



Dec 28 2018

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

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December 28, 2018

VIA E-MAIL (shpda.online@shpda.alabama.gov)

Alva M. Lambert
Executive Director
State Health Planning & Development Agency ("SHPDA")
100 North Union Street, Suite 870
Montgomery, AL 36130

**Re: *Children's Hospital of Alabama
Request for Non-Reviewability Determination
Reallocation of Pediatric Specialty Beds & Construction/Renovation of Space for Pediatric
Psychiatric Services Use***

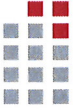
Dear Mr. Lambert:

On behalf of Children's Hospital of Alabama ("Children's Hospital" or "Children's") and pursuant to the Alabama Certificate of Need ("CON") Program Rules and Regulations ("CON Rules"), including CON Rules 410-1-7-.02 and 410-1-3-.09, attached hereto as **Exhibit A** is a request for your determination that the proposed expanded allocation of the Children's Hospital **existing pediatric specialty beds** for pediatric psychiatric specialty services use and the expansion and renovation of existing space for inpatient pediatric psychiatric services use in Birmingham, Alabama, is not subject to CON review under Alabama Code §§ 22-21-260 *et seq.* and the CON Rules, and does not require a CON in that, among other things, it does not involve a new institutional health service or any health care facility expenditures in excess of the current statutory thresholds requiring CON review (the "Request").

As detailed further in **Exhibit A**, Children's Hospital proposes: (1) to allocate additional beds from its existing pediatric specialty beds for pediatric psychiatric services use due to the high occupancy and demand for such services; and (2) to construct (in existing space contiguous to the current existing pediatric specialty beds used for inpatient pediatric psychiatric services) ten (10) additional patient rooms, six (6) of which will be staffed and operated immediately following completion of construction and four (4) of which will remain unstaffed and reserved for future use at a later date (the "Proposal").

In accordance with CON Rule 410-1-3-.09, a pdf copy of this Request is being submitted electronically on the 28th day of December, 2018, to shpda.online@shpda.alabama.gov; a paper original will be preserved in our files; and a fee of \$1,000.00 is being sent via the SHPDA online portal on December 28, 2018, by Christi Napper, Director, Institutional Services of Children's, a copy of the receipt of which will be preserved in our files.

Please give me a call if you have any questions.



Alva M. Lambert
December 28, 2018
Page 2

With kindest personal regards,

Lenora W. Pate
FOR THE FIRM

LWP/jj
Enclosures

c: Christi Napper
Mike McDevitt
Suzanne Respass

EXHIBIT A

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

| | | |
|--------------------------------|---|--------------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| CHILDREN’S HOSPITAL OF ALABAMA |) | Request for Non-Reviewability |
| |) | Determination |
| |) | RV - _____ |
| |) | |
| |) | |

REQUEST FOR NON-REVIEWABILITY DETERMINATION

On behalf of Children’s Hospital of Alabama (“Children’s Hospital” or “Children’s”) and pursuant to the Alabama Certificate of Need (“CON”) Program Rules and Regulations (“CON Rules”) 410-1-7-.02 and 410-1-3-.09, and Alabama Code §§ 22-21-260 *et seq.*, this Request for Non-Reviewability Determination (“Request”) is hereby filed with the State Health Planning and Development Agency (“SHPDA”) to request a determination from SHPDA that the Children’s Hospital proposal: (1) to expand the allocation of its existing **pediatric specialty beds** for pediatric psychiatric specialty services use in Birmingham, Alabama; and (2) to construct and renovate the existing soft space contiguous to its existing pediatric specialty beds used for inpatient pediatric psychiatric services and to expand such services due to the high occupancy and demand for such services, more fully described below, is not subject to CON review for the reasons stated below, and, hence, no CON is required for this Children’s Hospital proposal (“Proposal”).

The following factual and legal information is hereby included in this Request, and a Children’s Hospital filing fee in the amount of \$1,000.00 is being filed via SHPDA’s online portal on December 28, 2018, by Christi Napper, Director, Institutional Services of Children’s, in accordance with CON Rule 410-1-3-.09, as required for this Request, pursuant to CON Rule 410-1-7-.02.

