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RV2024-007  
**RECEIVED**  
**Dec 27 2023**

STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

420 North 20th Street  
Suite 3400  
Birmingham, AL 35203

Office (205) 251-3000  
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December 27, 2023

**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](mailto:shpda.online@shpda.alabama.gov)

**Re: Request for Determination of Non-Reviewability  
Alabama Digestive Health Endoscopy Center, LLC (073-U3710)  
Jefferson County, Alabama**

Dear Ms. Marsal:

This firm represents Alabama Digestive Health Endoscopy Center, LLC (“ADHEC”), a Medicare-certified ambulatory surgery center (“ASC”) located on the Brookwood Medical Center hospital campus in Birmingham, Alabama that serves patients in Jefferson County and surrounding areas.<sup>1</sup> Pursuant to Alabama Certificate of Need Program Rules and Regulations (“CON Rules(s)”) § 410-1-7-.02, ADHEC requests a determination that the proposed relocation of the ASC to another physician office building also located on the same Brookwood Medical Center campus in Jefferson County, Alabama and the addition of a procedure room 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:

By way of background, ADHEC currently operates a six (6) procedure room ASC located at 2018 Brookwood Medical Center Drive, Suite G-100, Birmingham, Alabama 35209. The ASC is currently connected to the Main Hospital on the Brookwood Medical Center campus. ADHEC is

<sup>1</sup> Contact information for ADHEC is as follows: 2018 Brookwood Medical Center Drive, Suite G-100, Birmingham, Alabama 35209, (205) 271-8000, Attn: Tara Shea, Administrator.

a joint venture providing ambulatory surgery services owned by a group of physicians and Brookwood Baptist Health 3, LLC. ADHEC's defined service area under CON Rules §§ 410-2-4-.12 and 410-1-2-.03 is Jefferson County, Alabama.

On or around August 7, 2022, ADHEC filed a Letter of Non-Reviewability request ("LNR") with SHPDA regarding the relocation of the ASC to the Medical D office building also located on the Brookwood Medical Center hospital campus.<sup>2</sup> This LNR was designated RV2022-021 by SHPDA. Pursuant to the LNR process, SHPDA determined that a CON would not be required for the relocation of the ASC within the hospital campus. See Attachment A (SHPDA Letter dated November 7, 2022 regarding RV 2022-021). In the RV 2022-021 LNR request filing, ADHEC stated that the project would only involve the relocation of the ASC, and that ADHEC would not be adding an additional procedure room in connection with the relocation. Since that time, ADHEC's circumstances have changed and, in order to accommodate existing and anticipated growth, ADHEC now desires to add an additional procedure room in connection with the relocation of the ASC. As a matter of full transparency, ADHEC hereby files this supplemental LNR to clarify that it intends to relocate the ASC, in accordance with the prior LNR request and approval from SHPDA, as well as add a 7<sup>th</sup> procedure room, and to seek further approval that the project is not subject to CON review in light of this change. The additional procedure room will be a room designated for the performance of endoscopy procedures.

No new services will be provided as a result of this project, as the ASC will continue to provide ambulatory surgical services. In connection with the entire project, the total cost of construction is anticipated to be approximately \$6,500,000; the total cost for the purchase and/or lease of major medical equipment is anticipated to be approximately \$1,300,000; other capital costs are anticipated to be less than approximately \$100,000; and new first year annual operating costs are estimated to be approximately \$650,000;<sup>3</sup> none of which will exceed the capital expenditure thresholds set forth in *Ala. Code* § 22-21-263 and CON Rule § 410-1-4-.01 (as adjusted in SHPDA's Memorandum dated September 19, 2023). Thus, the entire project (consisting of both the relocation and the addition of a procedure room) will be less than the capital expenditure thresholds set forth in *Ala. Code* § 22-21-263 and CON Rule § 410-1-4-.01 (as adjusted in SHPDA's Memorandum dated September 19, 2023). All expenditures will be incurred by ADHEC.

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<sup>2</sup> As defined by regulations of the Alabama Department of Public Health, a "hospital's campus shall consist of the premises occupied by the hospital's largest building together with all parcels of property that the hospital's governing authority owns or has the legal right to occupy and which are not separated from the remainder of the campus by anything other than a public right of way." *Ala. Admin. Code* § 420-5-7-.02(3)(h).

