

**EVALUATION OF THE CERTIFICATE OF NEED APPLICATION SUBMITTED ON BEHALF
OF THE DOCTORS CLINIC PROPOSING TO ESTABLISH AN AMBULATORY SURGERY
CENTER IN KITSAP COUNTY**

PROJECT DESCRIPTION

On January 2, 1992, The Doctors Clinic was established as a professional corporation licensed in the state of Washington. On January 28, 2005, The Doctors Clinic obtained a Determination of Non-Reviewability related to the establishment of an exempt ambulatory surgery center (ASC) to be located at 2200 Northwest Myhre Road in the city of Silverdale, within Kitsap County. The exempt ASC would have three operating rooms and at least one procedure room. The ownership of The Doctors Clinic was comprised of 14 physicians, and each would have surgical privileges at the proposed exempt ASC. As an exempt ASC, physician access is limited to those physicians that are part of The Doctors Clinic corporation or employed by the corporation.¹ Services to be provided include ENT, general GI, orthopedic; and gynecology procedures. Department files indicate that The Doctors Clinic received its Medicare certification and became operational in May 2005. [source: January 28, 2005, Determination of Non-Reviewability; October 24, 2005, supplemental documents; DOH, FSL database]

On July 12, 2007, The Doctors Clinic (TDC) submitted its Certificate of Need application to establish an ASC in Silverdale. Within the application, TDC acknowledged that it had been operational since May 2005 as an exempt ASC, and the impetus for submission of the application is to allow physicians, not part of the TDC corporation, access to the ASC. [source: Application cover sheet and p4] Between the date the exempt ASC became operational—May 2005—and submission of the application—July 2007—an additional 41 physicians have joined the corporation. Each physician has equal ownership in the TDC corporation and surgical privileges at the exempt ASC. [source: September 14, 2007, supplemental information, p5] With the additional physicians, services at the exempt ASC have expanded to include ENT, gynecology, general surgery, dental, podiatry, pain management, plastics, urology, ophthalmology, GI, and vascular. [source: Application, p5]

For this project, TDC does not propose to change the location of the ASC at 2200 Northwest Myhre Road in the city of Silverdale, the current number of ORs (3), or the number of procedure rooms (4). Given that the facility became operational in year 2005, there are no additional capital costs beyond those already expended for the establishment of the exempt facility in May 2005. [source: Application pp4, 6, 7]

If this project is approved, TDC anticipates commencement and completion of the project within six months of approval. Under this timeline, the ASC would become operational in mid year 2008, and year 2009 would be the facility's first full calendar year of operation; year 2011 would be the third full year of operation. [source: September 14, 2007, supplemental information p10]

¹ Additional limitations are required in order to maintain exempt ASC status; however, those limitations are not relevant in this evaluation.

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).

APPLICATION CHRONOLOGY

January 18, 2007	Letter of Intent Submitted
July 12, 2007	Application Submitted
July 13, 2007, through December 2, 2007	Department's Pre-Review Activities <ul style="list-style-type: none">• 1st screening activities and responses• 2nd screening activities and responses
December 3, 2007	Department Begins Review of Application
January 28, 2008	Public Hearing Conducted/End of Public Comment
February 12, 2008	Rebuttal Documents Received at Department
March 28, 2008	Department's Anticipated Decision Date
March 28, 2008	Department's Actual Decision Date

AFFECTED PERSONS

Throughout the review of this project, two CN approved ASCs located in Kitsap County sought and received affected person status under WAC 246-310-010.

- 1) Olympic Ambulatory Surgery Center located at 2613 Wheaton Way in Bremerton;
- 2) Surgery Center of Silverdale located at 9800 Levin Road, #102 in Silverdale.²

SOURCE INFORMATION REVIEWED

- The Doctors Clinic Certificate of Need Application received July 12, 2007
- The Doctors Clinic supplemental information dated September 14, 2007, and November 21, 2007
- Public comment received throughout the review of the application
- Public hearing documents received at the January 28, 2008, public hearing
- The Doctors Clinic rebuttal comments received February 12, 2008
- Olympic Ambulatory Surgery Center's rebuttal comments received February 12, 2008
- Kitsap County ASC and/or operating room utilization survey responses
- Historical charity care data obtained from the Department of Health's Office of Hospital and Patient Data Systems (2004, 2003, and 2006 summaries)
- Population data obtained from the Office Financial Management based on year 2000 census published November 2007
- Licensing and/or survey data provided by the Department of Health's Office of Health Care Survey
- Comprehensive Hospital Abstract Reporting System (CHARS) data obtained from the Department of Health's Office of Hospital and Patient Data Systems
- Certificate of Need Historical files

² While Surgery Center of Silverdale sought and received affected person status, it chose to neither oppose nor support The Doctors Clinic project.

