



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

October 26, 2012

Sandra Vander Yacht, Nurse Manager
Northwest Endoscopy Center, LLC
2979 Squalicum Parkway, #301
Bellingham, Washington 98225

Dear Ms. Vander Yacht:

Thank you for your October 8, 2012, application for an exemption from Certificate of Need for the establishment of an ambulatory surgery center (ASC) to be known as Northwest Endoscopy Center, LLC. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

FACTS

- Northwest Endoscopy Center, LLC is a corporation governed by the following nine members—Christoph Reitz, Barry Levenson, Alan Chang, Todd N. Witte, MD, James Schoenecker, MD, Sandra VanderYacht, Kelly McCullough, MD, Physicians Endoscopy, LLC, and Northwest Gastroenterology, PLLC. [source: Secretary of State website]
- Physicians Endoscopy, LLC is an inactive corporation. Members of Northwest Gastroenterology, PLLC are Alan Chang, Barry Levenson, Christoph Reitz, Kelly McCullough, MD, Todd N. Witte, MD, and James Schoenecker, MD. [source: Secretary of State website]
- The practice currently has one site at 2979 Squalicum Parkway in Bellingham, within Whatcom County.
- Northwest Endoscopy Center, LLC intends to establish an exempt ASC in Bellingham at 2930 Squalicum Parkway, #202.
- The facility would be known as Northwest Endoscopy Center and would be a separate legal entity from the Northwest Endoscopy Center, LLC practice.
- Physicians Endoscopy would have 30% ownership of the ASC and Northwest Gastroenterology would have 70% ownership.

- Eight physicians would have access to the proposed ASC. Information related to the physicians is listed below.

Name	Credential Status	% of Time Employed by Practice
Barry Levenson	Active	100%
Alan G.Y. Chang	Active	100%
Christoph R. Reitz	Active	100%
Kelly D. McCullough	Active	100%
James A. Schoenecker	Active	100%
Todd N. Witte	Active	100%
Hannah Sheinin	Active	100%
Gregory William Munson	Active	100%

- A copy of the “*Organization and Operating Agreement of Northwest Gastroenterology, PLLC*” was provided as part of this exemption application. This document also demonstrates that the practice and the proposed ASC are two separate legal entities.
- Procedures to be performed at the ASC include those surgeries typically associated with endoscopy procedures, such as colonoscopy. 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 Northwest Endoscopy Center, LLC 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.

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:

Sandra Vander Yacht, Nurse Manager
Northwest Endoscopy Center, LLC
DOR #13-08
October 26, 2012
Page 4 of 4

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