



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

August 30, 2012

Heidi Aylsworth, Vice President
Performance Improvement and Strategic Development
Swedish Health Services
747 Broadway
Seattle, Washington 98122

Dear Ms. Aylsworth:

Thank you for the May 29, 2012, submission requesting a six-month extension to the validity of Certificate of Need (CN) #1330R. CN #1330R approved the establishment of a three operating room ambulatory surgery center in Issaquah, within King County and is valid until October 1, 2012.

WAC 246-310-580 allows one six-month extension to the validity of an issued CN, provided that the applicant can demonstrate substantial and continuing progress towards commencement of the project. [emphasis added] Since the project approved by CN #1330R required construction, the provisions of WAC 246-310-580(2) applies to this request. This section states:

“in the case of a project involving construction, substantial and continuing progress towards commencement” includes one of the following:

- a) When review and approval by the department of the final plans for construction is required, the submission of working drawings;*
- b) When plan approval is not required by the department, receipt of copies of the working drawings for construction; or*
- c) In the event working drawings have not been submitted, the applicant must demonstrate that he or she has made continuous progress toward commencement of the project. [emphasis added]*

The department considered the following information in making its decision about granting an extension to CN #1330R.

- Information submitted by Swedish received on May 29, 2012, with the extension request.¹
- Supplemental letter submitted by Swedish received on August 3, 2012.

¹ The department did not consider activity that occurred between May 26, 2006 (initial CN #1330 issued) and April 6, 2009 (Order tolling commencement deadline) to be relevant to whether there had been substantial and continuous progress toward commencement of CN #1330R. The two year commencement deadline for CN #1330R was set October 1, 2010 by the Health Law Judge in Stipulation and Order Dismissing Adjudicative Proceeding (October 1, 2010 through October 1, 2012).

- Letter from Ogden Murphy Wallace representing Overlake Hospital Medical Center received August 20, 2012.
- Letter from Evergreen Hospital received July 26, 2012.
- Quarterly progress reports submitted by Swedish Health Services (SHS) from October 1, 2010 through present. A summary of the progress reports and other documents provided during this timeline is enclosed.

Significant Factors Considered:

- No working drawings have been submitted to the department (CRS² or CN). Therefore, an extension is not justified under (a) or (b).
- The supplemental information submitted in August 2012 describes various planning activities associated with the pending opening of the new Issaquah hospital. This includes the possible relocation of an approved ASC to Redmond. However, there is nothing in the Progress Monitoring Report record to support that the approved ASC being referred to in these high level planning activities is CN #1330R. Swedish had two CN approved ASCs within this planning area.³
- March 2011 Progress Report states *"Right now we are focused on CN1264R2 (Bellevue ASC) for which we applied for a site change amendment on 4/10/11. Once the situation Re: that ASC is finalized we will turn our energies to planning this ASC."* Response to monitoring question about anticipated date of submission of design documents to the Construction Review Unit was *"unknown at this time. Commencement deadline Oct 1, 2012."* Response to monitoring question about anticipated date of commencement of construction was *"unknown at this time."* The progress report also shows no changes or any planned changes to the approved project.
- September 2011 Progress Report states *"Following approval of site change for 1264R2A, Bellevue ASC, & opening of the ASC on the site, we have now shifted our attention to this C of N. We are discussing operational planning for the ASC."* Response to monitoring question about anticipated date of submission of design documents to the Construction Review Unit was *"unknown at this time. Commencement deadline Oct 1, 2012."* Response to monitoring question about anticipated date of commencement of construction was *"unknown at this time."* The progress report also shows no changes or any planned changes to the approved project.
- December 2011 Progress Report states *"Following approval of site change for 1264R2A, Bellevue ASC, & opening of the ASC on the site, we have now shifted our attention to this C of N. We are discussing operational planning for the ASC."* Response to monitoring question about anticipated date of submission of design documents to the Construction Review Unit was *"unknown at this time. Commencement deadline Oct 1, 2012."* Response to monitoring question about anticipated date of commencement of construction was *"unknown @ this time."* The progress report also shows no response to monitoring questions about changes or any planned changes to the approved project.

