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STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

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June 3, 2019

**VIA E-MAIL ([shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov))**

Emily T. Marsal  
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  
Psychiatric Intensive Outpatient Program & Partial Hospitalization Program***

Dear Ms. Marsal:

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 Children's proposed psychiatric intensive outpatient program ("IOP") setting and partial hospitalization program ("PHP") setting, to be established and located in existing Children's space, are not subject to CON review under Alabama Code §§ 22-21-260 *et seq.* and the CON Rules, and do not require a CON in that, among other things, no new institutional health services, including, but not limited to, health care facility expenditures in excess of the current statutory thresholds requiring CON review, are involved (the "Request").

Children's currently provides pediatric psychiatric services in both an inpatient setting and an outpatient setting. Additional outpatient settings will enhance a continuum of pediatric psychiatric services with steps up and steps down in levels of intensity of care in relation to the amount and type of structure and treatment needed. The continuum of pediatric psychiatric services settings, with increasing levels of structure and intensiveness involved, include: (1) outpatient; (2) IOP; (3) PHP; and (4) inpatient psychiatric treatment settings, as detailed more fully in **Exhibit A**.

In accordance with CON Rule 410-1-3-.09, a pdf copy of this Request is being submitted electronically on the 3rd day of June, 2019, to [shpda.online@shpda.alabama.gov](mailto: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 June 3, 2019, by Christi Napper, Children's Director, Facilities Development and Institutional Planning, a copy of the receipt of which will be preserved in our files.

Please give me a call if you have any questions.

Birmingham Huntsville Mobile Tuscaloosa Fort Lauderdale Orlando



Emily T. Marsal  
June 3, 2019  
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Best regards,



Lenora W. Pate  
FOR THE FIRM

LWP/jj  
Enclosures

c: Christi Napper  
Mike McDevitt  
Suzanne Respress

**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 proposal to establish a psychiatric intensive outpatient program ("IOP") setting and partial hospitalization program ("PHP") setting as a part of the continuum of medically necessary pediatric psychiatric services settings currently provided by Children's in existing Children's space is not subject to CON review for the reasons stated below, and hence, no CON is required for this Children's 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 June 3, 2019, by Christi Napper, Children's Director of Facilities Development and Institutional Planning, in accordance with CON Rule 410-1-3-.09, as required for this Request, and 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, 42 other States, and 7 foreign countries in 2018, representing more than 750,000 outpatient and Emergency Department visits, and nearly 16,000 inpatient discharges. Children's Hospital has more than 4,990 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 currently provides pediatric psychiatric services in inpatient and limited outpatient settings. Children's, however, has encountered issues with **overcrowding in its emergency department**, including with pediatric psychiatric patients **who may not require the highly intensive structure of inpatient psychiatric care, but who may require more intensive care than that received in Children's current limited outpatient setting, which is in an individual setting without a highly structured intensive care program.**

1.3 Under the Proposal, in order to provide pediatric psychiatric patients with the level of care and structure needed in appropriate settings, **Children's proposes to establish two additional levels of outpatient pediatric psychiatric care settings, IOP and PHP, which are more intensive than Children's current limited outpatient service setting but less intensive than Children's highly structured inpatient services setting.** The IOP and PHP settings will be established in existing Children's space which will be renovated for IOP and PHP purposes.

1.4 In order of increasing levels of care and structure, after the completion of the renovations associated with the proposed IOP and PHP settings, Children's will provide the continuum of pediatric psychiatric services in the following settings: (1) outpatient; (2) IOP; (3) PHP; and (4) inpatient. Children's will **not** be providing **any new** psychiatric services; rather, **Children's will continue to provide pediatric psychiatric services, but will do so in settings appropriate for the level of care and structure uniquely required by individual patients as part of a *continuum of pediatric psychiatric care services.***

1.5 In terms of outpatient psychiatric care, hospitals may provide care "**ranging from a few individual services to comprehensive, full-day programs; from intensive treatment programs to those that [are] primarily supportive.**" Centers for Medicare and Medicaid Services, *Medicare Benefit Policy*

*Manual – Chapter 6 – § 70.3 – Partial Hospitalization Services*, <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c06.pdf> (Dec. 18, 2015) (emphasis added).

1.6 To further illustrate this continuum of services, a PHP is less intensive than inpatient psychiatric care but more concentrated than IOP psychiatric care and is defined as a program “structured to provide intensive psychiatric care through active treatment that . . . closely resembles that of a highly structured, short-term hospital inpatient program. **It is treatment at a level more intense than outpatient day treatment or psychosocial rehabilitation.**” *Id.* (emphasis added).

