



DATE: September 19, 2024

TO: Commissioners

FROM: Jeanne Marie Gawel, Acting Chief, Certificate of Need

SUBJECT: Chesapeake Eye Surgery Center, LLC, Inc.
Docket No. 22-02-2461

Enclosed is the staff report and recommendation for a Request for Project Change after Certificate of Need (CON) Approval filed by Chesapeake Eye Surgery Center, LLC (CESC). On April 20, 2023, the Commission approved a Certificate of Need (CON) to CESC for the addition of one sterile OR, resulting in three sterile ORs after project completion, thereby establishing an ambulatory surgical facility (ASF)¹ at 2002 Medical Parkway, Suite 330, Annapolis, Maryland (Anne Arundel County). The project was approved at an estimated cost of \$636,164.00, which the applicant planned to fund with cash.

CESC has exceeded the approved budget and is now requesting the approval of the increase in the approved cost of the project of \$539,194. The increase is attributed to an underestimate of renovation, moveable equipment, and architect costs, bringing the total project budget to \$1,175,358. The applicant funded the additional cost with cash.

Staff recommends that the Commission **APPROVE** the Request for Project Change after Certificate of Need Approval based on staff's conclusion that the proposed project is a permissible modification, and it does not materially change the nature of the project, the location, or the immediate capacity. The requested project change would not alter the findings that the Commission made in 2023 concerning the need and the positive impact establishing a 3 OR ASF in Anne Arundel County.

¹ COMAR 10.24.11.07B(3) defines an ambulatory surgical facility as a health care facility that: (a) has three or more operating rooms; (b) operates primarily for the purpose of providing surgical services to patients who do not require overnight hospitalization and (c) seeks reimbursement from payors as an ambulatory surgical facility.

IN THE MATTER OF

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BEFORE THE

CHESAPEAKE EYE SURGERY
CENTER

MARYLAND HEALTH

CARE COMMISSION

DOCKET NO. 22-02-2461

**STAFF REPORT
REQUEST FOR PROJECT CHANGE
AFTER CERTIFICATE OF NEED APPROVAL**

I. INTRODUCTION

Background

Chesapeake Eye Surgery Center (CESC) is an existing ambulatory surgery center (ASC-2)¹ that provides ophthalmic surgery outpatient procedures with two operating rooms (OR) and two procedure rooms located at 2002 Medical Parkway, Suite 330 in Annapolis, Anne Arundel County. Vision Innovation Partners Topco, L.P is the 100% owner of CESC. Vision Innovation Partners Topco, L.P. is owned by Gryphon Partners, VI, L.P. (30.3 percent), Gryphon Partners VI-A, L.P. (41 percent), Maria Scott, M.D. (4.5 percent), and several additional owners with less than two percent ownership each.

On April 20, 2023, the Commission approved a Certificate of Need (CON) to CESC for the addition of one sterile OR, resulting in three sterile ORs after project completion, thereby establishing an ambulatory surgical facility (ASF).² The project was approved at an estimated cost of \$636,164.00, which includes \$530,137 in capital costs and \$106,027 inflation allowance. CESC funded this project with cash.

Project Change Request

On September 10, 2024, CESC submitted a Request for First Use that documented project costs that exceeded the approved budget of \$636,164. After being advised by staff that changes to an approved project required Commission approval, CESC submitted a Request for Post-Approval Project Change on September 16, 2024, for an increase of \$539,194 (85%) in the project budget, bringing the total cost estimate to \$1,175,358. The increased capital expenditures are attributed to an underestimation of renovation (\$507,485) and movable equipment costs (\$163,312), and

¹ COMAR 10.24.11.07B(2) defines an “ambulatory surgery center” (ASC) as any center, service, office, facility, or office of one or more health care practitioners, a group practice, or a non-rate-regulated center owned by a hospital that has no more than two operating rooms, that operates primarily for the purpose of providing surgical services to patients who do not require overnight hospitalization, and that seeks reimbursement from payors for the provision of ambulatory surgical services. An ASC-2 is an ambulatory surgery center with two operating rooms.

² COMAR 10.24.11.07B(3) defines an ambulatory surgical facility as a health care facility that: (a) has three or more operating rooms; (b) operates primarily for the purpose of providing surgical services to patients who do not require overnight hospitalization and (c) seeks reimbursement from payors as an ambulatory surgical facility.

additional architect fees (\$5,660). This increase is offset by the inflation allowance (\$106,027), contingency fees (\$21,000) and gross interest during construction (\$10,236).

