

EXECUTIVE SUMMARY

EVALUATIONS OF THE FOLLOWING TWO CERTIFICATE OF NEED APPLICATIONS PROPOSING TO PROVIDE MEDICARE CERTIFIED/MEDICAID ELIGIBLE HOSPICE SERVICES TO KITSAP COUNTY:

- **FRANCISCAN HEALTH SYSTEM-FRANCISCAN HOSPICE PROPOSING EXPAND EXISTING HOSPICE SERVICES INTO KITSAP COUNTY**
- **HCR MANORCARE-IN HOME HEALTH, LLC PROPOSING ESTABLISH A NEW HOSPICE AGENCY IN KITSAP COUNTY**

BRIEF PROJECT DESCRIPTIONS

Franciscan Health System-Franciscan Hospice

Currently, Franciscan Hospice provides Medicaid certified/Medicaid eligible hospice services to the residents of King and Pierce counties.¹ The services for both counties are provided through Franciscan Hospice's agency located at 2901 Bridgeport Way West in University Place, within Pierce County.

This application proposes to expand Franciscan Hospice's service area into Kitsap County. Since no new agency or branch office would be established, there is no capital expenditure for this project.

If this project is approved, Franciscan Hospice anticipates commencement of the project immediately. Under this timeline, year 2010 would be the facility's first full calendar year of operation. [source: Application, p6, 8p6, p8, & p9]

HCR ManorCare-In Home Health, LLC

In Home Health operates a "licensed only" home health agency in Seattle under the dba of Heartland Home Health Care. Currently, In Home Health does not provide hospice services in Washington State.

With this application, In Home Health would establish a new hospice agency under the Heartland subsidiary. The new hospice agency would be known as Heartland Hospice of Kitsap County.

The capital expenditure associated with the establishment of the new hospice agency is \$145,700. If this project is approved, In Home Health anticipates commencement immediately and completion within six months. Under this timeline, year 2011 would be the facility's first full calendar year of operation. [source: Application, p6 & p15]

APPLICABILITY OF CERTIFICATE OF NEED LAW

Both projects are subject to Certificate of Need review as the establishment of a new healthcare 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).

¹ A Medicare certified agency is also Medicaid eligible, therefore, the term "Medicaid eligible will not be repeated throughout this evaluation. Those agencies that are Washington State licensed but not Medicare certified will be referred to as "licensed only."

CONCLUSIONS

Franciscan Hospice

Franciscan Hospice meets all of the required review criteria to expand its existing Medicare certified/Medicaid eligible hospice services into Kitsap County, and a Certificate of Need should be issued provided Franciscan Hospice agrees to the term and condition stated below.

TERM

Based on information provided in the application, Franciscan Hospice currently has appropriate relationships with ancillary and support services in King and Pierce counties. Franciscan Hospice must provide a copy to the department for review and approval of any additional ancillary and support agreements established specifically for its Kitsap County services.

CONDITION

Franciscan Hospice must agree to provide Medicare certified hospice services to residents of the entire county.

There is no capital expenditure associated with the expansion of Franciscan Hospice's Medicare certified hospice services into Kitsap County.

In Home Health

In Home Health fails to meet all of the required review criteria to establish a Medicare certified/Medicaid eligible hospice agency in Kitsap County, and a Certificate of Need is denied.

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- **FRANCISCAN HEALTH SYSTEM-FRANCISCAN HOSPICE PROPOSING EXPAND EXISTING HOSPICE SERVICES INTO KITSAP COUNTY**
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PROJECT DESCRIPTIONS

Franciscan Health System-Franciscan Hospice

Catholic Health Initiatives is the parent corporation of Franciscan Health System (FHS). Through one of its subsidiaries, Catholic Health Initiatives owns 118 health care facilities in 22 states. For Washington State, FHS is the subsidiary that owns or operates twelve health care facilities—four hospitals, three dialysis centers, a skilled nursing facility, an ambulatory surgery center, a Medicare certified hospice agency, and a hospice care center. The health care facilities are listed below. [source: CN historical files and Application, Appendix 1]

HOSPITALS

Enumclaw Regional Hospital, Enumclaw
St. Anthony Hospital, Gig Harbor
St. Joseph Medical Center, Tacoma
St. Clare Hospital, Lakewood
St. Frances Hospital, Federal Way

DIALYSIS CENTERS

Greater Puyallup Dialysis Center, Puyallup
St. Joseph Dialysis Facility, Tacoma
Gig Harbor Dialysis Center, Gig Harbor

SKILLED NURSING FACILITY

Franciscan Care Center, Tacoma

HOSPICE AGENCY

Franciscan Hospice, University Place

HOSPICE CARE CENTER

FHS Hospice Care Center, University Place

AMBULATORY SURGERY CENTER

Gig Harbor Ambulatory Surgery Center

This project focuses on Franciscan Hospice located at 2901 Bridgeport Way in University Place, within Pierce County. Currently, Franciscan Hospice provides Medicare certified hospice services to the residents of King and Pierce counties from this office. This project proposes to add Kitsap County to the service area. The Kitsap County services would also be provided from the University Place hospice agency. [source: Application, p6]

There is no capital expenditure associated with this project. [source: Application, p17] If this project is approved, Franciscan Hospice anticipates commencement of the project immediately. Under this timeline, year 2010 would be the facility’s first full calendar year of operation. [source: Application, p6, 8p6, p8, & p9]

HCR ManorCare-In Home Health, LLC

In Home Health, LLC is a subsidiary of Manor Care Health Services, LLC, which is a subsidiary of Manor Care Inc, which, in turn is a subsidiary of HCR ManorCare, Inc, which is a subsidiary of The Carlyle Group. Of the five entities identified above, only In Home Health, LLC is registered in Washington State.² The majority of HCR ManorCare’s subsidiaries are registered in the state of

² Other subsidiaries of HCR Manor Care are registered in Washington State, but they are not relevant to this project.

Delaware. Manor Care Health Services, LLC is the parent company of several subsidiaries. The company operates primarily under the names of Heartland, ManorCare Health Services, and Arden Courts. [source: Application, p4 & Appendix B, and HCR ManorCare website]

As of end of year 2007, through its subsidiaries, Manor Care, Inc. owns, operates, or manages over 500 healthcare facilities, which includes skilled nursing centers, assisted living facilities, outpatient rehabilitation clinics, and hospice and home health offices across the nation. The healthcare facilities owned, operated, or managed by Manor Care, Inc. are grouped geographically into six operating divisions:

East Mid-West Central **West** Mid Atlantic Southeast

Washington State is located in the West division [in bold above], and includes facilities owned and operated by Manor Care Health Services, Inc. or its subsidiary Heartland. For Washington State, Manor Care Inc. owns and operates six skilled nursing facilities through its subsidiaries. Further, Manor Care Inc. owns and operates a home care agency and a “licensed only” home health agency through its Heartland subsidiary. The Washington State facilities and city of location are shown in the chart below. [source: Manor Care Website and Wikipedia]

Skilled Nursing Facilities

Manor Care of Gig Harbor WA, LLC, Gig Harbor
Manor Care of Lacey WA, LLC, Lacey³
Manor Care of Lynnwood WA, LLC, Lynnwood
Manor Care of Spokane WA, LLC, Spokane
Manor Care of Tacoma WA, LLC, Tacoma
Manor Care of Salmon Creek WA, LLC, Vancouver⁴

Home Care and Home Health Agencies

Heartland Home Care, Seattle
Heartland Home Health Care Services, Seattle

For this project, In Home Health proposes to establish a Medicare certified hospice agency to be operated under its Heartland subsidiary. The new agency would be known as Heartland Hospice of Kitsap County and located at 9633 Levin Road, #100 in Silverdale. [source: Application, p6]

The capital expenditure associated with the establishment of the new hospice agency is \$145,700. Of that amount, 46% is related to equipment, 30% is related to tenant improvements, and the remaining 24% is related to tax, freight, and fees. [source: Application, Appendix J]

If this project is approved, In Home Health anticipates commencement immediately and completion within six months. Under this timeline, year 2011 would be the facility’s first full calendar year of operation. [source: Application, p6 & p15]

APPLICABILITY OF CERTIFICATE OF NEED LAW

Both projects are subject to Certificate of Need review as the establishment of a new healthcare 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).

³ On February 18, 2009, Manor Care was issued Certificate of Need #1392 approving the establishment of a 120-bed skilled nursing facility in Lacey, within Thurston County. Given the recent approval, the facility is not yet operational.

⁴ On April 4, 2008, Manor Care was issued Certificate of Need #1366 approving the establishment of a 120-bed skilled nursing facility in Salmon Creek, within Clark County. This facility is not yet operational.

CRITERIA EVALUATION

WAC 246-310-200(1)(a)-(d) identifies the four determinations that the department must make for each application. WAC 246-310-200(2) provides additional direction in how the department is to make its determinations. It states:

“Criteria contained in this section and in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240 shall be used by the department in making the required determinations.

(a) In the use of criteria for making the required determinations, the department shall consider:

- (i) The consistency of the proposed project with service or facility standards contained in this chapter;*
- (ii) In the event the standards contained in this chapter do not address in sufficient detail for a required determination the services or facilities for health services proposed, the department may consider standards not in conflict with those standards in accordance with subsection (2)(b) of this section; and*
- (iii) The relationship of the proposed project to the long-range plan (if any) of the person proposing the project.”*

In the event the WAC 246-310 does not contain service or facility standards in sufficient detail to make the required determinations, WAC 246-310-200(2)(b) identifies the types of standards the department may consider in making its required determinations. Specifically WAC 246-310-200(2)(b) states:

“The department may consider any of the following in its use of criteria for making the required determinations:

- (i) Nationally recognized standards from professional organizations;*
- (ii) Standards developed by professional organizations in Washington state;*
- (iii) Federal Medicare and Medicaid certification requirements;*
- (iv) State licensing requirements;*
- (v) Applicable standards developed by other individuals, groups, or organizations with recognized expertise related to a proposed undertaking; and*
- (vi) The written findings and recommendations of individuals, groups, or organizations with recognized expertise related to a proposed undertaking, with whom the department consults during the review of an application.”*

WAC 246-310-290 contains service or facility specific criteria for hospice projects and must be used to make the required determinations.

