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VIA E-MAIL

Eric Hernandez
Manager – Certificate of Need
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Re: Request for Applicability Determination

Dear Mr. Hernandez:

I am writing on behalf of a group of Seattle-based orthopedic surgeons (“OPA Ortho, PLLC”) to request, pursuant to WAC 246-310-050, a certificate of need (“CN”) applicability determination that if members of the physician group acquire ownership of Seattle Surgery Center, or a legal entity that they own does so, the facility may continue to be operated as a CN-approved ambulatory surgical facility (“ASF”).

The physician group’s members propose to reacquire ownership of Seattle Surgery Center.

The physician group is the current iteration of one of the oldest medical practices in Washington. The group, established in 1958, originally was known as Orthopedic Physicians Inc. (“OPI”), later became known as Orthopedic Physician Associates (“OPA”), and is now known as OPA Ortho.

Seattle Surgery Center is an ASF authorized by CN #1001 on November 21, 1989 and later acquired by the physician group.¹ It has operated continuously as a CN-approved facility for more than thirty years, although its location changed during that time. The ASF’s current location is 900 Terry Avenue, Third Floor, Seattle, WA 98104. The facility has long been operated at this location and the physician group intends to continue operating the facility at its current location after the potential change of ownership.

Since approximately 2005, the facility has been owned by Proliance Surgeons, Inc., P.S. (“Proliance”). Proliance acquired ownership of the facility from members of the physician group, who were and are shareholders in Proliance. Notwithstanding Proliance’s ownership of Seattle

¹ See CN #1001, Nov. 21, 1989 (approving ASF, then known as First Hill Surgery Center).

Surgery Center, the physician group has continued to be responsible for the maintenance and operation of the facility as a division of Proliance.

The members of the physician group are considering their possible withdrawal from Proliance. If they take this action, they will have the contractual right and obligation to reacquire ownership of Seattle Surgery Center from Proliance, and assume the lease of the premises where the facility is located. In other words, the proposed action will result in the physician group's members once again directly owning the same ASF that they owned approximately seventeen years ago.²

The change of ownership of an ASF does not require CN review.

It is well established that the change of ownership of an ASF does not require CN review. Review is required only for those activities identified in statute.³ Specifically, review is required to establish a new ASF, but not to change the ownership of an existing ASF.⁴ The Department has confirmed this in several prior applicability determinations.⁵

The physician group seeks confirmation that Seattle Surgery Center will maintain its CN approval following the potential change of ownership.

Although the law is clear that the change of ownership of an ASC does not require CN approval, in an abundance of caution the physician group seeks confirmation that Seattle Surgery Center, specifically, will continue to be CN-approved, as it has been for more than thirty years, following the contemplated change of ownership. Specifically, the physician group wishes to confirm that the facility's CN is not separate from the facility itself, such that if ownership of the facility transfers from Proliance to the physician group, Proliance could not assert that it continues to "own" the CN (i.e., to use the CN for a different facility), resulting in Seattle Surgery Center's loss of its CN, even though the physician group would continue to operate Seattle Surgery Center at its current location following the change of ownership.

An ASF's CN approval cannot be separated from the approved facility.

CNs are facility-specific. Indeed, the CN is issued to authorize the "construction, development, or other establishment" of the specific healthcare facility identified in the application.⁶ Here, that

² Because this request relates only to the change of ownership of an existing ASF, there is no construction, change in service, or cost to be disclosed pursuant to WAC 246-310-050(1)(a).

³ See RCW 70.38.105(3), (4); see also WAC 246-310-020.

⁴ See RCW 70.38.105(4)(a) ("construction, development, or other establishment of a new health care facility" subject to CN review), RCW 70.38.025(6) ("health care facility" defined to include "ambulatory surgical facilities"); see also WAC 246-310-020(1)(a), WAC 246-310-010(5), (26); cf. RCW 70.38.105(4)(b) (CN approval required for the sale, purchase, or lease of a hospital, but not other types of healthcare facilities).

⁵ See, e.g., DOR 17-13, Mar. 28, 2017 (MultiCare Health System's purchase of Rockwood Eye Surgery Center not subject to CN review).

⁶ See WAC 246-310-020(1)(a).

facility is Seattle Surgery Center.⁷ There is no basis in the CN statutes or regulations for the separation of the CN for an existing ASF from the facility itself, such that a facility and its CN could be “owned” by different parties. Therefore, if the ownership of an ASF changes, the new owner may continue to operate the facility as an existing, CN-approved ASF, and need not separately acquire the CN for the already-acquired CN-approved facility.

The physician group accordingly requests an applicability determination that Seattle Surgery Center and its CN are inseparable, such that if members of the physician group acquire ownership of Seattle Surgery Center, or a legal entity that they own does so, they may continue to operate the facility as a CN-approved ASF without further CN review or approval.

Please let us know if any further information is necessary to provide the requested applicability determination. Otherwise, we would appreciate your providing this determination as soon as practicable.

Respectfully submitted,

Perkins Coie LLP



Brian W. Grimm
Attorneys for OPA Ortho, PLLC

⁷ See CN #1001.