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RV2025-029

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Mar 20 2025

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

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March 20, 2025

VIA EMAIL ONLY

Ms. Emily Marsal
Executive Director
Alabama State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36104
shpda.online@shpda.alabama.gov

**Re: Request for Determination of Non-Reviewability
Hanover Behavioral Partners, LLC
Jefferson County, Alabama**

Dear Ms. Marsal:

This firm represents Hanover Behavioral Partners, LLC ("Hanover"), an eating disorder treatment facility to be located in Jefferson County, Alabama.¹ Pursuant to Alabama Certificate of Need Program Rules and Regulations ("CON Rules(s)") § 410-1-7-.02, Hanover requests a determination that the operation of an eating disorder treatment facility is not subject to certificate of need ("CON") review under *Ala. Code* § 22-21-260 *et. seq.*, and the CON Rules. Pursuant to CON Rule § 410-1-7-.02, a \$1000.00 filing fee is being paid to the Alabama State Health Planning and Development Agency ("SHPDA") via the online payment portal. To assist with your determination, we submit the following information.

Background:

Hanover proposes to open a 38-bed eating disorder treatment facility in Jefferson County, Alabama ("Facility"). The Facility will provide the following levels of eating disorder treatment services: outpatient services, intensive outpatient services, partial hospitalization services ("PHP"), and residential treatment services. The Facility will treat patients with a primary diagnosis of an eating disorder, for example anorexia, binge eating, bulimia, and other specified feeding or eating disorders. The Facility will not treat substance use disorders or serious mental illnesses. As an eating disorder treatment facility, the Facility will not be licensed by either the Alabama Department of Mental Health (as a community mental health center or otherwise) or the Alabama Department of Public Health.

¹ Contact information for Hanover is as follows: 39 Hanover Circle, Birmingham, Alabama, 35205, Attn: Karen Musgrove, Ph.D.

The Facility's defined service area, under CON Rule §410-1-2-.03, will be Jefferson County, Alabama. Hanover is not owned by any other Alabama licensed healthcare facility.

An Eating Disorder Treatment Facility Is Not a Health Care Facility Under CON Law:

As you are aware, the Alabama CON program regulates the establishment of new "institutional health services". CON Rule § 410-1-4-.01 ("All new institutional health services which are subject to Section 22-21-260..., and which are proposed to be offered or developed within the state shall be subject to Certificate of Need review.").

"Institutional health services" are "health services² provided *in or through health care facilities* or health maintenance organizations, including the entity in or through which such services are provided." *Ala. Code* § 22-21-260(9) (emphasis added); *see also* CON Rule § 410-1-2-.14. Thus, if the institutional health service is not being provided "in or through health care facilities", as defined, it is not subject to CON review, regardless of the capital expenditure.³

² "Health services" are defined 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*." CON Rule § 410-1-2-.06 (emphasis added).

³ *See also* CON Rule § 410-1-4-.01 (emphasis added):

"(1) All new institutional health services which are subject to Section 22-21-260, et. seq., Code of Ala. 1975, and which are proposed to be offered or developed within the state shall be subject to Certificate of Need review. New institutional health services which are subject to review shall include:

- (a) the construction, development, acquisition through lease or purchase or other establishment of a new *health care facility* or health maintenance organization; or
- (b) any expenditure *by or on behalf of a health care facility* or health maintenance organization, which, under generally accepted accounting principles consistently applied, is a capital expenditure in excess of [established thresholds]...
- (c) any change in the existing licensed bed capacity of a *health care facility* or health maintenance organization through the:
 - 1. addition of new beds;
 - 2. the relocation of one or more beds from one physical facility to another, (that is, one geographically separate location to another); or
 - 3. reallocation among services of existing beds through the conversion of one or more beds from one category to another...

or

- (d) any health service which is proposed to be offered *in or through a health care facility* or health maintenance organization, and which was not offered on a regular basis *in or through such health care facility* or health maintenance organization within the twelve-month (12 month) period prior to the time such services would be offered, including, without limitation, health services to be provided through equipment obtained from vendors or lessors of equipment, provided, however, that a vendor or lessor of equipment which does not materially engage in the provision of the health service shall not be required to obtain a CON; or
- (e) the acquisition, by any person, of major medical equipment that will

