



December 14, 2023

Eric Hernandez, Manager  
Certificate of Need Program Community Health Systems  
Washington Department of Health  
111 Israel Road SE  
Tumwater, WA 98501  
[e.hernandez@doh.wa.gov](mailto:e.hernandez@doh.wa.gov)

**RE: MultiCare Health System’s Planned Acquisition of Yakima Ambulatory Surgery Center—  
Determination of Non-Reviewability**

Dear Mr. Hernandez,

Pursuant to WAC 246-310-050, and on behalf of MultiCare Health System, I am requesting a certificate of need (“CN”) applicability determination regarding its planned transaction to acquire the operating rights to a surgical facility in Yakima, currently licensed as a department of Astria Toppenish Hospital (“HOPD”). The ambulatory surgical facility (“ASF”) was formerly licensed as a CN-approved ASF. The Department confirmed at the time that the CN-approved ASF changed its licensed status to an HOPD that it would continue to be considered a freestanding ASF for Certificate of Need purposes.

As part of this planned transaction, Astria Toppenish Hospital will remove the ASF from the hospital license as an HOPD and at the time when the transaction closes and MultiCare or one of its affiliates then takes control of the facility, the ASF will be licensed as a “freestanding” ASF. Accordingly, this will not be the sale of part of a hospital. We understand the Department’s position is that a change of ownership of a freestanding ASF does not require CN review.<sup>1</sup> Review is required only for those actions identified in statute, and this transaction does not meet any of those actions.<sup>2</sup> This position has been confirmed by the Department in several prior applicability determinations.<sup>3</sup>

As discussed with CN Department leadership and staff during the Technical Assistance (“TA”) call December 5, 2023, timing of this planned transaction is critical to the continuous operation of this ASF, given it will lose its lease tenancy February 28, 2024. In that event, access to important outpatient services at this ASF for a medically underserved community will be lost if MultiCare is not able to complete this transaction and continue uninterrupted operations. Pertinent facts include:

1. Name of the ASF: Yakima Ambulatory Surgery Center (“YASC”).
2. Address of YASC: 111 South 11<sup>th</sup> Avenue, Suite #220, Yakima WA 98902.

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<sup>1</sup> See, for example, letter to Ms. Cara Waller from Mr. Hernandez, Program Manager, Office of Community Health Systems, Determination of Reviewability #22-16R-Department Decision, April 6, 2022.

<sup>2</sup> See RCW 70.38. 105(3), (4). See also WAC 246-310-020.

<sup>3</sup> Letter to Ms. Cara Waller from Mr. Hernandez, Program Manager, Office of Community Health Systems, Determination of Reviewability #22-16R-Department Decision, April 6, 2022. See also DOR 17-13, March 28, 2017, MultiCare Health System Purchase of Rockwood Eye Surgery Center.

3. Current CN holder: Astria Toppenish Hospital. Please see DOR #16-30, June 22, 2016 (Attached as Exhibit 1).
4. Relevant provisions of DOR #16-30 included:
  - i. Approval to include the following:
    1. Operation of the ASF under the hospital license.
    2. Continued operation of a three-operating suite ASF, with the following approved specialties: gynecology, orthopedic, otorhinolaryngology, general surgery, plastic surgery and urology.
  - ii. A statement in the Conclusion that stated: "The department would also like to remind YASC that although the ASC is proposed to be licensed under the hospital license, for Certificate of Need purposes, the ASC is considered freestanding."<sup>4</sup>
5. Original Certificate of Need approval for YASC: August 7, 1996.
  - a. Approval included: a 3-OR ASF, with those specialties stated above.
6. Planned transaction details by MultiCare or a MultiCare affiliate ("Purchaser") include:
  - a. No capital expenditure anticipated at this time.
  - b. No change in # of ORs.
  - c. No change in specialties.
  - d. No change in address. MultiCare is currently negotiating to lease the space where the current surgical facility operates upon closing of the transaction.
  - e. No disruption in service, pre- and post-transaction.
  - f. Astria Toppenish Hospital plans to remove YASC from its hospital license as of 11:59 PM on February 28, 2024, and Purchaser will license YASC as a "freestanding" ASF with the Department of Health Licensing to be effective as of 12:00 AM on February 29, 2024.
7. Planned transaction timing. Targeted closing date: February 28, 2024.

Attached is a discussion draft of a Letter of Intent between MultiCare or an affiliate and Astria Toppenish Hospital outlining the material terms of a transaction between the parties.

