



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

February 1, 2013

CERTIFIED MAIL # 7011 1570 0002 7809 5285

Kevin McHugh, CEO  
Strategic Ancillaries  
Post Office Box 696  
Centralia, Washington 98531

Re: CN #12-41

Dear Mr. McHugh:

We have completed review of the Certificate of Need application submitted for VP Surgery Center of Auburn, LLC proposing to establish a Certificate of Need approved ambulatory surgery center in Auburn. For the reasons stated in this evaluation, the application submitted is consistent with applicable criteria of the Certificate of Need Program, provided VP Surgery Center of Auburn, LLC agrees to the following in its entirety.

**Project Description:**

This certificate approves the establishment of a three operating room surgery center in Auburn, within southeast King County. Services provided at the ambulatory surgery center are limited to ENT, orthopedic, plastic surgery, and pediatric oral/dentistry.

**Conditions:**

1. Approval of the project description as stated above. VP Surgery Center of Auburn, LLC further agrees that any change to the project as described in the project description is a new project that requires a new Certificate of Need.
2. Prior to commencement of the project, VP Surgery Center of Auburn, LLC must provide to the department for review and approval a final Operating Agreement consistent with the draft agreement provided in the application.
3. Prior to commencement of the project, VP Surgery Center of Auburn, LLC must provide to the department for review and approval a final Admission Policy consistent with the draft policy provided in the application.
4. Prior to commencement of the project, VP Surgery Center of Auburn, LLC must provide to the department for review and approval a final Charity Care Policy consistent with the draft policy provided in the application.



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5. Prior to commencement of the project, VP Surgery Center of Auburn, LLC must provide to the department for review and approval a final Sub-Lease Agreement consistent with the draft agreement provided in the application.
6. Prior to commencement of the project, VP Surgery Center of Auburn, LLC must provide to the department for review and approval a final Patient Transfer Agreement with at least one of the hospitals identified in the application. The final agreement must be consistent with the draft agreement provided in the application.
7. VP Surgery Center of Auburn, LLC will provide charity care in compliance with the charity care policies reviewed and approved by the Department of Health. VP Surgery Center of Auburn, LLC will use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by the four hospitals currently operating in the southeast King County planning area. Currently, this amount is 1.66% gross revenue and 2.74% of adjusted revenue. VP Surgery Center of Auburn, LLC will maintain records documenting the amount of charity care it provides and demonstrating compliance with its charity care policies.

**Approved Costs:**

The approved capital expenditure associated with this project is \$2,127,221, and has already been expended by the two owing physicians of VP Surgery Center of Auburn, LLC.

Please notify the Department of Health within 20 days of the date of this letter whether you accept the above in its entirety. Your written response should be sent to the Certificate of Need Program, at one of the following addresses.

Mailing Address:

Department of Health  
Certificate of Need Program  
Mail Stop 47852  
Olympia, WA 98504-7852

Other Than By Mail:

Department of Health  
Certificate of Need Program  
111 Israel Road SE  
Tumwater, WA 98501

If you have any questions, or would like to arrange for a meeting to discuss our decision, please contact Janis Sigman with the Certificate of Need Program at (360) 236-2955.

Sincerely,



Steven M. Saxe, FACHE  
Director, Health Professions and Facilities

**EVALUATION DATED FEBRUARY 1, 2013, OF THE CERTIFICATE OF NEED  
APPLICATION SUBMITTED BY VP SURGERY CENTER OF AUBURN, LLC  
PROPOSING TO ESTABLISH A NEW HEALTHCARE FACILITY IN KING COUNTY**

**APPLICANT DESCRIPTION**

VP Surgery Center of Auburn, LLC is a for-profit limited liability corporation established in January 2012. VP Surgery Center of Auburn, LLC is owned by two dental physicians, each with 50% ownership. The physician owners are Ellen Polsky, DDS and Mahadeep Virk, DMD. Neither the owning physicians nor VP Surgery Center of Auburn, LLC own, operate, or manage any other healthcare facilities in Washington State or out of state. [source: Application, pp2-3 and Attachments I-A, I-B, & I-C]

On March April 6, 2011, the two owing physicians also created a real estate LLC known as VP R/E, LLC. The purpose of this LLC is to acquire by lease, improve, maintain, lease out, operate, or dispose of real property. [source: Application, Attachment I-A & I-B] The applicant uses this LLC to enter into a variety of agreements, and then creates sub-agreements between VP R/E, LLC and VP Surgery Center of Auburn, LLC. Any sub-agreements are further discussed in the appropriate sections of this evaluation.

