

# **EVALUATION OF THE CERTIFICATE OF NEED APPLICATION SUBMITTED ON BEHALF OF MAXIM HEALTHCARE SERVICES, INC. PROPOSING TO ESTABLISH A MEDICARE CERTIFIED/MEDICAID ELIGIBLE HOME HEALTH AGENCY TO SERVE THE RESIDENTS OF SPOKANE COUNTY**

## PROJECT DESCRIPTION

Maxim Healthcare Services, Inc. (MHSI) was established in 1988 under the name Medcall Medical Staffing. MHSI was created to service the staffing needs of the long-term care industry on the east coast. The company's name was changed to Maxim Healthcare Services, Inc. in 1992 following the acquisition of NSI Home Health Services.

In 1996, MHSI added a wellness division named Maxim Health Systems, LLC. According to information available at MHSI's website, Maxim Health Systems offers a full line of immunizations and health screenings nationwide. Three years later, MHSI added two new divisions Maxim Staffing Solutions and TravelMax. Maxim Staffing Solutions was created to take care of allied health and medical administrative staffing and TravelMax Medical Professionals took care of traveling nurses. During this period, Maxim Staffing Solutions added two new subdivisions known as Maxim Physician Resources and this sub-division deals with physician placement and staffing and Maxim Coding Solutions in charge of Coding and health information management professionals. Altogether, these divisions make MHSI one of the largest home health care and medical staffing companies in the United States. [Source: <http://www.Maximhealthcare.com>]

As of the writing of the evaluation, Maxim Healthcare Services, Inc or one of its subsidiaries has a presence in 46 continental mainland states of the United States.<sup>1</sup> For Washington State, MSHI has five offices in four counties King County (2) Thurston County (1) Pierce County (1) and Spokane County (1). MHSI sites in Washington specialize in providing homecare health services and staffing services.

For this project, MHSI proposes to establish a Medicare certified home health agency within Spokane County. Currently, MSHI operates a licensed only home health agency at Freeway Plaza 1500 West 4<sup>th</sup> Avenue, Suite 501 in the City of Spokane. The Medicare certified home health agency would be an extension of that agency's services. [Source: Supplemental information July 26, 2006 pg. 2]

The proposed Medicare certified home health agency would provide skilled nursing services, physical, occupational, speech and IV therapies, medical social work, respite care and home health aide services. [Source: application, May 22, 2006, pg. 4]

There is no capital expenditure associated with this project. The project first year of operation is 2007 [Source: Application, May 22, 2006 face sheet and pg. 9]

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<sup>1</sup>MHSI does not have offices or subsidiaries in following states Montana, Wyoming, North Dakota, and South Dakota.

## APPLICABILITY OF CERTIFICATE OF NEED LAW

This project is subject to Certificate of Need review as the establishment of a new health care facility under the provisions of Revised Code of Washington (RCW) 70.38.105(4)(a) and Washington Administrative Code (WAC) 246-310-020(1)(a).<sup>2</sup>

## CRITERIA EVALUATION

In order to obtain Certificate of Need approval, Maxim Healthcare Services, Inc 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 the State Health Plan, Long Term Performance Standards, (4)(d) (the home health agency projection methodology and standards).<sup>3</sup>

## APPLICATION CHRONOLOGY

March 29, 2006	Letter of Intent Submitted
May 22, 2006	Application Submitted
	Department Pre-Review Activities
June 7, 2006	• 1 <sup>st</sup> Screening activities and responses
July 31, 2006	Amended Application Submitted
	Department Pre-Review Activities
August 10, 2006	• 1 <sup>st</sup> Screening activities and responses
September 20, 2006	• 2 <sup>nd</sup> Screening activities and responses
October 4, 2006	• 3 <sup>rd</sup> Screening activities and responses
October 30, 2006	Department Begins Review of Application
December 6, 2006	Public Hearing conducted/End of Public Comment
December 21, 2006	Rebuttal Comments Received
February 2, 2007	Department's Anticipated Decision Date
March 3, 2008	Department Actual Decision Date

## INTERESTED AND AFFECTED PERSONS

Throughout the review of this project, eight entities sought and received interested persons status under WAC 246-310-010.

### Interested Persons

- Jerry F. Brown dba Jerry F. Brown, LLC - a health care consultant agency in Clark County
- Health Trends - a healthcare consultant agency in King County.
- Brent Russell- a healthcare consultant located in Spokane County.
- Jay Cushman- a healthcare consultant located in Oregon.

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<sup>2</sup> A Medicare certified home health agency is also Medicaid eligible; however, 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>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); WAC 246-310-220 (2), (3), and WAC 246-310-240(2) and (3).

- Family Home Care - a Medicare certified/Medicaid eligible home health agency in Spokane County.
- Northwest Healthcare Alliance, Inc - a health care consultant agency in King County.
- Providence Health System- a healthcare provider located thought Washington
- Visiting Nurse Association - a Medicare certified/Medicaid eligible home health agency in Spokane County

#### Affected Persons

Off the eight entities above, four sought and received affected person status.

- Family Home Care - a Medicare certified/Medicaid eligible home health agency in Spokane County.
- Northwest Healthcare Alliance, Inc - a health care consultant agency in King County.
- Providence Health System- a healthcare provider located thought Washington
- Visiting Nurse Association - a Medicare certified/Medicaid eligible home health agency in Spokane County.

