MINUTES

California Health Facilities Financing Authority
March 27, 2008 – 1:45 P.M.
915 Capitol Mall, Room 587
Sacramento, California

Patricia Wynne sitting for Chairperson Bill Lockyer called the meeting to order.

Present: Designee Patricia Wynne, Deputy State Treasurer
Designee Michael Carter for John Chiang, Controller's Office
Designee Anne Sheehan for Michael C. Genest, Department of Finance
Harry Bistrin
Judith Frank
Ronald Joseph
Sumi Sousa (Arrived at 2:00 pm, during the Anka Behavioral Health, Inc. presentation)

Staff: Barbara J. Liebert, Executive Director
Ronald Washington, Deputy Executive Director

The Chair declared a quorum present.

The minutes of the California Health Facilities Financing Authority's (CHFFA or the Authority) February 28, 2008 meeting were approved as submitted and the March 11, 2008 minutes were amended regarding the Controller's recusal on items involving Wells Fargo. Board member designee Michael Carter clarified that the recusal was asserted out of an abundance of caution to avoid any perception of a conflict of interest.

Judith Frank moved for adoption of the Resolution and Anne Sheehan seconded the motion. The motion was adopted with a 6-0 vote.

Item #3 **Executive Director's Report**
Barbara Liebert

Barbara Liebert welcomed new Board Member Ronald Joseph.

Ms. Liebert provided a refunding and conversion update.

Ms. Liebert then revisited the Board's March 11th discussion concerning 50% fee reductions for each of the hospitals approved for refundings and confirmed the Board could comfortably give these 50% fee reductions. Ms. Liebert also conveyed staff's new recommendation to cap that initial fee for the borrowers approved at the March 11th meeting at $100,000. After answering questions from board members, Ms. Wynne instructed staff to agendize that issue for formal discussion at the next meeting.

Ms. Liebert gave a quick summary of the Authority's fund balances. CHFFA's outstanding debt as of February 29, 2008 was $19,707,877,017 and actual bonds outstanding as that same date was $7,596,510,152. The individual fund balances that CHFFA has are: HELP II $18,204,473, Cedillo-Alarcón $320,082, Anthem-Wellpoint $5,232,913, Children's Hospital $433,949,033, lastly the Fund Balance $8,852,629.67.

Item #4 **Anka Behavioral Health Inc. (Anka)**
Resolution No. HII-216

Thera Hearne introduced Chris Withrow, Deputy Chief Executive Officer, Leny Nair, Vice President of Finance and John Strand, Chief Financial Officer. Mr. Strand provided the background of Anka

Behavioral Health Inc. (Anka). Anka (formerly Phoenix Programs, Inc.) was founded in 1973 to provide comprehensive rehabilitation and behavioral health services to persons with disabilities in Contra Costa County (primarily those with mental and developmental disabilities.) During the past thirty-five years, Anka has expanded its programs to other locations throughout the State and currently operates more than 64 programs in 19 counties in California.

Ms. Liebert said the loan proceeds would be used to refinance an existing variable interest rate bank loan in the amount of $750,000 with a current interest rate of 6.50%. Staff recommended approval of the HELP II loan for Anka Behavioral Health, Inc. in an amount not to exceed $750,000, for a term not to exceed 15 years, and on financing terms acceptable to the Authority.

Anne Sheehan moved for adoption of the Resolution and Michael Carter seconded the motion. The motion was adopted with a 7-0 vote.

Item #5 **North County Serenity House, Inc. (NCSH)**
Resolution No. HII-217

Yassar Dahbour introduced Kathy Valenzuela, Executive Director of North County Serenity House, Inc. Ms.Valenzuela provided the background of North County Serenity House, Inc. (NCSH). NCSH provides women primarily in San Diego County with intensive drug and alcohol addiction treatment, in addition to childcare, job training, personal development, and education concerning parenting, health issues, domestic violence, relationships, and social development.

Ms. Liebert said the loan proceeds would be used to refinance seven different loans, which range in interest rates from 7.5 to 9.25%. Staff recommended the Authority approve a resolution for a HELP II loan for North County Serenity House, Inc. in an amount not to exceed $750,000 for a term not to exceed 15 years and on financing terms acceptable to the Authority.

Anne Sheehan moved for adoption of the Resolution and Harry Bistrin seconded the motion. The motion was adopted with a 7-0 vote.