**PROJECT DESCRIPTION**

On July 5, 2011, VP Surgery Center of Auburn was granted an exemption from Certificate of Need for the establishment of an ambulatory surgery center (ASC) at 1102 – 15<sup>th</sup> Street Southwest, #200, in Auburn [98001]. For CN purposes, the ASC is located within the southeast King County planning area. [source: CN historical files]

Construction of the exempt ASC commenced in July 2011 and the facility was operational in February 2012. The exempt ASC is in 6,500 sf of leased space within the Auburn Corporate Center II office complex. The ASC has three operating rooms (ORs), pre- and post-operative and recovery space, administration/reception space, and physician offices. [source: Application, Attachment II-J] As of the writing of the evaluation, the exempt ASC continues to operate under the VP Surgery Center of Auburn group practice exemption.

With this application, VP Surgery Center of Auburn, LLC (VPSCA) proposes to obtain a Certificate of Need to allow physicians that are not part of the group practice to use the ASC. If approved, the ASC will continue to operate at the same site with three ORs and support space. [source: Application p8]

Services currently provided at the exempt ASC are pediatric oral/dentistry. [source: Application, p8] If approved, VPSCA proposes to continue providing pediatric oral/dentistry and expand services to include adult ENT, orthopedic, plastic, and general surgeries. [source: Application, p10]

The estimated capital expenditure for establishing the exempt ASC in 2012 was \$2,127,221. Even though the dollars have already been expended, since the exempt ASC has been operational

for less than 24 months, the capital costs are required to be included in this application. [source: Application, p28]

If this project is approved, VPSCA anticipates outside physicians would begin using the ASC immediately. Under this timeline, year 2014 would be the ASC's first full calendar year of operation as a CN approved ASC. [source: Application, p12]

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

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

### **EVALUATION CRITERIA**

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

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

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

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

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

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

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

To obtain Certificate of Need approval, the applicant must demonstrate compliance with the criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment)<sup>1</sup>. Additionally, WAC 246-310-270 (ambulatory surgery) contains service or facility specific criteria for ASC projects and must be used to make the required determinations.

### **TYPE OF REVIEW**

This application was reviewed under the regular review timeline outlined in WAC 246-310-160, which is summarized below.

### **APPLICATION CHRONOLOGY**

| <b>Action</b>  | <b>VP Surgery Center of Auburn, LLC</b> |
|--|---|
| Letter of Intent Submitted   | March 7, 2012                           |
| Application Submitted  | June 13, 2012                           |
| Department's pre-review activities including screening and responses   | June 14, 2012 through September 5, 2012 |
| Beginning of Review  | September 6, 2012                       |
| End of Public Comment <ul style="list-style-type: none"> <li>• public comments accepted through the end of public comment</li> <li>• No public hearing requested or conducted</li> </ul> | October 11, 2012                        |
| Rebuttal Comments <sup>2</sup>   | November 20, 2012                       |
| Department's Anticipated Decision Date   | January 4, 2013                         |
| Department's Anticipated Decision Date with 30-day Extension   | February 4, 2013                        |
| Department's Actual Decision Date  | February 1, 2013                        |

### **AFFECTED PERSONS**

Washington Administrative Code 246-310-010(2) defines 'affected person' as:

*"...an interested person who:*

- (a) Is located or resides in the applicant's health service area;*
- (b) Testified at a public hearing or submitted written evidence; and*
- (c) Requested in writing to be informed of the department's decision."*

During the review of this project, no entities sought or received affected person status.

<sup>1</sup> Each criterion contains certain sub-criteria. The following sub-criteria are not relevant to this project: WAC 246-310-210(3), (4), (5), and (6).

<sup>2</sup> The initial rebuttal comment due date was October 26, 2012. The applicant requested a 25 day extension to provide rebuttal comments. The department granted the extension request on October 23, 2012.

### **SOURCE INFORMATION REVIEWED**

- VP Surgery Center of Auburn, LLC's Certificate of Need application submitted June 13, 2011
- VP Surgery Center of Auburn, LLC's supplemental information received August 29, 2012
- Public comment received until October 11, 2012
- VP Surgery Center of Auburn, LLC's rebuttal documents received November 19, 2012
- Completed utilization surveys for operating room use and capacity
- Licensing and/or survey data provided by the Department of Health's Investigations and Inspections Office
- Data obtained from the DOH Integrated Licensing & Regulatory System [ILRS] database
- Washington State Secretary of State website [[www.sos.wa.gov](http://www.sos.wa.gov)]
- Department of Health / Health Systems Quality Assurance Provider Credential Information
- Certificate of Need historical files

### **CONCLUSION**

For the reasons stated in this evaluation, the application submitted by VP Surgery Center of Auburn, LLC proposing to establish a Certificate of Need approved ambulatory surgery center by converting its Certificate of Need exempt ambulatory surgery center is consistent with the applicable review criteria provided VP Surgery Center of Auburn, LLC agrees to the following in its entirety.

