

**BEFORE THE STATE OF ALABAMA
CERTIFICATE OF NEED REVIEW BOARD**

IN THE MATTER OF:)
)
Five Star Rehabilitation and) **PETITION FOR**
Wellness, LLC d/b/a Ageility) **DECLARATORY RULING**
Physical Therapy Solutions)
)
Request for Reviewability Determination)

**RESTORE THERAPY SERVICES, LTD.’S PETITION
FOR DECLARATORY RULING**

COMES NOW Petitioner, Restore Therapy Services, Ltd. (“Restore”), and pursuant to Alabama Administrative Code § 410-1-9-.01, respectfully submits this petition for declaratory ruling to the Certificate of Need Review Board (“CONRB”) regarding the Reviewability Determination Request submitted by Five Star Rehabilitation and Wellness, LLC d/b/a Ageility Physical Therapy Solutions (“Five Star”), RV2022-032. *See* Exhibit A. In its Reviewability Determination Request, Five Star seeks confirmation that it may offer outpatient physical therapy, occupational therapy, and speech therapy at a senior living community without obtaining a Certificate of Need. Restore seeks a declaratory ruling that Five Star’s proposed plan to provide these three disciplines of therapy is subject to mandatory Certificate of Need (“CON”) review pursuant to the CON Rules & Regulations and other applicable Alabama law. In support of its Petition, Restore further states the following:

I. FACTUAL BACKGROUND

Restore is an Alabama limited partnership that was formed in Alabama in 1994. It is one of the state’s largest providers of innovative rehabilitative therapies and well-based programs to senior populations.¹ In 2004, Restore received a CON to provide physical, occupational, and

¹ <https://restoretherapy.com/>

speech therapy services statewide. *See* Exhibit B. Pursuant to the CON, and as indicated in the CON application submitted, Restore provides these therapy services to seniors living in various independent and assisted living facilities across the state of Alabama. Because Restore was required to obtain a CON prior to providing more than one discipline of therapy, it now seeks to have the CONRB issue a declaratory ruling that any provider seeking to provide more than one discipline of therapy must first obtain a CON. Restore would be substantially affected by the issuance of a letter of non-reviewability to Five Star and, thus, has standing to file this petition.

II. RELEVANT LAW

The State Health Planning and Development Agency (“SHPDA”) regulations define a Certificate of Need as a “permit required by law before which no person, except as exempted by statute, shall acquire, construct or operate a new institutional health service. . .” *See* Ala. Admin. Code § 410-1-2-.19; *See also* Ala. Code § 22-21-265 (“On or after July 30, 1979, no person to which this article applies shall acquire, construct, or operate a new institutional health service, . . . or furnish or offer, or purport to furnish a new institutional health service, . . . unless the person shall first obtain from SHPDA a certificate of need therefor.”). Pursuant to these regulations, “all new institutional health services which are subject to Ala. Code § 22-21-260, *et. seq.* . . . shall be subject to Certificate of Need review.” *See* Ala. Admin. Code § 410-1-4-.01. The regulations further state that “[n]ew institutional health services which are subject to review shall include: (a) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization. . .” *Id.* (Emphasis added).

SHPDA sets out those entities which are deemed health care facilities under its Rules. *See* Ala. Admin. Code § 410-1-2-.05. Of importance here, rehabilitation centers are included in SHPDA’s definition of a health care facility. *See* Ala. Code 22-21-260(6). While the SHPDA

Rules do not provide an exact definition of what constitutes a rehabilitation center, the Alabama Department of Public Health (“ADPH”) regulations do. ADPH 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.**” Ala. Admin. Code § 420-5-11-.01 (2)(m) (emphasis added).

In addition to the rules set out by SHPDA and ADPH that define a rehabilitation agency/health care facility, the Centers for Medicare and Medicaid Services (“CMS”) has also addressed when an outpatient therapy provider is a rehabilitation agency. Under 42 CFR 485.705, a Rehabilitation Agency is

(1) an agency that provides an integrated, multidisciplinary program designed to upgrade the physical functioning of handicapped disabled individuals by bringing specialized rehabilitation staff together to perform as a team; and

(2) provides at least physical therapy or speech-language pathology services.

When state law requires that rehabilitation agencies be licensed, CMS requires such license in order for the provider to be certified. *See* 42 CFR § 485.707(a); see also State Operations Manual Appendix E, excerpts attached as Exhibit C. As discussed above, providing more than one discipline requires a rehabilitation center license in Alabama.

