

**Mississippi State Department of Health
Division of Health Planning and Resource Development
May 2008**

CON Review ASC-A-0208-004

DeSoto Ambulatory Surgery Center, LLC

Amendment/Cost Overrun to CON #R-0576

(Establishment of a Freestanding Ambulatory Surgery Facility)

Approved Capital Expenditure: \$2,037,007

Location: Olive Branch, DeSoto County, Mississippi

STAFF ANALYSIS

I. PROJECT SUMMARY

A. Applicant Information

DeSoto Ambulatory Surgery Center, LLC (“DASC”) is a closely held, member managed, limited liability company, established with two members – Lynn Carvel, MD, and Woodrum/ASD. Since the time of filing the original application, Community Care, Inc. became a substitute member for Woodrum/ASD.

B. Project Background

Certificate of Need No. R-0576, effective September 26, 2002, authorized DASC to establish a freestanding ambulatory surgery facility and services in Olive Branch, DeSoto County, Mississippi. The facility was proposed to include three (3) operating rooms and one (1) treatment room. The surgery center would be a Medicare approved facility consisting of approximately 12,000 square feet of leased space in a building to be constructed on property located at 9080 Sandidge Center Cove in Olive Branch, adjacent to DeSoto Diagnostic Imaging, LLC, and the DeSoto Family Medical Clinic. The building to house DASC was to be constructed by Zobar, LLC, an entity owned by Lynn Carvel, MD, the trust of Randon Carvel (Dr. Carvel’s husband) and two (2) trusts for each of the Carvels’ children. The center would provide orthopedic surgery, urological surgery, podiatric surgery, general surgery, ENT surgery, plastic surgery, neurological surgery, gynecological surgery, pain management, and ophthalmological services.

C. Project Description

DASC requests a CON amendment to change the site of DeSoto ASC to reflect a new location within Olive Branch, Mississippi. The applicant

submits that the original site that was approved pursuant to the CON application has been sold.

The applicant submits that it has been in discussions with College Park Medical Plaza, LLC ("College Park"), a real estate developer that is not related to or affiliated with DASC, to construct space conducive for DeSoto ASC. The building will be constructed on property located at 5427 Highway 305 within the city limits of Olive Branch. The applicant proposes to lease 10,000 square feet of space in the College Park Medical Plaza for the ambulatory surgery center, instead of the 12,000 square feet proposed in the original application.

The Division of Health Facilities Licensure and Certification has approved the new site of construction. Construction is expected to commence six to eight months after approval of the CON amendment and completion is expected 12 months after the commencement of construction of the building.

II. TYPE OF REVIEW REQUIRED

The State Health Officer reviews all projects for amendment and cost overrun in accordance with duly adopted procedures and standards of the Mississippi State Department of Health.

In accordance with Section 41-7-197(2) of the Mississippi Code or 1972 Annotated, as amended, any affected person may request a public hearing on this project within 20 days of publication of this staff analysis. The opportunity to request a hearing expires on June 5, 2008.

III. CONFORMANCE WITH THE STATE HEALTH PLAN AND OTHER ADOPTED CRITERIA AND STANDARDS

A. State Health Plan (SHP)

The original project was in substantial compliance with the FY 2002 *State Health Plan*, in effect at the time of submission.

In 2000, the period for which the latest data were available for the original application, facilities located in Ambulatory Surgery Planning Area (ASPA) 2, in which DeSoto County is located, performed a total of 28,925 surgeries utilizing 43 operating suites, for an average of 673 surgeries per suite. In 2007, there were 27,984 surgeries performed utilizing 48 suites, for an average of 583 surgeries per suite. The *FY 2002 State Health Plan* required that an applicant proposing to offer ambulatory surgery services document that the existing facilities in the ASPA have been utilized for a minimum of 600 surgeries per operating room per year for the most recent 12-month reporting period. The following table shows the change in surgeries performed in ASPA 2 over the past seven years in comparison to surgeries performed in the ASPA in 2000.