PROPOSAL

1. Facts.

1.1 Children's Hospital is a not-for-profit Pediatric Specialty Hospital located in Birmingham, Alabama in Jefferson County. Since 1911, Children's Hospital has provided specialized medical care for ill and injured children, offering inpatient and outpatient services throughout Central Alabama. Ranked among the best pediatric medical centers by U.S. News and World Report, Children's provided care for children from every county in Alabama, 45 other States, and 6 foreign countries in 2017, representing more than 750,000 outpatient and Emergency Department visits, and nearly 16,000 inpatient discharges. Children's Hospital has more than 4,850 employees. With more than 2 million square feet, Children's Hospital is one of the largest pediatric medical facilities in the United States.

1.2 Children's Hospital provides pediatric specialty services as a 332-bed Pediatric Specialty Hospital, as defined at Alabama Department of Public Health ("ADPH") Rule 420-5-7-.03(4), and reports all of its existing 332 beds to SHPDA as **pediatric specialty beds**. Services currently provided by Children's Hospital include inpatient and outpatient pediatric psychiatric specialty services. Children's Hospital currently staffs 293 of its 332 licensed pediatric specialty beds, 34 of which are currently staffed for pediatric psychiatric specialty services.

1.3 In accordance with past confirmation by SHPDA in its February 12, 2008 response, attached hereto as **Attachment 1**, to Children's Hospital's letter of June 21, 2007, attached hereto as **Attachment 2**, indicating that Children's Hospital is **not** required to segregate its pediatric specialty beds by category, Children's Hospital, as a Pediatric Specialty Hospital, properly reports all of its beds as pediatric specialty beds regardless of the type of pediatric specialty service for which such beds are used and classified as, **including those used for pediatric psychiatric services**. Additionally, in accordance with **SHP Rule 41-2-4-.10**, Children's Hospital may reallocate existing pediatric specialty beds between and among all pediatric specialty services, including pediatric psychiatric services, **without any CON review requirement**.

1.4 Due to the growth in its volume of inpatient pediatric psychiatric patients, resulting in an occupancy rate of 90+% in its existing inpatient pediatric specialty beds used for inpatient pediatric psychiatric services, Children's Hospital is in need of a reallocation of its existing pediatric specialty beds to expand the number of its existing pediatric specialty beds in use for the provision of inpatient pediatric psychiatric services. This expansion and reallocation Proposal will not involve the addition of any new beds. Rather, the number of Children's existing pediatric specialty beds used for pediatric psychiatric specialty services will eventually be increased from **34** to **44** beds in accordance with Paragraph 1.5 below.

1.5 To accommodate the additional pediatric specialty beds allocated to inpatient pediatric psychiatric services, Children's Hospital proposes to construct, in existing soft space contiguous to the existing 34 pediatric specialty beds currently used for inpatient pediatric psychiatric services, **ten (10) additional patient rooms, six (6)** of which Children's will **staff and operate immediately** following construction and **four (4)** of which Children's will **reserve and which will remain unstaffed** until a to-be-determined future date.

1.6 The build out of existing soft space contiguous to Children's pediatric specialty beds currently used for inpatient pediatric psychiatric services will allow for a higher capacity for the provision of existing inpatient pediatric psychiatric services. Hence, the construction involved in its Proposal will not involve **any new institutional health services**.

1.7 Moreover, the Proposal will allow Children's Hospital to respond to anticipated future demand and growth in the need for pediatric psychiatric services and alleviate the current high occupancy of existing pediatric specialty beds used for such services.

1.8 This Proposal will involve the following costs, which are below the current applicable statutory CON review thresholds:

(a) **Construction - \$1,256,667.00**, which includes the cost of building out **ten (10)** patient rooms to be used for pediatric psychiatric services in space contiguous to the existing **thirty-four (34)** pediatric specialty beds currently used for pediatric psychiatric services. As discussed in Paragraph

1.5 above, only **six (6)** of the additional rooms will be staffed immediately following construction; **four (4)** rooms will **not** immediately be staffed.

(b) **Equipment – \$95,616.00**, which includes:

- *Medical Equipment* – \$26,771.00, which is not based on number of patient rooms and would be the same amount regardless of whether six (6) or ten (10) patient rooms were staffed. The medical equipment costs associated with the Proposal are described in **Attachment 3**, enclosed and incorporated herein.

- *Furniture* – \$38,844.00, including furniture installation in six (6) of the ten (10) patient rooms constructed pursuant to the Proposal. The breakdown of furniture costs is attached hereto and incorporated herein as **Attachment 4**.

