

WILLIAM G. SOMERVILLE  
SHAREHOLDER  
Direct Dial: 205.250.8375  
Direct Fax: 205.488.3775  
E-Mail Address: [wsomerville@bakerdonelson.com](mailto:wsomerville@bakerdonelson.com)

December 29, 2021

Ms. Emily T. Marsal  
100 NORTH UNION STREET  
RSA UNION BUILDING, STE. 870  
MONTGOMERY, ALABAMA 36130-3025

**Re: IOP Services, LLC, Reviewability Determination**

Dear Ms. Marsal:

I represent IOP Services, LLC ("IOP"). We respectfully request a Letter of Nonreviewability for a proposed project to be located at 8331 Madison Boulevard, Madison, AL 35758. The proposed project would be substantially as follows:

1. There will be intensive outpatient mental health counselling by a licensed physician's medical practice. The primary population to be served consists of adults with common mood, anxiety, and adjustment disorders not responding adequately to traditional out-patient care, but not requiring hospital care. The practice will not be treating individuals diagnosed with severe mental illness. The practice is also seeking Joint Commission accreditation as a mental health IOP.

There are a number of IOPs located in Alabama. To the best of our knowledge, none of these have been required to obtain a CON. It is primarily an organization that is helpful for outpatient reimbursement.

2. The service area will be Madison County, Alabama.

3. The equipment costs for the project will be \$60,000 for furniture and equipment. The first annual operating costs will be approximately \$150,000. The capital costs are to lease office space at \$6500 per month. There will be no land cost nor improvements to occupy the office space including the monthly lease. There are no direct construction costs.

4. There will be no financial interests with other groups or healthcare facilities.

This request is submitted pursuant to *Ala. Code* § 22-21-260(6), which provides that “[t]he term health care facility shall not include the offices of private physicians or dentists, whether individual or group practices and *regardless of ownership*.” (emphasis supplied). In addition, the Alabama Supreme Court has set forth the definitive test for determining whether this so-called Physician’s Office Exemption (“POE”) to the CON law applies in a particular case.

1) The proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physician’s practice for the care of their patients;

2) The proposed services are to be provided, and related equipment used, at any office of such physicians:

3) All patient billings related to such services are through, or expressly on behalf of, the physician’s practice, and not on behalf of a third party; and,

4) The equipment may not be used for inpatient care, nor by, through or on behalf of a healthcare facility.

*Ex parte Sacred Heart Health System, Inc.*, 155 So.3d 980, 988 (Ala. 2012) (holding POE applicable to multi-office development). The CON review board has consistently held that the evidence pertaining to a POE must be reviewed in its “totality” and that no single factor will go into the determination in the absence of other considerations. Dr. Garry Grayson is the physician involved and he will be practicing the specialty of psychiatric medicine from this office. All other physicians involved will be owners of or employees of the practice. Persons other than Dr. Grayson with an ownership interest in IOP are Joe Lucas, M.D., Chris Stanley, M.D., Armand Schachter, M.D., Andrea Thomas, M.D., and Martha Furio, Lic.S.W.

Additionally, the Alabama Administrative Code §410-1-2-.05 defines the term health care facility. Subsection 2 of that regulation states that the term “health care facility” shall not include any of the following:

a) The private office of any duly licensed physician, dentist, chiropractor, or podiatrist whether for individual or group practice and regardless of ownership.

Clearly, physicians’ offices used on an outpatient basis for physicians’ practices, regardless of ownership, are intended to be excluded from Certificate of Need review. The medical practice of Dr. Garry Grayson, a psychiatrist properly licensed in the State of Alabama, obviously qualifies for the physician’s office exemption regardless of the business entity he chooses. This particular practice of Dr. Grayson will involve, in addition to his complete care and control, a number of employees. Martha Furio, a licensed social worker, will be the clinical director and primary group therapist and group therapy instructor. She will work under the direction and supervision of Dr. Grayson. Ms. Furio additionally will be a primary group therapist.

All patient billings will be on behalf of the practice.

These psychiatric services will be provided to primarily a population of adults with common mood, anxiety, and adjustment disorders not responding adequately to traditional outpatient care, but not requiring hospital care. Dr. Grayson will not be treating individuals diagnosed with severe mental illness in this office.

As noted above, there are a number of IOPs located in Alabama. To the best of our knowledge, none have been required to have a Certificate of Need.

As most physicians in the state do, there will be a portion of Dr. Grayson's practice that will require him to cover patients in the hospital. Hospital coverage is in no way related to the outpatient work of the IOP.

