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**Jun 16 2022**  
STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

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June 16, 2022

**ELECTRONICALLY FILED VIA:**  
**shpda.online@shpda.alabama.gov;**  
**WITH COPIES TO: Emily.marsal@shpda.alabama.gov;**  
**And Teresa.Lee@shpda.alabama.gov**

Emily Marsal, Executive Director  
State Health Planning & Development Agency  
100 North Union Street, Suite 870  
Montgomery, Alabama 36104

Re: Jackson Surgery Center, LLC  
Request for Non-Reviewability Determination - Constructing & Equipping New  
Operating Rooms  
Our File Number: **4256.1026**

Dear Ms. Marsal:

My law firm represents Jackson Surgery Center, LLC (JSC), which owns and operates Jackson Surgery Center in Montgomery, Alabama. This letter is written on behalf of JSC to request a State Health Planning and Development Agency (SHPDA) determination that the proposed opening and operation of JSC's two additional operating rooms is not subject to Certificate of Need (CON) review, for the reasons stated in this letter; and that no CON is required for JSC's project. This letter is filed pursuant to the Alabama Certificate of Need Program Rules and Regulations, including CON Rules for 410-1-3-.09 and 410-1-7-.02 and Alabama Code Sections 22-21-260, *et seq.*

JSC owns and operates a general multi-specialty ambulatory surgery center located in Montgomery, Alabama, which provides services to Montgomery County residents. The original Certificate of Need (No. 2174-ASC) was granted on August 31, 2006. A project modification request was granted on August 31, 2007 (2174-ASC-MOD#1). JSC currently operates with six operating rooms and proposes to add two additional operating rooms through the construction of an addition to the existing building, with storage space for the operating rooms. The goal of the project is to provide an easily accessible outpatient surgical care service and working environment for ambulatory surgery patients, physicians and staff. The plan is to continue to provide optimal, accessible, quality care to JSC patients at times that are optimal for patient care and convenience. This project is necessitated by a growing demand for outpatient surgical services in Montgomery and Alabama; in particular, orthopedic and

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Emily Marsal, Executive Director  
State Health Planning & Development Agency  
June 16, 2022  
Page 2

otolaryngology (ENT) outpatient surgical services. It is anticipated that additional surgeons will join the staff of JSC, once these operating rooms are available.

The initial estimates for the new Annual Operating Costs were based upon an assumption that projected cases would increase proportionally to the square footage increase for the two new operating rooms. After extensive study and scrutiny, it was determined the projected case increase for the first year of operation was overly optimistic. After further study, a more reasonable and accurate assessment of operating costs for the first year was developed. These projected first year operating costs are reasonable, conservative, and in line with the last three years of operations at JSC. The COVID-19 pandemic is still affecting JSC, and will continue to affect operations for the foreseeable future.

The expenditures associated with this proposal do not exceed the statutory CON review thresholds, as set out in Alabama Code Section 22-21-263 and CON Rule 410-1-4-.01, indexed for inflation and set forth in SHPDA's September 24, 2021, "New Certificate of Need Application Fee and Monetary Threshold for Review" memorandum (attached as **Exhibit 1** to this letter).

1. **Major Medical Equipment and Furniture** . . . . \$ 455,000.00  
This includes medical equipment, furniture, and other technological equipment.
  
2. **First Year Annual Operating Costs** . . . . . \$ 1,195,873.00  
This includes staffing expenses, medical supplies, office supplies, utilities and loan expenses. The new annual operating costs are more fully described in an Affidavit and a Summary of New Annual Operating Costs, attached as **Exhibit 2**.
  
3. **Capital Costs** . . . . . \$ 1,970,035.00  
These costs include the costs of constructing an addition to the existing surgery center, which will accommodate two additional operating rooms and storage space.

