



# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF THE COMMISSIONER  
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Concord, New Hampshire 03301

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March 7, 2016

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Approval of the Report and Findings of Councilor Joseph D. Kenney with regard to a certain project in participation with Kendal at Hanover, Hanover, New Hampshire.

### EXPLANATION

This item is submitted pursuant to a request by the New Hampshire Health and Education Facilities Authority. Councilor Kenney has requested that this be placed on the agenda as a regular item for the Wednesday, March 23, 2016 meeting for ratification by the Governor and Council.

Sincerely,

Vicki V. Quiram  
Commissioner

VVQ/rjk

Attachment

**REPORT  
AND  
FINDINGS  
OF**

**JOSEPH D. KENNEY**, designee of the Governor and Council of The State of New Hampshire, under the provisions of the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated, on the undertaking by the Authority of a certain project in participation with **KENDAL AT HANOVER** of Hanover, New Hampshire, pursuant to said Act.

**Introductory**

The New Hampshire Health and Education Facilities Authority (hereafter referred to as the “Authority”), requested of Governor Maggie Hassan and the Executive Council that a hearing be held pursuant to the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated (hereafter referred to as the “Act”), and particularly as prescribed in Section 21 of the Act. The hearing is required as the result of an application submitted to the Authority by Kendal at Hanover, a private, not-for-profit and charitable corporation (hereafter sometimes referred to as the “Institution” or “Kendal”) which operates a continuing care retirement community located in Hanover, New Hampshire and which constitutes a “nursing home” as that term is defined in the Act. Kendal is a participating health care institution under RSA 195-D:3. Such application seeks the participation of the Authority, under the Act, in the refinancing of certain existing indebtedness and the financing of certain capital improvements relating to the Institution’s facility located in Hanover (hereafter sometimes referred to as the “Project”).

Pursuant to RSA 195-D:21 above cited, the Governor and Council designated me to hold a hearing and make findings in connection with the application. Following Public Notice given in accordance with Chapter 91-A of the New Hampshire Revised Statutes Annotated, by notice published in the Union Leader on February 19, 2016, the hearing was held commencing at

10:00 a.m. on Friday, March 4, 2016, in the Administrative Conference Room of Kendal at Hanover, 80 Lyme Road, Hanover, New Hampshire. All witnesses were duly sworn. A summary of testimony presented at the hearing follows:

**Summary of Testimony**

Brent Edgerton, the Associate Executive Director/CFO of Kendal at Hanover, was the first witness. He described Kendal as a not-for-profit corporation which owns and operates a continuing care retirement community on 75 acres of land adjoining the Connecticut River in Hanover, New Hampshire. Kendal currently consists of 250 independent living apartments, a Health Center comprised of 107 assisted living licensed beds (38 assisted living – level 1, 51 assisted living – level 2, and 18 licensed beds for residents experiencing various forms of dementia) and 5 skilled nursing beds as well as certain common facilities.

Mr. Edgerton testified that the Institution's independent living units are located in a combination of one, two, and three-story buildings adjoining the community center and the Health Center. Kendal's skilled nursing facilities are licensed by the Department of Health and Human Services of the State of New Hampshire. In accordance with the provisions of New Hampshire law relating to continuing care retirement communities, Kendal's nursing care beds are open only to residents of the community and are not supported by the Medicaid program.

Mr. Edgerton stated that the new money component of the Project consists of the financing of the costs of (1) construction, furnishing, and equipping of the Wellness Fitness Project, comprised of approximately 4,370 square feet of new construction at an approximate cost of \$4,100,000; (2) the Gathering Room Project, comprised of the renovation of the existing space and addition of approximately 998 square feet at an approximate cost of \$2,500,000; (3) construction related to the Borrower's propane tank reconfiguration, a sewer pump station, and a second linked

elevator at an approximate cost of \$3,050,000; and (4) funding of routine capital expenditures during the three years following the issuance of the Series 2016 Bonds. Mr. Edgerton confirmed that none of the capital expenditures requires a Certificate of Need.

Mr. Edgerton also testified that the Project includes the refinancing of the Series 2004A Bonds issued by the Authority for the benefit of Kendal (the “2004A Bonds”) and the 2013 Capital Note (the “Capital Note”) issued by the Authority for the benefit of Kendal. He testified that the 2004A Bonds were used to refinance previous bond issues, the proceeds of which were used to finance or refinance the initial construction of the facilities that constitute the continuing care retirement community as well as subsequent additions and renovations thereto, and the equipping and furnishing thereof. The proceeds of the Capital Note have been used by Kendal for miscellaneous capital expenditures. In addition to the Project costs, Kendal may use bond proceeds to pay the costs of issuance, fund a debt service reserve fund, and fund capitalized interest. Mr. Edgerton confirmed that under the Loan Agreement and Mortgage with the Authority, Kendal will be required to continue to carry blanket fire and extended coverage as well as general liability insurance.

Mr. Edgerton explained that, in his view, the Project would be of public use and benefit and would permit Kendal to continue to render an appropriate level of service to its current and future residents. He also stated his opinion that Kendal would be able to meet its financial obligations under the proposed bond issue and that Kendal is operating in a financially responsible manner. Finally, he testified that the refinancing of existing indebtedness would be done in connection with the capital equipment and improvements portion of the Project and would assist Kendal in lowering the costs of providing healthcare facilities.

The next witness was Keith Robertson, Managing Director of B.C. Ziegler and Company, the underwriter of the bond issue. He stated that the plan of financing is to issue the Bonds at fixed rates in a public offering. The Bonds are expected to have a final maturity in 2046. He stated that, as part of his work in connection with the proposed bond issue, he had reviewed the Institution's financial statements and utilization statistics. He testified that, on the basis of such review, as well as based upon his discussions with members of the working group and the Institution's management, he was of the view that the Institution would be able to meet its financial obligations under the proposed bond issue. In concluding his testimony Mr. Robertson stated that, based upon such review, he was of the opinion that Kendal is operating as a financially responsible health care institution.

