

**RECONSIDERATION EVALUATION OF THE 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]

## **BACKGROUND INFORMATION ON THE PROJECT**

On April 20, 2007, the department denied FHC's request to establish a Medicare certified hospice agency to serve Spokane County. The denial was based on FHC's failure to meet the criteria related to need, financial feasibility, structure and process of care, and cost containment.

On May 17, 2007, FHC submitted its "Request for Reconsideration" related to the department's denial, which included information related to the criteria denied.<sup>3</sup> The department granted FHC's reconsideration request, and on July 12, 2007, conducted a public hearing and received additional clarifying information from FHC, as well as comments from any affected persons. On July 27, 2007, the department allowed FHC and affected persons to submit rebuttal comments related to any comments received at the public hearing. This document is the evaluation of the reconsideration information.

## **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**

### **Initial Review**

September 25, 2006	Letter of Intent Submitted
October 26, 2006	Application Submitted
October 27, 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, 2007	Department Begins Review of the Application public comments accepted throughout review
February 20, 2007	Public Hearing conducted – End of Public Comment
March 7, 2007	Rebuttal Documents Received at the Department
April 23, 2007	Department's Anticipated Decision Date
April 20, 2007	Department's Actual Decision Date

### **Reconsideration Review**

May 14 and May 17, 2007	Applicant Submits Request for Reconsideration, including supplemental documentation
June 15, 2007	Department Grants Reconsideration
July 12, 2007	Reconsideration Public Hearing Conducted in Spokane Information Submitted by Applicant & Affected Persons
July 27, 2007	Rebuttal Documents Received the Department
September 10, 2007	Department's Anticipated Reconsideration Decision Date
September 10, 2007	Department's Actual Reconsideration Decision Date

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<sup>3</sup> WAC 246-310-560.

## **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>4</sup> Throughout the initial review of this project, four entities sought and received affected person status under WAC 246-310-010. Two of the four 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.

One of the four entities—VNA Home Health Care Services—provides Medicare certified home health services to the residents of Spokane County.

The remaining entity—Northwest Healthcare Alliance—does not provide home health or hospice services in Spokane County, however, this entity submitted a letter of intent and an application during the 2006 hospice agency concurrent review cycle, and then withdrew it on January 16, 2007.

During the reconsideration process, only two of the four entities continued to participate in the reconsideration process. As a result, the two entities—Horizon Hospice, LLC and Hospice of Spokane—maintained their affected person status for this project.

## **SOURCE INFORMATION REVIEWED-INITIAL**

- 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
- 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

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<sup>4</sup> Northwest Healthcare Alliance also submitted an application to serve Spokane County during the 2006 review cycle; however, the Northwest Healthcare Alliance application was withdrawn on January 16, 2007.

### **ADDITIONAL SOURCE INFORMATION REVIEWED--RECONSIDERATION**

- Family Home Care's Requests for Reconsideration with supporting documentation received May 14 and May 17, 2007
- Family Home Care's information submitted at the July 12, 2007, reconsideration public hearing
- Hospice of Spokane's information submitted at the July 12, 2007, reconsideration public hearing
- Horizon Hospice's information submitted at the July 12, 2007, reconsideration public hearing
- Family Home Care's rebuttal comments received July 26, 2007
- Hospice of Spokane's rebuttal comments received July 27, 2007
- Hospice Methodology Advisory Committee Draft Report to Department of Health dated April 3, 2001
- Hospice Methodology Advisory Committee Draft Report to Department of Health dated September 12, 2001

### **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>5</sup>

### **CONCLUSION**

For the reasons stated in this reconsideration 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>5</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).