² Construction Review Services

³ On June 24, 2011 the department approved CN #1264R2A to relocate the Swedish-Bellevue ASC into the pending Issaquah hospital's outpatient surgery area.

- March 2012 Progress Report states *"We have filed a letter of intent for a change of location for this project. We are preparing working drawings."* Response to monitoring question about anticipated date of submission of design documents to the Construction Review Unit was *"Assuming site change approved. Oct 2012."* Response to monitoring question about anticipated date of commencement of construction was *"Assuming site change approved. April 2013"*⁴ The progress report also shows no changes in approved project. For the first time planned changes to the approved project are identified. It states *"Swedish plans to file a site-change application, & submitted a LOI to do so on 4/27/12."*

After consideration of the materials submitted for your extension request and the information submitted in the required Progress Monitoring Reports, the department concludes substantial and continuous progress toward commencement of CN #1330R has not been demonstrated. Therefore, the extension request submitted by SHS is denied. Certificate of Need #1330R remains valid until midnight, October 1, 2012.


This decision may be appealed. 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:
Department of Health
Adjudicative Service Unit
Mail Stop 47879
Olympia, WA 98504-7879

Other Than By Mail
Department of Health
Adjudicative Service Unit
111 Israel Road SE
Tumwater, WA 98501

If you have any questions, please call me directly at (360) 236-2957.

Sincerely,



Janis R. Sigman, Manager
Certificate of Need Program
Health Professions & Facilities

Enclosure

⁴ This commencement of construction date exceeds the commencement deadline (October 1, 2012). Amendments to issued CNs do not change the expiration dates.

Attachment

Noteworthy Highlights From Progress Reports Since Order Dismissing Adjudicative Proceeding and Setting Expiration Date		
Date	Document	Progress Report or Letter Highlights
October 6, 2010	Stipulation and Order Dismissing Adjudicative Proceeding	M2008-118037 Order signed by HLJ on October 1, 2010. Identified commencement deadline for CN #1330R to be two years after entry of this dismissal order. [October 1, 2012]
December 9, 2010	September 2010 Progress Report	Expiration date of CN #1330R is October 1, 2012. <ul style="list-style-type: none"> • Continued program and space planning; • No changes in approved project • No planned changes in approved project. • Anticipated commencement date not identified. • Anticipated completion date not identified.
February 18, 2011	December 2010 Progress report	Expiration date of CN #1330R is October 1, 2012. <ul style="list-style-type: none"> • Continued program and space planning; • No changes in approved project • No planned changes in approved project. • Anticipated commencement unknown at this time. • Anticipated completion date unknown at this time.
February 23, 2011	Letter to Marcia Peterson from Karen Nidermayer	Requests completion of the December 2010 Progress Report. Letter states the certificate holder must identify: <ul style="list-style-type: none"> • the anticipated or actual dates of commencement • The anticipated or actual date of completion of the project. • Description of activities to date and activities not yet undertaken or complete.
March 7, 2011	Revised December 2010 Progress Report	<ul style="list-style-type: none"> • Anticipated commencement date “unknown at this time.” • Anticipated commencement date “unknown at this time.” • We are continuing to plan this project. • We have not yet begun construction. • We are still in the planning phase. • Continued program and space planning.
April 6, 2011	March 2011 Progress Report	CN Program provided notation on Progress report requiring SHS to provide specific information related to progress. SHS provided the following: <ul style="list-style-type: none"> • No changes in approved project • No planned changes in approved project. • Discussing possible design and operations planning. • This project is still in the planning phase. We have until October 2012 to commence. • Right now we are focused on CN #1264R2