A “health care facility” is defined as “general and specialized hospitals, including tuberculosis, psychiatric, long-term care, and other types of hospitals, and related facilities such as, laboratories, out-patient clinics, and central service facilities operated in connection with hospitals; skilled nursing facilities; intermediate care facilities; skilled or intermediate care units operated in veterans’ nursing homes and veterans’ homes, owned or operated by the State Department of Veterans’ Affairs, as these terms are described in Chapter 5A (commencing with Section 31-5A-1) of Title 31; rehabilitation centers; public health centers; facilities for surgical treatment of patients not requiring hospitalization; kidney disease treatment centers, including free-standing hemodialysis units; community mental health centers and related facilities; alcohol and drug abuse facilities; facilities for the developmentally disabled; and home health agencies and health maintenance organizations.” *Ala. Code* § 22-21-260(6); *see also* CON Rule § 410-1-2-.05. By definition, a health care facility does not include an eating disorder treatment facility providing outpatient, intensive outpatient, PHP, or residential levels of care to patients with a primary eating disorder diagnosis.⁴

Thus, the proposed eating disorder treatment facility is not a “health care facility”, as defined by CON law, and the provision of eating disorder treatment services by Hanover does not constitute a new “institutional health service”.

The Proposed Eating Disorder Facility Is Not Subject to CON Review:

As set forth herein, the proposed service is not a new “institutional health service” provided in or through a health care facility subject to CON review under *Ala. Code* § 22-21-263 or CON Rule § 410-1-4-.01.

The project does not involve the addition of inpatient beds or the conversion of beds from one classification to another, as described in CON Rule § 410-1-4-.01.

In addition, this project does not involve any change in ownership of Hanover.

-
1. be owned by or located *in a health care facility*, or which will be used to provide health services to persons admitted *to a health care facility*; provided, however, that an acquisition of major medical equipment need not be reviewed if it will be used to provide services to inpatients of a health care facility only on a temporary basis in the case of a natural disaster, major accident, or equipment failure; or
 2. if a person acquires major medical equipment not located in a health care facility without a Certificate of Need and proposes at any time to use that equipment to serve inpatients *of a health care facility*, then the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a health care facility only on a temporary basis not to exceed six weeks in the case of an emergency, a natural disaster, a major accident, or an equipment failure...; or
 3. an acquisition made *by or on behalf of a health care facility* under lease or comparable arrangement, or through donation, which would have required a Certificate of Need if the acquisition had been by purchase.”

⁴ Further, eating disorders treatment facilities are not addressed in the 2024-2027 State Health Plan.

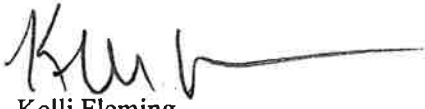
The total costs incurred by Hanover for the purchase and/or lease of major medical equipment is anticipated to be approximately \$400,000.00; the building lease costs are estimated to be approximately \$1,700,000.00 per year; other capital costs are anticipated to be less than approximately \$100,000.00; and new first year annual operating costs are estimated to be approximately \$8,700,000.00.

Consequently, the proposal does not constitute a "new institutional health service" provided in or through a health care facility subject to CON Review, as the proposal does not include:

- (1) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization;
- (2) any expenditure by or on behalf of a health care facility which, as a capital expenditure, exceeds the CON statutory threshold for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility;
- (3) any change in the existing licensed bed capacity of a health care facility;
- (4) any health service which is proposed to be offered in or through a health care facility which was not offered on a regular basis in or through a health care facility within the preceding 12-month period; or
- (5) any other reviewable event under the existing CON Rules.

Based on the above, Hanover requests your determination that the establishment and operation of the Facility as an eating disorder treatment facility is not subject to CON review under *Ala. Code* § 22-21-260 *et seq.* and the CON Rules, and is permissible without further filings or requests to SHPDA. We appreciate your response to this matter, and please do not hesitate to contact us should you need additional information.

Sincerely,



Kelli Fleming
Partner

KCF/caj

Affirmation of Requesting Party:

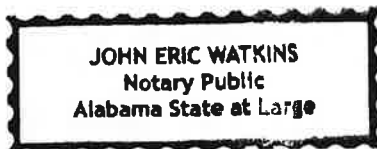
The undersigned, being first duly sworn, hereby make oath or affirm that she is the CEO of Hanover Behavioral Partners, LLC, has knowledge of the facts in this request, and to the best of her information, knowledge, and belief, such facts are true and correct.

