



## BALCH & BINGHAM LLP

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### HEALTHCARE BULLETIN

*July 21, 2010*

#### ALABAMA CON REVIEW BOARD UPDATE

##### I. CERTIFICATE OF NEED PROGRAM

###### A. For Informational Purposes Only:

###### Contested Case

**AL2009-032, Hoover Home Healthcare Services, Inc., Hoover, AL:** Proposal to establish a home health agency in Shelby County.

**Opposition:** Amedisys Home Health, Inc. of Alabama, MidSouth Home Health Agency, Alacare Home Health Services, Inc. d/b/a Alacare Home Health & Hospice and Continuous Care Services-Alabama, LLC filed opposition/intervention and request for a contested case hearing.

**This project was placed on the agenda for informational purposes only. No vote is required because the “recommended order of the Administrative Law Judge becomes the final order of the Agency when no exceptions have been filed.” No exceptions were filed. The ALJ denied this project.**

###### B. \*Pending Approval of the Vice Chair

###### \*Emergency Request

**AL2009-198, Stratford Enterprise d/b/a Helping Hands Hospice, Hoover, AL:** Emergency application requesting Blount, Chilton, Cullman, Jefferson, Shelby, St. Clair, Talladega, Tuscaloosa and Walker Counties in which applicant provided in-home hospice services under Medicare Provider Number 01-1638 and ADPH license as of May 13, 2009, or the preceding twelve months. Counties verified by SHPDA staff are: St. Clair, Walker, Cullman, Shelby, Jefferson and Chilton counties.

**Opposition: None**

**Granted for all counties except Blount, Talladega and Tuscaloosa Counties.**

- C. **Emergency Application**  
**AL2010-201-E, DVA Renal Healthcare, Inc. d/b/a Sylacauga Dialysis, Sylacauga, AL:** Emergency application requesting to add four hemodialysis stations due to a tornado that severely damaged Renal Treatment Centers-Southeast, LP, a ten station ESRD facility located in Talladega County. CON 2449-ESRD-E issued 6/24/2010. This project is being presented to the Board for ratification.  
**Opposition: None**  
**Ratified.**
- D. **Contested Case**  
**AL2008-037, Brookwood Medical Center d/b/a Brookwood 280 Emergency Care, Birmingham, AL:** Proposal to develop a freestanding Emergency Department offering a full range of emergency services complemented by necessary diagnostic imaging, laboratory, and therapy services to emergency patients as well as other outpatients. ALJ submitted his Order of approval.  
**Opposition: Trinity Medical Center and St. Vincent's Health System filed intervention/opposition and request for a Contested Case Hearing.**  
**ALJ's Order Affirmed. CON Granted.**
- E. **AL2010-007, St. Vincent's Health System d/b/a St. Vincent's Birmingham, Birmingham, AL:** Proposal to add thirty-seven (37) beds and construct a ten (10) bed Intensive Care Unit within shell space in the existing hospital. When construction is completed, ten of the newly opened thirty-seven (37) beds will be moved to the ICU.  
**Opposition: Affinity Hospital, LLC d/b/a Trinity Medical Center of Birmingham withdrew opposition/intervention and request for Contested Case Hearing.**  
**Granted.**
- F. **AL2010-157, University of South Alabama Children's & Women's Hospital, Mobile, AL:** Proposal to expand the current facility by adding new operating room facilities, a dedicated pediatric tower, ancillary support services, and plant support services.  
**Opposition: None**  
**Granted.**
- G. **AL2010-171, Ridgeview Assisted Living, LLD d/b/a Ridgeview at Meadowbrook, Hoover, AL:** Proposal to relocate thirty-two (32) existing nursing home beds and equipment from Chandler Health & Rehab Center in Alabaster to Ridgeview at Meadowbrook in Shelby County. Upon relocation, Chandler's nursing home beds would decrease from 230 beds to 198 beds. Meadowbrook is licensed for eighty-four (84) ALF beds. The third-two (32) nursing home beds will not displace any ALF patients but will be opened in Wing B, which was previously used by SCALF beds.  
**Opposition: None.**  
**Granted.**

