



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

February 15, 2011

E. Ross Farr, Attorney
Ogden Murphy Wallace, PLLC
1601 Fifth Avenue, #2100
Seattle, Washington 98101-1686

Dear Mr. Farr:

Thank you for the Ambulatory Surgical Center Determination of Non-Reviewability (DOR) Applications received on November 17, 2010, and the supplemental information provided on February 8, 2011. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding your client's interest in establishing an Ambulatory Surgical Center (ASC) time-share arrangement. The time-share agreement would be between South Sound Surgery, PLLC and Auburn Outpatient Surgery Center, LLC.

FACTS-SOUTH SOUND SURGERY, PLLC

- On June 2, 2010, John Conrad, MD obtained an exemption from Certificate of Need review for the establishment of an ASC to be known as South Sound Surgery, PLLC.
- The ASC is located at 101 Second Avenue Northeast in Auburn, within King County.
- No other physician or entity has ownership interest in the practice.
- Currently, the South Sound Surgery, PLLC practice has one employed physician. The employed physician, Donald Stepan, MD, currently has access to the exempt ASC.

FACTS-AUBURN OUTPATIENT SURGERY CENTER, LLC

- Auburn Outpatient Surgery Center, LLC is an existing practice with one site. The practice is located at 1427 Jefferson Avenue, #101 in Enumclaw, within King County.
- Currently there is one physician associated with the practice, Nancy Becker, DO.
- No other physician or entity has ownership interest in the practice.

FACTS--PROPOSED TIME-SHARE ASC

- Dr. John Conrad and Dr. Nancy Becker have entered into time-share arrangements for the ASC associated with Dr. Conrad's South Sound Surgery, PLLC located in Auburn.
- Consistent with the time-share agreement and the lease agreement provided in the application, only the physician(s) associated with Auburn Outpatient Surgery Center, PLLC would have access to the ASC every Monday and Tuesday mornings from 7:00 am to 12:00 noon.

- Consistent with the time-share agreement and the lease agreements provided in the application, only South Sound Surgery, PLLC would have access to the ASC every Monday and Tuesday afternoons after 12:00 noon; and all days on Wednesday through Sunday.
- Procedures to be performed by Auburn Outpatient Surgery Center, PLLC at the ASC are those procedures typically associated with treatment of sinuses and ears, and some skin related procedures. A listing of common procedures is provided with the DOR request.
- All billing for Auburn Outpatient Surgery Center, PLLC procedures would be done under Auburn Outpatient Surgery Center, PLLC billing number.
- Procedures to be performed by South Sound Surgery, PLLC include those procedures typically associated with general surgery, such as hernia repair, wound care, small excisions, and breast biopsies. A listing of common procedures is provided with the DOR request.
- All billing for South Sound Surgery, PLLC procedures would be done under South Sound Surgery, PLLC billing number.
- No management agreement is proposed for the management of the ASC for South Sound Surgery, PLLC or Auburn Outpatient Surgery Center, PLLC.

ANALYSIS

- Revised Code of Washington (RCW) 70.38.105(4) identifies the types of projects subject to prior Certificate of Need review and approval. Subsection (a) identifies that the construction, development, or other establishment of a new health care facility is subject to CON review.
- RCW 70.38.025(6) defines "health care facility" as *hospices, hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.*
- Washington Administrative Code (WAC 246-310-010) defines "ambulatory surgical facility" as *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 such facility is not extended to physicians or dentists outside the individual or group practice.*

CONCLUSION

Based on the above factual information provided by you, the Certificate of Need Program concludes that the establishment of the time-share ASC associated with South Sound Surgery, PLLC and Auburn Outpatient Surgery Center, PLLC does not meet the definition of an ASC under the Certificate of Need provisions of Washington Administrative Code (WAC) 246-310-010. Therefore, the proposed ASC is not subject to Certificate of Need review.

Please note: This determination is not transferable and is based on the facts submitted in the exemption application. Prior Certificate of Need review and approval may be required under the provisions of WAC 246-310-020 if changes occur in the project. Examples of such changes include the following. This list is not intended to be all inclusive.

- 1) Should South Sound Surgery, PLLC or Auburn Outpatient Surgery Center, PLLC later decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should either South Sound Surgery, PLLC or Auburn Outpatient Surgery Center, PLLC decide to expand the scope of services at the ASC to include services subject to Certificate of Need review under the provisions of WAC 246-310-020; OR
- 3) should South Sound Surgery, PLLC or Auburn Outpatient Surgery Center, PLLC decide to organize the ASC as a separate legal entity from their respective practices; OR
- 4) should South Sound Surgery, PLLC or Auburn Outpatient Surgery Center, PLLC decide to operate the ASC under a management agreement; OR
- 5) should any entity, other than South Sound Surgery, PLLC or Auburn Outpatient Surgery Center, PLLC hold the Medicare certification; OR
- 6) should South Sound Surgery, PLLC or Auburn Outpatient Surgery Center, PLLC cease operations or relinquish its Medicare certification and then choose to resume services at the ASC; OR
- 7) should any of the following be purchased or leased: the practice of South Sound Surgery, PLLC; Auburn Outpatient Surgery Center, PLLC; or the time-share ASC.

This determination of non-reviewability does not constitute approval under any other local, federal, or state statute, or implementing rules and regulations. Examples where additional approval may be necessary include, but are not limited to, construction plan approval through the Construction Review Section of the Department of Health, facility licensing/certification through the Department of Social and Health Services or Department of Health, and other federal or local jurisdiction permits.

This decision may be appealed. The two appeal options are listed below.

Appeal Option 1:

You or any interested or affected person may request a public hearing to reconsider this decision. The request must state the specific reasons for reconsideration in accordance with Washington Administrative Code 246-310-560. A reconsideration request must be received within 28 calendar days from the date of the decision at one of the following addresses:

E. Ross Farr, Attorney
Ogden Murphy Wallace, PLLC
South Sound Surgery, PLLC & Auburn Outpatient Surgery Center, PLLC
DOR #11-14
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Mailing Address:
Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

Other Than By Mail
Department of Health
Certificate of Need Program
310 Israel Road SE
Tumwater, WA 98501

Appeal Option 2:

You or any affected 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 following addresses:

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

Other Than By Mail
Adjudicative Clerk Office
310 Israel Road SE, Building 6
Tumwater, WA 98501

Please call me at (360) 236-2957 if you have any further questions as you proceed with establishment of the time-share ASC.

Sincerely,



Karen Nidermayer, Analyst
Certificate of Need Program
Office of Certification and Technical Support

cc: John Conrad, MD – South Sound Surgery, PLLC
Nancy Becker, DO – Auburn Outpatient Surgery Center, LLC
Katherine Carosino, Attorney, Montgomery Purdue Blankenship & Austin, PLLC
Department of Health, Investigations and Inspections Office
Department of Health, Office of Customer Service