CRITERIA EVALUATION

To obtain Certificate of Need approval, the applicant 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 WAC 246-310-270 (ambulatory surgery).³

CONCLUSION

For the reasons stated in this evaluation, the application submitted on behalf of The Doctors Clinic proposing to establish an ambulatory surgery center in Silverdale, within Kitsap County is not consistent with applicable criteria of the Certificate of Need Program, and a Certificate of Need should be denied.

³ Each criterion contains certain sub-criteria. The following sub-criteria are not relevant to this project: WAC 246-310-210(3), (4), (5), and (6); WAC 246-310-220(2) and (3); and WAC 246-310-240(2).

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 and WAC 246-310-270.

- (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 Department of Health’s Certificate of Need Program uses the numeric methodology found in WAC 246-310-270 for determining the need for additional ASCs in Washington State. The numeric methodology provides a basis of comparison of existing operating room (OR) capacity for both outpatient and inpatient OR’s in a planning area using the current utilization of existing providers. The methodology separates Washington State into 54 separate secondary health services planning areas. The proposed ASC would be located in the Kitsap County planning area.

The methodology estimates operating room (OR) need in a planning area using multi-steps as defined in WAC 246-310-270(9). This methodology relies on a variety of assumptions and initially determines existing capacity of dedicated outpatient and mixed-use operating rooms in the planning area, subtracts this capacity from the forecast number of surgeries to be expected in the planning area in the target year, and examines the difference to determine:

- a) whether a surplus or shortage of OR’s is predicted to exist in the target year, and
- b) if a shortage of OR’s is predicted, the shortage of dedicated outpatient and mixed-use rooms are calculated.

Applicant’s Methodology

To determine need for additional ORs in the planning area under WAC 246-310-270, the applicant provided a copy of the department’s methodology for Kitsap County calculated in July 2006 and used for a previous project. Assumptions and data used in that methodology are shown below.

Assumption	Data Used
Planning Area	Kitsap County
Population Estimates and Forecasts	Office of Financial Management’s Kitsap County-medium series, published year 2002 Target year 2010
Use Rate	Derived from a utilization survey completed by existing providers in year 2005. The use rate of 90.43/1,000 is based on 2004 historical data.
Percent of surgery ambulatory vs. inpatient	Based on 2004 DOH survey results, 78.4% ambulatory setting; 21.6% inpatient setting
Average minutes per case	Based on 2004 DOH survey results. Outpatient cases = 47.05 minutes; Inpatient cases 128.55 minutes
OR Annual capacity in minutes	68,850 outpatient surgery minutes; 94,250 inpatient or mixed-use surgery minutes (per methodology in rule)
Existing providers	Based on a 2004 listing of Kitsap County providers

The department’s application of the numeric methodology in year 2006 using 2004 survey and capacity responses indicated a surplus of 3 inpatient ORs and a need of 5 outpatient ORs for the Kitsap planning area in year 2010.⁴

In summary, TDC did not provide an updated methodology to determine need for the additional ORs in the Kitsap planning area. Rather, TDC simply relied on a 2006 numeric methodology performed by the department for another project and based on 2004 utilization survey data.

Department’s Methodology

Given that the ASC would be located in Kitsap County, the department will apply the methodology to that health service planning area. There are eight providers in the Kitsap County planning area, including the applicant. The eight providers are listed below. [source: CN historical files-FSL database]

Kitsap Planning Area Providers	
1 Hospital / City	7 ASCs / City
Harrison Medical Center / Bremerton & Silverdale campuses	Digestive Disease & Endoscopy Center, PLLC / Bremerton North Kitsap ASC/Poulsbo Olympic ASC, Inc. / Bremerton Olympic Plastic Surgery Suite / Bremerton Pacific Cataract & Laser Institute / Silverdale Surgery Center of Silverdale/Silverdale The Doctors Clinic / Silverdale (applicant)

As shown above, the eight facilities include one hospital and seven ASCs. Harrison Medical Center is the only hospital operating in the planning area. All appropriate OR capacity will be used in the numeric methodology calculations under WAC 246-310-270.

