



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

December 10, 2012

Sarah McMillan, MD  
5209 Lake Washington Boulevard Northeast, #115  
Kirkland, Washington 98033

Dear Dr. McMillan:

Thank you for your Ambulatory Surgical Center Determination of Reviewability (DOR) reconsideration information received on December 5, 2012. The reconsideration information responds to the Certificate of Need Program's November 26, 2012, conclusion related to an ambulatory surgery center (ASC) associated with your solo practice.<sup>1</sup> 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 solo practice known as Sarah E. McMillan, MD, PLLC.

**FACTS**

- Sarah E. McMillan, MD, PLLC is a solo practice corporation governed solely by one member—Sarah E. McMillan, MD. [source: Secretary of State website]
- The practice has one site at 5209 Lake Washington Boulevard Northeast, #115 in Kirkland [98033], within King County.
- You intend to establish an exempt ASC at the Lake Washington Boulevard practice site.
- The proposed ASC would not be operated under a separate legal entity from your solo practice entity.
- At this time, only one physician would have access to the proposed ASC—Sarah E. McMillan, MD. Information related to the physician is listed below.

Name	Credential Status	% of Time Employed by Practice
Sarah E. McMillan	Active	100% - sole owner

- Procedures to be performed at the ASC include those surgeries typically associated with plastic surgery, such as scar revisions, facial surgeries, and liposuction. A common listing of procedures was provided within the exemption application.
- The exemption application indicates that no management agreement for the ASC is proposed.

<sup>1</sup> The initial exemption application was submitted on November 5, 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 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 the ASC associated with your solo practice known as Sarah E. McMillan, MD, PLLC does not meet the definition of an ASC under the Certificate of Need provisions of Washington Administrative Code (WAC) 246-310-010. Therefore, the proposed ASC is not subject to Certificate of Need review.

**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 you decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should you 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 you decide to organize the ASC as a separate legal entity from the practice; OR
- 4) should you decide to operate the ASC under a management agreement; OR

- 5) should any entity other than Sarah E. McMillan, MD, PLLC 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 reconsidered decision may be appealed. The appeal option is listed below.

Appeal Option 1:

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 call me at (360) 236-2957 if you have any further questions regarding the establishment of the exempt ASC.

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