Please let me know if there is any other information that is necessary to provide the requested determination. Otherwise, we would appreciate you providing this determination as soon as practicable. I can be reached at 253.403.8771 or at [ekobberstad@multicare.org](mailto:ekobberstad@multicare.org). Thank you for your assistance.

Sincerely,



K. Erin Kobberstad  
Vice President, Strategic Planning  
253-403-8771  
MultiCare Health System  
820 A Street  
Tacoma, WA 98402

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<sup>4</sup>DOR #16-30, June 22, 2016, p. 2.



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
*Olympia, Washington 98504*

June 22, 2016

John Gallagher, Chief Executive Officer  
Sunnyside Community Hospital and Clinics  
1016 Tacoma Avenue  
Post Office Box 719  
Sunnyside, Washington 98944

DOR #16-30

Dear Mr. Gallagher:

The Department of Health has completed the review of your request for a determination of reviewability regarding the purchase of Yakima Ambulatory Surgical Center within Yakima County. Below is the information considered and the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding your project.

**INFORMATION CONSIDERED**

- Sunnyside Community Hospital's letter requesting a determination, received May 17, 2016
- Sunnyside Community Hospital's supplemental information received June 17, 2016
- Certificate of Need #1150 issued on August 7, 1996
- Yakima Ambulatory Surgical Center's ambulatory surgical facility license applications received January 27, 2015, and December 11, 2015 for ASF #60103038
- Revised Code of Washington (RCW) 70.38
- Washington Administrative Code (WAC) 246-310
- Washington Secretary of State and Department of Revenue information obtained from the respective websites
- Department of Health Integrated Licensing and Regulatory System (ILRS)
- Charity Care reports produced by the office of Hospital and Patient Data Systems (HPDS)
- Certificate of Need historical files

**FACTS CONSIDERED**

- Sunnyside Community Hospital Association [SCHA] is a non-profit corporation governed by three members.
- SCHA is currently registered with both the Washington State Secretary of State office and the Department of Revenue. [source: Washington State Secretary of State and Washington State Department of Revenue websites]



**FACTS CONSIDERED (continued)**

- SCHA owns and operates Sunnyside Community Hospital located in Yakima County. The hospital provides healthcare services to the residents of Yakima and Benton counties through its healthcare clinics.
- Yakima Ambulatory Surgical Center [YASC] is a freestanding ambulatory surgery center (ASC) located at 111 South 11<sup>th</sup> Avenue, Suite #220, in Yakima [98902], within Yakima County.
- YASC received Certificate of Need approval on August 7, 1996<sup>1</sup> to provide the following surgical services in the 3-OR ASC: gynecology, orthopedic, otorhinolaryngology, general surgery, plastic surgery, and urology.
- YASC has been in continuous operation since its establishment.
- Once purchased, SCHA intends to operate YASC under the hospital license.
- No management agreement is proposed.
- No change in services is proposed. SCHA intends to continue the same mix of services at the surgery center, which is ENT, general surgery, ophthalmology, orthopedics, pain management, and plastic surgery.
- SCHA intends to operate the 3-OR surgery center at its present location in Yakima.
- No new services that require their own Certificate of Need will be offered as a result of this acquisition.

**CONCLUSION**

Based on the totality of information considered, the department concludes the purchase of Yakima Ambulatory Surgical Center by Sunnyside Community Hospital is not subject to Certificate of Need review. This determination is not transferable and the conclusions reached concerning this determination are based on its specific facts and should not be assumed the department would reach the same conclusion in future determination requests for other future ambulatory surgery center purchases.

The department would like to remind YASC that although the ASC is proposed to be licensed under the hospital license, for Certificate of Need purposes, the ASC is considered freestanding. The department would also like to remind YASC that Washington Administrative Code 246-310-270(7) requires approved ASCs to provide charity care at levels that are at least equal to or greater than the averages provided by the hospitals that would be affected by the ASC. For your convenience, the table below shows the most recent average charity care levels of the four hospitals in Yakima County.

**2012-2014 Charity Care Averages<sup>2</sup>**

<b>Four Yakima County Hospitals Combined</b>	
% of Total Revenue	1.64%
% of Adjusted Revenue	3.66%

<sup>1</sup> Certificate of Need #1150.

<sup>2</sup> Sunnyside Community Hospital did not report annual charity care information timely in 2014. As a result, 2014 data does not include percentages report by the hospital.