Of the seven ASCs shown above, four—including the applicant, TDC—are located within a solo or group practice (considered an exempt ASC) and therefore, the use of these ASCs is restricted to physicians that are employees or members of the clinical practices that operate the facilities. Therefore, these four facilities do not meet the ASC definition found in WAC 246-310-010 and the ORs are not included in the capacity calculations of available ORs for the Kitsap planning area.

The three remaining ASCs—North Kitsap ASC in Poulsbo; Olympic ASC, Inc. in Bremerton; and Surgery Center of Silverdale in Silverdale—are ASCs as defined in WAC 246-310-010 and the OR capacity of the three ASCs will be included in the capacity calculations of available ORs for the Kitsap planning area.⁵

⁴ On December 26, 2006, the CN Program released a ‘Reconsideration Evaluation’ of the project that TDC relied on for its need methodology. In the reconsideration evaluation, the Program acknowledged that the previous methodology contained a mathematical error in the numeric calculations. When the error is corrected, the methodology indicates a surplus of 3 inpatient ORs and a need of 4 outpatient ORs for the Kitsap planning area in year 2010, rather than the 5 ORs initially identified.

⁵ North Kitsap ASC was issued CN #1124 on June 29, 1995; Olympic ASC was issued CN #0-490 on March 5, 1980; and Surgery Center of Silverdale was issued CN #1334 on July 14, 2006.

To assist in its application of the numeric methodology for this project, on December 11, 2007, the department requested utilization information from each of the facilities identified above. Responses were received from six of the eight facilities.⁶ Further, the department relied on the following assumptions to apply its methodology.

Assumption	Data Used
Planning Area	Kitsap County
Population Estimates and Forecasts	Office of Financial Management's Kitsap County-medium series, published November 2007. Target year 2011
Use Rate	Divide estimated current surgical cases by estimated 2006 populations results in the service area use rate of 100.55/1,000
Percent of surgery ambulatory vs. inpatient	Based on DOH survey results, 75% ambulatory setting; 25% inpatient setting
Average minutes per case	Based on DOH survey results, Outpatient cases = 45.09 minutes; inpatient cases 100.0 minutes
OR Annual capacity in minutes	68,850 outpatient surgery minutes; 94,250 inpatient or mixed-use surgery minutes
Existing providers	Based on 2007 listing of Kitsap County providers

The department's application of the numeric methodology using available survey responses and hospital data indicates a surplus of 1.48 mixed-use ORs, resulting in no need for additional outpatient ORs for the Kitsap planning area in year 2011. The department's methodology is Appendix A attached to this evaluation

Olympic Ambulatory Surgery Center (OASC) provided concerns related to the methodology approach used by TDC. OASC's concerns are summarized below. [source: Olympic Ambulatory Surgery Center public hearing documents submitted April 19, 2006, pp2-17]

WAC 246-310-270

- The applicant failed to provide a meaningful need calculation as required by WAC 246-310-270...instead, TDC relies on the department's findings from a prior CN project in the planning area.
- TDC fails to provide any evidence to support its assertions that improved access to needed services will result from transitioning TDC's CN exempt ORs to CN-approved ORs.
- TDC fails to provide any evidence that a need exists for additional operating rooms in Kitsap County.

⁶ Completed utilization surveys were not submitted by Harrison Medical Center and Olympic Plastic Surgery Suite. For Harrison Medical Center's utilization, the Program used quarterly data reported by the hospital to the Department of Health's Office of Hospital and Patient Data Systems. Data for Olympic Plastic Surgery Suite was not available.

