

**Department of Health**  
**Office of Community Health Systems**

# Interpretive Statement

Revised – 10/18/11

|                        |  |                         |
|------------------------|--|-------------------------|
| <i>Title:</i>          | Certificate of Need – Interpretation of WAC 246-310-010(5), Definition of Ambulatory Surgical Facility | <i>Number: CN 01-18</i> |
| <i>References:</i>     | Chapter 70.38 RCW, WAC 246-310-010   |                         |
| <i>Contact:</i>        | Nancy Tyson, Executive Director  |                         |
| <i>Phone:</i>          | 360.236.4796   |                         |
| <i>Email:</i>          | Nancy.Tyson@doh.wa.gov   |                         |
| <i>Effective Date:</i> | January 19, 2018   |                         |
| <i>Supersedes:</i>     | n/a  |                         |
| <i>Approved By:</i>    | John Wiesman, DrPH, MPH, Secretary of Health   |                         |

The Washington Department of Health (Department) is making this statement to clarify and provide consistency to the future application of the definition of “ambulatory surgical facility” in Washington Administrative Code (WAC) 246-310-010(5):

“Ambulatory surgical facility” means 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 the facility is not extended to physicians or dentists outside the individual or group practice.”

## **The Problem**

The Department has received complaints that the Certificate of Need (CN) Program has been inconsistent over a number of years in its application of this rule. Apparently, persons both in and outside the Program have interpreted the last sentence of the definition to exempt some facilities that operate primarily for the purpose of performing surgical procedures from CN review because a private physician or a group of private physicians owned and exclusively used the facility.

Any decision to exempt an ambulatory surgical facility operating primarily to perform surgical procedures from CN review would have been in error because such as decision is inconsistent with the Department’s statutory authority.

## **The Department’s Statutory Authority**

Under RCW 70.38.105, the Legislature requires new healthcare facilities to obtain a CN. RCW 70.38.025(6) defines healthcare facilities to include ambulatory surgical facilities. The Legislature did not authorize the Department to exempt any ambulatory surgical facility from this obligation. Therefore, the only possible reason for the final sentence in WAC 246-310-010(5) is to clarify that the rooms in private offices used intermittently and exclusively by physicians to perform minor surgery as an incident to their clinical practice are not ambulatory surgical facilities.

### **The Correct Application of WAC 246-310-010(5)**

The correct application of WAC 246-310-010(5) when reviewing applications for determination of reviewability is to first examine whether a proposed ambulatory surgical facility or center “operates primarily for the purpose of performing surgical procedures.” If it does, it is required to obtain a CN. An example of a surgical facility not required to obtain a CN is a room in a private physician’s clinic where office-based surgical procedures are performed incidental to the physician’s clinical practice. Another example not required to obtain a CN is a private physician’s clinic that closes as a clinic on an intermittent basis to open as a Medicare-certified ambulatory surgical facility, provided physicians outside the practice do not use the facility.

### **The CN Program’s Current Course of Action**

The CN Program is applying WAC 246-310-010(5) consistent with this statement. This statement does not affect any determinations of reviewability issued prior to the date of this statement, unless the existing owner relocates the facility, adds operating rooms, or adds specialties. If the facility transfers ownership, the new owner must apply for an exemption or a CN.

If there is no numerical need for operating rooms in the applicable planning area when a new owner acquires a previously exempt ambulatory surgical facility, the facility can apply under WAC 246-310-270(4). This regulation provides discretion for the CN Program to approve operating rooms that would not ordinarily be approved. For example, the CN Program can issue a CN without a showing of numeric need if the applicant can show that through existing volumes the facility will have no impact on market share, the facility is necessary to provide access to specific surgical types, or the existing healthcare system supports continued operation of the facility. Having only one operating room will not be a limitation preventing a previously exempt facility from obtaining a CN.