### **Project Description:**

This certificate approves the establishment of a three operating room surgery center in Auburn, within southeast King County. Services provided at the ambulatory surgery center are limited to ENT, orthopedic, plastic surgery, and pediatric oral/dentistry.

### **Conditions:**

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5. Prior to commencement of the project, VP Surgery Center of Auburn, LLC must provide to the department for review and approval a final Sub-Lease Agreement consistent with the draft agreement provided in the application.
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**Approved Cost**

The approved capital expenditure associated with this project is \$2,127,221, and has already been expended by the two owing physicians of VP Surgery Center of Auburn, LLC.

## **CRITERIA DETERMINATIONS**

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

Based on the source information reviewed and the applicant's agreement to the conditions identified in the 'conclusion' section of this evaluation, the department determines that VP Surgery Center of Auburn, LLC's project has met the need criteria in WAC 246-310-210(1) and (2) and the ambulatory surgery center methodology and standards outlined in the WAC 246-310-270.

- (1) The population served or to be served has need for the project and other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet that need.

#### WAC 246-31-270(9)-Ambulatory Surgery Numeric Methodology

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

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

- a) whether a surplus or shortage of OR's is predicted to exist in the target year, and
- b) if a shortage of OR's is predicted, the shortage of dedicated outpatient and mixed-use rooms are calculated.
- c) Data used to make these projections specifically exclude endoscopy rooms and procedures.<sup>3</sup>

VPSCA provided a numeric methodology in the initial application and four revised numeric methodologies in rebuttal responses to public comment. Below is a summary of the applicant's numeric methodologies submitted.

- **Methodology #1 - Initial Application Methodology-Projection Year 2015**

[source: Application, pp20-23]

In the initial application, VPSCA provided a numeric methodology using specific data points that were used in two applications submitted in year 2011 for the central Pierce planning area. The use rate used in this methodology is 186.51/1,000 population. Planning area population data for year 2015 was projected at 423,260. With this methodology, the applicant projected a need for 58.5 ORs in the southeast King planning area.

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<sup>3</sup> WAC 246-310-270(9)(a)(iv).



The applicant considered this methodology to be credible because it uses a use rate from an adjacent planning area and projects to year 2015.

- **Methodology #2 - Rebuttal Comment Methodology – Projection year 2009**

[source: November 19, 2012, supplemental information, Tab 20]

To support the reasonableness of methodology #1 above, VPSCA reviewed historical use rates used in past southeast King planning area applications. The use rate used in this methodology is 75.96/1,000 population and focused on historical year 2009. Planning area population data for year 2009 was identified at 460,211. With this methodology, the applicant projected a surplus of 8.89 ORs in the southeast King planning area.

The applicant did not consider this methodology to be credible because the use rate of 75.96 is considerably lower than the use rate in the adjacent planning area of central Pierce in methodology #1.

- **Methodology #3 - Rebuttal Methodology Projection year 2009**

[source: November 19, 2012, supplemental information, Tab 21]

The use rate used in this methodology is 102.00/1,000 population and also focused on historical year 2009. The 2009 population was identified at 423,260. With this methodology, the applicant projected a surplus of 2.47 ORs in the southeast King planning area.

The applicant considered the use rate of 102 to be reasonable, but did not consider this methodology to be credible because the population used is 36,951 lower than calculated in the 2015 methodology #1.

- **Methodology #4 - Rebuttal Methodology Projection year 2009**

[source: November 19, 2012, supplemental information, Tab 22]

VPSCA also provided this revised methodology in response to FHS comments. The use rate used in this methodology is 102.00/1,000 population and focused on historical year 2009. The 2009 population used was 460,211. With this methodology, the applicant projected a need for 7.95 ORs in the southeast King planning area.

The applicant considered the use rate of 102 and the population projections of 460, 211 to be reasonable.

