



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

January 18, 2018

Dave Atteberry, MD
NOVA Health
6101 Summitview, #200
Yakima, Washington 98908

RE: Determination of Reviewability (DOR) 17-01

Dear Dr. Atteberry:

The Department of Health (Department) has completed its review of your exemption request regarding the establishment of an ambulatory surgery center in Yakima, within Yakima County. For the reasons stated below, the Department concludes that you must obtain a Certificate of Need (CN) for your proposed ambulatory surgical center as required by Revised Code of Washington (RCW) 70.38.105. Below is the information considered and the facts relied upon by the Department of Health's Certificate of Need Program in reaching its conclusion regarding your project.

APPLICABLE LAW

RCW 70.38.105 requires a CN for construction, development, or other establishment of new health care facilities. RCW 70.38.025(6) includes ambulatory surgical facilities in the definition of health care facilities. Under WAC 246-310-010(5), the Department defines ambulatory surgical facilities as follows:

"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."

INFORMATION CONSIDERED

- Ambulatory Surgery Center (ASC) exemption application received July 11, 2016
- Supplemental information received on September 15, 2016, November 29, 2016, February 7, 2017, and November 27, 2017
- 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 external provider look-up
- Department of Health Integrated Licensing and Regulatory System (ILRS)
- Frontier Neurosurgery website at www.frontierneurosurgery.com
- Astria Sunnyside Hospital website at www.sunnysidehospital.org
- Certificate of Need historical files

BACKGROUND INFORMATION

On February 13, 2015, Frontier Neurosurgery, PLLC received an exemption from Certificate of Need for the establishment of an ambulatory surgery center located at 6101 Summitview Avenue, #200 in Yakima, within Yakima County. Subsequent to the exemption approval, Frontier Neurosurgery, PLLC elected to enter into a management agreement with Pacific Northwest ASC Management for management of the surgery center. Given that the facts of the exemption approval have changed, a new exemption is required. This letter is a review of the exemption application which includes the management agreement with Pacific Northwest ASC Management.

FACTS CONSIDERED

- On November 17, 2010, Frontier Neurosurgery, PLLC was established as a limited liability corporation with the Washington Secretary of State's Office. The corporation is governed by one member: Dave Atteberry, MD. [source: Secretary of State website]
- Frontier Neurosurgery, PLLC has been registered with the Washington State Department of Revenue since November 1, 2010. [source: Department of Revenue website]
- On May 16, 2016, Frontier Neurosurgery, PLLC dba NOVA Health, entered into an Asset Purchase Agreement with Sunnyside Community Hospital Association dba Sunnyside Community Hospital and Clinics.¹ This information was not disclosed in the July 11, 2016, Exemption Application. However, an un-redacted copy of the Asset Purchase Agreement was provided on November 27, 2017.
- The surgery center is operated by Astria Sunnyside Hospital.
- The surgery center is operated under a management agreement with Pacific Northwest ASC Management.

CONCLUSION

Ambulatory surgery facilities (ASF), subject to CN review, are defined in WAC 246-310-010(5) to mean *“any free-standing facility, including an ambulatory surgery center that operates primarily for the purpose of performing surgeries not requiring hospitalization. The term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice if the facility is not extended to physicians or dentists outside the individual or group practice.”*

Once purchased by Sunnyside Community Hospital Association dba Sunnyside Community Hospital and Clinics, the surgery center no longer qualified for the exemption. Since the practice is now owned by Astria Sunnyside Hospital, under the first sentence of the rule, the surgery center is subject to CN

¹ Sunnyside Community Hospital is now known as Astria Sunnyside Hospital.

review because it is a “free-standing” facility, located outside of a hospital, where surgeries would be performed.

Accordingly, the ASC is subject to prior Certificate of Need review. Since it is already established and operating without a valid exemption, timely submission of a Certificate of Need application is necessary.

Enclosed is a copy of the Certificate of Need rules, (WAC 246-310), regulations (RCW 70.38), and a blank application form.

APPEAL OPTION

This decision may be appealed using the option below.

Appeal Option 1:

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

Sincerely,



Janis R. Sigman, Manager
Certificate of Need Program
Community Health Systems

Enclosure

cc: Janis Snoey, AAG