

**EVALUATION OF THE CERTIFICATE OF NEED APPLICATION SUBMITTED ON  
BEHALF OF FAMILY HOME CARE PROPOSING TO ESTABLISH A MEDICARE  
CERTIFIED/MEDICAID ELIGIBLE HOSPICE AGENCY TO SERVE THE RESIDENTS OF  
SPOKANE COUNTY**

**PROJECT DESCRIPTION**

Family Home Care (FHC) is a privately-owned, for-profit Washington corporation that operates a Medicare certified/Medicaid eligible home health agency<sup>1</sup> in the city of Spokane, within Spokane County.<sup>2</sup> The Spokane County home health agency has been in operation for approximately 40 years. On October 1, 2006, FHC purchased an existing home health and hospice agency located in the city of Colfax, within Whitman County. The Colfax agency—known as Whitman Home Health and Hospice—provided Medicare and Medicaid home health and hospice services to the residents of Whitman County. As a result, FHC currently provides Medicare certified home health services to the residents of Spokane and Whitman counties; and Medicare certified hospice services to the residents of Whitman County. [source: Application, p5; Family Home Care website at familyhomecare.org]

This project proposes to add Medicare certified hospice services to Spokane County. The proposed hospice agency would be co-located with FHC's home health agency at 9922 East Montgomery Avenue, Suite 3 in Spokane. If this project is approved, the Spokane County Medicare certified home health and hospice agency would be known as "Family Home Care and Hospice." [source: Application p8]

Hospice programs are designed to offer support, care, and comfort to terminally ill patients and their families in the final stages of the patient's life. Provided either in-home or within an assisted living or skilled nursing center, hospice services typically include palliative care, patient and family counseling, and pastoral support. The proposed FHC hospice agency would offer a full range of hospice services, including routine home hospice care, continuous home care, inpatient respite care, and general inpatient care. Inpatient respite care and general inpatient care would be provided through contracts with existing nursing homes and hospitals. The hospice multidisciplinary team would include physicians, nurses, home health aides, medical social workers, counselors, chaplains, volunteers, and professional therapists. [source: Application, p9]

If this project is approved, FHC anticipates it would begin implementation of the approval and obtain Medicare certification by July 2008. Year 2009 would be the facility's first full calendar year of operation, and year 2011 would be the facility's third full year. [source: December 27, 2006, supplemental information, pp4&5]

The estimated capital expenditure to establish the Medicare certified hospice agency is \$32,089, which is solely related to moveable equipment for the hospice agency. [source: Application, p29; January 9, 2007, supplemental information, S-2]

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

<sup>2</sup> Michael Nowling, is the sole owner and stockholder of Family Home Care. [source: December 27, 2006, supplemental information, p1]

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

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

## **APPLICATION CHRONOLOGY**

September 25, 2006	Letter of Intent Submitted
October 26, 2006	Application Submitted
November 1, 2006, through January 15, 2007	Department's Pre-Review Activities <ul style="list-style-type: none"><li>• 1<sup>st</sup> screening activities and responses</li><li>• 2<sup>nd</sup> screening activities and responses</li><li>• 3<sup>rd</sup> screening activities and responses</li></ul>
January 16, 2005	Department Begins Review of the Application <ul style="list-style-type: none"><li>• public comments accepted throughout review</li></ul>
February 20, 2007	Public Hearing Conducted - End of Public Comment
March 7, 2007	Rebuttal Documents Received at Department
April 23 2007	Department's Anticipated Decision Date
April 20, 2007	Department's Actual Decision Date

## **CONCURRENT REVIEW AND AFFECTED PERSONS**

This application was submitted under the hospice agency concurrent review schedule for calendar year 2006 outlined in WAC 246-310-290(2).<sup>3</sup> Throughout the review of this project, three entities sought and received affected person status under WAC 246-310-010. The two of the three entities currently provide Medicare certified hospice services to the residents of Spokane County:

- 1) Horizon Hospice, LLC located at 123 West Cascade Way #E in Spokane; and
- 2) Hospice of Spokane located at 121 South Arthur Street in Spokane.

The third agency, VNA Home Health Care Services, provides Medicare certified home health services to the residents of Spokane County.

## **SOURCE INFORMATION REVIEWED**

- Family Home Care's Certificate of Need Application received October 26, 2006
- Family Home Care's supplemental information dated December 27, 2006, January 9, 2007, January 24, 2007, and January 30, 2007
- Public comments received throughout the review
- Public comments received at the February 20, 2007, public hearing
- Family Home Care's rebuttal comments received March 7, 2007
- Hospice of Spokane rebuttal comments received March 7, 2007
- Completed provider utilization surveys received from existing hospice providers

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<sup>3</sup> Northwest Healthcare Alliance also submitted an application during the 2006 review cycle; however, the Northwest Healthcare Alliance application was withdrawn on January 16, 2007.

