

# **EVALUATION OF THE CERTIFICATE OF NEED APPLICATION SUBMITTED BY ODYSSEY HEALTHCARE, INC. PROPOSING TO ESTABLISH A MEDICARE CERTIFIED AND MEDICAID ELIGIBLE HOSPICE AGENCY TO SERVE THE RESIDENTS OF SNOHOMISH COUNTY**

## **PROJECT DESCRIPTION**

Odyssey HealthCare is a for-profit corporation and operator of hospice agencies in approximately thirty states, based in Dallas, Texas. As of the writing of this evaluation, Odyssey HealthCare has over 65 hospice agencies across the nation. The hospice facilities are each owned by one of two owners of record, Odyssey HealthCare Operating A, LP, and Odyssey HealthCare Operating B, LP, depending on the tax laws in the state where each hospice agency is located. Further, both operating companies are 99% owned by Odyssey Health Care LP, LLC, and 1% owned by Odyssey GP, LLC. Each of those entities is wholly owned by Odyssey HealthCare, Inc. Odyssey HealthCare Inc. does not currently own or operate any health care facilities in Washington. [Source: Certificate of Need files.]

Odyssey proposes to establish a Medicare certified and Medicaid eligible hospice to be known as Odyssey Healthcare-Everett.<sup>1</sup> The draft lease agreement provided by the applicant identifies Odyssey-Everett administrative offices location to be 9930 Evergreen Way, Suite 116, in the city of Everett. The agency would provide Medicare certified hospice services for the residents of Snohomish County. [Source: Application page 7 and February 20, 2007 Supplemental Information] For ease of reference, the department will refer to the proposed agency as “Odyssey-Everett” and the applicant as “OHI”

Under the Medicare hospice benefit, the following services are provided: doctor services; nursing care; medical equipment; medical supplies; drugs for symptom control and pain relief; short-term care in the hospital, including respite care; home health aide and homemaker services; physical and occupational therapy; social worker services; dietary counseling; grief and loss counseling. Respite care and outpatient drugs are each subject to a small co-payment; other services are covered in full<sup>2</sup>.

The estimated capital expenditure to establish Odyssey-Everett Snohomish County office is \$45,000. Of that amount, 66.66% is related to moveable equipment (\$30,000); and the remaining 33.33% is related to furniture (\$15,000). [Source: Application page 20]

OHI anticipates the project to commence on January 1, 2008 and be completed on July 1, 2008. The first full calendar year of operation as a Medicare certified hospice agency is expected to be year 2009. [Source: Application page 9]

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<sup>1</sup> A Medicare certified hospice agency is also Medicaid eligible. Therefore, the term “Medicaid eligible” will not be repeated throughout this evaluation. Those agencies that are state licensed, but not Medicare certified, will be referred to as “licensed only.”

<sup>2</sup> Medicare Hospice Benefits, p. 7, Health Care Financing Administration Publication No. HCFA 02154, Revised March 2000.

## **APPLICABILITY OF CERTIFICATE OF NEED LAW**

This project is subject to Certificate of Need review because it would establish a new health care facility under Revised Code of Washington (RCW) 70.38.105(4) (a) and Washington Administrative Code (WAC) 246-310-020(1) (a).

## **APPLICATION CHRONOLOGY**

September 29, 2006	Letter of Intent Submitted
October 30, 2006	Application Submitted
November 20, 2006 through April 26, 2007	Department's Pre-Review Activities <ul style="list-style-type: none"><li>• 1<sup>st</sup> screening activities and responses</li><li>• 2<sup>nd</sup> screening activities and responses</li></ul>
May 7, 2007	Department Begins Review of the Application
June 11, 2007	Public Hearing Conducted/End of Public Comment
June 28, 2007	Rebuttal Documents Submitted to the Department
August 13, 2007	Department's Anticipated Decision Date
August 17, 2007	Department's Actual Decision Date

## **CONCURRENT REVIEW**

This application was submitted during the 2006 hospice care agencies concurrent review cycle outlined in WAC 246-310-295(3). However, no other hospice care agency application was submitted for Snohomish County during the 2006 concurrent review cycle. According to WAC 246-310-295(5), when an application initially submitted under a concurrent review is deemed not to be competing with another application; the department may convert the application to regular review process. Therefore, this application was converted to regular review.

## **AFFECTED PERSONS**

Throughout this project review, two entities sought and received affected persons status under WAC 246-310-010. Those entities are as follows:

1. Evergreen Healthcare, a hospice agency providing hospice services to the residents of King and Snohomish counties.
2. Providence Hospice and Home Care of Snohomish County.