#### SOURCE INFORMATION REVIEWED

- Maxim Healthcare Services, Inc. Initial Application received May 22, 2006
- Maxim Healthcare Services, Inc. supplemental information dated June 7, 2006
- Maxim Healthcare Services, Inc. Amended Application July 31, 2006
- Maxim Healthcare Services, Inc. supplemental information dated August 10, 2006; September 20, 2006 and October 4, 2006
- Maxim Healthcare's web site - [www.maximhealthcare.com](http://www.maximhealthcare.com)
- Certificate of Need Utilization Surveys for Spokane County
- Washington State Health Plan, Volume 1, Health Principals, Goals, and Strategies
- Public comments received during the public comment period
- Comments during the public hearing on December 6, 2006
- Comments submitted by Northwest Healthcare Alliance, Inc dated December 06, 2006
- Comments submitted by Family Home Care Corp dated December 11, 2006
- VNA Home Health Care Services rebuttal comments dated December 20, 2006
- Maxim Healthcare Services, Inc. rebuttal comments dated December 21, 2006
- Licensing and/or survey data provided by the Department of Health's Office of Health Care Survey
- Licensing and compliance history data provided by the Department of Health's Medical Quality Assurance Commission
- Office of Financial Management population data
- Financial feasibility review by the Department of Health's Office of Hospital and Patient Data Systems (January, 2007)
- Certificate of Need historical files
- Department of Social and Human Services Office of Financial Recovery

CONCLUSION

For the reasons stated in this evaluation, the application submitted on behalf of Maxim Healthcare Services, Inc. to establish a Medicare/Medicaid eligible agency in Spokane County is not consistent with applicable criteria of the Certificate of Need Program, and the application to receive a Certificate of Need is denied.

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

Based on the source information reviewed, the department determines that the applicant has not met the need criteria in WAC 246-310-210(1) and (2).

- (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.

MSHI rationale for the submission of a certificate of need application concluded that the department’s numeric methodology demonstrates an unmet need for additional Medicare certified home health agencies in Spokane County. “*At this time, Spokane County has six (6) certified home health agencies, with an additional authorized agency in the process of seeking certification. It would then appear that there is a need for 7 additional Medical certified home health agencies in the County*”. [Source: Application pg. 11]

To determine the numeric need for home health agencies in Spokane County, the applicant applied the department’s home health need methodology derived from the Home Health Agencies Need Estimation Method (Washington State Health Plan, Volume II, page B-34).

The department uses the original Home Health Agencies methodology (HHA) a four steps mathematical calculation process found in the Long Term Care Services Performance Standards of the Washington State Health Plan (WSHP); to determine need for Medicare certified home health agencies in a designated service area. In addition to the original HHA methodology, the department also uses a modified version. This modified version attempts to account for the varying age groups cohorts use rates by using an average of 21 visits multiplied by the patient total to arrive at the total number of patient’s visits in a given year. Outlined in Tables 1 through 5, is the Home Health Agency need methodology as it applies to Spokane County.

Modified Methodology

Step 1: as shown in the table below, displays Spokane County projected population for years 2007-2010. [Source: Office of Fiscal Management – Intermediate figures]

**Table 1  
Spokane County Population Projections**

Age Cohort	2006	2007	2008	2009	2010
0-64	392,697	396,921	401,144	405,368	409,592
65-79	36,223	37,020	37,817	38,614	39,411
80+	17,218	17,267	17,316	17,365	17,414
Total	446,138	451,208	456,277	461,347	466,417

Step 2: shown in Table 2 below, are the applicable use rates and the age group cohorts to which they applies. The projected population in an age group cohort is multiplied by the use rate and the resulting product indicates the total number of the planning area residents projected to need home health services. [Source: WSHP, page 35]

**Table 2  
Use Rate Multipliers**

Age Cohort	Use Rate
0-64	0.005
65-79	0.044
80+	0.183

Using the rates shown in the table above and rounding the number to the nearest whole unit, the calculations from step 2 are summarized in Table 3 below.

**Table 3  
Spokane County Use Rate Projections**

Age Cohort	Use Rate	2007	2008	2009	2010
0-64	0.005	1,984	2,005	2,026	2,047
65-79	0.044	1,628	1,663	1,699	1,734
80+	0.183	3,159	3,168	3,177	3,186
Total		6,773	6,838	6,903	6,968

Step 3 requires the multiplication of the total number of the projected population in a year by 21 visits as shown in Table 4 below. By using 21 as an average number of visits per patient, a total number of patient's visits are projected as provided in the WSHP—HHA Methodology. This modification maintains the same age group cohorts use rate, but uses an average of 21 visits per patient. The results of the calculations are shown in Table 4 below. [Source: Department's Home Health Services Methodology based on WSHP]

**Table 4  
Spokane County Use Rate**

Item	2007	2008	2009	2010
# of Patients Total	6,771	6,836	6,902	6,967
# of Visits	21	21	21	21
# Total Patient Visits	142,191	143,556	144,942	146,307

Step 4 involves the division of the projected total number of visits by the 10,000 minimum required volumes per home health agency. The result of these calculations determines the projected number of home health agencies needed for the projected population in the planning area. Once this number is established, the number of existing CN approved Medicare certified home health agencies available in the planning area or serving residents from the planning area are then subtracted from the total need, resulting in a net need for the planning area. Summarized below in Table 5, is the calculation for Spokane County based on the modified WSHP—HHA Methodology.

**Table 5  
Spokane County Agency Need**

Item	2007	2008	2009	2010
# Total Patient Visits	142,191	143,556	144,942	146,307
<i>Quotient of 10,000</i>	<i>14</i>	<i>14</i>	<i>14</i>	<i>14</i>

Further, to determine if there is need for another home health agency in Spokane, the department reviewed the number of existing providers. Listed below in Table 6, are the names of the “licensed only” and the Medicare certified agencies providing home health services in Spokane County. The department notes that 28 of the 29 agencies listed in the table below are located within the county.