To obtain Certificate of Need approval, each applicant must demonstrate compliance for their project with the applicable criteria found in WAC 246-310-210 (need) and 246-310-290(6) and (7) (hospice services standards and need forecasting method); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment) and 246-310-290(9). Additionally, each must demonstrate compliance with applicable standards outlined in WAC 246-310-290 (hospice standards and forecasting method).

APPLICATION CHRONOLOGY

As directed under WAC 246-310-290(3) the department accepted these two projects under the year 2008 Hospice Concurrent Review Cycle. Below is a chronologic summary of the two projects.

Action	Franciscan Hospice	In Home Health
Letter of Intent Submitted	September 30, 2008	September 29, 2008
Application Submitted	October 31, 2008	October 31, 2008
Department's pre-review Activities including screening and responses	November 1, 2008, through January 15, 2009	
Beginning of Review	January 16, 2009	
Public Hearing /End of Public Comment	March 25, 2009	
Rebuttal Comments Received	April 24, 2009	
Department Publishes Notice of Pivotal Unresolved Issue (PUI)	May 18, 2009	
Applicants Provide Documents Related to PUI	June 1, 2009	
Rebuttal Comments Received Related to PUI	June 18, 2009	
Department's Anticipated Decision Date	August 17, 2009	
Department's Anticipated Decision Date (with 30 day Extension)	September 16, 2009	
Department's Actual Decision Date	September 16, 2009	

CONCURRENT REVIEW AND AFFECTED PERSONS

The purpose of the concurrent review process is to comparatively analyze and evaluate competing or similar projects to determine which of the projects may best meet the identified need. In the case of these projects submitted by Franciscan Hospice and In Home Health, the department will issue one single evaluation regarding whether one, both, or none of the projects should be issued a Certificate of Need.

For each application, the other applicant sought and received affected person status under WAC 246-310-010. Two existing hospice providers in Kitsap County also sought and received affected person status—Group Health Cooperative and Hospice of Kitsap County. No other entity sought or received affected person status.

SOURCE INFORMATION REVIEWED

- Franciscan Hospice's Certificate of Need application submitted October 31, 2008
- In Home Health's Certificate of Need application submitted October 31, 2008
- Franciscan Hospice's supplemental information received December 31, 2008
- In Home Health's supplemental information received December 31, 2008
- Public comment received during the course of the review
- Public hearing documents submitted at the March 25, 2009, public hearing
- Franciscan Hospice's rebuttal documents received April 24, 2009
- In Home Health's rebuttal documents received April 24, 2009
- Hospice of Kitsap County's rebuttal documents received April 24, 2009
- Franciscan Hospice's Pivotal Unresolved Issue documents received May 29, 2009
- In Home Health's Pivotal Unresolved Issue documents received June 1, 2009
- Franciscan Hospice's Pivotal Unresolved Issue rebuttal comments received June 18, 2009

SOURCE INFORMATION REVIEWED (continued)

- In Home Health's Pivotal Unresolved Issue rebuttal comments received June 11, 2009
- Hospice of Kitsap County's Pivotal Unresolved Issue rebuttal comments received June 16, 2009
- Washington 246-310-290 Hospice Services Standards and Forecasting Method based on 2005, 2006, and 2007 data
- Licensing and/or survey data provided by the Department of Health's Investigations and Inspections Office
- Licensing and/or survey data provided by out-of-state health care survey programs related to In Home Health, Heartland, or its parent corporation or any of its subsidiaries
- Data obtained from Franciscan Health Systems webpage (www.fhshealth.org)
- Data obtained from Manor Care's webpage (www.hcr-manorcare.com)
- Data obtained from the Kitsap County Assessor webpage
- Certificate of Need historical files

CONCLUSIONS

Franciscan Hospice

Franciscan Hospice meets all of the required review criteria to expand its existing Medicare certified/Medicaid eligible hospice services into Kitsap County, and a Certificate of Need should be issued provided Franciscan Hospice agrees to the term and condition stated below.

TERM

Based on information provided in the application, Franciscan Hospice currently has appropriate relationships with ancillary and support services in King and Pierce counties. Franciscan Hospice must provide a copy to the department for review and approval of any additional ancillary and support agreements established specifically for its Kitsap County services.

CONDITION

Franciscan Hospice must agree to provide Medicare certified hospice services to residents of the entire county.

There is no capital expenditure associated with the expansion of Franciscan Hospice's Medicare certified hospice services into Kitsap County.

In Home Health

In Home Health fails to meet all of the required review criteria to establish a Medicare certified/Medicaid eligible hospice agency in Kitsap County, and a Certificate of Need is denied.

A. Need (WAC 246-310-210) and Hospice Agency Need Forecasting Method (WAC 246-310-290(7))

Based on the source information reviewed, the department determines that:

- Franciscan Hospice's project has met the need criteria in WAC 246-310-210(1); and
- In Home Health's project has met the need criteria in WAC 246-310-210(1).

Methodology WAC 246-310-290(7)

The determination of numeric need for hospice services is performed using the hospice services need forecasting method contained in the WAC 246-310-290. The methodology is a six-step process of information gathering and mathematical computation. The first step examines historical hospice utilization rates at the statewide level. The remaining five steps apply that utilization to current and future populations at the service area level and are intended to determine total baseline hospice services need and compare that need to the capacity of existing providers. The completed methodology is presented as an appendix to this evaluation.

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

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

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

For these sub-steps within Step 1, the department obtained utilization data for 2005 through 2007 from the licensed and Certificate of Need approved hospice providers throughout the state. The department asked providers to report their admissions by age group (under 65 and 65 and over) and diagnosis (cancer/non-cancer) for each of the most recent three years. This information was to be provided by county of resident. The results of this survey were compared with data provided by the Department of Health's Center for Health Statistics and Cancer Registry office to determine the percentages of deaths due to cancer and non-cancer causes for the two age groups. Although not

all hospice providers in the state responded to the program's surveys, all providers in Kitsap County provided responses.

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

This step was completed using death statistics from the Department of Health's Center for Health Statistics. The total deaths in each of the planning areas for 2005-2007 were averaged for each planning area.⁵

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

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

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

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

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

The values derived in Step 4, above, were inflated by the expected populations for each planning area. The age-specific population projections for each county were obtained from the state's Office of Financial Management. The most recent age-specific data set is the "Population Projections developed for Growth Management Act (Released November 2007)". This age-specific data is available for 5-year intervals only. The department has used these 5-year interval values to estimate population projections for the interstitial years. The department applied the one-year estimated population growth to the potential volume of hospice services derived in Step 4 to estimate potential hospice volume in 2008, the first year following the three-year data range.

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

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

There are two Medicare certified hospice agencies in Kitsap County and both providers have been in operation at least three years. The department calculated the ADC for each hospice by multiplying the state's most recent average length of stay (ALOS), calculated from responses to the

⁵ In applying Step 2, the department reads "total" to mean the total number of death for each of the four categories of patients identified in Step 1. The department adopts this reading because the various steps in the methodology build on each other and should be read together.

agency's survey, by each hospice's average admissions for the past three years and divided that total by three hundred sixty-five (days per year). The result of this calculation is an unmet need of an ADC of 44 for Kitsap County. The unmet need of 44 is divided by the minimum ADC of 35, resulting in 1.27 or a need for one new hospice agency in the county.⁶

In order to provide a numeric need methodology as described above, data from existing Washington State hospice providers must be obtained. Both Franciscan Hospice and In Home Health relied on the department's utilization survey to obtain the necessary data from the existing providers. Below is a summary of the numeric need calculations provided by each applicant.

Franciscan Hospice

Franciscan Hospice provided step six of their numeric methodology. Without steps one through five, the department is unable to determine historical years used in the method and whether Franciscan Hospice applied the previous steps consistent with the department's application of the steps as described above. Step six of the Franciscan Hospice methodology results in a need for one hospice agency in Kitsap County. [source: Application, Appendix 2]

In Home Health

In Home Health provided all six steps of its methodology and all six steps appear to have been applied consistent with the department's application of the steps as described above. In Home Health's numeric methodology results in a need for one hospice agency in Kitsap County. [source: Application, p18 and Appendix L]

Interested / Affected Persons Comments

Hospice of Kitsap County

During the public comment, Hospice of Kitsap County (HKC) raised concerns regarding the numeric methodology outlined in WAC 246-310-290(7). Most of the concerns focused on the department's interpretation of its rules when applying the six-step method described above. The department's interpretation of WAC 246-310-290(7) has been challenged in past projects unrelated to these Kitsap County projects, and the department's interpretation has prevailed in all challenges. As a result, the interpretation described above is consistent with the interpretations the department has used in past hospice reviews and will continue to use in these Kitsap County hospice projects.

HKC also provided concerns related to the historical data used in the numeric methodology. WAC 246-310-270(7) requires the use of "last three years" data. The phrase "last three years" is not defined in the rule. HKC provides the following statement regarding historical data. [source: HKC March 25, 2009, public hearing documents, p1]

"...the WA State Department of Health has postulated a potential unmet hospice need in Kitsap County of 221 admissions in 2007. This data was collected in the fall of 2008 for the prior three complete years (05-07). Data is now available for 2008 which shows dramatic gains in Kitsap County hospice admissions and reduces the calculated unmet need to 177 admissions. Using the methodology and applying average length of stay, this reduces projected average daily census from 36 patients to 29 which is below the methodology's need threshold."

Basically, HKC suggests that the "last three years" data identified in the methodology should be years 2006, 2007, and 2008. If 2008 data is used, there is no longer the numeric need that was shown using 2005-2007 data.

⁶ Numbers may not add to precision due to fractions.

