

**EVALUATION OF THE CERTIFICATE OF NEED APPLICATION SUBMITTED BY
OLYMPIC PENINSULA KIDNEY CENTERS PROPOSING TO AMEND CERTIFICATE OF
NEED #1359 BECAUSE OF AN INCREASE IN APPROVED COSTS**

APPLICANT DESCRIPTION

Olympic Peninsula Kidney Centers (OPKC) is a private, non-profit entity that provides dialysis services through three facilities located in Kitsap County. OPKC is governed by an 11-member Board of Directors comprised of medical, civic, and business leaders from the community. An appointed executive director and appointed administrator oversee day-to-day operations of OPKC. [source: OPKC Application, p2 and Exhibit 1]

Below is a listing of the three OPKC facilities in Kitsap County. [source: OPKC Application, p3]

OPKC-Bremerton

OPKC-Port Orchard

OPKC-Poulsbo

BACKGROUND INFORMATION

On November 9, 2007, the department issued Certificate of Need (CN) #1359 to OPKC approving the establishment of a new, 6-station dialysis center in Jefferson County. The approved site of the new facility is 2500 West Simms Way in Port Townsend. The capital expenditure associated with the project authorized under CN #1359 is \$518,700. [source: CN #1359]

On December 15, 2008, OPKC submitted an application proposing to amend CN #1359 because of an increase in the approved capital expenditure beyond those allowed. Under CN Program rules, if the capital costs of a project increase the greater amount of \$50,000 or 12% above the approved costs, an amended CN is required. Within its amendment application, OPKC identified an increase in capital expenditure from \$518,700 to \$943,219, equating to 81.8% increase. Initially the dialysis center was scheduled to open June 2008; within the amendment application, OPKC estimated it would begin operations in late 2009.

The review for an amendment project is limited to only those criteria that would be affected by the amendment, provided that the amendment does not significantly alter the project. OPKC's amendment project did not significantly alter the project; as a result, the department's review focused on financial feasibility (WAC 246-310-220) and cost containment (WAC 246-310-240).

On April 22, 2009, the department concluded that OPKC's amendment application failed to meet both criteria. This failure was based on the following factors:

Financial Feasibility (WAC 246-310-220)

- OPKC's increased lease costs could not be substantiated in its pro forma revenue and expense statement;
- OPKC did not provide data to demonstrate that the 81.8% increase in costs or the 115% increase in construction costs would not result in an unreasonable impact on the costs and charges for health services.

Cost Containment (WAC 246-310-240)

- OPKC failed to demonstrate that its project continued to be the best available alternative for the planning area regardless of the increase in capital costs.

PROJECT DESCRIPTION

On July 14, 2009, OPKC submitted a second application proposing to amend CN #1359 because of an increase in the approved capital expenditure beyond those allowed. In this amendment application, OPKC identified an increase in capital expenditure from the initial cost of \$518,700 to \$954,180, equating to 83.9% increase. The \$10,961 increase in costs from the first amendment application to this one is solely related to the additional fee to submit a second amendment application. In the initial application, the dialysis center was scheduled to open June 2008; within the first amendment application, OPKC estimated it would begin operations in late 2009. This second amendment application identifies an opening date of April 2010. The delay in opening is related to the additional time necessary to file a second amendment application.

As with the first amendment application, although the costs of the project have increased beyond the allowable amount, the scope of the project and the location of the dialysis center have not changed. The new, 6-station dialysis center will still be located at 2500 West Simms Way in Port Townsend, within Jefferson County.

This evaluation will refer to OPKC’s initial application submitted on February 27, 2007, and OPKC’s first amendment application submitted on December 15, 2008. The focus of this review will be OPKC’s second amendment application.

APPLICABILITY OF CERTIFICATE OF NEED LAW

This project is subject to review under WAC 246-310-570(1)(e) because the costs of the project have increased beyond the amount allowable in WAC 246-310-570.