**Table 6  
Spokane County Home Health Agencies**

“Licensed only” Agencies		Medicare Certified Agencies
A New Hope	Integrated Health Professionals	Family Home Care
Affordable Homecare	Interim Healthcare of Spokane, Inc.	Gentiva Health Services/Certified
Beneficial In-Home Care	Kelly Home Care Services, Inc.	Intrepid USA Healthcare Services
Comfort Keepers	Lifecare Solutions	N.E. Washington Health Programs
Evergreen Home Care	Lincare, Inc.	Option HHC Services/Certified
Family Home Care/Private Duty	Maxim Healthcare Services, Inc.	VNA Home Health Care Services
Gentiva Health Services/PP	North South Valley Caregivers	Waterford Home Health
Havenwood Caregiver Services.	Option Care	
Home Care of Washington, Inc.	Option Home Health Care-PD	
Homewatch.	S & S Health Care	
Independent Services Corp	SL Start	

As shown in the table above, of the 29 agencies serving Spokane County, 7 agencies are eligible to provide a full range of Medicare certified home health services<sup>4</sup>. The remaining 22 agencies are “licensed only” providers. [Source: CN historical files]

For the purpose of this evaluation, the department will base need for Spokane County on the 7 existing agencies licensed to provide a full range of Medicare certified home health services within the county, with the recognition that the 22 additional “licensed only” agencies including the applicant are able to serve the residents of Spokane County.

Using the modified WSHP—HHA Methodology results shown in Table 5, the department identified need for 14 Medicare certified home health agencies in Spokane County from year 2007 through year 2010. Once the existing number of Medicare certified home health agencies (7) is subtracted from the need, the result is a net need of at least seven additional Medicare certified home health agencies in Spokane County.

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<sup>5</sup> Family Home Care, Gentiva Health Services/Certified, Intrepid USA Healthcare Services, Option HHC/Certified, VNA Home Health Care Services, Waterford Home Health and N.E. Washington Health Programs.

Maxim Healthcare Services, Inc. Application of the original WSHP Home Health Services Methodology

MHSI proposes to establish a Medicare certified and Medicaid eligible home health agency in Spokane County base on years 2006-2007 projected population data for the planning area. MHSI did not provide data for year 2006 therefore, to project need for the planning area, the department will use the year 2006 Office of Fiscal Management – Intermediate figures for Spokane County. Summarized in Table 7 below, is MSHI’s steps 3 and 4 application of the Home Health Need Methodology. [Source: Application page 10]

**Table 7**  
**Steps 3A: MHSI Application of the Original WSHP**

Projections	2007	2008	2009	2010
# of Patients Total	6,771	6,839	6,904	6,969
# of Visits	21	21	21	21
# Total Patient Visits	142,254	143,619	144,984	146,349

**Table 8**  
**Steps 3B: MHSI Application of the Original WSHP**

Item	2007	2008	2009	2010
<i>Projected # of Visits divided by Quotient of 10,000</i>	142,254	143,619	144,984	146,349
<i>Projected agencies needed</i>	<i>14</i>	<i>14</i>	<i>14</i>	<i>14</i>

As shown in Tables 3A and B above, MHSI patents total from years 2007-2010 are slightly different from the departments, however despite the difference a mathematical need was demonstrated by MHSI for additional Medicare certified home health agencies in Spokane County. When comparing the results of the tables above with the departments need projections in Table 5, it is noted that both MHSI’s and the department’s projections shows a mathematical need for additional agencies in the planning area.

In June 2006, the department conducted a utilization data survey of all home health agencies serving Spokane County. The department received responses from 9 “licensed only” and 5 CN approved Medicare certified home health agencies<sup>5</sup>. Waterford on South Hill<sup>6</sup> a CN approved Medicare certified agency was unable to provide the department with utilization data because at the time, Waterford on South Hill was not yet operational.

The department also received utilization data from NE Washington Health Programs a CN approved Medicare certified home health agency located in Stevens County, but provides home health services to the residents of Spokane County. To account for the lack of utilization data from Waterford on South Hill, the department elected to use the projection data the agency provided in its CN application. This data is inserted as part of the Spokane

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<sup>5</sup> Responses to the department’s survey of all Spokane County home health agencies dated June 7, 2006  
 “Licensed only” agencies—Affordable Homes Inc, Family Home Care, Havenwood Caregiver Services, Home Care of Washington, Inc, Homewatch., Independent Services Corp, Interim Healthcare of Spokane Inc, S L Start and S & S Start. Medicare certified agencies—Family Home Care Private Duty, Gentiva Health Services, Interpid USA Health Services, VNA Home Health Caregiver Services and N.E. Washington Health Programs

<sup>6</sup> CN #1311 dated June 28, 2005.

County Medicare certified home health agencies market share calculations summarized in Table 10.

Summarized in Table 9 below, is the unduplicated number of patients and the anticipated total visits projected by MHSI for Spokane County during its first three years of operations.

**Table 9**  
**MHSI unduplicated number of Visits projected Year 1 to Year 3.**

<b>Item</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
# unduplicated Patients	500	575	661
# Of Visits	10,500	12,075	13,900

Based upon the projections in Table 9 above, the department calculated the market share percentages that MHSI would capture if the projections stated in the table above, were to materialize. The calculations below assumed that for the next three years, the current providers in Spokane County will not experience any increase in home health visits other than those visits reported in 2005.

**Table 10**  
**Home Health Agencies Projected Visits and Market Share**

<b>Name</b>	<b>Year 2005</b>	<b>Year 2006</b>	<b>Year 2007</b>	<b>Year 2008</b>	<b>Year 2009</b>
VNA Home Health Care	53,903	47500	53,903	53,903	53,903
Family Home Care	29,850	18,714	29,850	29,850	29,850
Intrepid USA HCS	2,617	2,043	2,617	2,617	2,617
Gentiva Certified HH	39,055	18,955	39,055	39,055	39,055
Waterford on South Hill <sup>7</sup>	10,500	0	10,500	10,500	10,500
NE Washington Health	1,362	986	1,362	1,362	1,362
Option HHC Services <sup>8</sup>	0	0	0	0	0
<b>Total</b>	137,287	89,865	137,287	137,287	137,287
<b>MHSI Projections</b>	-	-	<b>10,500</b>	<b>12,075</b>	<b>13,900</b>
<b>MHSI Market Share</b>	-	-	<b>7.6%</b>	<b>8.8%</b>	<b>10.1%</b>

Comments received by the department in opposition to the proposed project, states that the project is not needed that MHSI applied the numeric methodology without demonstrating that existing providers in Spokane County are not available and accessible.