- **Methodology #5 - Rebuttal Methodology Projection year 2009**

[source: November 19, 2012, supplemental information, Tab 21]

The use rate used in this methodology is 134.80/1,000 population. This methodology focused on year 2009 and used a population of 460,211. With this methodology, the applicant projected a need of 23.65 ORs in the southeast King planning area.

The applicant considered the use rate of 134.80 to be reasonable because it is an average of all use rates used in Methodologies #1, #2, and #4 above. The population used is 460,211 as was calculated in Methodology #2.

Department’s Review of VPSCA Methodologies

After reviewing the five methodologies provided by VPSCA, the department concludes that none of the methodologies can be considered reliable. Methodology #1 relies on a use rate calculated for an adjacent planning area [central Pierce], rather than from southeast King County. Methodologies #2 through #5 use data from past applications and focus on historical year 2009, rather than 2015.

As a result, the remainder of this evaluation will focus on the results of the department’s methodology outlined and discussed below.

**Department’s Methodology and Review**

The numeric portion of the methodology requires a calculation of the annual capacity of the existing providers inpatient and outpatient OR’s in a planning area—southeast King County. According to the department’s historical records, there are 21 planning area providers—including the applicant—with OR capacity. The 21 providers are listed below. [source: CN historic files and DOH ILRS database]

**Table 1  
Southeast King County Planning Area Providers**

| <b>Hospitals/City</b>                     | <b>ASC/City</b>   |
|---|---|
| FHS-St. Francis Hospital/ Federal Way     | Cascade Surgery Center/Auburn                           |
| FHS-St. Elizabeth Hospital/Enumclaw       | ENT & Plastic Surgery/Auburn                            |
| Valley Medical Center/Renton              | Auburn Surgery Center/Auburn                            |
| MHS-Auburn Regional Medical Center/Auburn | Surgical Associates Northwest/Federal Way               |
| MHS-Covington Hospital/Covington          | Evergreen Eye Center/Federal Way                        |
|   | Puget Sound Plastic Surgery/Federal Way                 |
|   | Virginia Mason ASC/Federal Way                          |
|   | Surgery Center of Enumclaw/Enumclaw                     |
|   | NYTE Surgical Care, LL/Maple Valley                     |
|   | Southlake Clinic/Renton                                 |
|   | Sports Medicine Day Surgery/Renton                      |
|   | Valley Orthopedic ASC/Renton                            |
|   | Valley Eye & Laser Surgery/Renton                       |
|   | Plastic & Reconstructive Surgeons/Renton                |
|   | Women's & Family Health Specialists/Renton              |
|   | VP Surgery Center of Auburn/Auburn ( <b>applicant</b> ) |

As shown above, the 21 facilities include 5 hospitals and 16 ASCs, including the applicant’s ASC. For the hospitals, one—MSH-Covington Hospital—is CN approved, but not operational.<sup>4</sup> The number of ORs, but not the procedures will be counted for this hospital. For the remaining four operational hospitals, all known OR capacity and inpatient / mixed-use procedures are included in the methodology calculations for the planning area.

<sup>4</sup> CN #1437 issued to MultiCare Health System on January 7, 2011.

Of the 16 ASCs shown above, all—including the applicant’s ASC—are located within a solo or group practice (considered an exempt ASC) and the use of these ASCs is restricted to physicians that are employees or members of the clinical practices that operate the facilities. Therefore, these 16 facilities do not meet the ASC definition found in WAC 246-310-010. For exempt ASCs, the utilization, but not ORs, is included in the methodology for the planning area.

To assist in its application of the numeric methodology, on July 17, 2012, the department requested utilization information from each of the operational facilities identified above, except the applicant. For the four operational hospitals, none submitted a completed survey. While FHS provided comments, a completed survey was not included in the comments. For the 20 ASCs, two completed and returned a survey.<sup>5</sup>

To apply the numeric methodology, the department relied on its survey results and data obtained from the Department of Health internal database.<sup>6</sup> The assumptions used by the department in the methodology are shown below.

