



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

April 13, 2018

Friedrich Loura, MD, Medical Director
Western Washington Medical Group
12800 Bothell Everett Highway, #200
Everett, Washington 98208

RE: Determination of Reviewability (DOR) 18-07

Dear Dr. Loura:

The Department of Health (Department) has completed its review of your exemption request regarding the establishment of an ambulatory surgery center in Everett, within Snohomish County. The Department concludes that you must obtain a Certificate of Need (CN) for your proposed ambulatory surgical center as required by Revised Code of Washington (RCW) 70.38.105 because the primary purpose of the surgical center is surgery. Below is the information considered and the facts relied upon by the Department of Health's Certificate of Need Program in reaching its conclusion regarding your project.

APPLICABLE LAW

RCW 70.38.105 requires a CN for construction, development, or other establishment of new health care facilities. RCW 70.38.025(6) includes ambulatory surgical facilities in the definition of health care facilities. Under WAC 246-310-010(5), the Department defines ambulatory surgical facilities as follows:

"Ambulatory surgical facility" means any free-standing entity, including an ambulatory surgery center, that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using the facility is not extended to physicians or dentists outside the individual or group practice."

INFORMATION CONSIDERED

- Ambulatory Surgical Facility (ASF) exemption application received October 12, 2017
- Supplemental information received on April 11, 2018
- Revised Code of Washington (RCW) 70.38
- Washington Administrative Code (WAC) 246-310
- Department of Health's Office of Community Health Systems Interpretive Statement #CN 01-18
- Washington Secretary of State and Department of Revenue information obtained from the respective websites
- Department of Health external provider look-up

- Department of Health Integrated Licensing and Regulatory System (ILRS)
- Western Washington Medical Group website at www.wwmedgroup.com
- Certificate of Need historical files

BACKGROUND INFORMATION

On April 11, 2018, Western Washington Medical Group's attorney provided background information for this facility. Below are excerpts from that information that is pertinent to this review.

"The WWMG Endoscopy Center (the "Center") was constructed in 1994/95 and opened in 1995. It has been in continuous operation since that time. The Center has 2 procedure rooms and is currently used by 7 gastroenterologists who are all either owners and/or employees of WWMG. WWMG is 100% owned and operated by its physician owners. The WWMG gastroenterologists who use the Center have clinic offices at WWMG's main clinic located at 4225 Hoyt Avenue, Everett. The gastroenterologists also hold clinic in Monroe, Bothell, Whidbey, Anacortes and Friday Harbor. There currently is no WWMG clinical space co-located at the medical office complex where the Center is located.

The Center is currently not licensed with Department of Health as an ambulatory surgery facility (ASF) pursuant to RCW 70.230 and WAC 246-330. The Center is, however, certified by Medicare as an ambulatory surgery center. As such, the Center is prohibited from having any use other than as a Medicare certified ambulatory surgery center while it is in operation by WWMG. In order to have clinical space at location, it would need to be a separate suite with a separate entrance, or the Center would have to be closed as CMS certified ambulatory surgery center on the days it was used for clinical services."

"At the time the Center was developed and opened, WWMG was generally aware of the CN Program's then position that endoscopy procedures were not surgery and therefore endoscopy services were not subject to prior CN review and approval. See 1994 J. Sigman Letter to A. Dolan attached as Exhibit C. We understand that sometime in the late 1990s/early 2000s, the CN Program changed its position on this issue. See 2003 Sigman/Carona letter attached as Exhibit D." [Please note that the referenced exhibits C and D are not attached to this letter]

FACTS CONSIDERED

- On June 21, 1993, Western Washington Medical Group, Inc. PS was established as a Washington Professional Service Corporation with the Washington Secretary of State's Office. The corporation is governed by 23 members. [source: Secretary of State website]
- Western Washington Medical Group, Inc. PS is registered with the Washington State Department of Revenue. Its UBI # of 601-474-013 has 21 listed under it. [source: Department of Revenue website]
- Western Washington Medical Group is a multi-disciplinary multi-specialty group practice. The clinical gastroenterology (GI) practice is located at 4225 Hoyt Avenue, #A in Everett [98203], within Snohomish County.

- The surgery center is located at 12800 Bothell Everett Highway, #200 in Everett [98208], also within Snohomish County.
- Services provided at the surgery center include colonoscopy, EGD, flexible sigmoidoscopy.
- The surgery center is not operated under a management agreement.
- The surgery center does not operate with a time-share agreement with any other practice.

CONCLUSION

Ambulatory surgery facilities (ASF), subject to CN review, are defined in WAC 246-310-010(5) to mean *“any free-standing facility, including an ambulatory surgery center that operates primarily for the purpose of performing surgeries not requiring hospitalization. The term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice if the facility is not extended to physicians or dentists outside the individual or group practice.”*

The surgery center is subject to CN review because it is a “free-standing” facility, located outside of a practice. Further information provided in the application states “the surgery center is used 100% of the time as a Medicare certified ambulatory surgery center.”

Accordingly, the ASC is subject to prior Certificate of Need review. Since it is already established and operating without a valid Certificate of Need, timely submission of a Certificate of Need application is necessary.

Enclosed is a copy of the Certificate of Need rules, (WAC 246-310), regulations (RCW 70.38), and a blank application form.

APPEAL OPTION

This decision may be appealed using the option below.

Appeal Option 1:

You or any person with standing may request an adjudicative proceeding to contest this decision within 28 calendar days from the date of this letter. The notice of appeal must be filed according to the provisions of Revised Code of Washington 34.05 and Washington Administrative Code 246-310-610. A request for an adjudicative proceeding must be received within the 28 days at one of the addresses listed below.

Mailing Address:
Department of Health
Adjudicative Service Unit
Mail Stop 47879
Olympia, WA 98504-7879

Physical Address
Department of Health
Adjudicative Service Unit
111 Israel Road SE
Tumwater, WA 98501

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Determination of Reviewability #18-07
April 13, 2018
Page 4 of 4

If you have any questions or you would like to arrange for a meeting or conference call to discuss this decision, please call me at (360) 236-2955.

Sincerely,



Janis R. Sigman, Manager
Certificate of Need Program
Community Health Systems

Enclosure

cc: Janis Snoey, Assistant Attorney General
Don Black, Attorney, Ogden Murphy Wallace