



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

January 15, 2013

Heidi Aylsworth, Vice President
Performance Improvement and Strategic Development
Swedish Health Systems
747 Broadway
Seattle, Washington 98122

Re: CN12-32

Dear Ms. Aylsworth:

This letter replies to Swedish Health Services' November 14, 2012, request for reconsideration of the Certificate of Need Program's October 22, 2012, decision denying its application for a site change amendment to CN #1330R.

Earlier, on August 30, 2012, the Program, under WAC 246-310-580, had denied a six-month extension to the validity period of CN # 1330R. That denial meant the validity period expired on October 1, 2012. A site change amendment to CN # 1330R could not be approved on October 22, 2012, because the validity period had expired on October 1. Swedish contests the validity-period expiration in Case # M2012-1076.

Your request for reconsideration of the site change denial is based on your interpretation of Prehearing Order No. 1 in Case # M2012-1076. You contend that the Order "tolled" the validity period from September 19, 2012, "*until the concluding of the adjudicative proceeding*" in Case # M2012-1076. You further contend that the Order "nullifies" the Program's decision on the validity-period expiration, and requires the Program to consider the "merits" of the site-change amendment.

However, following your request for reconsideration, the Health Law Judge (HLJ), in Prehearing Order # 4, reconsidered and clarified Prehearing Order # 1. The Reconsideration Order (¶ 2.4) states that, for some unknown reason, Swedish is "*interested in using the remaining September 19, 2012-October 1, 2012 period to its fullest extent.*" Hence, the Reconsideration Order (¶ 3.2) "tolled" the validity for only that 11-day period "*pending the conclusion of the adjudicative proceeding*" in Case # M2012-1076. It did not extend the validity period beyond October 1, 2012.

The Reconsideration Order also made clear that the issue in Case # M2012-1076 – whether the validity expired on October 1 – remains alive. It concluded (§ 2.3) that only by proving that it “*made substantial and continuing progress*” may Swedish obtain a six-month extension on CN # 1330R. In other words, only by obtaining the extension will Swedish be able to pursue its site-change amendment.

In conclusion, the Reconsideration Order does not, through tolling, extend the validity period of CN # 1330R beyond October 1, 2012. Hence, the reason for the Program’s denial of the site change amendment – that CN # 1339R had expired on October 1 before the amendment could be approved – remains the Program’s position. Accordingly, your request for reconsideration of the site change denial is denied.

This decision may be appealed. 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:

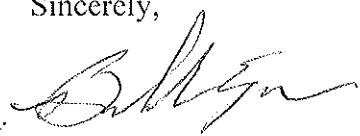
Department of Health
Adjudicative Service Unit
Mail Stop 47879
Olympia, WA 98504-7879

Other Than By Mail

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

If you have any questions, please contact me at (360) 236-2955.

Sincerely,


For Janis R. Sigman, Manager
Certificate of Need Program
Health Professions and Facilities

cc: Richard McCartan, AAG
Brian Grimm, Attorney Perkins Coie, LLC
Elana Zana, Attorney Ogden Murphy Wallace, PLLC
Emily Studebaker, Attorney Garvey Schubert Barer
Barry Tanner, Eastside Endoscopy Center
Trisha West, Evergreen Healthcare