### **SOURCE INFORMATION REVIEWED (continued)**

- Population data obtained from the Office Financial Management census published January 2005.
- Licensing and/or survey data provided by the Department of Health's Office of Health Care Survey
- Quality of Care surveys for all health care facilities owned, operated, or managed by Family Home Care
- WAC 246-310-290 Hospice services-standards and need forecasting method
- Data obtained from Family Home Care's website [[www.familyhomecare.org](http://www.familyhomecare.org)]
- Certificate of Need Historical files

### **CRITERIA EVALUATION**

To obtain Certificate of Need approval for Spokane County, Family Home Care must demonstrate compliance with the criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment); and 246-310-290 (hospice services-standards and need forecasting method).<sup>4</sup>

### **CONCLUSION**

For the reasons stated in this evaluation, the application submitted by on behalf of Family Home Care proposing to establish a Medicare certified hospice agency to serve the residents of Spokane County is not consistent with applicable criteria of the Certificate of Need Program, and a Certificate of Need is denied.

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

## **A. Hospice Services Standards and Need Forecasting Method (WAC 246-310-290)**

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

### **Methodology**

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 section.

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 2003 through 2005 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 Spokane 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's Center for Health Statistics. The total deaths in each of the planning areas for 2003-2005 were averaged for each planning area.<sup>5</sup>

*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 "2002 Projections developed for Growth Management Act (Developed January 2002)". This age-specific data is available for 5-year intervals only. The department has used these 5-year interval values to estimate population projections for the interstitial years.

The department applied the one-year estimated population growth to the potential volume of hospice services derived in Step 4 to estimate potential hospice volume in 2006, the first year following the three-year data range. In order to estimate need for hospice services in the first three years of this project under review, the department applied the use rates derived to the expected populations of each of the state's counties for the first three full years of the proposed projects (2009, 2010, and 2011).

*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

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<sup>5</sup> 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.

operated in the service area for at least three years, an average daily census (ADC) of thirty-five is assumed for that agency.

Each of the providers in Spokane County has 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 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 20 for Spokane County. This is far below the ADC of 35 which is the minimum in rule before a new hospice program can be approved.

### **Family Home Care's Application of the Numeric Methodology**

FHC contends that the department's survey is an unreliable source of planning data. The survey is the data collection tool used by the department to apply the numeric methodology. FHC notes several criticisms of the agency's survey, citing differences between survey responses and data submitted to Medicare, the failure of some hospice agencies to respond to the survey, and potential confusion about the terms used in the survey. As an alternative, FHC prepared four versions of the department's numeric need methodology during the application process. [source: December 27, 2006, supplemental information, Attachment SC-11] Below is a summary of the four versions and the department's response to each.

#### **Applicant's Methodology, Version #1**

FHC's first version illustrates the effect of what the applicant contends is a literal reading of Step 2 of the rule which greatly overstates need by multiplying a county's overall death rate by each of the four age and disease classified rates derived in the first step of the methodology, essentially generating a use rate that exceeds the total number of deaths in each county. As discussed, below, the department concludes that this version returns an illogical result and must be rejected.

The department rejects FHC's reading of the language of Step 2 of the methodology, for two reasons: First, as noted above, FHC's reading of this step predicts a hospice use rate that exceeds the average total number of deaths in the state. The department concludes that it is not logical to accept such a use rate as valid.

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. More importantly, reading of "total" in Step 2 to include all deaths in all four categories combined would produce an absurd use rate in which the number of persons needing hospice care would actually exceed the number of persons dying.

Second, the department notes that the methodology directs that the department generate four statewide hospice use rates based on age and diagnosis. Multiplying each of these four age- and diagnosis-specific use rates by the total number of deaths of residents of all ages and diagnoses returns a result that cannot be said to predict the number of potential patients. Only by multiplying the hospice use rate for patients age 65 and over with cancer by the number of deaths of residents aged 65 and over with cancer, and so on, can one generate a predicted number of such residents that are likely to seek hospice services.

The department concludes that calculating the number of persons likely to seek hospice can only be reasonably determined by reading “total” in Step 2 to mean the total number of deaths for each of the four categories of patients identified in Step 1.<sup>6</sup>

Applicant’s Methodology, Version #2

FHC’s second version of the methodology is described as “WAC Language as interpreted by DOH, using DOH survey results.” The calculations and narrative included to describe this version state that it is identical to FHC’s Version #1 in steps #1 and #2 above. However, the actual numbers of hospice patients used by FHC in its calculations are markedly different from the numbers derived from the department’s survey of hospice providers. The result of FHC’s calculations is an estimated unmet need for an ADC of 20 patients in 2006, increasing to an unmet need ADC of 31.3 patients in 2011. The department’s calculations also show some unmet need in Spokane—unmet need ADC of 9 patients in 2006, increasing to 20 in 2011.

