



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

December 10, 2012

Nancy Becker, DO
Ear, Nose, Throat, Facial Plastic Surgery
and Allergy of Western Washington
1427 Jefferson Avenue, #101
Enumclaw, Washington 98022

Dear Dr. Becker:

Thank you for your Ambulatory Surgical Center Determination of Reviewability (DOR) reconsideration information received on December 4, 2012. The reconsideration information responds to the Certificate of Need Program's November 6, 2012, conclusion related to an ambulatory surgery center (ASC) associated with your practice known as Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington.¹ Below are the facts relied upon by the Certificate of Need Program in reaching its reconsidered conclusion regarding your interest in establishing an ASC associated with your practice.

FACTS

- Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. is an active corporation governed by you, Nancy Becker, DO. [source: Secretary of State website]
- The practice is located at 1427 Jefferson Avenue, #101 in Enumclaw, within King County.
- At this time, you are the only physician practicing at Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc.
- On November 1, 2011, Nancy Becker, DO, received an exemption from Certificate of Need for the timeshare use of an ASC owned and operated by Robert Wright, MD.
- The timeshare ASC is known as Meridian Surgery Center and is located at 208 – 17th Avenue Southeast in Puyallup [98072].
- You intend to establish an exempt ASC in Enumclaw at the Jefferson Avenue site. Construction of the ASC is expected to be complete by March 1, 2013.
- The facility would be operated under the Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. entity.
- Procedures to be performed at the ASC include those surgeries typically associated with ENT and facial plastic surgeries. A listing of procedures was provided within the exemption application.
- The exemption application indicates that no management agreement for the ASC is proposed.
- Once the exempt ASC associated with Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. is operational in Enumclaw, Dr. Becker will cease all use of the timeshare ASC with Dr. Wright.

¹ The initial exemption application was submitted on September 27, 2012.



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.*
- Washington Administrative Code (WAC 246-310-010) defines "ambulatory surgical facility" as *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 such facility is not extended to physicians or dentists outside the individual or group practice.*

CONCLUSION

Based on the above factual information provided by you, the Certificate of Need Program concludes that the establishment of an exempt ASC associated with your Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc practice does not meet the definition of an ASC under the Certificate of Need provisions of Washington Administrative Code (WAC) 246-310-010. Therefore, the ASC is not subject to Certificate of Need review, provided that Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc agrees to the three conditions of this exemption approval.

Conditions of Exemption Approval

- 1) Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc will provide a copy of the Certificate of Dissolution for the Auburn Outpatient Surgery Center entity. This documentation must be provided by March 31, 2013.
- 2) Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc will provide documentation verifying transfer of licenses and certifications from Auburn Outpatient Surgery Center to Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc. This documentation must be provided by March 31, 2013.

Nancy Becker, DO
Ear, Nose, Throat, Facial Plastic Surgery
and Allergy of Western Washington, Inc.
DOR #13-06R
December 10, 2012
Page 3 of 4

- 3) Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc will provide documentation to demonstrate termination of the timeshare agreement with Dr. Robert Wright, MD. This documentation must be provided as soon as the exempt ASC in Enumclaw is operational, or no later than March 31, 2013.

Please note: This exemption is not transferable and is based on the facts submitted in the exemption application. Prior Certificate of Need review and approval may be required under the provisions of WAC 246-310-020 if changes occur in your project. Examples of such changes include the following. This list is not intended to be all inclusive.

- 1) should Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc decide to expand the scope of services at the ASC to include services subject to Certificate of Need review under the provisions of WAC 246-310-020; OR
- 3) should Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc decide to organize the ASC as a separate legal entity from the practice; OR
- 4) should Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc decide to operate the ASC under a management agreement; OR
- 5) should any entity other than Ear, Nose, Throat, Facial Plastic Surgery and Allergy of Western Washington, Inc hold the Medicare certification; OR
- 6) should the ASC cease operations or relinquish its Medicare certification and then choose to resume services as an ASC; OR
- 7) should the practice or ASC be purchased or leased; OR
- 8) should the ASC be moved to a different site than identified in the exemption application.

This exemption approval 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 Social and Health Services or Department of Health, and other federal or local jurisdiction permits.

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:

Nancy Becker, DO
Ear, Nose, Throat, Facial Plastic Surgery
and Allergy of Western Washington, Inc.
DOR #13-06R
December 10, 2012
Page 4 of 4

Mailing Address:
Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

Other Than By Mail
Department of Health
Certificate of Need Program
111 Israel Road SE
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:

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

Please provide a response to this letter by January 1, 2012, acknowledging acceptance of the conditions of this exemption approval. If you have any questions regarding the exemption approval, you may call me directly at 360-206-2957.

Sincerely,



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

cc: Department of Health, Investigations and Inspections Office
Department of Health, Construction Review Services
Robert Wright, MD
E. Ross Farr, Attorney