Attachment

Noteworthy Highlights From Progress Reports Since Order Dismissing Adjudicative Proceeding and Setting Expiration Date		
Date	Document	Progress Report or Letter Highlights
		<p>(Bellevue ASC) for which we applied for a site change amendment on 4/18/11.</p> <ul style="list-style-type: none"> • Once the situation RE: that ASC is finalized we will turn our energies for planning this ASC. • SHS changed the expiration date of CN #1330R to October 1, 2012.” • Anticipated commencement date identified as unknown at this time and • Anticipated completion date identified as ‘unknown at this time.’”
August 24, 2011	June 2011 Progress Report	<p>CN Program provided notation on Progress report requiring SHS to provide specific information related to progress. SHS provided the following:</p> <ul style="list-style-type: none"> • No changes in approved project • No planned changes in approved project. • Until now we have been focused on CN #1264R2 (Bellevue ASC) for which a site change was approved in July 2011. • We are now shifting our attention to this CN. • The planning phase has commenced & we are discussion possible operations planning. • Anticipated commencement date identified as ‘unknown at this time.’” • Anticipated completion date identified as ‘unknown at this time.’”
December 5, 2011	September 2011 Progress Report	<p>CN Program provided notation on Progress report requiring SHS to provide specific information related to progress. SHS provided the following:</p> <ul style="list-style-type: none"> • No changes in approved project • No planned changes in approved project. • Following approval of site change for CN #1264R2 (Bellevue ASC) & opening of the ASC on the site, we have now shifted our attention to this CN. • We are discussing operations planning. • Anticipated commencement date identified as ‘unknown at this time.’” • Anticipated completion date identified as ‘unknown at this time.’”
February 28, 2012	December 2011 Progress Report	<p>CN Program provided notation on Progress report requiring SHS to provide specific information related to progress. SHS provided the following:</p> <ul style="list-style-type: none"> • Failed to respond to questions on page 1 of Progress Report.

Attachment

Noteworthy Highlights From Progress Reports Since Order Dismissing Adjudicative Proceeding and Setting Expiration Date		
Date	Document	Progress Report or Letter Highlights
		<ul style="list-style-type: none"> • Following approval of site change for CN #1264R2 (Bellevue ASC) & opening of the ASC on the site, we have now shifted our attention to this CN. • We are discussing operations planning. • Anticipated commencement date identified as 'unknown at this time.' • Anticipated completion date identified as 'unknown at this time.'
March 1, 2012	Letter to Marcia Peterson from Karen Nidermayer	<ul style="list-style-type: none"> • Reminded SHS that CN #1330R expires on October 1, 2012. • Deadline given to request an extension request must be submitted by June 1, 2012, to be considered a valid request.
May 1, 2012 (certified letter)	Letter to Heidi Aylsworth from Karen Nidermayer	<ul style="list-style-type: none"> • Reminded SHS that CN #1330R expires on October 1, 2012. • Acknowledged Letter of Intent (LOI) submitted to amend site of CN #1330R. • Statement that amendment application must be submitted no later than May 29, 2012 to allow CN Program opportunity to review project.
May 21, 2012	March 2012 Progress Report	<ul style="list-style-type: none"> • First time a planned change in project identified. • Notation that SHS plans to submit a site change application. • Anticipated commencement date (assuming site change approved) is April 2013. • Anticipated completion date October 2013.
Note: June 2012	June Progress	<ul style="list-style-type: none"> • Progress Report was due on July 1, 2012. • To date, June Progress Report has not been received.
May 29, 2012	SHS request for 6-month extension	<ul style="list-style-type: none"> • SHS provided an overview of the history of CN #1330 & #1330R. • SHS provided its rationale for extension to be connected to the amendment of CN #1330R because of a site change. • SHS did not identify any activity of progress towards commencement of CN #1330R.
August 3, 2012	SHS supplemental information based on July 17, 2012, telephone request from Karen Nidermayer	<ul style="list-style-type: none"> • SHS provided supplemental information on activity to date from October 1, 2010 to date. • Provided high level summary planning activities from "mid-2010" to May 29, 2010.