<sup>3</sup> First year annual operating costs include all new estimated operating costs associated with operating in the new space and adding one (1) procedure room. New first year annual operating costs have been estimated using conservative assumptions and contingencies, and are based on actual and historical costs.

Consequently, the proposal does not constitute a “new institutional health service” 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;<sup>4</sup>
- (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.

In addition, this proposal does not involve any change in ownership of the ASC.

Accordingly, based on the above, ADHEC requests your determination that the relocation of the ASC to space located on the same hospital campus and the addition of a procedure room 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

KCF/caj

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<sup>4</sup> Since the relocation is to space located on the same hospital campus, under SHPDA precedent and the approval received in RV2022-031, this project does not constitute “construction” that requires CON review.

**Affirmation of Requesting Party:**

The undersigned, being first duly sworn, hereby make oath or affirm that he/she is the Manager of Alabama Digestive Health Endoscopy Center, LLC, has knowledge of the facts in this request, and to the best of his/her information, knowledge, and belief, such facts are true and correct.

Affiant: K O'Connor (SEAL)

SUBSCRIBED AND SWORN to before me this 27th day of December, 2023.

Lori Marlar  
Notary Public

My Commission Expires: January 4, 2027



**ATTACHMENT A**



## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104

November 7, 2022

Jim Hoover, Esquire  
Kelli C. Fleming, Esquire  
Burr & Forman LLP  
420 20<sup>th</sup> Street North, Suite 3400  
Birmingham, Alabama 35203

RE: RV2022-031  
Alabama Digestive Health Endoscopy  
Center, LLC  
SHPDA ID: 073-U3710

Dear Counsel:

This is written in response to the Reviewability Determination Request received on August 2, 2022, with additional information submitted on September 19, 2022, on behalf of *Alabama Digestive Health Endoscopy Center, LLC*, a joint venture providing ambulatory surgery services that is owned by a group of eight (8) physicians and Brookwood Baptist Health 3, LLC. This proposal involves the relocation of an ambulatory surgery center (ASC) that currently operates six (6) rooms in which endoscopy procedures are performed and is presently located at 2018 Brookwood Medical Center Drive, Suite G-100 on the Brookwood Medical Center hospital campus in Jefferson County, Alabama. The request indicates the existing ASC will relocate to 513 Brookwood Boulevard, Medical Building D, a physician office building located on the same Brookwood Medical Center hospital campus in Jefferson County. The request indicates the driving distance between the two (2) locations is approximately 0.5 miles.

Agency records reflect Certificate of Need (CON) 2101-ASC was issued on November 4, 2004, for the construction of a single-specialty ASC (restricted to endoscopy procedures only) to be located at 2022 Brookwood Medical Center Drive, Suite 626, in Birmingham, Alabama, with four (4) operating rooms, workrooms, a prep room, and recovery beds. *Project Modification 1* was issued on July 2, 2007, for Brookwood Medical Center to purchase an interest in Alabama Digestive Health Endoscopy Center, LLC and lease space in the existing endoscopy center at Brookwood Medical Center to Alabama Digestive Health Endoscopy Center, LLC. Agency records also indicate a Reviewability Determination Request (*RV2011-028*) was received on June 15, 2011, proposing the expansion of the existing five (5) procedure room ASC through the addition of one (1) procedure room, resulting in a total of six (6) procedure rooms. The Agency sent a letter, dated August 18, 2011, acknowledging a Certificate of Need was not required for the proposed additional procedure room.

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025  
PHONE: (334) 242-4103 WWW.SHPDA.ALABAMA.GOV

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November 7, 2022  
Page Two

Expenditures for the proposal are estimated to be \$5,400,000.00 in total construction costs, \$1,000,000.00 in equipment costs, and \$600,000.00 for first year annual operating costs. The request notes that various other capital expenses are projected to be less than \$100,000.00.

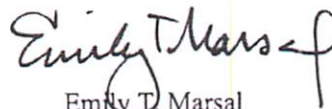
The proposed project does not involve the addition, conversion, or reclassification of *inpatient* beds or the provision of any new institutional health services. Pursuant to ALA. ADMIN. CODE r. 410-1-4-.01, this proposal will not exceed any of the Certificate of Need expenditure thresholds in effect at the time of this filing, which were \$3,165,569.00 for major medical equipment; \$1,266,226.00 for new annual operating costs; and \$6,331,138.00 for capital expenditures.

