

SYNOPSIS

Rule 272-2 Certificate of Need

Rule 272-2-.07 Exclusions

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed amendment in totality is to modify existing regulations in light of changes in the Certificate of Need statute, O.C.G.A. § 31-6 et seq., due to the passage of Senate Bill (SB) 433 in the 2008 Georgia General Assembly. SB 433 necessitates extensive revision to the existing administrative rules for certificate of need. The revisions are outlined in detail below.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

This rule is repealed in its entirety. The provisions for a LNR are addressed in Rule 111-2-2-.10(4)(a) as new language under this Rule section but is inclusive of the requirements to qualify for a letter of non-reviewability for a single specialty ambulatory surgical center that previously existed at Rule 272-2-.07(5) as well as new requirements for exemption as a joint venture ambulatory surgical center. Rule 111-2-2-.10(4)(a)(1)-(18) includes all the language of Rule 272-2-.07(5)(a)-(r).

272-2-.07 Exclusions. Repealed.

~~(1) Repealed.~~

~~(2) Repealed.~~

~~(3) Repealed.~~

~~(4) Repealed.~~

~~(5) When the Department receives a request for a Letter of Non-Reviewability (LNR) for the establishment of a physician-owned, single-specialty, office-based ambulatory surgery facility, pursuant to O.C.G.A. § 31-6-2(14)(G)(iii), the party requesting such a letter must comply with the following:~~

~~(a) Identify the name and address of the proposed ambulatory surgery facility, including the principal business address of the sole physician or group practice that will own the facility.~~

~~(b) Identify the individual private physician, or all owners (e.g., stockholders, partners, members) of the single group practice of private physicians who are also of the same single specialty, that will own, operate, and utilize the proposed facility. All members of the single group practice must be of the same specified surgical specialty. Physicians who perform procedures within the ambulatory surgery facility must own at least eighty-five (85) per cent of the group practice and the surgery center. The Department will issue a LNR, if all other criteria are met, to a single group practice which utilizes the services of employee physicians of the same specialty in the surgery center if these employee physicians are not a member or employee of any other medical practice. All employee physicians must be identified, and an affirmative statement with regard to their practice affiliation must be included. The Department will allow no more than fifteen (15) per cent non-physician ownership in the physician (s) practice requesting a LNR, and/or the surgery center. Evidence of non-physician ownership, including the percentage of such ownership, must be provided with the LNR request.~~

~~(c) All physicians must be licensed to practice in the state of Georgia, and must submit a copy of such license; should any physician members of a single group practice perform procedures in the ambulatory surgery facility created by the issuance of a LNR lose their license to practice medicine in Georgia, the LNR shall be revoked, unless within sixty (60) days of such physician losing their license, the group practice submits new evidence documenting that the physician ownership of the facility by the group practice does not include the physician who lost their license.~~

~~(d) Submit evidence of the sole physician professional corporation or the entity comprising the single group practice of private physicians, to include authorizing and governing documents such as articles of incorporation, by laws, operating agreements, partnership agreements, etc. Submit a sworn affidavit, signed by the owners, which lists all owners of the sole or group practice and the proposed surgery facility.~~

~~(e) The physician(s) must show evidence of ownership by warranty deed or lease of the space housing the ambulatory surgery facility including the clinical office space.~~

~~(f) Provide a detailed description of the proximity of the physician's or the group practice's clinical offices to the ambulatory surgery facility. The Department will only grant a LNR to those proposed ambulatory surgical facilities, which are deemed to be in reasonable proximity to the clinical offices of the sole physician or single group practice that will own the proposed facility. Reasonable proximity will be determined on a case-by-case basis. Examples of reasonable proximity include those ambulatory surgical facilities on the same floor and physically attached to the clinical offices; surgical suites on a different floor of the same building as the clinical offices with one public entrance to the proposed facility.~~

~~(g) State the number of operating rooms in the proposed ambulatory surgery facility.~~

~~(h) State the total square footage in the proposed ambulatory surgery facility. This total includes the square footage associated with all operating suites, reception and waiting areas, business offices, pre and post-operation areas, all building common areas including a pro rata share of the common areas of buildings utilized by multiple tenants, which are new and/or renovated and involve expenditures to be incurred in the development, construction and establishment of the proposed surgery facility.~~

~~(i) List costs attributable to new construction or renovation of the total area comprising the ambulatory surgery facility. Documentation of the total cost of constructing, developing, and establishing the proposed ambulatory surgical facility, and the costs of all items associated with or simultaneously developed with the project, including, but not limited to, fixed equipment not included in the construction contract, moveable equipment, architectural and engineering fees, legal and administrative fees, interim financing (interest during construction), and underwriting costs. The documentation of construction and renovation costs must be in the form of a letter from a licensed Georgia architect verifying the estimated construction costs of the proposed ambulatory surgery facility. With regard to the construction of a new building (or a new wing including space devoted to services other than the surgery center) to house an ambulatory surgery facility, a pro-rata portion of the building shell costs, including all building common areas, must be allocated to the costs of the proposed ambulatory surgery facility. Other costs to be included are:~~