APPLICATION CHRONOLOGY

June 5, 2009	Letter of Intent submitted
July 14, 2009	Application submitted
July 15, 2009 through August 30, 2009	Department’s Pre-Review Activities 1 st screening activities and responses
August 31, 2009	Department Begins Review of the Amendment Application <ul style="list-style-type: none">• public comments accepted throughout review;• no public hearing conducted under the expedited review rules
September 21, 2009	End of Public Comment
October 6, 2009	Rebuttal Comments Submitted by OPKC
October 26, 2009	Department's Anticipated Decision Date
October 26, 2009	Department's Actual Decision Date

AFFECTED PERSONS

When OPKC submitted its initial application on February 28, 2007, two other dialysis providers also submitted applications proposing to serve dialysis patients in Jefferson County. The two providers were DaVita, Inc (DaVita) and Northwest Kidney Centers. The three applications were reviewed under concurrent review as outlined in WAC 246-310-282. Under the concurrent review, the department issued one single evaluation for all three projects. The department's initial evaluation, released on October 18, 2007, approved OPKC's project in its entirety and a portion of the Northwest Kidney Centers project. DaVita's project was denied.

When OPKC submitted its first amendment application on December 15, 2008, only DaVita sought and received affected person status. During the review of this second amendment application, DaVita provided comments, but did not request affected person status under WAC 246-310-010. As a result, no entities sought or received affected person status related to OPKC's second amendment application.

Within DaVita's September 21, 2009, public comments, DaVita states *"We submit these comments to update and supplement the comments we provided in response to OPKC's first amendment application, which the Program denied."* DaVita attached a copy of its February 11, 2009, comments related to OPKC's first amendment application to its comments submitted in this second amendment. In its first amendment evaluation, the department addressed some, but not all, of DaVita's comments. In this evaluation, the department will address any new issues raised by DaVita, as well as DaVita's comments not addressed in the first amendment evaluation.

SOURCE INFORMATION REVIEWED

- Olympic Peninsula Kidney Centers Second Amendment Certificate of Need application submitted July 14, 2009
- Olympic Peninsula Kidney Centers supplemental information received August 24, 2009
- DaVita, Inc.'s comments received September 21, 2009, and February 11, 2009
- Olympic Peninsula Kidney Centers rebuttal comments received October 6, 2009
- Quarterly Progress Reports completed and submitted by Olympic Peninsula Kidney Centers related to CN #1359 [Reports for December 2007, March 2008, June 2008, September 2008, and December 2008]
- Olympic Peninsula Kidney Center's initial application requesting the establishment of a 6-station dialysis facility in Jefferson County submitted February 28, 2007
- The department's October 18, 2007, initial evaluation approving Olympic Peninsula Kidney Centers initial application
- The department's April 22, 2009, evaluation denying Olympic Peninsula Kidney Center's first amendment application

CRITERIA EVALUATION

The review for an amendment project is limited to only those criteria that would be affected by the amendment, provided that the amendment does not significantly alter the project. Based on information presented in this amendment, this application is solely for the increase in capital expenditure. To obtain CN approval for this project, Olympic Peninsula Kidney Centers must demonstrate compliance with the relevant criteria found in WAC 246-310-220 (financial feasibility)

and WAC 246-310-240 (cost containment). Additionally, all terms and conditions of the initial approval that are not requested to be explicitly modified as part of an applicant's request for an amendment remain in effect. On August 6, 2008, Olympic Peninsula Kidney Centers met the condition stated below. To date, the term is not met.

CONCLUSION

For the reasons stated in this evaluation, the application submitted on behalf of Olympic Peninsula Kidney Center proposing to amend Certificate of Need #1359 because of an increase in approved costs is approved, provided Olympic Peninsula Kidney Center agrees to the following term and condition.