Hospice applications are submitted during an annual concurrent review cycle. [WAC 246-310-290(3)]. A key piece of the hospice application is the applicant’s numeric methodology used to determine whether numeric need exists for hospice services in a specific planning area. Hospice applications are submitted during the month of October. For these Kitsap County projects, the applications were submitted in October 2008 and review began in January 2009. At the time of submission and when review began, years 2005, 2006, and 2007 are the “last three years” data as referenced in the methodology. The program published the 2005, 2006, and 2007 data that would be used in the numeric methodology. Once the program has published specific data and an applicant has relied on the specific data to determine if an application should be submitted during an annual review cycle, it is unfair to change the historical data to be used in the review.

In conclusion, the numeric methodology is a population-based assessment to determine the projected need for hospice services in a county (planning area). Based solely on the numeric methodology applied by the two applicants and the department, need for one additional hospice agency to serve Kitsap County has been demonstrated.

Need (WAC 246-310-210)

(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.

WAC 246-310-290(8) also requires the department to evaluate all hospice applications based on the population’s need for the service and determine whether 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. The results of numeric methodology as described above conclude that the population has a need for the additional service. Below is an evaluation of whether existing services and facilities in Kitsap County are not, or will not, be sufficiently available or accessible to meet the numeric need projected in the methodology.

Franciscan Hospice [December 31, 2008, supplemental information, pp2-5]

Franciscan Hospice’s current hospice service area is King and Pierce counties and asserts that it provides almost 70% of the hospice services in Pierce County. Franciscan Hospice also states that it is uniquely qualified to provide hospice services in Kitsap County for three reasons:

- 1) Kitsap County is adjacent to Pierce County;
- 2) working knowledge of the Kitsap market place because of FHS owned clinics currently operating in Kitsap County; and
- 3) current working relationships with other healthcare providers in Kitsap County.

Franciscan Hospice states that hospice penetration rates and average lengths of stay (ALOS) for hospice patients are proxies for accessibility, availability, and acceptability of hospice services in a given area. Franciscan Hospice provided the comparison data summarized in Table 1 below.

**Table 1
Comparison Penetration Rates and ALOS for Year 2007**

	Penetration Rate Age 0-64	Penetration Rate Age 65+	ALOS
Washington State	27.8%	49.8%	61.7 days
Pierce County	31.7%	67.4%	61.7 days
Kitsap County	20.4%	33.0%	58.3 days

Franciscan Hospice notes that the Kitsap County penetration rates and ALOS are lower than both Pierce County and the state as a whole.

Franciscan Hospice also provided a brief overview of the types of services and programs currently in place for King and Pierce counties that would be expanded to Kitsap County to address the unmet hospice need.

In Home Health [source: Application, pp17-38]

In addition to the numeric need methodology provided by In Home Health, this applicant evaluated this criterion using three additional analyses of demographic, vital statistics, and hospice utilization data. Those three analyses are:

- Kitsap County 2007 hospice utilization rates by diagnosis and age group compared with Washington State 2007 hospice utilization rates by diagnosis and age group.
- Analysis of diagnostic case mix of Kitsap County hospices and comparison to Heartland Hospice's national experience.
- Analysis of Kitsap County hospice's ALOS and Heartland Hospice's ALOS and Medicare national average of ALOS

Using 2007 hospice utilization rates comparison with the state, In Home Health concludes approximately 265 persons in Kitsap County would have been served by hospice if the Kitsap County utilization rates were the same as the Washington State utilization rates. [source: Application, pp18-19, Exhibit Tables 1 and 2]

The diagnostic case mix analysis performed by In Home Health concludes that approximately 50% of the non-cancer patients aged 65+ access hospice services and of those, approximately 8% had a secondary diagnosis as "mental disease." The applicant concludes that if Alzheimer's patients had been served as well as cancer patients were served in Kitsap County, up to 40 more patients and their families would have received the hospice care in year 2005.

With its ALOS analysis, In Home Health concludes that an additional hospice agency in Kitsap County would increase patient accessibility of services and potentially reduce response time for patients accessing hospice services. In Home Health defines "response time" in this sense as the time between a terminally ill person's needing hospice care and the time that care is actually initiated. [source: December 31, 2008, supplemental information, p3] In Home Health assumes where ALOS are shorter, dying persons are accessing hospice later in the course of illness; where ALOS are longer, dying persons are accessing hospice earlier in the course of the illness. Kitsap County's ALOS is 50 days verses 80 days for In Home Health (or Heartland) in other states.

Affected Persons Comments [sources noted]

Group Health Cooperative [source: oral comments submitted at March 25, 2009, public hearing]

At the March 25, 2009, public hearing, one of the physicians associated with Group Health Cooperative (GHC) provided comments related to this sub-criterion. Specifically, the physician acknowledged while GHC only serves Group Health member patients, it has a long-standing relationship with FHS for hospice referrals in King and Pierce counties. The physician also stated that GHC has its own team of board certified physicians, including pediatric physicians, and is capable of expanding to admit more patients.

Hospice of Kitsap County⁷ [source: HKC comments submitted at March 25, 2009, public hearing, p4]

At the March 25, 2009, public hearing, HKC provided the following written comments related to this sub-criterion.

“Hospice of Kitsap County accepts every county resident referred. The agency does not have limited capacity. If there are patients in the service area which are not being served by hospice, other forces are at play other than a lack of capacity. If there are in fact 221 unserved potential hospice patients in this service area, Hospice of Kitsap County can easily serve that number with slight staff increases. We have served that number in the past when census was over 80 versus the current 60.”

Interested Persons Comments / General Public Comment [sources noted]

During the review of this project and the public hearing conducted on March 25, 2009, the department received many comments related to this sub-criterion. A number of comments focused on the impact of another provider on HKC. In summary, the concern is that HKC has been providing hospice services to residents of Kitsap County for approximately 30 years. HKC is well-known and well-respected within the community and many residents and patients living in the community have either already experienced HKC’s hospice benefits or expect to use HKC in the future. Concerns were raised that an additional provider would substantially affect HKC’s ability to continue to provide the high-quality, personal services it has provided for many years.

[sources: (not all inclusive): local physicians, United Way of Kitsap County, etc]

A number of community members recognized that there is not a choice of providers for patients not subscribing to GHC. For some community members, the additional provider of choice is FHS. [sources (not all inclusive): Laurie Brown, Lois Watson, Port Orchard Medical Group, Key Medical Center, St. Anthony Family Medicine, etc.] For other community members, the additional provider of choice is In Home Health. [sources (not all inclusive): Kitsap Physical Therapy and Sports Clinics, Crista Senior Living, Belmont Terrace nursing facility, rehab, and assisted living facility, etc]

In Home Health also provided a number of “thank you” letters from families of past patients in states where In Home Health or Heartland operates a hospice agency. [sources (not all includes): states include Ohio, Minnesota, California, Oklahoma, Indiana, Maryland, Pennsylvania, etc]

Department’s Evaluation

Both applicants submitted an analysis and supporting documentation to demonstrate that the existing provider is not, or will not, be sufficiently available or accessible to meet the projected hospice need. In addition to the supporting documentation, both applicants relied on a comparison of historical hospice ALOS and penetration rates to meet this sub-criterion. Franciscan Hospice compared year 2007 Kitsap County ALOS and penetration rates with Pierce County and the state as a whole. This comparison demonstrated that Kitsap County’s ALOS and penetration rates are lower than both. In Home Health compared year 2007 Kitsap County ALOS and penetration rates with its own agency averages in other states (operating under the Heartland name) and the year 2007 Medicare national averages. This comparison also demonstrated that Kitsap County’s is lower than both.

HKC argues that with an increase in staffing, it is available for future patients, and therefore, a new provider is not necessary. However, HKC had the ability to increase staff in comparison

⁷ Hospice of Kitsap County submitted many comments; the department will not specifically address each comment in this evaluation, rather the department organized the comments in relation to the criterion to be reviewed.

year 2007. The year 2007 data shows that a significant number of patients and/or families in Kitsap County did not access HKC for hospice care, for whatever reason.

Additionally, Group Health Cooperative, the other hospice provider in Kitsap County, also recognizes that it is an option for only Group Health enrollees, rather than an option for the entire county. In conclusion, when the comparison data is evaluated with the results of the numeric methodology, and the recognition by one of the existing providers that it is not available to all community members in the service area, the department concludes that this sub-criterion has been met by both applicants.

- (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, both applicants currently provide health care services to out of state residents or residents of Washington State. To determine whether all residents of the Kitsap County service area would have access to an applicant's proposed services, the department requires applicants to provide a copy of its current or proposed admission policy. The admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility and any assurances regarding access to treatment.

Franciscan Hospice

To demonstrate compliance with this sub-criterion, Franciscan Hospice provided a copy of its current Admission / Discharge / Transfer policies that would also be used to serve the residents of Kitsap County. The policy outlines the process/criteria that Franciscan Hospice uses to admit patients for treatment, and ensures that patients receive appropriate end of life care. The Admission Policy also states that any terminal patient will be accepted for treatment by Franciscan Hospice without regard to race, color, national origin, sex, age, religion, or disability. [source: Application, Exhibit 5]

In Home Health

To demonstrate compliance with this sub-criterion, the applicant provided a copy of its Admission Policy and Patient Non-Discrimination Policy used for its Heartland subsidiaries, including the proposed Kitsap County hospice agency. A review of the policies is below. [source: Application, Appendix Q]

Admission Policy – This policy outlines the process/criteria In Home Health will use to admit patients for treatment, and ensures that patients will receive appropriate end of life care.

Patient Non-Discrimination Policy – this policy ensures that any terminal patient will be accepted for treatment by In Home Health without regard to race, color, national origin, sex, age, religion, or disability.