## **SOURCE INFORMATION REVIEWED**

- Odyssey HealthCare Certificate of Need Application dated October 30, 2006
- Odyssey HealthCare Supplemental Information dated: February 20, 2007
- Odyssey HealthCare Supplemental Information dated: April 26, 2007
- Public comments received during the public comment period
- Comments received at the public hearing on June 11, 2007
- Evergreen Healthcare rebuttal comments dated: June 27, 2007
- Providence Hospice and Home Care of Snohomish County rebuttal comments dated: June 28, 2007
- Population data obtained from the Office Financial Management based on year 2000 census published January 2002.
- Licensing and/or survey data provided by the Office of Health Care Survey
- Completed provider utilization surveys received from existing providers

- Quality of Care utilization surveys for out-of state health care facilities owned, operated or managed by Odyssey HealthCare, Inc.
- Draft Report: Hospice Methodology Advisory Committee, April 3, 2001
- Recommendations of the Hospice Methodology Advisory Committee, Rev. September 13, 2001
- WAC 246-310-290 Hospice services-standards and need forecasting method
- Data obtained from Odyssey HealthCare's website
- Certificate of Need Historical files

### **CRITERIA EVALUATION**

To obtain Certificate of Need approval for Snohomish County, Odyssey HealthCare must demonstrate compliance with the criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment); and 246-310-290 (Hospice services-standards and need forecasting method).<sup>3</sup>

### **CONCLUSION**

For the reasons stated in this evaluation, the application submitted by Odyssey HealthCare proposing to establish a Medicare certified hospice agency to serve the residents of Snohomish County is not consistent with applicable criteria of the Certificate of Need Program, and a Certificate of Need is denied.

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<sup>3</sup> Each criterion contains certain sub-criteria. The following sub-criteria are not discussed in this evaluation because they are not relevant to this project: WAC 246-310-210(3), (4), (5), and (6); and WAC 246-310-240(2) and (3).

**A. Need (WAC 246-310-210 and WAC 246-310-290)**

Based on the source information reviewed, the department determines that the applicant has not met the need criteria in WAC 246-310-210 and 246-310-290.

- (1) The population served or to be served has need for the project and other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet that need.

The determination of numeric need for hospice services is performed using the hospice services need forecasting method contained in the WAC 246-310-290.

The methodology is a six-step process of information gathering and mathematical computation. The first two steps examine historical hospice utilization. The remaining four steps apply that utilization to current and future populations and are intended to determine total baseline hospice services need and compare that need to the capacity of existing providers.

The completed methodology is presented as an appendix to this section. The methodology uses population and healthcare utilization statistics on statewide and planning area levels. By rule, the planning area for hospice services is each individual county. Although the planning areas for the applications currently under review are limited to Snohomish, King and Pierce counties, need projections for the entire state have been prepared.

This document will describe, in summary, the calculations made at each step and the assumptions and adjustments made in that process. The titles for each step are excerpted from the WAC.

*STEP 1: Calculate the following four statewide predicted hospice use rates using CMS and department of health data or other available sources.*

- (i) *The predicted percentage of cancer patients sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients the age of sixty-five and over with cancer by the average number of past three years statewide total deaths sixty-five and over from cancer.*
- (ii) *The predicted percentage of cancer patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients under the age of sixty-five with cancer by the current statewide total of deaths under sixty-five with cancer.*
- (iii) *The predicted percentage of non-cancer patients sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients age sixty-five and over with diagnoses other than cancer by the current statewide total of deaths over sixty-five with diagnoses other than cancer.*
- (iv) *The predicted percentage of non-cancer patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice*

*admissions over the last three years for patients under the age of sixty-five with diagnoses other than cancer by the current statewide total of deaths under sixty-five with diagnoses other than cancer.*

For these sub-steps within Step 1, the department obtained utilization data for 2003 through 2005 from the licensed only and Medicare hospice providers throughout the state. The department asked providers to report their admissions by age group (under 65 and 65 and over) and diagnosis (cancer/non-cancer) for each of the most recent three years. This information was provided by county of resident. The results of this survey were compared with data provided by the Department's Center for Health Statistics and Cancer Registry to determine the percentages of deaths due to cancer and non-cancer causes for the two age groups.

Although not all hospice providers in the state responded to the program's surveys, all providers in King, Pierce and Snohomish counties provided responses.

*STEP 2: Calculate the average number of total resident deaths over the last three years for each planning area.*

This step was completed using death statistics from the Department's Center for Health Statistics. The total deaths in each of the planning areas for 2003-2005 were averaged for each planning area for each of the age groups with cancer diagnosis identified in Step 1, above.

Step 2 requires that the department calculate the "average number of total resident deaths over the last three years for each planning area." The Step 2 calculation is then used in Step 3 multiplication to calculate the number of likely hospice patients for each of the four age diagnosis categories.

In interpreting Step 2, the Department interprets "total" to mean the total number of death for each of the four categories of patients identified in Step 1. The Department adopts this interpretation because the various steps in the methodology build on each other and should be read together.

*STEP 3: Multiply each hospice use rate determined in Step 1 by the planning area's average total resident deaths determined in Step 2.*

For this step, the use rates from Step 1 were multiplied by the applicable age group's death rate for each planning area to determine the number of likely hospice patients for each of the four age/diagnosis categories.

*STEP 4: Add the four subtotals derived in Step 3 to project the potential volume of hospice services in each planning area.*

The numbers of likely hospice patients from each of the four categories derived in Step 3 are added together for each planning area. This number is described as the "potential volume" of

hospice services in the area. This represents the number of patients expected to elect hospice services in the area.

*STEP 5: Inflate the potential volume of hospice service by the one-year estimated population growth (using OFM data).*

The values derived in Step 4, above, were inflated by the expected populations for each planning area. The age-specific population projections for each county were obtained from the state's Office of Financial Management. The most recent age-specific data set is the "2002 Projections developed for Growth Management Act (Developed January 2002)". This age-specific data is available for 5-year intervals only. The department has used these 5-year interval values to estimate population projections for the interstitial years.