**Table 2  
Department’s Methodology Assumptions and Data**

| <b>Assumption</b>                           | <b>Data Used</b>  |
|---|---|
| Planning Area                               | Southeast King  |
| Population Estimates and Forecasts          | Claritas population data:<br>Year 2011 – 445,998<br>Year 2015 – 524,190   |
| Use Rate                                    | Divide calculated surgical cases by 2011 populations results in the service area use rate of 118.550/1,000 population |
| Percent of surgery ambulatory vs. inpatient | Based on DOH survey and ILRS data, 83.52% ambulatory (outpatient) and 16.48% inpatient                                |
| Average minutes per case                    | Based on DOH survey and ILRS data<br>Outpatient cases = 50.63 minutes;<br>inpatient cases 100 minutes                 |
| OR Annual capacity in minutes               | 68,850 outpatient surgery minutes; 94,250 inpatient or mixed-use surgery minutes (per methodology in rule)            |
| Existing providers/ORs                      | Based on listing of southeast King County providers.<br>0 dedicated outpatient ORs and 14 mixed use ORs               |

The department’s application of the numeric methodology based on the assumptions described above indicates a need for 38.16 outpatient ORs in year 2015. The department’s methodology is Appendix A attached to this evaluation.

<sup>5</sup> Completed surveys submitted by Sports Medicine Center Day Surgery in Renton and Virginia Mason ASC in Federal Way.

<sup>6</sup> The Department of Health’s internal data base is Integrated Licensing & Regulatory System, known as ILRS.

During the review of this application, only FHS submitted public comments related to this sub-criterion. The comments related to VPSCA's application of the numeric methodology and the number of ORs counted in each hospital within the planning area. Even though the department did not consider any of the applicant's five methodologies to be reliable, specific hospital OR capacity comments raised by FHS are addressed below. [source: FHS public comment received October 11, 2012]

#### Hospital OR Capacity

FHS criticized the applicant's OR count for the hospitals in the planning area. Of the five hospitals located, or to be located, in the planning area, FHS owns two: St. Elizabeth in Enumclaw and St. Francis in Federal Way. FHS provided the OR capacity, but not the number of procedures for both of these hospitals. As a result, the department relied on 2011 quarterly data for the number of procedures.

FHS also provided a 'corrected count' of ORs for both MultiCare Health System facilities—Auburn Regional Medical Center and Covington Hospital. Since FHS is not affiliated with MHS, the department will not rely on FHS data for those facilities. For Auburn Regional Medical Center, the department relied on 2011 quarterly data for the number of procedures. The OR count at Auburn Regional Medical Center is unknown. For Covington Hospital, since the facility is not operational, the department did not apply a number of procedures for this facility. According to historical CN files, MHS proposed 3 ORs would be located at this hospital.

FHS also provided 'corrected data' for Valley Medical Center in Renton. Since FHS is not part of Valley Medical Center, the department will not rely on FHS's data for this hospital. For Valley Medical Center, the department relied on 2011 quarterly data for the number of procedures. The OR count at Valley Medical Center is unknown.

In summary, based on the department's numeric methodology, need for additional OR capacity in southeast King County is justified.

#### WAC 246-310-270(6)

WAC 246-310-270(6) requires a minimum of two ORs in an ASC. The exempt ASC was constructed to accommodate three ORs, however, only one of them is operational at this time. By the end of the third year of operation, VPSCA expects to equip and begin using all three ORs. [source: Application, p9 and Attachment II-J] This standard is met.

In summary, based on the department's application of the numeric methodology and the applicant's ability to meet the standard above, **this sub-criterion is 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.

The applicant is a new provider to health care services in Washington State. As an exempt ASC, VPSCA is not required to meet the access to care standard stated above. As a CN approved ASC, VPSCA must demonstrate that it would be available to all residents of the

planning area, including low-income, racial and ethnic minorities, handicapped and other underserved groups. VPSCA must also participate in the Medicare and Medicaid programs and commit to providing a percentage of charity care in the planning area.

#### Admission Policy

To determine whether all residents of the service area would have access to the proposed outpatient services, the department requires an applicant 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. The admission policy must also include language to ensure all residents of the service area would have access to services. This is accomplished by providing an admission policy that states patients would be admitted without regard to race, ethnicity, national origin, age, sex, pre-existing condition, physical, or mental status.

To demonstrate compliance with this sub-criterion, VPSCA provided a draft admission policy that would be used at the ASC. The draft policy outlines the process and criteria that would be used to admit patients for treatment. The draft policy also includes the appropriate non-discrimination language required by the department. [source: August 29, 2012, supplemental information, SR-1]

#### Medicare and Medicaid Programs

The department uses Medicare certification to determine whether the elderly would have access, or continue to have access, to the proposed services. To demonstrate compliance with this sub-criterion, the applicant provided its projected source of revenues by payer. Medicare revenues would be 10% of the total revenues at the ASC. Additionally, the financial data provided in the application shows Medicare revenues. [source: Application, Attachment II-B and August 29, 2012, supplemental information, p2]

