

JADE E. SIPES
ATTORNEY
Direct Dial: 205.244.3821
E-Mail Address: jsipes@bakerdonelson.com

AL2017-031
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STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

April 22, 2021

VIA ELECTRONIC DELIVERY

Executive Director Emily Marsal, Esq.
State Health Planning & Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36104

**Re: Physicians Choice Dialysis of Montgomery, LLC, d/b/a Montgomery
Community Dialysis, AL2017-031, Certificate of Need 2838-ESRD**

Dear Executive Director Marsal:

This law firm represents Physicians Choice Dialysis of Montgomery, LLC d/b/a Montgomery Community Dialysis (“Physicians Choice”) regarding the above-referenced Project in which a Certificate of Need (CON 2838-ESRD) was awarded to Physicians Choice to establish and create a new End State Renal Disease (ESRD) treatment facility, consisting of nine (9) in-center hemodialysis stations and one (1) isolation station, for a total of ten (10) stations in Montgomery County, Alabama.

Physicians Choice filed a progress report relating to CON 2838-ESRD notifying the Alabama State Health Planning and Development Agency (the “Agency”) of the final cost report of the actual expenditures for the subject facility. The Agency responded and requested information relating to the increase of costs for the project. The Agency indicated that a project modification should be filed.

In response to the Agency’s request, please accept this letter as a request for a project modification in accordance with Ala. Admin. Code r. 410-1-10-.03. In addition, as required by Ala. Admin. Code r. 410-1-10-.03(1)(b), a filing fee in the amount of \$7,790.30, representing 35% of the original CON Application fee of \$22,258.00, has been submitted electronically.

The requested modification will not involve the addition of beds, a change in bed classification, or the provision of new health services not specified in Physicians Choice’s CON Application.

This project modification request is necessary because Physicians Choice estimated in good faith in its CON Application that the Project’s total costs would total \$3,582,116.00, which

included the cost of construction (\$1,818,00.00), equipment (\$746,208.00), and first-year annual operating costs (\$1,017,908.00). However, due to circumstances largely beyond Physicians Choice's control, the total cost of the Project was \$4,737,361.34. The increased cost was due to increased construction costs and annual operating costs. (The actual cost for equipment was less than anticipated, with the total cost of equipment being \$467,129.33.)¹

The increased construction costs (which were estimated in the CON Application to be \$1,818,000 but were actually \$2,762,817.01) were due to a number of unforeseen circumstances beyond Physicians Choice's control. First, the cost to obtain the site of Physicians Choice's facility was \$33,000.00 more expensive than anticipated. Second, when the site for Physicians Choice's facility was selected, little information existed on the soil condition, and the estimated cost of construction submitted with the CON Application assumed that construction would require no specialized attention to the soil conditions of the subject property. The actual soil conditions could not be discovered (and fully priced) until after construction started. Once construction was underway, however, a water table was discovered, and an entire foot of soil had to be removed from the site and replaced with select fill and then an additional nine inches of stone had to be added for the entire building site. In addition to the soil issues, other items were found to be necessary during construction, including the need for an additional manhole pump, the need for additional electrical wiring at the facility, and the need for emergency lights. This all significantly increased the construction costs, and change orders with the contractor had to be executed to address these issues, increasing the construction cost by \$162,000.00. Third, there were significant weather-related delays during the project, which set completion of the project back by approximately six months. These delays increased the development fees, causing an additional \$154,500.00 to be expended. And fourth, when the project was actually bid out, the architect and engineering fees significantly increased, costing Physicians Choice an additional \$595,000.00. These additional costs (which total \$944,500.00) account for the increased final construction costs.

The increased first-year annual operating costs (which were estimated in the CON Application to be \$1,017,908.00 but were actually \$1,507,415.00), were due, in part, to the COVID-19 virus. Physicians Choice had to remit hazard pay to its staff for one year due to the virus for an additional cost of \$21,951.00. And it had to purchase Personal Protective Medical Equipment (PPE) for its staff due to the virus, which added costs of \$11,240.00. In addition, Physicians Choice incurred \$145,353.00 in costs for back office support, billing and collections, human resources, and finance that were mistakenly omitted from the budget for the first-year operating costs. But, perhaps most importantly, the increase for Physician Choice's first-year

¹ Actual equipment costs amounted to \$467,129.33, which is \$279,078.67 less than the CON Application's budget of \$746,208.00. This is because the water treatment system was \$55,000.00 less than expected; the office equipment, the dialysis chairs, and the dialysis machines were \$132,000.00 less than anticipated; although a water tap fee was budgeted for the facility for a total of \$74,078.00, it was not needed; and the televisions and electronic cabling for the dialysis chairs ended up being \$15,000.00 less than expected.

operating costs was largely due to an increase in the demand for ESRD care in the community. Physicians Choice originally budgeted for a yearly census of 3,298 treatments for year 1. But the demand from the community for ESRD care was much more than expected, and Physicians Choice actually administered 4,203 treatments in year 1. Similarly, Physicians Choice currently has nine (9) in-center hemodialysis stations (and one (1) isolation station),² meaning that per the State Health Plan, its maximum optimal capacity is 28.8 patients. From December 2019 through December 2020, Physicians Choice had an average monthly patient census of 31.75. And it provided a total of 4,379 treatments during the same period. These increased treatments required increased staffing (which, due to COVID-19, also increased costs because Physicians Choice had to provide hazard pay and purchase PPE for the staff), and they also required Physicians Choice to have to increase staffing ratios and shifts to handle these additional patients and purchase additional supplies and drugs, all for a total increase of \$310,963.00. This more-than-anticipated demand coupled with the costs associated with the COVID-19 virus increased first-year operating costs beyond the estimates included in the CON Application.

In an abundance of caution, Physicians Choice certifies under Ala. Admin. Code r. 410-1-10.03(b) that a copy of this request has been served on Renal Treatment Centers – Southeast, LP d/b/a Monarch Dialysis, which filed a Notice of Intervention and Opposition to the project and a Request for Contested Case Proceeding, although it ultimately withdrew both.

In short, Physicians Choice provides much-needed, life-or-death care to ESRD patients in the Montgomery, Alabama area. Without Physicians Choice, Montgomery County ESRD patients will have a difficult time accessing this critical, life-saving care. This project modification request should be granted so that Physicians Choice can continue to provide this vitally-important care. For the reasons explained in this letter, the actual costs increased from the costs anticipated by Physicians Choice in its CON Application. Thus, in response to the Agency's request, Physicians Choice respectfully requests the issuance of a project modification to CON 2838-ESRD. Physicians Choice submits that CON 2838-ESRD qualifies for a project modification pursuant to Ala. Admin. Code r. 410-1-10-.03.

Please let me know if you need additional information or have any questions. Thank you for your assistance with this matter.

² Under the State Health Plan, Planning Policy 2(a)(1), isolation stations are excluded from the total number of stations at a facility and are not considered when determining the optimal utilization. The optimal capacity of 28.8 patients was calculated by taking the total stations (nine) times 12 treatments per week, meaning that there are 108 available treatments per week. Optimal utilization is 80%, meaning maximum optimal capacity is 86.4 treatments per week. With three treatments per patient, the maximum optimal census is 28.8 patients per week.

Executive Director Emily Marsal, Esq.
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Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

A handwritten signature in black ink that reads "Jade Sipes". The signature is written in a cursive, flowing style.

Jade E. Sipes

JES/

cc: William G. Somerville, Esq.