FHC contends that its calculations justify approval of its application despite a projected ADC of fewer than 35 patients [the standard contained in WAC 246-310-290(7)(g)]. FHC notes that this ADC is “over ‘half’ an agency and is need that...the current agencies do not have the capacity to meet.” FHC also contends that it qualifies for an exemption to this standard under WAC 246-310-290(6)(b), which outlines the conditions when a provider projecting an ADC of fewer than 35 patients may be approved. Those three conditions are met if the applicant:

- (a) commits to maintain Medicare certification; and
- (b) commits to serve one or more counties that do not have any Medicare certified providers; and
- (c) can document overall financial feasibility.

In this application, FHC proposes to serve Spokane County, which already has two Medicare-certified providers. As a result, FHC does not meet condition #2 above, therefore, the exception standard does not apply to FHC.

FHC also contends that by 2011, its projected unmet need of 31 indicates that “For the entire second half of the year the census will be over 31. By the end of the year, Spokane County will see well over 35 residents a day going without their end of life needs being met.” The department notes that the third full year of operation for FHC’s proposed Spokane County hospice agency is 2011, and FHC’s calculations project an ADC of 31 in year 2011, not the 35 ADC that is necessary to demonstrate need for an additional agency. Further, the department’s methodology projects an ADC of 20 in year 2011, which is only slightly more than half of the unmet need sufficient to approve a new agency.

In both Versions #1 and #2 above, FHC contends that the department’s survey is an unreliable source of planning data. FHC notes several criticisms of the agency’s survey, citing differences between survey responses and data submitted to Medicare, the failure of some hospice agencies to respond to the survey, and potential confusion about the terms used in the survey.

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<sup>6</sup> This very issue was previously addressed in a June 8, 2006, Health Law Judge ruling [Docket #s 05-10-C2015CN, 05-10-C-2016CN, and 05-10-C-2017CN Prehearing Order #3: Order Granting Summary Judgment]. In that ruling, the Health Law Judge concluded that interpretations of regulations that result in unlikely, absurd, or strained consequences should be avoided. Regulations should be interpreted in a manner that is consistent with the spirit or purpose of the rule rather than a literal reading that renders the statute ineffective.

The department disagrees with FHC's allegations about the reliability, noting that only three Medicare-certified hospice agencies<sup>7</sup> failed to respond to the agency's survey. The department notes that all hospice agencies in Spokane County responded.

*Applicant's Methodology, Version #3*

In this version, FHC followed the series of calculations prepared by the department, but substituted information from the CMS cost reports for the survey data. In presenting this version, FHC noted that the cost report data does not separate patients by age or diagnosis. FHC also noted that 2005 cost reports were not available for all hospice agencies in the state. FHC used historical responses to the department's surveys to estimate cost report data for those agencies that did not have cost reports on file.

In this third version, FHC also made an adjustment in step 5 of the methodology (population adjustment), by estimating potential patient volume for Spokane County by age group, rather than as a combined population. FHC also made an adjustment in calculation of current capacity by subtracting a portion of Hospice of Spokane's admissions from its calculation of current capacity for Spokane County, thus creating a current capacity for Spokane County that is lower than the department's survey data by 155 patients. Finally, FHC presented two different methods of calculating ADC—one based on the department's survey, the other based on the CMS cost report data. As a result of all modifications, FHC presented a need for additional hospice services to serve a projected unmet need of either 45 or 53 unmet ADC in 2011. If the adjustment to Hospice of Spokane's admission was not made, FHC's third method would return an unmet need of only 122 admissions, translating to an unmet ADC of only 17 or 20 patients, depending on which ALOS calculation method is used. The department concludes that proper counting of current capacity returns insufficient need to approve an additional hospice, even with the numerous estimations and assumptions necessary for this version.

*Applicant's Methodology, Version #4*

FHC's fourth and final version of the methodology uses another Medicare data source, the Standard Analytical File (SAF). FHC obtained SAF 2002-2004 data from the University of California-Irvine.

Like its third version of the methodology, this fourth version begins with a data set that does not contain all the data elements required to prepare the methodology. FHC notes, first, that SAF data for 2005 was not available, therefore FHC obtained SAF data for 2002-2004. FHC also noted that the SAF data it obtained did not contain any data for non-Medicare patients. While it is not clear from FHC's narrative, it appears that FHC has assumed that the SAF data accounts for all patients over age 65. FHC states that it estimated hospice admissions for patients under age 65 by relying on the department's hospice survey. Finally, FHC notes that the process of removing identifying data from the SAF removed all length-of-stay information from the file. In response to this, FHC adopted the ALOS estimations from its version #3.