Bonnie S. Payette was the final witness called. She stated that she is the Director of Operations and Finance of the Authority, and is familiar with administration of the Authority's day-to-day affairs. In her capacity as Director of Operations and Finance she has become acquainted with the Project and the details of its financing, having worked with Kendal's officers in developing the financial arrangements to be reflected in the bonds proposed to be issued.

She stated that the Authority has voted to issue its bonds for the Project, subject to compliance being had with all laws bearing upon such issue and the advice of counsel, including Bond Counsel. She testified that the Authority adopted a Resolution on February 18, 2016, approving issuance of bonds for Kendal.

Ms. Payette testified that certain documents are being prepared for execution in connection with the Project, including the Bond Indenture to be entered into between the Authority and the Trustee for the current bond issue and the Loan Agreement and Mortgage intended for execution between the Institution and the Authority. She stated that there is a provision in the Loan Agreement and Mortgage under which the Institution is obligated to hold and use the Project for

health care purposes so long as the Bonds are outstanding. She testified to the language in the Bond Indenture which requires that each bond issued by the Authority for Kendal bear on its face the following provision:

Neither the State of New Hampshire nor any political subdivision thereof shall be obligated to pay the principal of or interest on this bond, other than from Pledged Revenues, and neither the faith and credit nor the taxing power of the State of New Hampshire or of any political subdivision thereof is pledged to the payment of the principal of or interest on this bond.

Ms. Payette testified that the bond documents will make adequate provision for payment of principal and interest on the bonds, as well as the costs of the Project, so that the State will not be obligated in any way for their repayment.

Ms. Payette concluded her testimony by stating that, based on her familiarity with the statute under which the Authority operates, on her experience as Director of Operations and Finance of the Authority, and on the advice of counsel, including Bond Counsel, the Project is within the powers conferred by law upon the Authority.

### **Findings**

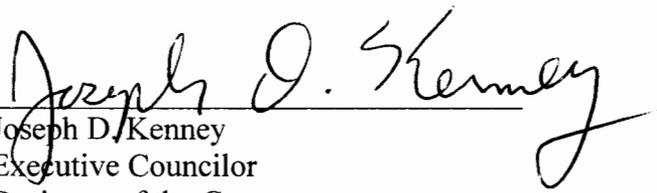
Upon the testimony submitted at the hearing, and upon consideration, I find as follows:

- (1) The construction and acquisition of the Project, as the same is described in such testimony, will enable and assist Kendal at Hanover (herein called the "Institution"), a not-for-profit healthcare institution located in Hanover, New Hampshire, to provide healthcare facilities within the State of New Hampshire (herein called the "State"); and
- (2) The Project, including the refinancing of existing indebtedness, will be leased to, or owned by, the Institution, which is a financially responsible participating institution within the State; and
- (3) Adequate provision has been, or will be, made for the payment of the cost of the construction and acquisition of the Project and the refinancing of existing indebtedness, and under no circumstances will the State be obligated, directly or indirectly, for the payment of the principal of, or interest on, any obligations issued to finance such construction and acquisition or to provide for the refinancing of

existing indebtedness, or obligations to which such refinancing of existing indebtedness relates; and

- (4) Adequate provision has been, or will be, made in any lease or mortgage of the Project to be undertaken or any property leased or mortgaged in connection with the issuance of bonds or notes for the payment of all costs of operation, maintenance and upkeep of the Project by the Institution so that under no circumstances will the State be obligated, directly or indirectly, for the payment of such costs; and
- (5) Adequate provision has been made to obligate the Institution to hold and use the Project for healthcare purposes so long as the principal of and interest on bonds or other obligations issued by the New Hampshire Health and Education Facilities Authority (herein called the "Authority") to finance the cost of the Project, including any refunding bonds issued to refund and refinance such bonds, have not been fully paid and retired and all other conditions of the resolution or trust agreement authorizing and securing the same have not been satisfied and the lien of such resolution or trust agreement has not been released in accordance with the provisions thereof; and
- (6) The construction and acquisition of the Project will be within the authority conferred by Chapter 195-D of the New Hampshire Revised Statutes Annotated upon the Authority; and
- (7) The construction and acquisition of the Project serves a need presently not fulfilled in providing health care facilities within the State and is of public use and benefit; and
- (8) The refinancing of existing indebtedness is being done in connection with the Project and will assist the Institution in lowering the cost of providing healthcare facilities in the State.

Dated: March 4, 2016

  
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Joseph D. Kenney  
Executive Councilor  
Designee of the Governor  
and Council

**RATIFICATION AND GOVERNOR'S APPROVAL**

The Governor and Council hereby ratify, confirm, approve and adopt the findings set forth in the Report and Findings attached hereto made by Joseph D. Kenney, the Designee of the Governor and Council to hold a hearing and make findings pursuant to Section 21 of the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated. The hearing was required and held as a result of an application submitted to the New Hampshire Health and Education Facilities Authority by Kendal at Hanover, a not-for-profit corporation which is located in Hanover, New Hampshire, is licensed by the Department of Health and Human Services and provides nursing care facilities within the State of New Hampshire. The hearing was held on March 4, 2016 following public notice, in the Administrative Conference Room of Kendal at Hanover, 80 Lyme Road, Hanover, New Hampshire at 10:00 a.m.

The Governor's signature constitutes her approval under Section 147(f) of the Internal Revenue Code of 1986, as amended, of the issuance of the bonds described herein and in the notice of public hearing published on February 19, 2016.

Dated: March 23, 2016

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Governor and Council:

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