Given that the department did not accept TDC's approach of reliance on a previous need methodology calculated in year 2006 and based on 2004 data, OASC's concern regarding the need methodology has been addressed. In summary, based solely on the numeric methodology contained in WAC 246-310-270, need for additional outpatient OR capacity in the Kitsap planning area is not demonstrated. [source: department's methodology and utilization surveys]

WAC 246-310-270(4) states:

“Outpatient operating rooms should ordinarily not be approved in planning areas where the total number of operating rooms available for both inpatient and outpatient surgery exceeds the area need.”

This section of the rule implies that under extraordinary circumstances, an applicant proposing additional ORs in a planning area may be approved, even if the numeric methodology calculations result in no need for additional OR capacity.

For this project, the numeric methodology results in no need for additional outpatient ORs for the Kitsap planning area through at least year 2011. TDC provided its rationale for submitting its application to convert its existing CN exempt facility to a CN approved facility. A summary of TDC's rationale is below. [source: Application p13; September 14, 2007, supplemental information, pp13-15]

- The numeric methodology demonstrates that not approving this CON leaves an ASC access void in the Kitsap planning area.
- There are certain procedures that TDC physicians perform that require the co-surgical skills of a surgeon from outside the TDC organization. Currently, in these cases, the patient must be admitted to the hospital.
- Permitting outside surgeons to use the TDC will allow surgeons with super-specialized skills from tertiary care centers to work in the community. Currently this type of surgical care would have to be done in Seattle or Tacoma.

TDC's numeric method, as previously stated, relied on a need methodology calculated in year 2006, based on 2004 data, and projected to target year 2010. The Office of Financial Management released updated population projections on November 2007. When the numeric methodology is updated using 2006 utilization data and projected to target year 2011 based on updated population data, numeric need is not demonstrated.

Other than the statements provided above regarding the benefit of outside physician access to the ASC, TDC did not provide any documentation to demonstrate extraordinary circumstances exist in the planning area. The desire for non-TDC physician access to the ASC is not a demonstration of extraordinary circumstances.

In conclusion, TDC has not demonstrated that 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 as required in WAC 246-310-210. Further, TDC did not demonstrate extraordinary circumstances exist in the Kitsap planning

area that should result in approval of this project when no numeric need is demonstrated. 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.

TDC states that it became operational as an exempt ASC in year 2005, and since that time, has been providing health care services to residents of Kitsap County and surrounding areas, including low-income, racial and ethnic minorities, handicapped and other underserved groups. To demonstrate compliance with this sub-criterion, TDC provided a copy of its current Admission Policy and Charity Care Policy used at the exempt ASC.

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. TDC's Admission Policy outlines the process used for admission into the ASC. The admission policy does not include language to demonstrate that patients are admitted to the ASC without regard to age, race, color, religion, sex, national origin, handicap, or sexual preference and will be treated with respect and dignity. [source: September 14, 2007, supplemental information, Appendix 3] As a result, this policy does not substantiate TDC's assertion that all residents of the service area would have access to the ASC.

To determine whether low income residents would have access to the services at TDC, 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 to the hospital, the department uses Medicare certification as the measure to make that determination. Information provided by the applicant verifies that the exempt ASC currently contracts with Medicaid, and if this project is approved, the CN approved ASC would maintain its Medicaid contract. Further, within the application, TDC provided its projected sources of revenues, which identifies 7.51% Medicaid. [source: Application, pp2 and 6]

To determine whether uninsured or underinsured patients would have access to the ASC, the department reviewed the facility's current Charity Care Policy. The policy outlines the process used by TDC to determine eligibility of charity care. [source: Application, Appendix A] Further, WAC 246-310-270(7) states that ASCs shall implement policies to provide access to individuals unable to pay consistent with charity care levels reported by the hospitals affected by the proposed ASC. For charity care reporting purposes, the Department of Health's Office of Hospital and Patient Data Systems (OHPDS), divides Washington State into five regions: King County, Puget Sound (less King County), Southwest, Central, and Eastern. TDC's ASC would be located in Kitsap County within the Puget Sound region. For charity care reporting purposes, the affected hospital includes Harrison Medical Center located in Bremerton within Kitsap County. For this project, the department reviewed charity care data for Harrison Medical Center and the 18 existing hospitals currently operating within the Puget Sound Region.

