



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

Certificate of Need Program

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February 20, 2018

Mr. Peter Diemer, Attorney at Law
Clayton & Diemer, LLC
500 L Street, Suite 200
Anchorage, AK 99501

RE: Request for Determination dated December 18, 2017

Dear Mr. Diemer,

Thank you for your letter dated January 26, 2018 in which you responded to the Department's January 9, 2018 letter asking for additional information regarding your request for a determination as to whether a proposed business reorganization and relocation by Muldoon ASC, LLC (Muldoon), ASC North, LLC (North), and South Anchorage Surgery Center, LLC (SASC) requires a certificate of need (CON). The Department has reviewed both your request for determination dated December 18, 2017 and the certified cost estimate submitted January 26, 2018. The Department determines that the proposed activity is subject to CON laws, and that therefore a certificate of need application must be submitted and approved before you may begin with the proposed activity.

Based upon our review of your request for determination we find the following:

1. Muldoon, North and SASC are all currently licensed ambulatory surgery centers within Anchorage.
2. ASC North, and SASC have one operating room each and Muldoon operates as a co-located but temporally separate facility from North.
3. Muldoon, North, and SASC desire to reorganize to create a new business entity.
4. After the new business is created, it desires to relocate all of the existing facilities to a remodeled consolidated site of approximately 11,000 square feet located at 1917 Abbott Road, Suite 100 in Anchorage, Alaska. This location is where SASC is currently co-located with Advanced Pain Centers of Alaska.
5. The proposed single facility would have two operating rooms, but perform the same categories of health services as are currently being provided at the existing ambulatory surgery centers.
6. The total cost of this relocation, as stated in the certified cost estimate, is \$7,545,034.

Pursuant to the submitted cost estimate, the proposed project would require a CON under Alaska Statute 18.07.031 because it is estimated to cost at least \$7,545,034 for construction of a health care facility. However, Muldoon, North, and SASC claim that the project is exempt from the CON statute because of the exception in Alaska Statute 18.07.031(c):

“[A] person who is lawfully operating a health care facility that is an ambulatory surgical facility at a site may make an expenditure of any amount in order to relocate the services of that facility to a new site in the same community without obtaining a certificate of need as long as neither the bed capacity nor the number of categories of health services provided at the new site is greater.”

The Department disagrees for a number of reasons.

First, the statute provides an exception for a ‘person’ relocating a single facility within the same community. The proposal outlined in the Request for Determination is for multiple ‘persons’ to create a new entity to operate a new healthcare facility. The statute clearly contemplates a single entity moving within the same community, not the merging of multiple entities into one. This is further supported by the clear language of the statute that provides: “health care facility that is an ambulatory surgical facility at a site may make an expenditure of any amount in order to relocate the services of that facility.” This statute is framed in the singular, nowhere is it contemplated that anything other than a single *ambulatory surgical facility* could move without the required Certificate of Need.

Secondly, the proposed project does increase the bed capacity because it proposes two operating rooms. While the overall bed capacity in Anchorage would not change, the facility itself would change. Again, this type of merger does not appear to be what AS 18.07.031(c) is designed to allow.

Therefore, because the exception which allows an ambulatory surgery center to relocate does not apply to the proposed activity, it is subject to the CON requirement in AS 18.07.031, and you must apply for a CON, and it must be approved before the project may begin.

If you are dissatisfied with this determination, you may request reconsideration under 7 AAC 07.033. A request for reconsideration must be received by the CON Program and postmarked no later than 30 days after this notice, it must be signed by the person seeking reconsideration or an authorized representative, it must reference this determination, and it must explain the reasons for disagreement with this decision. If you wish to revise your request for determination, or apply for a CON, please notify the CON Program.

Regards,



Alexandria Hicks, CON Coordinator