

October 31, 2019

**John M. Hundscheid**  
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John.Hundscheid@wilsonelser.com

**Via Electronic Filing (shpda.online@shpda.alabama.gov)**

Ms. Emily T. Marsal  
Executive Director  
State Health Planning and Development Agency  
100 North Union Street, Suite 870  
Montgomery, AL 36140

Re: Physicians Choice Dialysis of Auburn, LLC  
Request for Non-Reviewability Determination  
Electronically Filed: October 31, 2019

Ms. Marsal:

Attached to this letter as **Exhibit A** is a request for your determination that Physicians Choice Dialysis of Auburn, LLC does not require a Certificate of Need under Ala. Code. § 22-21-278 to establish and operate a new ten-station dialysis facility, consisting of eight in-center hemodialysis stations, one peritoneal dialysis station, and one hemodialysis isolation station, in Lee County, Alabama.

Under Ala. Code. § 22-21-278, a kidney disease treatment center proposing no more than ten hemodialysis units that will be located in a county that will that does not contain any portion of a Class 1, 2, or 3 municipality, as defined by Ala. Code. § 11-40-12(a), is not reviewable. Physicians Choice Dialysis of Auburn, LLC's proposes to establish a ten-station facility in Lee County, which does not contain any part of a Class 1, 2, or 3 municipality. Thus, we ask you to determine that Physicians Choice Dialysis of Auburn, LLC does not require a Certificate of Need to construct or operate this anticipated project.

The appropriate filing fee has been submitted contemporaneously with the filing of this request through the electronic payment portal. If you have any questions about this project, please

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contact me.

Wilson Elser Moskowitz Edelman & Dicker LLP



John M. Hundscheid

JH/uw

# EXHIBIT A

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

## **REQUEST FOR NON-REVIEWABILITY DETERMINATION**

## PROPOSAL

Physicians Choice-Auburn will be a part of the Physicians Choice network, which spans across four states. The anticipated project will be a new ten-station dialysis facility in Lee County, Alabama. The center will consist of eight in-center hemodialysis stations, one peritoneal dialysis station, and one hemodialysis isolation station. The total cost of construction is estimated to be \$2,586,000. The total cost of equipment is estimated to be \$801,844. Physicians Choice-Auburn expects the first-year annual operating cost to be \$1,255,968. The center's medical director will be Dr. Venugopala Bheemanathini. Through this project, Physicians Choice-Auburn will provide patient-centered, critical care to treat Lee County patients who require dialysis.

**B. The proposed project is not reviewable under Ala. Code. § 22-21-278.**

Under Alabama law, kidney treatment centers located in a Class 3 through Class 8 municipality that contain no more than ten freestanding hemodialysis stations are not subject to CON review. Ala. Code. § 22-21-278(b). If the county where the center is located contains any part of a Class 1 through Class 3 municipality, however, the project *is* reviewable. Ala. Code. § 22-21-278(c). According to the State Health Plan, proposed projects to construct a kidney treatment center in Jefferson, Limestone, Madison, Mobile, Montgomery, and Shelby counties are currently required to receive a CON before operating. Ala. Admin. Code r. 410-2-3-.05(1)(b).

Physicians Choice-Auburn will be located in Lee County. Lee County does not contain a Class 1, Class 2, or Class 3 municipality.<sup>1</sup> And Physicians Choice-Auburn will contain ten dialysis stations. Thus, Physicians Choice-Auburn's anticipated project meets the criteria set out in Ala. Code. § 22-21-278, and is not subject to CON review.

**CONCLUSION**

Because Physicians Choice-Auburn's anticipated project meets the exemption set out in Ala. Code. § 22-21-278, it does not require a CON. Physicians Choice-Auburn respectfully requests that SHPDA determine that the construction and operation of its proposed facility in Lee County, Alabama is non-reviewable under Alabama's CON law, rules, and regulations.

Respectfully submitted on this 31st day of October, 2019.

/s/ John M. Hundscheid  
JOHN M. HUNDSCHIED

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<sup>1</sup> The largest municipality in Lee County is Auburn, which had a population of 53,380 at the time of the 2010 United States Census. Under Alabama law, a Class 1 municipality has a population of 300,000 or more, a Class 2 municipality has a population between 175,000 and 299,999, and a Class 3 municipality has a population between 100,000 and 174,999. See Ala. Code. § 11-40-12(a).

**OF COUNSEL:**

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*Attorney for Physicians Choice Dialysis of Auburn, LLC*

### AFFIRMATION OF REQUESTING PARTY

The undersigned, being first duly sworn, hereby make oath or affirm that he, Chief Executive Officer for Physicians Choice Management LLC and authorized agent for Physicians Choice Dialysis of Auburn, LLC, has knowledge of the facts in this request, and to the best of his information, knowledge and belief, such facts are true and correct.

  
\_\_\_\_\_  
THOMAS KARL

SUBSCRIBED AND SWORN to before me this 29 day of October  
2019

Notary Public Kelly Smith

My commission expires: 1/29/2023

Commonwealth of Pennsylvania - Notary Seal KellyAnn Smith, Notary Public Montgomery County My Commission Expires January 28, 2023 Commission Number 1288032
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### **CERTIFICATE OF SERVICE**

I certify that on this the 31<sup>st</sup> day of October, 2019, I electronically filed this document with the State Health Planning and Development Agency by emailing the document to shpda.online@shpda.alabama.gov in accordance with Ala. Admin. r. 410-1-3-.09.

/s/ John M. Hundscheid  
OF COUNSEL



November 27, 2019

**John M. Hundscheid**  
205.709.8981 (direct)  
John.Hundscheid@wilsonelser.com

**Via Electronic Filing (shpda.online@shpda.alabama.gov)**

Ms. Emily T. Marsal  
Executive Director  
State Health Planning and Development Agency  
100 North Union Street, Suite 870  
Montgomery, AL 36140

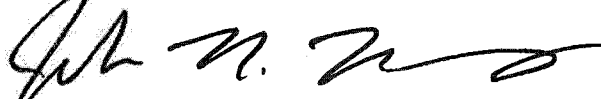
Re: Physicians Choice Dialysis of Auburn, LLC  
Request for Non-Reviewability Determination (RV2020-006)  
Electronically Filed: October 31, 2019

Ms. Marsal:

I write in response to your November 19, 2019 letter requesting that Physicians Choice Dialysis of Auburn, LLC ("Physicians Choice-Auburn") provide the Agency with "approximate capital costs of the proposed project as it related to leases and land costs." Physicians Choice-Auburn does not anticipate any capital costs associated with a lease for the proposed project. The capital costs associated with land costs are expected to be \$300,000.

If I can provide the Agency any additional information, please let me know.

Wilson Elser Moskowitz Edelman & Dicker LLP

  
John M. Hundscheid

JH/uw

cc: Ms. Melissa Trehern (via email at [melissa.trehern@shpda.alabama.gov](mailto:melissa.trehern@shpda.alabama.gov))

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### AFFIRMATION OF REQUESTING PARTY

The undersigned, being first duly sworn, hereby make oath or affirm that he, Chief Executive Officer for Physicians Choice Management LLC and authorized agent for Physicians Choice Dialysis of Auburn, LLC, has knowledge of the facts in this request, and to the best of his information, knowledge and belief, such facts are true and correct.



\_\_\_\_\_  
THOMAS KARL

SUBSCRIBED AND SWORN to before me this 27 day of November  
2019

Notary Public

*Kelly Smith*

My commission expires: 1/28/2023

Commonwealth of Pennsylvania - Notary Seal KellyAnn Smith, Notary Public Montgomery County My Commission Expires January 28, 2023 Commission Number 1288032
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