The department applied the one-year estimated population growth to the potential volume of hospice services derived in Step 4 to estimate potential hospice volume in 2006, the first year following the three-year data range. In order to estimate need for hospice services in the first three years of the proposed projects, the department applied the use rates derived to the expected populations of each of the state's counties for the first three full years of the proposed projects (2007, 2008, and 2009).

*STEP 6: Subtract the current hospice capacity in each planning area from the above projected volume of hospice services to determine unmet need. Determine the number of hospice agencies in the proposed planning area which could support the unmet need with an ADC of thirty-five.*

Current hospice capacity is defined in the rule as the average number of admissions for the most recent three years of operation for those agencies that have operated or have been approved to operate in the planning area for three years or more. For the remaining agencies that have not operated in the service area for at least three years, an average daily census (ADC) of thirty-five is assumed for that agency.

Each of the hospice providers in Snohomish County have been in operation for at least three years. The department calculated the ADC for each hospice by multiplying the state's most recent average length of stay (ALOS), calculated from responses to the department's survey, by each hospice's average admissions for the past three years and divide that total by three hundred sixty-five (days per year).

Twenty-six counties showed some need for additional hospice services, but all at a level less than an ADC of 35, which is indicative of insufficient need to support an additional hospice agency. The remaining thirteen counties showed a no need or a surplus of hospice services. Those counties were Benton, Clark, Cowlitz, Ferry, Franklin, Jefferson, Klickitat, King, Lewis, Pierce, Skagit, Snohomish and Wahkaikum. [Source: Appendix A] The chart on the following page summarizes the department's numeric need methodology for Snohomish County. [Appendix A]

	2011 Potential volume	Current Capacity	2011 Unmet Need admits	Statewide ALOS	2011 Unmet Need Pt Days	2011 Unmet Need ADC	Agency Need
<b>Snohomish County</b>	1,353	1,173	180	51.658324	9,305	25	None

**Odyssey’s Application of the Numeric Methodology**

The Department mailed copies of the 2006 Hospice Survey results to the applicant on November 16, 2006, prior to receipt of the applicant’s responses to initial screening questions on February 20, 2007. This information provided the necessary data for the modification of any preliminary methodologies constructed by the applicant. Odyssey contends that the department’s survey is an unreliable source and understates the need of planning data. The survey is the data collection tool used by the department to apply the numeric methodology. As an alternative, Odyssey prepared two versions of the department’s numeric need methodology during the application process. Below is a summary of the two versions and the department’s response to each. [February 20, 2007 Supplemental Information, Attachment SC1-B & E]

*Applicant’s 1<sup>st</sup> Methodology, Appendix SC1-B - (CMS)*

OHI’s initial version of the methodology uses a Medicare data source, the Standard Analytical File (SAF). OHI obtained a “limited data set” of SAF 2002-2004 data from the University of California-Irvine. OHI followed the calculation steps prepared by the department, but substituted information from this source for the survey data.

This version begins with a data set that does not contain all the data elements required to prepare the methodology. OHI notes, first, that SAF data for 2005 were not available; therefore OHI obtained SAF data for years 2002-2004. OHI also noted that the SAF data it obtained did not contain any data for non-Medicare patients. While it is not directly stated from OHI’s narrative, it appears that OHI has assumed that the SAF data accounts for all patients over age 65. OHI states that it estimated hospice admissions for patients under age 65 by relying on the department’s hospice survey for a percentage of total admits then applied that percentage to the SAF data. Finally, OHI notes that the process of removing identifying data from the SAF also removes all length-of-stay information from the file. In response to this, OHI adopted the ALOS calculated from Medicare Cost Reports.

Once these modifications are inserted, the applicant calculates the projected patient count in Step #4 to total 1,386. This differs from a Department total projection of 1,413. The primary source of the discrepancy resides in the applicant calculating a lower need in the 65+ age categories than that of the Department.

This version relied upon the limited data set and established current capacity by estimating the less than 65 age group in relation to reported 65+ capacity. This produced a capacity of 1,204.3. This value is 722 patients fewer than the department’s calculation of 1,927, representing a 37% understatement.

When the applicant calculates the Average Length of Stay (ALOS) derived from the Medicare Cost Reports, rather than that cited in WAC 246-310-290(8), they cite a ALOS of 59.95. In contrast, Department survey results indicate a statewide ALOS of 51.66. When the

applicant's ALOS is applied to determine unmet need in the service area, Odyssey derives a calculation for unmet need in this methodology of an ADC of 37 patients. This equates to a need for 1.05 additional hospices agencies under this version of the methodology.

Applicant's 2<sup>nd</sup> Methodology, Appendix SC10-E - (WAC)

OHI's second version of the methodology is described as "the literal language of the hospice need methodology." Odyssey notes that this method submission is based upon the applicant's summary of the responses to the Department's survey and adopts the literal language of the CoN need methodology.

The result of OHI's calculations indicates an estimated unmet need ADC of 683 patients in 2006, increasing to an unmet need of 788 patients in 2011. The department's calculations show a substantially smaller unmet need in Snohomish County. In summary, this second version calculates a need for 12.61 new hospice agencies for Snohomish County and thus justifies approval of OHI's application. [Source: February 20, 2007 Supplemental Information, p1] Department calculations indicate a surplus in 2006 through 2011. Therefore, a closer look at OHI's methodologies is necessary.

In the calculation details, the applicant uses two separate sets of population data; 2002 through 2004 as well as 2003 through 2005. In the calculation steps outlined above, steps #1 and #2 follow the Department's process.