VNA Home Health Care Services

The approval of Maxim’s application will do nothing to promote certificate of need objectives: there is access to home health services in Spokane County, there is high quality of health services delivery now; and approval would duplicate services and would do nothing to control costs, in fact, duplicative competition would very likely have just the opposite effect—it would raise cost. [Source: VNA Rebuttal comments received December 20, 2006]

<sup>7</sup> Waterford figures are based upon projections cited in their approved Certificate of Need application

<sup>8</sup> Option HHC did not respond to the requested survey information

#### Northwest healthcare Alliance, Inc.

Maxim modified the Washington State Health Plan (WSHP) methodology (page 10) by assuming a higher number of visits per patient than called for in the WSHP. The WSHP calls for about 16 visits per patient. This modification should not be accepted unless there is evidence that the age-specific visit rates provided by the WSHP methodology are not appropriate for Spokane County. Maxim concludes that the existing agencies are providing fewer visits than required under the WSHP methodology (page 12). Yet Maxim modified the WSHP method to inflate the number of visits projected by the WSHP method without this modification, there would be no unmet need for visits computed for 2004. Maxim has not demonstrated that existing providers are failing to provide an adequate volume of home health visits to the residents of Spokane County. [Source: Public comments received October 6, 2006]

#### Family Homecare Services

Spokane County currently has adequate number of home health agencies that are able to serve all home health referral and Maxim's need methodology is based on a 20 years old out-dated document. [Source: Public comments received October 6, 2006]

#### MHSI Response

Both Family Health and VNA criticized Maxim for adhering to the instructions promulgated in the Washington State Health Plan (1987). Understandably, this plan is nineteen years old and may not be reflective of current conditions. However, until this plan is changed in its entirety or in parts, it is the prevailing regulation and it must be followed. For the last few years, the certificate of need unit has accepted the factor of 21 visits per patient to determine the total number of visits for any given primary service area. When the certificate of need application for Waterford Home Agency was filed (2/16/04) the 21 visits per patient factor was used and accepted. [Source: MHSI Rebuttal comments received December 21, 2006]

#### Department's Response

The department concludes MHSI has demonstrated that a mathematical unmet need for additional Medicare certified home health services agencies exist in Spokane County as shown in Table 8. Additionally, the department's methodology as shown in Table 5, using 10,000 visits as a guideline, also demonstrates that a mathematical need exists in Spokane County. However, MHSI failed to demonstrate that the 6 current Medicare certified home health providers located in Spokane County and NE Washington Health Programs a CN approved Medicare certified home health agency located in Stevens County and providing home health services to the residents of Spokane County, are not available and accessible.

The department noted in Table 10 above, two agencies Option HHC Certified and Intrepid USA Health Care Services total patients visits as stated above, are below the 10,000 minimum number of visits required before a new agency is added in the planning area. Furthermore, the figures for Waterford on South Hill cited in Table 10 above are projections assumed by the department because actual data from this agency is not available. Waterford on South Hill CN was approved in June 2005 and is yet to start providing services.

Based on source information reviewed, the department concludes that because two of the six CN approved agencies providing services in Spokane County have patient's visits that are currently below the required minimum number of visits, the addition of a new Medicare

certified home health agency in the service area is not reasonable. This sub-criterion is not met.

- (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.

As previously stated, MHSI is an existing “licensed only” home health agency and currently providing services to Spokane County residents. To demonstrate compliance with the sub-criterion, MHSI provided a copy of its existing admission and charity care policies that would be used if this project is approved.

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. Documents provided by MHSI stated that it would provide services to all persons regardless of race, gender, ethnic origin, disability, life-circumstances, income, or ability to pay. [Source: Application, May 22, 2006 pg. 46]

To determine whether low-income patients would have access to home health services, the department uses the facility’s Medicaid eligibility or contracting with Medicaid as a measure to make that determination. The concerns below were submitted in opposition to the project from the following agency.

VNA Home Health Care Services.

Rebuttal comments received from VNA Home Health Care Services stated, “WAC Section III.A.9 requests the applicant to document the manner in which low-income persons and other under-served persons will have access to the services proposed”. “They stated on page 14-15, that Exhibits XIV, XV, XVI provide this information”.

- a. Exhibit XIV is a copy of the admission policy—it is actually a policy statement—a statement of purpose, more than anything else, and with only a single page of text very generic.
- b. Exhibit XV is a community service policy. It is less than ½ page of text. It is certainly not a charity care policy—it is statement of purpose, with absolute no detail—the department will have no basis to judge the appropriateness of under-served person’s access to proposed services.
- c. Exhibit XIV is a patient referral policy. It, too, is less than one page; there is no documentation, as required by WAC Section III.A.9.
- d. In responses to screening questions dated October 18, 2006, the applicant states “How will the applicant make....indigent client aware of the availability of charity care”. [Source: Rebuttal statement, Dec 20, 2006, page10]

*“It is unlikely that a health care provider will advertise in a newspaper ...that his/her feasibility (sic) will offer charity care.....The only way charity care can be disseminated is through conversations with discharge planners....Maxim/Spokane on several occasions has continued providing services to clients whose eligibility has expired.... as rule, the costs of these services was never booked.....this is why there is no record....of any charity care.” (Page 2, letter from Mario Martini to Peter Agabi, October 18, 2006).*

This response makes our point—there is simply no Maxim policy—charity care is administered in a piecemeal, ad hoc fashion. By the applicant’s admission, there is not even any record of such care. [Source: Rebuttal statement, Dec 20, 2006, page10]

#### MHSI Reponses

The applicant did not submit any response to the concerns raised by VNA Home Health Care Services.

