

State Supreme Court to hear arguments on new hospital transfer rules Tuesday

By Dan Jackson The Daily World

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The Washington state Supreme Court is set to hear oral arguments today in a case that could effect Grays Harbor Community Hospital.

The case, between the state Department of Health and the Washington State Hospital Association, involves new rules for the state's Certificate of Need process. The state last year created stricter rules governing the program, which oversees changes in hospital ownership and services. The state Hospital Association sued the state over the rules in February of last year, and the case was granted Supreme Court review in December.

Historically, hospitals have been required to apply for a new Certificate of Need when a facility entered into a new sale, purchase or lease agreement. The new rules call for the process to cover a wider range of affiliations between hospitals, prompting the association to call for the court to invalidate the rules. The association says the new rules go beyond the authority of the Department of Health, and could force even some small business decisions — like outsourcing billing services — to go through lengthy and costly reviews.

The process to get a new Certificate of Need can take up to a year, and cost upwards of \$40,000 in filing fees, according to the association.

The new rules have been suspended as the case has made its way to the Supreme Court. Since the timeline by which justices may rule on a case is unpredictable, the court's office does not offer estimates for how long it will take for them to make a decision.

Under the old rules, the transition of Grays Harbor Community Hospital to Public Hospital District 2's control did not require a new Certificate of Need.

Grays Harbor Community Hospital's assets still reside with its original non-profit corporation. Instead of leasing or purchasing those assets, control of the corporation was simply transferred to the new public district by making the district the sole governing member of the non-profit. Public district board members serve dual roles as board members of the non-profit corporation.

Since no assets were leased or purchased, the district and Grays Harbor Community were able to avoid the Certificate of Need process, and control of the facility was transferred to the district on Jan. 1.

Since the new rules have not gone into effect due to the court case, it is still unclear if Grays Harbor Community Hospital would be required to apply for a new Certificate of Need if the state Hospital Association loses the case. The new rules implement a "change of control" provision that can trigger the Certificate of Need process even if it only involves part of a facility, a provision that may yet apply to Grays Harbor.

Either way, Community Hospital CEO Tom Jensen said hospital officials believe the effect would most likely be minimal.

Because of the method by which the hospital's control was transferred, Jensen said they believe, even under the new rules, a new Certificate of Need would not be necessary since in essence the hospital transferred facility control by simply "swapping board members."

However, if they are wrong, the hospital would just pay its \$40,000 and go through the process, he said. And, even if the worst-case scenario happened — the need for a Certificate of Need jeopardized the hospital's newly gained higher Medicaid reimbursement — the hospital has other options to keep the cash flow coming.

“If we found ourselves in that position, we would simply ask for a temporary waiver,” Jensen said.

As for the new rules themselves, Jensen sees them from a bottom-line perspective. Simply put, “They will increase hospitals' costs to provide more or different levels of service,” he said.

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