



September 28, 2021

Eric Hernandez, Manager  
Randy Huyck, Analyst  
Certificate of Need Program  
Department of Health  
Olympia, WA 98501

Re: CN Application # 21-79

Dear Mr. Hernandez and Mr. Huyck:

This letter serves as follow up to the telephone conversation that Jody Carona of Health Facilities Planning & Development had with Mr. Huyck regarding Certificate of Need (CN) application #21-79. That application was filed by Astria Health, through AH NP8 (Astria) and proposed the establishment of a new dialysis facility in Yakima County in the 2021 concurrent review cycle 1.

As you are aware, Astria, Northwest Kidney Centers and Fresenius Medical Care each submitted a CN application in the 2020 prior review cycle (due on July 1, 2020) seeking to establish new dialysis centers in Yakima County. The applications were declared complete, and the scheduled decision date was set, by rule, for January 21, 2021. The public comment period closed on October 8, 2020, and all three applicants timely submitted written rebuttal. Applicants were notified on January 29, 2021—**after the scheduled decision date**—that an affected party was not sent public comment and therefore, did not have the opportunity to submit rebuttal comments. The January 29 correspondence informed the applicants that the record was being reopened to allow the party an opportunity to submit comments. The rebuttal was due by March 1, and applicants are given 10 days to respond; yet the Program extended the review by a total of 77 additional days, to May 17, 2021.

WAC 246-310-806 (1) sets the concurrent review timeline for dialysis applications. The 2021 cycle for Yakima County new, competitive dialysis stations began on the first working day of May 2021 (letter of intent) followed by a full application on the first working day of June. In an abundance of caution, Astria submitted a LOI for Yakima County by May 1, 2021, knowing that if the Program did not issue the CN decision on the 2020 applications by May 31, a new application would need to be submitted on June 1. On May 27, 2021, after attempting to reach the program via phone, Ms. Carona sent an email to Mr. Hernandez and several others noting that:

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***Updating the application and submitting the \$25,054 CN fee are costs that should not have to be borne by applicants due to oversights and delays on the part of the Program. As such, I am writing to request that Astria be refunded 100% of its 2021 filing fee should the Program approve one of 2020 cycle applicants after the submittal of its 2021 application. I would appreciate a written response regarding this request before noon on Friday, May 28.***

After business hours on May 27, the Program responded and stated:

*In reviewing your request, we can provide you with a refund only in accordance with WAC 246-310-990(3-6), if Astria elects to submit an application and withdraw it after receipt by the Program.*

With no real recourse, Astria resubmitted a new application on June 1, along with a new application fee. On June 18, the Program issued its 2020 decision, and the CN was issued to Astria, for which we are grateful. Upon advice from legal counsel, we waited for 28 days following the actual CN award to determine if any applicants were going to appeal the award (which did happen). While we waited for the appeal clock, the screening of the 2021 application was sent to us. We did not respond.

This letter confirms what Ms. Carona transmitted to Mr. Huyck: Astria requests that our 2021 application be returned, along with the review fee. Our position continues to be that it is blatantly unfair for the Program to run so late in issuing a decision, such that an applicant is forced to submit a new application to remain competitive, and in consideration. We again ask the Program to return 100% of the fee.

Thank you for the continued consideration.

Sincerely,



Brian P. Gibbons, Jr., FACHE  
President and CEO