According to 2004-2006⁷ charity care data obtained from OHPDS, the three-year average for the Puget Sound Region is 1.90% for gross revenue and 4.07% for adjusted revenue. The three-year charity care data reported by Harrison Medical Center is 1.55% of gross revenue and 3.86% of adjusted revenue. [source: OHPDS 2004-2006 charity care summaries]

The applicant's pro formas indicate that the ASC will provide charity care at approximately 1.20% of gross revenue, and 2.00% of adjusted revenue. [source: November 21, 2007, supplemental information, p5] These averages are below the average charity care provided in the Puget Sound Region and Harrison Medical Center for its gross revenues. Given that the amount of charity care proposed to be provided at TDC is below to the three-year historical gross revenue averages for the region and the local hospital, if this project is approved, the department concludes that a condition related to the percentage of charity care to be provided at the ASC would be necessary.

Based on the omitted statements in the Admission Policy provided in the application, the department concludes that this sub-criterion is not met.

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

Based on the source information reviewed, if this project is approved, the department determines that the applicant has met the financial feasibility criteria in WAC 246-310-220, provided that the applicant agrees to a condition related to charity care percentages.

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

If this project is approved, TDC anticipates commencement and completion within six months of approval. Under this timeline, the ASC would become operational in mid-year 2008, and years 2009 through 2011 would be the facility's first three full calendar year of operation. [source: September 14, 2007, supplemental information, p10] To determine whether TDC would meet its immediate and long range operating costs, the department reviewed TDC projected revenue/expense statements and projected balance sheets for the first three full years of operation.

Table 1 below shows a summary of the balance sheets provided by the applicant. [source: November 21, 2007, supplemental information, p6, p10, & p12]

Table 1
The Doctors Clinic ASC Projected Balance Sheets for Years 2009-2011
Year 2009

Assets		Liabilities	
Current Assets	\$ 6,598,566	Current Liabilities	\$ 428,332
Other Assets (Fixed)	2,038,589	Other Liabilities (incl long term debt)	3,871,778
Total Assets	\$ 8,637,155	Total Liabilities	\$ 4,300,110
		Equity	4,337,045
		Total Liabilities and Equity	\$ 8,637,155

⁷ Year 2007 charity care data is not available as of the writing of this evaluation.

Year 2010

Assets		Liabilities	
Current Assets	\$ 8,292,993	Current Liabilities	\$ 434,707
Other Assets (Fixed)	1,538,745	Other Liabilities (incl long term debt)	3,715,333
Total Assets	\$ 9,831,738	Total Liabilities	\$ 4,150,040
		Equity	5,681,698
		Total Liabilities and Equity	\$ 9,831,738

Year 2011

Assets		Liabilities	
Current Assets	\$ 10,050,152	Current Liabilities	\$ 441,238
Other Assets (Fixed)	1,038,898	Other Liabilities (incl long term debt)	3,558,892
Total Assets	\$ 11,089,050	Total Liabilities	\$ 4,000,130
		Equity	7,088,920
		Total Liabilities and Equity	\$ 11,089,050

Based on the projected balance sheets shown above, it is clear that the ASC would be financially stable. Further, a review of the balance sheets provided in the application indicates that the ASC would not increase the long term debt for TDC. It appears from the balance sheets that TDC intends to pay off its debt fairly quickly. While this approach by TDC is ambitious, it is not an unusual approach for an ASC project.

Table 2 below is a summary of TDC's projected revenues and expenses for the first three full years of operation. [source: November 21, 2007, supplemental information, p5, p9, and p11]

Table 2
The Doctors Clinic ASC Revenue and Expense Summary

	Full Year 1-2009	Full Year 2-2010	Full Year 3-2011
Number of Cases	3,437	3,506	3,576
Net Revenue*	\$ 5,806,541	\$ 5,964,506	\$ 6,127,546
Total Expense	\$ 4,603,475	\$ 4,704,259	\$ 4,807,682
Net Profit or (Loss)	\$ 1,203,066	\$ 1,260,247	\$ 1,319,864
Net Revenue per Case	\$ 869.63	\$ 876.36	\$ 882.68
Total Expenses per v	\$ 689.45	\$ 691.19	\$ 692.55
Net Profit or (Loss) per Cases	\$ 180.18	\$ 185.17	\$ 190.13

*Includes deductions for charity care, bad debt, and contractual allowances

As shown in Table 2 above, TDC projects a profit in each of the facility's first three full years of operation. However, as stated in the need section of this evaluation, TDC's projected charity care percentages are less than both the 3-year regional average and Harrison Medical Center's 3-year average. If approved, the net revenue would be overstated by approximately 2.0%, however, even with the percentage adjustments, TDC would be operating at a profit.