Year	Total Surgeries	Total ORs	Average Number of Surgeries/OR
2007	27,984	48	583
2006	27,057	47	576
2005	26,522	43	617
2004	26,904	46	585
2003	26,631	42	634
2002	28,502	43	663
2001	29,823	43	694
2000	28,925	43	673

The *FY 2007 State Health Plan* requires that an applicant proposing to offer ambulatory surgery services document that the existing facilities in the ASPA have been utilized for a minimum of 800 surgeries per operating suite. Given the information above, this amendment application does not continue to be in compliance with the *FY 2002 State Health Plan*, in effect at the time the project was approved, nor is it in compliance with the *FY 2007 State Health Plan*, in effect at the time the amendment was submitted.

It is a general CON policy that: “The MSDH intends to approve an application for CON if it substantially complies with the projected need and with the applicable criteria and standards presented in the Plan, and to disapprove all CON applications which do not substantially comply with the projected need or with applicable criteria and standards presented in the Plan.”

B. General Review (GR) Criteria

The original project was in substantial compliance with the *Certificate of Need Review Manual, 2000 revision*, in effect at the time of submission.

However, as indicated above, the need for ambulatory surgery services in ASPA 2 has continued to decline since approval of this project. Further, as stated above, the MSDH intends to disapprove all CON applications that do not substantially comply with the projected need as stated in the State Health Plan. In addition, one of the purposes of Certificate of Need, as stated in the FY 2002 State Health Plan, is to prevent unnecessary duplication of health services.

General Criterion 1 requires that all projects be reviewed under the State Health Plan in effect at the time the application is received by the Department. Further, no project may be approved unless it is consistent with the State Health Plan. This project does not continue to be in compliance with the FY 2002 State Health Plan in effect at the time of receipt of the original application, and therefore does not continue to be in compliance with the Certificate of Need Review Manual.

At the time this application was submitted, the project was in compliance with the projection of need as stated in the FY 2002 Plan; however, due to the decline in surgeries performed in ASPA 2 since approval of the project, staff is concerned that the project may not be economically viable today and that it presents an unnecessary duplication of health services in the area.

The applicant does not project a change in the three-year operating statement as presented in the original application; thus, projecting to perform 3,253 surgeries the first year.

Staff is further concerned that given the number of surgeries performed in the area, the project may have an adverse effect on the existing ambulatory surgery facilities in the service area.

The Certificate of Need Review Manual provides that: "A CON may be amended when no substantial change exists in construction, service, or capital expenditure when extenuating circumstances or events, as

determined by the State Department of Health, inhibit completion of a Certificate of Need as originally presented in final form.” The applicant’s justification of need for the amendment was that the original site approved pursuant to the CON application has been sold. It should be noted that the approved site on which the ASC would be constructed was adjacent to other property owned by Lynn Carvel, MD, the primary applicant for DeSoto Ambulatory Surgery Center, LLC. Therefore, need for this amendment has not been adequately demonstrated.

IV. FINANCIAL FEASIBILITY

A. Capital Expenditure Summary

	<u>Approved Capital Expenditure</u>	<u>Revised Capital Expenditure</u>	<u>Increase (Decrease)</u>
Construction (including fixed equipment)	\$ 0	\$ 0	\$ 0
Renovation	0	0	0
Equipment	1,662,007	1,832,813	170,806
Land	0	0	0
Site Work	0	0	0
Architectural/Engineering Fees	205,000	0	(205,000)
Capitalized Interest	0	0	0
Contingency Reserve	0	100,000	100,000
Other Fees (Accounting)	170,000	70,000	(100,000)
Total	\$2,037,007	\$2,002,813	\$(34,194)

The applicant submits that while equipment costs with respect to the project have increased since the CON application was filed in 2001, other capital expenditures associated with this project are either no longer applicable with respect to the project or have decreased.