TERM

To ensure that appropriate ancillary and support agreements will be established at its Port Townsend facility, prior to providing services at the new Port Townsend dialysis center, Olympic Peninsula Kidney Center will provide an executed copy of the Patient Transfer Agreement that includes the new facility in Port Townsend, for the department's review and approval.

CONDITION

Prior to commencement of the project, Olympic Peninsula Kidney Center will provide an executed copy of the Lease Agreement, consistent with the draft lease agreement provided in the application, for the department's review and approval. [Condition met on August 6, 2008]

The approved capital expenditure associated with the establishment of the six-station dialysis center is \$954,180.

A. Financial Feasibility (WAC 246-310-220)

Based on the source information reviewed, the department determines that the applicant has met the financial feasibility criteria in WAC 246-310-220.

(1) The immediate and long-range capital and operating costs of the project can be met.

WAC 246-310 does not contain specific WAC 246-310-220(1) financial feasibility criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what the operating revenues and expenses should be for a project of this type and size. Therefore, using its experience and expertise the department evaluates if the applicant's pro forma income statements reasonably project the proposed project is meeting its immediate and long-range capital and operating costs by the end of the third complete year of operation.

OPKC's Initial Application Review

In its October 18, 2007, evaluation supporting the issuance of CN #1359, the department concluded that this sub-criterion was met based on the following factors:

- 1) a review of OPKC's draft lease agreement provided in the initial application;¹
- 2) OPKC's historical audited financial reports; and
- 3) a review of OPKC's projected patient utilization for the new 6-station dialysis center in Port Townsend. This review included proposed revenues, expenses, and net loss for the new facility in year 1 (2009) and a net profit in years 2 and 3 (2010 and 2011).

[source: Department's initial evaluation, pp24-27]

OPKC's First Amendment Application Review

In its April 22, 2009, evaluation, the department concluded that this sub-criterion was not met because OPKC's increased lease costs could not be substantiated in its pro forma revenue and expense statement. [source: Department's first amendment evaluation, pp4-5]

OPKC's Second Amendment Application Review

Within its amended application, OPKC provided documentation to demonstrate that its capital cost increase would not negatively affect its projected patient census or in-center treatments relied upon in the initial approval. OPKC also provided a breakdown of the increase in costs, noting those that would increase expenses at the new facility.² The cost that would have a substantial affect on the immediate financial viability of the new facility is the lease costs.

OPKC also provided updated pro forma revenue and expense summaries and balance sheets used to demonstrate that the increase in expenses within the amendment application would not substantially affect the financial viability of the new 6-station facility or OPKC as a whole. Table 1 on the following page is a comparison of the new facility's third year of operation shown in the initial application (2011) and this amendment application (2013) using the updated capital costs. [source: Department's initial evaluation, p24; OPKC's second amendment application, Exhibit 8; and August 24, 2009, supplemental information, p2]

¹ CN #1359 included a condition requiring OPKC to provide a copy of the executed lease agreement, consistent with the draft agreement provided in the application. [source: Department's initial evaluation, p9] The executed lease agreement was provided with OPKC's first amendment application and also provided with this second amendment application.

² The majority of the increases are one time expenses related to construction costs and equipment purchases, which are further evaluated in sub-sections (2) and (3) of this criterion.

Table 1
Olympic Peninsula Kidney Center’s Jefferson County Dialysis Facility
Year 3 Only--Comparison

	Initial Application Year 3 - 2011	Amended Application Year 3 - 2013
# of Stations	6	6
# of Treatments ^[1]	3,314	3,572
# of Patients ^[2]	19	20
Utilization Rate ^[2]	3.16	3.83
Net Revenue ^[1]	\$ 800,252	\$ 864,622
Total Expense ^[1,3]	\$ 765,677	\$ 841,928
Net Profit or (Loss) ^[1]	\$ 34,575	\$ 22,694
Net Patient Revenue/Treatment ^[1]	\$ 278.54	\$ 276.15
Total Operating Exp./Treatment ^[1]	\$ 266.51	\$ 268.90
Net Profit (Loss) per Treatment ^[1]	\$12.03	\$ 7.25

[1] includes both in-center and home dialysis patients; [2] in-center patients only; [3] includes deductions for bad debt, charity care and allocated costs

As shown in the comparison table above, the increase in costs related to the lease decreases year 3 (2013) net profit from \$34,575 to \$22,694, equating to the profit of \$7.25 per treatment. The amendment application also demonstrates that year 3 is the first year that OPKC’s Jefferson County dialysis center operates at a profit.