## **RECONSIDERATION EVALUATION**

### **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.

Within its May 14 and May 17, 2007, reconsideration requests, FHC identified three issues for reconsideration. All three issues focus on the numeric methodology used by the department in its evaluation of numeric need for the project under this criterion. The issues are identified below. [source: FHC May 17, 2007, reconsideration request, pp13 and Exhibit A; FHC May 14 reconsideration request, pp1-2]

1. The Department should reconsider its evaluation of Family Home Care's CON application because its analysis includes calculation errors that could not have been pointed out prior to the Department making its decision.
2. The Department should reconsider its evaluation of Family Home Care's CON application because it failed to properly apply the steps of the Hospice Services Need Projection Methodology.
3. The Department reversed the proper order of its adopted procedures when, rather than reviewing the need projection in the application submitted by Family Home Care, it conducted its own analysis and required Family Home Care to prove the substituted analysis was not accurate.

Within this reconsideration evaluation, the program will address each issue separately. Given that two of the three issues raised by FHC refer to the department's application of the numeric methodology, the department will again apply the numeric methodology for the project. The completed methodology is presented as an appendix to this document.

#### **RECONSIDERATION ISSUE #1:**

#### **THE DEPARTMENT SHOULD RECONSIDER ITS EVALUATION OF FAMILY HOME CARE'S CON APPLICATION BECAUSE ITS ANALYSIS INCLUDES CALCULATION ERRORS THAT COULD NOT HAVE BEEN POINTED OUT PRIOR TO THE DEPARTMENT MAKING ITS DECISION**

The determination of numeric need for hospice services is performed using the hospice services need forecasting method contained in the WAC 246-310-290. The methodology is a six-step process of information gathering and mathematical computation. The first two steps examine historical hospice utilization rates at the statewide level. The remaining four 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 Appendix A to this analysis. The methodology uses population and healthcare utilization statistics on statewide and planning area levels. By rule, the planning area for hospice services is each individual county. Although the planning area for this application under review is Spokane County, need projections for the entire state have been prepared.

The calculation error referenced by FHC was made during the process of computing the statewide average length of stay (ALOS) data before Step #1 is calculated. The department inadvertently included an additional column of data from the spreadsheet with the correct columns of data. Since, the result of the statewide ALOS calculation is applied in Step #6 of the methodology, an incorrect statewide ALOS calculation would skew the projected volume of hospice services statewide. Below is a summary of the calculations made at each step of the methodology 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 only and Medicare certified 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's Center for Health Statistics and Cancer Registry to determine the percentages of deaths due to cancer and non-cancer causes for the two age groups. Although not all hospice providers in the state responded to the program's surveys, all providers in 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 for each of the average/cancer diagnosis groups identified in Step 1 above.

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

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

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

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

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

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

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

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

The department applied the one-year estimated population growth to the potential volume of hospice services derived in Step 4 to estimate potential hospice volume in 2006, the first year following the three-year data range. In order to estimate need for hospice services in the first three years of 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 FHC project (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 operated in the service area for at least three years, an average daily census (ADC) of thirty-five is assumed for that agency.

Each of the hospice providers in 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 underlined portion of the previous paragraph is where the calculation error referenced by FHC occurred. An incorrect statewide ALOS of 51.801075 applied in Step #6 would skew the projected volume of hospice services statewide.

To correct this error, the department re-calculated the survey responses that resulted in a corrected statewide average length of stay of 51.658324, rather than the previous calculation of 51.801076. This calculation error has been corrected in the methodology attached to this evaluation.

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

	2011 Potential volume	Current Capacity	2011 Unmet Need Admits	Statewide ALOS	2011 Unmet Need Patient Days	2011 Unmet Need ADC	Agency Need
Spokane County	1,353	1,173	180	51.658324	(9,305)	25	None

**RECONSIDERATION ISSUE #2:**

**THE DEPARTMENT SHOULD RECONSIDER ITS EVALUATION OF FAMILY HOME CARE'S CON APPLICATION BECAUSE IT FAILED TO PROPERLY APPLY THE STEPS OF THE HOSPICE SERVICES NEED PROJECTION METHODOLOGY**

Within Reconsideration Issue #2, FHC included the following two sub issues:

- 1) The department failed to follow the requirement of WAC 246-310-0290(1)(a) that Center for Medicare and Medicaid Services (CMS) data be used to derive the total annual days of care; and
- 2) The department misapplied Step 5 of the methodology by using the same estimated population growth rate for all age groups when the population age 65 and older, who account for over 82% of hospice admissions, is growing at a rate almost three times that of the general population.