Item #6 **Women's Recovery Association of San Mateo County, Inc. (WRA)**
Resolution No. HII-218

Karma Manni introduced Linda Carlson, Executive Director, and Anne Bolla, Director of Finance, from Women's Recovery Association of San Mateo County, Inc. Ms. Carlson said WRA was established in 1970 as a licensed nonprofit chemical dependency treatment rehabilitation organization. The mission of WRA is to assist women, adolescent girls and their families in recovering from substance abuse and its secondary effects.

Ms. Liebert said the loan proceeds would be used to refinance a 7.75% adjustable interest rate loan with Union Bank of California (UBC). In addition, loan proceeds will be used for major upgrades to WRA's newest residential treatment facility. WRA intends to repair the structural foundation, replace the roof, install a new drainage system, and purchase new equipment. Staff recommended approval of a HELP II loan for Women's Recovery Association of San Mateo County, Inc. in an amount not to exceed $684,000 for a term not to exceed 15 years and contingent upon financing terms acceptable to the Authority.

Anne Sheehan moved for adoption of the Resolution and Michael Carter seconded the motion. The motion was adopted with a 7-0 vote.

Other Business

Item #7 **Status Reort-CHFFA-1985 B Pooled Loan Program**
Barbara Liebert

Barbara Liebert gave a status report on the upcoming mandatory redemption of the CHFFA 1985 B Pooled Loan Program (April 1, 2008), indicating this matter will likely return as a formal agenda item for Board discussion at one of the next upcoming Board meetings.

Item #8 **Pass Through Savings Update**
Kurt Sjoberg, Sjoberg Evashenk Consulting, Inc.

Mr. Sjoberg mentioned several minor changes he made to their initial report at the request of CSCDA for purposes of clarifying various statistics. Mr. Sjoberg noted these changes did not alter the original point made in the report that CSCDA conducts a lot more conduit business than CHFFA currently does.

Mr. Sjoberg then provided background on CHFFA's pass-through savings issue by noting CHFFA's1979 statute which contains legislative intent language for facilities to pass on all or part of the savings generated through CHFFA tax-exempt financing. Sjoberg noted this 1979 provision only applies to CHFFA and not to any other authorities or issuers doing similar kinds of funding on behalf of non-profit hospitals. Mr. Sjoberg also mentioned the Attorney General opinion giving CHFFA broad discretion to interpret how to implement the legislative intent language.

Sjoberg noted the proliferation of conduit competition, beginning around 1990, with the ultimate emergence of three or four significant competitors. Sjoberg noted that by the time the Sutter deal was negotiated (2007), the competitive advantage enjoyed by these alternative JPAs – namely, their lack of a "pass-through savings" requirement - became more apparent. At this time, Mr. Sjoberg found that many clients that had historically come to CHFFA were going elsewhere.

After interviewing many different parties, including former CHFFA clients and underwriters, Mr. Sjoberg discerned that CHFFA clients ceased doing business with CHFFA for five main reasons: 1) the uncertainty over the initial fees charged under the pass on or pass-through provision, 2) the focus of the board shifted, 3) public comments at board meetings were unrelated to financial aspects of the transaction, 4) approval timelines for CHFFA were longer, and 5) the CHFFA application is much longer (34 pages compared to 3 or 4 for the competitors).

Mr. Sjoberg also learned from the non-profit hospitals he spoke with that they would not return unless and until (1) CHFFA clearly defined its pass through requirement - with no additional fee to be required as part of that requirement and (2) the CHFFA Board focused public comments on the financial merits of a transaction rather than on issues of no relevance to the financial merits. He added that these stakeholders also hoped CHFFA could be more flexible with the scheduling of meetings and that they asked for the ability to call special or emergency meetings.

Mr. Sjoberg then conveyed various recommendations. First, he recommended that until such time as legislative clarification is provided to the Board, CHFFA should rely on the broad discretion the Attorney General empowered CHFFA with in its November 2005 opinion.