To demonstrate that OPKC would meet its immediate and long range capital costs with the six-station dialysis center, OPKC also provided a copy of its June 2007 and 2008 audited financial statements. [source: Application, Appendix 1]

DaVita Public Comments

[source: DaVita, Inc. February 11, 2009, public comments, p6 and September 21, 2009, public comments, pp1-2]

During the review of OPKC’s first amendment application, DaVita provided comments noting that OPKC’s increased expenses related to its final lease agreement is based on two factors:

- 1) an increase in the square footage of the facility from 2,500 to 2,793; and
- 2) OPKC omitted an additional \$25 per square foot (psf) tenant improvement costs.

Additionally, DaVita acknowledges that “need” for this project is not reviewed in this amendment application; however, DaVita asserts that OPKC’s pro forma revenue and expense summaries cannot be considered reliable. DaVita’s assertion is based on the passage of time from the initial approval of this project to this amendment application, which resulted in a reduction in the projected number of patients in the planning area.

DaVita also voices concerns related to OPKC’s long term financial viability. DaVita asserts that OPKC is “*staggering under the financial and administrative burdens of two large capital projects*” [one is this project] and suggests that OPKC’s ability to proceed with this project is threatened.

OKPC's Rebuttal

[source: Application, pp12-16; OPKC October 6, 2009, rebuttal comments, p1-2]

In response to DaVita's comments related to the increase in lease costs, OPKC acknowledges that the increase in expenses is based, in part, on the increase in lease costs. OPKC provided a copy of the final lease agreement executed on April 22, 2008. OPKC also provided a listing of other factors that resulted in the increased expenses.

OPKC concurs with DaVita that "need" for this project is not reviewed in this amendment application, however, OPKC provided responses to DaVita's assertions that the pro forma revenue and expense summaries are no longer reliable because of the decrease in patients residing in Jefferson County. OPKC asserts that dialysis patients residing in rural communities with no dialysis center will relocate to a community where dialysis facilities are closer to them. OPKC provided examples of this occurrence in the communities of Moses Lake, Clarkston, Chehalis, and Shelton where a dialysis provider [not DaVita] provided reasonable rationale for projecting to serve more patients than the number of patients projected in the department's numeric methodology. Additionally, OPKC points out that in year 2007, DaVita used this rationale for establishing its own rural two-station dialysis center in Ellensburg, within Kittitas County.

Related to DaVita's concerns regarding its long term viability, OPKC asserts that year 2008 was the most successful financial year in its history with an operating margin in excess of \$1,150,000. End of fiscal year cash and reserves were over \$1,500,000 with no long term debt.

Department's Evaluation

OPKC's pro forma revenue and expense statements include all costs associated with the six-station facility, including costs omitted in the initial and first amendment applications. The increase in lease costs are substantiated in the revenue and expense statements. The increased lease costs substantially affect OPKC's profitability for the dialysis center. In its initial evaluation, OPKC's anticipated revenues would exceed expenses in beginning in its second full calendar year of operation—year 2010. In this amendment application, revenues cover expenses beginning in its third full year of operation—year 2013. The department requires applicants to provide pro forma revenue and expenses statement beginning with the year the project becomes operational through the end of the third full calendar year of operation. For larger dialysis centers (15 stations or more) the department typically sees revenues covering expenses by the end of full calendar year one; for smaller centers, it is not unusual for the center to begin covering expenses beginning in calendar year three. OPKC's six-station facility becomes profitable in year three—which is consistent with a small dialysis center.