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

Franciscan Hospice

Franciscan Hospice currently provides Medicare/Medicaid hospice services in King and Pierce counties. By submission of this application, Franciscan Hospice demonstrates that it intends to provide those same services in Kitsap County. If this project is approved, Franciscan Hospice

intends to begin providing hospice care in Kitsap County immediately. Submission of this application and financial documentation provided in the application demonstrates compliance with this sub-criterion. [source: Application, p9]

In Home Health

In Home Health currently provides Medicare/Medicaid home health and hospice services in other states through its In Home Health or Heartland subsidiaries. By submission of this application, the applicant demonstrates that it intends to provide those same services in Kitsap County. If this project is approved, In Home Health intends to begin providing hospice care in Kitsap County by January 2011. Submission of this application and financial documentation provided in the application demonstrates compliance with this sub-criterion. [source: Application, p15]

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

Franciscan Hospice

Franciscan Hospice provided a copy of its existing FHS charity care policy. The policy outlines the process FHS uses to determine whether a patient qualifies for full or partial charity care. The policy also states that any terminal patient will be accepted for treatment by Franciscan Hospice without regard to race, color, national origin, sex, age, religion, or disability. To substantiate its intent to provide charity care in Kitsap County, Franciscan Hospice included a 'charity care' line item as a deduction from revenue within the pro forma income statements documents. [source: Application, Exhibit 5; May 29, 2009, PUI responses, Attachment 1]

In Home Health

To demonstrate compliance with this sub-criterion, In Home Health provided a copy of its Continuation and Continuity of Care Policy used for its Heartland subsidiaries, including the proposed Kitsap County hospice agency, and a copy of the Heartland Hospice of Kitsap County Charity Care Policy. A review of each policy is below. [source: Application, Appendix Q; December 31, 2008, supplemental information, Appendix S-7]

Continuation and Continuity of Care Policy – this policy ensures that all patients will receive end of life care regardless of ability to pay.

Charity Care Policy – this policy outlines the process In Home Health will use to determine whether a patient qualifies for full or partial charity care. The policy also states that any terminal patient will be accepted for treatment by In Home Health without regard to race, color, national origin, sex, age, religion, or disability. To substantiate its intent to provide charity care in Kitsap County, In Home Health also included a 'charity care' line item as a revenue source and expense line item within the pro forma income statements documents.

Department's Evaluation

Based on the above information and standards, the department provides the following conclusion.

Franciscan Hospice

The department concludes that all residents of the service area would have adequate access to the hospice services proposed to be provided by Franciscan Hospice through its existing Medicare certified hospice agency. If this project is approved, the department would attach conditions requiring Franciscan Hospice to provide Medicare certified hospice services to residents of the entire county. Provided that Franciscan Hospice agreed to this condition, this sub-criterion is met.

In Home Health

The department concludes that all residents of the service area would have adequate access to the hospice services proposed to be provided by In Home Health through its new Medicare certified hospice agency to be located in Kitsap County. If this project is approved, the department would attach a conditions requiring In Home Health to provide Medicare certified hospice services to residents of the entire county. Provided that In Home Health agreed to this condition, this sub-criterion is met.

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

Based on the source information reviewed, the department determines that:

- Franciscan Hospice’s project has met the financial feasibility criteria in WAC 246-310-220; and
- In Home Health’s project has not met the financial feasibility criteria in WAC 246-310-220.

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

For financial review of applications, the department requests data for at least the first three full-years following project completion. Below is a summary of this sub-criterion for each applicant.

Franciscan Hospice

Franciscan Hospice anticipates it will become operational immediately after approval and its first full calendar year of operation will begin January 2010. Based on this timeline, calendar year 2012 would be the third full year of operation. Using the financial information provided by Franciscan Hospice, Table 2 below illustrates the projected revenue, expenses, and net income for full calendar years 2010, 2011, and 2012 for Kitsap County only. [source: December 31, 2008, supplemental information, Attachment 2, p27]

**Table 2
Franciscan Hospice - Kitsap County Only
Projected Revenue and Expenses for Years 2010 - 2012**

	Full Year 1 2010	Full Year 2 2011	Full Year 3 2012
Projected # of Patients	91	147	213
Projected # of Patient Days	5,475	9,125	13,870
Projected Average Length of Stay	60	62	65
Projected Average Daily Census	15	25	38
Net Patient Revenue	\$890,027	\$1,480,678	\$2,252,135
Total Expenses	\$797,418	\$1,209,854	\$1,669,648
Net Profit or (Loss)	\$92,609	\$270,824	\$582,487
Net Patient Revenue per Patient	\$9,781	\$10,073	\$10,573
Total Expenses per Patient	\$8,763	\$8,230	\$7,839
Net Profit / (Loss) per Patient	\$1,018	\$1,842	\$2,735

Whole numbers may not add due to rounding

The ‘Net Patient Revenue’ line item is the result of gross revenues minus deductions for contractual allowances, other adjustments & allowances (denied claims), bad debt, and charity care. The gross revenue line item also includes philanthropic revenue from the Franciscan Foundation. The “Total Expenses” line item does not include direct expenses for utilities,

depreciation, rentals/leases, or insurance because the Kitsap services will be provided through the existing hospice agency. To account for these costs, the expenses include FHS overhead at 11% of total operating expenses and King/Pierce Hospice overhead at 3% of total operating expenses. [source: December 31, 2008, supplemental information, p8]

As shown in Table 2, Franciscan Hospice expects its average daily census to increase from 15 patients in the first year to 38 patients by the end of year three. Based on these expectations and an average length of stay of 60 to 65 days per patient, Franciscan Hospice anticipates its Kitsap operations would be profitable in the first three years of operation.

Table 3 below is an all-inclusive picture of Franciscan Hospice’s projected operations with Kitsap County included. The table shows Franciscan Hospice’s current and projected revenue, expenses, and net income for full calendar years 2008, and 2010 through 2012 with Kitsap County as part of its Medicare certified service area. [source: June 17, 2009, PUI documents, Attachment 1]

Table 3
Franciscan Hospice – King, Pierce, and Kitsap Counties
Current and Projected Revenue and Expenses for Years 2008 and 2010 - 2012

	Current Year 2008⁸	Full Year 1 2010	Full Year 2 2011	Full Year 3 2012
Projected # of Patients	2,924	3,136	3,345	3,571
Projected # of Patient Days	186,706	203,840	217,425	232,115
Projected Average Length of Stay	76	65	65	65
Projected Average Daily Census	510	558	596	636
Net Patient Revenue	\$36,161,179	\$37,051,206	\$37,641,857	\$38,413,314
Total Expenses	\$33,333,029	\$34,130,447	\$34,542,883	\$35,002,678
Net Profit or (Loss)	\$2,828,150	\$2,920,759	\$3,098,974	\$3,410,636
Net Patient Revenue per Patient	\$12,367	\$11,815	\$11,253	\$10,757
Total Expenses per Patient	\$11,400	\$10,883	\$10,327	\$9,802
Net Profit / (Loss) per Patient	\$967	\$931	\$926	\$955

Whole numbers may not add due to rounding

In Table 3, the ‘Net Patient Revenue’ line item is the result of gross revenue minus deductions for contractual allowances, other adjustments & allowances (denied claims), bad debt, and charity care. The gross revenue also includes philanthropic revenue from the Franciscan Foundation. The “Total Expenses” line item includes expenses for utilities, depreciation, rentals/leases, and insurance, as well as FHS overhead at 11% of total operating expenses and King/Pierce Hospice overhead at 3% of total operating expenses. [source: December 31, 2008, supplemental information, p8]

As shown in Table 3 above, in current year 2008, Franciscan Hospice operates at a profit. Once Kitsap County is added to the service area, Franciscan Hospice anticipates its average length of stay will hold steady at 65 days per patient and it will continue to operate at a profit in calendar years 2010, 2011, and 2012.

In Home Health’s comments related to Franciscan Hospice’s application

[source: In Home Health public hearing documents, p7]

⁸ Year 2008 data is based on King and Pierce counties only; years 2010 through 2012 includes King, Pierce, and Kitsap counties.

In Home Health asserts that Franciscan Hospice significantly underestimates its operating expenses in the area of overhead allocations, specifically in the area of lease costs. In Home Health's recalculations conclude that the overhead expenses should be at least \$74,108, rather than the \$43,938 as identified in year 2012.

Hospice of Kitsap County's comments related to Franciscan Hospice's application

[source: Hospice of Kitsap County's PUI rebuttal documents, p1]

Hospice of Kitsap County asserts that Franciscan Hospice's revenue and expense statement is discredited because the volumes in the application are unsubstantiated based on no need for an additional hospice provider in the county.

Franciscan Hospice Responses

[source: Franciscan Hospice rebuttal documents, p6]

Franciscan Hospice's response to the comments raised by In Home Health provides the process used to determine the overhead allocations included in its Kitsap County revenue and expense statement. Franciscan Hospice did not provide a direct response to Hospice of Kitsap County's assertions.

Department's Evaluation

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

Franciscan Hospice's pro forma financial projections are reasonable. This conclusion is based on the methodology and assumptions used by the applicant to base its projections, lengths of stay, average daily census, revenues and expenses. In Home Health suggests that the overhead allocations are understated, however, Franciscan Hospice provided a reasonable formula for determining overhead allocations for its Kitsap services. Hospice of Kitsap County bases its financial concerns on its assertion that there is no need for an additional hospice agency in the county. This issue was addressed in the previous criteria (WAC 246-310-290 and 210), and will not be re-addressed here.