- *Technology* – \$30,000.00, including costs for the expanded inpatient pediatric psychiatric services which are the same for both the six (6) bed and ten (10) bed increase. Therefore, no additional technology costs are expected as a result of the future use of the four (4) additional inpatient pediatric psychiatric rooms.

(c) **First Year Annual Operating Costs – \$1,080,158.00**, including staffing of six (6) of the ten (10) patient rooms added to the pediatric specialty beds used for pediatric psychiatric services pursuant to the Proposal.

2. Legal Analysis.

2.1 The Proposal does not involve a “new institutional health service” subject to CON review within the meaning of Alabama Code § 22-21-263 and CON Rule 410-1-4-.01, in that the Proposal does not include:

- (a) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization;

- (b) any expenditure by or on behalf of a health care 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;

(c) the addition of any new health care facility beds or stations;

(d) any health service which is proposed to be offered in or through Children's Hospital which was not offered on a regular basis in or through Children's Hospital within the preceding twelve (12) month period; or

(e) any other reviewable event under the existing CON Laws, Rules, or Regulations of the State of Alabama.

2.2 Additionally, Children's Hospital, as a Pediatric Specialty Hospital, is **expressly exempt** from the CON Review requirements of SHP Rule 410-2-4-.10 with respect to the categorization of inpatient psychiatric bed categories. SHP Rule 410-2-4-.10 provides, "The bed allocation by category reported on the third Hospital Annual Report following the passage of this amendment shall be considered final for operating beds. Thereafter, any permanent change to a different inpatient psychiatric bed category for an existing operating bed or beds will require the approval of a new CON. This requirement will not apply to licensed beds not currently in use; however once beds are put into use, the provider will have to declare the category(ies) of the beds."

2.3 There is an **exception to such CON review requirement**, however, for **Pediatric Specialty Hospitals** under **SHP Rule 410-2-4-.10(2)(b)**, which provides that the psychiatric bed methodology "**does not apply to pediatric specialty hospital providers, and is not intended: to preclude pediatric specialty hospital providers from using their pediatric specialty beds to provide pediatric psychiatric services, as necessary; to require such providers to report or declare via the SHPDA Hospital Annual Report their pediatric specialty beds used for pediatric psychiatric services as psychiatric beds, with related patient days, by inpatient category; or require such providers to obtain a CON for any new or additional use of their pediatric specialty beds for the provision of any pediatric specialty services, including pediatric psychiatric services.**"

2.4 Thus, in accordance with SHP Rule 410-2-4-.10(2)(b), any Children's Hospital proposed reallocation of its existing pediatric specialty beds among pediatric specialty services, including pediatric psychiatric services, **as in this Proposal, is not subject to CON review.**

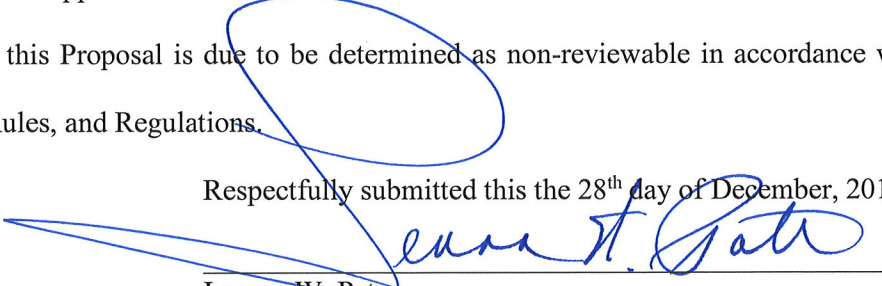
2.5 Considering that the Proposal involves **only** construction related to a build out of **existing soft space contiguous to the existing Children's Hospital inpatient pediatric specialty beds used for pediatric psychiatric services and reallocation of existing pediatric specialty beds and does not allow Children's Hospital to provide any new institutional health services** subject to CON review, does not add any new beds, does not exceed the CON statutory expenditure thresholds, and considering that the reallocation of pediatric specialty beds for pediatric psychiatric specialty beds is expressly removed from CON review requirements, the Proposal is **not subject to CON review under any existing laws, rules, or regulations of the State of Alabama.**

3. Conclusion and Request.

3.1 This Proposal does not involve a new institutional health service subject to CON review pursuant to CON Rules 410-1-4-.01 *et seq.* and Alabama Code §§ 22-21-260 *et seq.* Children's Hospital is merely reallocating its existing pediatric specialty beds to use for the provision of pediatric psychiatric services and constructing and renovating existing soft space to accommodate such reallocation of ten (10) existing pediatric specialty beds contiguous to the existing thirty-four (34) pediatric specialty beds currently used for inpatient pediatric psychiatric specialty services. Additionally, such expansion will not result in any expenditures above the applicable CON review thresholds.