Mr. Sjoberg went on to recommend the Board focus its attention and require the audience to focus its attention, during public commenting, to the financial transaction itself, which includes the creditworthiness of a transaction and debt coverage. Mr. Sjoberg noted that the Board had already begun to make some headway in this direction by limiting the time for public comment at the March 11th meeting. He recommended the board continue with this policy and also consider requesting advance submission of written comments. Mr. Sjoberg also recommended the use of special sessions for future Board meetings. Ms. Kristin Smith, counsel to the State Treasurer, clarified that "special sessions" should instead be referred to as "more frequent regular meetings," since the term "special session" is actually a term of art within our code – which potentially has a different meaning and intent. Ms. Smith explained that the board's March 11th CHFFA meeting was not a "special session," but rather a regularly scheduled meeting at a more frequent interval.

Board member Judith Frank queried Sjoberg as to how he would advise the legislature on further defining or amending the current pass-through language in the CHFFA statute. Sjoberg responded by stating that one must first look at what is occurring at the federal level concerning 501(c)(3) legislation – and Grassley's efforts relating to that, as those actions can affect what can and should be taken at the state level. Sjoberg said that he would advise the legislature not to simply single out the healthcare system, but instead make a law uniformly applicable to all entities seeking to access tax-exempt debt.

Item #9

Public Comment #1 **California Hospital Association (CHA)**
Anne McCloud, Vice-President

Ms. McCloud began by presenting figures from a recent study by the Healthcare Financial Managers Association indicating that California ranks second on the list of all states lacking adequate access to healthcare. She added that in 2007, hospitals provided $2.7 billion in unreimbursed medical care to Medi-Cal beneficiaries. Ms. McCloud went on to express general support for Sjoberg's recommendations, with two exceptions: (1) CHA felt it unnecessary to define a required percent of Medi-cal and uninsured adjusted patient days and (2) CHA expressed a desire not to quantify community hospital contributions since many types of community benefits simply cannot be quantified. Ms. McLeod added that since many hospitals report negative operating margins, imposing a minimum level of net operating income to be budgeted for specific community services would create an impracticable measure of benefits. CHA asked for CHFFA requirements to be fair, reasonable, easy to measure, and not increase reporting burdens to hospitals.

Ms. Sousa, in reference to the earlier Medi-Cal statistic presented, asked Ms. McCloud if she had the $2.7 billion un-reimbursed Medi-Cal figure broken down by each hospital across the state. Ms. McCloud said the statistic is available, but not published by CHA. She indicated the figure could be found on the Office of Statewide Health Planning and Development's (OSHPD) website, using the figures from four quarters, ending in the third quarter of 2007.

Public Comment #2 **California State Community Development Authority (CSCDA)**
Terrence Murphy, Program Manager

Mr. Murphy expressed appreciation for the amendments Sjoberg made to his report reflecting the changes requested by CSCDA.

Public Comment #3 **California Children's Hospital Association (CCHA)**
Diana Dooley, President & CEO

Ms. Dooley reiterated the fact that hospitals in her Association have gone to other lenders besides CHFFA for the reasons that are very well outlined in the Sjoberg report. She added their members would like to return to borrowing at CHFFA but they do not think new legislation is needed. Ms. Dooley expressed one concern she has on behalf of CCHA relates to the specific code section cited in the Sjoberg report, which was proposed to serve as an example of how charity care should be defined. Ms. Dooley stated that their concern lies with the fact that four of their eight hospitals do not have operating margins, so to use such a percentage to define charity care standards would not work in their situation.

Mr. Ronald Joseph asked Ms. Dooley to clarify her statement that "new legislation is not needed." Ms. Dooley responded by referring back to the Attorney General's opinion that CHFFA could adopt any criteria it sees fit within the parameters of the Act, thus indicating that new legislation is not necessary.

Mr. Michael Carter added there may or may not be a need for legislation as it relates to the charity care criteria, but that current JPA legislation is a little soft and probably could use some attention in regards to their application of pass-through and their reporting requirements. Ms. Tricia Wynne agreed with this statement.

Ms. Dooley responded by stating if legislation is indeed called for, CHFFA should at least establish something in the meantime in order to bring some stability back, similar to how things were done from 1979 until 2005 and at least until such time as legislation clarifies it.