In Home Health

In Home Health intends to establish a new hospice agency in Kitsap County at 9633 Levin Road, #100 in Silverdale. The hospice agency is expected to be operational by December 31, 2010, and its first full calendar year of operation will begin in year 2011. Based on this timeline, calendar year 2013 would be the third full year of operation. Using the financial information provided by In Home Health, Table 4 on the following page illustrates the projected revenue, expenses, and net income for partial year 2010 and full calendar years 2011, 2012, and 2013 for the Kitsap County facility.⁹ [source: Application, p15; and May 29, 2009, PUI responses, pp5-6]

⁹ Page 15 of the application states the project will "commence July 2010 or receipt of Certificate of Need and complete by January 1, 2011." Under this timeline, the agency's first full calendar year of operation is year 2011 and year three is 2013. In the initial application, years 2011 through 2013 are listed as the first three calendar years of operation which is reasonable based on the release of this evaluation. However, December 31, 2008, supplemental information indicates the first three calendar years of operation are 2010 through 2012. Given that In Home Health did not provide any

Table 4
In Home Health’s Heartland of Kitsap County
Projected Revenue and Expenses For Partial Year 2010 and Full Years 2011, 2012, and 2013

	2 Months 2010	Full Year 1 2011	Full Year 2 2012	Full Year 3 2013
Projected # of Patients	5 to 8	49	117	186
Projected # of Patient Days	115	3,890	9,364	14,875
Projected Average Length of Stay (ALOS)	80	80	80	80
Projected Average Daily Census (ADC)	2	11	26	40
Net Patient Revenue	(\$1)	\$623,843	\$1,607,786	\$2,547,734
Total Expenses	\$239,184	\$1,017,671	\$1,617,616	\$2,262,031
Net Profit or (Loss)	(\$239,185)	(\$393,828)	(\$9,830)	\$285,703
Net Patient Revenue per Patient	No	\$12,731	\$13,742	\$13,697
Total Expenses per Patient	Calculations	\$20,769	\$13,826	\$12,161
Net Profit / (Loss) per Patient	Performed	(\$8,038)	(\$84)	\$1,536

Whole numbers may not add due to rounding

Table 4 demonstrates that its hospice agency is expected to operate at a loss through its second full calendar year of operation (2012), and a profit by the end of year three (2013) based on an average length of stay of 80 days.

In Home Health included a “charity care” line item in its gross revenue and a deduction from revenue. In Home Health asserts that inclusion in the gross revenue demonstrates a commitment to charity care. For this project that commitment is 2.5% of projected Medicare gross revenue. Since there is no one to bill for charity care, In Home Health demonstrates this by including the same charity care dollar amount as a deduction from revenue. In Home Health also clarified that its projected number of staff (FTEs) is derived from its revenue amounts in the revenue and expense statement, and inclusion of charity care is necessary to account for the FTEs that would be providing charity care for the patients. Inclusion of charity care in the expense section accounts for the charity care concept of no dollars received for the care provided.¹⁰ [source: May 29, 2009, PUI documents, pp1-4] It is clear from the pro forma revenue and expense statements that In Home Health will provide charity care at 2.5% of the projected Medicare gross revenue.

Franciscan Hospice comments related to In Home Health’s application

[source: Franciscan Hospice public comments, pp4-9]

Franciscan Hospice identifies three areas within In Home Health’s financial documents that are inconsistent. First, the lease amounts identified in the pro forma revenue and expense statements are inconsistent with the letter of intent to lease provided by In Home Health. Second, In Home Health did not provide a medical director agreement, draft or executed, to substantiate medical director fees associated with its Kitsap County project. Third, Franciscan Hospice asserts that In

documentation to demonstrate that its projected timeline has changed, the department will evaluate this project using the assumption that years 2011 through 2013 continue to be the first three calendar years of operation.

¹⁰ In Home Health also provided excerpts from opinions of two experts related to how charity care should be reported. The experts—American Institute of Certified Public Accounts (AICPA) and the Healthcare Financial Management Association (HFMA)—appear to disagree on how charity care should be presented. AICPA asserts (in 1996) that charity care would not qualify for recognition as receivables or revenue in a hospital’s financial statements. HFMA asserts (in 1986) that charity care is reported as revenue in an amount equivalent to that which would be reported if collection was expected. Both agree, however, that charity care must be included in the notes to financial statements within the audited financial statements. In Home Health provided its historical statements, and charity is included in those documents.

Home Health’s average length of stay of 80 days is unrealistic, resulting in skewed volume projections and revenue and expense statements.

Hospice of Kitsap County’s comments related to In Home Health’s application

[source: Hospice of Kitsap County’s PUI rebuttal documents, p2]

Hospice of Kitsap County voices concerns regarding In Home Health’s presentation of charity care within its pro forma revenue and expense statements. Hospice of Kitsap County asserts that the applicant should have provided the charity care information in the format requested by the department. Hospice of Kitsap County also asserts that In Home Health’s revenue and expense statement is discredited because the volumes in the application are unsubstantiated based on no need for an additional hospice provider in the county.

In Home Health Reponses

[source: In Home Health rebuttal documents, p6, 25]

Related to Franciscan Hospice’s concerns, In Home Health’s states that its letter of intent to lease identifies a triple net lease, which means the dollar cost per square foot (psf) is not the full amount owed under the lease agreement. The exact lease amount to be paid each year cannot be determined until the other expenses are determined. The letter of intent to lease identifies \$17.50 psf. To compensate for the triple net concept, In Home Health identified \$25/psf in the pro forma revenue and expense statements.

Regarding the medical director costs, In Home Health initially asserts that it is not required to have a medical director and provided rationalization for its position. However, in an attempt to be as responsive as possible, In Home Health provided a medical director contract used as a template for Heartland Hospice agencies nationwide, with an assurance that the contract would be used for its new Kitsap County agency. Further, In Home Health provided a job description for the medical director outlining roles, responsibilities, and required experience; identified all costs to be paid to the medical director related to the services provided; and identified the medical director costs in the pro forma financial documents provided in the application.

In Home Health did not provide a direct response to Franciscan Hospice’s concern related to the projected average length of stay of 80 days, nor did In Home Health provide a direct response to Hospice of Kitsap County’s assertions.

Department’s Evaluation

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

Regarding the costs identified in In Home Health’s letter of intent to lease versus the pro forma revenue and expense statements, the triple net lease costs cannot be fully determined until the utilities, property taxes, and other costs are calculated. To compensate for these unknowns, In Home Health added \$7.50 psf to its letter of intent to lease costs.

The hospice agency application form that must be completed and submitted by the applicant requests specific information related to the site. While an executed lease agreement is always

preferable, a draft lease agreement is acceptable provided the draft agreement identifies all costs associated with the lease and all exhibits/attachments referenced in the lease agreement are attached. The letter of intent to lease provided by In Home Health is neither an executed lease agreement nor a draft lease agreement. As a result, the letter of intent to lease is not sufficient documentation for the site.

Regarding the medical director costs, In Home Health's explanation of why it is not required to have a medical director is incorrect. Under the state licensing statute, a hospice agency is required to consult with a medical director.¹¹ To receive Certificate of Need approval, the costs of the medical director must be identified in the draft agreement and substantiated in the pro forma revenue and expense statement. If this project is approved, In Home Health's Kitsap agency would not begin operations until late 2010. As a result, establishing a contract with a medical director at this time can be considered premature. In lieu of a draft or executed medical director contract, In Home Health provided the following documentation to demonstrate compliance with this sub-criterion.

- 1) A medical director agreement used as a template for Heartland's hospice agencies nationwide. The template outlines the roles and responsibilities of the medical director and Heartland. [source: Application, Appendix E]
- 2) The Heartland medical director job description. This document outlines the qualifications and responsibilities of the medical director. [source: December 31, 2008, supplemental information, Appendix S-5]
- 3) A medical director expense line item in the pro forma revenue and expense statement. The line item assumes medical director costs in partial year 2010 to be \$10,428, which increases each year. Year three medical director costs are identified at \$124,800. [source: May 29, 2009, PUI responses, p5]

Based on the above information, the department concludes that In Home Health has demonstrated its intent to provide a medical director for its Kitsap County hospice agency. Given that the medical director contract is a draft and a specific physician is not identified, if this project is approved, terms or conditions would be attached to ensure the final documents were reviewed and approved by the department.

In Home Health did not provide specific responses to concerns raised by Franciscan Hospice related to the 80 day average length of stay used as a basis for its financial projections. However, throughout the application, In Home Health consistently asserts that the year 2007 Washington State average length of stay of 57.72 days calculated in the methodology is too low. In Home Health states that its average length of stay for its hospice agencies in its West Region is over 80. In Home Health contends that if Washington State and Kitsap County patients were being referred to hospice earlier, the average length of stay would be much higher [source: Application, p21]

The numeric methodology applied by the department for these two projects is based on year 2005, 2006, and 2007 data of all hospice agencies in the state. The year 2007 average length of stay for the two hospice agencies operating in Kitsap County is 78.5 for Group Health Cooperative and 54.3 for Hospice of Kitsap County. An average of those two lengths of stay is 66.4. For 2007, the department calculated the statewide average length of stay at 61.64.¹²

¹¹ WAC 246-335-055(4)(a) and CFR 418.102

¹² For the year 2007 hospice concurrent review cycle, a hospice application was reviewed for Skamania County. The methodology calculated for that project was based on historical years 2004, 2005, and 2006. For year 2006, Group Health Cooperative and Hospice of Kitsap County reported average lengths of stay at 52.9 and 52.1, respectively. The 2006 statewide average length of stay was 56.1. [source: Heart of Hospice methodology, created May 2008]

Within its application, In Home Health reviews and discusses the Kitsap County and statewide average length of stay for hospice patients. In its discussion of need for an additional provider, In Home Health calculates that 265 additional patients could be served in the county. Using a “conservative” average length of stay of 60 days, In Home Health further calculates that the 265 additional patients would represent an average daily census of 43.6 patients. [source: Application, pp19-20] Rather than using the 60 day average length of stay identified by In Home Health as “conservative,” 80 days was used in the financial projections.

In 2007, of the 75 utilization surveys returned for the methodology, 7 did not respond with average length of stay data. Of the remaining 68 surveys that did respond, only 9 surveys reported an average length of stay of 80 days or more. The 9 utilization surveys represent agencies that have been providing Medicare certified hospice services for many years within the state.¹³

Certificate of Need historical files show that in October 2003, In Home Health submitted three separate hospice applications under the Heartland subsidiary. The three applications proposed to establish three new hospices agencies—one each in King, Pierce, and Snohomish counties. Within those applications, Heartland asserted that the average lengths of-stay for hospice patients in each of the three counties should be at least 60 days. As required, Heartland provided separate pro forma revenue and expense statements for each county for years 2005 through 2007. Table 5 below is a summary of Heartland’s projected average lengths of stay for each of the counties. [source: Heartland Certificate of Need Application #04-23; supplemental information submitted by Heartland on February 6, 2004, Attachments 5 & 12]

Table 5
Heartland’s Application #04-23
Average Length of Stay Projections for years 2005 - 2007

	2005	2006	2007	3-Year Average
King	60.26	61.09	61.16	60.84
Pierce	61.07	60.88	60.86	60.94
Snohomish	60.26	61.09	61.16	60.84

In these historical applications, Heartland asserted that the average lengths of stay in each of the three counties should be at least 60 days. As shown in Table 5 above, Heartland used that same assumption as a basis for its pro forma financial statements. This approach is reasonable.

