

## DOH Revised ASC Policies

The New York State Department of Health (“DOH”) has revised its ambulatory surgery center (“ASC”) Certificate of Need Policy to require a closer review of the financial impact that a new freestanding ASC can have on the continued availability of essential community health care services in rural areas.

Previously, DOH would only recommend disapproval of a new ASC if the impact would likely result in the closure of a local hospital, and the burden was placed on the surrounding hospitals, rather than the applicant, to prove this financial impact. Under the new policy, if the proposed ASC will have a negative financial impact on a Critical Access or Sole Community Hospital, DOH will recommend disapproval. Between 2008 and 2018, DOH approved 87 new ASCs, and disapproved 1. This rate of approval is likely to change, particularly in rural areas.

In addition, since 2006, DOH has imposed a limited duration operating certificate (a “Limited Life”) of five years on all newly established free standing ASCs where there is no hospital owner (subject to renewal). Going forward, DOH will also impose a Limited Life on an ASC where there is a change of ownership of 50% or more members.

Operators of proposed ASCs should consult with legal counsel to determine the issues that DOH will consider regarding approval. Similarly, existing ASCs without a Limited Life should consult legal counsel when engaging in a change of ownership.

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If you have any questions about this alert, please contact a member of our [Health Care Practice Group](#) or the [Garfunkel Wild attorney](#) with whom you regularly work.



For additional information please visit our website at [nymetroasc.com](http://nymetroasc.com) or call 516-393-2294

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