Both OPKC and DaVita are correct that "need" for this project is not evaluated in this amendment application. DaVita's concerns regarding OPKC's projected number of patients were adequately addressed by OPKC.

Related to OPKC's long term viability, OPKC's responses regarding its most recent fiscal year cannot be substantiated because the documentation is not yet available. However, OPKC's audited financial statements for years 2007 and 2008 demonstrate that OPKC has historically been financially viable. The department does not expect approval of this project to negatively affect OPKC's long term financial viability.

Based on the information above, the department concludes that the immediate and long-range operating costs of the project can be met. This sub-criterion is met.

(2) The costs of the project, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.

WAC 246-310 does not contain specific WAC 246-310-220(2) financial feasibility criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what an unreasonable impact on costs and charges would be for a project of this type and size. Therefore, using its experience and expertise the department compared the proposed project's costs with those previously considered by the department.

OPKC's Initial Application Review

In its October 18, 2007, evaluation supporting the issuance of CN #1359, the department concluded that this sub-criterion was met based on the following factors:

- 1) OPKC's basis for establishing its construction costs for the 6-station facility;
- 2) OPKC's projected sources of revenues, broken down by Medicare, Medicaid, and Insurance/HMO; and
- 3) a comparison of OPKC's costs per dialysis with recent dialysis projects reviewed by the department.

[source: Department's initial evaluation, p29]

OPKC's First Amendment Application Review

In its April 22, 2009, evaluation, the department concluded that this sub-criterion was not met because OPKC's did not provide any information to demonstrate that its 81.3% increase in capital costs and the 115% increase in construction costs probably would not result in an unreasonable impact on the costs and charges for health services. [source: Department's first amendment evaluation, pp6-8]

OPKC's Second Amendment Application Review

[source: Application, p12-16]

OPKC's costs for this project increased from \$518,700 to \$954,180, which equates to an 83.9% overall increase and a 115% increase in construction costs alone. OPKC states the following factors resulted in the increase in construction costs.

- Building construction costs were based on the square footage of 2,500. Actual square footage of the facility is 2,793, which equates to approximately 12% more than estimated in the initial application.
- The initial construction contract was based on the 2,500 sf facility and the actual costs of OPKC's establishment of its Poulsbo project completed in June 2006. The costs for Poulsbo were \$92 psf; OPKC estimated \$100 psf for its Jefferson County dialysis center. In preparation of this second amendment application, OPKC reviewed construction costs related to its Poulsbo project, which revealed two incorrect assumptions that were used in the Jefferson County project. 1) OPKC assumed that the tenant improvement allowance used in Jefferson County were included in the construction costs. They were not. 2) OPKC assumed an 8% psf increase in construction costs, resulting in an estimate of \$100 psf, rather than \$92 psf in

Poulsbo. Based on the time period (2006-2008), the actual construction costs inflation was substantially higher than 8%.

- CMS adopted additional Life Safety Codes for outpatient dialysis facilities in April 15, 2008. Meeting these requirements added \$42,296 for sprinklers and related controls, and \$22,000 for walls, ceiling, chases and doors to meet a two-hour fire rating.
- The building owner does not provide an adequately sized sewer connection to the suite. A new sewer line must be routed around the outside of the building to the suite.
- Water line coming into the building is not large enough to support the fire sprinkler system being added in the suite. A larger connection to the water main is being added at OPKC's expense.

