

**BEFORE THE STATEWIDE HEALTH COORDINATING COUNCIL
AND THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY**

IN RE:)
)
2LR HEALTHCARE HOLDINGS, LLC) **DR -2021-159**
d/b/a HEART AND VACSULAR)
INSTITUTE OF ALABAMA, LLC)
)
)

PROCEDURAL ORDER

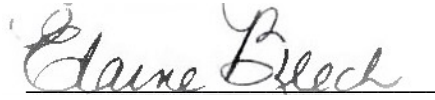
The above-styled Petition for Declaratory Ruling was received by the State Health Planning and Development Agency (“SHPDA”), on behalf of the SHCC, on November 9, 2021. The Petition seeks a declaratory order from the State Health Coordinating Council (“SHCC”) interpreting the cardiac services section of the Alabama State Health Plan, found at ALA. ADMIN. CODE 410-2-3-.03. The Petition has been accepted for filing and placed on the agenda for the December 14, 2021 SHCC meeting, subject to the following.

Interested parties seeking to appear before the SHCC on this matter shall file a notice with SHPDA by 5:00 p.m. on November 29, 2021 and may file written responses to the Petition by the same deadline. All written submissions shall meet the requirements of ALA. ADMIN CODE 410-1-3-.09. Those supporting the petition, on the one hand, and those opposing the petition, on the other, will be given thirty (30) minutes to address the SHCC at its meeting. Parties supporting and opposing the petition are asked to coordinate their presentations to meet these time limitations, which may be extended by the Chair to permit questions or for other good cause.

The Chair has reached the tentative conclusion that the SHCC has authority to consider the Petition, however, this issue may be revisited following written submissions from interested parties. To assist the parties in addressing this threshold issue, the Alabama Administrative Procedure Act, at ALA. CODE § 41-22-11 provides that a person “substantially affected by a rule” may petition a state agency to issue a declaratory ruling “with respect to the validity of the rule or with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the agency.” ALA. CODE § 41-22-11(a) prescribes that “[e]ach agency shall prescribe by rule the form of such petitions and the procedure for their submission, consideration and disposition, and shall prescribe in its rules the circumstances in which rulings shall or shall not be issued.” ALA. ADMIN CODE 410-1-9-.01., adopted by SHPDA’s Certificate of Need Review Board (“CONRB”), addresses only declaratory petitions filed with the CONRB. However, the Alabama Courts have found that the “SHCC is an agent of the State of Alabama, separate and apart from SHPDA”. *Ex parte Traylor Nursing Home, Inc.*, 543 So. 2d 1179 (Ala. 1988)” cited in *Prime Lithotripter Op. v. Lithomedtech*, 855 So. 2d 1085, 1091 (Ala. Civ. App. 2001), *aff’d on other grounds, sub nom . Ex parte State Health*

Planning, 855 So. 2d 1098 (Ala. 2002). The rules adopted by the SHCC as part of the State Health Plan do not address declaratory relief, and to the Chair's knowledge, this is the first time formal declaratory relief has been sought from the SHCC. As part of their written response, interested parties are invited to comment on whether the SHCC has authority to consider the Petition, or whether a declaratory order seeking an administrative interpretation of the State Health Plan may only be filed with the CONRB.

Done this 15th day of November, 2021.

A handwritten signature in cursive script, reading "Elaine Beech", written over a horizontal line.

Elaine H. Beech
Chairman