CMS also acknowledges that these outpatient rehabilitation services can be performed in a patient’s private residence, assisted living or independent living facility. In those situations, CMS requires the provider to obtain separate certification as a rehabilitation agency or receive approval to become an extension location for a rehabilitation agency. *See* State Operations Manual Chapter 2, The Certification Process, Section 2300 (excerpts attached at Exhibit D).

There is an exception to the rule requiring separate certification or extension location approval; however, Five Star's request does not qualify for such exception. Under CMS's rules, a provider is not required to obtain an additional certification or receive approval to become an extension location when the therapy services are provided in the patient's private residence or in a patient's room in an independent or assisted living facility as long as the services are provided on an intermittent basis where there is no ongoing or permanent presence of the outpatient therapy provider. *See* SOM, Chapter 2, Exhibit D. CMS notes that examples of an ongoing or permanent presence include elements such as an on-site therapy gym; storing of equipment, supplies or medical records at the facility; or having outpatient therapy staff regularly assigned to work at that facility directing a coordinated and ongoing rehabilitation program at the facility. *See* SOM, Chapter 2, Exhibit D.

III. ANALYSIS AND CONCLUSION

Five Star is seeking to provide a new institutional health service by establishing a rehabilitation center, which constitutes a new health care facility requiring a CON under Alabama law. Five Star alleges that it is not establishing a rehabilitation center because it intends to provide therapy services within the patient's home in an independent and assisted living facility; however, the activities it is proposing fit squarely in the definition of a rehabilitation center. ADPH's definition of a rehabilitation center is quite clear. Essentially, any business entity that offers and provides rehabilitation services by providing at least two of the three primary rehabilitative services (*i.e.* physical therapy, occupational therapy, and speech pathology) is a rehabilitation center. *See* Ala. Admin. Code 420-5-11-.01 (2)(m). Five Star Rehabilitation and Wellness, LLC is a business entity, as demonstrated by its Certificate of Formation with Alabama's Secretary of State. *See* Exhibit E. Additionally, its Reviewability Determination

Request asserts that it will provide all three therapy disciplines. The request does not limit the therapy services provided to only one discipline.² Accordingly, Five Star is a business entity that will be providing at least two therapy services, requiring a license as a health care facility. This makes Five Star's proposed project reviewable by the CONRB because it constitutes the development of a new health care facility.

CMS's rules also provide further support as to why Five Star's proposed project constitutes a health care facility that requires a CON. Similar to Alabama law, a multi-discipline provider of outpatient physical therapy is a rehabilitation agency. Although Five Star attempts to differentiate its services by stating that it will provide services within a senior living community and only bill Medicare Part B, its ongoing or permanent presence within the senior living community require it to be separately certified as a rehabilitation agency. The State Operations Manual related to certification states that having "staff regularly assigned to work in the facility to direct a coordinated and ongoing program" at the facility is indicative of an ongoing or permanent presence such that separate certification would be required. This applies when the provider is providing services at an independent or assisted living facility.

Five Star's reviewability letter states that it 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... ." Therefore, Five Star intends to have an ongoing presence within the senior living community.

Five Star seeks to draw distinctions that do not exist in an effort to evade Alabama's CON laws and SHPDA's rules and regulations. The law is clear that the activities Five Star is proposing to do in its Reviewability Determination Request constitute the development of a new

² Historically, a therapy provider seeking to perform only one discipline of therapy has sought a reviewability determination that providing one discipline does not require a CON.

health care facility, specifically a rehabilitation center. SHPDA has required those providers seeking to provide more than one discipline of therapy to first obtain a CON. In fact, Petitioner was required to obtain a CON in 2004 for the same services proposed by Five Star. Accordingly, Restore respectfully petitions the CONRB to conduct a review of the proposed services and issue a declaratory ruling that Five Star must obtain a CON.

Respectfully submitted this the 4th day of January, 2023,

/s/Angie C. Smith

Angie C. Smith, Esq.

Lindsey A. Phillips, Esq.

Attorneys for Restore Therapy Services, Ltd.

