

**Wegener Lane & Evans**  
*a professional corporation of attorneys and counselors*

RV2025-031

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Apr 07 2025

STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

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April 7, 2025

***Via Electronic Filing To: shpda.online@shpda.alabama.gov***

State Health Planning & Development Agency

Attn: Executive Director Emily T. Marsal

P.O. Box 303025

Montgomery, Alabama 36130

***RE: Nuclear Care Partners, LLC – Request for Reviewability Determination***

Dear Ms. Marsal:

We write to you as our client, Nuclear Care Partners, LLC (“NCP”) is requesting a determination from the State of Alabama’s State Health Planning & Development Agency (“SHPDA”) that its proposed offering of health services is not subject to Certificate of Need (“CON”) review under Ala. Code § 22-21-260, *et seq.*, or is subject to compliance with the CON Rules. To assist with your determination as to whether NCP is exempt, we submit the following information regarding NCP’s operations and its anticipated operations within the State of Alabama.

NCP provides no cost health care services for former Department of Energy (“DOE”) workers who have been diagnosed with work related illnesses and qualify for in-home medical benefits. NCP primarily serves individuals who qualify for benefits under the Energy Employees Occupational Illness Compensation Program Act (hereinafter “EEOICPA”), but the company is also approved to provide no cost health care services through the Federal Employees Compensation Act, the federal Black Lung Program, and the Radiation Exposure Compensation Act.

The EEOICPA is a federal program administered by the Department of Labor (“DOL”) through the Division of Energy Employees Occupational Illness Compensation, which is part of the Office of Worker’s Compensation Programs. The EEOICPA provides benefits to former DOE employees, or to people who worked for companies that contracted with the DOE, who have developed certain fatal illnesses resulting from their exposure to toxic substances in the course of their employment. The illnesses that entitle former DOE employees to benefits are identified by the EEOICPA.

Notably, NCP only provides services to individuals who qualify for care through the above named DOL programs and NCP primarily cares for individuals who qualify for benefits through the EEOICPA. Qualifying individuals constitute a very limited portion of the population, and NCP is one of only a few companies that cater exclusively to DOE employees. NCP does not treat or provide services to any other individuals, and it does not receive payment from private health insurers or Medicare/Medicaid. NCP only provides services to these former DOE employees and contractors, and NCP is paid by the DOL for the services it provides.

As a DOL provider of EEOICPA benefits, NCP is subject to strict federal regulation and oversight. Once a former DOE employee is determined to qualify for benefits, and the patient decides to utilize NCP's services, NCP becomes responsible for communicating all patient information to the DOL and ensuring that the level of care complies with federal regulations. NCP works with the patient's physician to tailor a plan of care that fits the patient's needs, but NCP is neither affiliated with any physicians, nor is the care the company provides directed by the patient's physician. Rather, NCP utilizes case managers, registered nurses, certified nursing assistants, and often a patient's own family members to ensure the patient receives the highest quality of care. The DOL will only reimburse NCP for patient care that the DOL has pre-approved, and therefore, the role of NCP's case managers is crucial, as they are responsible for ensuring that the care patients are provided with is consistent with the patient's DOL plan of care.

NCP is seeking a determination of whether it is subject to Alabama's CON requirements as NCP has a few patients that are considering moving to Alabama from nearby States. The reasons for these moves are numerous, but primarily, the illnesses these patients have are fatal and these patients are considering moving to Alabama to be closer to family. Due to the foregoing, NCP intends to provide ongoing services to these patients as there are no other companies in Alabama that take care of patients that qualify for benefits under the EEOICPA.

That said, the following information is being provided as part of this Request:

1. Name of company seeking the reviewability determination: Nuclear Care Partners, LLC
2. Address and contact information for the authorized company representative seeking the determination: Patti Kendall, Vice President of Clinical Compliance, 631 24 ½ Road, Suite C, Grand Junction, Colorado 81505; (970) 244-0900; pkendall@nuclearcarepartners.com
3. Service area for the proposed service/equipment: St. Clair County and Montgomery County.
4. Any new/additional services to be provided under the proposed project: In-home nursing services to NCP's current patients. NCP does not intend to provide any new or different services compared to what it is currently offering its patients in the other states it provides services to former DOE employees and contractors.

5. Approximated costs of the proposed project for:
  - a. Equipment: None.
  - b. First year annual operating costs: Limited to payroll and insurance. Estimated yearly total payroll is \$28,000.
  - c. Capital costs, to include:
    - i. Leases: None.
    - ii. Land/Building costs: None.
    - iii. Construction costs: None.
6. Disclosure of financial interests in the entity requesting the reviewability determination held by any other healthcare facilities or groups: NCP is wholly owned by NCP Investor, Inc.. However, NCP Investor, Inc. is not a healthcare facility or group.
7. Affirmation of Requesting Party is provided below.