#### Department’s Response

In a screening question dated June 7, 2006, the department asked, “Applicant Exhibit XV Community Service Policy item (B) stated, *three percent (3%) of the gross income generated by Maxim/Spokane Home Health will be provided to indigent persons who are financially unable to defray the cost of the necessary care.* Staff is unable to find charity care data for partial year 2007. Please re-submit statements of account with the 3% charity care listed”. On September 20, 2006, the applicant called the department seeking technical help to clarify screening questions asked of the applicant. During the telephone conference, department staff verbally asked the applicant “How will the applicant make indigent clients aware of the availability of charity care”.

In a written submission dated October 18, 2006, the applicant stated, “*It is unlikely that a health care provider will advertise in a newspaper or some other form of media that his/her facility will offer charity care. The only way information about charity care can be disseminated is through conversations with discharge planners, doctors and other caregivers who represent prospective clients. Maxim Healthcare Service Inc./Spokane on several occasions have continued providing services to clients whose eligibility has expired, needed additional assistance, and did not have the resource to pay for it. As rule, the costs of these services was never booked this is why there is no record of any charity care.*” [Source: Supplemental Information, October 18, 2006, pg. 2]

Based on all documents submitted and statements made by the applicant regarding whether MHSI has a Charity Care policy and will provide adequate access to all residents, the department concludes that the applicant has not provided adequate documentation that home health services will be accessible to all residents of Spokane County. Therefore, this sub-criterion has not been met

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

Based on the source information reviewed, the department determines that the application is not consistent with the applicable financial feasibility criteria in WAC 246-310-220.

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

To assist the department in its evaluation of his sub-criterion the department asked the applicant to provide a partial year and three full years’ pro-forma financial statements starting from the first projected year of project approval. On September 20, 2006, the department mailed the following screening questions to the applicant:

- Maxim Healthcare Services, Incorporation Spokane Exhibit #2 P&L Statement 1/1-6/30 listed bad debt allowance as \$41675. Please provide a break down of what is contained in the line item titled bad debt allowance.
- The applicant-projected year I through year III Pro-Forma Statement of Operations received on May 22, 2006 (Application Appendix 17) did not include partial year 2007 statement. Resubmit pro-forma statement of operations for Maxim HHC/Spokane that includes forecast of the partial year of operation in addition to the information currently cited for the following three full years. Pro-forma statements should include charity care. [Source: Supplemental Information, Sept 20, 2006]

During a telephone conference with department staffs, the above questions were restructured to read: “Why is there such a material difference between the bad debt listed on the financial statements on Appendix XX—Calendar years 2003, 2004 and 2005, and allowance for bad debts on the pro-forma statements on Appendix XVII—year I, II and III”.

The applicant responded and stated on October 18, 2006, “Bad debts are the amount of accounts receivable deemed to be uncollectible and therefore written off for a variety of purposes. These amounts may relate to revenue booked over an unidentified period and the write-offs do not necessarily meet GAAP requirements of achieving best possible matching of revenues and expenses. In pro-forma statements, when each fiscal period is evaluated on its own merit and the matching revenues and expenses are limited to that particular period, the allowance for bad debts (not the bad debt write-offs) becomes more of a budget figure, which is related to sales earned rather than accounts receivable performance”.

The table below summarizes the applicant projected revenue, expenses, and net income for the first three years of operation. [Source: Application May 22, 2006, pg 9—12; Exhibit XVII Pro-forma Statement and Supplemental Information, October 23, 2006 Maxim HHC/Spokane Statement of Operations]

**MHSI Projected Revenue and Expenses Year I—III**

	<b>2006/2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
# of Patients	500	500	575	661
# of Visits per Patient	21	21	21	21
Total # of Visits	10,500	10,500	12,075	13,900
Net Patient Revenue	\$3,314,500	\$1,046,208	\$1,228,814	\$1,447,690
Total Expense	\$3,247,000	\$1,036,523	\$1,174,882	\$1,326,270
Net Profit or (Loss)	\$933,015	\$520,621	\$705,184	\$914,940
Operating Revenue/Patient per Visit	\$8.09	\$6.95	\$8.12	\$9.48
Operating Expense/Patient per Visit	\$1.53	\$3.29	\$3.26	\$3.23
Net Profit/Loss per Patient per Visit	\$6.56	\$3.66	\$4.86	\$6.25

During the application screening process, the applicant amended the office location and on August 10, 2006, and submitted an amended application with new pro-forma financial statements. Upon the review of these pro-forma statements, it was noted that MHSI submitted partial year pro forma statement for year 2006 and a full year pro-forma for 2007. The 2006 partial year pro-forma indicated net patient revenue of \$3,314,500 this amount

indicates that there will be a drop of \$2,268,292 in net revenue between partial year 2006 and full years 2007 and 2008. The applicant did not provide any explanation for the precipitous drop in revenues. Summarized below are concerns provided to the department by affected persons in opposition to the applicant proposed project.

Northwest Healthcare Alliance, Inc.

*The applicant's financial feasibility is incorrect. Financial feasibility depends on financial viability and transparency of the parent corporation. The financial information given to the department is well below the standard expected of an organization the size of the applicant. The financial tells the story of highly secretive organization and one in which the financial details that have been disclosed, indicates a significantly troubled organization. [Source: Rebuttal Comments, Dec 6, 2006, page 2]*

*First, it is important to know that no lender will ever lend money to an entity the size of Maxim without full audited financials from a reputable financial firm. Maxim has incurred \$113,000,000 in long-term debt (Exhibit 13). Maxim has audited financials, which it has declined to provide. Audited financials are like a state survey. They must be done to verify the agencies integrity. [Source: Rebuttal Comments, Dec 6, 2006, page 6]*

VNA Home Health Care Services.