OF COUNSEL:

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Suite 3400
Birmingham, AL 35203
Telephone: (205) 251-3000
Facsimile: (205) 458-5100
Email: acsmith@burr.com
lphillips@burr.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing by email and/or mailed by U.S. Mail, postage pre-paid, on this the 4th day of January, 2023 to the following:

SHPDA Online Filing (shpda.online@shpda.alabama.gov)

J.S. "Chris" Christie
chris.christie@detons.com
Dentons Sirote PC
2311 Highland Avenue South
Birmingham, AL 35205

/s/ Angie C. Smith _____

OF COUNSEL

EXHIBIT A



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

MEMORANDUM

DATE : September 8, 2022
TO: All Interested Parties
FROM: Emily T. Marsal 
Executive Director
SUBJECT: Reviewability Determination Request (RV2022-032)

The attached request for a reviewability determination has been received. Any affected person may file written comments regarding this request, per 410-1-7-.02 of the *Alabama Certificate of Need Program Rules and Regulations*, by October 20, 2022.

Pursuant to ALA. ADMIN. CODE r 410-1-3-.09, all documents to be filed with the Agency must be submitted to shpda.online@shpda.alabama.gov in PDF, text searchable format.

Enclosure: see attached

Holly S. Hosford
hhosford@bradley.com
205.521.8376



RV2022-032
RECEIVED

Aug 29 2022

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

August 29, 2022

Via Electronic Filing
(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.¹ 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.

¹ 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.

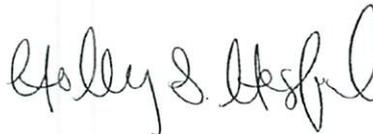
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- (iii) Bill Medicare only for services furnished in his or her private practice office space, or in the patient's home. A therapist's private practice office space refers to the location(s) where the practice is operated, in the State(s) where the 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:

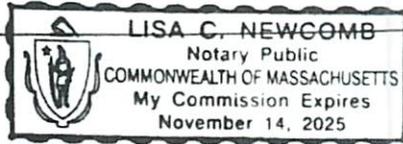


EXHIBIT B

HD-304
(8-95)

**ALABAMA
STATE HEALTH PLANNING & DEVELOPMENT AGENCY
CERTIFICATE OF NEED
FOR HEALTH CARE SERVICES**

I. IDENTIFICATION		
1. Certificate of Need 2051-OPT-EXT	2. Date Issued: April 3, 2004	3. Termination Date: April 2, 2005
4. Project Number: AL-2002-018	5. Name of Facility: Restore Therapy Services, Ltd;	
6. Service Area: State of Alabama	7. Location of Facility: 245 Cahaba Valley Pky, Suite 200 Pelham, AL 35124	
8. Type of Facility: Rehabilitation Therapy Service	9. Number of Beds: N/A	10. Estimated Cost: \$50,000
11. Services to be provided for the provision of physical, occupational, and speech therapy statewide.		
II. CERTIFICATE OF NEED		
<p>In accordance with Section 22-21-260 through 22-21-279, <u>Code of Alabama</u>, 1975, the Certificate of Need Review Board finds as follows:</p> <ol style="list-style-type: none"> 1. There is a need for the project. 2. There are in force in the State of Alabama reasonable minimum standards of licensure and methods of operation for hospitals and health facilities. 3. The prescribed standards of licensure and operation will be applied and enforced with respect to the applicant, hospital or other health facility. 		
III. ISSUANCE OF CERTIFICATE OF NEED		
<p>This Certificate of Need is issued Restore Therapy Services, Ltd. only, for a period not to exceed 12 months from the date of issuance. This Certificate of Need is not transferable and any action on the part of the applicant to transfer this Certificate of Need will render the Certificate of Need null and void.</p>		
<p><i>Alva M. Lambert</i> Alva M. Lambert Executive Director</p>		
EXTENSION		

ALABAMA
STATE HEALTH PLANNING & DEVELOPMENT AGENCY
CERTIFICATE OF NEED
FOR HEALTH CARE SERVICES

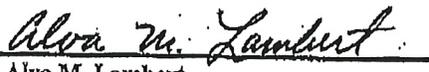
I. IDENTIFICATION		
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4. Project Number: AL-2002-018	5. Name of Facility: Restore Therapy Services, Ltd.	
6. Service Area: State of Alabama	7. Location of Facility: 11 West Oxmoor, Suite 210 Birmingham, Alabama 35209	
8. Type of Facility: Rehabilitation Therapy Service	9. Number of Beds: N/A	10. Estimated Cost: \$50,000
11. Services to be provided: for the provision of physical, occupational, and speech therapy statewide.		
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 Alva M. Lambert Executive Director		
ORIGINAL		

