

Kelli Fleming
kfleming@burr.com
Direct Dial: (205) 458-5429
Direct Fax: (205) 244-5762

RV2024-024
RECEIVED
Jun 05 2024
STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

420 North 20th Street
Suite 3400
Birmingham, AL 35203

Office (205) 251-3000
Fax (205) 458-5100

BURR.COM

June 5, 2024

VIA EMAIL

Ms. Emily Marsal
Executive Director
Alabama State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36104
shpda.online@shpda.alabama.gov

**Re: Request for Determination of Non-Reviewability
Addiction & Mental Health Services, LLC d/b/a Bradford Health Services
Warrior Location in Jefferson County, Alabama**

Dear Ms. Marsal:

This firm represents Addiction & Mental Health Services, LLC d/b/a Bradford Health Services ("Bradford"), a substance use disorder treatment provider with several locations in Alabama. Among others, Bradford operates a location in Warrior, Alabama that serves patients in Jefferson County, Alabama, and surrounding areas to which this request relates.¹ Pursuant to Alabama Certificate of Need Program Rules and Regulations ("CON Rules(s)") § 410-1-7-.02, Bradford requests a determination that the operation of an adult residential home with specialized behavioral health services housing patients with a primary psychiatric diagnosis is not subject to certificate of need ("CON") review under *Ala. Code* § 22-21-260 *et. seq.*, and the CON Rules. Pursuant to CON Rule § 410-1-7-.02, a \$1000.00 filing fee is being paid to the Alabama State Health Planning and Development Agency ("SHPDA") via the online payment portal. To assist with your determination, we submit the following information:

Background:

By way of background, Bradford currently provides substance use disorder treatment services. In that regard, Bradford holds several CONs for substance use disorder beds, including 182 substance use disorder beds at its Warrior location, located at 1189 Allbritton Road, Warrior, Alabama 35180. Bradford is not owned by any other healthcare facilities or groups. Bradford's defined service area, with regard to the Warrior location, under CON Rule §410-1-2-.03, is Jefferson County, Alabama.

¹ Contact information for Bradford's Warrior location is as follows: 1189 Allbritton Road, Warrior, Alabama 35180, 205-647-1945, Attn: Brandon Lasker, Administrator.

Bradford now desires to expand into a new aspect of business at its Warrior location and open a residential setting to provide adult residential care with specialized behavioral health services consistent with *Ala. Admin. Code* § 580-2-20-.13(35). The adult residential services to be provided will be for patients with a primary psychiatric diagnosis (*i.e.*, not substance abuse). Pursuant to *Ala. Admin. Code* § 580-2-20-.13, admission criteria for mental illness residential services requires “a principal psychiatric diagnosis”. Thus, the services proposed to be offered by Bradford relevant to this letter of non-reviewability are not substance use disorder treatment services, but rather residential mental health services, and will not involve the use of any substance use disorder beds. Any patients requiring substance use disorder treatment services or having a primary diagnosis of substance use disorder will not reside in, or utilize, the proposed mental illness residential setting. Further, the services proposed to be offered by Bradford relevant to this letter of non-reviewability will in no way impact or reduce Bradford’s ability to continue to provide substance use disorder treatment services consistent with the CONs previously obtained.

The Adult Residential Home with Specialized Behavioral Health Services Is Not a Health Care Facility Under CON Law

As you are aware, the Alabama CON program regulates the establishment of new “institutional health services”. CON Rule § 410-1-4-.01 (“All new institutional health services which are subject to Section 22-21-260..., and which are proposed to be offered or developed within the state shall be subject to Certificate of Need review.”).

“Institutional health services” are “health services² 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.

A “health care facility” is defined as “general and specialized hospitals, including tuberculosis, psychiatric, long-term care, and other types of hospitals, and related facilities such as, laboratories, out-patient clinics, and central service facilities operated in connection with hospitals; skilled nursing facilities; intermediate care facilities; skilled or intermediate care units operated in veterans’ nursing homes and veterans’ homes, owned or operated by the State Department of Veterans’ Affairs, as these terms are described in Chapter 5A (commencing with Section 31-5A-1) of Title 31; rehabilitation centers; public health centers; facilities for surgical treatment of patients not requiring hospitalization; kidney disease treatment centers, including free-standing hemodialysis units; community mental health centers and related facilities; alcohol and drug abuse facilities; facilities for the developmentally disabled; and home health agencies and health maintenance organizations.” *Ala. Code* § 22-21-260(6); *see also* CON Rule § 410-1-2-.05. Thus, if the institutional health service is not being provided “in or through health care facilities”, as defined above, it is not subject to CON review.³

² “Health services” are defined as “clinically related (*i.e.*, diagnostic curative or rehabilitative) services, including alcohol, drug abuse and mental health services customarily furnished on either an inpatient or outpatient basis *by health care facilities*.” CON Rule § 410-1-2-.06 (emphasis added).