The proposal does not constitute a "new institutional health service" subject to CON review under Alabama Code Section 22-21-263 and CON Rule 410-1-4-.01, in that the proposal does not include any of the following:

1. The construction, development, acquisition, through lease or purchase, or other establishment of a new healthcare facility or health maintenance organization; or

GILPIN GIVHAN, PC

Emily Marsal, Executive Director  
State Health Planning & Development Agency  
June 16, 2022  
Page 3

2. Any expenditure by or on behalf of a healthcare facility or health maintenance organization, the capital expenditure of which exceeds the CON statutory thresholds for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility; or
3. The addition of any new healthcare facility beds or stations; or
4. Any health service which is proposed to be offered in or through a healthcare facility which was not offered on a regular basis in or through such healthcare facility within the preceding twelve (12) month period; or
5. Any relocation of the ambulatory surgery center; or
6. Any other reviewable event under existing Certificate of Need laws, rules, or regulations of the State of Alabama.

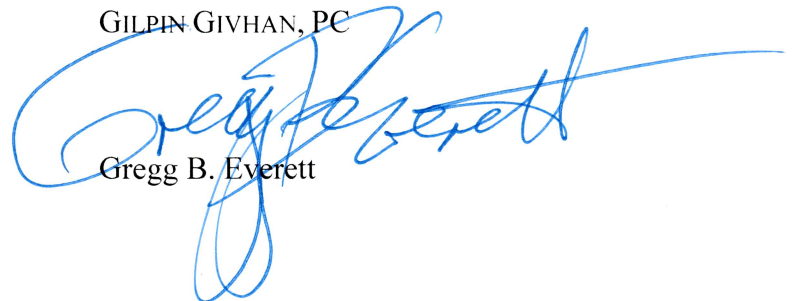
The ownership of JSC has not changed since its creation – it is jointly owned by Jackson Hospital & Clinic, Inc. (a non-profit hospital in Montgomery, Alabama) and individual members of the JSC medical staff.

We request SHPDA's determination that proposed construction of an addition, with two additional operating rooms, is not subject to CON review because it does not involve any expenditure in excess of the CON monetary thresholds; does not involve any other reviewable event under CON laws, rules and regulations; and does not involve the relocation of the JSC ambulatory surgery center.

A text searchable PDF copy of this request is submitted on June 16, 2022, and a check for \$1,000.00 from JSC is being hand delivered for delivery on June 16, 2022.

Sincerely,

GILPIN GIVHAN, PC



Gregg B. Everett

GBE/sd

Enclosures - Exhibits 1 & 2, as stated  
Check (\$1,000.00)

cc: Missy Sallas, Administrator for JSC

Emily Marsal, Executive Director  
State Health Planning & Development Agency  
June 16, 2022  
Page 4

**AFFIRMATION OF REQUESTING PARTY**

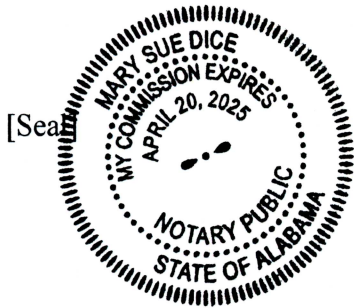
The undersigned, being first duly sworn, hereby makes oath and affirms that she, Missy Sallas, CEO of Jackson Surgery Center, LLC, has knowledge of the facts in this request, and to the best of her information, knowledge and belief, such facts true and correct.



Missy Sallas, CEO  
Jackson Surgery Center, LLC

[Seal]

Subscribed and sworn to me this the 16<sup>th</sup> day of June, 2022.



Notary Public

My Commission expires: 4-20-2025




## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104

## MEMORANDUM

DATE: September 24, 2021

TO: Interested Parties

FROM: Emily T. Marsal   
Executive Director

SUBJECT: New Certificate of Need Application Fee and  
Monetary Threshold for Review  
Effective October 1, 2021

Section 22-21-271, Code of Alabama, 1975 and Rule 410-1-7-.06 of the *Alabama Certificate of Need Program Rules and Regulations* require that the maximum application fee be indexed for inflation along with the threshold for new institutional health services listed in §22-21-263, Code of Alabama, 1975. The United States Department of Labor Consumer Price Index (CPI) – All Urban Consumers, Professional Medical Services, averaged an increase of 2.8% for the months of September 2020 through August 2021 (series id CUUR0000SEMC, CUUS0000SEMC).