EXHIBIT C

State Operations Manual

Appendix E - Guidance to Surveyors: Outpatient Physical Therapy or Speech Pathology Services

(Rev. 119, 07-25-14)

Transmittals for Appendix E

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- §485.703 Definitions
- §485.707 Condition of Participation: Compliance With Federal, State and Local Laws
 - §485.707(a) Standard: Licensure of Organization
 - §485.707(b) Standard: Licensure or Registration of Personnel
- §485.709 Condition of Participation: Administrative Management
 - §485.709(a) Standard: Governing Body
 - §485.709(b) Standard: Administrator
 - §485.709(c) Standard: Personnel Policies
 - §485.709(d) Standard: Patient Care Policies
- §485.711 Condition of Participation: Plan of Care and Physician Involvement
 - §485.711(a) Standard: Medical History and Prior Treatment
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 - §485.711(c) Standard: Emergency Care
- §485.713 Condition of Participation: Physical Therapy Services
 - §485.713(a) and (b) Standards: Adequate Program; Facilities, and Equipment
 - §485.713(c) Standard: Personnel Qualified to Provide Physical Therapy Services
 - §485.713(d) Standard: Supportive Personnel
- §485.715 Condition of Participation: Speech Pathology Services
 - §485.715(a) and (b) Standards: Adequate Program; Facilities and Equipment
 - §485.715(c) Standard: Personnel Qualified to Provide Speech Pathology Services
- §485.717 Condition of Participation: Rehabilitation Program
 - §485.717(a) Standard: Qualifications of Staff
 - §485.717(b) Standard: Arrangements for Social or Vocational Adjustment Services

§485.719 Condition of Participation: Arrangements for Physical Therapy and Speech Pathology Services to be Performed by Other Than Salaried Rehabilitation Agency Personnel

§485.719(b) Standard: Contract Provisions

§485.721 Condition of Participation: Clinical Records

§485.721(a) Standard: Protection of Clinical Record Information

§485.721(b) and (c) Standard: Content; Completion of Records and Centralization of Reports

§485.721(a) Standard: Protection of Clinical Record Information

§485.721(b) and (c) Standard: Content; Completion of Records and Centralization of Reports

§485.721(d) Standard: Retention and Preservation

§485.721(e) Standard: Indexes

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§485.723(b): Standard: Maintenance of Equipment, Building, and Grounds

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§485.725 Condition of Participation: Infection Control

§485.725(a) Standard: Infection Control Committee

§485.725(b) Standard: Aseptic Techniques

§485.725(c) Standard: Housekeeping

§485.725(d) Standard: Linen

§485.725(e) Standard: Pest Control

§485.727 Condition of Participation: Disaster Preparedness

§485.727(a) Standard: Disaster Plan

§485.727(b) Standard: Staff Training and Drills

§485.729 Condition of Participation: Program Evaluation

§485.729(a) Standard: Clinical Record Review

§485.729(b) Standard: Annual Statistical Evaluation

General Note: Extension Locations

§485.703 Definitions

(Rev. 83, Issued: 03-15-13, Effective: 03-15-13, Implementation: 03-15-13)

Clinic - A facility that is established primarily to furnish outpatient physician services and that meets the following tests of physician involvement:

- (1) The medical services are furnished by a group of three or more physicians practicing medicine together.
- (2) A physician is present during all hours of operation of the clinic to furnish medical services, as distinguished from purely administrative services.

Extension Location - A location or site from which a rehabilitation agency provides services within a portion of the total geographic area served by the primary site. The extension location is part of the rehabilitation agency. The extension location should be located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the extension location to independently meet the conditions of participation as a rehabilitation agency.

Organization - A clinic, rehabilitation agency, or public health agency.

Public Health Agency - An official agency established by a State or local government, the primary function of which is to maintain the health of the population served by performing environmental health services, preventive medical services, and in certain cases, therapeutic services.

Rehabilitation Agency - An agency that—

- (1) Provides an integrated, interdisciplinary rehabilitation program designed to upgrade the physical functioning of handicapped disabled individuals by bringing specialized rehabilitation staff together to perform as a team; and
- (2) Provides at least physical therapy or speech-language pathology services.

Supervision - Authoritative procedural guidance that is for the accomplishment of a function or activity and that—

- (1) Includes initial direction and periodic observation of the actual performance of the function or activity; and
- (2) Is furnished by a qualified person—
 - (i) Whose sphere of competence encompasses the particular function or activity;and

(ii) Who (unless otherwise provided in this subpart) is on the premises if the person performing the function or activity does not meet the assistant-level practitioner qualifications specified in § 485.705.