It is the opinion of this office that the change of location within the same campus as described is *de minimis* in nature and thus does not require Certificate of Need approval under the Alabama Court of Civil Appeals' decision in *Pleasure Island Ambulatory Surgery Center, LLC v. State Health Planning & Dev. Agency*, 38 So. 3d 739 (Ala. Civ. App. 2008), *cert. denied, Ex parte Infirmiry Health Sys., Inc.* 38 So. 3d 745 (Ala. 2009), which held that the relocation of a hospital-owned ambulatory surgical center to another location within the same health service area (the county) requires a new Certificate of Need even if it doesn't exceed the financial thresholds for review. According to the facts that have been provided, a Certificate of Need would not be required under Alabama law and the *2020-2023 Alabama State Health Plan* for this proposal. Pursuant to ALA. ADMIN. CODE r. 410-1-7-.02 (2017), this opinion is for informational purposes only and is based on circumstances as they currently exist, with a clear understanding that this proposal will not result in the offering of any new institutional health services.

This letter is also specifically conditioned upon the continuing accuracy of the representations contained in this request and the assumption that all pertinent information relative to this request has been disclosed. Should there be any deviations from the facts and premises which were provided to this Agency, and should circumstances prove to be other than represented, this letter may become null and void.

Should you have any questions, please contact the Agency at (334) 242-4103.

Sincerely,



Emily T. Marsal  
Executive Director

ETM:mst

cc: Felicia Williams-Smith, ADPH  
Rosemary Coggins, ADPH  
Gloria Harris, ADPH  
Ken Reid, ADPH

Kelli Fleming  
kfleming@burr.com  
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RV2024-007  
**RECEIVED**  
Jan. 17, 2024

STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

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Birmingham, AL 35203

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January 17, 2024

**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](mailto:shpda.online@shpda.alabama.gov)

**Re: Additional Information – Request for Determination of Non-Reviewability  
RV2024-007  
Alabama Digestive Health Endoscopy Center, LLC (073-03710)  
Jefferson County, Alabama**

Dear Ms. Marsal:

As you are aware, this firm represents Alabama Digestive Health Endoscopy Center, LLC (073-03710) (“ADHEC”), a Medicare-certified ambulatory surgery center (“ASC”) located on the Brookwood Medical Center hospital campus in Birmingham, Alabama that serves patients in Jefferson County and surrounding areas.<sup>1</sup> Pursuant to Alabama Certificate of Need Program Rules and Regulations (“CON Rules(s)”) § 410-1-7-.02, on or around December 27, 2023, ADHEC filed a determination request that the proposed relocation of the ASC to another building also located on the Brookwood Medical Center campus and the addition of one (1) procedure room is not subject to certificate of need (“CON”) review under *Ala. Code* § 22-21-260 *et. seq.*, and the CON Rules. ADHEC’s request was designated RV2024-007 (“Request”).

We are in receipt of the January 3, 2024 letter from the State Health Planning and Development Agency (“SHPDA”) requesting additional information concerning ADHEC’s Request. ADHEC hereby responds to SHPDA’s letter dated January 3, 2024 requesting additional information, and

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<sup>1</sup> Contact information for ADHEC is as follows: 2018 Brookwood Medical Center Drive, Suite G-100, Birmingham, Alabama 35209, (205) 271-8000, Attn: Tara Shea, Administrator.



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. On page two of the request, the applicant incorrectly references RV2022-021 as a Letter of Non-Reviewability received by the Agency on August 2, 2022 on behalf of Alabama Digestive Health Endoscopy Center, LLC. Please review and correct the discrepancy, submitting an amended application page.**

Thank you for calling this typo to our attention. Attached please find a corrected page 2 reflecting that the Letter of Non-Reviewability previously received by the Agency on August 2, 2022 was designated RV2022-031.

- 2. The referenced request asserts the existing ambulatory surgery center will relocate to another physician office building also located on the Brookwood Medical Center campus in Jefferson County, Alabama. Please confirm the physical address for the proposed relocation.**

The physical address for the proposed relocation of the ASC remains the same as that reflected in RV2022-031. Thus, the facility proposes to relocate to the Medical D office building also located on the Brookwood Medical Center hospital campus at 513 Brookwood Boulevard, Birmingham, Alabama 35209.