No explanation can be found regarding Step #3 when calculations rely solely on 2002-2004 population data in the projection of potential volume in each of the state's planning areas, including Snohomish County. It is also unclear how the numbers have been calculated to produce such dramatically larger projections. The applicant and the department record similar averages per age group in step #2 when comparing the 2003-2005 population period, but the applicant projects dramatically more need in the following years. These differences are depicted below.

	Step #3 - Projected Deaths in reported Population periods		
	Applicant		Department
<b>Ages 0-64</b>	2002-2004	2003-2005	2003-2005
0-64 Average Deaths	1,141	1,157	1,542
0-64 Cancer Projected	2,325	x	267
0-64 Non-Cancer Projected	306	x	91
<b>Ages 65 and above</b>			
65+ Average Deaths	2,977	3,042	3,870
65+ Cancer Projected	2,834	x	596
65+ Non-Cancer Projected	1,111	x	860

Based upon the applicant's 2002-2004 population calculations, average deaths in the 0-64 age group increase from 1,141 to 2,631 and the 65+ age group increases from 2,977 to 3,945. The applicant's method also forecasts that the number of deaths by cancer alone to total 5,159, (combining 2,325 for 0-65 and 2,834 for 65+), exceeding the department's calculated total deaths in the county by 253.

As this methodology continues from steps 4 through 6, a split is made by OHI to report the results to both population projection periods of 2002-2004 and 2003-2005 as well as by age groups. This split is in contrast to the methodology as outlined above and in WAC 246-310-290. Because the appropriate time period for this application is 2003-2005, the remainder of the review will focus on those calculations based upon 2003-2005 population rates.

OHI's Step #5 calculations show a potential volume of 6,051 in 2011 when combining projections for both age groups. In Step #6, the 2011 projected volume is cited at only 5,083. There is no explanation to assist in determining the cause for the decrease in volume in each of the projection years of 2006 through 2011 from Step #5 to step #6.

Further, using the capacity figure (1,172.7) and Average Length of Stay (51.06) cited by the applicant, this methodology also shows unmet need. The unmet need ADC calculations using these factors equal 441.5. This then calculates to a need of over 12 additional hospice agencies. This again stands in stark contract to the Department's application of the need methodology which shows a surplus of service for Snohomish County residents.

In both Versions #1 and #2 above, OHI contends that the department's survey is an unreliable source of planning data. OHI notes several criticisms of the agency's survey, citing inappropriate use of population data for specific age cohorts, the failure of some hospice agencies to fully complete the survey, and a lack of clarity in the questions. [Source: February 20, 2007 Supplemental Information, page 2; June 28, 2007 Rebuttal Comments Page 3]

The department contends that the current practice of relying on survey data more closely adheres to the recommendations reached by the Hospice Methodology Advisory Committee in the development of the current hospice methodology. The committee recommended a data source which was collected through a "state-specific utilization data from all state hospice agencies". Through the use of survey data, the department has been able to establish a database of information to rely upon. Though there was consideration made by the committee for short-term implementation issues, survey data exists for the years necessary to review this application. [Source: Recommendations of the Hospice Methodology Advisory Committee, Revised September 13, 2001, Page 3]

Additional review of the advisory committee discussions regarding the projection of total need for hospice service provides additional guidance. When considering available options, the committee opted for versions which "avoided complex refinements that would make the method more difficult to understand or to carry out without necessarily increasing accuracy". [Source: Draft Report: Hospice Methodology Advisory Committee, April 3, 2001, p7] As noted by the applicant, the Standard Analytical File requires removal of any data affected by HIPPA regulations and must be converted into a Limited Data Set (LDS). This data set is also insufficient in that it omits admissions for 2 of the 4 required patient groups and all length of stay data is removed. The LDS requires additional manipulation based upon data collected through the Department's original survey data the applicant has cited as unreliable.

The department concludes that it cannot support OHI's assertion that the responses received by the department through a survey are inherently inaccurate or unreliable. The department

has no evidence that the responses returned by the providers are either intentionally or unintentionally inaccurate. Finally, the department concludes that OHI's version of the methodology in WAC 246-310-290 that is based on Medicare data [Odyssey Versions #1, Appendix B] can only be applied if several data elements are estimated. OHI has based those estimates on the department's survey responses. These efforts appear to be contrary to guidance provided by the Hospice Methodology Advisory Committee. Further, the use rates and lengths of stay to be considered in the methodology are identified in rule and not subject to substitution with alternate standards.

OHI states that *“Currently, Snohomish County residents have the choice of only a handful of providers, one which is Group Health Cooperative (“Group Health”). Group Health, however, provides hospice services almost exclusively to residents who are members of one of the cooperatives health plan. It is therefore, highly unlikely that physicians in Snohomish County who are not Group Health physicians will refer non-Group Health patients to Group Health hospice services”*. [Source: June 28, 2007 Rebuttal Comments, page 20]

Comments from the affected persons, community members, business owners, local physicians and healthcare providers in Snohomish County indicated opposition to OHI's project. Additionally, the letters of opposition indicate that the local healthcare providers refer hospice care patients to the existing hospice agencies in the county and patients referred for hospice services are not experiencing delays in service or difficulty obtaining the appropriate hospice care necessary. [Source: June 11, 2007, Public Hearing documents Evergreen Healthcare]

The department notes that OHI's use of different data sources projecting varying numbers of providers needed in Snohomish County indicates that there is no need for an additional hospice agency in the county. Furthermore, the department observed that OHI did not include the capacity of Group Health Cooperative an existing provider serving Snohomish County in its calculation. WAC 246-310-290(1) (b) defines the current supply of hospice providers as:

- (i) Services of all providers that are licensed and Medicare certified as a provider of hospice services or that has a valid (unexpired) certificate of need but have not yet obtained a license.
- (ii) Hospice services provided directly by health maintenance organizations that are exempt from the certificate of need program. Health maintenance organization services provided by an existing provider will be counted under (b)(i) of this subsection.