FHC's fourth version also relied upon a calculation of current capacity that is 469 patients lower than the department's calculation—a difference of over 38%. As a result, FHC's calculation for unmet need in this fourth version is an ADC of 53 patients. The department notes, however, that if

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<sup>7</sup> Kittitas Valley Home Health and Hospice in Kittitas County, Kaiser Permanente Continuing Care Services located in Portland Oregon and serving Clark and Skamania counties in Washington, and Lower Valley Hospice in Yakima County.

the current capacity provided by the department's survey is used, this method would actually project a surplus of available hospice capacity in Spokane County.

In conclusion, the department notes that FHC is correct in concluding that the hospice survey data provided by the department's survey of each hospice provider in the state is incomplete in that it does not contain results from every hospice. The department cannot, however, conclude that the absence of data from three providers, as discussed above, renders this data source unreliable. For purposes of this evaluation, for example, both existing providers of hospice services in Spokane County have provided complete responses to the survey. The department also concludes that it cannot support FHC's assertion that the responses received by the department are inherently inaccurate or unreliable. The department has no evidence that the responses returned by the providers are either intentionally or unintentionally inaccurate. Finally, the department concludes that FHC's version of the methodology in WAC 246-310-290 that are based on Medicare data [FHC's Versions #3 and #4] can only be applied if several data elements are estimated. FHC has based those estimates on the department's survey responses – the very source it claims to be flawed.

On the basis of the department's need calculations, and given the significant number of assumptions required by FHC to apply its four alternative calculations, the department concludes that its own application of the numeric methodology is reasonable and consistent with WAC 246-310-290. The results of the department's methodology conclude that there is not sufficient need demonstrated in Spokane County to approve an additional hospice agency.

#### **B. Need (WAC 246-310-210)**

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

- (1) 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. Both WAC 246-310-210 and WAC 246-310-290 require the department to evaluate this application on the basis of the population's need for the service. Information provided by FHC to support this criterion is summarized below.

FHA contends that there is need for an additional Medicare certified hospice provider to serve Spokane County and provided extensive discussion to support its assertion. [source: Application, 11-22] FHC further states that *“each year Family Home Care refers many of its home care patients to area hospices and many of them make the transition. On the other hand, despite these efforts to refer home health patients to area hospices, many patients have great difficulty making the proposed transition to another provider. ...since the existing Spokane County hospices are limited to hospice only, there is no agency in the county now that can provide the continuity of care proposed by Family Home Care.”* [source: December 27, 2006, supplemental information, p7]

FHC further states that only one of the two Medicare certified hospice providers in the county provide hospice services to patients residing in nursing homes, which, when compared to other communities across Washington State, is *“significantly below average.”* FHC proposes to provide Medicare certified hospice services to nursing home residents. [source: December 27, 2006, supplemental information, p8]

Finally, 29 form letters were submitted in support of FHC's application. Below is a restatement of the form letter.

*"This is a letter of support for the approval of the Certificate of Need application for Family Home Care Corporation for its intent to provide hospice services to the residents of Spokane County. Family Home Care has been providing high quality home care to the residents of Spokane County for over 45 years. The agency has achieved some of the highest patient outcomes in the nation due to the dedication and high level of competence of the staff. The addition of hospice to their services will assure high quality of hospice care in Spokane County as well as continuity of care and choice for patients. Sincerely...."* [source: public comment received in support of FHC application]

In response to FHC's application and assertions above, the two existing Medicare certified hospice agencies in Spokane County provided the following statements.

Hospice of Spokane [source: Hospice of Spokane public hearing documents, p3; Gina Drummond (of Hospice of Spokane) public hearing comments]

*"Family Home Care has failed to demonstrate any areas of underutilization, unavailability of services, or any lack of accessibility for hospice services in the county. With two agencies in the county, there is adequate choice for consumers to access needed services. There is not sufficient need to justify a third provider and existing providers are sufficiently available and accessible to meet the estimated need of the future. In June of 2006, the department issued an amended Certificate of Need to Hospice of Spokane for the establishment of the first hospice care center in Spokane County at a capital cost of nearly \$5.3 million. This application is overwhelmingly supported by residents, other health care providers, and civic groups from throughout the county. The new hospice care center is well under development. ...In order to ensure the long-term financial feasibility of our new hospice care center, we must achieve the utilization projections (and concomitant financial projections) contained in our hospice care center CN pro formas. In a nutshell, these projections rely on our historical volumes being sustained. In the absence of need, the only way FHC can achieve its projected volumes is to shift volume from Hospice of Spokane. This would have a deleterious impact on our proposed hospice care center."*

Horizon Hospice [Horizon Hospice public hearing documents, p1]

*"The effectiveness of the current hospice delivery system in Spokane County is evidenced in many ways, as expressed in the letters ...submitted to the Department of Health today. These letters express the following:*