There are significant variances across the financial statistics provided by the applicant—which financials are the “real” ones? Projected figures from years 2008, 2009 and 2010 according to the applicant pro-forma statements exhibit XVII do not match. The 2006 figures, 2007 and revised 2008-2010 figures dated October 18, 2006 submitted to the department are in conflict. [Source: VNA Public comments received October 6, 2006]

MSHI Response

*Sections of the written testimony offered by Northwest Healthcare Alliance, Inc (herein referred to as the “witness” can, at best, be describe as pathetic compilation of half-truths, misstatements and plain outright lies.*

- 1. Witness states that Maxim has incurred \$113,000,000 in long-term debt. This is both a half-truth and a misstatement. Witness fails to disclose in what period(s) Maxim incurred such debt. According to the witness own statements, as of 12/31/04, Maxim had a long-term debt of \$56,966,647. As of 12/31/05, this long-term debt had increased to \$113,548,318 and consisted of the following:*

Credit facility	\$30,000,000
Term notes	\$30,000,000
Deferred compensation	<u>\$53,548,318</u>
	<u>\$113, 548, 318</u>

*In this instance, deferred compensation is a stock based plan for key employee and does not qualify as long-term debt.*

- 2. Witness states that Maxim has audited financial, which it has declined to provide. This is an outright lie. The financial statements for years ending 12/2003 and 12/2004 included in the Certificate of Need Application are audited. The fact that is overlooked is that in*

*the calendar years 2005 and 2004 the applicant generated a net income of \$68,753,684 and \$58,224,706 respectively. [ Source: MHSI Rebuttal Comments, December 6, 2006]*

### Department Response

The department, in a screening question dated August 10, 2006, asked the applicant “According to Healthcare Financial Administration regulations, home health agencies must have enough cash reserve funds on hand to operate for three months upon Medicare/Medicaid Certification. Applicant Exhibit XX Financial Statements Final Consolidated Balance Sheet Cash Reserved shows a negative balance of (\$1,917,692). Please explain how Maxim Healthcare Service, Inc. intends to meet this requirement. Financial ratios will not suffice”.

A submission dated September 13, 2006 provided to the department by the applicant stated, “Exhibit #3 includes a 6/30/2006 balance sheet for Maxim Health Care Services, Inc. showing a positive balance in the cash account. This exhibit also includes an audit footnote to the applicant detailing the various sources of short-term cash available to the applicant and their respective amounts. As an aside, HCFA regulations requiring evidence of cash availability apply primarily to starting businesses that have no revenue generating capabilities. In this instance, Maxim Healthcare Services/Spokane has been providing services for the past four years, and its operating statement reflects a healthy financial position for each of the years in operation”.

The Office of Hospital and Patient Data Systems within the Department of Health provided assistance in reviewing MHSI pro-forma financial documents. The following is a summary for that review.

*“I have reviewed the financial information provided in the Maxim Healthcare of Spokane application to be a Medicare Certified Home Health agency. While the Total Asset of the “parent” corporation as reported in the documents is large enough to support a Medicare certified home health agency, the detail of the financial information provided both at the corporate and the Spokane office is not sufficient to argue that the project is financially feasible. The applicant needs at a minimum the latest full audited report on the “parent” corporation with no pages missing as well as a pro-forma income statement of the Spokane office with and without the project in a format that meets basic reporting standards such as the income statement required by my office for hospitals to report year end and budget information”.* [Source: OHPDS, Analysis, January 4, 2007]

On October 4, 2006, the department in correspondence with the applicant asked for a written permission to conduct a business risk assessment of the applicant’s business operations. On October 9, 2006, the department received the following information from the Office of Financial Recovery. This Business Risk Assessment reflects financial and public records gathered and verified between October 3 and October 9, 2006. Any changes to financial and public records after October 9, 2006 are not reflected in this assessment. All supporting documents used to complete the assessment are on file in the Office of Financial Recovery. [Source: Office of Financial Recovery]

## Summary of Business Risk Assessment

### Washington State:

Maxim Healthcare Services, Inc. is an active Maryland profit corporation. Articles of Incorporation were filed in Washington State on 08/17/92. The federal tax ID number was not available. The following trade names have been registered, Maxim Healthcare Staffing Services on 04/14/93, NSI Health Care Staffing Services on 08/19/92 and NSI Health Care Staffing, Inc. on 09/02/92. The registered agent is Prentice Hall Corporation System Inc, 6500 Harbor Heights Pkwy Ste. 400, Mukilteo, WA. The corporation meets all licensing requirements through the Department of Licensing, Business and Professions Division. The corporation provides temporary medical staffing services. There are 4 employees listed. The corporation is registered with the Department of Revenue, Labor & Industries and Employment Security. [Source: Office of Financial Recovery]

### Maryland:

Maxim Healthcare Services, Inc. is an active Maryland profit corporation. The corporate charter number is D02629145. Articles of Incorporation were filed on 06/27/00. The registered agent is Robert Snyder Jr., 100 South Charles Street, Ste. 1100, Baltimore, MD. [Source: Office of Financial Recovery]

### Public Record Information:

The following state and county tax liens were assessed against Maxim Healthcare Services, Inc.

20033689217	Los Angeles Cnty	\$ 364	12/08/03	Open
2033689216	Los Angeles Cnty	\$ 347	12/08/03	Open
04045574	Howard Cnty	\$39,606	05/24/04	Open
20050315366	Los Angeles Cnty	\$ 226	02/10/05	Open

- 2 accounts were placed for collection due to unpaid balances. Both accounts are open.

