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March 24, 2012

Via U.S. Mail

Debra Fisher,
Ambulatory Surgical Facility Program Manager
Washington State Department of Health
P.O. Box 47852
Olympia, WA 98504-7852

Re: Proposed Ambulatory Surgical Facility Licensing Fee Increase
Washington Ambulatory Surgery Center Association Comments

Also sent via email: debra.fisher@doh.wa.gov

Dear Ms. Fisher:

On behalf of the Washington Ambulatory Surgery Center Association ("WASCA"), please find below comments regarding the proposed rulemaking announced by the Washington State Department of Health (the "Department") on March 7, 2012 regarding ambulatory surgical facility license fees (the "Proposed Rule").

WASCA is a nonprofit association representing the interests of those who own, operate and seek the services of ambulatory surgery centers in the state of Washington. Ambulatory surgery centers include "ambulatory surgical facilities" or "ASFs" licensed pursuant to chapter 70.230 RCW and other entities that operate for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within 24 hours and do not require inpatient hospitalization.

WASCA was established in 1991. It currently represents approximately 120 ambulatory surgery centers as well as the professionals who provide services and the patients who seek care at these centers. Ambulatory surgery centers play a central role in creating a modern, innovative healthcare delivery system by offering efficient and quality care at lower costs. WASCA is dedicated to promoting the well-being of Washington's residents and preserving their access to efficient and quality care. Accordingly, the association supports the licensure of ASFs. However, the Proposed Rule raises concerns for WASCA's membership. The Proposed Rule would not only increase ASF licensing fees, but it would also change other significant aspects of the ASF licensing requirements.



WASCA understands that, pursuant to certain authority granted in Engrossed Substitute House Bill 1087, the Department seeks to increase ASF licensing fees to fund the costs of the ASF licensing program.¹ WASCA appreciates the Department's willingness to meet with representatives of the ambulatory surgery industry since November 22, 2011 in connection with the Department's proposed increase in ASF license fees. WASCA also appreciates the Department's willingness to consider alternative ASF licensing fee models and its willingness to consider reducing the proposed ASF licensing fee.

However, WASCA is concerned that the Proposed Rule provides for a reduced licensing fee only for certain accredited ASFs. It provides for a reduced licensing fee only for ASFs that are accredited by The Joint Commission, Accreditation Association for Ambulatory Health Care, or American Association for Accreditation of Ambulatory Surgery Facilities at a level that meets Medicare's Conditions of Coverage. This amendment to WAC 246-330-199 is not authorized by Engrossed Substitute House Bill 1087 and would violate Governor Christine Gregoire's Executive Orders 10-03 and 10-06, which suspends all non-critical rulemaking through December 31, 2012.

WASCA is also concerned that the Proposed Rule changes the licensing requirements for certain accredited ASFs. The Proposed Rule distinguishes between ASFs that are accredited at a level that meets Medicare's Conditions for Coverage and ASFs that are accredited at a level that does not meet Medicare's Conditions for Coverage. No distinction currently exists in the ASF licensure law, chapter 70.230 RCW, or the ASF licensure regulations, chapter 246-330 WAC. *See* WAC 246-330-020; WAC 246-330-025; WAC 246-330-105; WAC 246-330-500. In fact, pursuant to RCW 70.230(5), the Department has recognized the accreditation standards of The Joint Commission, the Accreditation Association for Ambulatory Health Care, and the American Association for Accreditation of Ambulatory Surgery Facilities as substantially equivalent to the state licensing requirements, irrespective of whether those standards meet Medicare's Conditions of Coverage.

For the foregoing reasons, WASCA respectfully requests that Subsection (1)(a) of the Proposed Rule be revised as follows to eliminate the proposed distinction between ASFs accredited at a level that meets Medicare's Conditions for Coverage and those that are accredited at a level that does not meet Medicare's Conditions for Coverage:

¹ The CR-102 states:

Reasons supporting proposal:

In 2007, ASF was established as a new licensing category (effective 2009) to protect the public's health by ensuring a safe environment for ASF patients. RCW 43.70.250 requires the cost of each licensing program be fully borne by the licensees. Since 2009, costs to operate the ASF program have far exceeded revenue. In 2011, the department was given the authority in the operating budget (E2SHB1087) to increase fees to fund the costs of the program. In addition, HB1575 (2011) was passed redefining ASFs that fall under the licensing requirement. The proposed rule also reflects that change.



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Accredited, for purposes of the initial and renewal fee, means an ASF is accredited by one of the organizations identified in WAC 246-330-025 (1)(b) ~~at the level that meets medicare's conditions of coverage.~~

WASCA appreciates the opportunity to offer comments on the Proposed Rule. Please do not hesitate to contact me if you would like to discuss WASCA's comments in further detail.

Sincerely,

GARVEY SCHUBERT BARER

By

Emily R. Studebaker

cc: Board of Directors, Washington Ambulatory Surgery Center Association
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