The cost of equipment was originally estimated at \$1,662,007 and is now \$1,832,813, reflecting an increase of \$170,806; architectural and consultant fees are part of the expense and cost that will be borne by College Park Medical Plaza, LLC, in constructing the building, representing a reduction of \$205,000; added contingency represents \$100,000; and the “Other” line item in the amount of \$170,000 for “pre-opening supplies, salaries, equipment deposit, and other miscellaneous,” is no longer illustrative of the “Other” capital costs associated with this

project, according to the applicant. However, the applicant states that DeSoto has expended approximately \$70,000 toward the private offering submitted to various physicians. The total revised capital expenditure is thus \$2,002,813. The applicant does not request an increase or decrease in approved capital expenditure.

The applicant further submits that although construction cost has increased since approval of the project, construction cost will be borne by College Park Medical Plaza, LLC. The applicant will, however, pay a 20 percent increase in rent (\$36 per square foot instead of the original \$30 per square foot).

B. Method of Financing

The original project was to be financed from equity contributions of \$375,000, and a bank loan (for equipment) of \$1,662,007. The applicant indicates that financing has not changed for the project.

C. Effect on Operating Cost

The applicant's projected operating expenses for the first year of operation are presented in Attachment 1. The applicant does not project any changes in the original operating statement.

D. Cost to Medicare/Medicaid

According to the applicant, this CON amendment will have no effect on Medicaid patients, Medicare patients, or other patients.

V. RECOMMENDATION OF OTHER AFFECTED AGENCIES

The Division of Medicaid was provided a copy of this amendment to CON # R-0576; however, no comments were received.

VI. CONCLUSIONS AND RECOMMENDATION

The original application was found to be in substantial compliance with criteria and standards for the establishment of an ambulatory surgery facility found in the

FY 2002 Mississippi State Health Plan; Certificate of Need Review Manual, 2000 revisions; and all adopted rules, procedures, and plans of the Mississippi State Department of Health in effect at the time of approval. However, the project does not continue to be in compliance with the FY 2002 Plan, nor is it in compliance with the FY 2007 Plan currently in effect. Specifically, the FY 2002 Plan required that an applicant proposing to provide ambulatory surgery services demonstrate that each existing facility in the ASPA have been utilized for a minimum of 600 surgeries per operating suite per year for the most recent 12-month period. Data submitted to the Department by existing ambulatory surgery facilities indicate that only 583 surgeries per operating room were performed during the 12-month period January through December 2007. In addition, given the decline in surgeries performed in ASPA 2 since original approval of the project, staff is concerned that the project presents an unnecessary duplication of health services and may no longer be economically viable.

Consequently, the Division of Health Planning and Resource Development recommends disapproval of the application submitted on behalf of DeSoto Ambulatory Surgery Center, LLC for amendment of CON # R-0576.

Attachment 1

**DeSoto Ambulatory Surgery Center, LLC
Projected Operating Statement
First Year of Operation**

	Year 1
Revenue	
Gross Patient Service Revenue	\$5,964,776
Charity/Indigent Care (2%)	(119,296)
Contractual Adjustments (45%)	(2,684,149)
Bad Debt (3%)	(178,943)
Net Operating Revenue	<u>\$ 2,982,388</u>
Expenses	
Salaries and Benefits	\$ 736,819
Medical Supplies and Drugs	665,644
Rent	360,000
Depreciation and Amortization	312,430
Operating Cost (Building)	72,000
Interest	172,589
Insurance	32,528
Housekeeping and Medical Waste	21,758
Transcription	11,385
Laundry and Linen	13,011
Repairs (Equipment)	20,000
Marketing	29,824
Office Supplies	29,824
Legal and Accounting	20,000
Telephone	8,947
Administration	178,943
Miscellaneous	59,648
Total Operating Expense	<u>\$ 2,745,349</u>
Net Income (Loss)	\$ 237,039
Assumptions	
Number of Patients	3,253
Treatment (Procedures)/Patient	1
Avg. No. of Treatments(Procedures)	3,253
Cost/Treatment (Procedure)	\$ 844
Charge/Treatment (Procedure)	\$ 1,834