John Gallagher, Chief Executive Officer  
Sunnyside Community Hospital and Clinics  
DOR #16-30  
June 22, 2016  
Page 3 of 3

**APPEAL OPTION**

This decision may be appealed. You or any 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 addresses listed below.

Mailing Address:

Department of Health  
Adjudicative Service Unit  
Mail Stop 47879  
Olympia, WA 98504-7879

Physical Address

Department of Health  
Adjudicative Service Unit  
111 Israel Road SE  
Tumwater, WA 98501

If you have any questions or would like to arrange for a meeting to discuss this decision, please call me at (360) 236-2955.

Sincerely,



Janis Sigman, Manager  
Certificate of Need Program  
Community Health Systems

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

Via Electronic Mail:

Brian P. Gibbons, Jr., FACHE  
President & C.E.O.  
Astria Health  
1016 Tacoma Avenue  
Sunnyside, WA 98944

**Re: Confidential Non-Binding Letter of Intent**

Dear Brian:

The purpose of this confidential non-binding letter of intent (this “**Letter of Intent**”) is to set forth the general basis on which SHC Medical Center d/b/a Astria Toppenish Hospital (“**Astria**”), and MultiCare Health System (“**MHS**” or “**MultiCare**”) or one of MultiCare’s affiliates (each, a “**Party**” and collectively, the “**Parties**”) propose to work together to explore a transaction involving the following entity:

Astria Toppenish Hospital ambulatory surgical facility, formerly known as Yakima Ambulatory Surgery Center (“**YASC**”).

This Letter of Intent is intended to foster a collaborative process through which the Parties will discern and explore a transaction, or series of transactions, that will result in MultiCare providing cost-effective and coordinated care to patients and payers in MultiCare’s Central Washington region and surrounding communities. This Letter of Intent shall function as the framework from which the Parties shall jointly develop, negotiate and eventually draft definitive agreements that are necessary to consummate any or all portions of the proposed transactions (the “**Definitive Agreements**”). Each Party’s respective legal counsel shall work with each other to finalize the Definitive Agreements, acknowledging that time is of the essence.

1. **Current Structure and Licensed Status.** Astria owns and operates the CN-approved ambulatory surgical facility formerly known as YASC located at 111 South 11<sup>th</sup> Avenue, Suite 220, Yakima, Washington 98902 (the “**Center**”). The Center is currently licensed as an outpatient department of Astria Toppenish Hospital and has three operating rooms (“**ORs**”). The Center received Certificate of Need approval (#1150) on August 7, 1996. Surgical services authorized at the Center are gynecology, orthopedic, otorhinolaryngology, general surgery, plastic surgery, and urology. The Center will lose its leasehold interest at 111 South 11<sup>th</sup> Avenue on or around February 28, 2024.

2. **Structure of the Proposed Transaction.** As part of this planned transaction, Astria will remove the Center from the hospital license as a hospital outpatient department and at the time when the transaction closes and MultiCare or one of its affiliates then takes control of the Center, the Center will be licensed as a “freestanding” ambulatory surgical facility. Accordingly, this will not be the sale of part of a hospital. It is anticipated that Astria will transfer 100% of the operating rights and control of the Center to MultiCare or an affiliate free and clear of all liens and encumbrances of any kind, which transfer will be made in accordance with a written Asset Purchase Agreement or other similarly-styled arrangement (the “**Control Transfer**”). In connection with the Control Transfer, MultiCare proposes the following:

No capital expenditure by MultiCare anticipated at this time.

No change in # of ORs.

No change in specialties.

No change in address.

No disruption in service, pre- and post-transaction.

3. Termination of Agreements. Either in conjunction with or immediately following the Control Transfer, the Center's Lease Agreement shall be terminated (the "**Agreement Terminations**.") The Control Transfer and the Agreement Terminations shall together be referred to herein as the "**Transaction**."

4. Definitive Agreements. The terms and conditions associated with the Transaction will be set forth in mutually acceptable Definitive Agreements which shall be negotiated the Parties and include terms and conditions normally associated with a transaction of this size and complexity. The Definitive Agreements will provide that the closing of the Transaction will be expressly conditioned upon customary representations and warranties and other closing conditions generally included in transactions of similar complexity. Following the closing of the Transaction, neither Astria nor any affiliated entities will have any relationship with the Center.