1.7 The Centers for Medicare and Medicaid Services (“CMS”) has published guidance related to PHP psychiatric treatment which states, “PHPs work best as part of a **continuum of mental health services** which range from the most restrictive inpatient hospital setting to less restrictive outpatient care and support.” *Id.* (emphasis added). “Patients in PHP may be discharged by either **stepping up** to an **inpatient level of care** which would be required for patients needing 24-hour supervision, or **stepping down** to a **less intensive level of outpatient care** when the patient’s clinical condition improves or stabilizes and he/she no longer requires structured, intensive, multimodal treatment.” *Id.* (emphasis added).

1.8 Like PHPs, IOPs are less intensive than inpatient psychiatric care. IOPs, however, are also less intensive than PHPs, but are more intensive than individual psychiatric outpatient treatment. Studies have found that patients benefit from both outpatient, including IOP, and inpatient levels of care, depending on a patient’s unique needs. The Substance Abuse and Mental Health Services Administration (“SAMHSA”) has stated that patients “benefit from *both* levels of care and that comparing inpatient with outpatient treatment is potentially counterproductive because the important question is not which level of care is better but, rather, **which level of care is more appropriate at a given time for each [patient]. Matching [patients] with enhanced services also improves [patient] outcomes.**” SAMHSA, *Substance Abuse: Clinical Issues in Intensive Outpatient Treatment: a Treatment Improvement Protocol*, at 8, [https://www.ncbi.nlm.nih.gov/books/NBK64093/pdf/Bookshelf\\_NBK64093.pdf](https://www.ncbi.nlm.nih.gov/books/NBK64093/pdf/Bookshelf_NBK64093.pdf) (2006) (emphasis in bold added, emphasis in italics in original).

1.9 **Offering a continuum of psychiatric care settings, which includes IOPs and PHPs, is consistent with hospital models nationwide, including with Pediatric Specialty Hospital models.** See e.g., UCLA Resnick Neuropsychiatric Hospital, *Child & Adolescent Services*, <https://www.uclahealth.org/resnick/child-and-adolescent-services> (offering various inpatient, PHP, and less intensive outpatient programs); Loma Linda University Health, *Youth Mental Health*, <https://lluh.org/behavioral-health/our-services/youth-mental-health> (offering inpatient, PHP, and IOP youth services); PEAK Behavioral Health Services, *Outpatient & Partial Programs: Adolescent Outpatient Program Services*, <http://peakbehavioral.com/outpatient-partial-programs/> (offering inpatient, PHP, and IOP adolescent services).

1.10 The provision of pediatric services in IOP and PHP settings, in addition to Children's current limited outpatient and inpatient settings, will allow for pediatric psychiatric patients to receive care in the appropriate pediatric psychiatric specialty setting for their unique situation. Children's has previously developed and implemented a **pediatric Psychiatric Intake Response Center ("PIRC")**, operated by trained staff, in order to place patients in the correct setting for psychiatric care, with consideration for the level of structure and intensiveness needed. The PIRC has already served to relieve overcrowding of Children's emergency department by allowing a determination of whether patients need inpatient or strictly outpatient care, without an inpatient hospital visit. The establishment of the IOP and PHP will further streamline the process of triage of pediatric psychiatric patients, making a determination of the intensiveness of the level of pediatric psychiatric services needed in the appropriate setting **more medically and economically efficient.**

1.11 In addition, the proposed Children's PHP will be the only PHP available for the child age group in the State of Alabama, making it even more imperative that Children's establish the proposed IOP and PHP as a part of its continuum of pediatric psychiatric services in existing Children's space.

1.12 Therefore, pursuant to the above information and accepted standards concerning the provision of existing pediatric psychiatric services as a continuum of care, Children's Proposal does not contemplate the addition and performance of any new health services. **Rather, the Proposal would better**

**allow Children's to continue to provide pediatric psychiatric services in a broader range of settings, tailored to specific patient needs with regard to level of care and intensiveness, consistent with the established standard of care for pediatric psychiatric patients.**

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

- a. Construction – \$279,300.00
- b. Equipment – \$55,860.00
- c. First Year Annual Operating Costs – \$577,521.00

## **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.

### 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 is merely expanding the range of settings in which it provides existing pediatric psychiatric services in existing Children's space, in accordance with accepted medical standards to benefit patient outcomes by providing pediatric psychiatric services in a setting tailored to the unique needs of each patient, with regard to level of care and intensiveness required, and to allow for more medically and economically efficient triage of pediatric psychiatric patients.

3.1 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 3rd day of June, 2019,



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

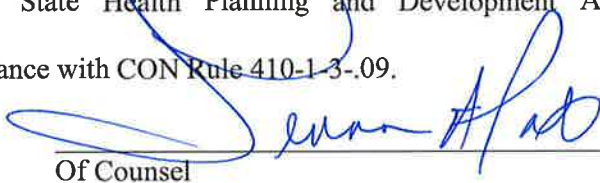
**OF COUNSEL:**

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 3rd day of June, 2019, 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, Facilities Development and 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

Seal

Subscribed and Sworn to before me this the 3rd day of June, 2019.

  
Notary Public  
My Commission Expires:

