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RV2022-027
RECEIVED
Jun 03 2022

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

June 2, 2022

Ms. Emily T. Marsal
100 NORTH UNION STREET
RSA UNION BUILDING, STE. 870
MONTGOMERY, ALABAMA 36130-3025

Re: IOP Services, LLC, Reviewability Determination

Dear Ms. Marsal:

This law firm represents IOP Services, LLC ("IOP"). We respectfully request a Letter of Nonreviewability ("LNR") for a proposed project to be located at 420 28th Avenue, Tuscaloosa, AL 35401. You may recall that IOP has previously received LNRs for offices in Jefferson and Madison Counties, pursuant to the Physician's Office Exemption ("POE") to Alabama's Certificate of Need program. The proposed Tuscaloosa project would be organizationally similar to the Jefferson and Madison ones, and thus should also qualify under the POE. The specifics are as follows:

1. An IOP is primarily an organization that is helpful for outpatient reimbursement, and most importantly will improve access to intensive mental health treatment at a time of dramatically increased need. There will be intensive outpatient mental health counselling by a licensed physician's medical practice. The primary population to be served consists of adults with common mood, anxiety, and adjustment disorders not responding adequately to traditional outpatient care, but not requiring hospital care. The practice will not be treating individuals diagnosed with severe mental illness. The practice is also seeking Joint Commission accreditation as a mental health IOP.

There are a number of IOPs located in Alabama. To the best of our knowledge, none of these have been required to obtain a CON.

2. The service area will be Tuscaloosa County, Alabama.

3. The equipment costs for the project will be \$20,000 for furniture and equipment. The first annual operating costs will be approximately \$250,000. The capital costs are to lease

office space at \$1500 per month. There will be no land costs or costs for improvements to occupy the office space. There are no direct construction costs.

4. There will be no financial interests with other groups or healthcare facilities.

This request is submitted pursuant to *Ala. Code* § 22-21-260(6), which provides that “[t]he term health care facility shall not include the offices of private physicians or dentists, whether individual or group practices and *regardless of ownership.*” (emphasis supplied). In addition, the Alabama Supreme Court has set forth the definitive test for determining whether the POE applies in a particular case:

- 1) The proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physician’s practice for the care of their patients;
- 2) The proposed services are to be provided, and related equipment used, at any office of such physicians:
- 3) All patient billings related to such services are through, or expressly on behalf of, the physician’s practice, and not on behalf of a third party; and,
- 4) The equipment may not be used for inpatient care, nor by, through or on behalf of a healthcare facility.

Ex parte Sacred Heart Health System, Inc., 155 So.3d 980, 988 (Ala. 2012) (holding POE applicable to multi-office development). The CON review board has consistently held that the evidence pertaining to a POE must be reviewed in its “totality” and that no single factor will go into the determination in the absence of other considerations. Dr. Garry Grayson is the physician involved and he will be practicing the specialty of psychiatric medicine from this office. All other physicians involved will be owners or employees of the practice. Persons other than Dr. Grayson with an ownership interest in IOP are Joe Lucas MD, Armand Schachter MD, Andrea Thomas MD, Chris Stanley MD, Martha Furio LCSW.

Additionally, the Alabama Administrative Code §410-1-2-.05 defines the term health care facility. Subsection 2 of that regulation states that the term “health care facility” shall not include any of the following:

- a) The private office of any duly licensed physician, dentist, chiropractor, or podiatrist whether for individual or group practice and regardless of ownership.

Clearly, physicians’ offices used on an outpatient basis for physicians’ practices, regardless of ownership, are intended to be excluded from Certificate of Need review. The medical practice of Dr. Garry Grayson, a psychiatrist properly licensed in the State of Alabama, obviously qualifies for the physician’s office exemption regardless of the business entity he chooses. This particular practice of Dr. Grayson will involve, in addition to his complete care and control, a number of employees. Employed staff will do initial clinical assessment of patients and their suitability to

receive treatment in the IOP program. They will also serve as group therapists in the 9 hour per week counseling program.

All patient billings will be on behalf of the practice.

These psychiatric services will be provided to primarily a population of adults with common mood, anxiety, and adjustment disorders not responding adequately to traditional outpatient care, but not requiring hospital care. Intensive outpatient treatment is designed for individuals with a variety of mental or emotional disturbances that currently interfere with their ability to function effectively in domains of work, family life, or self-care. Typically, IOP programs elect to treat populations of individuals with general mental health issues, or elect to treat populations whose primary problem is a substance use disorder. We are the former category, which means that Dr. Grayson and the practice will not be enrolling patients whose primary problem is substance use disorder.