In addition to the pro forma projections summarized above, TDC also provided the following statements related to the assumptions used as a basis for the projected number of cases at the ASC. [source: September 14, 2007, supplemental information, p10]

“The following assumptions were used in developing surgery case projections:

- *2006 is actual TDC volumes.*
- *2007 - prior year 2006 actual volumes plus 5.5% inflation. The 5.5% inflation represents additional orthopedic cases related to a new hand surgeon, general population increases, and ramp-up related to physicians practicing less than 5 years with TDC who are still building their practices.*
- *2008—2010 - prior year plus 2% inflation. The 2.0% increase assumes additional cases related to general population increases and continued physician ramp-up.”*

OASC provided comments related to the financial feasibility criteria, which is summarized below. [source: Olympic Ambulatory Surgery Center January 28, 2008, public hearing documents; and February 12, 2008, rebuttal documents, p8]

- TDC fails to consider the fees and costs related to filing and defending its application.
- TDC fails to consider the costs for supporting additional physicians who practice at the facility if TDC obtains its requested CN.
- The department should question the financial data provided by TDC, such as the lease expenses and costs, to determine whether the financial data is, in fact, all related to TDC’s proposed project. If TDC is using financing that is not directly related to the facility and the services provided therein, then TDC’s claim that its proposed project is financially feasible is undermined.

Within its rebuttal documents, TDC addressed OASC concerns regarding the lease expenses. TDC leases a 50,000 sf building; the majority of the building is used for advanced imaging and physician office space. The ASC uses only 8,000 sf, or 16%, of the building. Within its pro forma financials, TDC allocated its total lease costs based on the percentage of square footage used by the ASC. This facility allocation approach to determine lease, utility, and other costs allocated to the proposed ASC has been used by past applicants, and is considered by the department to be a reasonable approach.

Regarding OASC’s assertion that TDC should have included costs for physician recruitment, filing, and defending its application, WAC 246-310-010 provides the following definition for “capital expenditure.”

“Capital expenditure”: Except for WAC 246-310-280, capital expenditure means an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting and other services which, under generally accepted accounting principles,

are not properly chargeable as an expense of operation and maintenance) shall be considered capital expenditures. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required certificate of need review if the acquisition had been made by purchase, this acquisition shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility, which if acquired directly by the facility, would be subject to review under this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to the review.

Physician recruitment and CN filing fees are not included in the list above, TDC may, but is not required to, include those costs. The costs for defending an application are not considered part of a project’s capital expenditure, and TDC was correct to exclude them. The department concludes that the issues raised by OASC have been adequately addressed.

Based on the financial information above, the department concludes that if this project is approved, TDC must provide demonstration that its long-term capital and operating costs of this project could be met with the charity care condition requirement attached to the approval. With a condition related to charity care percentages, 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 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 stated in the project description portion of this evaluation, TDC anticipates commencement and completion of the project within six months. Under this timeline, the ASC would become operational in mid-year 2008, and year 2009 would be the facility’s first full calendar year of operation. [source: September 14, 2007, supplemental information, p10] Given that TDC is currently operating as an exempt ASC, the addition of staff is not anticipated. Table 3 below summarizes the current staffing at TDC. [source: September 14, 2007, p22]

**Table 3
The Doctors Clinic 2008 Current Staffing**

Type of Staff	# of FTEs
Administration	4.00
RNs	7.80
Clinical (OR techs, X-ray Tech, etc)	6.00
Scheduling/Clerical	2.00
Reception/Admission	1.00
Billing/Bookkeeper	1.60
Total FTEs	22.40

To further demonstrate that current staff of the ASC would be adequate for the project, TDC provided the following statements:

“The reason for this [application] is simply stated in the intent of this CON, which is to allow physicians that are not partners of TDC to assist with procedures. As such, The Doctors Clinic is projecting only a slight increase in ASC volumes, 2% per year, and has adequate staff in place to handle this growth.”