I-7

(Rev. 83, Issued: 03-15-13, Effective: 03-15-13, Implementation: 03-15-13)

§485.707 Condition of Participation: Compliance with Federal, State and Local Laws

The organization and its staff are in compliance with all applicable Federal, State and local laws and regulations.

Interpretive Guidelines §485.707

A - General

In order to assure that the clinic, rehabilitation agency, or public health agency and staff are in possession of current licenses as required by Federal, State and local laws; licenses should be available for review. Compliance with this condition may have a direct bearing on other Conditions; e.g., physical therapy services (§485.713), speech pathology services (§485.715), rehabilitation program (§485.717), and physical environment (§485.723).

Review the licenses to assure the licenses are current and are applicable to the State in which the provider is providing services.

B - Major Sources of Information:

- Federal, State and local laws governing health care; building, fire and safety codes;
- Organization personnel records containing applicable State and local licenses and up-to-date information; and
- All written policies which must conform to applicable Federal, State and local laws.

I-8

(Rev. 83, Issued: 03-15-13, Effective: 03-15-13, Implementation: 03-15-13)

§485.707(a) Standard: Licensure of Organization

In any State in which State or applicable local law provides for the licensing of organizations, a clinic, rehabilitation agency or public health agency is licensed in accordance with applicable laws.

Interpretive Guidelines §485.707(a)

A – General

Where State law provides for the licensing of clinics, rehabilitation agencies or public health agencies, these organizations must meet all requirements for licensure, before the organization is eligible for Medicare certification.

If a State license or local law is applicable, the provider shall provide the surveyor with evidence of that license. Verify at the time of the survey that all required licenses are valid and in effect. Contact the appropriate State department or authority to ascertain the status of the organization's State licensure when a license for an organization, currently participating in Medicare, has been temporarily suspended or revoked. The surveyor must contact the appropriate State department if the organization is unable to produce the license (in States where licenses are required). Contact the regional office (RO) and begin termination proceedings.

If a provisional license has been issued, note if there are restrictions as part of the provisional license. If there are restrictions, determine whether the organization is operating within the scope of the imposed restrictions.

If the limitations stipulated in a provisional license adversely affect the organization's ability to render services in compliance with Federal regulations, and as a result endangers the safety and welfare of the patients, the organization should be found in noncompliance with this standard and this condition. Contact the RO and begin termination proceedings.

B – Major Sources of Information

- Licenses or other documentation as appropriate.

I-9

(Rev. 83, Issued: 03-15-13, Effective: 03-15-13, Implementation: 03-15-13)

§485.707(b) Standard: Licensure or Registration of Personnel

Staff of the organization are licensed or registered in accordance with applicable laws.

Interpretive Guidelines §485.707(b)

A – General

Qualified personnel providing services at a certified organization must be licensed, registered, or certified when licensure, registration, or certification is applicable. This includes personnel providing services directly for, or under arrangement with the organization.

Review the organization's personnel records for evidence of current licensure or registration of personnel, such as wallet size identification cards sometimes made available. Where personnel are required to be licensed, but are not licensed, notify the appropriate State licensing body. If extension locations are located in other States, ensure that personnel who are providing services are licensed in the State in which the services are provided. Generally, licenses or registration certificates are located in credential files or posted on the clinic or office walls.

B- Major Sources of Information

- Personnel licenses; and/or
- Personnel registration certificates.

I-11

(Rev. 83, Issued: 03-15-13, Effective: 03-15-13, Implementation: 03-15-13)

§485.709 Condition of Participation: Administrative Management

The clinic or rehabilitation agency has an effective governing body that is legally responsible for the conduct of the clinic or rehabilitation agency. The governing body designates an administrator, and establishes administrative policies.

Interpretive Guidelines §485.709

A – General

The clinic or rehabilitation agency has a governing body responsible for developing, reviewing, and updating its administrative and clinical policies and procedures. The provision of adequate and effective services requires that the clinic or rehabilitation agency be responsive to internal and external needs and demands which may necessitate changes in program operation. The governing body is responsible for designating an administrator.

