

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

**The North Carolina Medical Care Commission  
809 Ruggles Drive  
Raleigh, North Carolina 27603**

**MINUTES**

**CALLED MEETING OF THE EXECUTIVE COMMITTEE  
CONFERENCE TELEPHONE MEETING ORIGINATING  
FROM THE COMMISSION'S OFFICE  
FEBRUARY 28, 2012  
11:00 A.M.**

**Members of the Executive Committee Present:**

Lucy Hancock Bode, Chairman  
Joseph D. Crocker, Vice-Chairman  
Dr. George A. Binder  
George H.V. Cecil  
Albert F. Lockamy  
Mary L. Piepenbring  
Dr. Carl K. Rust

**Members of the Executive Committee Absent:**

None

**Members of Staff Present:**

Christopher B. Taylor, CPA, Assistant Secretary  
Alice S. Creech, Bond Program Assistant

**Others Present:**

Allen K. Robertson, Robinson Bradshaw & Hinson, P.A.  
Robert N. Willis, Jr., Duke University Health System, Inc.

**1. Purpose of Meeting**

(1) To authorize approval to a project for Duke University Health System, Inc. to provide funds, to be used together with other available funds, to effect a conversion of the North Carolina Medical Care Commission Health Care Facilities Revenue Refunding Bonds Series 2005A Bonds to a Bank-Bought mode, (2) To authorize the financing of certain health care equipment for the benefit of Duke University Health System, Inc. pursuant to a master lease and sublease agreement, (3) To authorize amendments to the Duke University Health System Series 2005B and 2005C Bonds to add Index Floating Rate and Bank-Bought Index Floating Rate modes.

**2. Duke University Health System, Inc., Durham - Christopher B. Taylor**

**Executive Committee Action:** A motion was made by Mr. Joe Crocker, seconded by Ms. Mary Piepenbring and unanimously approved.

**Resolution:** The Commission grants preliminary approval to a project for Duke University Health System, Inc. (DUHS) to provide funds, to be used together with other available funds, to effect a conversion of the North Carolina Medical Care Commission Health Care Facilities Revenue Refunding Bonds (Duke University Health System) Series 2005A Bonds to a Bank-Bought mode. The Bonds will be purchased by JP Morgan Chase and will carry an initial interest rate of 74% of one month LIBOR plus 100 basis points until final maturity on June 1, 2028 (approximately 16 years). The conversion is being done in order to eliminate bank credit risk. The project is in accordance with an application received as follows.

**ESTIMATED SOURCES OF FUNDS**

Principal amount of Bonds	\$107,380,000
Cash and negotiable securities from reserves	<u>142,000</u>
<b>Total Sources</b>	<b>\$107,522,000</b>

**ESTIMATED USES OF FUNDS**

Conversion/redemption of 2005A Bonds	\$107,380,000
Corporation counsel	21,000
Bond counsel	75,000
Trustee fees and counsel	3,500
Bond purchaser fees and counsel	<u>42,500</u>
<b>Total Uses</b>	<b>\$107,522,000</b>

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

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.

2. Any required certificate of need must be in effect at the time of the issuance/conversion of the bonds or notes.
3. Financial feasibility must be determined prior to the issuance/conversion of bonds.
4. The project must, in all respects, meet requirements of §G.S. 131A (Health Care Facilities Finance Act).
5. The Executive Committee of the Commission is delegated the authority to approve the issuance/conversion of bonds of 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/converted in such a manner and upon such terms and conditions as will, in the sole judgment of the Executive Committee of the Commission, result in the lowest cost to the facility and its patients.
7. The borrower will provide the Commission annually a copy of the Advocacy Needs Data Initiative (ANDI) form it files with the North Carolina Hospital Association (NCHA) in accordance with a resolution passed by the Commission on February 9, 2007 adopting the NCHA Community Benefits reporting format and methodology for hospitals reporting to the Commission.
8. All health care facilities and services directly or indirectly owned or controlled by the health care organization, including physician practices, shall be available to Medicare and Medicaid patients with no limitations imposed as a result of the source of reimbursement.
9. If public approval of the bonds is required for the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended (“Section 147(f)”), this tentative approval shall constitute the recommendation of the Commission that the Governor of the State of North Carolina (the “Governor”) approve the issuance of such bonds, subject to the satisfaction of the requirements of Section 147(f) concerning the holding of a public hearing prior to the submission of such recommendation to the Governor.

