

June 19 2020

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

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June 19, 2020

VIA EMAIL (shpda.online@shpda.alabama.gov)

Emily T. Marsal
Director
State Health Planning and Development Agency
RSA Union Building
100 North Union Street, Suite 870
Montgomery, Alabama 36104

***Re: Arrowhead Dialysis, LLC d/b/a Northriver Home
Request for Non-Reviewability Determination
Electronically Filed: June 19, 2020***

Dear Ms. Marsal:

On behalf of Arrowhead Dialysis, LLC d/b/a Northriver Home ("Northriver Home"), a subsidiary of DaVita, Inc. ("DaVita"), and pursuant to the Alabama Certificate of Need ("CON") Program Rules and Regulations ("CON Rules") § 410-1-7-.02 and § 410-1-3-.09, attached hereto as **Exhibit A** is a Request for your determination that the proposal to establish and operate a new DaVita home training program / facility comprised of five (5) home-training stations, which shall be located in leased space at 1850 Mcfarland Blvd N, Tuscaloosa, AL 35406, Tuscaloosa, Alabama, following the purchase by Northriver Home of the existing home training dialysis program business currently owned and operated by Tuscaloosa Nephrology Associates and its affiliate, to be used initially for peritoneal dialysis home training and support, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and peritoneal dialysis home training/ treatment in Tuscaloosa County, does **not** require a CON pursuant to Ala. Code § 22-21-278, because CON approval is not required for a dialysis facility located in a Class 3, 4, 5, 6, 7, or 8 municipality, as defined by Ala. Code § 11-40-12(a), which contains no more than ten (10) freestanding hemodialysis stations.

In accordance with CON Rule § 410-1-3-.09, a pdf text searchable copy of this Request is being submitted electronically on June 19, 2020, to shpda.online@shpda.alabama.gov; a paper original will be preserved in our files. Per my discussion with Deborah Compton, DaVita check no. 9605739 in the amount of \$1,000.00 was delivered to SHPDA on June 18, 2020 as the filing fee for the above matter.

Please give me a call if you have any questions.

Birmingham Huntsville Mobile



Emily T. Marsal
June 19, 2020
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With kindest personal regards,

Lenora W. Pate

Lenora W. Pate
Tom Ansley
FOR THE FIRM

LWP/ta

Enclosures

c: Karen McGuire
Deborah Compton
Malia Chapman
Brandon King

EXHIBIT A

**BEFORE THE STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY OF THE STATE OF ALABAMA**

| | | |
|---------------------------------------|---|--------------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| ARROWHEAD DIALYSIS, LLC, D/B/A |) | |
| NORTHRIVER HOME |) | Request for Non-Reviewability |
| |) | Determination |
| |) | RV-_____ |

REQUEST FOR NON-REVIEWABILITY DETERMINATION

On behalf of Arrowhead Dialysis, LLC d/b/a Northriver Home (“Northriver Home”), a subsidiary of DaVita, Inc. (“DaVita”), and pursuant to the Alabama Certificate of Need Program Rules and Regulations (“CON Rules”) § 410-1-7-.02 and § 410-1-3-.09, and Alabama Code § 22-21-260, *et.seq.*, this Request is hereby filed with the State Health Planning and Development Agency (“SHPDA”) for a determination that the Northriver Home proposal, more fully described herein, to establish and operate a new DaVita home training program / facility comprised of five (5) home-training stations, which shall be located in leased space at 1850 Mcfarland Blvd N, Tuscaloosa, AL 35406, Tuscaloosa, Alabama, following the purchase by Northriver Home of the existing home training dialysis program business currently owned and operated by Tuscaloosa Nephrology Associates and its affiliate, to be used initially for peritoneal dialysis home training and support, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and peritoneal dialysis home training/ treatment in Tuscaloosa County, is not subject to CON Review for the reasons stated below, and that no CON is required for this Proposal (“Proposal”).

The following factual and legal information is hereby included in support of this Request, and a check in the amount of \$1,000.00 made payable to the State Health Planning and Development Agency is being filed in accordance with CON Rule § 410-1-3-.09, simultaneously with SHPDA, as the required filing fee for this Request pursuant to CON Rule § 410-1-7-.02.