EXHIBIT D

State Operations Manual

Chapter 2 - The Certification Process

Table of Contents *(Rev. 205, 03-11-22)*

Transmittals for Chapter 2

Identification of Providers and Suppliers and Related Pre-Survey Activities

- 2000 - Certification Surveys - Citations and Responsibility
- 2002 - Meaning of Providers and Suppliers
- 2003 - SA Identification of Potential Providers and Suppliers
- 2003A - Assisting Applicant Providers and Suppliers
- 2003B - Initial Certification “Kits”
- 2003C - Deemed Status Providers/Suppliers, Excluding CLIA
- 2004 - Provider-Based Determinations
- 2005 - Medicare Health Care Provider/Supplier Enrollment
- 2005A - Approval or Denial
 - 2005A1 - Enrollment Denial Based on MAC Review
 - 2005A2 - Approval or Denial of Certification Based on Survey Findings
 - 2005A3 - Reconsideration of Denial
 - 2005A4 - Deemed Providers/Suppliers, Excluding CLIA
- 2005B - Deemed Providers/Suppliers Except CLIA - Additional Information
- 2005C - Clinical Laboratory Improvement Amendments of 1988 (CLIA) Laboratories
- 2005D - Supplementary Applications
 - 2005D1 - Forms CMS-855A or the CMS-855B for Changes in Provider/Supplier Information
 - 2005D2 - Form CMS-855R
- 2005E - Changes of Ownership
 - 2005E1 - CHOW Occurs
 - 2005E2 - Change in Intermediary as Result of CHOW
 - 2005E3 - CHOWs Involving Multi-Regional Chain Organizations
 - 2005E4 - Change of Owners, but Not CHOW
- 2005F - Voluntary Terminations
- 2008 - Prioritizing SA Survey Workload - Initial Surveys and Recertifications
- 2008A - Surveys of New Providers and Suppliers

- 2286A - ESRD Network Participation
- 2286B - Furnishing Data and Information for ESRD Program Administration (42 CFR 494.180(h))
- 2286C – Using ESRD Data
 - 2286C.1 - Dialysis Facility Reports and Outcomes Lists
 - 2286C.2 - Dialysis Facility Compare
- 2287 - ESRD Patient Care Technician (PCT)
 - 2287A - PCT Certification
 - 2287B - Independent ESRD Facility
 - 2287C – Certification and Additional Requirements
 - 2287D – State and National Certification Programs for PCTs
- 2288 – Infection Control Considerations

Providers of Outpatient Physical Therapy and/or Outpatient Speech Pathology Services Specified in §485.701 - §485.729

- 2290 – Providers of Outpatient Physical Therapy and Speech-Language Pathology Services - Citations
- 2292 - Types of Organizations, Who May Provide Outpatient Physical Therapy and Speech-Language Pathology Services, Specified in §485.701 - §485.729
 - 2292A - Rehabilitation Agency
 - 2292B – Rehabilitation Agency Clinic and Public Health Agency
 - 2292C - Public Health Agency
- 2294 – Change of Address
- 2296 – Medicare Approved Sites of Service Provision
- 2298 – Extension Locations for Rehabilitation Agencies
 - 2298A – Criteria for Extension Location Approval
 - 2298B – Extension Location Approval Process
 - 2298C – Survey of Rehabilitation Agency Extension Locations by SAs
 - 2298D – Accreditation Organization (AO) Surveys of Rehabilitation Agencies
- 2300 – Outpatient Physical Therapy and/or Speech-Lanaguage Pathology Services at Other Locations such as a Patients’s Private Residence, Assisted Living or Independent Living Facility
- 2302 – CMS - 381 Model Letter Requesting Identification of Extension Locations
- 2304-- Operation of an Organization on the Premises of a Supplier/Provider
- 2306 – When a Rehabilitation Agency’s Extension Location Becomes Its Primary Site
- 2308 – Relocations of Providers of Outpatient Physical Therapy and Outpatient Speech-Language Pathology Services Concurrent with CHOWs
 - Comprehensive Outpatient Rehabilitation Facilities (CORFs)**
 - 2360 - CORF - Citations and Description

the agency.

If the RO approves the addition of practice locations based upon the recommendations of the AO, the RO will issue identifiers for those locations and will send a notice letter to the rehabilitation agency regarding the RO approval.

The AO may cross state lines to survey an extension location only if there is a reciprocal agreement between the two states. However, the AO should determine whether the extension location in the second state is in close enough proximity to the Medicare certified primary site to be adequately supervised.