³ *See also* CON Rule § 410-1-4-.01 (emphasis added):

“(1) All new institutional health services which are subject to Section 22-21-260, et. seq.. Code of Ala. 1975, and which are proposed to be offered or developed within the state shall be subject to Certificate of Need review. New institutional health services which are subject to review shall include:

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

(b) any expenditure *by or on behalf of a health care facility* or health maintenance organization, which, under generally accepted accounting principles consistently applied, is a capital expenditure in excess of [established thresholds]:...

(c) any change in the existing licensed bed capacity *of a health care facility* or health maintenance organization through the:

1. addition of new beds;
2. the relocation of one or more beds from one physical facility to another, (that is, one geographically separate location to another); or
3. reallocation among services of existing beds through the conversion of one or more beds from one category to another...

or

(d) any health service which is proposed to be offered *in or through a health care facility* or health maintenance organization, and which was not offered on a regular basis *in or through such health care facility* or health maintenance organization within the twelve-month (12 month) period prior to the time such services would be offered, including, without limitation, health services to be provided through equipment obtained from vendors or lessors of equipment, provided, however, that a vendor or lessor of equipment which does not materially engage in the provision of the health service shall not be required to obtain a CON; or

(e) the acquisition, by any person, of major medical equipment that will

1. be owned by or located *in a health care facility*, or which will be used to provide health services to persons admitted *to a health care facility*; provided, however, that an acquisition of major medical equipment need not be reviewed if it will be used to provide services to inpatients of a health care facility only on a temporary basis in the case of a natural disaster, major accident, or equipment failure; or
2. if a person acquires major medical equipment not located in a health care facility without a Certificate of Need and proposes at any time to use that equipment to serve inpatients *of a health care facility*, then the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a health care facility only on a temporary basis not to exceed six

An adult residential home with specialized behavioral health services provided in accordance with *Ala. Admin. Code* § 580-2-20-.13(35) is not a “health care facility”, as defined by CON law, and does not, therefore, constitute a new “institutional health service” requiring CON review.

Relevant to the services proposed by Bradford, “health care facility” includes alcohol and drug abuse facilities” or a “community mental health center”. As previously mentioned, the proposed services will be a new aspect of Bradford’s business and will only be provided to patients with a primary psychiatric diagnosis and not substance use disorder. Any patients requiring substance use disorder treatment services will not reside in, or utilize, the mental illness residential setting. Thus, the proposed residential home is not an “alcohol and drug abuse facility.”

Further, the services to be provided by Bradford in the proposed residential setting are not a “community mental health center” subject to CON law. *Ala. Admin. Code* § 580-2-9-.01 defines “community mental health center” (“CMHC”) as a provider that provides all of the following services: emergency services, outpatient services, consultation and education services, partial hospitalization/intensive day treatment/rehabilitation day program services, and residential services. *See also Ala. Admin. Code* § 580-3-23-.06. “If all of the criteria for a CMHC are not met during a site visit, the provider is not eligible for certification as a CMHC. A provider may request certification as a Mental Health Services Provider for those services which do not meet the applicable standards.” *Ala. Admin. Code* § 580-2-9-.01; *see also Ala. Admin. Code* § 580-3-23-.06.

Through this new line of service, Bradford will only be providing adult residential services consistent with *Ala. Admin. Code* § 580-2-20-.13(35). Bradford will not be providing emergency services, outpatient services, or partial hospitalization/intensive day treatment/rehabilitation day program services to the residents. Thus, Bradford will not be a “community mental health center” as defined by *Ala. Admin. Code* § 580-2-9-.01. Consequently, this new line of service is not a “health care facility” subject to CON law.

The Adult Residential Home with Specialized Behavioral Health Services Does Not Rise to the Level of Inpatient Psychiatric Services

On a related note, the residential services proposed to be provided by Bradford will not rise to the level of inpatient psychiatric services provided in a psychiatric hospital/unit. Pursuant to *Ala. Admin. Code* § 580-2-20-.13, one of the conditions for treatment in the residential setting is that “inpatient care is not warranted.” Further, the services provided in a residential setting are distinguishable from those provided in an inpatient psychiatric hospital/unit. For example, inpatient psychiatric services typically require an

weeks in the case of an emergency, a natural disaster, a major accident, or an equipment failure...; or

3. an acquisition made *by or on behalf of a health care facility* under lease or comparable arrangement, or through donation, which would have required a Certificate of Need if the acquisition had been by purchase.”

