



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

November 6, 2012

Nancy Becker, DO  
Auburn Outpatient Surgery Center, LLC  
1427 Jefferson Avenue, #101  
Enumclaw, Washington 98022

Dear Dr. Becker:

Thank you for your September 21, 2012, application for an exemption from Certificate of Need for the establishment of an ambulatory surgery center (ASC) related to your solo practice. Your application was received in the Certificate of Need Program office on September 27, 2012, and your subsequent documents were received on October 31, and November 2, 2012. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

**FACTS**

- Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. is an active corporation governed by you, Nancy Becker, DO. [source: Secretary of State website]
- The practice is located at 1427 Jefferson Avenue, #101 in Enumclaw, within King County.
- The practice employs one physician, Lisa Mulligan MD. Dr. Mulligan's time is spent between two practices: 5% to 10% of her time is spent at Auburn Outpatient Surgery Center, LLC; the remaining 90% to 95% is spent at her own practice in Issaquah.
- You intend to establish an exempt ASC in Enumclaw at the Jefferson Avenue site.
- The facility would be known as Auburn Outpatient Surgery Center, LLC, and would be a separate legal entity from the Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. practice.
- Auburn Outpatient Surgery Center, LLC, is currently an active corporation with one member—Nancy Becker, MD. [source: Secretary of State website]
- Two physicians would have access to the proposed ASC. You and Lisa Mulligan referenced above. Information related to both physicians is listed below.

Name	Credential Status	% of Time Employed by Practice
Nancy Ann Becker	Active	100%
Lisa M. Mulligan	Active	5% - 10%

- Procedures to be performed at the ASC include those surgeries typically associated with ENT and facial plastic surgeries. A listing of procedures was provided within the exemption application.
- The exemption application indicates that no management agreement for the ASC is proposed.

## **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 within the application, the ASC would be a separate legal entity from the Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. practice. Additionally, the majority of Lisa Mulligan, MD's time is spent at her own practice in Issaquah, rather than at the Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. practice.

As a result, the Certificate of Need Program concludes that the establishment of the ASC associated with the practice meets the definition of an ASC under the Certificate of Need provisions of WAC 246-310-010. Therefore, the proposed ASC is subject to prior Certificate of Need review and approval before it is established. Enclosed is a copy of the Certificate of Need rules, (WAC 246-310), regulations (RCW 70.38), and a blank application form should you wish to pursue this project.

## **APPEAL OPTIONS**

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

Nancy Becker, DO  
Auburn Outpatient Surgery Center, LLC  
DOR #13-06  
November 6, 2012  
Page 3 of 3

Appeal Option 1:

You or any interested or affected person may request a reconsideration of 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:

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  
111 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:

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

Please call me directly at (360) 236-2957 if you have any questions or you would like to meet to discuss this determination.

Sincerely,



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

Enclosure

cc: Department of Health, Investigations and Inspections Office  
Department of Health, Construction Review Services