The AO can only survey an extension location and recommend approval to CMS if the primary site is already accredited by the AO and has been certified by CMS as a provider through deemed status. If a provider is currently accredited by a CMS-approved AO and has been certified by CMS as a provider through deemed status, it may submit a request to open an extension location by completing and submitting to the MAC/FI a modified Form CMS-855A. The agency must also notify the AO of its intention to open an extension location.

The AO must evaluate each condition and standard in the CoPs at all surveyed sites. The survey should include record reviews, observations and interviews to reach conclusions regarding the agency's compliance with regulations for care provided at all practice locations before recommending approval by the RO.

**2300 - Outpatient Physical Therapy and/or Speech-Language Pathology Services at Other Locations such as a Patient's Private Residence, Assisted Living or Independent Living Facility
(Rev. 150, Issued: 10-30-15, Effective: 10-30-15, Implementation: 10-30-15)**

In addition to the primary site and any extension locations, the organization may provide therapy services in the patient's private residence or in a patient's room in a SNF/NF, in an assisted living facility, or in an independent living facility. These are services that are provided on an intermittent basis where there is no ongoing or permanent presence of the OPT. Examples of an ongoing or permanent presence may be indicated by a dedicated therapy gym; storing of equipment, supplies, or medical records at the facility; or having OPT staff regularly assigned to work at that facility directing a coordinated and ongoing rehabilitation program at the facility. These situations are examples that would require the OPT to have the other location become separately certified or become approved as an extension location.

The agency must provide an adequate therapy program whenever and wherever it provides services at locations away from the primary site. The agency must have adequate equipment and modalities available, at any location, to treat the patients accepted for service. If the agency is providing services at more than one location each day, the agency must have infection control policies in place that set forth the techniques the agency employees will use at all locations.

The agency is responsible for providing any modality that is designated on the plan of care or requested by the physician. It is not acceptable for agencies to ask patients to sign waivers for modalities that are not available. The agency should refer the patient to another agency if needed services are not available at the agency practice location. The surveyor should see evidence of the referral in the patient's clinical record.

The current plan of care and progress notes must be accessible to service providers anytime that the patient is receiving care in order to promote continuity of care.

Periodically, an organization may wish to use a community facility to provide certain therapeutic services. For example, the organization may want to use a community pool to provide aquatic therapy. The SA or AO shall verify that the community pool meets all applicable State laws (i.e., health and safety, infection control requirements, etc.) governing the use of the community facility. Also the SA or AO shall review the organization's policies and procedures regarding the type of therapy being provided, training for staff, supervision, etc. The pool must be closed to public use during the time the organization is providing therapy to protect the privacy and safety of the patients being treated. The hours of operation and days of the week during which the facility will be used for therapy services, supervision, etc. must be clearly stated in the organization's policies and procedures as well as the contractual agreement between the community pool and the organization. Verify that the organization has a carefully detailed policy regarding specific arrangements for emergency services in the event of a medical emergency at the community location (i.e., is a telephone in close proximity to the qualified professional providing the service, is there a second organization staff person on site, etc.

2302 - CMS -381 Model Letter Requesting Identification of Extension Locations

(Rev. 83, Issued: 03-15-13, Effective: 03-15-13, Implementation: 03-15-13)

Form CMS 381 is **no longer required** to be collected by the SA **on an annual basis** as it is overly burdensome for the SAs. The rehabilitation agency must notify both the MAC and CMS of its intent to add a new practice location prior to providing physical therapy and speech-language pathology services at the new location. The agency submits its request on a modified Form CMS-855A. The SA should request the agency to submit the Form CMS 381, in addition to the modified 855A **whenever the agency requests to add a new practice location**. The SA must continue to notify the RO when new practice locations are added to ensure that identifiers are issued to the new practice locations. As indicated previously, a provider cannot provide services at a new practice location until this location has been approved by CMS.

2304 - Operation of an Organization on the Premises of a Supplier/Provider

(Rev. 83, Issued: 03-15-13, Effective: 03-15-13, Implementation: 03-15-13)

There is no prohibition against an organization operating on the premises of a supplier (e.g., physician or chiropractor) or another provider as long as they are not operating in the same space at the same time.

EXHIBIT E

STATE OF ALABAMA

FOREIGN LIMITED LIABILITY COMPANY (LLC)
APPLICATION FOR REGISTRATION

PURPOSE: In order to register a foreign entity (any entity formed outside of Alabama) to transact business in Alabama, the entity must deliver to the Secretary of State for filing an Application for Registration pursuant to Section 10A-1-7.04, Code of Alabama 1975.