- 1. The community's satisfaction with the availability and prompt response to requests for hospice services.*
- 2. The community's satisfaction with the prompt and thorough response to patients'/family's need for pain control, symptom management, medical supplies, medications, psychosocial support, spiritual counseling, bereavement counseling and other services.*
- 3. A strong and confident relationship between hospice and its referral sources, including the ease of transition into hospice care from other health care settings*
- 4. The community's strong support of the two existing hospice agencies and their opinion that granting an unneeded and unnecessary hospice license at this time would be damaging and counter productive.*
- 5. The community's desire to see the existing hospice delivery system continue its growth of new projects and programs.*

*In addition to these letters, [referenced above] the hospice use rate for Spokane County is higher than the average county use rate within the State of Washington. This is perhaps the best indicator that Spokane County is presently being served well by the two existing hospice agencies.”*

As an affected person, VNA Home Health Care Services also provided comments regarding the FHC application. An excerpt of those comments is restated below.

VNA Home Health Care Services [source: VNA public hearing documents, p1]

*“...Family Home Care has not met the state’s burden of proof to demonstrate that there is unmet need, quality, or access issues related to end of life care in the Spokane area. The two current Medicare-certified hospice providers, Hospice of Spokane and Horizon Hospice, both have the capacity and willingness to care for increased numbers of patients. ...VNA has been providing end-of-life care since 1942 and has a high quality palliative/end of life program that serves many patients. VNA has a collaborative relationship with Hospice of Spokane and systems are in place to transfer patients from VNA to Hospice of Spokane services when appropriate and approved by the patient and physician. VNA and Hospice of Spokane both provide a great deal of charity care and there is no documentation that Family Home Care will serve anyone not already able to access care. Granting Family Home Care a CON for Hospice will not provide better access, higher quality of care, or services not already available to all residents. In fact, it will further stress the existing resources in the community.”*

In addition to comments from the affected persons above, the department received numerous letters of opposition to the FHC project from community members, business owners, and 41 local physicians/healthcare providers in Spokane County. Many of the letters of opposition from community members were form letters. The common concern in the form letters is that approval of another hospice agency in the county would jeopardize the financial viability, depth, and quality of service currently provided by the existing two hospice providers. Additionally, the letters of opposition indicate that the local healthcare providers refer to one or both existing hospice agencies in the county and patients referred for hospice services are not experiencing delays in service or difficulty obtaining the appropriate hospice care necessary. [source: February 20, 2007, public hearing documents]

It is clear from the documentation provided during the review of the FHC project that Spokane County residents are currently receiving hospice care services. None of the 29 form letters in support of the FHC project indicate that hospice services were neither available nor accessible to the residents. None of the 29 letters of support indicate that there were unreasonable or unnecessary delays before patients would receive services. Rather, the FHC application proposes to add Medicare certified hospice services so that FHC would not have to refer its hospice patients to one of the two Medicare certified hospice providers in the county.

FHC indicates that only one of the two Medicare certified hospice providers in the county provide hospice services to patients residing in nursing homes, which, when compared to other communities across Washington State, is “*significantly below average.*” FHC does not identify which communities were used for this comparison, or how the conclusion for a new hospice agency is reached by using this comparison.

Based on the methodology and standards contained in WAC 246-310-290, statewide levels of services are to be considered the benchmarks. Under this methodology and standards, the

department concludes that no additional hospice agency need is indicated for Spokane County. Further, the use rates and lengths of stay to be considered in the methodology are identified in rule and not subject to substitution with alternate standards.

The department concludes that FHC has not demonstrated an unmet need for hospice services in Spokane County. The department further concludes that FHC has not demonstrated that the existing providers—Hospice of Spokane and Horizon Hospice—are unavailable, inaccessible, or otherwise unable to meet the hospice needs of the proposed service area. This criterion is not met.

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

As previously stated, FHC currently provides Medicare certified home health services to the residents of Spokane and Whitman counties; and Medicare certified hospice services to the residents of Whitman County. To determine whether all residents of the service area would continue to have access to an applicant's proposed services, the department requires applicants to provide a copy of its current or proposed admission policy. The admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility and any assurances regarding access to treatment.

To demonstrate compliance with this sub-criterion, FHC provided copies of its current Admission Policy and Non Discrimination Policy and further stated that these current policies would be used for the proposed hospice agency that would serve Spokane County. [source: Application, Appendix L]

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. As previously stated, if a hospice agency is Medicare certified, it is also Medicaid eligible. For hospice projects, an applicant is required to undergo CN review only if it wishes to become Medicare certified/Medicaid eligible. Because this application has been submitted for review, the department concludes that, if approved, FHC would obtain both Medicare certification and Medicaid eligibility. Further, FHC provided the timeline whereby it would obtain its Medicare certification and Medicaid eligibility if this project is approved, and included a revenue line item for both Medicare and Medicaid within its pro forma financial data. [source: December 27, 2006, supplemental information, pp4-5; January 9, 2007, supplemental information, SC-3]

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

To demonstrate compliance with the charity care sub-criterion, FHC provided a copy of its current Charity Care Policy in use at the existing facility. The Charity Care Policy confirms that all residents of the service area including low-income, racial and ethnic minorities, handicapped and other underserved groups currently have access to healthcare services through FHC's Spokane and Whitman County agencies. The policy also includes the process one must use to access charity

care by the applicant. [source: Application, Appendix L] Further, FHC’s pro forma financials appropriately include charity care line item as a deduction from revenues.