Dr. Grayson will not be treating individuals diagnosed with severe mental illness in this office. No ketamine infusions or electroconvulsive treatments will be administered by or at the office. Only medications customarily used for the treatment of outpatient psychiatric patients will be prescribed by physicians practicing in the office.

There is a single CPT code for IOP treatment. That code is S9480. This covers the 3-hour, group-based treatment session that is provided three days per week for a total of 9 hours of psychotherapy per week for each patient. IOP Services, LLC has its own billing number, and all providers will be billing under that number. We believe that this is analogous to the situation in *Ex parte Sacred Heart Health System, Inc.*, 155 So.3d 980 (Ala. 2012), in which all providers billed under the Sacred Heart Medical Group's provider number.

As noted above, there are a number of IOPs located in Alabama. To the best of our knowledge, none have been required to have a Certificate of Need. As noted above, SHPDA has previously issued LNRs for IOP practices in Jefferson and Madison Counties.

As most physicians in the state do, there will be a portion of Dr. Grayson's practice that will require him to cover patients in the hospital. Hospital coverage is in no way related to the outpatient work of the IOP.

We hope that in evaluating this POE proposal based on these representations it will be confirmed not to be subject to CON review. Concurrently herewith, we have submitted a payment of \$1,000 through the Agency's Payment Portal. If you have any questions, please call.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC


William G. Somerville

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

SHIPT TOWER
420 20TH STREET NORTH
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STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

June 27, 2022

Ms. Emily T. Marsal
Executive Director
State Health Planning and Development Agency
P. O. Box 303025
Montgomery, AL 36130-3025

Re: RV2022-027
IOP Services, LLC

Dear Executive Director Marsal:

This is in response to your inquiry dated June 14, 2022. I have set forth your questions in bold below. The answers will follow:

1. **Provide additional information regarding the roles of Joe Lucas, M.D., Chris Stanley, M.D., Armand Schacter, M.D., and Andrea Thomas, M.D. at IOP Services, LLC.**

Response: Drs. Lucas, Schacter, Stanley and Thomas are all psychiatrists licensed in Alabama. IOP Services, LLC is making a continued effort to improve access of intensive outpatient counseling in several communities. The current burden of mental disorders in most communities has been dramatically worsened during the Covid era. The psychiatrists listed above will all be available to perform psychiatric assessments of patients interested in treatment in the IOP program. They will also be available to provide ongoing treatment to those individuals who do not have an existing relationship with a psychiatrist.

2. **Provide an explanation concerning the statement "it is primarily an organization that is helpful for outpatient reimbursement."**

Response: IOP programs are facilities and submit CPT codes appropriate to that service. The intensive outpatient counseling services can only be provided through a facility, and not through ordinary professional fees.

June 27, 2022
Page 2

3. Provide a signed and notarized Affirmation of Requesting Party.

Response: Attached.

I hope we have answered your questions. Please do not hesitate to call should you need any additional information.

Sincerely yours,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

A handwritten signature in black ink that reads "Will Somerville". The signature is written in a cursive, slightly slanted style.

WILLIAM G. SOMERVILLE

WGS:dgc
Enclosures

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BEARMAN, CALDWELL & BERKOWITZ, PC

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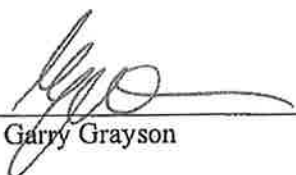

William G. Somerville

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STATE OF ALABAMA)

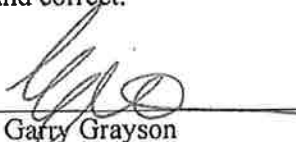
JEFFERSON COUNTY)

Comes now Dr. Garry Grayson, a properly licensed Board Certified psychiatrist in the State of Alabama and represents to the State Health Planning and Development Agency that I have reviewed the attached supplemental information for the previously filed Request for Non-Reviewability signed by the Honorable William G. Somerville, and finds it to be a true and accurate representation of the services I want to provide as a physician pursuant to the Physician's Office Exemption including backup staff as IOP Services, LLC in Tuscaloosa, Alabama.



Dr. Garry Grayson

The undersigned, being first duly sworn, hereby makes oath or affirmed that he is the psychiatrist and owner of IOP Services, LLC, has knowledge of the facts attached to this affidavit via letter to the State Health Planning and Development Agency, and to the best of his information, knowledge, and belief, such facts are true and correct.



Dr. Garry Grayson

Sworn to and subscribed before me this the 24th day of June, 2022.



NOTARY PUBLIC

My Commission Expires: 7-22-2025

(SEAL)