If Group Health capacity were not deducted and *“minor revisions”*, admittedly made by OHI to the hospice need methodology were not a factor in its application, OHI's hospice need calculations would show no additional hospice need in Snohomish County.

WAC 246-310-290(1)(b) defines currently supply of hospice providers” to mean

- (i) *Services of all providers that are licensed and Medicare certified as a provider of hospice services or that have a valid (unexpired) certificate of need but have not yet obtained a license; and*

- (ii) Hospice services provided directly by health maintenance organizations who are exempt from the certificate of need program. Health maintenance organization services provided by an existing provider will be counted under (b)(i) of this subsection.  
[emphasis added]

The department concludes that these modifications or “*minor revisions*” to the hospice need methodology are not permitted by rule and must, therefore, be rejected.

Based upon the above information, the department concludes that there is no unmet need for hospice care service in Snohomish County and concludes that modifications proposed by OHI are not consistent with the intent of the rule and therefore, not appropriate when applying the methodology contained in WAC 246-310-290. This criterion is not met.

OHI contends that hospice patients use rates in Washington State, and specifically in King, Pierce and Snohomish counties are lower than they should be. Based on the standards contained in WAC 246-310-290, the department concludes that hospice providers in Snohomish County are providing services at or near the level of the state as a whole. If, as stated in the rule, statewide levels of services are to be considered the benchmarks, the department concludes that no additional need has been demonstrated on this basis.

On the basis of the department’s need methodology, and given the significant number of assumptions and omission by OHI in its alternative calculations, the department concludes its application of the numeric methodology is reasonable and consistent with WAC 246-310-290. Therefore, the department concludes that sufficient need was not demonstrated in Snohomish County to warrant the approval of additional hospice agency.

(1)(b) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

An additional factor examined to determine the accessibility or availability of existing providers is the time between referral of a patient to a particular hospice and admission of the patient. OHI contends that existing hospices are not admitting patients quickly enough and offers as a standard its corporate policy of admitting all patients within three hours of referral. The department surveyed existing providers in all Washington State counties and learned that their typical time from referral to admission ranges from 24 to 48 hours, with some admissions on the day of referral.

During a review of OHI’s application and comments provided by members of the community in Snohomish County the department did not find any compelling evidence to demonstrate that the current time between patient referral and admission is either too long or indicative of a lack of ability of the existing hospice providers to admit new patients in a timely manner. Both oral and written comments to the department by the existing hospice care providers serving Snohomish County indicated that it’s their policy to contact each referred patient and or family within 1-2 hours of a patient hospice care referral to ask when they would prefer to be admitted. The department cannot, therefore, accept that this factor is demonstrative of need in Snohomish County.

Evidence that existing providers in Snohomish County are unable to meet the need for hospice services might be manifested in information from physicians or other health care providers unable to refer patients to existing providers due to capacity issues, or statements from patients or their families who might have experienced difficulty obtaining hospice services. However, public comments provided by a professor of Medicine and palliative care physician states that “*consumers have good choice and rapid access, there is no community need and no underserved populations exists and current providers are more than adequate and can easily expand as need grows*”. [Source: May 31, 3007, University of Washington School of Medicine Public Comments]

The department might also expect to learn of existing providers being unable to accommodate further increases to caseloads. In contrast, several providers expressed ability to add to their current caseloads without adding staff. OHI did not provide the department with compelling evidence that existing providers are unable to handle current or future patient volumes. In contrast, Providence Hospice and Homecare of Snohomish County stated at the public hearing, “*With our present staffing we could easily admit more patients.*” [Source: June 11, 2007 Public Hearing Comments]

Rebuttal comments submissions by OHI states “*nearly all the providers asserted that there is no need for Odyssey’s hospice services because they are absorbing all the new need for hospice services. They further asserted that they plan to continue to absorb all the increased need in the future nothing gives the existing providers the right to simply absorb all the increased need as it arises, either currently or in the future*”. [Source: June 28, 2007 Odyssey Rebuttal Comments, Pages 27 and 28] As noted previously, OHI’s has not demonstrated, other than through the use of proposed goals such as the Last Acts recommendations, that the existing hospices care providers in Snohomish County collective performances are not adequate. Additionally, OHI provided documentation indicating that existing Snohomish County providers serve patients residing within the county. [Source: February 21, 2007, Supplemental Information, Appendix SC1-D] The department concludes that OHI has not met its own burden of addressing these proposed criteria.

OHI has not demonstrated that an unmet need exists and further it has not shown that the existing providers in Snohomish County are unavailable, inaccessible or inappropriate to meet current hospice care services provided by those agencies. Therefore, the department concludes that this criterion is not meet.