Based upon the above information, the department concludes that all residents of the service area would have adequate access to hospice services through FHC and approval of this project would not negatively affect that access. This sub-criterion is met.

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

Based on the source information reviewed, the department determines that the applicant has not met the financial feasibility criteria in WAC 246-310-220.

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

FHC anticipates becoming operational by July 2008. [source: December 27, 2006, supplemental information, pp4-5] Based on this timeline, year 2009 would be the Medicare certified hospice agency’s first full calendar year of operation. Using the financial information provided in the application, Table 1 below illustrates the projected revenue, expenses, and net income for partial year 2008, and full years 2009-2011 for FHC’s Medicare certified hospice agency. [source: January 9, 2007, supplemental information, Attachment SC-3]

**Table 1  
Family Home Care Projected Revenue and Expenses for Years 2008 - 2011**

	<b>Partial Year 2008</b>	<b>Full Year 1 2009</b>	<b>Full Year 2 2010</b>	<b>Full Year 3 2011</b>
Projected # of Patient Days @43 ALOS	625	4,445	8,703	12,936
Projected Unduplicated Census	15	103	202	301
Projected Average Daily Census	3.4	12.2	23.8	35.4
Net Patient Revenue*	\$ 92,294	\$ 641,624	\$ 1,269,142	\$ 1,886,337
Total Expenses	\$ 327,660	\$ 863,291	\$ 1,206,817	\$ 1,558,961
Net Profit or (Loss)	(\$ 235,366)	(\$ 221,667)	\$ 62,325	\$ 327,376
Net Patient Revenue per Patient Day	\$ 147.67	\$ 144.35	\$ 145.83	\$ 145.82
Total Expenses per Patient Day	\$ 524.26	\$ 194.22	\$ 138.67	\$ 120.51
Net Profit / (Loss) per Patient Day	(\$ 376.59)	(\$ 49.87)	\$ 7.16	\$ 25.31

\*Includes deductions for bad debt and charity care for all three years.

As shown in Table 1 above, at the projected volumes identified in the application, FHC expects it would be operating at a loss in partial year 1 (2008) and full year 1 (2009). By the end of year 2011—full year 3—FHC would be operating at a profit. However, for this application, the department concluded in the need section of this evaluation that need for an additional Medicare certified hospice agency in Spokane County has not been demonstrated. As a result, the projected number of patients is likely overstated.

Based on the above information, the department concludes that this sub-criterion is not met.

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

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

*“Minimal capital expense will be required for Family Home Care to serve patients of Spokane County. When considering costs from a health care industry level, hospice care actually reduces the need for expenditure for more capital-intensive care. The Medicare hospice benefit reduces operating costs for the health care system as a whole. Medicare hospice patients elect to receive palliative and end-of-life care in the home or other environment vs. seeking curative treatment in more expensive settings such as ICUs at the end of life. This patient decision...results in reduced total healthcare expenses. Medicare estimates this savings at about \$1.50 for each \$1.00 spent on hospice care. Medicare reimburses hospice agencies on a fixed per diem basis.”* [source: Application, p30]

Given that the proposed hospice agency would be co-located with FHC’s home health agency, the capital expenditure associated with this project is \$32,089, and is solely related to equipment needed for the proposed hospice agency. As a result, there are no construction costs. [source: Application, p29; January 9, 2007, supplemental information, S-2]

Medicare does, in fact, reimburse hospice agencies on a fixed per diem basis, therefore, the addition of the proposed hospice agency would not generally result in an unreasonable impact on the costs and charges for health services. However, for this project, the need section of this evaluation concluded that the applicant failed to demonstrate that the population has a need for this project and existing providers are not available to meet the future need for Medicare certified hospice services in Spokane County. As a result, the department also concludes that the costs of this project may result in an unreasonable impact on the costs and charges for health services in the county. This sub-criterion is not met.

(3) The project can be appropriately financed.

As stated in the project description portion of this evaluation, the total estimated capital expenditure for this project is \$32,089, and the entire amount is related to equipment needed for the proposed hospice agency. [source: Application, p29; January 9, 2007, supplemental information, S-2]

The source of financing for the project will be from FHC reserves. A review of FHC’s historical financial statements shows the funds necessary to finance the project are available. Further, FHC provided a letter from its chief financial officer demonstrating a commitment to the project and any necessary funding. [source: January 9, 2007, supplemental information, SC-2]

Based on the above documentation, the department concludes the capital costs to establish the proposed Medicare certified hospice agency would not adversely affect the financial stability of FHC, and the project can be appropriately financed. This sub-criterion is met.