Based on information furnished by applicant, the project is:

- |  |               |     |               |    |               |     |
|--|---------------|-----|---------------|----|---------------|-----|
| 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 |

**Notes:**

1) **Bond counsel fee of \$75,000 is to cover 2005A Conversion and amendments to 2005B and 2005C referenced in a separate resolution.**

2) **Duke University Health System, Inc. and Affiliates Financial Information for year ended June 30, 2011.**

<b>Operating Income</b>	<b>\$189,467,000</b>
<b>Increases in unrestricted net assets</b>	<b>\$584,932,000</b>
<b>Increase in net assets</b>	<b>\$583,000,000</b>
<b>Net cash provided by operating activities</b>	<b>\$292,998,000</b>
<b>Net increase in cash and cash equivalents</b>	<b>\$139,108,000</b>

3) **Long Term Debt Service Coverage Ratio**

<b>FYE</b>	<b>6/30/2011</b>	<b>7.99</b>
	<b>6/30/2012</b>	<b>6.51</b>
	<b>6/30/2013</b>	<b>6.23</b>
	<b>6/30/2014</b>	<b>6.09</b>
	<b>6/30/2015</b>	<b>6.08</b>

4) **Community Benefits per ANDI Report for Duke University Health System for FYE 6/30/2011**

<b>Total Community Benefits</b>	<b>\$300,524,901</b>
<b>Bad Debts</b>	<b>\$ 23,010,938</b>

5) **Bond rating is AA by all three rating agencies**

3. **Resolution of the North Carolina Medical Care Commission Authorizing Financing in the Aggregate Principal Amount of up to \$40,000,000 of Health Care Equipment for the Benefit of Duke University Health System, Inc. Pursuant to a Master Lease and Sublease Agreement**- Remarks were made by Allen Robertson and Robert Willis.

**Executive Committee Action:** A motion was made by Mr. Joe Crocker, seconded by Mr. George Cecil and unanimously approved with Mrs. Lucy Bode and Dr. Carl Rust abstaining from the vote.

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"), (i) to finance health care facilities and pay all or any part of the cost thereof from funds available to the Commission for such purpose, (ii) to acquire personal property constituting health care facilities by lease upon such terms and at such cost as shall be agreed upon by the owner and the Commission, (iii) to lease as lessor personal property, (iv) to lease any health care facility to a non-profit agency for operation and maintenance, (v) to fix and collect rents for the use of health care facilities, and (vi) to pledge and assign the revenues and receipts from any health care facilities and any lease and the rent received thereunder; and

WHEREAS, Duke University Health System, Inc. ("DUHS") 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 "non-profit agency" within the meaning of the Act; and

WHEREAS, DUHS has made application to the Commission requesting that the Commission provide financing for the cost of acquiring and installing certain health care equipment for the benefit of DUHS pursuant to a master lease and sublease agreement; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted on August 12, 2011, has approved the financing, subject to compliance by DUHS with the conditions set forth in such resolution, and DUHS has complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there has been presented at this meeting a draft copy of a Master Lease and Sublease Agreement dated as of March 1, 2012 (the "Master Agreement") among Banc of America Public Capital Corp ("BAPCC"), the Commission and DUHS, and the form of Draw-Down Schedule (as defined in the Master Agreement) thereto attached as Exhibits A-1 and A-2 the Master Agreement (the Master Agreement and a Draw-Down Schedule thereto being referred to herein as an "Agreement" and collectively as the "Agreements"), pursuant to which the Commission will lease medical, computer, office and capital equipment for use at Duke University Hospital, Durham Regional Hospital, Duke Health Raleigh Hospital and other DUHS

facilities (collectively, the "Equipment") from BAPCC (the obligations of the Commission to make payments to BAPCC for the use of Equipment pursuant to an Agreement being referred to herein as a "Lease" and collectively as the "Leases") and sublease the Equipment to DUHS, and BAPCC, on behalf of the Commission, will pay or provide the proceeds of the Leases in the aggregate principal amount of up to \$40,000,000 to DUHS for the purpose of financing and reimbursing the cost of acquiring and installing the Equipment; and

WHEREAS, the Commission has determined that DUHS is financially responsible and capable of fulfilling its obligations under the Agreements; and

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

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

Section 1. Capitalized words and terms used in this Resolution and not defined herein shall have the same meanings in this Resolution as such words and terms are given in the Master Agreement.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the incurrence of the Leases in the aggregate principal amount of up to \$40,000,000. Each Lease shall be repaid and shall bear interest upon the terms and conditions set forth in the related Agreement.

Section 3. Each Lease shall be subject to prepayment at the times, upon the terms and conditions, and with the premium set forth in the related Agreement.

Section 4. The proceeds of each Lease shall be applied as provided in the related Agreement and the related Escrow Agreement, if any. The Commission hereby finds that the use of the proceeds of the Leases to finance the cost of the Equipment will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Master Agreement are hereby approved in all respects, and the Chairman, the Vice Chairman, any member of the Commission designated by the Chairman, the Secretary and the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Master Agreement in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 6. The Chairman, the Vice Chairman, any member of the Commission designated by the Chairman, the Secretary and the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver Draw-Down Schedules, in substantially the form of Exhibits A-1 or A-2 to the Master Agreement, 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 7. The Chairman, the Vice Chairman, any member of the Commission designated by the Chairman, the Secretary and the Assistant Secretary of the Commission are 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, financing statements, undertakings, agreements or other instruments, including Escrow Agreements, as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Agreements.

