



Waller Lansden Dortch & Davis, LLP
1901 Sixth Avenue North
Suite 1400
Birmingham, AL 35203-2623

205.214.6380 main
205.214.8787 fax
wallerlaw.com

Chris Thompson
205.226.5739 direct
Chris.thompson@wallerlaw.com

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RECEIVED

Dec. 09, 2022

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

December 8, 2022

VIA EMAIL (SHPDA.ONLINE@SHPDA.ALABAMA.GOV)

Hon. Emily T. Marsal, Executive Director
State Health Planning and Development Agency
100 North Union Street
RSA Union Building, Suite 870
Montgomery, Alabama 36130-3025

Re: Non-Reviewability Determination Request - Purchase and Operation of a CT Scanner by
Gastroenterology Associates of North-Central Alabama, Inc.

Dear Ms. Marsal:

Our firm represents Gastroenterology Associates of North-Central Alabama, Inc. d/b/a Gastro Health Alabama ("Gastro Health"). Gastro Health proposes to purchase and install a computerized tomography ("CT") scanning machine (the "CT Scanner") within Shelby County at 4510 Overton Road, Ste. 106, Birmingham, Alabama 35242 and through such CT Scanner to offer CT services to patients at such location (the "Project").

We are writing to submit a reviewability determination request ("Request") in accordance with Section 410-1-7-.02 of the Alabama State Health Planning and Development Agency's ("SHPDA's") certificate of need ("CON") program rules and regulations (the "Rules") with regard to the Project. As discussed below, a 1993 order issued by the CON Review Board ("CONRB") stated that CT services do not require CONs unless the overall capital expenditures of a CT services project exceed certain monetary thresholds.

The authorized company representative seeking this determination request is Mark Johnson, 513 Brookwood Blvd., Suite 250, Birmingham, AL 35209.

A description of facts relevant to the Project and an analysis of applicable CON law considerations in support of the Request follows.

1. *Description of the Project.*

The CT Scanner will be installed at space leased and controlled by Gastro Health at 4510 Overton Road, Ste. 106, Birmingham, Alabama 35242. Gastro Health, a medical group, will operate the scanner without the involvement of any affiliates or other entities, and Gastro Health anticipates that the CT Scanner will primarily be utilized by patients initially seen by Gastro Health providers at other Gastro Health locations. A properly supervised and credentialed nurse practitioner will be present at the CT Scanner location, along with technical support staff employed or otherwise contracted by Gastro Health.

2. *Estimated Costs.*

The equipment cost associated with the Project (including the CT Scanner itself) will not exceed \$450,000.00. The facility improvement costs associated with the Project will not exceed \$350,000.00. The annual operating expenses associated with the Project will not exceed \$500,000.00. The total cost of the Project (including the first year operating expenses) will not exceed \$1,300,000.00.

Accordingly, this Project will not exceed any of the CON expenditure thresholds specified in CON Rule 410-1-2-.07—that is: \$3,241,543.00 for major medical equipment, \$1,296,615.00 for new annual operating costs, or \$6,483,085.00 for total capital expenditures, as currently adjusted for CPI.

3. *Legal Analysis.*

The Alabama CON program primarily regulates the establishment of new "institutional health services," defined as "health services provided in or through health care facilities or health maintenance organizations, including the entity in or through which such services are provided." Ala. Code § 22-21-260(9) (emphasis added); *see also* CON Rule § 410-1-2-.14.

In an order dated March 9, 1993, the CONRB adopted a policy stating that CT services "do not constitute new institutional health services." The order is attached to this letter as Exhibit A.

Accordingly, since the Project encompasses only the offering of CT services, and since the Project will not exceed the applicable expenditure thresholds (as discussed above), Gastro Health understands that the Project will not require a CON.

Based on the foregoing information, we respectfully request that SHPDA grant a determination of non-reviewability for the Project. An attestation from the requesting party is enclosed herein. In accordance with CON Rule 410-1-7-.02, the filing fee of \$1,000.00 for this Letter of Non-Reviewability has been paid via the SHPDA electronic payment portal. Please do not hesitate to contact me at chris.thompson@wallerlaw.com or (205) 226-5739 if you require any further information or have any questions.

Very truly yours,



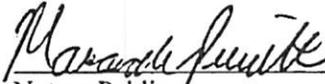
Chris Thompson

Emily T. Marsal
December 1, 2022
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The undersigned, being first duly sworn, hereby makes oath or affirms that he is the Division Vice President of Gastro Health, has knowledge of the facts in this request, and to the best of his information, knowledge and belief, such facts are true and correct.

Affiant: 
Division Vice President

SUBSCRIBED AND SWORN to before me this 6 day of December, 2022.


Notary Public
My commission expires: 6-11-2025

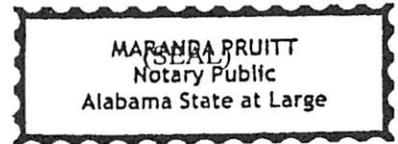


EXHIBIT A
To Non-Reviewability Determination Request

CONRB CT Policy Statement

See attached

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POLICY ON COMPUTERIZED AXIAL TOMOGRAPHY SERVICES

ADOPTED BY CERTIFICATE OF NEED REVIEW BOARD MARCH 9, 1993

Computerized Axial Tomography (CT) Services have become necessary for the routine diagnosis of radiology patients. They are an integral part of radiology services offered within health care facilities. Therefore, the CON Review Board believes that CT Services do not constitute new institutional health services under §22-21-263(a)(4) Code of Alabama 1975).

In accordance with §22-21-263(2) if the capital cost of Computerized Axial Tomography Scanner services is in excess of \$500,000.00, a certificate of need would be required.

NOTICE

CHANGE IN APPLICATION FEES

In accordance with Section 22-21-271 Code of Alabama, 1975, you are hereby notified that the United States Department of Commerce construction cost index for 1991 was 111.2. Therefore, effective October 1, 1992 the maximum filing fee for a Certificate of Need application will be ~~\$12,100.00.~~

12,642.00

effect 11/22/95