Affiant: [Signature] (SEAL)

SUBSCRIBED AND SWORN to before me this 19th day of March, 2025.

[Signature]
Notary Public

My Commission Expires: July 25, 2027



My Commission Expires
July 25, 2027

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April 22, 2025

VIA EMAIL

Ms. Emily Marsal
Executive Director
State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36104
shpda.online@shpda.alabama.gov

**Re: Additional Information – Request for Determination of Non-Reviewability
RV2025-029
Hanover Behavioral Partners, LLC**

Dear Ms. Marsal:

As you are aware, this firm represents Hanover Behavioral Partners, LLC (“Hanover”). Pursuant to Alabama Certificate of Need Program Rules and Regulations (“CON Rules(s)”) § 410-1-7-.02, on or around March 20, 2025, Hanover filed a determination request that the operation of an eating disorder treatment facility is not subject to certificate of need (“CON”) review under *Ala. Code* § 22-21-260 *et. seq.*, and the CON Rules. Hanover’s request was designated RV2025-029 (“Request”).

We are in receipt of the March 27, 2025 letter from the State Health Planning and Development Agency (“SHPDA”) requesting additional information concerning Hanover’s Request. Hanover hereby responds to SHPDA’s letter dated March 27, 2025 requesting additional information, and provides the following additional information for SHPDA’s additional review, consideration, and determination that the proposal described in the Request is non-reviewable under the current CON Rules.

1. **The applicant indicates Hanover Behavioral Partners, LLC will provide the following levels of eating disorder treatment services: outpatient services, intensive outpatient services, partial hospitalization services, and residential treatment**

services. Please provide additional detailed information on the proposed services to be provided by Hanover Behavioral Partners, LLC; by whom these services will be provided; and if medication will be prescribed to patients.

The proposed services to be provided consist of eating disorder treatment services for patients with a primary diagnosis of an eating disorder, for example, anorexia, binge eating, bulimia, and other specified feeding or eating disorders. Hanover will not treat substance use disorders. As deemed appropriate based on patient needs, the following services will be provided in-house by Hanover or arranged by Hanover staff:

- Group, individual, and family therapy for eating disorder diagnosis
- Nutrition education and counseling
- Meal supervision and support
- Exercise and exercise education
- Education on coping mechanisms and relapse prevention
- Assistance with medication management
- Assistance in the development of basic life skills
- Recreation and activities
- Transportation to and from group outings
- Family support and education

Staffing will include, at a minimum, psychiatrist, nursing staff, therapists, dieticians, and case managers. All staff will be Hanover employees or independent contractors working on behalf of Hanover. All clinical staff will have certifications for first aid and CPR.

Medication will not be prescribed by Hanover, but assistance with medication management will be provided as appropriate. All filled prescriptions to be managed by Hanover will be stored in a locked cabinet.

2. **The request states that Hanover Behavioral Partners, LLC is not owned by any other Alabama licensed healthcare facility and notes this project does not involve any change in the ownership of Hanover. Please provide clarification to the Agency concerning the complete ownership structure for the proposed project.**

The eating disorder treatment facility will be solely owned by Hanover Behavioral Partners, LLC. Hanover is not owned by any other licensed healthcare facility. While Hanover, as a limited liability company, has a corporate structure involving upstream ownership by corporate entities, none of the upstream owners are licensed healthcare facilities, as defined by *Ala. Code* § 22-21-260(6).

3. Pursuant to ALA. ADMIN. CODE r. 410-1-4-.01, this proposal will not exceed any of the Certificate of Need expenditure thresholds in effect at the time of this filing, which were \$3,379,066.00 for *major medical equipment*; \$1,350,305.00 for *new annual operating costs*; and \$6,751,537.00 for *capital expenditures*. The aforementioned request indicates expenditures for the proposed eating disorder treatment facility are estimated to be \$1,700,000.00 for yearly building lease costs, \$400,000.00 for the purchase and/or lease of major medical equipment, \$100,000.00 for other capital related expenses, and \$8,700,000.00 for first year annual operating costs. Please clarify for the Agency the appropriate CON expenditure threshold categories regarding the estimated costs for the proposed facility and address the discrepancy in expenditure totals pertaining to *new annual operating costs*.