**H. Hospice Non-Substantive Review Projects:**

**The following projects were all granted.**

1. **AL2010-151, Alacare Home Health Services, Inc. d/b/a Alacare Home Health & Hospice, Birmingham, AL:** Certificate of Need 2396-HPC issued to the applicant on April 1, 2010, consists of Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Coffee, Colbert, Coosa, Crenshaw, Cullman, Dale, Dallas, DeKalb, Elmore, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marion, Marshall, Mobile, Montgomery, Morgan, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, and Winston counties. Counties requested to be added to Medicare Provider No. 01-1543 are Choctaw, Clarke, Conecuh, Covington, Escambia, Marengo, Monroe, Perry, Sumter, and Wilcox counties.  
**Opposition: None**
2. **AL2010-152, Oasis Healthcare, Inc. d/b/a Oasis Healthcare-Moody, AL:** Certificate of Need 2414-HPC issued to the applicant on April 1, 2010, consists of Blount, Jefferson, Shelby, St. Clair, Talladega, Tuscaloosa, and Walker counties. Counties requested to be added to Medicare Provider No. 01-1660 are Bibb, Calhoun, Chilton, Clay, Cullman, Etowah, and Marshall counties.  
**Opposition: None**
3. **AL2010-153, American Homecare Hospice, Sylacauga, AL:** Certificate of Need 2399-HPC issued to the applicant on April 1, 2010, consists of Talladega, Clay, Tallapoosa, Coosa, and Shelby counties. Counties requested to be added to Medicare Provider No. 01-1608 are St. Clair, Calhoun, Cleburne, Jefferson, and Chilton counties.  
**Opposition: None**
4. **AL2010-158, Health Care Investments d/b/a Life Care Hospice, LLC, Cullman, AL:** Certificate of Need 2397-HPC issued to the applicant on April 1, 2010, consists of Blount, Cullman, Etowah, Jefferson, Lawrence, Marshall, Walker, and Winston counties. Counties requested to be added to Medicare Provider No. 01-1580 are Madison and Morgan counties.  
**Opposition: None**
5. **AL2010-161, Good Samaritan Hospice of Madison, Madison, AL:** Certificate of Need 2387-HPC issued to the applicant on April 1, 2010, consists of Colbert, Lauderdale, Limestone, Madison, and Morgan counties. Counties requested to be added to Medicare Provider No. 01-1676 are Cullman, Franklin, Jackson, Lawrence, and Marshall counties.  
**Opposition: None**

6. **AL2010-163, Hospice Services of Alabama, LLC, Birmingham, AL:** Certificate of Need 2383-HPC issued to the applicant on April 1, 2010, consists of Bibb, Blount, Chilton, Cullman, Jefferson, Shelby, St. Clair, Talladega, Tuscaloosa, and Walker counties. Counties requested to be added to Medicare Provider No. 01-1629 are Autauga, Calhoun, Cherokee, Clay, Coosa, DeKalb, Elmore, Etowah, Jackson, Madison, Marshall, Montgomery, Morgan and Tallapoosa counties.  
**Opposition: None**
  
7. **AL2010-164, Odyssey Healthcare Operating B, LP d/b/a Odyssey HealthCare of Birmingham, Birmingham, AL:** Certificate of Need 2378-HPC issued to the applicant on April 1, 2010, consists of Bibb, Blount, Coosa, Cullman, Jefferson, St. Clair, Shelby, Talladega, and Walker counties. Counties requested to be added to Medicare Provider No. 01-1570 are Lawrence, Marshall, Morgan, Tuscaloosa, and Winston counties.  
**Opposition: None**

## II. **REVIEWABILITY DETERMINATIONS**

- A. **RV2010-019, AseraCare Hospice-Monroeville, LLC d/b/a AseraCare Hospice-Foley:** Request to relocate the administrative hospice office from 1113 A McKenzie Street, Foley, AL to 708 West Laurel Avenue, Foley, AL.  
**Status: Non-Reviewable**
  