Based on historical information for Washington State and Kitsap County, the department concludes that In Home Health’s projected average length of stay of 80 days for partial year one and full years one through three is overstated for a new agency in Washington State. In Table 4 of this evaluation, using its overstated 80 day average length of stay, In Home Health projects a profit in only year 3. While In Home Health’s parent corporation may be financially viable, WAC 246-310-220 requires the department to conclude that the “*operating costs of the project can be met.*” [emphasis added] The department concludes that the pro forma financial projections for this project are based on unsubstantiated assumptions and this financial portion of In Home Health’s application cannot be fully evaluated on its long-range capital and operating costs. Therefore, this sub criterion is not met.

¹³ The nine surveys were submitted by: Lower Valley Hospice for Benton and Yakima counties; Community Home Health and Hospice for Clark County; Hospice of Spokane for Ferry County; Franciscan Hospice and Swedish Hospice, both for King County; Klickitat Valley Hospice for Klickitat County; Horizon Hospice for Spokane County; and Group Health for Snohomish County

(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.

Franciscan Hospice

As previously stated, Franciscan Hospice currently provides Medicare certified hospice services in King and Pierce counties. The services are provided through Franciscan Hospice’s agency located in Pierce County. For Kitsap County, Franciscan Hospice proposes to include the county in its service area and provide the services through its existing Pierce County agency. As a result, there is no capital expenditure associated with this project.

To further demonstrate compliance with this sub-criterion, Franciscan Hospice also provided the sources of patient revenue shown in Table 6 below. [source: Application, p19]

**Table 6
Franciscan Hospice – Kitsap County
Sources and Percentages of Revenue**

Source of Revenue	Percentage of Revenue
Medicare	91.0%
State (Medicaid)	5.0%
Insurance/Other	4.0%
Total	100%

In Home Health’s comments related to Franciscan Hospice’s application

[source: In Home Health public hearing documents, pp3-6]

In Home Health asserts that Franciscan Hospice significantly underestimates its capital costs by not including any transfers of capital assets to Kitsap County. In Home Health reviewed Franciscan Hospice’s Medicare cost report data and determines that Franciscan Hospice’s estimated capital expenditure should be approximately \$74,108. This conclusion by In Home Health is based on the assertion that the Kitsap County residents would use a portion of Franciscan Hospice’s capital assets and Centers for Medicare and Medicaid Systems (CMS) requires allocation of an agency’s capital costs across all its patients. In another separate calculation, In Home Health asserts Franciscan Hospice’s capital expenditure should be approximately \$101,106. This conclusion by In Home Health is based on its review of Franciscan Hospice’s projected annual depreciation expenses for Kitsap County. In summary, In Home Health suggests that Franciscan Hospice did not accurately identify its estimated capital costs for this project.

Franciscan Hospice Reponses

[source: Franciscan Hospice rebuttal documents, p3]

Franciscan Hospice states that In Home Health’s logic is incorrect. Franciscan Hospice states that consistent with the definition of WAC 246-310-010(10) and generally accepted accounting principles as referenced in the definition, it does not intend to purchase any items that would exceed \$1,000 in order to add Kitsap County to its service area. As a result, Franciscan Hospice treated these small purchases as operating expenses, rather than capital expenditure. The operating expenses are identified in the projected revenue and expense statements within the application. Franciscan Hospice further notes that In Home Health did not assign any corporate assets to its Kitsap Hospice agency as it suggests Franciscan Hospice should.

Department’s Evaluation

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

WAC 246-310-010(10) defines capital expenditure and references generally accepted accounting principles. The department has used this definition for hospice agencies for many years. Additionally, the hospice application form provides guidance for an applicant to identify all capital expenditures for the proposed project. Franciscan Hospice states it will not incur any capital costs that fall under the generally accepted accounting principles, the definition found in WAC 246-310-010(10), or the guidance provided in the hospice application. Additionally, Franciscan Hospice appropriately identified operating expenses that would be incurred by adding Kitsap County to its service area.

As shown in Table 6, the Medicare and State (Medicaid) entitlements are projected to equal 96.0% of the revenue at for Kitsap County. The department concludes that the majority of revenue is dependent upon entitlement sources that are not cost based reimbursement and are not expected to have an unreasonable impact on charges for services. The remaining 4.0% will be derived through other or private insurance reimbursements.

Further, the department calculated the average cost per patient for the proposed facility and compared those costs to recent hospice proposals submitted to the department. The department concludes that the average cost per patient is reasonable. This sub-criterion is met.

In Home Health

In Home Health intends to establish a new hospice agency in Kitsap County at 9633 Levin Road. The agency would be located in leased space. The capital costs for this project are estimated at \$145,704 and are broken down in Table 7 below.

**Table 7
In Home Health Estimated
Capital Expenditure Breakdown**

Item	Cost	% of Total Cost
Tenant Improvements	\$45,100	31%
Equipment	\$66,300	45%
Tax and Freight	\$15,600	11%
Fees	\$18,704	13%
Total Capital Costs	\$145,704	100%

To demonstrate compliance with this sub-criterion, In Home Health provided the following statements:

“The great efficiency of this proposal results from the economies of scale achieved by spreading the cost of Heartland Hospice’s existing national support infrastructure over an additional local program.” [source: Application, p39]

In Home Health also provided the sources of patient revenue shown in Table 8 below. [source: Application, p42]

Table 8
In Home Health Kitsap Hospice Agency
Sources and Percentages of Revenue

Source of Revenue	Percentage of Revenue
Medicare	90.0%
State (Medicaid)	5.5%
Insurance/Other	4.5%
Total	100%

Franciscan Hospice’s comments related to In Home Health’s application

[source: Franciscan Hospice public hearing documents, p6]

Franciscan Hospice asserts that In Home Health spends less on direct care and more on administrative costs when compared to Franciscan Hospice’s application. Additionally, Franciscan Hospice asserts that its own profit per day is sufficient to ensure long-term viability and is 30% lower than In Home Health.

In Home Health Reponses

[source: In Home Health rebuttal documents, p14]

In Home Health does not specifically provide responses to Franciscan Hospice’s assertions. In Home Health states that a comparison of the pro forma financial data within the two projects is meaningless because Franciscan Hospice’s financials include services for King and Pierce counties, as well as Franciscan’s 15-bed hospice care center. In Home Health continues to assert that its project is cost efficient and financially feasible.

Department’s Evaluation

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

The department recognizes that the majority of reimbursements for hospice service is through Medicare hospice entitlements. As shown in Table 8 above, the Medicare and State (Medicaid) entitlements are projected to equal 95.5% of the revenue at In Home Helath’s hospice agency in Kitsap County. The department concludes that the majority of revenue is dependent upon entitlement sources that are not cost based reimbursement and are not expected to have an unreasonable impact on charges for services. The remaining 4.5% will be derived through other or private insurance reimbursements.

The costs and charges per hospice patient for the proposed facility cannot be compared to recent hospice proposals submitted to the department. The department is not able to calculate the average cost per patient with any certainty due to data used by In Home Health to prepare its financial projections. The department is unable to conclude the average cost per patient is reasonable or accurate; as a result, this sub-criterion is not met.

(3) The project can be appropriately financed.

Franciscan Hospice

There is no capital expenditure associated with this project, as a result, Franciscan Hospice did not provide any discussion in its application regarding this sub-criterion.

Department's Evaluation

The department concluded in the previous sub-criterion that zero capital expenditure was reasonable for Franciscan Hospice's project. As a result, this sub-criterion does not apply to Franciscan Hospice's project.

In Home Health

As previously stated, the capital expenditure associated with the establishment of a new hospice agency in Kitsap County is \$145,704. In Home Health states that the project will be funded from its parent corporation, HCR-ManorCare, cash reserves of \$57.9 million. In Home Health provided a letter from HCR-ManorCare's vice president and treasurer confirming the commitment of corporate funding. In Home Health also provided HCR-ManorCare's consolidated financial statements to demonstrate that the funds to finance the project are available. [source: Application, p41; Appendix U; and Appendix V]

Department's Evaluation

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

The estimated capital cost of \$145,704 is 0.25% of HCR-ManorCare's cash reserves. A review of HCR-ManorCare's consolidated financial statements shows the funds necessary to finance the project are available. 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:

- Franciscan Hospice's project has met the structure and process of care criteria in WAC 246-310-230; and
- In Home Health's project 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.

Franciscan Hospice

Table 9 on the following page shows a breakdown of current (year 2008) and projected staff through year three (2012). [source: December 31, 2008, supplemental information, p9]

Table 9
Franciscan Hospice
Current Year (2008) and Year Three (2012) Projected FTEs

Staff/FTEs	Current Year 2008	Year 3 Increase	Total FTEs
Hospice Director	1.00	0.00	1.00
RN/LPN	76.10	3.00	79.10
Nurses Aides	43.80	2.30	46.10
OT/PT	2.50	0.10	2.60
MSW	24.20	1.40	25.60
Spiritual Care	10.00	0.80	10.80
Bereavement	3.40	0.40	3.80
Volunteer Coordinator	4.20	0.50	4.70
Pharmacy Tech	4.50	1.00	5.50
Dietician	on call	on call	on call
Total FTE's	169.70	9.50	179.20

Franciscan Hospice anticipates that in year one an additional 91 patients will be served from Kitsap County alone. The number of patients will increase to 147 in year two, and 213 in year three. Based on these projections, Franciscan Hospice does not expect to add staff until its third year of operation, as shown in Table 9 above.