The department uses the facility's Medicaid eligibility or contracting with Medicaid to determine whether low-income residents would have access to the proposed services. The applicant states that the majority of its patients are currently Medicaid eligible and approval of this project would not change this payer percentage. The projected sources of Medicaid revenue is 65%. Additionally, the financial data provided in the application shows Medicaid revenues. [source: Application, Attachment II-B & August 29, 2012, supplemental information, p2]

#### Charity Care Policy

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 this sub-criterion, VPSCA provided a copy of its draft charity care policy. The draft policy includes the appropriate non-discrimination language as required and outlines the process one must use to obtain charity care at the ASC. The pro

forma financial documents provided in the application also include a charity care ‘line item.’ [source: Application, Attachments II-B & III-F]

WAC 246-310-270(7)

WAC 246-310-270(7) requires that ASCs shall implement policies to provide access to individuals unable to pay consistent with charity care levels reported by the hospitals affected by the proposed ASC. For charity care reporting purposes, the Department of Health’s Hospital and Patient Data Systems (HPDS), divides Washington State into five regions: King County, Puget Sound, Southwest, Central, and Eastern. VPASA would be located in Auburn, within King County. Currently, there are 22 hospitals either operating, or approved to operate, in King County. Of those, 5 are within the southeast King ASC planning area and could be affected by approval of this project. Four of the five are currently operating, and one is CN approved, but not yet operational.<sup>7</sup> The four operating hospitals are shown below.

| Hospitals / City                            |
|---|
| FHS-St. Francis Hospital / Federal Way      |
| FHS-St. Elizabeth Hospital / Enumclaw       |
| Valley Medical Center / Renton              |
| MHS-Auburn Regional Medical Center / Auburn |

For this project, the department reviewed the most recent three years of charity care data for the 21 existing hospitals currently operating within King County and the four hospitals currently operating in the southeast King County planning area. The three years reviewed are 2008, 2009, and 2010. Below is a comparison of the average charity care for the King County, the four hospitals in southeast King County combined, and VPSCA projected. [source: 2008-2010 HPDS charity care summaries]

**Table 3  
Charity Care Percentage Comparisons**

|  | % of Total Revenue | % of Adjusted Revenue |
|--|--------------------|-----------------------|
| King County (less Harborview) <sup>8</sup> | 1.51%              | 2.69%                 |
| Four Hospitals Combined                    | 1.66%              | 2.74%                 |
| VPSCA Projected                            | 2.00%              | 8.00%                 |

As shown in the table above, the regional average is slightly lower than the combination of the four operating hospitals. VPSCA proposes to provide a greater percentage of charity care than both the regional average and the combined four hospitals.

Since VPSCA is an exempt ASC, it did not undergo any review of its charity care policies, procedures, or percentages. To ensure that appropriate charity care percentages would be

<sup>7</sup> MultiCare Health System’s Covington Hospital is not yet operational.

<sup>8</sup> Harborview Medical Center is subsidized by the state legislature to provide charity care services. Charity care percentages for Harborview make up almost 50% of the total percentages provided in the King County Region. Therefore, for comparison purposes, the department excluded Harborview Medical Center’s percentages.

provided by VPSCA, if this project is approved, the department would attach a condition requiring VPSCA to provide charity care at certain percentages.

VPSCA provided a draft Admission Policy and draft Charity Care Policy. If this project is approved, department would also attach conditions requiring the applicant to provide final policies. With the three conditions identified above, the department concludes that all residents of the service area would have access to the proposed ASC. **This sub-criterion is met.**

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

Based on the source information reviewed and the applicant's agreement to the conditions identified in the 'conclusion' section of this evaluation, the department determines that VP Surgery Center of Auburn LLC's project has 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.*

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

To evaluate this sub-criterion, the department first reviewed the assumptions used by VPSCA to determine the projected number of procedures for the ASC. The assumptions are summarized below. [source: Application, Attachment IV-A]

- As a CN exempt ASC, the types of procedures are limited to the pediatric oral/dental surgeries performed by the two owning physicians. The projected number of pediatric oral/dental procedures was based on four months of operating history at the ASC. [This application was submitted in June 2012, after four months of operation.]
- ENT procedures are expected to begin in April 2013, shortly after CN approval. The number of ENT procedures is based on the projected volumes by the physicians who have expressed interest in using the ASC. ENT procedures are expected to be about 5% of the total surgeries in year one (2013) and increase to 11% of the total surgeries by the end of the third full year of operation (2016).
- Orthopedic and plastic surgeries are expected to begin in year 2014. The number of surgeries is also based on the projected volumes by the physicians who have expressed interest in using the ASC. These surgeries are expected to be about 3% of the total surgeries in year 2014 and increase to almost 7% of the total surgeries in year 2016.