The expenditure threshold for major medical equipment will be increased from \$3,079,347.00 to \$3,165,569.00; the new annual operating cost will be increased from \$1,231,738.00 to \$1,266,226.00; and any other capital expenditure by or on behalf of a healthcare facility or health maintenance organization will be increased from \$6,158,695.00 to \$6,331,138.00.

Based on a 2.8% increase in the CPI, the maximum Certificate of Need filing fee will be increased from \$23,448.00 to \$24,105.00.

ETM/tml

**AFFIDAVIT OF W. MARK BAKER**

STATE OF ALABAMA            }  
  }  
COUNTY OF MONTGOMERY    }

Before me, the undersigned Notary Public, in and for the State of Alabama at large, personally appeared **W. Mark Baker**, (hereinafter referred to as "Affiant"), who, after first being duly sworn, deposes and states upon personal knowledge as follows:

1. My name is W. Mark Baker. I am over the age of nineteen and have personal knowledge of the information set forth herein.

2. I am a resident of the City of Wetumpka, County of Elmore, State of Alabama.

3. I am a certified public accountant, and practice in Montgomery, Alabama, at the public accounting firm of Jackson Thornton & Co., P.C. ("Jackson Thornton"). I am currently a Principal of Jackson Thornton, in Montgomery, Alabama.

4. Jackson Thornton is the accounting firm of Jackson Surgery Center, LLC ("JSC"), which owns and operates an ambulatory surgery center located in Montgomery, Alabama, serving patients primarily from Montgomery County, Alabama.

5. Jackson Thornton has continuously been the accounting firm for JSC since it opened and, as such, I am familiar with the operations and financial statements of JSC.

6. I participated in the development of and have first-hand knowledge of the information to be submitted to the State Health Planning and Development Agency ("SHPDA") by JSC, along with its request for a reviewability determination ("LNR"). I hereby attest that all of the representations made in the LNR, filed simultaneously with this Affidavit on behalf of JSC, are truthful and accurate to the best of my knowledge and belief.

7. **Major Medical Equipment Costs.** Costs for major medical equipment contained in the LNR, which are comprised of all equipment related to the Proposal, are based on fair market value prices from arm's-length third party providers.

8. **First Year Annual Operating Costs.** Projections of new annual operating costs in the first year of operations of the Proposal include all new costs of operations of the Proposal, and are based on actual, historical costs incurred by JSC for the relevant expense categories. Such projections were determined utilizing conservative assumptions, where assumptions were appropriate, as well as JSC's actual contemplated operating schedule for the new OR's it plans to open pursuant to the Proposal. I worked with JSC management and assisted with developing the estimate for New Annual Operating Costs for the first year of operations for two (2) new operating rooms proposed to be added through the construction of an addition to JSC.

9. **Other Capital Expenditures.** Costs contained in the LNR for other capital expenditures are based on arm's length third-party quotes for estimated costs of construction of the Proposal.

10. **First Year Annual Operating Costs.** In preparing the LNR, I utilized actual historical costs incurred by JSC in operating this same facility to inform projections of new annual operating costs relating to the Proposal. New annual operating costs that will be incurred due to the Proposal outlined in the LNR were included in JSC's estimates, such as new costs of additional clinical staff salaries and benefits, housekeeping services, waste removal, utilities, insurance, and property tax, among others. (See attachment.)

11. JSC plans to comply with all licensing requirements of the Alabama Department of Public Health ("ADPH").

12. The LNR does **not** include the construction, development, acquisition, or involvement of any new health care facility; nor any capital expenditure by or on behalf of any health care facility which as a capital expenditure exceeds the CON statutory thresholds for review; nor does it involve the addition of any health care facility beds; nor the offering of any inpatient health services; nor any new institutional health services subject to CON review under the Alabama CON laws and regulations.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.  
SIGNATURE PAGE FOLLOWS.]

I swear, under penalty of perjury, that the foregoing is correct to the best of my knowledge.