- (2) *All residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services.*

To determine whether all residents of the service area would have access to an applicant’s proposed services, the department requires applicants to provide a copy of its current or proposed admission policy. The admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility and any assurances regarding access to treatment.

To determine whether low-income residents would have access to the proposed services, the department uses the facility's Medicaid eligibility or contracting with Medicaid as the measure to make that determination. To determine whether the elderly would have access or continue to have access to the proposed services, the department uses Medicare certification as the measure to make that determination.

A facility's charity care policy should confirm that all residents of the service area including low-income, racial, and ethnic minorities, handicapped, and other underserved groups have, or would have, access to healthcare services of the applicant. The policy should also include the process one must use to access charity care at the facility.

To demonstrate compliance with this sub-criterion, OHI provided copies of its current compliance and access to care admission and a non-discrimination funding policy currently in used at other OHI'S facilities. [Source: Application, Exhibits I and J]

To demonstrate compliance with this sub-criterion, Odyssey provided copies of its current Access to Care admission criteria, Non-Discrimination Compliancy, and Funding Non-Discrimination policies that are currently used in the Odyssey facilities. The Access to Care policy indicates that "[Odyssey] offers palliative care to terminally ill patients and support to those patients and their families without regard for diagnosis, gender, sexual orientation, national origin, race, color, creed, disability, age, place of residence or ability to pay for services." Odyssey also included information regarding efforts in cultural competence to various Spanish-language, Asian, and Eastern European communities in an effort to provide hospice services to as many patients as possible. [Source: Application, Page 17]

Also, the policy on Funding Non-Discrimination states "...[Odyssey] will not discontinue or diminish heath care provided to a Medicare beneficiary in the event the beneficiary becomes ineligible or the funding source changes". [Source: Application, Appendix J]

The department concludes that, if approved, Odyssey would obtain Medicare certification and become Medicaid eligible. Odyssey's projected sources of revenue confirm this conclusion. [Application, p21] WAC 246-310-210(2) requires the department to evaluate the extent to which medically underserved groups such as Medicare, Medicaid and medically indigent will have access to services. The funding policy as previously stated only speaks to not reducing or discontinuing services to Medicare beneficiaries whose funding status changes. The policy does not make the same statements for patients with other payor sources. A review of the projected financial statements shows charity care as a line item under sources of revenue and as a deduction from revenue. The amount identified is 2.5% of Medicare revenue. It is not clear if this 2.5% is in fact Medicare contractual allowances, charity care for only Medicare patients or the amount of charity care for all payor types. If this project is approved the applicant would need to agree to a term and condition that would require the policy on funding non-discrimination be modified to be inclusive of all patients regardless of payor source and report to the department on an annual basis the amount of charity care provided to residents of Snohomish County. The charity care report would be due 120 days from the close of the agency's fiscal year.

Based on the above information, the department concludes that all residents of the service area would have adequate access to the health care services at Odyssey-Snohomish provided the applicant would agree to the above term and condition. This sub-criterion is met.

**B. Financial Feasibility (WAC 246-310-220)**

Based on the source information reviewed, the department determines that the applicant has not 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.

Odyssey anticipates becoming operational by July 1, 2008. [Source: Application, page 9] Based on this timeline, year 2009 would be the Medicare certified hospice agency's first full calendar year of operation. Using the financial information provided in the application, Table 1 below illustrates the projected revenue, expenses, and net income for partial year 2008, and full years 2009-2011 for Odyssey's Medicare certified hospice agency. [Source: February 20, 2007 Supplemental Information, Attachment SC1-D]

**Table 1  
Odyssey-Everett County Projected Revenue and Expenses Full Years 2008 - 2011**

	<b>2008 Partial year</b>	<b>2009 Full Year 1</b>	<b>2010 Full Year 2</b>	<b>2011 Full Year 3</b>
Projected Patient Days	640	4,480	8,720	12,960
Projected Unduplicated Census	8	56	109	162
Projected Average Daily Census	3.4	12.2	23.8	35.5
Net Patient Revenue*	\$ 159,985	\$ 663,579	\$ 1,299,374	\$ 1,935,003
Total Operating Expense*	\$ 420,489	\$ 867,632	\$ 1,255,941	\$ 1,484,453
Net Profit or (Loss)	(\$ 260,504)	(\$ 204,053)	\$ 43,433	\$ 450,550
Net Patient Revenue per Patient Day	\$ 249.98	\$ 148.12	\$ 149.01	\$ 149.31
Total Expense per Patient Day	\$ 657.01	\$ 193.67	\$ 144.03	\$ 114.54
<b>Net Profit/(Loss) per Patient Day</b>	(\$ 407.04)	(\$ 45.55)	\$ 4.98	\$ 34.76

\*Includes deductions for bad debt and charity care

As shown in Table I above, at the projected volumes identified in the application, Odyssey-Snohomish expects it would be operating at a loss in partial year 1 (2008) through 2009. By the end of year 2010, the second full year, Odyssey would be operating at a profit. This forecast also relies on an average length of stay of 80 days, more than 20 days longer than used in the applicant's need forecasts. This rate is 28 days higher than the state average and 25 days greater than the average length of stay of 55 days for the hospice providers currently serving Snohomish County. Projecting an ADC for the third year using the county ALOS would be 24.4 and this would lower 2011 net profit.