Beginning with the sub-issue #1 above, FHC asserts that the department should have used CMS data in step #1 of the methodology to determine the total number of annual days of care in the state. FHC references the definition portion of the hospice rule under WAC 246-310-290(1)(a)(i) which states:

(a) "ADC" means average daily census and is calculated by:

- (i) Multiplying projected annual agency admissions by the most recent average length of stay in Washington (based on Center for Medicare and Medicaid Services (CMS) data) to derive the total annual days of care. [emphasis added]

However, FHC ignores the reference within the same rule that outlines the six step process to be used to determine numeric need for hospice agencies. In that portion of the rule (WAC 246-310-290(7), step #1 states the following:

(7) *Need projection. The following steps will be used to project the need for hospice services.*

- (a) *Step 1. Calculate the following four statewide predicted hospice use rates using CMS and department of health data or other available data sources.* [emphasis added]

The underlined reference above allows the department to rely on other available data sources, in this case, survey data.

Within the initial evaluation, the department addressed FHC's criticisms of the utilization survey used to calculate data points to apply the numeric methodology. [source: April 20, 2007, Initial evaluation, pp6-12] Within its reconsideration request, FHC again criticizes the utilization survey, citing inappropriate use of population data for specific age cohorts, the failure of some hospice agencies to fully complete the survey, and a lack of clarity in the questions. FHC's conclusion is that the department is required to use CMS data to calculate the numeric methodology.

During the reconsideration review of this project, the department reviewed the notes and recommendations created by staff of the Hospice Methodology Advisory Committee in the development of the current hospice methodology.

- When considering available options for a hospice methodology, the committee ultimately narrowed down their choices to two options to be considered based on “*quantitative scenarios that showed the methods projected similar future hospice need, at a level believable to the committee.*” Further, the two methods “*avoided complex refinements that would make the method more difficult to understand or to carry out without necessarily increasing accuracy.*” [source: Draft Report: Hospice Methodology Advisory Committee, April 3, 2001, p7]
- The Hospice Methodology’s report drafted five months later on September 13, 2001, includes a recommendation section focused on data sources. The committee made the following three recommendations regarding data sources.
  - *Collect state-specific utilization data from all state hospice agencies.*
  - *Develop a system to assure data quality.*
  - *Recognizing there may be short-term implementation issues with the above recommendations, the committee agreed that the HCFA<sup>6</sup> data could be used on an interim basis to implement the recommended methodology, with national hospice data supplementing when necessary.*

[source: Recommendations of the Hospice Methodology Advisory Committee, Revised September 13, 2001, p3]

As noted above, the Advisory Committee recommended that utilization data be obtained from the hospice agencies to be used in applying the methodology, rather than long term use of HCFA (or CMS) data or another national data source. Given that the hospice methodology rules became effective on April 19, 2003, the department has been able to collect historical utilization data from the Washington hospice agencies to create the recommended data source. Therefore, the use of years 2003 – 2005 data obtained by the utilization survey of all hospice agencies in the state is not only in compliance with the rule (WAC 246-310-290), it is also in compliance with the intent of the rule as outlined in the Advisory Committee recommendations.

If, for argument’s sake, the CMS ALOS of 56.21 claimed by FHC is used, the year 2011 need for Spokane County increases from an ADC of 25 to 28. This ADC is still below the required ADC of 35 referenced in step #6 of the methodology.