[source: September 14, 2007 supplemental information, p22]

Comments provided by OASC related to the staffing sub-criterion focused on the availability of anesthesiologist. OASC states the Kitsap County has historically faced challenges of recruiting and retaining adequate anesthesiology staff to the area. There are two available anesthesiology groups in the area, and OASC asserts that approval of TDC would exacerbate the shortage in the planning area. [source: OASC public hearing documents, p12]

In its rebuttal responses, TDC disagreed with OASC’s assertions regarding lack of anesthesiologists in the planning area. TDC states that it has never experienced issues with shortage of anesthesiologists. TDC further asserts that approval of this project would have no different effect on the availability of anesthesiologists than TDC’s natural growth rate. [source: TDC rebuttal comments, p3]

The department concludes that the staffing issue raised by OASC was adequately addressed by TDC. Further, TDC provided a comprehensive approach to retain staff necessary for the ASC. 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.*

As an operating exempt ASC, TDC currently has ancillary and support contracts in place. To demonstrate compliance with this sub-criterion, TDC provided a listing of those entities. [source: September 14, 2007, supplemental information, p24]

The documents demonstrate TDC currently has, and intends to continue, appropriate relationships with ancillary and support services for the health care services to be provided. 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.*

TDC has been operating as an exempt, Medicare certified ASC in the state of Washington since May 2005. TDC does not own or operate any other healthcare facilities in Washington or any other state. From May 2005 through February 2008, the Department of Health’s Office of Health Care Survey (OHCS), which surveys ASCs within Washington State, has completed one compliance survey for TDC.⁸ The survey revealed minor deficiencies typical for an ASC and TDC submitted a plan of corrections and demonstrated implementation of

⁸ Initial Medicare and life safety survey completed May 16, 2005.

the required corrections. [source: compliance survey data provided by Office of Health Care Survey]

The Department of Health's Medical Quality Assurance Commission credentials medical staff in Washington State and is used to review of the compliance history for all medical staff, which includes physicians, RNs, and LPNs, associated with TDC. A compliance history review of all medical staff associated with TDC reveals no recorded sanctions for all. [source: compliance history provided by Medical Quality Assurance Commission]

Given the compliance history of the ASC and the compliance history of the medical staff associated with the ASC, there is reasonable assurance that TDC would operate the ASC in conformance with applicable state and federal licensing and certification requirements. 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.

To demonstrate compliance with this sub-criterion, TDC provided a summary of its main rationale for submission of this project. Primarily, TDC would like to allow physicians, not associated with the TDC practice, access to the ASC. TDC states approval of this project would be in the best interest of TDC's patients and the community. [source: September 14, 2007, supplemental information, p25]

However, as previously stated, TDC relied on a perceived need for additional ORs in the Kitsap County planning area. Results of the numeric methodology demonstrate a surplus of OR capacity in the planning area. Based on this information, the department must reasonably conclude that approval of another ASC in the planning area has the potential to cause unwarranted fragmentation of the existing healthcare system. Therefore, 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 evaluated in sub-section (3) above, and based on that evaluation, the department concludes that this sub-criterion is met.

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

Based on the source information reviewed, the department determines that determines that the applicant has not met the applicable cost containment criteria in WAC 246-310-240.

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

To demonstrate conformance with this sub-criterion, TDC first assumed, based on the department's numeric methodology conducted in year 2006, that additional ORs are needed in Kitsap County. TDC then provided a decision matrix comparing the various alternatives for meeting the projected outpatient OR need. The decision matrix concluded that

submission of this application was the superior alternative. [source: September 14, 2007, supplemental information, p26]

As stated in the need portion of this evaluation, when the numeric methodology is applied using 2006 utilization data and projected to target year 2011 based on population data released November 2077, numeric need is not demonstrated. Within its application, TDC did not provide any rationale to consider if need for additional ORs in Kitsap County is not demonstrated.

In summary, the applicant chose an alternative based on its perception of need for additional ORs in the planning area. The department concludes that the best available alternative for this project is TDC's continuous operation as an exempt ASC in the planning area. Based on the discussion above, the department concludes that this project is not the best alternative for the community, and this sub-criterion is not met.