

# Health Care Facilities – Non-Tax Matters

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# Structural Uniquenesses for Health Care Credits

**Master Indenture  
Structure**

**Nuances of Health  
Care Credit  
Disclosure**

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# Master Indenture Structure

## The 'Group' Mentality – Who is In and Who is Out

- Obligated Groups, Credit Groups, Combined Groups, Reporting Groups, System
- Corporate Debenture Model and Pledging Affiliates

## Security Packages

- Gross Revenue Pledge
  - Government Receivables
  - Control Agreements
- Mortgages
- All-Assets Pledges and Bank Financing Considerations

# Master Indenture Structure

## Streamlining Complex Credit Structures

- Issuing Master Notes for all obligations
  - debt, swaps, leases, reimbursement agreements, continuing covenant agreements
- Decision-Making Implications

## Master Indenture Substitutions and Replacements

- Master Indenture Replacement vs. Note Substitution
- Amending and Restating vs. Springing Amendments
- Retained Bank and Counterparty Consent Rights
- Facilitating health care system consolidations

# Master Indenture Structure

## Benefits and Drawbacks

- Pledge in the Master Indenture
  - Gross Revenues vs. Gross Receivables
  - Control Agreements
  - Restricted Revenues
  - Government Receivables
- Permitted Liens and Trust Estates
- Mortgages and Deeds of Trust
- All-Assets Pledges and Bank Financing Considerations
  - Vendor Financing Statements

# Other Health System Structures

Hospital Districts

Open-Ended  
Indentures

Single Site Hospitals  
with traditional bank  
debt

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# Nuances of Health Care Disclosure

## Bondholders Risks

- Industry Risks
  - Operational
  - Regulatory and Legal
- Revenue Stream Risks
  - Health Care; Health Plans
  - Senior Living
  - Service Line Monetization
- General Economic and Political Risks
  - Banking Crisis / Debt Ceiling
- State Specific Risks
  - Property Tax

See recent NABL Paper –“What’s the Risk? Considerations in Drafting Risk Factors Disclosure”

- Provides guidance on why risk factors disclosure is important
- Provides framework for analyzing risks, facts that contribute to those risks, materiality, and developing related disclosure



# Nuances of Health Care Disclosure

## The Evolution of Appendix A

- Obligated Group Focus
  - Facilities and Service Area and Competition
- System Focus – Strategy and Performance
  - Non-Obligated Related Entities and Operations
- Multi-state Systems
- Financial Disclosure with M&A Activity

# Recent Developments

Headwinds Facing Health Care Providers

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# Headwinds Facing Health Care Providers - Overview

## Operating Performance and Strategic Challenges

- Staffing
  - Cost and Availability
- Increased Regulation
- Certificates of Need
- Consolidation
- Competition (including non-hospitals)

## Financial Performance Challenges

- COVID Aid Ends
- Investment Portfolios
- Expense Management

# Headwinds Facing Health Care Providers - Implications

## Rating Agency Focuses and Implications:

- Recent Developments
- Selecting and Dropping Rating Agencies

## Continued Health System Consolidation:

- Financial Reporting and Covenant Complexities
- Antitrust and State AG activity

# Headwinds Facing Health Care Providers - Implications

## Covenant Defaults:

- DSCR and How Tested
  - Definitions and accounting interpretations
- Consultant call-ins vs. Events of Default

## Liquidity Issues:

- Investment Gains and Losses

## Creditor Negotiations:

- Bondholders
- Banks / Direct Purchase Holders
- Waivers and Forbearance Agreements

# Headwinds Facing Health Care Providers - Implications

## The Return of Tenders

- Qualified Tenders and Inapplicability / Applicability
- 'Informal' Tenders
- Open Market Purchases
- EMMA notices and disclosure considerations

# Non-Profit Status of Health Care Providers

## The Social Contract of Tax-Exempt Health Care

- The benefits of tax-exemption are viewed as a subsidy
- Primary historic justification - relieving burdens that would otherwise be borne by the public through the provision of charity care

# Non-Profit Status of Health Care Providers

## Increasing Challenges

- Should health care providers still receive the benefits of tax exemption?
- Measuring the benefits and contributions:
  - March 2023 – Kaiser Family Foundation Report
  - April 2023 – Hearing of the Subcommittee on Oversight of the House Ways & Means Committee
  - In-state vs. Out-of-state Contributions



# Non-Profit Status of Health Care Providers

## Consequences

- Increased focus on transparency and reporting
  - Oversight of collections and creditor relationships
- State property taxation
- Continued debate about how to measure community benefit and push back against establishing minimum requirements and bright-line tests
- High Levels of Engagement on:
  - Community Benefits and Mission Services
  - Justifying Tax-Exempt Status
  - Differentiation from for-profit health care providers

# Particular Challenges in the Senior Living Space

Life Care Model

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Entrance Fee Units in the Current Real Estate Market

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Concentration of Distressed Deals

- Out-of-court modifications and restructurings
- Forbearance Agreements
- Bankruptcy and Restructuring

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# Re-Emerging Financing Structures and Products

## Bank Debt

- Lines of Credit
  - Bank Loans
  - Banking Crisis Implications?
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## Variable Rate Demand Bonds and Put Bonds

- Letters of Credit
  - Standby Bond Purchase Agreements
  - Self-Liquidity
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## Sale of Call Rights

- Sale into TOB (debt service reduction) vs. Resale on Public Market (upfront payment of yield differential)
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## Derivatives

# Questions

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