3.2 Hence, this Proposal is due to be determined as non-reviewable in accordance with the Alabama CON Laws, Rules, and Regulations.

Respectfully submitted this the 28th day of December, 2018,



Lenora W. Pate
Jordan Jackson
Attorneys for Children's Hospital of Alabama

OF COUNSEL:

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

CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the above and foregoing Exhibit A was electronically filed this the 28th day of December, 2018, with the State Health Planning and Development Agency via shpda.online@shpda.alabama.gov in accordance with CON Rule § 410-1-3-.09.



Of Counsel

Affirmation of Requesting Party:

The Undersigned, being first duly sworn, hereby makes oath or affirms that she, Christi Napper, Children's Hospital of Alabama Director, Institutional Planning, has knowledge of the facts in this Request, and to the best of her information, knowledge, and belief such facts are true and correct.

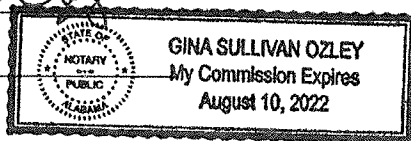
Christi Napper
Christi Napper

Seal

Subscribed and Sworn to before me this the 28th day of December 2018

Gina Sullivan Ozley
Notary Public

My Commission Expires:



“ATTACHMENT 1”

SHPDA RESPONSE LETTER TO CHILDREN’S – FEBRUARY 12, 2008



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

February 12, 2008

Hon. Lenora W. Pate
Sirote & Permutt
Post Office Box 55727
Birmingham, AL 35255-5727

RE: Children's Hospital of Alabama
073-6530170
Psychiatric Bed Inventory

Dear Ms. Pate:

In response to your communication of June 21, 2007, please be advised effective this date the 36 psychiatric beds previously identified in the *State Health Plan* as being operational by Children's Hospital of Alabama will be returned to inventory.

An updated inventory will be made available during the next psychiatric statistical update released by this office.

Sincerely,

A handwritten signature in cursive script that reads "Alva M. Lambert".

Alva M. Lambert
Executive Director

AML/kwm

“ATTACHMENT 2”

CHILDREN’S LETTER TO SHPDA – JUNE 21, 2007

LENORA W. PATE

ATTORNEY AT LAW

(205) 930-5162

lpate@sirote.com

S I R O T E
— & —
P E R M U T T
A PROFESSIONAL CORPORATION

June 21, 2007

VIA FACSIMILE AND U.S. MAIL

Jim Sanders

Deputy Director

State Health Planning Agency

PO Box 303025

Montgomery, AL 36130-3025

Re: Annual Reports for Children's Hospital of Alabama
C/M No.: 002022-00067

Dear Jim:

This letter is to follow-up and confirm our discussions on June 12, 2007, regarding the Children's Hospital of Alabama ("Children's") SHPDA annual reporting form clarification.

Per our request, you reviewed the issue of how a Pediatric Specialty Hospital like Children's should report its psychiatric and burn services, considering that we have been unable to locate any specific CON authorized psychiatric or burn units for Children's. As we discussed, however, Children's was authorized in its 1982 CON to add Pediatric Psychiatric Services within its total bed license as a Pediatric Specialty Hospital.

You researched the status of Children's CON authorized beds, and confirmed with Guy Nevins at the Alabama Department of Public Health that Children's is an excluded Children's Hospital under the Prospective Payment System ("PPS"). As such, all of Children's licensed beds are excluded from PPS, and are assigned to Children's, as a Pediatric Specialty Hospital, for specialty pediatric use, without regard to a specific specialty designation and without regard to separate or distinct reimbursement by bed category.

Accordingly, you confirmed, as did Guy Nevins, that Children's could use any of its licensed beds for any pediatric service, and, therefore, should not segregate any of its beds and the related patient data on the SHDPA Annual Reports into the Psychiatric or Burn Unit categories on the SHPDA form. You instructed that all of Children's licensed beds, and the related patient data, should be reported in the General Hospital Pediatric Section of the 2006 SHPDA Report Form; however, the NICU, Level III, bassinets are not licensed beds, and, therefore, should not be counted in the General Hospital Pediatric bed section, but separately reported, with the related patient data, in Section II.D. on Page 5 of the 2006 SHPDA Report Form.

