



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

December 13, 2012

Jennifer Baldock, Counsel
Symbion Healthcare
40 Burton Hills Boulevard, #500
Nashville, Tennessee 37215

Dear Ms. Baldock:

Thank you for your letter of November 5, 2012, requesting a determination of reviewability regarding the potential consolidation and relocation of Bellingham Surgery Center and Northwest Ambulatory Surgery Services, LLC. Your letter was received in the Certificate of Need (CN) program office on November 6, 2012, and subsequent documentation was received on December 11, 2012. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding your consolidation and relocation project.

FACTS-BELLINGHAM SURGERY CENTER

- On November 29, 1989, CN #1002 was issued to Bellingham Surgery Center, Inc. approving the establishment of an ambulatory surgery center (ASC) to be located at 2980 Squalicum Parkway in Bellingham [98225], within Whatcom County.
- Bellingham Surgery Center was established with four operating rooms (ORs), recovery space, and administration/reception space.
- On April 14, 1999, the Certificate of Need Program concluded that the purchase of Bellingham Surgery Center by Ambulatory Resource Centres, Inc. did not require prior CN review and approval.¹ Currently Bellingham Surgery Center operates under ARC of Bellingham, LP.
- According to Department of Health files, Bellingham Surgery Center has remained in continuous operation at its current site since its inception.

FACTS-NORTHWEST AMBULATORY SURGERY SERVICES

- On September 8, 2000, CN #1002 was issued to Northwest Ambulatory Surgery Services, LLC approving the establishment of an ASC to be located at 2075 Barkley Boulevard in Bellingham [98226], within Whatcom County.
- Northwest Ambulatory Surgery Services was established with two ORs, recovery space, and administration/reception space.

¹ Ambulatory Resource Centres, Inc. is wholly owned by Symbion Healthcare. Symbion Healthcare is the managing partner of Ambulatory Resource Centres, Inc. Symbion Healthcare develops, acquires, operates, and manages ASCs in partnership with physicians, physician groups, practice management companies, payers, hospital, and hospital networks. After the 1999 acquisition of Bellingham Surgery Center, Symbion has owned and operated the ASC since that time.



- Ownership of Northwest Ambulatory Surgery Services is 53.333% physician owned (Way Yin, MD) and 45.557% non-physician owned.
- According to Department of Health files, Northwest Ambulatory Surgery Services has remained in continuous operation at its current site since its inception.

FACTS--PROPOSED CONSOLIDATION

- ARC of Bellingham, LP proposes to acquire 100% ownership of Northwest Ambulatory Surgery Services, in two separate, but sequential transactions.
 - Transaction #1: Northwest Ambulatory Surgery Services will sell 100% of the non-physician owner shares and approximately ½ of the physician owner shares to Ambulatory Resource Centres, Inc. Resulting ownership of Northwest Ambulatory Surgery Services will be 22.58% Way Yin, MD and 77.32% Ambulatory Resource Centres, Inc.
 - Transaction #2: All members of Northwest Ambulatory Surgery Services will sell 100% of the shares to ARC of Bellingham, LP. Resulting ownership of Northwest Ambulatory Surgery Services will be 100% ARC of Bellingham. This transaction is expected to occur immediately after the closing of Transaction #1.
- After consolidation of Northwest Ambulatory Surgery Services and Bellingham Surgery Center, both will continue to operate at their current, respective locations until early 2013. Both will operate under ARC of Bellingham.
- In summary, the ARC of Bellingham entity will increase by one physician and two sites in Bellingham.

FACTS--PROPOSED RELOCATION

- In early 2013, the new, consolidated ARC of Bellingham will close the Northwest Ambulatory Surgery Services site at 2075 Barkley Boulevard in Bellingham. All physicians will operate within the four ORS located at the Squalicum Parkway site.
- Also in early 2013, ARC of Bellingham will begin to remodel the former Northwest Ambulatory Surgery Services space. During the remodel, the OR space will increase from two to three. The remodel is expected to be complete in the fall of 2013.
- In the fall of 2013, ARC of Bellingham will relocate from the Squalicum Parkway site to the newly remodeled site at 2075 Barkley Boulevard in Bellingham.
- In summary, ARC of Bellingham will consolidate from two locations with a combined total of six ORs to one location at 2075 Barkley Boulevard with three ORs.
- There are no expected changes in the types procedures performed by Bellingham Surgery Center or Northwest Ambulatory Surgery Services. After consolidation, the new ARC of Bellingham will begin providing pain management cases that were solely provided by Northwest Ambulatory Surgery Services.
- ARC of Bellingham will hold the ASC license.

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.*

CONCLUSION

Based on the above factual information provided by you, the Certificate of Need Program concludes that the consolidation and relocation proposed in your letter does not require Certificate of Need review as the establishment of a new health care facility under Washington Administrative Code (WAC) 246-310-010.

Please note: This determination is not transferable and is based on the facts submitted in your letter and subsequent documentation. 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 ARC of Bellingham decide to expand the scope of services to include services subject to Certificate of Need review under the provisions of WAC 246-310-020; OR
- 2) should any entity, other than ARC of Bellingham, hold the Medicare certification; OR
- 3) should ARC of Bellingham cease operations or relinquish its Medicare certification and then choose to resume services as an ASC; OR
- 4) should ARC of Bellingham be moved to a different site than identified in your letter.

This letter 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 Health, and other federal or local jurisdiction permits.

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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:

<u>Mailing Address:</u>	<u>Other Than By Mail</u>
Department of Health	Department of Health
Certificate of Need Program	Certificate of Need Program
Mail Stop 47852	111 Israel Road SE
Olympia, WA 98504-7852	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:

<u>Mailing Address:</u>	<u>Other Than By Mail</u>
Department of Health	Department of Health
Adjudicative Service Unit	Adjudicative Service Unit
Mail Stop 47879	111 Israel Road SE
Olympia, WA 98504-7879	Tumwater, WA 98501

Please call me at (360) 236-2957 if you have any further questions as you proceed with the consolidation and relocation project.

Sincerely,



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

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