Section 2.** The forms, terms and provisions of the Second Amendatory Agreement and the Second Amendment are hereby approved in all respects, and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman for such purpose and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Second Amendatory Agreement substantially in the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary or appropriate; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 3.** The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman, the Secretary and any Assistant Secretary of the Commission are authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this Resolution.

**Section 4.** This Resolution shall take effect immediately upon its passage.

## **BOND PROJECTS**

### **A. Cypress Glen Retirement Community- Greenville, NC - Christopher B. Taylor (attached as Exhibit D & H)**

**Resolution:** The Commission grants preliminary approval to a project for Cypress Glen Retirement Community to provide funds, to be used together with other available funds, to refund all or a portion of (1) the outstanding North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Refunding Bonds (Cypress Glen Retirement Community) \$5,000,000 Series 2004B (Adjustable Rate Bonds) dated March 15, 2004 and (2) the outstanding North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Cypress Glen Project) \$2,500,000 Series 2004D (Adjustable Rate Bonds) dated August 1, 2004. The current refunding will be accomplished with either a Variable Rate Demand Bond Structure or a Bank Qualified Bond Structure. The project is in accordance with an application received as follows:

**Note:** In today's market, based on the ten year SIFMA average interest rate of 2.40% the present value of the savings from the refunding would be \$1,115,147 which equates to 14.87% PV savings.

#### **ESTIMATED SOURCES OF FUNDS**

Principal Amount of Bonds	<u>\$7,750,000</u>
Total Sources	<b>\$7,750,000</b>

#### **ESTIMATED USES OF FUNDS**

Amount to Refund Series 2004B and Series 2004D Bonds	\$7,500,000
Letter of Credit Fee	50,000
Underwriters Discount	70,000
Accountants fees	10,000
Corporation Counsel	25,000
Bond Counsel	50,000
Rating Agency	10,000
Trustee Fees	5,000
Printing	5,000
Local Government Commission	3,500
Appraisal	15,000
Miscellaneous	<u>6,500</u>
Total	<b>\$7,750,000</b>

Tentative approval is given with the understanding that the governing board of Cypress Glen 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. 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 patients.
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 CCRC's as adopted on November 9, 2007.

**Based on information furnished by applicant, the project is:**

1. Financially feasible	✓	Yes	_____	No	_____	N/A
2. Construction and related costs are reasonable		Yes	_____	No	✓	N/A
		_____	_____		_____	

**B. Duke University Health System, Durham- Christopher B. Taylor and William L. Warren (attached as Exhibit E &H)**

**Resolution:** The Commission grants preliminary approval to projects for new construction, renovations, and equipment purchases for Duke University Hospital (DUH), in Durham and Duke Raleigh Hospital (DRAH). The projects are to be funded by a combination of bond proceeds and equity contribution. There are a total of six projects in various stages of development or completion. Two projects (30,085 sq.ft.) have been completed at Duke Raleigh Hospital which included the renovation of 2<sup>nd</sup> and 3<sup>rd</sup> floor nursing units and providing telemetry services throughout the hospital. One project (6600 sq. ft.) to be completed in 2010 that is currently under construction at Duke University Hospital expands the Intensive Care Nursery by 14 beds. Two additional renovation projects (11,000 sq. ft.) for Duke University Hospital include the replacement of one OR and the construction of four new OR's to accommodate emerging technology/equipment. One of the OR's will be an intraoperative endovascular OR Suite (Hybrid OR). The remaining project is to construct a new 265,000 square foot Ambulatory Cancer Center to provide 61 additional exam rooms, 36 additional infusion treatment spaces, three new linear accelerators, four new CT Scanners, two MRI units, one pharmacy robotic I.V. automation machine, and renovations to 30,000 sq. ft. of existing space in two adjacent buildings. All projects are in accordance with a preliminary application, plans and specifications and participation as follows:

**ESTIMATED SOURCES OF FUNDS**

Principal amount of bonds to be issued	\$ 180,000,000
Interest earned during construction	1,417,000
Equity contribution	<u>94,936,698</u>
<b>Total</b>	<b>\$276,353,698</b>

**ESTIMATED USES OF FUNDS**

Site Costs	\$ 1,769,780
Construction contracts:	146,336,293
(a) DRAH – 3 <sup>rd</sup> Floor Nursing Unit	= \$ 2,585,848
(b) DRAH – 2 <sup>nd</sup> Floor Nursing Unit	= 2,778,998
(c) DUH – Intensive Care Nursery	= 4,153,183
(d) DUH – OR Renovations	= 8,391,191
(e) DUH – Hybrid OR	= 841,728
(f) DUH – Amb. Cancer Center	= 127,585,345

Architect's Fees	10,400,250
Architect's Reimbursables	1,090,000
Survey tests, etc.	3,089,633
Contingency	3,825,877
Fixed Equipment and moveable including installation	81,130,191
Consultant Fees	460,000
Bond Interest during Construction	24,269,674
Underwriters' Discount/Placement Fee	3,240,000
Feasibility Fees	30,000
Accountant Fees	25,000
Legal Fees for Corporate Counsel	85,000
Bond Counsel	125,000
Rating Agencies	235,500
Trustee Fees	9,000
Printing Costs	4,000
Local Government Commission Reimbursables	3,500
Financial Advisor	150,000
Underwriter's Counsel	<u>75,000</u>
<b>Total</b>	<b>\$ 276,353,698</b>