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LAW OFFICES AND MEDIATION CENTERS
2311 HIGHLAND AVENUE SOUTH BIRMINGHAM, ALABAMA 35205
POST OFFICE BOX 55727 BIRMINGHAM, ALABAMA 35255-5727

TELEPHONE | 205.930.5100 FAX | 205.930.5101 URL | <http://www.sirote.com>

B i r m i n g h a m | H u n t s v i l l e | M o b i l e

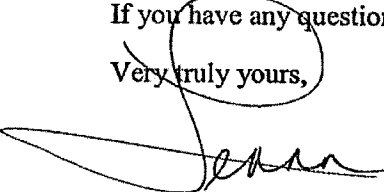
Jim Sanders
June 21, 2007
Page 2

You also determined that the last two (2) State Health Plans had inadvertently listed Children's as having "32 psychiatric beds", presumably as a result of a 1990 Memo in which Children's stated that 32 beds, at that time in 1990, were assigned for Psychiatric Services. You concluded that the Children's 32 Psychiatric Bed reference would be deleted from the State Health Plan inventory, since it should never have been included. Hence, all of Children's licensed beds will remain listed in the General Hospital Pediatric category, as reflected in its previously issued CONs and Pediatric Specialty Hospital license.

Thank you for clarifying these issues, and for confirming how this information should be properly reflected on the revised SHPDA Reports. You should be receiving shortly the revised SHPDA Reports for years 2004 through 2006, with the 2004 and 2006 Reports submitted on the 2006 SHPDA Report Form, but with the 2005 Report on the 2005 SHPDA Form per your instructions.

If you have any questions regarding these issues, please give me a call immediately.

Very truly yours,



Lenora W. Pate
FOR THE FIRM

LWP/cm

C: Mike McDevitt
Christi Napper
Suzanne Respass
Paul May
Karen McGuire

“ATTACHMENT 3”

MEDICAL EQUIPMENT COSTS



Children's
of Alabama

Behavioral Health Medical Expenses

| Name | Asset Desc | Model # | Quantity | Cost Per Item | Extended Cost | Room |
|--------------------|---------------------------------------|--------------|----------|---------------|--------------------|------|
| Scale-Tronix Inc | Wheel Chair Scale | 5002 | 1 | \$2,673 | \$2,673 | exam |
| Exergen Corp. | Temporal Scanner Infrared Thermometer | TAT-5000 | 1 | \$381 | \$381 | exam |
| Welch Allyn Inc | Manual Blood Pressure | CE0297 | 1 | \$209 | \$209 | exam |
| Ohio Medical | Portable Suction | Care-e-Vac 3 | 1 | \$599 | \$599 | exam |
| Welch Allyn Inc | Wall Transformer | 76710 | 1 | \$651 | \$651 | exam |
| MIDMARK | Exam Table | Ritter 104 | 1 | \$2,000 | \$2,000 | exam |
| Physio-Control Inc | Defibrillator | LP20e | 1 | \$8,401 | \$8,401 | |
| GE Medical Systems | Dinamap | V100 | 2 | \$3,096 | \$6,191 | |
| GE Medical Systems | Dinamap | V100 | 1 | \$3,096 | \$3,096 | |
| CONAIR | Curling Iron | | 1 | \$69 | \$69 | |
| CONAIR | Blow Dryer | | 1 | \$69 | \$69 | |
| Contingency | | | | | \$2,433.77 | |
| | | | | | \$26,771.50 | |

“ATTACHMENT 4”

FURNITURE COSTS

**Behavioral Health
Furniture**

| Furniture Item | Quantity | Cost per item | Extended Cost |
|---|-----------------|----------------------|----------------------|
| Floor mounted bed, mattress and restraint rings | 6 | 2329.8 | 13979 |
| Floor mounted desk | 6 | 647 | 3882 |
| Armless chair, patient room | 6 | 183 | 1098 |
| Nurse station task chair | 5 | 705.66 | 3528 |
| Mobile BBF | 3 | 254.33 | 763 |
| Mobile FF | 3 | 745.59 | 2237 |
| Dining Table | 4 | 1920 | 7680 |
| Dining Table ADA | 1 | 2146 | 2146 |
| contingency | | | 3531 |
| | | | \$ 38,844 |