### Financial Analysis:

Maxim Healthcare Services, Inc. lists help supply services as its primary business category and health and allied services as its secondary business category. Reviews of financial indicators that measure past performance indicate that this company pays its accounts slower than the industry standard and payments are being made increasingly late. Predictors of future payment trends based on the number of derogatory public record accounts, number of delinquent accounts and number of collection accounts indicate that this company has a high risk of becoming seriously delinquent within two years. [Source: Office of Financial Recovery]

### Overview

Maxim Healthcare Services, Inc. is paying its accounts the same as similar firms in their industry but they are making those payments increasingly late. Most of their accounts are being paid at or ahead of industry standards and they have long-standing relationships with most of their vendors. They fall within acceptable parameters but regular monitoring is recommended. The licensing recommendations contained in this assessment are based solely on evaluations of the provider's business and financial information. [Source: Office of Financial Recovery]

Based on the information provided by the applicant, and the Office of Hospital and Patient Data Systems and the business risk assessments recommendations from the Office of Financial Recovery, the department concludes that 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.

On page 16, the applicant stated on its original application dated May 22, 2006 “As a tenant, applicant will not incur any of the capital expenditure listed above”. “Because capital costs are not going to be incurred, they will not have any impact on the project. Lease costs, which are part of operating expenditure, are controlled by the lease agreement and are not likely to have a significant impact on health services costs”. [Source: Application, page 16]

Based on the information provided, the department concludes that the cost of the project that does not require any construction will not result in an unreasonable impact on the costs and charges for health services within the services area. This sub-criterion is met.

- (3) The project can be appropriately financed.

As summarized in sub-criterion 1 and 2 above, the department concludes that approval of this project will not impact MHSI overall financial health. The department concludes that the proposed financing is appropriate. 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 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.

As an existing provider of home health services in Washington State MHSI currently has 58.37, FTE’s as a “licensed only” home health agency. MHSI identified and provided to the department for review, staffing plan if this project is approved. Summarized in the table below, is MHSI’s current FTE’s and proposed staffing for calendar years 2008-2010.

**MHSI Current and Projected FTE’s**

Position	Partial 2007	2008	2009	2010
Medical Director	Contracted Position @ 0.25 hr per month			
RN	23.27	7.39	8.49	9.78
LPN	20.12	0	0	0
Home Health Aides	10.98	3.16	3.64	4.18
Admin	1	0.36	0.36	0.36
DNS/Assist DNS	2	0.72	0.72	0.72
Business Clerical	1	0.36	0.36	0.36
PT	0.00	0.88	0.96	1.16
OT	0.00	0.08	0.09	0.11
Speech Therapist	0.00	0.05	0.06	0.07
Social Services	0.00	0.20	0.23	0.26
<b>FTE Total</b>	58.37	13.20	14.91	17.00

[Source: Application, pg. 20 and Amended Application Sept 20, 2006 Exhibit XXI]

As shown in the table above, the “licensed only” home health agency anticipates that additional 13.20 FTEs will be hired in year 2008 and by the third full year of operation, MHSI total FTE’s would be 103.48. MHSI states that it does not anticipate difficulties in the recruitment of FTEs to staff the home health agency. To support the addition of FTE’s, the applicant stated, “*Maxim/Spokane over the past three years, has developed a very effective staff recruiting program and has never experienced any personnel shortages. If a shortage does occur and cannot be remedied through overtime, clients will be referred to other provider’s management staff is already in place*” [Source: Application May 22, 2006, pg. 21]

MHSI identified Michael J. Metcalf, MD as the Medical Director for the proposed project and provided a draft medical director agreement between MHSI and Dr. Metcalf. The draft Medical Director’s agreement identifies the term of the agreement, role and responsibilities of both parties. [Source: Application May 22, 2006, Medical Director Contact Exhibit VI]

Based on the information reviewed the department concludes there is reasonable assurance that a sufficient supply of qualified staff is available or can be recruited to support this project. 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.*

MHSI stated, “Ancillary services will be provided by staff members who will perform within their own area of specialization at the direction of the lead RN/LPN once the patient’s plan of care has been identified, formulated and approved. Janitorial and plant maintenance services will be provided by the landlord as part of the negotiated rental cost. Bookkeeping and clerical services will be performed by in-house staff”. [Source: Application, pg. 21]

MHSI currently operates a “licensed only” home health care agency in Spokane. As an existing entity, MHSI has already established ancillary and support services in Spokane County. Because of its current status in Spokane County as a “licensed only” home health agency, the department does not anticipate any difficulty in the expansion of either ancillary or support services. To further demonstrate compliance with this sub-criterion, MHSI provided samples of its ancillary support services agreements with some healthcare providers in Spokane. [Source: MHSI Supplemental Information, August 10, 2006 Exhibit 12]

If this project is approved, the department would include a term requiring MHSI to provide a copy of the executed transfer agreement with a local hospital in Spokane County.

Term

*Prior to providing services MHSI will provide an executed copy of the Patient Transfer Agreement for the department’s review and approval.*

Based on the evaluation of supporting documents provided and with agreement to the term above, the department concludes that there is reasonable assurance that MHSI will have appropriate ancillary and support services with healthcare provider's in Spokane County. This sub-criterion is met provided MHSI agrees to the term identified above.

(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 part of its review, the department must conclude that the services to be provided at the proposed home health agency would be provided in a manner that ensures safe and adequate care to the public.<sup>9</sup> MHSI is a national provider of a variety of health care services. They are located throughout the United States with the exception of Montana, Wyoming, North Dakota and South Dakota. As part of its review, the department must conclude that the services would be provided in a manner that ensures safety and adequate care to the public. To accomplish this, the department requests quality of care compliance histories from state licensing and/or surveying entities where MHSI has health care agencies. The compliance histories from the responding states revealed that MHSI complies with state and federal rules and regulations.