Using the assumptions stated above, VPSCA's projected number of procedures by year is shown on the following page.



**Table 4**  
**VPSCA Projected Number of Procedures**

| <b>Type of Procedure</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> |
|--------------------------|-------------|-------------|-------------|-------------|
| Pediatric oral/dentistry | 2,000       | 2,748       | 2,830       | 2,972       |
| ENT                      | 105         | 210         | 360         | 420         |
| Orthopedic/Plastic       | 0           | 90          | 180         | 240         |
| Total Procedures         | 2,105       | 3,048       | 3,370       | 3,632       |

As shown in the table above, the majority of procedures to be provided at the ASC are expected to be pediatric oral/dentistry for all years shown. [source: Application, Attachment IV-A]

Franciscan Health System (FHS) public comments

During the review of this project, FHS provided comments related to the types of procedures to be provided at the ASC. Specifically, FHS stated it would support a conditional CN for pediatric dentistry only. [FHS public comments received October 11, 2011, pp1-4]

In response to the comments provided by FHS above, VPSCA provided the statements summarized below.

VP Surgery Center of Auburn rebuttal comments

[source: VPSCA rebuttal comments received November 19, 2012, p2]

VPSCA acknowledged the support of FHS related to pediatric dentistry. The applicant also asserted that numeric need for additional ORs in the southeast King planning area results in need for an ASC with the capabilities to provide a wide-variety of services.

Department's Review of the Comments

Page 10 of the application identified the types of procedures that VPSCA expected to be provided at the ASC. In addition to the pediatric oral/dentistry already provided, ENT, orthopedic, plastic surgery, and general surgery would be added. During the review of this application, the department required VPSCA to clarify whether any other types of procedures would be added. While VPSCA did not identify any other procedures, the following statements were meant to clarify this issue:

*“...there is significant shortage of dedicated outpatient ORs in the southeast King planning area. Further, in Table 2 [of the application] you will note that there are no CN approved ‘freestanding’ facilities in the area. In addition, there is tremendous uncertainty of tomorrow’s healthcare infrastructure requirements. For these reasons, the applicant would like to preserve all options to future surgical utilization.”*

The department requires an applicant to identify the specific types of procedures that would be provided at an ASC. This allows a complete and comprehensive review of the application by the department, interested or affected persons, and the community. The types of procedures also directly relate to the financial portion of the review as shown in this evaluation. For these reasons, the department does not allow applicants to ‘keep the options open’ and possibly expand to other types of procedures once the facility is operational.

A review of the documents and rationale provided in the VPSCA application shows that the application was submitted primarily to allow other physicians' access to the ASC that are not part of the VPSCA group practice. This is especially demonstrated in the small number of procedures that are not pediatric oral/dentistry procedures. By the end of year 2016, the pediatric oral/dentistry procedures are expected to be 81% of the total.

While it would be ideal if an applicant could identify the physicians that would use the facility during the review, most times this type of commitment by other physicians is unlikely. Within the application, VPSCA provided the assumptions used to determine the types and number of procedures that would be provided at the ASC. For ENT, orthopedic, and plastic, the assumptions appear to be reasonable and conservative.

The applicant did not identify what types of procedures would be included in 'general surgery.' Additionally, VPSCA did not provide any assumptions used to project general surgery or identify the projected number of general surgeries, if this application is approved, the department would attach a condition limiting the types of procedures to ENT, orthopedic, plastic surgery, and pediatric oral/dentistry.

If approved, VPSCA anticipates commencement and completion within six months of approval. Under this timeline, year 2013 would be a partial year of operation, and 2014 would be the ASC's first full calendar year of operation. Year 2016 is full year three. VPSCA's projected revenue, expenses, and net income using calendar years is shown below. [source: Application, Attachments II-B through II-E]

**Table 5  
Calendar Years 2013 through 2016 Projected Revenue and Expense Statements**

|                    | <b>CY 2013<br/>Partial Year</b> | <b>CY 2014<br/>Full Year 1</b> | <b>CY 2015<br/>Full Year 2</b> | <b>CY 2016<br/>Full Year 3</b> |
|--------------------|---------------------------------|--------------------------------|--------------------------------|--------------------------------|
| Net Revenue        | \$ 1,569,191                    | \$ 2,417,835                   | \$ 2,880,339                   | \$ 3,180,798                   |
| Total Expenses     | \$ 1,133,320                    | \$ 1,912,472                   | \$ 2,268,556                   | \$ 2,467,028                   |
| Net Profit /(Loss) | \$ 435,871                      | \$ 505,363                     | \$ 611,783                     | \$ 713,770                     |

The 'Net Revenue' line item is gross revenue minus any deductions for charity care, bad debt, and contractual allowance. The 'Total Expenses' line item includes salaries and wages, rent, supplies, and depreciation. As shown above, VPSCA projected net profits in all projected years.