FHC’s sub-issue #2 asserts that the four use rates derived in step #1 should be applied in step #5 using specific population growth for the subgroups of 65 years of age or older, and the different rate of population growth for the subgroups 65 of years and older, also broken down by cancer and non-cancer patients. For example, in step #1(i), to determine the use rate of cancer residents aged 65 and older, FHC’s approach divides the average number of hospice admissions over the last three years for patients aged sixty-five and over with cancer by the average number of past three years statewide total deaths sixty-five and over from cancer. Step #1(ii) would divide the average number of hospice admission over the last three years for under 65 patients by the average number of past three years statewide total deaths under 65. Steps #1(iii) and (iv) require similar calculations for patients aged 65 and older and

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<sup>6</sup> Health Care Financing Administration (HCFA) was renamed Centers for Medicare & Medicaid Services (CMS) on July 1, 2001.

under 65 for non-cancer patients. This approach would apply four separate use rates to four separate population groups, and the separation would remain through the end of step #5.

FHC's suggestion in sub-issue #2 above ignores step #4 that states:

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

A review of the Program's historical files created when the Hospice Methodology Advisory Committee established the hospice rules under WAC 246-310-290, shows that the committee relied upon the underlying premise that patients, depending on their age and diagnosis, use hospice care at different rates. This is confirmed by the age and diagnosis breakdowns identified in step #1. The plain language of step #4 requires the four subtotals from step #3 to be added together for each planning area. The language in step #4 is not ambiguous. This approach has been upheld in an adjudicative ruling and in a subsequent superior court ruling.

Additionally, as stated above, when considering available options for a hospice methodology, the committee's self-limitation to two options took into consideration that a methodology should *“avoid[ed] complex refinements that would make the method more difficult to understand or to carry out without necessarily increasing accuracy.”* [source: Draft Report: Hospice Methodology Advisory Committee, April 3, 2001, p7] Given the clear language in step #4, using four separate use rates and carrying out four separate calculations broken down by age cohort and diagnosis has the potential to increase the chances of errors and does not appear to increase accuracy. The department concludes that the adoption of FHC's deviation through step #5—ultimately ignoring step #4—is not merely an interpretation of the steps in the methodology. Rather it is a modification of the methodology that would require an amendment to the rule under WAC 246-310-290.

### **RECONSIDERATION ISSUE #3:**

**THE DEPARTMENT REVERSED THE PROPER ORDER OF ITS ADOPTED PROCEDURES WHEN, RATHER THAN REVIEWING THE NEED PROJECTION IN THE APPLICATION SUBMITTED BY FAMILY HOME CARE, IT CONDUCTED ITS OWN ANALYSIS AND REQUIRED FAMILY HOME CARE TO PROVE THE SUBSTITUTED ANALYSIS WAS NOT ACCURATE**

FHC's raises concerns regarding the process used by the department in evaluating the FHC application to establish a Medicare certified hospice agency in Spokane. FHC states that the Certificate of Need regulations (RCW 70.38) and rules (WAC 246-310) outline the process for the submittal and review of applications. FHC further acknowledges that *“the CON applicant submits the required information, using the data sources allowed or required by law; and the department reviews the submittal to determine if the applicant has demonstrated the need for an additional hospice.”* While FHC suggests that the department did not follow this process, its concern under this issue is unclear; FHC seems to assert that the department did not “review” FHC's application of the need methodology.

As acknowledged by FHC, the specific information required for hospice applications is outlined in the ten sub-sections under WAC 246-310-290—Hospice Services—Standards and Need Forecasting Method. A summary of each sub-section (SS) is outlined below.