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

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

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

Given that FHC does not currently provide Medicare certified hospice services in Spokane County, all staff for the hospice agency would have to be recruited. Table 2 below shows the projected number of staff for partial year 2008 and the first three full years of operation. [source: January 7, 2007, supplemental information, SC-6]

**Table 2  
Family Home Care Projected FTEs 2008 – 2011**

Type of Personnel	Partial Year 2008	Increase Year 2009	Increase Year 2010	Increase Year 2011	Totals
Projected # of Pt Days <sup>8</sup>	625	4,445	8,703	12,936	-----
Projected # of Unduplicated Pts	15	103	202	301	-----
Average Daily Census	3.4	12.2	23.8	35.4	-----
Nursing/Patient Care	0.80	2.40	2.10	2.20	7.50
Administrative	1.60	0.90	0.50	0.00	3.00
Therapists	0.20	0.10	0.00	0.00	0.30
Medical Director	0.20	0.30	0.00	0.00	0.50
Other*	0.60	0.70	0.40	0.30	2.00
<b>Total FTEs</b>	<b>3.40</b>	<b>4.40</b>	<b>3.00</b>	<b>2.50</b>	<b>13.30</b>

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

As shown in Table 2 above, in year 2008, FHC plans to recruit 3.4 FTEs to begin providing Medicare certified services in Spokane County, then majority of staff would be recruited in full years 2009 and 2010.

FHC also provided the following strategies used to recruit and retain the key staff for the project. [source: Application, p34]

*“The challenge of adequate health care manpower regardless of type is a fact of life in the Spokane community and across the state. Family Home Care and Hospice addresses this issue by maintaining professional relationships with schools of higher education and by aggressive recruitment efforts. The length of time positions are officially open is difficult to measure as hiring is a constant process to keep up with growing demand. Our approach...is to treat our employees very well. As a result, [of] our competitive salary and benefits, plus a supportive supervisory structure, we are becoming an “employer of choice” for health care professionals in the area.”*

<sup>8</sup> FHC provided its projected number of patient days based on a 43 day average length of stay (ALOS).

FMC also provided also identified key staff on its Interdisciplinary Team and provided the job description for its medical director, one of the key staff on the team. Key staff include:

- Medical director;
- RN Case Manager
- Home Health Aide
- Social Worker
- Pharmacy
- Volunteer/bereavement coordinator
- Pastoral Care counselor
- Other counselors as needed.

[source: Application, p34]

The department concludes that the applicant provided a demonstration within the application that the appropriate staff can be recruited.

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

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

As a Medicare certified hospice provider in Whitman County, FHC has agreements in place for pharmacy, durable medical equipment, and in-patient respite. FHC is in the process of developing similar agreements for Spokane County. [source: Application, p36] To demonstrate compliance with this criterion, FHC provided the following timelines to be used to establish the ancillary and support agreements related to this project.

Agreement	Timeline
Pharmacy Contract	In place effective October 1, 2006
In-Patient Contracts w/ area Hospitals	Hospitals will be contacted 11/07; agreements to be effective approximately March 2008
Skilled Nursing Facility Contracts	Nursing facilities were contacted beginning in December 2006; agreements to be effective approximately May 2008
Durable Medical Equipment (DME) contracts	In process of selecting DME vender; agreement to be in place approximately May 2008
Other Agreements, including massage therapy and other complementary care providers	Agreements would be in place approximately May 2008

[source: December 27, 2006, supplemental information, pp13-14)

Documentation provided in the application confirms that FHC maintains appropriate relationships with patient care ancillary and support services, such as social services, nutrition services,

pharmacy, patient and staff education, financial counseling, human resources, material management, plant operations, and administration and technical services for its existing agency that serves Spokane and Whitman counties. Further, it is clear that the applicant has established appropriate relationships with area hospitals and other health care providers for those patients requiring either hospitalization or inpatient care for its existing agency. To ensure that the same types of relationships would be established for the residents of Spokane County for hospice services, if this project is approved, the department would include a requirement (term) based on the applicant's agreement to provide copies of such contracts specific to Spokane County hospice. With the requirement (term) described above, the department would conclude that this sub-criterion is met.