Section 8. This Resolution shall take effect immediately upon its passage.

4. **Resolution of the North Carolina Medical Care Commission Approving Amendments to the North Carolina Medical Care Commission Health Care Facilities Revenue Refunding Bonds (Duke University Health System) Series 2005B and 2005C to Index Floating Rate and Bank-Bought Index Floating Rate Modes –**  
Remarks were made by Allen Robertson

**Executive Committee Action:** A motion was made by Dr. George Binder, seconded by Dr. Carl Rust and unanimously approved.

WHEREAS, on May 19, 2005, the North Carolina Medical Care Commission (the “Commission”), a commission of the Department of Health and Human Services of the State of North Carolina, issued \$322,140,000 aggregate principal amount of its Revenue Refunding Bonds (Duke University Health System) Series 2005, consisting of \$107,380,000 aggregate principal amount of Series 2005A (the “2005A Bonds”), \$107,380,000 aggregate principal amount of Series 2005B (the “2005B Bonds”) and \$107,380,000 aggregate principal amount of Series 2005C (the “2005C Bonds,” and, collectively with the 2005A Bonds and the 2005B Bonds, the “Bonds”), all of which are outstanding, pursuant to the terms of a Trust Agreement for each series of the Bonds, each dated as of May 1, 2005 (each an “Original Trust Agreement” and collectively the “Original Trust Agreements”), between the Commission and The Bank of New York Trust Company, N.A., now known as The Bank of New York Mellon Trust Company, N.A.;

WHEREAS, the Commission loaned the proceeds from the sale of the Bonds to Duke University Health System, Inc. (the “Corporation”) pursuant to the Loan Agreement for each

series of the Bonds, each dated as of May 1, 2005 (each an “Original Loan Agreement” and collectively the “Original Loan Agreements”), between the Commission and the Corporation;

WHEREAS, the Bonds are bearing interest at the Weekly Interest Rate (as defined in the Trust Agreements); and

WHEREAS, the Bonds are subject to optional and mandatory tender for purchase while they are bear interest at the Weekly Interest Rate; and

WHEREAS, on August 21, 2009, the Commission and The Bank of New York Mellon Trust Company, N.A. executed and delivered an Amended and Restated Trust Agreement, dated as of August 21, 2009, for each series of the Bonds (each, a “2009 Trust Agreement” and collectively the “2009 Trust Agreements”), pursuant to which the Windows Interest Rate Mode was added to each series of the Bonds and an irrevocable standby letter of credit (the “2005C Confirming Liquidity Facility”) issued by the Federal Home Loan Bank of Atlanta was added as another source of payment of the purchase price of tendered 2005C Bonds; and

WHEREAS, the Corporation has requested, and the Commission has approved, the addition of Index Floating Rate and Bank-Bought Index Floating Rate modes to the 2005A Bonds and the conversion of the 2005A Bonds to the Bank-Bought Index Floating Rate mode; and

WHEREAS, the Corporation has requested that the Corporation approve the addition of Index Floating Rate and Bank-Bought Index Floating Rate modes to the 2005B Bonds and the 2005C Bonds simultaneously with the conversion of the 2005A Bonds to the Bank-Bought Index Floating Rate mode;

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

Section 1. Capitalized terms used in this resolution that are not defined in this resolution shall have the meanings given to them in the 2009 Trust Agreements.

Section 2. The addition of the Index Floating Rate and the Bank-Bought Index Floating Rate modes to the 2005B Bonds and the 2005C Bonds is hereby approved.

Section 3. The Chairman, Vice Chairman, the Secretary and the Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) (collectively, the “Authorized Officers”) are each hereby authorized and directed to take such action and to approve, execute and deliver any and all documents, certificates, undertakings, agreements or other instruments as they, with the advice of Bond Counsel, may deem necessary



or appropriate to effect the addition of the addition of the Index Floating Rate and Bank-Bought Index Floating Rate modes to the 2005B Bonds and the 2005C Bonds, including but not limited to amendments (or amendments and restatements) of the Trust Agreements, the Loan Agreements, the Tender Agreements, the Remarketing Agreements and the Liquidity Facilities, replacement Bonds, the 2005C Confirming Liquidity Facility, one or more supplements to the May 11, 2005 Official Statement for the Bonds, a Tax Certificate and Form 8038.

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

**5. Adjournment**

There being no further business, the meeting was adjourned at 11:20 a.m.

Respectfully submitted,

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Christopher B. Taylor, CPA  
Assistant Secretary

Professional Fees Comparison for  
Duke University Health System, Inc.  
Tax-Exempt Equipment Lease Program with Banc of America Public Capital Corp

Professional	Fees Estimated In Preliminary Approval Resolution	Actual Fees
Bond counsel	\$15,000	\$10,000
DUHS counsel	25,000	17,000
Lessor counsel	10,000	5,000