5. Due Diligence; Access to Information. During the term of this Letter of Intent, Astria will permit MultiCare and its representatives to have reasonable access during normal business hours to such books, records, office space, equipment and other relevant information as necessary to enable MultiCare to conduct appropriate due diligence related to the Transaction. In addition, Astria shall promptly load any and all requested information to a data room where both Parties will have access to a secure site that is solely accessed by personnel who have a need to access the information for purposes of evaluating the Transaction. Astria shall promptly provide VMG or any other consultant mutually agreed to by the Parties access to all requested records and information necessary for VMG to provide any required analysis, including valuation.

6. Expenses. MultiCare, on one hand, and Astria, on the other, will each pay its own fees and expenses and those of their agents, advisers, attorneys and accountants with respect to the negotiation of this Letter of Intent, the conduct of due diligence, the negotiation of the Definitive Agreements, and the closing of the Transaction.

7. Control Purchase Price. In exchange for the Control Transfer and Agreement Terminations, MultiCare and/or its designees shall pay Astria and/or its designees in an amount equal to approximately \$1,050,000, subject to further diligence and any necessary and proper adjustments mutually agreed to by the Parties.

8. Timeline. The Parties anticipate closing this transaction on or before February 29, 2024.

9. Confidentiality. Each Party acknowledges it is a party to the Confidentiality and Non-Disclosure Agreement executed prior to this Letter of Intent between MultiCare and Astria (the "***NDA***"), and that the NDA remains in full force and effect and governs the exchange of

information pursuant to this Letter. This Letter of Intent supersedes and replaces any prior agreements between the Parties related to a proposed transaction.

10. Public Announcement. The Parties mutually agree that neither Party will issue any press release or make any public announcement of the Transaction or this Letter of Intent without the prior consent of the other Party, except where a public announcement is required by law as reasonably determined by such Party. The form, content, timing, and means of publication of any such press release or public announcement will be mutually agreed upon in advance by the Parties. Notwithstanding the foregoing, in the event a Party hereto determines that this Letter of Intent or the terms hereof will be the subject of discovery in any litigation involving such Party, such Party will promptly notify the other Party hereto of such determination and if the other Party concludes that such disclosure through discovery is inevitable, then: (i) the Parties will make a public announcement of the terms hereof prior to such discovery taking place; (ii) such public announcement will be made in a manner and at a time mutually agreed by the Parties; and (iii) both Parties will be represented at and permitted to participate in such announcement.

11. Non-Binding. Except for Sections 5, 6, 9, 10, 12, 13 and 14, each of which are legally enforceable and binding upon the parties, the provisions set forth in this Letter of Intent reflect the Parties' mutual understandings and current expectations, but each Party acknowledges that the Letter of Intent is not intended to create or constitute any legally binding obligation between Astria and MultiCare, and neither Astria nor MultiCare will have any liability to the other Party with respect to the provisions set forth in the Letter of Intent, except to the extent that such provisions are reflected in the Definitive Agreements and one or more Definitive Agreements are entered into by the Parties. If the Parties do not enter into one or more Definitive Agreements for any reason, neither Party to this Letter of Intent will have any liability to the other Party based upon or relating to the Letter of Intent. The Transaction shall be subject to receipt of all necessary consents and approvals, including, without limitation, any consents mandated by each party's organizational documents and the consents and approvals of all state agencies with jurisdiction over the Center.

12. Termination of Letter of Intent. This Letter of Intent may be terminated: (i) at any time, upon the agreement of the Parties; (ii) at any time, by either Party upon written notice to the other Party; or (iii) upon execution of one or more Definitive Agreements. Upon any such termination, neither Party will have any obligation or liability, except for those that arose prior to the effective date of termination.

13. Counterparts. This Letter of Intent may be executed in two or more counterparts. Each of these counterparts shall be deemed an original. All of such counterparts shall constitute one and the same document. Each party agrees that the delivery of executed counterparts of this Letter of Intent by facsimile or electronic (.pdf) transmission shall have the same force and effect as delivery of original signatures and that each party may use such facsimile or electronic signatures as evidence of the execution and delivery of this Letter of Intent to the same extent that an original signature could be used.

14. Applicable Law. This Letter of Intent and the Definitive Agreements shall be governed and construed in accordance with the laws of the State of Washington.



If you are in agreement with the provisions of this Letter of Intent, please sign below and deliver a copy to the undersigned.

Sincerely,

**MULTICARE HEALTH SYSTEM**

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By: William G. Robertson  
Title: Chief Executive Officer

**ACCEPTED AND AGREED** to this \_\_\_\_ day of \_\_\_\_\_, 2023:

**ASTRIA TOPPENISH HOSPITAL**

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By:

Title: