

April 9, 2019

VIA EMAIL [SHPDA.ONLINE@SHPDA.ALABAMA.GOV]

Hon. Emily T. Marsal, Executive Director
State Health Planning and Development Agency
100 North Union Street
RSA Union Building, Suite 870
Montgomery, Alabama 36130-3025

**Re: Non-Reviewability Determination Request - Opening of Urgent Care Clinic
Provider: Cullman Regional Medical Center, Facility ID: H2201**

Dear Ms. Marsal:

We are writing to submit a reviewability determination request (“Request”) in accordance with Section 410-1-7-.02 of the Alabama State Health Planning and Development Agency’s (“SHPDA’s”) certificate of need (“CON”) program rules and regulations (the “Rules”) with regard to the development of an urgent care physician’s clinic in Hartselle, Alabama (the “Clinic”) to be established and owned by our client, Cullman Regional Medical Center (the “Hospital”).

Specifically, we request a determination of non-reviewability with respect the development of the Clinic by the Hospital (the “Project”). We note that the Clinic will be a physician office and will therefore qualify for the physician’s office exemption under applicable law. A description of facts relevant to the Project and an analysis of applicable CON law considerations in support of the Request follows.

1. *Description of the Project.* The Clinic shall be located at 1549 Highway 13 NW, Hartselle, AL 35640 on real estate that will be owned by the Hospital.

2. *Legal Analysis.* We note that the Project:

- a) does not involve the establishment of a “health care facility” under CON law; *see* Ala. Code § 22-21-260(6) (“The term health care facility shall not include the offices of private physicians or dentists, whether for individual or group practices *and regardless of ownership...*”; emphasis added); *see also* Ala. Admin. r. 410-1-2-.05(2)(a): “The term ‘health care facility’ shall not include any of the following: ... The private office of any duly licensed physician, dentist, chiropractor, or podiatrist, whether for individual or group practice and regardless of ownership.”); and
- b) does not involve offering a “health service” under CON law; *see* Ala. Admin. r. 410-1-2-.06 (Defining “Health Services” as “Clinically related (i.e., diagnostic curative or rehabilitative) services, including alcohol, drug abuse and mental health services customarily furnished on either an inpatient or outpatient basis *by health care facilities*, but not including the lawful practice of any profession or vocation conducted

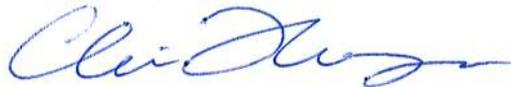
independently of a health care facility and in accordance with applicable licensing laws of this State”; emphasis added); and

- c) Satisfies the four requirements set forth by the Alabama Supreme Court in *Ex parte Sacred Heart Health Sys., Inc.*, 155 So. 3d 980,988, (Ala. 2012), namely:
1. That the proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physicians' practice for the care of their patients. In the case of the Clinic, the services are to be provided, and related equipment used, only by physicians identified as employees of the Clinic.
 2. That the proposed services are to be provided, and related equipment used, at an office of such physicians. In the case of the Clinic, the services are to be provided, and related equipment used, at the Clinic, which serves as an office of the employed physicians.
 3. That all patient billings related to such services are through, or expressly on behalf of, the physicians' practice. In the case of the Clinic, all services shall be billed expressly on behalf of the Clinic as a physician office.
 4. That the equipment will not be used for inpatient care, nor by, through, or on behalf of a health care facility. In the case of the Clinic, none of the equipment will be used for inpatient care, nor by, through, or on behalf of a health care facility.

All services provided at the Clinic will be urgent care services. In light of the foregoing analysis, the Clinic qualifies for the Physician's Office Exemption.

Based on the foregoing information, we respectfully request that SHPDA grant a determination of non-reviewability for the Project. An attestation from the requesting party is enclosed herein, and we have sent via overnight mail a check for the required filing fee. Please do not hesitate to contact me at Chris.Thompson@wallerlaw.com or (205) 226-5739 if you require any further information or have any questions.

Very truly yours,



Christopher Thompson

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby make oath or affirm that he/she is the CEO
of Cullman Regional Medical Center, Inc., has knowledge of the facts in this request, and to the
best of his/her/their information, knowledge and belief, such facts are true and correct.

Affiant *[Signature]* (SEAL)
SUBSCRIBED AND SWORN to before me this 9th day of April 2019.

Charlotte Hicks

Notary Public

My commission expires: _____



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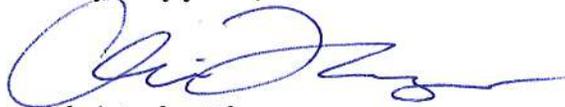
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health services customarily furnished on either an inpatient or outpatient basis *by health care facilities*, but not including the lawful practice of any profession or vocation conducted independently of a health care facility and in accordance with applicable licensing laws of this State”; emphasis added); and

- c) will not involve the provision of any services billed through the Hospital or any other health care facility, as the services performed at the Clinic will be billed as physician office services; and
- d) qualifies for the Physician’s Office Exemption.

Based on the foregoing information, we respectfully request that SHPDA grant a determination of non-reviewability for the Project. An attestation from the requesting party is enclosed herein, and we have sent via overnight mail a check for the required filing fee. Please do not hesitate to contact me at Chris.Thompson@wallerlaw.com or (205) 226-5739 if you require any further information or have any questions.

Very truly yours,



Christopher Thompson

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The undersigned, being first duly sworn, hereby make oath or affirm that he/she is the CEO of Cullman Regional Medical Center, Inc., has knowledge of the facts in this request, and to the best of his/her/their information, knowledge and belief, such facts are true and correct.

Affiant [Signature] (SEAL)
SUBSCRIBED AND SWORN to before me this 9th day of April 2019.

Charlotte Hicks

Notary Public

My commission expires: _____