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

As stated in the project description portion of this evaluation, currently FHC provides Medicare certified home health services in Spokane and Whitman counties, and Medicare certified hospice services in Whitman County. [source: Application, p5]

Since 2003, the Department of Health's Office of Health Care Survey (OHCS) has completed six compliance surveys for the FHC facilities in operation.<sup>9</sup> Of the compliance surveys completed, all revealed minor deficiencies typical for the type of facility and FHC submitted plans of correction and implemented the required corrections. [source: compliance survey data provided by Office of Health Care Survey]

As an existing provider of home health and hospice services, FHC identified its current medical directors. For Whitman County, FHC contracts with Timothy Moody, MD, for medical director services. Dr. Moody provides the medical director services under a contract with FHC that was established in September 2006. [source: Application, Attachment F]

For Spokane County medical director services, FHC contracts with Bruce Dentler, MD. Dr. Dentler provides the medical director services under a contract with FHC that was established in April 2004. If this project is approved, FHC anticipates Dr. Dentler would continue as medical director for the hospice agency. A compliance history review for both Dr. Moody and Dr. Dentler reveals no recorded sanctions. [source: compliance history provided by Medical Quality Assurance Commission].

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

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<sup>9</sup> FHC-private duty services surveys completed in August 2004, January 2005, and August 2006; FHC-home health and hospice in Whitman County surveys completed in October 2004 and June 2006; FHC-home health in Spokane County surveys completed in year April 2005.

Based on the compliance history of FHC and the compliance history of the current medical directors, the department concludes that there is reasonable assurance that FHC would operate a Medicare certified hospice agency in Spokane County in conformance with state and federal regulations, and this sub-criterion would be met provided the applicant agreed to a requirement (term) related to identification of the director of clinical services and an alternate.

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

To demonstrate that this project will promote continuity of care, the applicant provided the following statements. [source: Application, p36-37]

*“For more than 30 years, Family Home Care has provided quality home care and private duty services to thousands of Spokane County residents. Expanding our services to include hospice care will enhance the continuity, and thus the quality, of health care for current and new patients. First the new service would allow a seamless transition from health care to hospice and prevent time-consuming and costly transfers to another agency. This option, which is currently unavailable in Spokane County, builds on the established trust and confidence between patients’ and caregivers and streamlines decision-making for patients, families, and primary physicians. And, most importantly, it avoids unnecessary disruption of patient care.”*

FHC further states that the addition of hospice care would assist it to continue to foster existing relations with hospital staff, facility discharge coordinators, primary providers, and other health services resources. FHC asserts that the inherent design of the Medicare hospice benefit assures continuity and avoids fragmentation. Because services would be planned and monitored by Family Home Care & Hospice, reimbursed on a per diem basis, and paid for by that same entity, FHC believes there is an inherent coordination of all providers around the care of the patient and the patient’s family. [source: Application p37]

In the need section of this evaluation, the department concluded that the existing providers are both available and accessible to adequately provide current and future hospice need in the county. Further, FHC intends to establish another Medicare certified hospice agency so it would not have to transfer patients to one of the two existing providers. The promotion of continuity of care and unwarranted fragmentation of services does not require nor is it intended to have a single facility provide each and every service a patient might require. If that was the intent, there would be no concern about unnecessary duplication of services. The application guidelines provide guidance regarding the intent of this criterion. The application guidelines ask for identification of existing and proposed formal working relationships with hospitals, nursing homes, and other health services and resources serving the applicant’s primary service area. This description should include recent, current, and pending cooperative planning activities, shared services agreement, and transfer agreements. Establishment of a third hospice provider in Spokane County when no need has been demonstrated has the potential to increase the cost of hospice care for all providers if the number of patients is not sufficient to support the number of agencies providing services.

Therefore, the department concludes that approval of a third hospice provider in the county does not meet the intent of this criterion, and approval of this project has the potential of fragmentation of Medicare certified hospice services within Spokane 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.

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

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

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

- (1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.  
The applicant's consideration and rejection of the following three alternatives to this application are summarized below. [source: December 27, 2006, supplemental information, pp14-18]

Acquisition of an existing Medicare certified hospice agency

Give its recent purchase of Whitman Home Health and Hospice agency, FHC explored this option for hospice in Spokane County. However, this alternative was rejected because there were no existing Medicare certified hospice agencies to purchase.

Postponing Action

At this time, there are no existing Medicare certified hospice agencies to purchase, and FHC states that it is unlikely that postponing action would result in one becoming available. Further, FHC states that this alternative would delay the offering of improved continuity of care to Spokane County residents. Therefore, this option was also rejected.

No Action

FHC asserts that this option of taking no action (or status quo) would mean that the benefits to FHC's current home health patients to terminally ill patients in the county, including long-term care nursing home residents, would not materialize. This option was also rejected.

Approval of this project would allow an additional Medicare certified hospice agency in Spokane County, however, as previously concluded in this evaluation, at this time, two hospice agencies in the county appears to be adequate.

On the basis of the information provided within this application, the department concludes that adding another hospice agency is not the best available alternative for Spokane County at this time, and this sub-criterion is not met.

# APPENDIX