We hope that in evaluating this POE proposal based on these representations it will be confirmed not to be subject to CON review. Concurrently herewith, we have submitted a payment of \$1,000 through the Agency's Payment Portal. If you have any questions, please call.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

A handwritten signature in cursive script that reads "William G. Somerville".

William G. Somerville

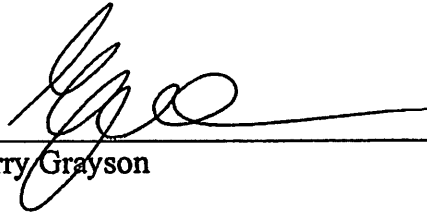
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STATE OF ALABAMA

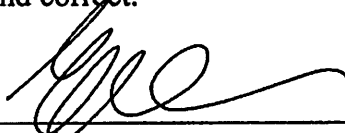
JEFFERSON COUNTY

Comes now, Dr. Garry Grayson, a properly licensed Board Certified psychiatrist in the State of Alabama and represents to the State Health Planning and Development Agency that I have reviewed the attached Request for Non-Reviewability signed by the Honorable William G. Somerville, and finds it to be a true and accurate representation of the services I want to provide as a physician pursuant to the Physician's Office Exemption including backup staff as IOP Services, LLC in Madison, Alabama.

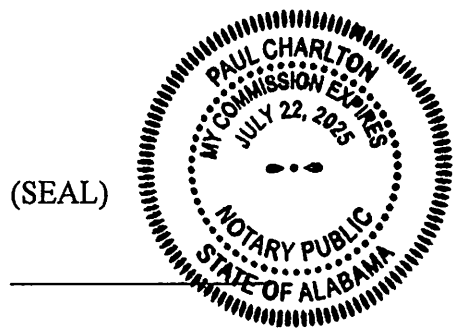
  
\_\_\_\_\_  
Dr. Garry Grayson


Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby makes oath or affirmed that he/she is the psychiatrist an owner of IOP Services, LLC, has knowledge of the facts attached to this affirmation via letter to the State Health Planning and Development Agency, and to the best of his information, knowledge, and belief, such facts are true and correct.

  
\_\_\_\_\_  
Dr. Garry Grayson

SWORN TOO and SUBSCRIBED BEFORE ME this the 29<sup>th</sup> day of December, 2021.



  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 7-22-2025

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

SHIPT TOWER  
420 20TH STREET NORTH  
SUITE 1400  
BIRMINGHAM, ALABAMA 35203  
  
PHONE: 205.328.0480  
FAX: 205.322.8007

www.bakerdonelson.com

WILLIAM G. SOMERVILLE  
SHAREHOLDER  
Direct Dial: 205.250.8375  
Direct Fax: 205.488.3775  
E-Mail Address: wsomerville@bakerdonelson.com

RV2022-016  
**RECEIVED**  
Jan 14 2022  
STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

January 14, 2022

Ms. Emily T. Marsal  
Executive Director  
State Health Planning and Development Agency  
P. O. Box 303025  
Montgomery, AL 36130-3025

Re: RV2022-016  
IOP Services, LLC

Dear Executive Director Marsal:

This is in response to your inquiry dated January 6, 2021. I have set forth your questions in bold below. The answers will follow:

1. **Please address if IOP Services, LLC will be prescribing medication to patients.**

**Response:** We expect that physicians employed by IOP Services, LLC, will be prescribing medication to patients.

2. **Provide additional information regarding the roles of Joe Lucas, M.D., Chris Stanley, M.D., Armand Schachter, M.D., and Andrea Thomas, M.D. at IOP Services, LLC.**

**Response:** These physicians, who are part owners of IOP Services, LLC, may provide some coverage. We believe that this is consistent with the requirement that,

for the Physician's Office Exemption to apply, all services must be provided by persons who are owners or employees of the practice.

3. Provide explanation concerning the statement "it is primarily an organization that is helpful for outpatient reimbursement." "IOP" is an acronym that stands for "intensive outpatient program." Payors are familiar with this terminology and are aware that IOPs are in many cases cost-effective alternatives to inpatient treatment for serious psychiatric disorders. As previously noted, IOP Services, LLC, is owned by physicians, and the medical services will be provided by owners or employees of IOP Services, LLC.

IOP Services, LLC, will have its own billing number, and all providers will bill under that number. We believe that this is analogous to the situation in *Ex parte Sacred Heart Health System, Inc.*, 155 So.3d 980 (Ala. 2012), in which all services and providers billed under the Sacred Heart Medical Group's provider number.

I hope we have answered your questions. Please do not hesitate to call should you need any additional information.

Sincerely yours,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC



WILLIAM G. SOMERVILLE

January 14, 2022  
Page 3