*W. Mark Baker*

**W. Mark Baker**  
AFFIANT

STATE OF ALABAMA }  
COUNTY OF Montgomery }

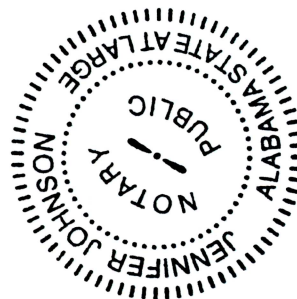
I, the undersigned authority, a Notary Public in and for said State of Alabama at Large, hereby certify that **W. Mark Baker**, whose name is signed to the foregoing document, and who is known to me, acknowledged before me on this date that, being informed of the contents of the foregoing, he swears and affirms that the facts contained therein are true and correct to the best of his personal knowledge.

DATED this 14<sup>th</sup> day of June, 2022.

*Jennifer Johnson*

**Notary Public**  
My Commission Expires: Oct 14, 2024

[Seal]





**Jackson Surgery Center, LLC**  
**2 Operating Room / Storage Building Addition**  
**First Year Annual Operating Cost Estimate**  
**Exhibit 2**

	<u>Sq. Footage</u>	<u># OR's</u>
Existing Size	25,000	6
Addition	5,000	2
Total After Addition	30,000	8
% Increase	20%	33%

		<u>Average Implant / Drug / Supply Cost</u>	<u>Total Estimated New Implant / Drug / Supply Cost</u>
Total cases 2021	8,650		
Estimated new cases for 1st year:			
ENT Sinus (15 cases per month)	180	\$ 1,000	\$ 180,000
Knee & Shoulder Scopes (15/mth)	180	\$ 1,500	\$ 270,000
	<u>360</u>		<u>\$ 450,000</u>
Est. % increase in estimated case volume	4.16%		(see Note 2 below)

Estimated 1st year staffing cost	
- 2 additional RN's	\$ 156,000
- 2 additional OR Techs	\$ 87,500
	<u>\$ 243,500</u>

	<u>Annual Costs per 2021 Financial Stmt</u>	<u>Estimated 1st Year Additional Costs for 2 OR Addition</u>	<u>Estimated % Increase</u>
Facility / Operating Expenses (Note 1)	770,910	77,091	10%
Implants (Note 2)	1,702,142	166,817	See Note 2 below
Med Supplies (Note 2)	2,431,060	238,254	See Note 2 below
Drugs (Note 2)	458,432	44,928	See Note 2 below
IT Software / Support (Note 3)	256,715	12,836	5%
Minor Medical Equip	97,398	4,870	5%
Repairs & Maintenance	28,608	0	0%
Equipment Rental	604,715	0	
Insurance	56,265	11,253	20%
Purchased Services (Note 4)	274,047	27,405	10%
Legal, Accounting & Consulting	229,544	11,477	5%
Utilities	476,502	95,300	20%
Interest (Note 5)	313,338	112,199	See Note 5 below
Depreciation (Note 6)	680,679	140,251	See Note 6 below
Other (Note 7)	193,836	9,692	5%
	<u>8,574,191</u>	<u>952,373</u>	
Plus 1st year staffing per above		243,500	
<b>Total 1st Year Additional Cost Estimate</b>		<u><u>\$ 1,195,873</u></u>	

**EXHIBIT 2**  
**(attachment cont'd)**

**Exhibit 2 (continued)**

**Note 1** - Approximately 1/2 of historical balance is variable based on case volume (service agreements on scopes, bankcard fees) and 1/2 variable based on sq. footage (building / equipment repairs). Repairs should be less since historical balance includes repairs on aging building / equipment. Estimated overall increase of 10% historical costs

**Note 2** - \$450,000 overall increase in Implants, Medical Supplies and Drugs per analysis above. Overall increase allocated among Implants, Medical Supplies and Drug costs based on historical ratio of total supply case costs.

**Note 3** - Significant portion of historical balance is for IT practice management software which is a fixed cost. Estimated annual increase at 5% related to addition.

**Note 4** - Approximately 1/2 of costs are variable based on sq. footage (janitorial) and 1/2 variable based on case volume (transcription). Estimated annual increase in cost at 10%.

**Note 5** - Based on projected amount of additional debt of \$2,425,035

**Note 6** - Based on projected amount of new equipment of \$455,000

**Note 7** - Majority of balance is advertising / marketing and other fixed costs not expected to increase significantly. Estimated annual increase in cost at 5%.