

Item Title: WakeMed Board of Directors Amendment to WakeMed's Articles of Incorporation and Second Amendment to Transfer Agreement

Specific Action Requested:
That the Board of Commissioners:

- 1. Approves the Amended and Restated Articles of Incorporation of WakeMed, subject to the terms and conditions set forth herein;**
- 2. Authorizes the Chair to execute a Second Amendment to Transfer Agreement, subject to the terms and conditions set forth herein and any other terms and conditions required by the County Attorney.**

Item Summary:

Purpose: The Board of Commissioners, in conjunction with the Board of Directors of WakeMed, must approve any amendments to the WakeMed Articles of Incorporation in accordance with §55A-10-30 of the General Statutes of North Carolina and Article VII of the Articles of Incorporation of Wake Med, originally filed September 9, 1965, as amended and restated December 12, 1996.

Background: In 1965, WakeMed, formerly known as the Wake County Hospital System, Inc., was incorporated for the purpose of establishing and operating a community general hospital, clinics, nursing homes, and other related facilities to provide for the care and treatment of persons suffering from illnesses, injuries or other disabilities. The initial Board of Trustees was comprised of seven members, one of which was an ex-officio, non-voting member, appointed by the Wake County Board of Commissioners who served concurrent with their term of office on the Wake County Board of Commissioners. From 1967 through 2019, the WakeMed Articles of Incorporation have been amended and restated several times to expand the powers of the corporation, modify the total number of the WakeMed Board of Directors and their terms and qualifications for office. Currently, WakeMed's Board of Directors is comprised of fourteen directors, eight of whom are appointed by the Wake County Board of Commissioners and six of whom are selected by the WakeMed Board after nomination by the directors not appointed by the Wake County Board of Commissioners.

Over time, WakeMed has expanded its community footprint and currently operates three community hospitals and several outpatient facilities throughout Wake County. In 1996, the Wake County Board of Commissioners approved a transfer of health care assets owned by the County to WakeMed, which included five parcels of real estate and improvements. In accordance with N.C.G.S. §131E-8, these

assets were transferred to WakeMed for no monetary consideration, but subject to condition that WakeMed provide ongoing community hospital services to indigent patients, regardless of ability to pay, and a reversionary interest in favor of the County in the event WakeMed failed to operate a community general hospital open to the general public. In 1997, WakeMed and the County entered into a Transfer Agreement memorializing this asset transfer and indigent care requirements. The Transfer Agreement was first amended in 2008 to establish a single mathematical test to determine the amount of indigent care provided to Wake County residents, which currently equals or exceeds 4.8 percent of specified WakeMed revenues. The proposed restructuring of WakeMed as part of this action would retain this formula.

Fiscal Impact: None.

Additional Information:

WakeMed is a private and independent, 501(c)(3) non-profit organization, headquartered and organized in Wake County, North Carolina, for which the Wake County Board of Commissioners has a limited role in the appointment of certain members to its Board of Directors and a reversionary interest in certain real estate now owned by WakeMed. Recently, WakeMed leadership informed the County of its plans for a strategic combination with Atrium Health, Inc. Atrium Health combined with Advocate Aurora Health in 2022 to create Advocate Health, Inc. which is headquartered in Charlotte. At its April Board meeting, the WakeMed Board of Directors unanimously approved this transaction, allowing WakeMed to become affiliated with the Advocate Health enterprise. WakeMed intends to convert from a non-member nonprofit to a single-member nonprofit in which Atrium Health becomes the sole member to ensure unified governance, consistent oversight, and alignment with system objectives (“Transaction”). WakeMed will continue as the same legal entity without dissolving or reincorporating, and as part of the Transaction, Atrium Health will make a \$2,000,000,000.00 capital commitment to further WakeMed’s strategic initiatives.

The WakeMed Board of Directors requests that the Wake County Board of Commissioners approve the Amended and Restated Articles of Incorporation, which will modify the terms of the WakeMed Board of Directors, as well as the criteria for county appointees. Eight seats on the Board of Directors will remain subject to Wake County Board of Commissioners’ appointment.

As part of this Transaction, WakeMed has requested that the County amend the 1997 Transfer Agreement to restate and clarify indigent care requirements and the County’s interest in 2 parcels of real estate owned by WakeMed and included in their hospital system. In the Second Amendment to Transfer Agreement, WakeMed will restate its commitment to maintaining or improving the existing level of health care services to citizens of Wake County and surrounding areas, including indigent and community health care. The County is not contributing any funding and will not be conveying any new property or assets to WakeMed as part of the Transaction. As part of its original transfer of assets in 1997, the County, in accordance with N.C.G.S. 131E-8, retained

transfer and reversionary interests in the property it conveyed to WakeMed in the event the non-profit hospital ceased operations without a successor or indigent care conditions were unmet. The proposed Amended and Restated Articles of Incorporation and Second Amendment to Transfer Agreement will restate these conditions and statutory requirements.

Wake County's approval of the Amended and Restated Articles of Incorporation and Second Amendment to Transfer Agreement is conditioned upon completion of all regulatory approvals required under federal and state law and upon final execution of all related agreements required by this Transaction.

Attachments:

1. Amended and Restated Articles of Incorporation
2. Second Amendment to Transfer Agreement