Franciscan Hospice states it will have no difficulty recruiting staff because it is a well-known provider in adjoining counties. Further, Franciscan Hospice already provides some healthcare services to the residents of Kitsap County through its hospital and clinics located in adjacent counties. [source: Application, p23]

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(1) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what specific staffing patterns or numbers of FTEs that should be employed for projects of this type or size. Therefore, using its experience and expertise the department concludes that the planning would allow for the required coverage.

As an existing provider, Franciscan Hospital already has the staff in place to begin providing hospice services in Kitsap County. By the end of year 2012, Franciscan Hospice expects to add 9.50 additional FTEs. Additionally, in year 2012, Franciscan Hospice projects an average daily census of 38 patients from Kitsap County. Given the small number of staff needed, and recognition of Franciscan Hospice in the county, the department concludes that adequate staffing to provide hospice services to Kitsap County residents are available or can be recruited.

In Home Health

Table 10 on the following page shows a breakdown of projected staff for partial year 2010, and full years 2011 through 2013. [source: December 31, 2008, supplemental information, p8]

Table 10
In Home Health
Partial Year (2010) and Full Years One - Three (2011-2013) Projected FTEs

Staff/FTEs	Partial Year 2010	Year 1 Increase	Year 2 Increase	Year 3 Increase	Total FTEs
Medical Director (contract)	0.03	0.17	0.10	0.10	0.40
Administrator	0.42	0.58	0.00	0.00	1.00
Bereavement Coordinator	0.13	0.37	0.00	0.03	0.53
Chaplin	0.13	0.62	0.25	0.00	1.00
Volunteer Coordinator	0.13	0.37	0.00	0.50	1.00
Dietician	0.01	0.04	0.15	0.10	0.30
Director of Clinical Services (RN)	0.42	0.58	0.00	0.00	1.00
Home Health Aids	0.25	0.85	1.04	1.25	3.39
MSW	0.13	0.22	0.66	0.49	1.50
Community Educator	0.25	0.75	0.00	0.00	1.00
RNs	0.25	0.97	1.34	1.50	4.06
Team Coordinator-Administrative	0.00	0.00	0.50	0.10	0.60
Office Manager	0.33	0.67	0.50	0.00	1.00
Total FTE's	2.48	6.19	4.04	4.07	16.78

In Home Health anticipates that in partial year one 5 to 8 patients will be served from Kitsap County. The number of patients will increase to 49 patients in full year one, 117 patients in full year two, and 186 patients in full year three. In order to increase its staff consistent with its projected increases in patients, In Home Health anticipates its will add a total of 14.30 staff in full years one through three.

In Home Health states it will have no difficulty recruiting staff because it is a well-known national provider and has a proven track record of recruitment. Additionally, staff recruitment will be assisted by corporate HCR ManorCare support services, which includes:

- National contract with an advertising agency for front line advertising;
- Corporate human resources department that assists the local offices;
- Use of recruiters as part of HCR ManorCare's human resources department to assist with administrative and director of nursing positions;
- Corporate partnership with the Job Corps program, including provision of funding support and staff hiring;
- Scholarships and tuition reimbursement provide by HCR ManorCare for job-related education; and
- Support for leadership and management development and training.

[source: Application, pp45-46; December 31, 2008, supplemental information, Appendix S-8]

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(1) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what specific staffing patterns or numbers of FTEs that should be employed for projects of this type or size. Therefore, using its experience and expertise the department concludes that the planning would allow for the required coverage.

As shown in Table 10 above, In Home Health expects a steady recruitment of staff through year 2012. In its third year of operation, In Home Health projects it will serve 186 patients and have an average daily census of 40. It is noted that the average daily census is based on the 80 day average length of stay considered by the department to be overstated. However, if the lengths of stay are shorter as anticipated by the department, the number of FTEs necessary to serve the projected number of patients would decrease. With its national and corporate ties, In Home Health demonstrates adequate staffing to provide hospice services to Kitsap County residents can be recruited. 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.

Franciscan Hospice

In response to this sub-criterion, Franciscan Hospice states that its ancillary and support services relationships are already in place for its King and Pierce hospice services. For Kitsap County, additional support relationships would be established with the existing hospital in Kitsap County—Harrison Medical Center. Given that one of the existing hospice providers in Kitsap County—Hospice of Kitsap—has already established a 15 bed hospice care center, Franciscan Hospice states it intends to establish a referral relationship for those patients requiring end of life services in the hospice care center environment. Franciscan Hospice estimates that establishment of these types of agreements usually take one to two months, and if this project is approved, work on the appropriate agreements would commence immediately. [source: Application, p25; December 31, 2008, supplemental information, p11]

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(2) as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what relationships, ancillary and support services should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials contained in the application.

Documentation provided in the application confirms that Franciscan Hospice maintains appropriate relationships with ancillary and support services for its Medicare certified hospice services in King and Pierce counties. For its Kitsap County services, Franciscan Hospice would appropriately establish relationships with the existing hospital and hospice providers.

Based on this information, the department concludes that Franciscan Hospice currently has appropriate relationships with ancillary and support services. If this project is approved, the department would include a term requiring Franciscan Hospice to provide a copy of any additional ancillary and support agreements established specifically for its Kitsap County services. Provided Franciscan Hospice agreed to the term, this sub-criterion is met.

In Home Health

As a national hospice provider, In Home Health states that it has current contracts with vendors for ancillary services and support services nationally. For ancillary and support services that must be accessed locally, Heartland Hospice has standard contracts and procurement procedures to support the efforts of local administrative staff once a Certificate of Need is granted. In Home Health anticipates that efforts to establish any local agreements would occur in mid year 2009 and would be completed by end of year 2009. [source: Application, p52; December 31, 2008, supplemental information, p13]

In Home Health provided copies of sample agreements used by Heartland Hospice in other states to be used as a template for its Kitsap County agency. Further, In Home Health provided a letter from the local Kitsap County hospital—Harrison Medical Center—indicating a willingness to negotiate a contract with In Home Health if the project is approved. [source: Application, Appendix BB; December 31, 2008, supplemental information, Appendix S-10]

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(2) as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what relationships, ancillary and support services should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials contained in the application.

Documentation provided in the application confirms that In Home Health and its parent Heartland Hospice maintain appropriate relationships with ancillary and support services for its out-of-state hospice services. For its Kitsap County services, In Home Health would appropriately establish relationships with the existing hospital and hospice providers.

Based on this information, the department concludes that if this project is approved, the department would include a term requiring In Home Health to provide a copy of any ancillary and support agreements established specifically for its Kitsap County services. 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.

Franciscan Hospice

As a current provider of healthcare services in Washington State, Franciscan Health Systems owns and operates 12 healthcare facilities. To demonstrate compliance with this sub-criterion, Franciscan Hospice provided a listing of the 12 facilities for the department to use to determine quality of care history. [source: Application, Appendix 1]

Specific to hospice services, Franciscan Hospice provided the following:

- names and credential numbers for its current hospice staff,
- a copy of its current Staff Orientation Development Policies and Procedures;
- a copy of its current Quality Assessment Performance Plan; and
- Franciscan Hospice licensure surveys.

Franciscan Hospice's current medical director is employed by Franciscan Hospice; therefore, a medical director contract is not necessary. The current medical director is Thomas Baker, MD, and a job description used for the medical director was provided. [sources: Application, Exhibits 2, 8, 9, & 10; December 31, 2008, supplemental information, Attachment 3]

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(3) criteria as identified in WAC 246-310-200(2)(a)(i). There are known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that a facility must meet when it is to be Medicare certified and Medicaid eligible. Therefore, using its experience and expertise the department assessed the applicant's history in meeting these standards at other facilities owned or operated by the applicant.

As part of its review, the department reviewed the quality of care history of all 12 healthcare facilities owned or operated by Franciscan Health System. Within the last three years, the Department of Health's Investigations and Inspections Office (IIO) completed at least two quality of care and/or fire and life-safety surveys at 4 of the 5 hospitals owned by Franciscan Health System.¹⁴ Additionally, IIO completed at least one survey for each of the three dialysis centers, one ambulatory surgery center, Franciscan's hospice agency and its home health agency. There were no adverse licensing actions as a result of these surveys. Department of Social and Health Services (DSHS) is the quality of care surveyor for nursing homes in Washington State. In the most recent three years, DSHS completed at least two quality of care surveys for Franciscan's nursing home located in Pierce County. There were also no adverse licensing actions as a result of these surveys. [source: facility survey data provided by IIO and DSHS]

A review of the compliance history of all credentialed staff identified in the application reveals that all staff credential are current and there are no recorded sanctions. [source: Medical Quality Assurance Commission compliance data]

The specific documents identified above and provided by Franciscan Hospice are consistent with hospice documents provided by applicants in past hospice applications. This sub-criterion is met.

In Home Health

As stated in the project description portion of this evaluation, In Home Health is a subsidiary of Manor Care Inc, which, in turn is a subsidiary of HCR Manor Care, Inc., which is a subsidiary of The Carlyle Group. The majority of HCR ManorCare's subsidiaries are registered in the state of Delaware. As of the writing of this evaluation, Manor Care, Inc. has over 500 skilled nursing centers, assisted living facilities, outpatient rehabilitation clinics, and hospice and home health offices in 30 states.¹⁵ The majority of the health care facilities are operated under the names of, or dba of, Manor Care, Arden Courts, and Heartland.

As a current provider of healthcare services, In Home Health provided a listing of the 500+ healthcare facilities and contact names and addresses for the state licensing and quality of care entities for the department to use to determine quality of care history. [source: Application, Appendix C]

Specific to hospice services, In Home Health provided the following:

- Resumes of the Medical Director Search Committee;
- Medical Director position description, requirements, and qualifications;
- Specialized Alzheimer's' Training Manual;
- Volunteer Training Manual;
- Circle of Care Training Manual; and
- Customer Satisfaction Assessment Instruments.