SS	Summary of Sub-section
(1)	Focuses on the definitions specific to hospice that are used in the remaining sections.
(2)	Requires hospice applications to undergo a concurrent review.
(3)	Outlines the concurrent review schedule beginning with the letter of intent, through the public comment and rebuttal portions of the review, and ending with the 60-day period used by the Program to prepare its evaluation of the submitted project.
(4)	Provides the process to be used if a letter of intent or application is submitted outside the concurrent review schedule in the previous section.
(5)	Allows the department to convert a hospice application to a regular review if no competing application is submitted.
(6)	Requires that the applicant demonstrate that its proposed agency would have a minimum average daily census (ADC) of 35 patients by the third year of operation and outlines the requirements that must be met if an applicant does not project an ADC of 35.
(7)	Outlines the six-step numeric methodology using a systematic, step-by-step format.
(8)	Provides the additional criteria that every hospice application must meet. Those additional criteria are identified as WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); and 246-310-240 (cost containment).
(9)	Provides the factors to be considered if two or more applicants are competing to meet the same forecast net need under the concurrent review.
(10)	States that failure to operate a hospice agency in accordance with the CN standards may be grounds for appropriate action.

Additionally, the Application for Certificate of Need-Hospice Project provides further guidance regarding data, documents, or information that must be submitted in a hospice application.

FHC contends that the applicant has the initial burden of “*producing evidence that establishes the requisite need...after the party filing the application meets this burden of production, the department must review the information submitted ...to determine if the proffered evidence does or does not demonstrate need for an additional hospice.*” The department agrees with these statements.

FHC further contends that it “*made a strong case with respect to the need for a new hospice agency, using the data sources identified in the department’s regulation*” and the proper procedure would be for “*the department to determine whether the data sources provided in the application demonstrate need under the steps of the methodology.*” FHC further asserts that instead of reviewing the application, “*the department decided to choose different data sources to conduct its own analysis under the methodology.*”

As previously discussed in the evaluation, FHC did not use the data sources identified in the regulation under WAC 246-310-290(7). Further, in its April 20, 2007, initial evaluation, the department provided an extensive review of FHC’s methodologies—all four versions—none of which followed the step-by-step methodology outlined in WAC 246-310-290(7).

FHC's assertion that the department chose a different data source to conduct its own analysis under the methodology is intentionally misleading. Rather, the department applied the methodology as outlined in WAC 246-310-290(7) using the data source identified within sub-section (7)(a) and recommended by the Hospice Methodology Advisory Committee in the development of the current hospice methodology. In a letter dated November 16, 2006, the department provided to all of the hospice applicants—including FHC--the data that would be used to calculate the numeric need for the year 2006 hospice review cycle.<sup>7</sup> In contrast, during the initial and reconsideration processes, FHC has provided at least five different versions of the numeric methodology, and **none of them follow the step-by-step methodology outlined in WAC 246-310-290(7).**

Further, for all Certificate of Need projects that include a numeric methodology in rule,<sup>8</sup> the department has applied the numeric methodology and within its evaluation, addressed deviations, if any, the applicant has made to the methodology. This is the same process used by the department in its initial evaluation of the FHC application. As a result, FHC's contention under Reconsideration Issue #3 is simply not true.

The department's corrected application of the numeric methodology is attached to this evaluation as Appendix A. The result of the numeric methodology shows an unmet need of an ADC of 25 for Spokane County, rather than the 20 identified in the department's initial evaluation. The ADC of 25 continues to be below the ADC of 35, which is the minimum in rule before a new hospice program can be approved.

Within the initial review of this project, the department received comments in opposition to the FHC project from the two hospice agencies in the county—Hospice of Spokane and Horizon Hospice. Both agencies stated that FHC misapplied the numeric methodology and need for an additional hospice agency in the county had not been demonstrated. During the course of reconsideration of this project, both agencies restated their overall positions taken in the initial review. [source: Hospice of Spokane, public hearing and rebuttal documents and Horizon Hospice, public hearing and rebuttal documents]

In response to the public comments made by both agencies in Spokane, FHC continues to assert that its numeric methodology demonstrates need for an additional hospice agency in Spokane County—however, FHC ignores the fact that it must significantly modify several steps in the methodology in order to establish numeric need.

In conclusion, as with its initial evaluation, 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

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<sup>7</sup> In addition to the Family Home Care application, the department received a competing application also proposing to provide hospice services in Spokane County. However, once the applicant reviewed the data provided with the November 16, 2007, letter, that applicant withdrew its competing application citing recognition of no need for an additional hospice provider in Spokane County. Additionally, the department received three separate applications proposing to provide hospice services in King, Pierce, and Snohomish counties (one application per county).