Public Comment #4 **Alliance of Catholic Care**
Harry Osborne Vice President & Chief Legislative Advocate

Mr. Osborne asked the Board for its intended role in crafting legislation that might stem from the Sjoberg report. He asked the Board what it thought about the Sjoberg recommendation to request borrower applicants provide additional informational relating to charity care, quality assurance, and transparency. Ms. Wynne responded by stating the Board has not yet formed a position because they have not had a chance to discuss the issues. Ms. Wynne added, however, that in 1979 when there was no other authority doing tax exempt financing, the legislature in its wisdom decided that some of the savings from tax-exempt financing ought to be passed on to the public. She stated that over the next 30 years, competitors entered the market and the law as it applied to CHFFA, in her opinion, was not contemporized. She concluded by expressing that if the legislature believes savings should be passed along to the public as a public benefit, then the requirement to do so should apply to all tax-exempt financing no matter which conduit provider a borrower chooses to work with. She cautioned that she is not sure the Board agrees with her on that point. Ms. Sousa, however, agreed with Ms. Wynne and stated that she thinks that everybody agrees there needs to be a level playing field among the different authorities. Ms. Sousa added that in 1979, the CHFFA statute actually meant something because back then not every hospital took Medi-Cal, and today everybody takes Medi-Cal. She stated that "pass-through" means something different today than it did in 1979.

Mr. Osbourne stated one of the things that has changed since 1979 is that adding something that amounts to an additional financial obligation to non-profit hospitals is something to think twice about.

Public Comment #5 **United Healthcare Workers West, Local SEIU**
Richard Thomason, Policy Director

Mr. Thomason said that one of the interesting things in the Sjoberg report that got clarified today is the fact that CSCDA really had been getting far more business than CHFFA, far prior to the pass through savings issue coming up. He believes there has been a lot of attention paid to the practices of JPA conduit bond issuers for the past few months, which has raised a lot of appropriate questions about the transparency and accountability with which they conduct themselves and conduct their business in comparison with CHFFA and the very appropriate kinds of public notice and meeting transparency provisions that govern CHFFA. He believes one of the reasons hospitals started migrating to CSCDA and others is simply because it allowed them to fly under the radar and get their bonds through without having to trouble themselves, with too much public scrutiny. Mr. Thomason added he agrees it is appropriate to level the playing field on the accountability and transparency sides, as well as the pass-through savings issue. He disagrees, however, with the consultant's report, and recommends that CHFFA not simply "do nothing" until new legislation is formed or the issue is settled, and believes that the board should continue to discuss and debate the pass-through savings ideas and look towards creating guidelines. He asserted that the four provisions identified in the Sjoberg do not help solve the problem because those four items really do not identify any meaningful community benefit that is above and beyond what hospitals in California, profit or non-profit, are currently doing.

Mr. John Glynn, consultant for the SEIU, went on to make a power-point presentation of how they would identify hospitals that are not passing through the savings, with the goal of helping to remove the current uncertainty that exists when coming to CHFFA, so that customers will return to doing business with CHFFA. Mr. Glynn used data from OSHPD to create graphs that measured the rates of increase of hospital rates from 2001 through 2006. In their opinion, these numbers show that the average rate of increase for all non-profit hospitals in the commercial sector from 2001 to 2006 was 85%. Mr. Glynn added only four hospitals really exceeded the average rate of increase: St. Joseph's Health (141% rate increase), Sutter Health (112% rate increase), Scripps (116% increase) and Sharp (106% increase). Based on this information, SEIU recommended CHFFA consider a safe harbor (i.e., no additional pass through savings to be imposed) for those hospitals who could show their increase in rates fell anywhere between 4% and 8% of that average, so hospitals could be considered to be passing on savings through reduction or containment in a rate of increase in healthcare dollars, if they had rate increases only between 89% and 93%%.

The next graph looked at charity care as a percentage of net income. According to the statistics presented by SEIU, the average percent of net income spent on charity care for non-profit hospitals for 2006 was 19.4%. The graph shows significant variation in this area ranging from a low of 7.1% (St. Joseph's Health System) all the way up to 158% (Adventist Health System.) Mr. Glynn opined that this shows that the variability is quite large and is representative of why hospitals would increase their prices.