INSTRUCTIONS: Mail one (1) signed original and one (1) copy of this completed form along with a self-addressed, stamped envelope with the filing fee of \$150.00 (credit card, check, or money order) to the Secretary of State, Business Services, P.O. Box 5616, Montgomery, Alabama 36103-5616. The entity will not be registered if the credit/debit card does not authorize and will be removed from the index if the check is dishonored (\$30 fee).

Using a credit card and our website, you may file the Foreign LLC online in the time it takes to type this application.

This form must be typed.

Emailed applications will not be acknowledged, reviewed, processed, or returned.

1. The legal name of the foreign entity as recorded in the jurisdiction in which it was formed/organized:

Five Star Rehabilitation and Wellness Services, LLC

2. The name of the foreign entity for use in Alabama (only if different from the legal name*):

*A fictitious name may be used only if the legal entity name is not available for use in Alabama or the name does not contain the words "Limited Liability Company" or the abbreviation "L.L.C." or "LLC" (10A-1-5.06).

3. If a fictitious name is used the undersigned certifies the resolution of the LLC's governing authority to adopt the fictitious name for use in Alabama and affirms the authority to make such a certification under 10A-1-7.07.

4. A copy of the name reservation received from the Office of the Alabama Secretary of State must be attached.

5. Street (No PO Boxes) Address of principal office: _____

400 Centre Street, Newton, MA 02458 Attn: Melissa Welin

Mailing Address (if different from street address) _____

This form was prepared by: (type name and full address)

Melissa Welin, Senior Corporate Paralegal
 c/o AlerisLife Inc.
 400 Centre Street
 Newton, MA 02458

RECEIVED DATE
 APR 08 2022

SECRETARY OF STATE
 OF ALABAMA

(For SOS Use Only)

Alabama
Sec. Of State

New Entity
 001-013-567 FLL
 Date 4/08/2022
 Time 15:39
 220408 3 Pg

File \$150.00
 County \$.00

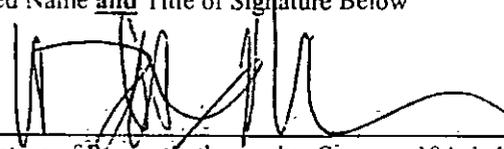
Total \$150.00
 01/020

FOREIGN LIMITED LIABILITY COMPANY (LLC) APPLICATION FOR REGISTRATION

6. Entity's jurisdiction of formation: Maryland
(State or Country, if formed outside the United States, of formation)
7. Date of the entity's formation in state/country of jurisdiction: 1 / 31 / 2007 (MM/DD/YYYY)
8. The undersigned certifies that the foreign entity exists as a valid Limited Liability Company under the laws of the entity's jurisdiction of formation.
9. Name of registered agent for service of process (MUST be physically located in Alabama): _____
Corporation Service Company, Inc.
10. Street (No PO Boxes) Address of registered office of registered agent (MUST be physically located in Alabama):
641 South Lawrence Street Montgomery, AL 36104
Mailing Address in Alabama of registered agent/office (if different from street address) _____
11. If the entity registering is a Non Profit LLC, Series LLC or Non-Profit Series LLC. Please check type below:
 Non-Profit LLC Series LLC Non-Profit Series LLC
12. The foreign entity began or will begin transacting business in Alabama (**a date must be provided**):
Began or Will begin doing business: 4 / 7 / 2022 (MM/DD/YYYY)

4 / 7 / 2022
Date (MM/DD/YYYY)

Vijay Moses, General Counsel
Typed Name and Title of Signature Below


Signature of Person Authorized to Sign per 10A-1-4.01, Alabama Code

In order to review the sections of the *Code of Alabama 1975* referred to in the filing form you may access www.sos.alabama.gov and Go to Records. Choose the Code of Alabama link to review.

John H. Merrill
Secretary of State

P.O. Box 5616
Montgomery, AL 36103-5616

STATE OF ALABAMA

I, John H. Merrill, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama 1975, and upon an examination of the entity records on file in this office, the following entity name is reserved as available:

Five Star Rehabilitation and Wellness Services, LLC

This name reservation is for the exclusive use of Corporation Service Company, C/O CSC, 251 LITTLE FALLS DRIVE, WILMINGTON, DE 19808 for a period of one year beginning April 08, 2022 and expiring April 08, 2023



RES015386

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.

April 08, 2022

Date

John H. Merrill

Secretary of State