As previously stated, In Home Health has not yet identified a specific medical director or other staff for its proposed Kitsap County hospice agency. If this project is approved, all staff will be hired and trained prior providing hospice services. [sources: Application, Appendices D, E, I, W, X, Y]

¹⁴ Given that St. Anthony Hospital in Gig Harbor opened in March 2009, IIO completed one survey for the hospital.

¹⁵ States include: Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(3) criteria as identified in WAC 246-310-200(2)(a)(i). There are known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that a facility must meet when it is to be Medicare certified and Medicaid eligible. Therefore, using its experience and expertise the department assessed the applicant's history in meeting these standards at other facilities owned or operated by the applicant.

Given that In Home Health has not yet hired staff for its new hospice agency, the department was unable to review the compliance history of credentialed staff. If this project is approved, the department would attach terms to the approval requiring In Home Health to identify all credentialed staff, including the medical director, prior to providing services.

To assure that In Home Health's Kitsap County agency would provide quality healthcare services, the department requested quality of care histories from the states where Manor Care, or any of its subsidiaries, owns or operates healthcare facilities--which represents a total of 291 health care facilities. Through either return of the quality of care survey or by accessing the Center for Medicare and Medicaid Services website, the department was able to obtain information representing all 30 states. A review of data from the 30 states revealed that four states—Florida, Indiana, Michigan, and West Virginia—reported substantial non-compliance issues at one or more of the healthcare facilities operated by HCR Manor Care or one of its subsidiaries. There are a total of 69 facilities within the four states, and of those, 8 facilities--or 12%--indicated significant non-compliance issues that were subsequently corrected by Manor Care or one of its subsidiaries. Further, the majority of the significant non-compliance citations related to isolated incidences and did not represent immediate jeopardy to patients. [source: compliance survey data provided by each state agency or CMS website] According to documents provided by the out-of-state licensing agencies, Manor Care resolved the significant non-compliance issues and no disciplinary actions were taken by the out-of-state surveying agencies.

Further, Manor Care or one of its subsidiaries owns or operates six skilled nursing facilities and two in-home services agencies in Washington State. There was also no adverse licensing action as a result of these surveys.¹⁶

At the March 25, 2009, public hearing, community members voiced concerns regarding In Home Health's parent corporation's patient care practices and quality of care history. Documents obtained from the internet were provided by a community member to substantiate the concerns. [source: March 25, 2009, public hearing documents submitted by J. Adams] In Home Health did not provide any rebuttal comments related to the concerns raised.

The documentation included a wrongful death lawsuit in West Virginia (2008) and a federal investigation of Manor Care and The Carlyle Group related to nursing home workers and union representation (2008). At the time of the public hearing, it was not clear whether the lawsuit or the federal investigation had been resolved. In its rebuttal comments, In Home Health did not provide any statements addressing the investigations. While the lawsuit and the federal investigation are both serious accusations, based on the compliance history of Manor Care and its subsidiaries, it is

¹⁶ On April 4, 2008, Certificate of Need #1366 was issued to Manor Care for the establishment of a new 120-bed nursing home in Clark County, and on February 18, 2009, Certificate of Need #1392 was issued to Manor Care for the establishment of a new 120-bed nursing home in Thurston County. Neither facility is operational; therefore, no quality of care history is available.

clear that the issues are not representative of a systemic pattern for either entity. On the basis of In Home Health and its parent corporation's current and past compliance history, 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.

Franciscan Hospice

As previously stated, Franciscan Hospice provided a copy of its current Staff Orientation Development Policies and Procedures and a copy of its current Quality Assessment Performance Plan. The Quality Assessment Performance Plan is reviewed annually and updated as needed. Additionally, Franciscan Hospice identified the members of its hospice interdisciplinary team. [source: Application, p24, Exhibits 8 & 9]

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(4) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs how to measure unwarranted fragmentation of services or what types of relationships with a services area's existing health care system should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials in the application.

The documents identified above confirm that Franciscan Hospice would promote continuity in the provision of hospice services, and avoid any unwarranted fragmentation. The department also considered Franciscan Hospice history of providing care to residents in Washington State, and specifically hospice care in King and Pierce counties. The department concludes that the applicant has been providing healthcare services to the residents of Washington State for several years and has been appropriately participating in relationships with community facilities to provide a variety of medical services. Nothing in the materials reviewed by staff suggests that approval of this project would change these relationships. [source: CN historical files]

Additionally, the department considers the results of the previous criteria of need and financial feasibility (WAC 246-310-210 and WAC 246-310-220, respectively) and the hospice numeric methodology (WAC 246-310-290). Application of the numeric methodology shows a need for one additional provider in Kitsap County. Related to the need and financial feasibility criteria, documents provided demonstrate that Franciscan Hospice meets both criteria to receive approval to provide Medicare certified hospice services in Kitsap County. This sub-criterion is met.

In Home Health

Given that In Home Health is not currently a provider of Medicare/Medicaid hospice services in Washington State, ancillary and support documents for Kitsap County have not yet been established. To demonstrate compliance with this sub-criterion, In Home Health provided a copy of draft contracts for ancillary services intended to be used with local hospitals and nursing homes for inpatient hospice services. Additionally, In Home Health identified the members of its hospice interdisciplinary team. [source: Application, p 47 & Appendix BB]

Department's Evaluation

WAC 246-310 does not contain specific WAC 246-310-230(4) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs how to measure unwarranted fragmentation of services or what

types of relationships with a services area's existing health care system should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials in the application.

The documents identified above confirm that In Home Health intends to promote continuity in the provision of hospice services, and avoid any unwarranted fragmentation. The department also considered In Home Health's history of providing healthcare services to the residents in Washington State, and specifically home health care in King County. The department concludes that the applicant has been providing healthcare services to the residents of Washington State for several years and has been appropriately participating in relationships with community facilities to provide a variety of medical services. Nothing in the materials reviewed by staff suggests that approval of this project would change these relationships. [source: CN historical files]

Additionally, the department considers the results of the previous criteria of need and financial feasibility (WAC 246-310-210 and WAC 246-310-220, respectively) and the hospice numeric methodology (WAC 246-310-290). Application of the numeric methodology shows a need for one additional provider in Kitsap County. Related to the need and financial feasibility criteria, documents provided demonstrate that In Home Health meets the need criteria. However, as stated in the financial feasibility portion of this evaluation, the assumptions used as a basis for the pro forma revenue and expense statements prevent an accurate evaluation of the facility's forecasted viability. In the long-term this may lead to the unnecessary opening and closing of a facility, resulting in a loss of hospice services in the planning area. Therefore, the department concludes that approval of this project would have the potential of fragmentation of hospice services within Kitsap County. 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.*

Department's Evaluation

For both projects, this sub-criterion is addressed in sub-section (3) above.

Franciscan Hospice - This sub-criterion is met.

In Home Health - This sub-criterion is met.

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

Based on the source information reviewed, the department determines that:

- Franciscan Hospice's project has met the cost containment criteria in WAC 246-310-240; and
- In Home Health's project has not met the cost containment criteria in WAC 246-310-240.

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

Franciscan Hospice

Before submitting its application to expand Medicare certified hospice services into Kitsap County, the only alternative considered by Franciscan Hospice is "status quo" or "do nothing." With this alternative, Franciscan Hospice would continue to provide those services in King and Pierce counties. Franciscan Hospice's rationale for rejecting this alternative is summarized on the following page. [source: Application, pp28-29; and December 31, 2008, supplemental information, p12]

Do nothing or status quo

By applying the numeric methodology, Franciscan Hospice determined need for one additional provider in Kitsap County. As a current Medicare certified hospice provider two counties adjacent to Kitsap (King and Pierce) and considering Franciscan Health System currently provides healthcare services to many residents of Kitsap County through its healthcare facilities in the adjacent counties, Franciscan Hospice concluded expansion of its existing hospice services into Kitsap County was the better alternative than status quo.

In Home Health

Before submitting its application to establish a new Medicare certified hospice agency in Kitsap County, In Home Health considered two other alternatives: 1) acquisition of an existing hospice agency; and 2) “status quo” or “do nothing.” With either alternative, In Home Health would continue to provide Medicare certified home health services in King County. In Home Health evaluated its two alternatives using the following three decision-making criteria:

- Acquisition Availability
- Financial Feasibility
- Responsiveness to Community Needs

In Home Health’s rationale for rejecting both alternatives using its decision-making criteria are summarized below. [source: Application, pp58-59]

Acquisition

There are two existing hospice agencies in Kitsap County—Hospice of Kitsap County and Group Health Cooperative. Neither agency was available for acquisition at the time In Home Health was considering submission of this application. In Home Health also determined an existing agency would probably not be available for purchase in the “foreseeable future.”

Status Quo

Based on the results of the numeric need methodology, In Home Health concluded that need for an additional hospice services in Kitsap County was demonstrated at this time. In Home Health asserts that the community should not have to wait to have additional access to hospice care where need is determined.

Department’s Evaluation

To determine if a proposed project is the best alternative, the department takes a multi-step approach. Step one determines if the application has met the other criteria of WAC 246-310-210 thru 230. If it has failed to meet one or more of these criteria then the project is determined not to be the best alternative, and would fail this sub-criterion.

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

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

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

For these two projects, only Franciscan Hospice was determined to meet all criteria within WAC 246-310-210, 220, and 230. In Home Health's project failed to meet the criteria within WAC 246-310-220 and 230. As a result, steps two and three above are not evaluated under this sub-criterion.

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

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

Franciscan Hospice

This project does not involve construction, therefore, this sub-criterion does not apply to this project.

In Home Health

This project requires construction of a new hospice agency in Kitsap County. This sub-criterion is primarily evaluated within the financial feasibility criterion under WAC 246-310-220(2). Based on that evaluation, the department concludes that this sub-criterion is not met.

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

Franciscan Hospice

This project does not involve construction; therefore, this sub-criterion does not apply to this project.

In Home Health

This project requires construction of a new hospice agency in Kitsap County. This sub-criterion is primarily evaluated within the financial feasibility criterion under WAC 246-310-220(2). Based on that evaluation, the department concludes that this sub-criterion is not met.