Mr. Glynn next presented an index which compared the rate of increase in hospital rates and the amount of charity care as a percentage of net income for the four hospitals that exceeded the "safe harbor" limit (St. Joseph, Sharp, Sutter, and Scripps.) The index they used led them to conclude that when an organization has significant rate increases, yet their contribution back to the community also far out strips that rate increase, this gives rationale to indicate that the provider is passing on, in a different form, the cost of savings back to the consuming public. The problem then is what to do with the few outliers (Scripps per their chart) that are not adequately passing on the savings onto the consuming public. Mr. Glynn recommended using a similar index to what they presented, in order to create an annual safe harbor index measurement to be used to review hospitals that fall in the outlier category. He recommends that CHFFA look at the outlier's index of the rate of change of increase in process, look at their index for charity care, and if they have consistently demonstrated that they have been able, yet unwilling, to provide funds back to the community, CHFFA should look to remedial options for the organization. Mr. Glynn explained that they looked at OIG advisory opinions and believe that a coalition type of model program might be used where non-compliant borrowers could be required to contribute financial sums which could then be used to fund a type of coalition patient assistant program. Mr. Glynn further explained the funds for that program could be held by some independent organization and distributed back to the consumer in a variety of ways.

Ms. Sousa asked who would have the authority to require something like the coalition type of model program he suggested. She also asked who could enforce the program. Mr. Glynn responded by saying that finding the answer to her question is part of the reason they are all here today, which is really not to make specific recommendations, but to begin a dialogue.

Ms. Anne Sheehan asked Mr. Thomason whether in their recommendations they intend to impose the same requirement on other conduit issuers as well. Mr. Thomason agreed and said that the SEIU would like to work with CHFFA on that legislation. It was added that the U.S. Senate Finance Committee has looked into this issue and has issued a report (not yet final) which basically recommends that no 501(c)3 receive a tax benefit without paying 5% of their net income or net operating expenses to charity, which is much higher that what hospitals in California are doing. Mr. Michael Carter suggested further discussion on this and expressed his concerns on how adjustments in the public financing world might potentially hinder any competitive edge held by CHFFA in the market.

Public Comment #6 **California Nurses' Association (CNA)**
Donna Fox, Regulatory Policy Specialist

Ms. Fox stated the CNA agrees with the Sjoberg report recommendation that the pass-through issue be reframed as a larger responsibility for all conduit issuer joint power authorities. She added that the 80,000 registered nurses of the CNA are interested in the community benefits that communities should receive as a result of hospitals having non-profit status under the federal tax code. According to Ms. Fox, there is evidence to suggest many of the largest hospital systems have made record earnings. Ms. Fox believes these record earnings are an indication that resources exist in hospital systems to pass through community benefits. Ms. Fox added the CNA believes the appropriate recommendation to make is to level the playing field up and beyond what CHFFA and others are required to do. She said there is ample evidence that a hospital corporation such as Sutter Health has used tax-exempt bonds to fund the hospital acquisition and consolidation strategy that allowed for the growth of the company from 2 acute care hospitals to the current 28 hospitals since 1983. Ms. Fox mentioned that the CNA uses Sutter merely as an example for the sake of argument because their numbers are dramatic, but it should be noted they are not the only corporation taking advantage of CHFFA's organizational need to collect operational revenue. According to Ms. Fox, the hospital corporations in California who have tax-exempt status through their non-profit status should be held to high, not low, standards because they are benefiting from the support of taxpayers who subsidize their private business and those standards should be required of all tax-exempt bonding agencies.

In regards to the Sjoberg report, CNA does not support the recommendation that simply providing healthcare to the Medi-Cal population should satisfy the pass-through savings intent of the CHFFA code made by the legislature. Ms. Fox also added that CNA does not support the recommendation that public comments be provided in advance in writing and be held to a time-limit. According to Ms. Fox, CNA believes this public comment recommendation may be overly burdensome because there is not enough time between when the staff reports are posted and the actual meeting date. In addition, CNA added such restrictions on public comments are not even used by the Legislature. Ms. Fox also pointed out CNA is tracking SB 1293 (Negrete-McLeod) and supports SB 1221 (Kuehl). Ms. Fox concluded by stating it is crucial the business of healthcare not overrun the mission of healthcare, which includes the health of the community served.

Ms. Liebert concluded by stating this discussion will continue at the next CHFFA Board Meeting and the staff will work over the next month to formulate some specific recommendations for consideration by the Board on the issue of pass-through.

Item #10 **Adjournment**
Patricia Wynne, Deputy State Treasurer

Having no further business or comments, Patricia Wynne called for a vote to adjourn the meeting. Sumi Sousa moved for adjournment of the meeting and Ronald Joseph seconded the motion. The motion was adopted with a 6-0 vote.