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STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

August 29, 2022

Via Electronic Filing  
([shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov))

Ms. Emily Marsal, Esq.  
Executive Director  
State Health Planning and Development Agency  
100 North Union Street, Suite 870  
Montgomery, Alabama 36104

Re: Five Star Rehabilitation and Wellness, LLC  
Request for Reviewability Determination

Dear Ms. Marsal:

Pursuant to Chapter 410-1-7-.02 of the Alabama Certificate of Need Program Rules and Regulations (the "Rules"), we respectfully submit this letter requesting your determination that Five Star Rehabilitation and Wellness, LLC d/b/a Ageility Physical Therapy Solutions ("Ageility") may offer through licensed therapists outpatient physical therapy, occupational therapy, and speech therapy services in patients' residences in Jefferson County, Alabama without obtaining a Certificate of Need ("CON") from the Alabama State Health Planning and Development Agency ("SHPDA"). In order to assist with this determination, we offer the following information:

Ageility seeks approval to begin providing therapy services to residents of certain assisted living facilities and independent living communities in Birmingham, Jefferson County, Alabama. Specifically, Ageility will serve therapy patients residing at Morningside of Vestavia Hills, a senior living community consisting of independent living, assisted living and specialty care assisted living units and located at 2435 Columbiana Rd, Birmingham, AL 35216 (the "Community").

Licensed physical therapists, licensed occupational therapists, and licensed speech language pathologists employed by Ageility will provide medically necessary outpatient therapy services to patients in the patients' residences within the Community. Ageility will not provide services anywhere within or outside of the Community other than the patients' residences and will not establish a brick-and-mortar clinic or therapy gym. Ageility will enroll in Medicare Part B as a Physical/Occupational Therapy Group in Private Practice.<sup>1</sup> Ageility will not and is not required or eligible to apply with the Alabama Department of Public Health ("ADPH") for a license as a rehabilitation center.

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<sup>1</sup> To qualify under Medicare as a supplier of outpatient physical therapy services, each individual physical therapist in private practice must satisfy the following requirements:

- (i) Be legally authorized (if applicable, licensed, certified, or registered) to engage in the private practice of physical therapy by the State in which he or she practices, and practice only within the scope of his or her license, certification, or registration.
- (ii) Engage in the private practice of physical therapy on a regular basis as an individual, in one of the following practice types: a solo practice, partnership, or group practice; or as an employee of one of these.

The proposed offering of professional therapy services does not involve the construction, development, acquisition or other establishment of a new health care facility. CON Rule 410-1-2-.05(1) defines the term "health care facility" to include the following:

General and specialized hospitals, including tuberculosis, psychiatric, long term care and other types of hospitals, and related facilities, such as laboratories, outpatient clinics and central service facilities operated in connection with 13 hospitals: skilled nursing facilities: intermediate care facilities: skilled or intermediate care units operated in veterans' nursing homes and veteran's 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 freestanding hemodialysis units; community mental health centers and related facilities; alcohol and drug abuse facilities; facilities for the developmentally disabled; hospice service providers; and home health agencies and health maintenance organizations.

Rehabilitation centers are licensed by ADPH pursuant to Chapter 420-5-11 of the Alabama Administrative Code (the "ADPH Rules"). ADPH Rule 420-5-11-.01(2)(m) defines a rehabilitation center as "a business entity offering and providing outpatient assistance in the rehabilitation of disabled persons by providing two or more services that must be performed by or under the supervision of a physical therapist, occupational therapist or speech pathologist." Based on the preceding definition, outpatient clinics offering more than one therapy modality are considered health care facilities subject to CON review and approval. Ageility does not propose to establish a therapy clinic. Instead, Ageility proposes only to provide therapy services in private practice in patients' residences. A rehabilitation center license is not required in order to perform the professional therapy services in the manner proposed. In fact, as a provider of therapy in private practice, Ageility will not be subject to licensure or regulation by ADPH. As Ageility will not be considered a rehabilitation center and does not fit within any other category of "health care facility", the Ageility's proposal does not involve the construction, development, acquisition, or other establishment of a new health care facility.

The proposal also does not involve the offering of a new health care service, but rather "the lawful practice of any profession or vocation [i.e., physical therapy, occupational therapy, and speech language pathology] conducted independently of a health care facility and in accordance with applicable licensing laws of this state." See CON Rule 410-1-2-.06. Consequently, this transaction does not involve a new institutional health service subject to review, as defined by CON Rule 410-1-4-.01 and Ala. Code § 22-21-263.

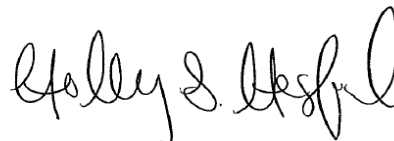
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- (iii) Bill Medicare only for services furnished in his or her private practice office space, or in the patient's home. A therapist's private practice office space refers to the location(s) where the practice is operated, in the State(s) where the therapist (and practice, if applicable) is legally authorized to furnish services, during the hours that the therapist engages in practice at that location. When services are furnished in private practice office space, that space must be owned, leased, or rented by the practice and used for the exclusive purpose of operating the practice. A patient's home does not include any institution that is a hospital, a CAH, or a SNF.
  - (iv) Treat individuals who are patients of the practice and for whom the practice collects fees for the services furnished.

The proposed offering of professional therapy services does not involve any capital expenditures exceeding the 2022 threshold amounts set forth in CON Rule § 410-1-4-.01, that is, \$3,165,569 for major medical equipment, \$1,266,226 for annual operating cost, and \$6,331,138 for other capital expenditures. Furthermore, the proposal does not involve the addition, relocation or reallocation of beds and does not entail the acquisition of major medical equipment. Finally, no financial or ownership interests in Five Star Rehabilitation and Wellness, LLC d/b/a Ageility Physical Therapy Solutions are held by any other healthcare facilities or groups.

Based upon the above, we respectfully request your determination that Ageility's proposed offering of licensed physical therapy, occupational therapy, and speech therapy services in patients' residences in Jefferson County is exempt from CON review and Ageility is not required to obtain a CON in order to complete the project as described in this letter. In the event Ageility decides to pursue offering two or more modalities of therapy [physical therapy, occupational therapy, and/or speech language pathology] in a clinic setting as a Medicare Part A provider, Ageility will first seek a CON to establish a multispecialty outpatient rehabilitation center.

We appreciate your consideration of this request and welcome the opportunity to address any questions regarding this matter. A check in the amount of \$1,000.00 is being submitted to your office for the filing fee. Thank you very much.

Best regards,



Holly S. Hosford

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby makes oath or affirms that he, as Deputy General Counsel of Five Star Rehabilitation and Wellness, LLC, has knowledge of the facts in the attached Reviewability Determination Request for Five Star Rehabilitation and Wellness, LLC and to the best of his information, knowledge and belief, such facts are true and correct.

Mark L. Cooke  
Mark L. Cooke  
Five Star Rehabilitation and Wellness, LLC

(SEAL)

SUBSCRIBED AND SWORN to before me this 25 day of August, 2022.

Lisa C. Newcomb  
Notary Public

My commission expires:

LISA C. NEWGOMB  
Notary Public  
COMMONWEALTH OF MASSACHUSETTS  
My Commission Expires  
November 14, 2025