In addition to this application, Odyssey has two other applications undergoing review for establishing hospices in King and Pierce counties. The department notes that for each

application (King, Pierce and Snohomish) the projected number of patient days, average daily census and unduplicated census are exactly the same. In the department's experience it is highly unusual that three separate hospice agencies in different counties would have the exact same projections in these categories. The department is concerned that the projections as presented may not be reflective of what the applicant actually expects to provide but instead is what is needed to project having an average daily census by the third year of operation as required by rule.

However in the need section of this evaluation the department concluded that need for an additional Medicare certified hospice agency has not been demonstrated. As a result, the department concludes that Odyssey's projected number of patient days is not reliable and the department cannot conclude that sufficient revenue would be generated to meet the expenses of the proposed project.

Based on the above information, the department concludes that the project's revenues may be overstated and this sub-criterion is not 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.*

In response to this sub-criterion, the applicant provided the following statements:

Capital cost Impact

Minimal capital expense will be required for Odyssey to serve patients of Snohomish County. At a system level, hospice care reduces the need for expenditure for more capital-intensive care.

Operating costs

The national Medicare Hospice benefit reduces operating costs for health care at the system level. Medicare hospice patients elect to receive palliative and end-of-life care in the home or other environment vs. seeking curative treatment in more expensive settings such as ICU's at the end of life. This patient decision, supported by passionate end of life care, results in reduced total healthcare expenses. Medicare estimates this savings as about \$1.50 for each \$1.00 spent on hospice care.

Charges

Medicare reimburses hospice agencies on a fixed per diem basis. [Source: Application page 20]

Odyssey-Everett is leasing space for the proposed hospice agency and a copy of the draft lease agreement was submitted. [Source: April 26, 2007, Supplemental Information, Appendix SC-1] The department compared the costs identified in the lease document to the amounts contained in Odyssey's projected financial statements and found them to be consistent.

The department concludes that, while the initial capital expenditure of \$45,000 proposed to establish this agency may be small, the applicant has not been able to show need for additional hospice services in Snohomish County except through significant modification of the department's need projection methodology. Absent sufficient unmet need to support a

new hospice agency, the department concludes that any capital or operating expenditures incurred pursuing this project would be an unnecessary duplication of those made by existing providers and may result in an increase in the costs and charges for health services in the county. This sub-criterion is not met.

(3) The project can be appropriately financed.

The estimated capital expenditure to establish Odyssey’s Snohomish County office is identified as \$45,000. Of that amount, 66.66% is related to moveable equipment (\$30,000); and the remaining 33.33% is related to furniture (\$15,000). [Source: Application, page 20]

The source of financing for the project will be from OHI’s cash on hand. [Source: Application page 21] A review of OHI’s historical financial statements shows that the funds necessary to finance the project are available. OHI provided a letter confirming that the Chief Financial Officer has authorized allocation of funds to this project. [Source: February 20, 2007, Supplemental Information]

Based on the above documentation, the department concludes the capital costs to establish Odyssey-Everett would not adversely affect the financial stability of Odyssey HealthCare and the project can be appropriately financed. This sub-criterion is met

**C. Structure and Process (Quality) of Care (WAC 246-310-230)**

Based on the source information reviewed, the department determines that the applicant has not met the structure and process (quality) of care criteria in WAC 246-310-230.

(1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.

Given that Odyssey does not currently provide Medicare certified hospice services in Snohomish County, all staff for the hospice agency would have to be recruited. Table 2 shows the projected number of staff for partial year 2008 and the first three full years of operation. [Source: February 20, 2007 Supplemental Information, Appendix SC1-D]

**Table 2  
Odyssey-Everett Projected Number of FTEs**

<b>Type of Personnel</b>	<b>Partial Year 2008</b>	<b>Year 1 2009</b>	<b>Year 2 2010</b>	<b>Year 3 2011</b>
Nursing/Patient Care	0.60	2.23	4.69	7.51
Administrative	3.50	7.25	7.50	9.50
Other*	0.40	0.67	1.33	1.92
Therapists	0.00	0.00	0.00	0.00
Medical Director	0.00	0.00	0.00	0.00
<b>Total FTEs</b>	<b>4.50</b>	<b>10.15</b>	<b>13.52</b>	<b>18.93</b>

\*Includes medical social worker; massage therapists, volunteers, and pastoral

As shown in Table 2 above, in year 2008, Odyssey plans to recruit 4.50 FTEs to begin providing Medicare certified services in Snohomish County, then the majority of staff would be recruited in full throughout the next three years until fully staffed by the end of year 2011.

Odyssey contends that these recruiting goals will be achievable based on the following statements:

*“Odyssey HealthCare invests substantial resources in employee recruitment and retention efforts. These investments have resulted in a very stable nursing staff and permit us to provide a full range of care without needing to use contract agency nurses. A number of experienced Odyssey RN’s in other communities have already expressed interest in relocating to the Northwest if we develop services here.”* [Source: Application, Page 24]

Odyssey states that its status as a hospice-only program should enable it to recruit committed hospice nurses and cites its programs of generous benefits and bonus, stock option, tuition reimbursement and a company-wide career advancement opportunities are very attractive to the cohort of nursing professionals [Source: Application, Page 25]

Based on the available information, the department concludes that staffing for the Medicare certified hospice agency will be available. This sub-criterion is met.