- B. **RV2010-020, Southeast Alabama HomeCare, LLC d/b/a Southeast Alabama HomeCare:** Request to establish a home health branch office in Barbour County.  
**Status: Non-Reviewable**
  
- C. **RV2010-021, HGA HomeCare, LLC d/b/a HGA HomeCare of Decatur:** Request to establish a home health branch office in Cullman County.  
**Status: Non-Reviewable**

## III. **PENDING REVIEWABILITY DETERMINATIONS**

- A. **RV2010-007, Gentiva Home Health Troy:** Request to relocate the administrative office two blocks away.  
**Status: Withdrew 6/28/2010**
  
- B. **RV2010-023, Drayer Physical Therapy Institute, LLC:** Request to establish a single service physical therapy center in Jefferson County.  
**Status: Pending**
  
- C. **RV2010-024, Millennium Nursing & Rehab Center, Inc.:** Request to provide outpatient physical therapy in Madison County.  
**Status: Pending**

- D. **RV2010-025, Glenwood Healthcare, Inc.:** Request to continue providing outpatient physical therapy rehabilitation services in Lauderdale County.  
**Status: Pending**
- E. **RV2010-026, Preston Doyle Wingate, P.A.-C:** Request to establish a ten (10) station ESRD facility that would include a home hemodialysis training station and a hepatitis B positive isolation room in St. Clair County.  
**Status: Pending**
- F. **RV2010-027, Amedisys Hospice of Sylacauga:** Request a determination that Amedisys Hospice, LLC's establishing a separately licensed branch office in a county it is permitted to service under its single Medicare provider number Certificate of Need is permissible without further filings or requests to the State Health Planning and Development Agency.  
**Status: Pending**
- G. **RV2010-028, Baptist Health System, Inc., d/b/a Shelby Baptist Medical center:** Request that the acquisition of certain assets of Birmingham Radiological Group-Shelby, P.C. is not subject to CON review.  
**Status: Pending**
- H. **RV2010-029, Renal Treatment Centers Southeast, LP d/b/a DaVita Enterprise:** Request to establish a ten station ESRD facility consisting of eight hemodialysis stations, one home training station and one hemodialysis isolation station in Coffee County.  
**Status: Pending**
- I. **RV2010-030, Thomas Home Health, LLC d/b/a Thomas Home Health:** Request to establish a branch office in Baldwin County.  
**Status: Pending**

#### IV. **NEW BUSINESS**

- A. **Declaratory Ruling Request 129:**  
Mid South Home Health Agency, Inc. filed a Declaratory Ruling request that failure of a hospice provider pending licensure with ADPH as of May 13, 2009, does not meet the standard for not having abandoned its licensure application pursuant to Section 410-2-3-.10 (6)(f)(3) if the proposed provider did nothing to affirmatively seek licensure approval other than notification of readiness for survey, and was not ready at any time for inspection between submission of licensure application and March 1, 2009, the ADPH notification deadline; and as such, should not be granted untested, unopposable ground for non-substantive review of their CON application.

**Denied.**

**B. Affinity Hospital, LLC d/b/a Trinity Medical Center's "Motion for Reconsideration" of Vice-Chair's Procedural Ruling:**

Affinity Hospital, LLC d/b/a Trinity medical Center has a pending CON application to relocate its current 560-bed hospital to the abandoned 280 "Digital" hospital facility, located near the intersection of U.S. Highway 280 and Interstate 459 in Birmingham. The application, which is opposed by Brookwood Health Services, Inc. and St. Vincent's Health Systems, has been the subject of a contested case hearing before an Administrative Law Judge who has concluded the hearings, but not yet issued a recommended order. On June 29, 2010, Trinity filed a Motion asking the Board to tour the 280 facility as part of its deliberations in this case. On July 12, 2010 the Board's Vice-Chair, Hon. Reese McKinney, issued a procedural ruling denying the request. Trinity has filed a "Motion for Reconsideration" of this ruling, which is opposed by Brookwood and St. Vincent's. Copies of each of these documents have been provided to the Board.

**Motion for Reconsideration Denied.**

**The next meeting of the CON Board will be August 18, 2010 at 10:00 a.m.**

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