



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

Certificate of Need Program
111 Israel Road Southeast – MS 4-7852
Olympia, Washington 98504

November 21, 2014

Neil Johnson, Chief Operating Officer
EvergreenHealth
12040 Northeast 128th Street
Kirkland, Washington 98034

RE: DOR 14-26

Dear Mr. Johnson:

The Department of Health (department) has completed the review of your request under Washington Administrative Code (WAC) 246-310-050 for a determination related to Evergreen Surgery Center and Evergreen Surgical Clinic, both located in Kirkland, within King County. Below is the information considered and the facts relied upon by the Certificate of Need (CN) Program in reaching its conclusion regarding your project.

INFORMATION CONSIDERED

- CN #607-0 issued to Evergreen Surgical Center¹ on April 27, 1981 (information includes evaluation).
- September 26, 1994, Determination of Reviewability request from Evergreen Surgical Clinic.
- September 5, 2002, CN exemption approval issued to Evergreen Surgical Clinic.
- May 13, 2014, Determination of Reviewability request from EvergreenHealth.
- Supplemental information provided on July 25, 2014, May 13, 2014, and August 15, 2014.
- Notes from July 19, 2014, and October 6, 2014, conference calls with Certificate of Need staff and representatives of EvergreenHealth.
- Functional program and plan review comments related to Construction Review Project #60424148.
- Revised Code of Washington (RCW) 70.38
- Washington Administrative Code (WAC) 246-310
- Certificate of Need historical files

¹ CN #607-0 was issued to Evergreen Surgical Center that is now known as Evergreen Surgery Center. To avoid confusion, hereinafter, this facility will be referenced as Evergreen Surgery Center.

FACTS CONSIDERED

Evergreen Surgery Center

- On April 27, 1981, CN #607-0 was issued to Evergreen Surgery Center approving the establishment of a two operating room ambulatory surgery center to be located at 12911 – 120th Avenue Northeast in Kirkland. At that time, the owning corporation was made up of Evergreen Hospital [55%] and a number of physicians [45%].
- In October 2012, Evergreen Hospital purchased the 45% ownership from the physicians, resulting in 100% owned by the hospital.²
- On October 18, 2012, the attorney for the Evergreen Hospital received confirmation from CN staff that the business operations of Evergreen Surgery Center could be moved under the hospital's license and CN #607-0 would remain in effect. According to CN files, that action occurred in late year 2012.
- At this time, the surgery center is operated as an outpatient department of Evergreen Hospital.

Evergreen Surgical Clinic

- On September 26, 1994, Evergreen Surgical Clinic received a determination of non-reviewability for the establishment of an ambulatory surgery center at 12303 Northeast 130th Lane in Kirkland. The facility currently has two operating rooms.
- On September 5, 2002, Evergreen Surgical Clinic received a determination of non-reviewability to establish a new ambulatory surgery center located at 12333 Northeast 130th Lane. The surgery center located at 12303 Northeast 130th Lane would close.³

DOR #14-26 Submitted by EvergreenHealth

- For this project, Evergreen Surgery Center remains under the hospital's license and continues to operate as an outpatient department of the hospital.
- EvergreenHealth provided documentation to demonstrate that the hospital and the medical office building that house both Evergreen Surgery Center and Evergreen Surgical Clinic are connected by a tunnel.
- Because of the tunnel connection, EvergreenHealth asserts that Evergreen Surgery Center is part of the hospital's footprint and therefore "in" the hospital.
- EvergreenHealth proposes to purchase Evergreen Surgical Clinic, the CN exempt facility located in the same medical office building as Evergreen Surgery Center.
- EvergreenHealth also proposes transfer CN #607-0 that was issued to Evergreen Surgery Center to the newly acquired Evergreen Surgical Clinic.
- If approved the hospital would be operating: 1) Evergreen Surgery Center as an outpatient department in the hospital with eight operating rooms; and 2) Evergreen Surgical Clinic as a CN approved surgery center with two operating rooms.

² At some point, Evergreen Surgery Center's operating rooms were expanded from the two approved to eight. This action occurred without prior contact from either Evergreen Surgery Center or Evergreen Hospital to CN staff.

³ The practice is part of Proliance Surgeons, PS.

CONCLUSION

Based on the totality of information considered, the department provides the following conclusions.

Evergreen Surgery Center

- This facility can continue to operate as an outpatient department of the hospital. Further, the department concurs with the assertion that the space is part of the hospital's footprint and therefore in the hospital.
- However, since the space is considered to be part of the hospital's footprint, CN #607-0 is not required for the continued operations of this outpatient surgery department.
- Once CN #607-0 is no longer required, then the CN is deemed relinquished and no longer in effect.

Evergreen Surgical Clinic

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."*

Evergreen Surgical Clinic has been exempt from CN approval under the second sentence of WAC 246-310-010(5). Once purchased by Evergreen Hospital, the Clinic would lose that exemption. Under the first sentence of the rule, the Clinic would be subject to CN review because it would be a "free-standing" facility, located outside of a hospital, where surgeries would be performed.

Finally, Evergreen Surgery Center's CN is not transferable to Evergreen Surgical Clinic for two reasons. First, as explained above, the Evergreen Surgery Center's CN will no longer be in effect, leaving nothing to be transferred. Second, the Evergreen Surgery Center received CN approval to operate at 12911 – 120th Avenue Northeast in Kirkland, and cannot be relocated to a new address without CN approval.

APPEAL OPTION

This decision is subject to judicial review provisions in RCW 34.05.

If you have any questions regarding this conclusion, please call me at 360-236-2955.

Sincerely,



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