~~1. The cost of new space (even if the space will be leased) based on the construction cost of the new space. Appropriate documentation from an architect licensed in Georgia must be submitted. A copy of all leases must be submitted;~~

~~2. The cost of all equipment (medical and non-medical) purchased for the ambulatory surgery facility.~~

~~3. The present value of any equipment to be leased for the surgery facility.~~

~~4. The Department must have a line item breakdown of all amounts attributable to new construction, renovation, furnishings, leases, and items of equipment in accordance with the provisions outlined above, including new expenditures for furnishings for non-patient care areas such as waiting areas, reception areas, and business offices.~~

~~The Department will require a sworn affidavit that no party associated with the practice or physicians requesting a LNR, by virtue of ownership or employment, has incurred any expenditure for equipment or employment, has incurred any expenditure for equipment of any kind to be utilized in the surgery center that has been subsequently donated to~~

~~the practice for use in the surgery center and the cost of that equipment, whether purchased or leased, was not included in the dollar threshold applicable to the surgery center.~~

~~(j) A schematic floor plan must be provided to the Department. This documentation must be clear and readable. The floor plan must clearly show all areas of the proposed ambulatory surgery facility.~~

~~(k) Pursuant to O.C.G.A. § 31-6-2(14), list the cost of all other items, regardless whether they are independently subject to Certificate of Need review, that are associated and to be simultaneously developed with the proposed ambulatory surgery facility, except for the expenditure or commitment of funds to develop studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites.~~

~~(l) The Department will not issue a LNR to any sole physician or single specialty group practice of physicians proposing to bill a professional fee through a larger multi-specialty group practice in which the single specialty group practice requesting the LNR remains a part of. For purposes of these rules, this provision does not preclude the issuance of a LNR to a physician(s), which utilizes a larger group practice for the sole purpose of billing services under the provider number of the sole physician or single group practice.~~

~~(m) The Department will not issue a LNR to any physician(s) who is a member of more than one single group practice, pursuant to O.C.G.A. § 43-1B-3(5) of the Georgia Patient Self-Referral Law.~~

~~(n) The Department will not issue a LNR to any group practice of physicians if any members of that group practice are also members of a multi-specialty clinical practice. For purposes of these rules a multi-specialty clinical group practice does not mean any volume purchasing association or managed care network whose function is managed care contracting in which the physician or group practice participates.~~

~~(o) The Department will not issue a LNR to any party proposing to share operating rooms or common space in a proposed ambulatory surgical facility between more than one group practice of the same specialty or between more than one surgical group practice of different specialties, or between more than one sole physician of the same or different specialties who are not members of the same medical practice.~~

~~(p) Provide a sworn affidavit, signed by the physician(s) owners, that the party requesting a LNR will not incur any additional capital expenditures involving new construction or renovation of physical space or the addition or replacement of equipment within three years after the issuance of the LNR, which, when coupled with prior expenditures, would exceed the threshold amount applicable to the statutory exemption for this type of facility unless it first secures a Certificate of Need. A party holding a LNR issued by the Department may request, in writing, a waiver from this provision for expenditures for equipment involving newly recognized and innovative medical technologies (FDA approved) present in the marketplace. Any such expenditure will be applied to the original threshold amount unless the written consent of the Department is obtained prior to the expenditure.~~

~~(q) Upon completion of construction of the ambulatory surgery facility, the party requesting a LNR shall submit a final statement of the total costs of the facility, including a separate line item completed project cost sheet with the same detail and~~

~~documentation as required in subsection (J) above. In addition, if the proposed ambulatory surgery facility is not completed within 180 days of the issuance of a LNR, the party requesting a LNR shall submit an interim statement within two weeks of the end of that 180 day period and within two weeks of the end of each succeeding 90 day period until the final statement is submitted upon completion of the facility. Each of the interim statements shall disclose the cost of the facility incurred to date, and any good faith estimates of the percentage of completion of the facility and the amount of costs expected to be incurred to complete the facility. The accuracy and completeness of the interim and final statements shall be verified by sworn affidavits from an authorized owner or officer of the party requesting a LNR and from the general contractor. Failure to comply with the provisions of this subsection may result in the rescission of the LNR issued.~~

~~(f) The LNR is not transferable to a purchaser of the sole physician or single group practice, which originally received a LNR. This provision is not intended to limit the transferability of a sole physician practice or a group practice, but is intended to put the new physician owners on notice that they must request a new LNR as new owners of that practice. Such a new request will be evaluated based on the LNR criteria applicable at the time of the new request, and the acquisition costs of the practice will not be a part of the applicable capital expenditure threshold.~~

Authority O.C.G.A. §§ 31-5A, 31-6.