



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

Certificate of Need Program

3601 C Street, Suite 978
Anchorage, Alaska 99503
Main: 907.334.2464
Fax: 907.334-2220

January 6, 2016

Mr. Harold Gear
Muldoon ASC, LLC
11284 Business Boulevard
Eagle River, AK 99557

Re: Muldoon ASC, LLC Request for Determination 11-24-2015

Dear Mr. Gear,

Thank you for your letter dated December 21, 2015, in which you provide additional information requested by the Department on December 11, 2015 regarding your request for determination as to whether Muldoon ASC, LLC's (Muldoon ASC) proposed project requires a certificate of need (CON).

Per the initial request for determination dated November 11, 2015, and the additional information provided on December 21, 2015, Muldoon ASC seeks to co-locate a single operating room ambulatory surgery center with ASC North, LLC (ASC North), which is an ambulatory surgery center located in a free-standing building at 6911 DeBarr Road.

You correctly point out that "[a]s we discussed during our meeting on November 5, 2015, this concept is in accordance with CMS guidelines for temporally separate ASCs that share the same location[.]" This is further supported by information that is published on the Alaska Department of Health and Social Services, Division of Health Care Services' website.¹ The information states:

CMS does permit two different Medicare-participating ASCs to use the same physical space, so long as they are temporally separated. That is, the two facilities must have entirely separate operations, records, etc., and may not be open at the same time.

Based on this information, it appears to be valid for two Medicare-participating ASCs to use the same space as long as they are temporally separated. You indicate that Muldoon ASC will be temporally located with ASC North. Since they will be temporally located, Muldoon ASC's

¹See http://dhss.alaska.gov/dhcs/Pages/hflc/fac_asc.aspx

costs are estimated using a percentage of the total costs expended, or to be expended, by ASC North, plus other additional costs that are specific to Muldoon ASC.

Given that both facilities will need to maintain entirely separate operations, they can only access and occupy the space at totally distinct times. Accordingly, Muldoon ASC will be operating a maximum of two days per week, and ASC North will be operating a maximum of five days per week. Based on this ratio, you estimate several of Muldoon ASC's costs as two-sevenths of the total costs estimated for or incurred by ASC North.

Using this allocation method, and after factoring in certain additional costs that are specific to Muldoon ASC, total expenditures for the Muldoon ASC is estimated to be \$532,450.00. Based on the documentation presented, the CON program estimates the costs to be \$527,653.77. The CON program's breakdown is as follows:

DESCRIPTION	COSTS (from ASC North Determination 7/30/15)	ALLOCATION	EXPENDITURE
• Building & Land	\$225,840.00	2/7	\$64,525.71
• Tenant Improve	\$994,874.00	2/7	\$284,249.71
• Consulting Fees	\$750.00	2/7	\$214.29
• Equipment	\$182,079.00	2/7	\$52,022.57
• Shipping Costs	\$15,000.00	2/7	\$4,285.71
• Added Equip	<u>N/A</u>	<u>N/A</u>	<u>\$122,355.77</u>
• TOTAL	\$1,418,543.00		\$527,653.77

In your December 21, 2015 letter, you clarified the minor discrepancy between Muldoon ASC's estimated project costs (i.e. \$532,450.00) and the CON program's estimates (i.e. \$527,653.77) as a math or translational error, indicated that you added \$5,000 to the cost in case there were additional costs associated with shipping of equipment and did not allocate a portion of the consulting fees to the project cost. Since the documentation provided supports the CON program's estimates, and since both estimates are so far below the \$1.5 million CON threshold, the CON program will use its estimates for this determination.

In your December 21, 2015 letter, you also provided an explanation about the surgery specialties that will be offered by Muldoon ASC, and how those specialties will likely differ from the specialties offered by ASC North. You also confirmed that the additional equipment costs specific to Muldoon ASC are attributable to endoscopy equipment.

Finally, in your December 21, 2015 letter, you explained the allocation method used to separate costs between Muldoon ASC and ASC North. The allocation is described as follows:

Muldoon ASC, LLC
January 5, 2016
Page 3

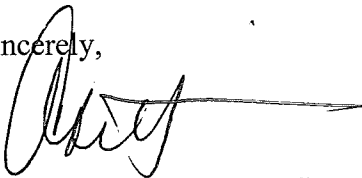
Ultimately, I cannot give you a more definitive estimate of the number of cases, nor the final head count of surgeons that will be involved with Muldoon ASC. Our current best estimate is that we will fill up 4 full days a week with ASC North and 2 full days a week with Muldoon ASC. Currently there is no interest from either ASC to utilize Sundays, but for cost allocation purposes it is our opinion that it should be carried by ASC North, since ASC North will only be granting Muldoon ASC a sub-lease for a maximum of 2 days per week. Therefore the 5/7 and 2/7 allocation ratio makes logical sense.

The CON program agrees that based on the information provided, the 5/7 and 2/7 allocation appears to be a reasonable means of allocating costs between the two ASCs.

Based on Muldoon ASC's request for determination, and the additional information provided on December 21, 2015, a CON is not required for the proposed project, as presented, because the expenditures at issue do not exceed the \$1.5 million statutory threshold under AS 18.07.031.

If you are dissatisfied with this determination, you may request reconsideration under 7 AAC 07.033. A request for reconsideration must be postmarked no later than 30 days after publication of the public notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex", with a long horizontal line extending to the right.

Alexandria Hicks, CON Coordinator