



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

Certificate of Need Program
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Anchorage, Alaska 99503
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November 7, 2017

Mr. William W. Horton
Jones Walker LLP
One Federal Place
1819 5th Avenue North, Suite 1100
Birmingham, Alabama 35203-2122

RE: Surgery Center of Wasilla, LLC Request for Determination – Additional Operating Room

Dear Mr. Horton,

In January of 2016, the Department of Health and Social Services (Department) issued a determination that the Surgery Center of Wasilla (SCOW) did not require a Certificate of Need (CON) to relocate its facility from one location in Wasilla, to its current location on East Meridian Loop in Wasilla. The relocation did not require a CON pursuant to AS 18.07.031(c) because SCOW was relocating to a site in the same community and not expanding bed capacity or the category of health services provided.

On September 8, 2017, the Department received a letter from the SCOW requesting a formal determination as to whether a CON is necessary to convert a storage room to an additional operating room. The SCOW is currently an ambulatory surgery center with one operating room, located at 3190 East Meridian Loop, Suite 111, Wasilla, Alaska.

In your letter you state that you believe a CON is not necessary for the additional operating room because the cost of the conversion falls below the CON monetary threshold of \$1.5 million. You also state the proposed project does not require a CON as it does not constitute a divided or phased activity which would be considered a single activity for the purposes of AS 18.07.

The department required additional information and requested the following:

- Certified cost estimates for the original construction of the facility in its current location.
- An incremental breakdown of these costs related to the original construction of the space including any plumbing, electrical, and HVAC work.
- Proof the conversion costs were not financed together with SCOW's relocation.

Your response dated October 13, 2017 included a certified cost estimate by Howdie General Contractor, Inc. for the construction of the original facility as well as the proposed conversion.

The final estimate certified that the total cost of the proposed conversion, in addition to the costs to initially construct the 454 square foot space, resulted in a revised total of \$238,958.18. Adding the equipment costs for the new operating room would bring the total construction costs for the proposed operating room to \$322,545.13

Total Revised Cost:	<u>\$322,545.13</u>
Construction Cost to build original storage space	\$131,272.18
Construction Cost to convert space)	\$107,686.00
Equipment Costs – Proposed OR	\$ 83,586.95

Per the department's request for proof the conversion cost was not financed with the initial development costs, you provided a letter from the SCOWs lender, First National Bank of Alaska. The lender for the relocation and construction of the property certified the credit provided did not consider an additional operating room at a later time.

You also included in your response to our request for additional information the net present value of the remaining lease payments allocable to the space proposed. You state the total, which would be payable regardless of how the space was utilized, is \$75,290 and that it would not increase due to the conversion. In this instance, this cost is not subject to the \$1.5 million CON monetary threshold as the lease payments do not increase as a result of the proposed conversion of space.

Construction on SCOW's new location was completed around March 1, 2017. SCOW submitted its request for determination related to conversion of a storage room to operating room just over 180 days later on September 8, 2017.

The department must look at two issues to make its determination. First, the department must consider whether the construction to convert the storage room to an operating room will exceed the monetary threshold of \$1.5 million and therefore require a CON. Second, whether the conversion of the storage room must be considered a single activity attached to the overall relocation to the new facility because it is part of a divided or phased project pursuant to 7 AAC 07.025(d). If the conversion is considered part of the overall construction, then the project clearly exceeds the threshold and a CON would be required.

Threshold for the Operating Room

The department considers the cost of the original construction of the storage room, and the costs to convert the storage room to an operating room. Based on the certified cost estimates provided by SCOW, these combined costs are \$322,545.13. This amount is under the \$1.5 million threshold, so no CON will be required on this basis.

Divided or Phased Activity

Under 7 AAC 07.025(d), there are three reasons that require the department to consider the costs of multiple construction projects as a single activity for purposes of determining the monetary threshold. Each must be considered here.

1. Whether the components were financed together.

SCOW has provided the department with a letter from First National Bank Alaska stating that the credit it extended to SCOW in July 2016 for \$7.15 million was for the purpose of relocating and constructing their ambulatory surgical facility with one operating suite, and did not take into account the addition of a second surgery suite being added in the future. Therefore, this additional operating room was not financed as part of the previously constructed components.

2. Whether one component is dependent upon completion of another component, and neither component would meet the objectives of a certificate of need application.

This section does not apply since SCOW has not submitted an application for a CON.

3. Whether different activities are built at the same time or with no more than 120 days between the completion of one activity and the start of another.

SCOW completed construction on its new location on or about March 1, 2017. It submitted its request for determination regarding the addition of a second operating room on September 8, 2017. The period of time between the completion of the facility and the planned construction of the second operating room is greater than 120 days, and therefore this is not considered a phased activity under this subsection.

Because the proposed activity does not meet any of the criteria under 7 AAC 07.025(d), this is not a divided or phased activity that ought to be considered a single activity under the CON program.

Since the proposed activity will cost less than \$1.5 million and is not part of a phased activity, no CON is required for the activity. 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.

Regards,



Alexandria Hicks, Coordinator
Certificate of Need Program