- 3. The applicant indicates the existing ASC is a joint venture owned by a group of physicians and Brookwood Baptist Health 3, LLC. Please provide this Agency with the names of the physicians identified as owners of the ambulatory surgery center.**

ADHEC is currently owned by Brookwood Baptist Health 3, LLC and the following physicians: Brent Barranco, M.D., Gregory Champion, M.D., William Halama, III M.D., Rajat Parikh, M.D., Lindsay Robinson, M.D., Christopher Shaver, M.D., and Wiley Truss, M.D.

Accordingly, based on the above, ADHEC requests your determination that the relocation of the ASC to space located on the same hospital campus and the addition of a procedure room 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.

Ms. Emily Marsal  
January 17, 2024  
Page 3

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

Sincerely,



Kelli Fleming

KCF/caj

**Affirmation of Requesting Party:**

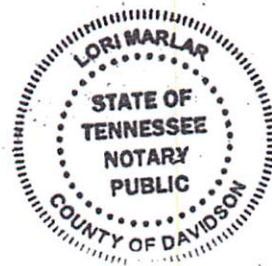
The undersigned, being first duly sworn, hereby make oath or affirm that he/she is the Manager of Alabama Digestive Health Endoscopy Center, LLC, has knowledge of the facts in this request, and to the best of his/her information, knowledge, and belief, such facts are true and correct.

Affiant: *K O Connor* (SEAL)

SUBSCRIBED AND SWORN to before me this 12th day of January, 2024.

*Lori Marlar*  
Notary Public

My Commission Expires: 1/4/2027



**Amended Page 2 to Letter of Non-Reviewability**

(Please See Attached)

a joint venture providing ambulatory surgery services owned by a group of physicians and Brookwood Baptist Health 3, LLC. ADHEC's defined service area under CON Rules §§ 410-2-4-.12 and 410-1-2-.03 is Jefferson County, Alabama.

On or around August 7, 2022, ADHEC filed a Letter of Non-Reviewability request ("LNR") with SHPDA regarding the relocation of the ASC to the Medical D office building also located on the Brookwood Medical Center hospital campus.<sup>2</sup> This LNR was designated RV2022-031 by SHPDA. Pursuant to the LNR process, SHPDA determined that a CON would not be required for the relocation of the ASC within the hospital campus. See Attachment A (SHPDA Letter dated November 7, 2022 regarding RV 2022-031). In the RV 2022-031 LNR request filing, ADHEC stated that the project would only involve the relocation of the ASC, and that ADHEC would not be adding an additional procedure room in connection with the relocation. Since that time, ADHEC's circumstances have changed and, in order to accommodate existing and anticipated growth, ADHEC now desires to add an additional procedure room in connection with the relocation of the ASC. As a matter of full transparency, ADHEC hereby files this supplemental LNR to clarify that it intends to relocate the ASC, in accordance with the prior LNR request and approval from SHPDA, as well as add a 7<sup>th</sup> procedure room, and to seek further approval that the project is not subject to CON review in light of this change. The additional procedure room will be a room designated for the performance of endoscopy procedures.

No new services will be provided as a result of this project, as the ASC will continue to provide ambulatory surgical services. In connection with the entire project, the total cost of construction is anticipated to be approximately \$6,500,000; the total cost for the purchase and/or lease of major medical equipment is anticipated to be approximately \$1,300,000; other capital costs are anticipated to be less than approximately \$100,000; and new first year annual operating costs are estimated to be approximately \$650,000;<sup>3</sup> none of which will exceed the capital expenditure thresholds set forth in *Ala. Code* § 22-21-263 and CON Rule § 410-1-4-.01 (as adjusted in SHPDA's Memorandum dated September 19, 2023). Thus, the entire project (consisting of both the relocation and the addition of a procedure room) will be less than the capital expenditure thresholds set forth in *Ala. Code* § 22-21-263 and CON Rule § 410-1-4-.01 (as adjusted in SHPDA's Memorandum dated September 19, 2023). All expenditures will be incurred by ADHEC.

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<sup>2</sup> As defined by regulations of the Alabama Department of Public Health, a "hospital's campus shall consist of the premises occupied by the hospital's largest building together with all parcels of property that the hospital's governing authority owns or has the legal right to occupy and which are not separated from the remainder of the campus by anything other than a public right of way." *Ala. Admin. Code* § 420-5-7-.02(3)(h).

<sup>3</sup> First year annual operating costs include all new estimated operating costs associated with operating in the new space and adding one (1) procedure room. New first year annual operating costs have been estimated using conservative assumptions and contingencies, and are based on actual and historical costs.