<sup>8</sup> Certificate of Need projects that currently have a numeric methodology in rule include hospice agencies, hospice care centers, kidney dialysis centers, nursing homes, adult and pediatric open heart surgery programs, and ambulatory surgery centers.

additional hospice agency need is indicated for Spokane County. Further, the use rates and lengths of stay to be considered in the methodology, along with specific steps of the methodology, are identified in rule and not subject to substitution with alternate standards. This criterion is not met.

**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.*

Within the department's April 20, 2007, initial evaluation, the department concluded that FHC had not demonstrated unmet need for hospice services and had not demonstrated that the existing providers were unavailable, inaccessible, or otherwise unable to meet the hospice needs of Spokane County.

While this issue was not addressed in FHC's reconsideration request, FHC's public hearing documents suggest that once numeric methodology for an additional hospice agency is demonstrated, FHC should not have to demonstrate that the "*existing providers are unavailable, inaccessible, or otherwise unable to meet the hospice needs of the proposed service area.*" FHC further asserts that it would be contrary to the regulatory scheme governing hospice to require any demonstration of projected volume of hospice need above that determined by the methodology. [source: FHC, public hearing documents, pp17-18] As a result, given that FHC believes it has demonstrated numeric need, FHC asserts that this sub-criterion should be met as well.

This assertion by FHC is incorrect. WAC 246-310-290(8) lists the additional criteria that every hospice application must meet. The additional criteria include WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); and 246-310-240 (cost containment). Specifically, WAC 246-310-210(1) states:

*"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. "*

Based on the requirements under WAC 246-310-290(8) and WAC 246-310-210(1), it is unclear why FHC believes that it should not have to demonstrate that the existing providers are unavailable, inaccessible, or otherwise unable to meet the hospice needs of the proposed service area. FHC did not provide any other data regarding WAC 246-31-210(1).

For this reconsideration evaluation, the department concludes FHC has not demonstrated an unmet need for hospice services in Spokane County or 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.

In its April 20, 2007, initial evaluation, the department concluded that all residents of the service area including low-income, racial and ethnic minorities, handicapped and other underserved groups would have adequate access to hospice services through FHC and approval of this project would not negatively affect that access.

There was no additional information provided during the reconsideration review that would change this conclusion by the department, therefore, this sub-criterion remains 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.  
(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.  
(3) The project can be appropriately financed.

In its April 20, 2007, initial evaluation, the department concluded that the project did not meet the financial feasibility criteria outlined in WAC 246-310-220 because need had not been demonstrated for a third hospice agency in Spokane County.

In the hospice methodology and need portions of this reconsideration evaluation, the department again concludes that need for a third hospice agency in Spokane County has not been demonstrated. Given this conclusion, the department's conclusions regarding the financial feasibility criteria remains unchanged, and this criterion is not 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.  
(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.  
(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.

- (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.
- (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.

In its April 20, 2007, initial evaluation, the department concluded that the project did not meet the structure and process of care criteria outlined in WAC 246-310-230 because need had not been demonstrated for a third hospice agency in Spokane County.

In the hospice methodology and need portions of this reconsideration evaluation, the department again concludes that need for a third hospice agency in Spokane County has not been demonstrated. Given this conclusion, the department's conclusions regarding the structure and process of care criteria remains unchanged, and this criterion is not 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.

In its April 20, 2007, initial evaluation, the department concluded that the project did not meet the cost containment criteria outlined in WAC 246-310-240 because need had not been demonstrated for a third hospice agency in Spokane County.

In the hospice methodology and need portions of this reconsideration evaluation, the department again concludes that need for a third hospice agency in Spokane County has not been demonstrated. Given this conclusion, the department's conclusions regarding the cost containment criteria remains unchanged, and this criterion is not met.