- (2) *The proposed service(s) will have an appropriate relationship, including organizational relationship, to ancillary and support services, and ancillary and support services will be sufficient to support any health services included in the proposed project.*

In its responses to the department’s screening questions, OHI provided copies of standard vendor agreements. [source: Application, Appendix N] The appendix contained samples of OHI’s standard ambulance/transportation services, occupational, speech and physical therapy services, supplemental staffing, respite services, inpatient services, laboratory services, pharmacy services, durable medical equipment and supplies agreements. OHI did not, however, identify any prospective vendors of such services or document that any of those services would be readily available on the terms identified in those draft agreements.

The types of vendor agreements provided area consistent with what department would expect for this type of project. If this project is approved, to ensure that appropriate ancillary and support agreements will be established the applicant must agree to a term requiring it to provide copies of these agreements for review and approval, identifying vendors and charges for services consistent with the drafts provided.

Based on the evaluation and the supporting documents provided, the department concludes with agreement to the term stated above, OHI has demonstrated reasonable assurance that it will have appropriate ancillary and support services with healthcare providers in Snohomish County. This sub-criterion is met.

- (3) *There is reasonable assurance that the project will be in conformance with applicable state licensing requirements and, if the applicant is or plans to be certified under the Medicaid or Medicare program, with the applicable conditions of participation related to those programs.*

As stated in the project description portion of this evaluation, Odyssey HealthCare is based in Dallas, Texas and operates over 81 hospice agencies across the nation. To evaluate this sub-criterion, the department requested quality of care histories from the 30 states where Odyssey HealthCare, or any of its subsidiaries, owns or operates healthcare facilities. Of the 30 states, 23 states provided information related to the quality care history and 8 states did not

respond.<sup>4</sup> Of the 23 states that responded, two identified either minor or unsubstantiated claims or minor deficiencies that resulted in fines<sup>5</sup>. Three states indicated significant non-compliance issues at one or more of the healthcare facilities operated by Odyssey HealthCare within in last 3 years.<sup>6</sup> Georgia reported immediate jeopardy in two separate investigations in 2005 and 2006. The remaining non-compliance citations related to isolated incidences and did not represent immediate jeopardy to patients. According to documents provided by the out-of-state licensing agencies, OHI resolved the investigated issues and minor disciplinary actions taken by the out-of-state surveying agencies. [Source: Compliance survey data provided by each state agency]

OHI has not identified a medical director of its proposed Snohomish County hospice agency. A copy of a draft medical director agreement was provided for reference with this criterion. [Source: April 26, 2007 Supplemental Information, Page 1]

WAC 246-335-100 outlines the key staff positions that each Medicare certified hospice agency must maintain. One of the key positions is a director of clinical services to be available 24/7, and the hospice agency must identify a similarly qualified alternate to act in the director's absence. Neither of these positions was identified in the application, therefore, the compliance history of the individuals proposed to fill these two positions could not be evaluated. If this project is approved, the department would attach a term to the approval requiring OHI to identify for review and approval these two key positions prior to commencing the project.

Based on this information, the department concludes there is reasonable assurance that Odyssey-Everett would be operated in conformance with state and federal regulations with agreement to the term above. Therefore this sub-criterion is met.

(4) *The proposed project will promote continuity in the provision of health care, not result in an unwarranted fragmentation of services, and have an appropriate relationship to the service area's existing health care system.*

OHI addressed this sub-criterion with the following statements:

*“The design of the Medicare hospice benefit assures continuity and avoids fragmentation. Because services are planned and monitored the hospice and are reimbursed on a per diem basis and paid for by that same entity, there is inherent coordination of all providers around the care of the patient and his or her family”.*

*“During the start-up phase of OHI's program in Snohomish County, we will begin contracting with hospitals, nursing homes, and other facilities and contract professionals for provision of services to our patients that we do not provide directly.”* [Source: Application page 23-24]

OHI asserts that there is need for additional Medicare certified hospice agencies in Snohomish County. However; in the need section of this evaluation, the department

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<sup>4</sup> States that did not respond: Arkansas, Colorado, Florida, Georgia, New Mexico, Ohio, South Carolina and Texas.

<sup>5</sup> California had unsubstantiated claims in one of three facilities and Wisconsin listed \$493 in fines

<sup>6</sup> States indicating significant non-compliance issues: Georgia, Oregon and Virginia

concluded that the existing providers are both available and accessible to adequately provide current and future hospice need in the county through 2011. Additionally, a number of the existing providers indicated that they have the capacity to serve the patients within the service area without adding staff.

Therefore, the department concludes that approval of this project has the potential of fragmentation of Medicare certified hospice services within the service area. This sub-criterion is not met.

- (5) *There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations.*

This sub-criterion is addressed in sub-section (3) above.

**D. Cost Containment (WAC 246-310-240)**

Based on the source information reviewed, the department determines that the applicant has not 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.*

Acquisition of an existing hospice agency

The applicant evaluated this option based upon 4 criteria; Timeliness, Financial feasibility, Capital Costs and Staffing impact. Odyssey determined that, due to the lack of hospice's available for acquisition, this is not a viable alternative to the start-up of a new facility.

The department concurs with the applicant's assertion that there is no hospice agency available in Snohomish County for acquisition. Further, the approval of this project would allow an additional Medicare certified hospice agency in Snohomish County. However, as previously concluded in this evaluation, no need has been demonstrated for additional services.

On the basis of the information above, the department concludes that adding another hospice agency is not the best available alternative for Snohomish County. This sub-criterion is not met.

# APPENDIX A