acuity level where the patient is an immediate threat to themselves or others. Mental health residential homes will not accept patients that are an immediate threat to themselves or others. Further, mental health residential homes do not use physical or mechanical restraints on patients, but inpatient psychiatric facilities/units do use such restraints when necessary. Mental health residential homes are a voluntary level of care and patients may have periods of time when they are offsite engaging in community support groups. Inpatient psychiatric facilities/units take involuntary admissions and the facilities/units are locked to restrict the patient's ability to leave. Finally, pursuant to *Ala. Admin. Code* § 580-2-20-.13, a number of the services provided in the adult residential home are not typically part of the treatment in an inpatient setting, including, but not limited to, assistance in applying for benefits, recreation and activities, assistance in improving social and communication skills, and transportation to and from community services and support groups. Thus, the services provided do not rise to the level of inpatient psychiatric services provided in a psychiatric hospital/unit.

The Adult Residential Home with Specialized Behavioral Health Services Is Not Subject to CON Review

As set forth herein, the proposed service is not a new "institutional health service" provided in or through a health care facility subject to CON review under *Ala. Code* § 22-21-263 or CON Rule § 410-1-4-.01.

In connection with the entire project, the total cost of construction is anticipated to be approximately \$100,000.00; the total cost for the purchase and/or lease of major medical equipment is anticipated to be approximately \$0.00; other capital costs are anticipated to be less than approximately \$100,000.00; and new first year annual operating costs are estimated to be approximately \$1,200,000.00;⁴ none of which will exceed the capital expenditure thresholds set forth in *Ala. Code* § 22-21-263 and CON Rule § 410-1-4-.01 (as adjusted in SHPDA's Memorandum dated September 19, 2023). All expenditures will be incurred by Bradford.

Consequently, the proposal does not constitute a "new institutional health service" provided in or through a health care facility subject to CON Review, as the proposal does not include:

- (1) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization;
- (2) any expenditure by or on behalf of a health care facility which, as a capital expenditure, exceeds the CON statutory threshold for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility;
- (3) any change in the existing licensed bed capacity of a health care facility;

⁴ First year annual operating costs include all new estimated operating costs associated with the adult residential home with specialized behavioral health services. New first year annual operating costs have been estimated using conservative assumptions and contingencies.

Ms. Emily Marsal
June 5, 2024
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- (4) any health service which is proposed to be offered in or through a health care facility which was not offered on a regular basis in or through a health care facility within the preceding 12-month period; or
- (5) any other reviewable event under the existing CON Rules.

In addition, this proposal does not involve any change in ownership of Bradford.

Accordingly, based on the above, Bradford requests your determination that the operation of an adult residential care home with specialized behavioral services is not subject to CON review under *Ala. Code* § 22-21-260 *et seq.* and the CON Rules, and is permissible without further filings or requests to SHPDA. We appreciate your response to this matter, and please do not hesitate to contact us should you need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kelli', followed by a long, sweeping horizontal stroke.

Kelli Fleming
Partner

KCF/caj

Affirmation of Requesting Party:

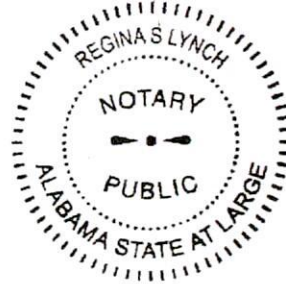
The undersigned, being first duly sworn, hereby make oath or affirm that he/she is the Chief Executive Officer of Addiction & Mental Health Services, LLC d/b/a Bradford Health Services, has knowledge of the facts in this request, and to the best of his/her information, knowledge, and belief, such facts are true and correct.

Affiant: Blair H (SEAL)

SUBSCRIBED AND SWORN to before me this 4th day of June, 2024.

Regina S. Lynch
Notary Public

My Commission Expires: 1/13/2025



**My Commission Expires
January 13, 2025**

Kelli Fleming
kfleming@burr.com
Direct Dial: (205) 458-5429
Direct Fax: (205) 244-5762

420 North 20th Street
Suite 3400
Birmingham, AL 35203

Office (205) 251-3000
Fax (205) 458-5100

BURR.COM

June 25, 2024

VIA EMAIL

Ms. Emily Marsal
Executive Director
State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36104
shpda.online@shpda.alabama.gov

**Re: Additional Information – Request for Determination of Non-Reviewability
RV2024-024
Addiction & Mental Health Services, LLC d/b/a Bradford Health Services**

Dear Ms. Marsal:

As you are aware, this firm represents Addiction & Mental Health Services, LLC d/b/a Bradford Health Services (“Bradford”). Pursuant to Alabama Certificate of Need Program Rules and Regulations (“CON Rules(s)”) § 410-1-7-.02, on or around June 5, 2024, Bradford filed a determination request that the operation of an adult residential home with specialized behavioral health services housing patients with a primary psychiatric diagnosis is not subject to certificate of need (“CON”) review under *Ala. Code* § 22-21-260 *et. seq.*, and the CON Rules. Bradford’s request was designated RV2024-024 (“Request”).