II. APPLICABLE REGULATIONS

If an applicant seeks to make a permissible change from a project that has received CON approval, it requires approval from the Commission pursuant to COMAR 10.24.01.17. Any of the following proposed changes that would place the project at variance with its CON or other approval issued under this chapter, including any condition placed on the approval, shall be reviewed by the Commission:

- (1) A significant change in physical plant design;
- (2) A capital cost increase that exceeds the approved capital cost inflated by an amount determined by applying the Hospital Capital Market Baskets published by IHS Markit in Health Care Cost Review or other guidance approved by the Commission and posted on the Commission website from the application submission date to the date of the filing of a request for a project change;
- (3) A change in the financing mechanisms of the project; or
- (4) A change in the location of the project.

CESC's project change requires Commission action because there was a capital cost increase that exceeds the approved capital costs according to the calculation under COMAR 10.24.01.17B(2).

Under COMAR 10.24.01.17D(3), the Commission may approve the requested change, approve the change in part or with conditions, not approve the change with explanation, or require a complete CON review because of the scope of the requested change.

III. COST INCREASE AND FINANCIAL IMPACT OF THE REQUEST

Current Request Compared with the Original CON Approved Budget

Table 1 compares the April 2023 approved project costs with the applicant's September 2024 current cost estimate, reflecting the increased cost of renovation and movable equipment.

Table 1: Comparison of Approved Project Budget and the Project Change Request

A. Uses of Funds				
	Approved April 2023	Proposed Budget September 2024	Variance	% Change
Renovation				
Building	\$333,561	\$841,046	\$507,485	152%
Architect/Engineering	\$31,000	\$36,660	\$5,660	18%
Permits and fees	\$3,340	\$3,340	\$0	0%
Subtotal – Renovation	\$367,901	\$881,046	\$513,145	139%
Moveable equipment	\$131,000	\$294,312	\$163,312	125%
Contingencies	\$21,000	\$0	(\$21,000)	(100%)
Gross interest during Construction	\$10,236	\$0	(\$10,236)	(100%)
Total Current Capital Costs	\$530,137	\$1,175,358	\$645,221	122%
Inflation allowance	\$106,027	\$0	(\$106,027)	(100%)
CESC Total Uses of Funds	\$636,164	\$1,175,358	\$539,194	85%
B. Sources of Funds				
	Original	Currently Anticipated	Variance	% Change
Cash	\$636,164	\$1,175,358	\$539,194	85%
Total Sources of Funds	\$636,164	\$1,175,358	\$539,194	85%

Source: Project Budget, from original approved CON dated April 20, 2023, and the project change request letter dated September 16, 2024.

The Change in Project Cost Exceeds the Inflation Allowance

CECS’s budget projections for the project requires an additional expenditure of \$539,194. CON regulations provide for an inflation allowance calculated by applying the Hospital Capital Market Baskets published by IHS Markit in Health Care Cost Review. However, project cost increases that exceed that allowance are required to obtain Commission approval.

(https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/documents/2023_3rd_Qtr_cost_indexes%20cap_cost_modification_20231117.pdf)

Using the building cost inflation index noted above, the inflation allowance for this project is \$18,448, or 2.9 percent, well below the proposed cost increase. Thus, COMAR 10.24.01.17B(2) requires Commission authorization for the budget increase.

Impact on Financial Performance

This project change request includes a budget increase of \$539,194, which has already been obligated with cash. The applicant reports that the increased capital total cost of \$539,194 represents 3.2 percent of CESC’s cash on hand as of December 31, 2023, and therefore the Commission staff does not anticipate that this change will have an appreciable effect on CESC’s financial viability.

IV. ANALYSIS AND RECOMMENDATION

The project approved by the Commission on April 20, 2023, permitted CESC to establish a 3 OR ASF, in Annapolis, Anne Arundel County. CESC now requests a \$539,194 increase in the project budget as a result of unanticipated costs. There are no changes to the financing and the increased project cost is being funded with cash.

Staff concludes that there are no material changes to the nature of the project, the location, or the immediate capacity, and that this requested change would not alter the findings that the Commission made in 2023 concerning the need for, and the positive impact of establishing the 3 OR ASF. For these reasons, staff recommends that the Commission approve the requested change to the project with the original condition continuing to apply:

Chesapeake Eye Surgery Center shall continue to provide a patient with an estimate of out-of-pocket charges prior to arrival for surgery.

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FINAL ORDER

Based on Commission staff’s analysis of this request for a project change after issuance of a Certificate of Need, it **ORDERED** on this 19th day of September 2024 that:

The request by Chesapeake Eye Surgery Center, LLC, Inc. for a project change to its April 20, 2023, Certificate of Need to establish 3 OR Ambulatory Surgical Facility in Annapolis, Anne Arundel County has increased to a total project cost of \$1,175,358 is **APPROVED**. The original conditions continue to apply:

Chesapeake Eye Surgery Center shall continue to provide a patient with an estimate of out-of-pocket charges prior to arrival for surgery.