Tentative approval is given with the understanding that the governing board of Duke University Health System 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.
3. Financial feasibility must be determined prior to the issuance of the debt.
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 debt for this project and may approve the issuance of such greater principal amount of the debt 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 debt or notes shall be financed in such a manner and upon such terms and conditions as will, in the sole judgment of the Executive Committee of the Commission, result in the lowest cost to the facility and its patients.
7. The borrower will provide the Commission annually a copy of the Advocacy Needs Data Initiative (ANDI) form it files with the North Carolina Hospital Association (NCHA) in accordance with a resolution passed by the Commission on February 9, 2007 adopting the NCHA Community Benefits reporting format and methodology for hospitals reporting to the Commission or other acceptable reporting format.
8. All health care facilities and services directly or indirectly owned or controlled by the health Care organization, including physician practices, shall be available to Medicare and Medicaid patients with no limitations imposed as a result of the source of reimbursement.
9. If public approval of the debt is required for the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended ("Section 147(f)"), this tentative approval shall constitute the recommendation of the Commission that the Governor of the State of North Carolina (the "Governor") approve the issuance of such bonds, subject to the satisfaction of the requirements of Section 147(f)

concerning the holding of a public hearing prior to the submission of such recommendation to the Governor.

**Based on information furnished by applicant, the project is:**

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

**C. The Episcopal Home for the Ageing in the Diocese of North Carolina, Inc. DBA Penick Village, Southern Pines, NC - Christopher B. Taylor and William L. Warren (attached as Exhibit F & H)**

**Resolution:** The Commission grants preliminary approval for a project for The Episcopal Home for the Ageing in the Diocese of North Carolina, Inc., Southern Pines, for the construction, equipping and campus utility upgrades for two buildings (Penick Woodlands and The Village House) located on the existing campus of Penick Village. Penick Woodlands will be a 127,000 square foot independent living facility comprised of 21 one-bedroom and 48 two-bedroom apartments, totaling 69 units. The Village House will provide a non-denominational multi-use chapel, dining rooms, library, resident activity space and business offices in a two-story building totaling 38,916 square feet, 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	\$ 37,155,000
Cash and negotiable securities from reserves	0
Interest earned during construction	<u>250,000</u>
<b>Total</b>	<b>\$37,405,000</b>

**ESTIMATED USES OF FUNDS**

Site utility and development costs	\$2,161,300
Construction contracts	20,752,940
Construction contingency	415,000
Architect/engineer fees and reimbursables	1,475,000
Fixtures, furniture and equipment and installation	850,000
Consultants' fees related to construction	685,000
Local permits	10,000
DHSR plan review	26,936
Marketing costs	1,080,000
Owner purchased equipment	25,000
Bond interest during construction	5,654,600
Reimbursement for interest paid on existing letter of credit	\$155,000
Debt service reserve fund	2,689,800
Underwriters' discount/placement fee	1,017,900
Feasibility fees	175,000
Accountants fees	20,000
Legal fees for Corporation counsel	50,000
Bond counsel	85,000
Rating agencies	15,000
Trustee fees	10,000
Printing costs	5,000
Local Government Commission reimbursables	3,500
Miscellaneous	<u>43,024</u>
<b>Total</b>	<b>\$37,405,000</b>

Tentative approval is given with the understanding that the governing board of Penick Village 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. 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 patients.
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 CCRC's as adopted on November 9, 2007.

**Based on information furnished by applicant, the project is:**

1. Financially feasible	✓	Yes	_____	No	_____	N/A
2. Construction and related costs are reasonable		Yes	_____	No	_____	✓ N/A

**D. DePaul Community Facilities, Rochester, New York**-Christopher Taylor (attached as Exhibit G & H)

**Resolution:** The Commission grants preliminary approval to a project for Community Facilities, Inc. to provide funds, to be used together with other available funds, to effect a refinancing of the Series 2007A and Series 2007B North Carolina Medical Care Commission Health Care Facilities First Mortgage Revenue Bonds (Community Facilities Project). The refinancing is to be accomplished as a tax-exempt bank qualified bond issue in accordance with the attached memo from Citizens Bank, N.A. setting forth the terms of the financing. The project is in accordance with an application received as follows:

The transaction is a refunding for Federal tax purposes but will be a conversion of the Series 2007A Bonds to a bank qualified mode for State law purposes and accomplished by an amendment to the 2007 Trust and Loan agreements.



**ESTIMATED SOURCES OF FUNDS**

Tax Exempt Bank Qualified Bonds	\$ 30,000,000
Bank Taxable Loan	1,665,000
Corporation Equity	<u>135,000</u>
<b>Total</b>	<b>\$31,800,000</b>

**ESTIMATED USES OF FUNDS**

Refinancing of Series A and Series B 2007 Bonds	\$31,665,000
Corporation Counsel	20,000
Bond Counsel	50,000
Bank Counsel	20,000
Accountant/Feasibility Fees	20,000
Miscellaneous	<u>25,000</u>
<b>Total</b>	<b>\$31,800,000</b>

Tentative approval is given with the understanding that the governing board of DePaul 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. 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 patients.
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 CCRC's as adopted on November 9, 2007.

**Based on information furnished by applicant, the project is:**

1. Financially feasible	@	Yes	_____	No	_____	N/A
2. Construction and related costs are reasonable		Yes	_____	No	_____	✓ N/A

@- Recommendations depending on receipt of forecasted debt serve cost ratios.

## **Refunding of Commission Bond Issues**

### **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 November 13, 2009;

**THEREFORE, BE IT RESOLVED**; that the Commission authorizes its Executive Committee to approve projects involving only the refunding of existing Commission debt between this date and November 13, 2009.

**VI. MEMBER REPORT**

**VII. QUESTIONS FROM THE PUBLIC** - The Chairperson will receive questions from the public.

**VIII. ADJOURNMENT** - A motion to adjourn is requested.