We are in receipt of the June 12, 2024 letter from the State Health Planning and Development Agency (“SHPDA”) requesting additional information concerning Bradford’s Request. Bradford hereby responds to SHPDA’s letter dated June 12, 2024 requesting additional information, and provides the following additional information for SHPDA’s additional review, consideration, and determination that the proposal described in the Request is non-reviewable under the current CON Rules.

1. **Please provide additional detailed information on the proposed services to be provided by Bradford Health Services; by whom these services will be provided; and if medication will be prescribed to patients.**

The proposed services to be provided consist of adult mental illness residential care for patients with a primary psychiatric diagnosis. The proposed services will be consistent with the applicable requirements of *Ala. Admin. Code* § 580-2-20-.13, providing congregate living and dining to residents. As required by *Ala. Admin. Code* § 580-2-20-.13, at a minimum, the following services will be provided in-house by Bradford or arranged by the residential staff:

- Assistance in applying for benefits;
- Assistance in improving social and communication skills;
- Assistance with medication management;
- Assistance in the development of basic living skills (e.g., money management, laundering, meal preparation, personal hygiene, etc.);
- Vocational services;
- Community orientation;
- Recreation and activities;
- Assistance in locating long-term community placement;
- Transportation to and from community services and support;
- Education about psychiatric illness; and
- Family support and education.

Additional services permitted by the Alabama Department of Mental Health for an adult residential home with specialized behavioral health services may also be provided.

Staffing levels and types will comply with the requirements of *Ala. Admin. Code* § 580-2-20-.13, and will include, at a minimum, a program coordinator and mental health workers. All staff will be Bradford employees or independent contractors working on behalf of Bradford. As required by the applicable Alabama Department of Mental Health regulations, staff will be on the premises twenty-four hours/day for seven days/week. All staff will have certification for first aid and CPR.

Medication will not be prescribed by the residential home, but assistance with medication management will be provided. All filled prescriptions will be stored in a locked cabinet.

2. **The request indicates Bradford Health Services seeks to offer adult residential care with specialized behavioral services for patients with a primary psychiatric diagnosis at an existing facility in Jefferson County, Alabama and notes the proposed services will not involve the use of any substance use disorder beds. Please**

provide the Agency with the number of residential beds to be housed for the proposed services that will be a new aspect of Bradford's business.

The proposal will have the capacity to house between ten (10) and sixteen (16) residential patients, depending on the capacity authorized by the Alabama Department of Mental Health during the certification process. The residential home will not involve the use of Bradford's CON-authorized substance use disorder beds, nor will the project reduce Bradford's ability to continue to provide substance use disorder treatment services consistent with the CONs previously obtained.

3. Please provide a disclosure of financial interests in the entity requesting the reviewability determination held by any other healthcare facilities or groups.

Bradford is not owned by any other healthcare facilities or healthcare groups. While Bradford has a corporate structure involving upstream ownership, none of the upstream owners are healthcare facilities, as defined in *Ala. Code* § 22-21-260(6).

4. Provide the Agency with planned emergency procedures in place on behalf of the proposed RV filing.

The proposed residential home will not provide emergency treatment services as part of the services offered, but will have emergency treatment protocols in place consistent with applicable requirements. All residents will have access to a nearby hospital for the provision of emergency medical care.

In addition, the residential home will have an emergency preparedness program to address procedures for various emergency situations, including, but not limited to, fire, natural disasters, inclement weather, active shooter, threats, violence, power outages or failure, structural damage, etc.

Accordingly, based on the above, Bradford requests your determination that the operation of an adult residential care home with specialized behavioral services consistent with *Ala. Admin. Code* § 580-2-20-.13 is not subject to CON review under *Ala. Code* § 22-21-260 *et seq.* and the CON Rules, and is permissible without further filings or requests to SHPDA.

Ms. Emily Marsal
June 25, 2024
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I appreciate your response to this matter, and please do not hesitate to contact me should you need additional information or have any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelli F", with a long horizontal flourish extending to the right.

Kelli Fleming

KCF/caj

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby make oath or affirm that he/she is the Chief Executive Officer of Addiction & Mental Health Services, LLC d/b/a Bradford Health Services, has knowledge of the facts in this request, and to the best of his/her information, knowledge, and belief, such facts are true and correct.

Affiant: R. Marsh (SEAL)

SUBSCRIBED AND SWORN to before me this 24th day of June, 2024.

Regina S. Lynch
Notary Public

My Commission Expires: 6/24/24

My Commission Expires
January 13, 2025