In addition to the substantial construction cost increases discussed above, OPKC also experienced a 46% increase in fixed and moveable equipment. Equipment increases are based on the following factors. [source: Application, pp15-16]

- Installation of Sterimed© bio-hazardous waste processing equipment, which eliminates the need and cost of using a medical waste disposal firm to dispose of potentially infectious medical waste.
- Installation of a phone system. In the initial application, OPKC assumed the phone system was included in the construction contract. It was not.
- OPKC also elected to add the following moveable equipment to the dialysis center that was not initially considered when the initial budget was created. The moveable equipment includes a variety of items, such as a defibrillator; updated dialysis machines, EKG machine, new storage rack for medical records, and oxygen concentrator. The additional equipment was determined to be necessary to meet new Medicare requirements and OPKC's standard of care. The majority of the new equipment was determined to be necessary to ensure that the rural dialysis center would be self-sufficient in the case of severe inclement weather or natural disaster.

To demonstrate that OPKC's increase in capital costs, including construction costs, would not have an unreasonable impact on the costs and charges for health services, OPKC provided the following statements.

"This project has no impact on either charges or payment for kidney dialysis services. Medicare pays for services on a prospective composite rate. The base composite payment rate for dialysis services is based on a fixed rate predetermined by Medicare and adjusted by case mix variables for each patient. Regardless of how much OPKC expends to construct the facility, it will receive the same reimbursement on a per-patient and per treatment basis. OPKC did not assume any change in payer mix from the original [initial] application to this amendment application. Increase in construction costs and the resulting increase in depreciation expenses will be borne by OPKC and not passed through to commercial payers in the form of higher rates."

DaVita Public Comments

[source: DaVita February 11, 2009, public comment, pp2-7]

During the review of OPKC's first amendment application, DaVita provided comments related to OPKC's reasons for the construction cost increases. The department did not specifically address DaVita's concerns in that evaluation. DaVita's comments are summarized below.

Omitted Tenant Improvement Allowance

DaVita calculated that the \$25 psf omitted tenant improvement allowance equated to 21% of OPKC's construction cost estimate.

Use of Outdated and Inaccurate Construction Cost Estimates

DaVita calculated OPKC's use of 2003 cost estimate—rather than 2007 cost estimates—increased its project by 93%. DaVita also asserted that OPKC's understatement of construction costs led to OPKC's delays in implementation of this project.

Omission of costs for Published and Well-Known Safety Code Requirements

DaVita asserted that OPKC should have known about the upcoming changes in safety codes because the proposed codes, which were adopted in April 2008, became effective August 2008, and were published in February 2005—approximately two years before OPKC submitted its initial application for this Jefferson County project (OPKC's initial application was submitted February 2007).

Omission of Known Equipment Costs

DaVita stated that OPKC's omission of a necessary telephone system, along with additional moveable and fixed equipment, equated to a 35% increase in equipment. This percentage of increase did not take into account OPKC's plans to install a more costly waste-processing system.

In summary, DaVita asserted that a number of the cost increases were known, or should have been known, by OPKC when it prepared the initial application. As a result, DaVita asserted that CN #1359 should be revoked under WAC 246-310-500(6). In the first amendment evaluation, the department did not revoke CN #1359.

Department's Evaluation

As stated above, in the initial review, the department concluded that OPKC's project met this sub-criterion based, in part, on OPKC's basis for establishing its construction costs for the 6-station facility. It is clear with this amendment application that OPKC substantially underestimated its construction costs. In its initial application, OPKC stated its "*construction costs were based on OPKC's recent experience in creating satellite facilities.*" [source: OPKC initial application, p21]

OPKC based its construction costs projects on a 2,500 sf building. In the initial evaluation, the department noted that construction costs made up 48% of OPKC's total capital expenditure for the project. When the costs for the additional square footage are coupled with the increase in costs construction materials, OPKC's construction costs were substantially higher.

WAC 246-310-280(2) identifies the items that must be included in the capital expenditure for dialysis projects. Section (d) of that citation includes '*building owner tenant improvements.*' OPKC mistakenly assumed the tenant improvements were included in the lease agreement with the building owner. They were not. Knowledge of improvements to the sewer and water line should have been part of OPKC's planning and development before submission of its initial application. To account for the extra costs related to tenant improvements, including the sewer and water line, OPKC included them in its amendment application. Once these costs are added to the increase in construction costs, OPKC's capital expenditure increases substantially.

