



## **Court of Appeals Denies Department of Health Request to Stay Thurston County Superior Court Order Invalidating New Rule Subjecting ASFs Operating Rooms Increases to Certificate of Need Review**

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In *The Polyclinic, et al. v. Department of Health of the State of Washington*, the Thurston County Superior Court entered an Order on October 31, 2014 invalidating a new rule of the Department of Health that required certificate of need (“CN”) review where an existing CN-approved ambulatory surgical facility (“ASF”) seeks to increase the number of operating rooms (“ORs”) at its facility. WASCA participated as *amicus curiae* in that lawsuit.<sup>1</sup>

The Department appealed the October 31, 2014 ruling. In addition, it requested the Court of Appeals issue a stay allowing the Department to impose its new rule during the pendency of the appeal.

Participating in the appeal as *amicus curiae*, WASCA filed a brief addressing the adverse impact of the Department’s new rule on the ambulatory surgery industry as well as the adverse impact of the potential stay allowing the Department to impose its new rule during the pendency of the appeal. Specifically, WASCA argued that, if a stay were granted, it would cause real and substantial injury to ASFs, including ASF owners and operators who have invested resources in the planning and construction of additional ORs in reliance on the longstanding Department position that those expansions are not subject to CN review.

On January 23, 2015, the Court of Appeals denied the Department’s request for a stay. WASCA will keep the membership apprised of significant developments in this appeal.

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<sup>1</sup> The Polyclinic, an active member of WASCA, is an independent, physician-owned organization that operates an ASF in the Seattle metro area. WASCA appreciates The Polyclinic pursuing this issue, which affects other ASFs as well.

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