In Washington State, MHSI "licensed only" facilities are located within the following cities Bellevue, Seattle, Olympia, Tacoma, and Spokane<sup>10</sup>. For a compliance history of those facilities located in Washington, the department reviewed the most recent three years survey compliance history of those facilities provided by the Department's Office of Health Care Survey. That review revealed some non-compliance citations related to the care and management of patients at those facilities. The numbers of non-compliance citations were typical for Washington State home health agencies. MHSI provided plans of correction and those corrections were implemented.

Summarized below are the comments the department received from the public regarding the proposed project.

Northwest Healthcare Alliance, Inc.

- Northwest Healthcare Alliance, Inc. states, "According to project rationale under structure and process, the applicant has not demonstrated the expected quality of care expected of healthcare entities operating under the Certificate of Need Program and the Federal Medicare Program guidelines.
- The measurement of quality of care can best be made by reviewing the applicants past history throughout the country. Looking at the record of the applicant, there is an indication that there is a serious lack of training of personnel, lack of supervision of personnel, lack of administrative policies designed to protect patients by verifying the

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<sup>9</sup> WAC 246-310-230(5)

<sup>10</sup> King County – Bellevue, Seattle; Thurston County - Olympia; Pierce County – Tacoma; and Spokane County - Spokane

applicant employee's background and willingness to deal with aftermath of these conditions in the court systems

- Currently, just in state courts, Maxim has 226 lawsuits against the firm. This does not count local lawsuits or federal lawsuits. There are many lawsuits initiated against Maxim for violations of EEOC regulations, Fair Labor Standards Act violation and Department of Labor violations. The most troubling though, are those lawsuits related to the abuse of patients, or worse, for the actions of individuals hired, screened and supposedly supervised by Maxim that led to the death of several patients in the Northwest and elsewhere across the country. . [Source: Northwest Healthcare Alliance, Inc—Rebuttal Comments, Dec 6, 2006, pages 1 and 2]

#### Department's Responses

The department reviewed the information submitted regarding the various lawsuits. On the surface the number and type of lawsuits appears high. MHSI is a large multi-state organization. No comparison data for like size and type organizations was provided to the department so that we could determine if this volume of lawsuits was indeed significant. Additionally, the issues in any given lawsuit are complex and to determine if there was a quality of care issue, an in-depth analysis of each case would need to be undertaken. For these reasons, the department generally does not use the number of lawsuits as a measure for evaluating quality of care. Instead, the department relies on the survey histories of the various states where MHSI does business in.

As stated earlier, the compliance histories from other states revealed that MHSI complies with state and federal rules and regulations. In Washington State, MHSI operates in four different counties. A review of MHSI most recent three years survey, revealed some non-compliance issues related to the care and management of patients. These compliance issues were typical in number for Washington State home health agencies as well as nationally. MHSI provided plans of correction and the corrections were implemented. [Source: Certificate of Need Program's compliance surveys and Department of Health's Office of Health Care Survey]

A review of the compliance history with the Medical Quality Assurance Commission of the proposed medical director, Michael J. Metcalf, M.D. reveals no recorded sanctions. [Source: Compliance history provided by Medical Quality Assurance Commission]

Given MSHI's compliance history and the compliance history of the medical director, the department concludes that there is reasonable assurance that the Medicare certified home health agency would be operated in conformance with applicable state and federal requirements and with the applicable conditions of participation for Medicare and Medicaid. 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.*

MHSI stated, "As a licensed home health agency, Maxim/Spokane is already a participant in the health care delivery infrastructure of Spokane County, and has already established meaningful work relationships with other providers in this primary service area.

Being non-Medicare certified at this time, its relationship with hospital discharge coordination and long-term care providers will not require a significant enhancement to gain consideration as prospective provider of services”. [Source: Application, May 22, 2006, pg. 23]

In the need section of this evaluation, the department concluded that two of the current six CN approved agencies in the planning area are currently operating below the minimum patients visit standard. Therefore, the addition of a new Medicare certified home health agency in the planning area is not reasonable. The department concludes that the addition of another agency will result in an unwarranted fragmentation of services. 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 and is considered met.

#### **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).

- (1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.

MHSI states that the decision to file a certificate of need application and ultimately to begin a home health care operation was prompted by the inadequate level of services provided to Spokane County residents and the apparent need for an additional operator to meet and address this need. Summarized below, are the options MHSI considered before submitting its application.

- Consideration was given to all aspects of the proposed endeavors and it was determined that with the proper direction and supervision, a new home health agency would contribute to the fulfillment of the applicant’s long-term goals for the Spokane County primary service area while alleviating the need for services to the area’s target population.
- Because of the minimal amount involved capital costs is not a major consideration in this matter.
- As previously indicated, the applicant is comfortable with its understanding of staff availability. [Source: Application May 22, 2006, pages. 23-24]
- Postponing action is not “a valid option in light of the identified need for home health services in the Spokane County area”.

- Furthermore, joint ventures, mergers and other forms of shared services arrangements are high-risk propositions for two reasons: If the controlling entity (i.e., the certified provider) is operating profitable, it will not share its market resources and techniques with a potential competitor. If the controlling entity is not doing well, the new partner may acquire a burden rather than a positive opportunity. [Source: MHSI Supplemental Information, June 16, 2004]

The department acknowledges MHSI considerations of alternatives to the proposed project, but disagrees that this is the best available alternative. The department determined that a mathematical need was demonstrated however, two of the current six CN approved agencies in the planning area are currently operating below the minimum patients visit standard as required. As a result, the approval of this project could jeopardize the viability of MHSI. Based on the information provided, the department concludes that this project is not the best alternative. This sub-criterion is not met

# **APPENDIX**