The proposed costs, broken down into the categories requested are as follows: \$400,000 for equipment, \$8,700,000 for new annual operating costs and \$1,800,000 for capital expenditures (including yearly building lease costs). Since the facility is not yet open, all annual operating costs incurred will be new. While the new annual operating costs are above the thresholds set forth by SHPDA, those expenditures only trigger CON review when they are by or on behalf of a health care facility. *Ala. Admin. Code* § 410-1-4-.01 sets forth the new institutional health services that are subject to CON review. *Ala. Admin. Code* § 410-1-4-.01(b) addresses cost expenditures and states that “any expenditure by or on behalf of a health care facility or health maintenance organization” exceeding established thresholds is subject to CON review. *See also Ala. Code* § 22-21-263(a)(2).

As set forth in the March 20, 2025 letter to SHPDA, and consistent with SHPDA’s historical interpretation, an eating disorder treatment facility treating patients with an eating order diagnosis, is not a “health care facility” as defined by *Ala. Code* § 22-21-260(6) and *Ala. Admin. Code* § 410-1-2-.05. An eating disorder treatment facility is not governed by the 2024-2027 State Health Plan, is not licensed by either the Alabama Department of Public Health or the Alabama Department of Mental Health, and does not fall under the definition of “health care facility” as set forth in *Ala. Code* § 22-21-260(6).¹ Thus, the expenditure is not “by or on behalf of a health

¹ A “health care facility” is defined as “general and specialized hospitals, including tuberculosis, psychiatric, long-term care, and other types of hospitals, and related facilities such as, laboratories, out-patient clinics, and central service facilities operated in connection with hospitals; skilled nursing facilities; intermediate care facilities; skilled or intermediate care units operated in veterans’ nursing homes and veterans’ homes, owned or operated by the State Department of Veterans’ Affairs, as these terms are described in Chapter 5A (commencing with Section 31-5A-1) of Title 31; rehabilitation centers; public health centers; facilities for surgical treatment of patients not requiring hospitalization; kidney disease treatment centers, including free-standing hemodialysis units; community mental health centers and related facilities; alcohol and drug abuse facilities; facilities for the developmentally disabled; and home health agencies and health maintenance organizations.” *Ala. Code* § 22-21-260(6); *see also* CON Rule § 410-1-2-.05.

care facility,” and, as a result, is not subject to CON review as set forth by *Ala. Admin. Code* § 410-1-6-.01.

4. **The applicant reports the purchase and/or lease of major medical equipment is anticipated to be approximately \$400,000.00 for the proposal. Please provide additional details concerning the equipment for the proposed treatment facility in Jefferson County, Alabama.**

The majority of the equipment purchased and/or leased will not be medical clinical equipment, and instead will be office and technology-related equipment. The equipment to be purchased and/or leased will consist of defibrillators, Connex spot monitors, kitchen equipment, and technology and office equipment (*e.g.*, computers, printers, copier, smart boards, etc.).

5. **Please provide this Agency with planned emergency procedures in place on behalf of the proposed RV filing.**

Hanover will not provide emergency treatment service as part of the services offered, but will have emergency treatment protocols in place. All residents will have access to a nearby hospital for the provision of emergency care.

In addition, the eating disorder treatment facility will have an emergency preparedness program to address procedures for various emergency situations, including, but not limited to, fire, natural disasters, inclement weather, power outages or failures, violence, structural damage, etc.

Accordingly, based on the above, Hanover requests your determination that this project is not subject to CON review under *Ala. Code* § 22-21-260 *et seq.* and the CON Rules, and is permissible without further filings or requests to SHPDA.

I appreciate your response to this matter, and please do not hesitate to contact me should you need additional information or have any further questions.

Sincerely,


Kelli Fleming



KCF/caj

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby make oath or affirm that she is the CEO of Hanover Behavioral Partners, LLC, has knowledge of the facts in this request, and to the best of her information, knowledge, and belief, such facts are true and correct.

Affiant: [Signature] (SEAL)

SUBSCRIBED AND SWORN to before me this 21st day of April, 2025.

[Signature]
Notary Public

My Commission Expires: 10.28.2025