Related to the changes in safety codes requirements, OPKC stated it did not know about the changes when the initial application was submitted; DaVita stated it knew, or should have known, about the changes in safety code requirements.

OPKC also listed cost increases in fixed and moveable equipment that resulted in OPKC's choice to add or upgrade equipment for the new center. These costs were not identified before OPKC submitted its initial application because they were the result of final planning and development of the dialysis center. It is unclear whether knowledge of these costs should have been part of OPKC's planning and development before submission of its initial application.

In conclusion, OPKC omitted some very important costs when it submitted its Jefferson County dialysis project. The omitted costs resulted in substantial increases in OPKC's project, submission of two amendment applications, and countless delays in the provision of dialysis services to the residents of Jefferson County. DaVita asserts that the majority of the costs were known, or should have been known, by OPKC when it submitted its initial application, and CN #1359 should be revoked. DaVita raises issues that require detailed documentation to substantiate its assertions. DaVita's assertion of deliberate omissions cannot be substantiated; without substantiation, the department would not revoke CN #1359.

OPKC provided detailed discussion to document that neither the 83.9% increase in capital expenditure nor the 115% increase in construction costs alone would result in an unreasonable impact on the costs and charges for health services as required under this sub-criterion. Based on the information above, the department concludes that this sub-criterion is met.

(3) *The project can be appropriately financed.*

WAC 246-310 does not contain specific source of financing criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs how a project of this type and size should be financed. Therefore, using its experience and expertise the department compared the proposed project's source of financing to those previously considered by the department.

OPKC's Initial Application Review

The approved capital expenditure associated with CN #1359 was \$518,700. The majority of the costs were associated with construction (48%) and fixed/moveable equipment (44%). In the initial application, OPKC proposed to fund the project through accumulated reserves. The department concluded that the funding sources were reasonable based on historical financial statements from OPKC. [source: Department's initial evaluation, p30]

OPKC's First Amendment Application Review

In its April 22, 2009, evaluation, the department concluded that this sub-criterion was met based on the following factors. [source: Department's April 22, 2009, evaluation, p8]

- 1) OPKC did not change its funding source for this project. Even though the capital costs would increase 81.8% from its initial costs, OPKC still intended to fund the project from its reserves. Given that the Jefferson County facility would be part of the parent OPKC entity and the capital amount was not considered an advance or a loan, repayment of the cost is not required.
- 2) The department reviewed OPKC's June 2007 and June 2008 audited financial statements, years 2009 through 2011 projected consolidated revenue and expense statements, and years

2009 through 2011 projected balance sheets. All financial documents demonstrated that OPKC had the funds, or would generate the funds, to support this project.

- 3) OPKC also provided a cost comparison of a bank loan financing alternative. That cost comparison demonstrated that funding this project through OPKC's reserves continued to be the lower cost option.

OPKC's Second Amendment Application Review

OPKC provided documentation to demonstrate that its funding sources for the project will not change. Additionally, the new Jefferson County facility would be part of the parent OPKC entity and the capital amount is not considered an advance or a loan, therefore, repayment of the cost is not required. OPKC provided its most recent audited financial statements (June 2007 and June 2008) to demonstrate that the funds necessary to finance the project are available. OPKC also provided a cost comparison of a bank loan financing alternative. That cost comparison demonstrated that funding this project through OPKC's reserves continues to be the lower cost option.

DaVita Public Comments

DaVita's public comment related to the funding for the project focused on OPKC's long-term viability. Those comments were addressed in WAC 246-310-220(1) above and will not be re-addressed here.

Department's Evaluation

In its evaluation of OPKC's first amendment application, the department concluded that OPKC had the funds to finance the project and this sub-criterion was met. There was no documentation provided in this second amendment application that would change this conclusion. This sub-criterion is met.