With that being said, pursuant to Ala. Admin. Code § 410-1-7-.02, NCP is requesting a determination that its proposed operations or project is not subject to CON review and compliance based on the following:

1. NCP would not be considered a “new institutional health service” that is subject to CON review as it does not provide health services “in or through health care facilities or health maintenance organizations.” *See* Ala. Code §§ 22-21-260(9); 22-21-263; Ala. Admin. Code r. 410-1-4-.01. NCP does not provide any services in or through a health care facility, only in the patient’s home. NCP is not a “health care facility” as that term is defined. *See* Ala. Code § 22-21-260(6). NCP would not fall under the definition of “home health agency” as a “health care facility” because its services are not provided on an intermittent basis, and further, visits and procedures are performed on a patient according to their DOL-approved plan of care, not only “upon a physician’s written order.” *See* Ala. Admin. Code § 410-2-4-.07. As NCP’s services are not ordered by a physician, it is also not a “skilled nursing facility.” *See* Ala. Admin. Code § 660-2-4-.28. Thus, NCP does not provide health services in or through a health care facility, and NCP is not establishing a new health care facility. *See* Ala. Admin. Code § 410-1-4-.01(1)(a).
2. NCP is not constructing, developing, or acquiring a new health care facility through lease, purchase, or otherwise. *See* Ala. Admin. Code § 410-1-4-.01(1)(a).
3. NCP’s intended operations in Alabama would not involve any capital expenditures in excess of the threshold amounts set forth at Ala. Admin. Code § 410-1-4-.01(1)(b). (*i.e.*, \$2,000,000.00 indexed annually for inflation for major medical equipment; resulting in excess of \$800,000.00 for new annual operating costs indexed annually for inflation; or \$4,000,000.00 indexed annually for inflation for any other capital expenditure by or on behalf of a health care

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Executive Director Emily T. Marsal

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facility or health maintenance organization) *See id.*

4. NCP's intended operations would not involve the addition, relocation, or reallocation of beds since it only cares for patients in their homes. *See Ala. Admin. Code § 410-1-4-.01(1)(c).*

5. NCP will not be purchasing any new major medical equipment. *See Ala. Admin. Code § 410-1-4-.01(1)(e).*

6. Within the State of Alabama, NCP only intends to provide health services to its current patients who are relocating to the State of Alabama. NCP is not accepting other patients within the State of Alabama, nor does it intend to engage in any marketing or advertising of its services to potential patients within the State of Alabama.

Based on the foregoing, NCP respectfully requests that the SHPDA issue a determination of non-reviewability with respect to NCP's intended operations in the State of Alabama. Please do not hesitate to contact us if you have any questions or would like to discuss this matter in further detail. We are submitting the applicable \$1000 filing fee contemporaneously with the filing of this request via the SHPDA electronic payment portal.

Sincerely,

**WEGENER LANE & EVANS, P.C.**

*/s/ Benjamin M. Wegener*

Benjamin M. Wegener, Esq.  
Dalen B. Porter, Esq.

April 4, 2025

State Health Planning & Development Agency

Executive Director Ms. Emily T. Marsal

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**Affirmation of Requesting Party:**

The undersigned, being first duly sworn, hereby make oath or affirm that she is the Vice President of Clinical Compliance with NCP, has knowledge of the facts in this request, and to the best of her information, knowledge and belief, such facts are true and correct.

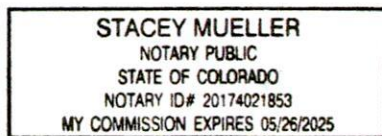
Affiant

Patti Kendall  
Patti Kendall

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of April, 2025.

Stacey Mueller  
Notary Public

My commission expires:



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State Health Planning & Development Agency

Attn: Executive Director Emily T. Marsal

P.O. Box 303025

Montgomery, Alabama 36130

***RE: RV2025-031 - Nuclear Care Partners, LLC – Request for Reviewability  
Determination***

Dear Ms. Marsal:

This letter is in response to your letter dated April 11, 2025, requesting supplemental information to be submitted with respect to the above-referenced request for reviewability determination.

In your correspondence to Nuclear Care Partners, LLC (“NCP”), you note that NCP’s Request does not contain the applicable CON threshold amounts. As such, below are the correct CON threshold amounts applicable to NCP’s request, and which NCP’s proposal would not exceed.

Pursuant to ALA. ADMIN. CODE r. 410-1-4-.01, effective as of October 1, 2024, the 2025 CON threshold amount for major medical equipment is \$3,322,582, \$1,350,305 for new annual operating costs, and \$6,751,537 for other capital expenditures. NCP’s proposal would not exceed these thresholds. As provided in NCP’s request, NCP’s proposal does not entail any costs for equipment or other capital expenditures involving construction, leasing, or land/building costs. Further, NCP’s anticipated annual operating costs total approximately \$28,000.

Thank you, and if you require any additional information, please do not hesitate to contact us.

Sincerely,

**WEGENER LANE & EVANS, P.C.**

www.wlelegal.com

April 11, 2025  
State Health Planning & Development Agency  
Executive Director Emily T. Marsal

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/s/ Benjamin M. Wegener

Benjamin M. Wegener, Esq.  
Dalen B. Porter, Esq.

**Affirmation of Requesting Party:**

The undersigned, being first duly sworn, hereby make oath or affirm that she is the Vice President of Clinical Compliance with NCP, has knowledge of the facts stated herein and in NCP's request, and to the best of her information, knowledge and belief, such facts are true and correct.

Affiant Patti Skendall

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of April, 2025.

Stacey Mueller  
Notary Public

My commission expires: 05.26.2025