PROPOSAL

1. Facts:

1.1 Arrowhead Dialysis, LLC d/b/a Northriver Home is a subsidiary of DVA Healthcare Renal Care, Inc., which is a subsidiary of DaVita, Inc., an owner and operator of end stage renal disease facilities.

1.2 Northriver Home proposes to establish and operate a new DaVita home training program / facility to be comprised of five (5) home-training stations to be used initially for peritoneal dialysis home training and support, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and home peritoneal dialysis training/treatment in Tuscaloosa County.

1.3 The total cost of construction is estimated to be \$270,000.00; the total cost of equipment is estimated to be \$0.00; and the total cost of first year annual operating costs is estimated to be \$1,900,766.00.

1.4 This Proposal is necessary and appropriate to provide convenient peritoneal dialysis home training and support, and may in the future, subject to licensure, be used alternatively to provide home hemodialysis training/treatment and home peritoneal dialysis training/treatment to the patients located in Tuscaloosa County.

2. Legal Analysis.

2.1 Pursuant to Ala. Code § 22-21-278, CON approval is not required for a dialysis facility located in a Class 3, 4, 5, 6, 7, or 8 municipality, as defined by Ala. Code § 11-40-12(a), which contains no more than ten (10) freestanding hemodialysis stations. However, this exemption from CON approval does not apply to a dialysis facility located in a Class 4, 5, 6, 7, or 8 municipality if such municipality, or any part of such municipality, is located in a county in which a Class 1, 2, or 3 municipality, or any part thereof, is located.

2.2 Section 410-2-3-.05(1)(b) of the State Health Plan further states that Ala. Code § 22-21-278 allows dialysis facilities with no more than ten (10) freestanding hemodialysis stations to

operate in 61 of 67 counties without CON approval. Facilities in Jefferson, Limestone, Madison, Mobile, Montgomery, and Shelby counties are required to receive CON approval for any dialysis stations.

2.3 The proposed location for Northriver Home is Tuscaloosa County. Tuscaloosa County does not contain a Class 1, 2, or 3 municipality.¹ There is no municipality, town, or unincorporated community in Tuscaloosa County that does not satisfy the requirements of Section 22-21-278 of the Alabama Code.

3. Conclusion and Request.

3.1 Pursuant to Ala. Code § 22-21-278 and Section 410-2-3-.05(1)(b) of the State Health Plan, a CON would not be required to own and operate a new DaVita home training program facility consisting of (5) home-training stations to be used initially for peritoneal dialysis training and support, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and home peritoneal dialysis training/ treatment in Tuscaloosa County.

3.2 Therefore, this Proposal is due to be determined as non-reviewable in accordance with the Alabama CON law, rules, and regulations.

Respectfully submitted this the 19th day of June, 2020,

Lenora W. Pate

Lenora W. Pate
Tom Ansley
Attorneys for Northriver Home

¹ As defined by Ala. Code § 11-40-12(a), a Class 1 municipality is a city with a population of 300,000 inhabitants or more; a Class 2 municipality is a city with a population of not less than 175,000, and not more than 299,999 inhabitants; and a Class 3 municipality is a city with a population of not less than 100,000, and not more than 174,999 inhabitants.

OF COUNSEL:

Sirote & Permutt, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205
205.930.5162

CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the above and foregoing Exhibit A was electronically filed this the 19th day of June, 2020, with the State Health Planning and Development Agency via shpda.online@shpda.alabama.gov in accordance with CON Rule § 410-1-3-.09.

Lenora W. Pate

Of Counsel

Affirmation of Requesting Party:

The Undersigned, being first duly sworn, hereby makes oath or affirms that he, Brandon King, the Division Vice President of Arrowhead Dialysis, LLC d/b/a Northriver Home, has knowledge of the facts in this Request, and to the best of his information, knowledge and belief such facts are true and correct.




Brandon King

Seal



Subscribed and Sworn to before me this the 19th day of June, 2020.


Notary Public
My Commission Expires: 6-19-2021