B. Cost Containment (WAC 246-310-240)

Based on the source information reviewed, the department determines that the applicant has met the cost containment criteria in WAC 246-310-240.

- (1) *Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.*
To determine if a proposed project is the best alternative, the department takes a multi-step approach. Step one determines if the application has met the other criteria of WAC 246-310-210 thru 230. If it has failed to meet one or more of these criteria then the project is determined not to be the best alternative, and would fail this sub-criterion.

If the project met WAC 246-310-210 through 230 criteria, the department would move to step two in the process and assess the other options the applicant or applicants considered prior to submitting the application under review. If the department determines the proposed project is better or equal to other options the applicant considered before submitting their application, the determination is either made that this criterion is met (regular or expedited reviews), or in the case of projects under concurrent review, move on to step three.

Step three of this assessment is to apply any service or facility specific criteria (tie-breaker) contained in WAC 246-310. The tiebreaker criteria are objective measures used to compare competing projects and make the determination between two or more approvable projects which is

the best alternative. If WAC 246-310 does not contain any service or facility criteria as directed by WAC 246-310-200(2)(a)(i), then the department would look to WAC 246-310-240(2)(a)(ii) and (b) for criteria to make the assessment of the competing proposals. If there are no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b), then using its experience and expertise, the department would assess the competing projects and determine which project should be approved.

OPKC's Initial Application Review

In its October 18, 2007, initial evaluation, the department concluded that need for dialysis access in Jefferson County was demonstrated, and OPKC's initial application was the only project proposing to locate dialysis stations in the county, rather than in the adjacent Clallam County. As a result, the department concluded that OPKC's project was the best alternative when compared to the two competing projects submitted by DaVita and Northwest Kidney Centers. [source: Department's initial evaluation, pp40-41]

OPKC's First Amendment Application Review

In its April 22, 2009, evaluation, the results of steps one and two above concluded that this sub-criterion was not met based on the following factors.

- 1) OPKC did not provide any information to demonstrate it considered options other than submission of its amendment application.
- 2) OPKC did not provide any information to demonstrate that its project continued to be the best available alternative for the planning area.
- 3) OPKC failed to meet specific sub-criterion related to financial feasibility.

[source: Department's April 22, 2009, evaluation, p9]

OPKC's Second Amendment Application Review

Before submitting this second amendment application, OPKC considered relinquishing CN #1359. This option was rejected by OPKC because it would mean patients would continue to travel out of the county at least three times per week to receive the much needed services. As a result, OPKC's board determined this option to be unacceptable. [source: Application, pp22-23]

Department's Evaluation

To evaluate OPKC's second amendment project, the department begins with the three steps identified above.

Step One

For this project, OPKC has met the applicable review criteria under WAC 246-310-220. Therefore, the department moves to step two below.

Step Two

OPKC considered and rejected one option before submitting this application—relinquishing CN #1359. This option was appropriately rejected by OPKC when it considered the Jefferson County patients that require the dialysis services. Moving forward with this project, even with the increase in capital costs, is ultimately the best option for the residents of Jefferson County.

Step Three

This step is used to determine between two or more approvable projects which is the best alternative. This amendment application is not undergoing concurrent review.

Based on the information above, the department concludes this project continues to be the best available alternative for Jefferson County. This sub-criterion is met.

(2) *In the case of a project involving construction:*

(a) *The costs, scope, and methods of construction and energy conservation are reasonable; and*

This project requires construction of a new dialysis center in Jefferson County. This sub-criterion is evaluated within the financial feasibility criterion under WAC 246-310-220(2). Based on that evaluation, the department concludes that this sub-criterion is met.

(b) *The project will not have an unreasonable impact on the costs and charges to the public of providing health services by other persons.*

This sub-criterion is re-evaluated within the financial feasibility criterion under WAC 246-310-220(2) and is met.