The ASC would remain at its current location at 1102 – 15<sup>th</sup> Street Southwest, #200, in Auburn [98001]. VPSCA provided a copy of the Master Lease Agreement between Fana Auburn 234, LLC (landlord) and VP R/E, LLC (tenant). [source: Application, Attachment II-L] The lease agreement is for 15 years beginning June 8, 2011, identifies a \$0.50 per square foot [6,500 sf] cost increase each year beginning in year 3 (June 2014), and outlines roles/responsibilities of both entities. The lease agreement allows for the establishment of a healthcare facility at the site. The pro forma Revenue and Expense Statements summarized in Table 5 above include a 'rent' line item and annual cost increases for the ASC.

Section 12.4 of the lease agreement allows the tenant (VP R/E, LLC) to assign or sublet a portion of the premises to a ‘parent, subsidiary, affiliate, division, or other entity controlled by the tenant.’ VPSCA also provided a draft sub-lease agreement between VP R/E, LLC and VP Surgery Center of Auburn, LLC. This agreement is for approximately 8 years for 6,500 sf of space. The basic monthly rent is the same as the Master Lease Agreement with the same increases and timelines for increases. [source: Application, Attachments II-M] Since this agreement is a draft, if this project is approved, the department would require VPSCA to provide a copy of the signed, executed lease agreement consistent with this draft agreement.

The physician owners of VPSCA are Ellen Polsky, DDS and Mahadeep Virk, DMD. Dr. Polsky has agreed to provide medical directorship for the ASC. Since Ellen Polsky is an owning physician, no medical director agreement would be established and no additional compensation will be provided for the services. VPSCA provided a medical director job description with roles and responsibilities for review. Information in the document is consistent with medical director responsibilities reviewed in past CN applications. [source: August 29, 2012, supplemental information, p4 and SR-4]

On November 28, 2011, VPSCA’s two owning physicians—Drs. Polsky and Virk—entered into a Management Services Agreement with Strategic Ancillaries, LLC for business management services, billing services, and consulting services. The agreement commenced on January 1, 2012, and continues for five years.<sup>9</sup> All costs associated with the agreement are included in the pro forma financial statements provided in the application. [source: Application, Attachments II-B through II-E and Attachment V-A]

In addition to the projected Revenue and Expense Statements shown above, VPSCA provided the projected Balance Sheets using the same calendar years. Full year one, (2014) and three (2016) are shown below and continuing on the following page. [source: Application, Attachment IVI & IVK]

**Tables 6**  
**VP Surgery Center of Auburn Forecasted Balance Sheets**  
**Full Calendar Year One - 2014**

| <b>Assets</b>            |                     | <b>Liabilities</b>                  |                     |
|--------------------------|---------------------|-------------------------------------|---------------------|
| Current Assets           | \$ 1,045,264        | Current Liabilities                 | \$ 112,388          |
| Accumulated Depreciation | \$ 606,887          | Long Term Debt                      | \$ 872,464          |
| Fixed Assets             | \$ 1,520,205        |                                     |                     |
| Board Designated Assets  | \$ 378,828          | <b>Equity</b>                       | <b>\$ 2,566,332</b> |
| <b>Total Assets</b>      | <b>\$ 3,551,184</b> | <b>Total Liabilities and Equity</b> | <b>\$ 3,551,184</b> |

<sup>9</sup> Consistent with the consulting services identified in the agreement, Strategic Ancillaries, LLC submitted this application on behalf of VPSCA.

**Full Calendar Year Three – 2016**

| <b>Assets</b>            |                     | <b>Liabilities</b>                  |                     |
|--------------------------|---------------------|-------------------------------------|---------------------|
| Current Assets           | \$ 2,376,871        | Current Liabilities                 | \$ 113,874          |
| Accumulated Depreciation | \$ 834,567          | Long Term Debt                      | \$ 640,206          |
| Fixed Assets             | \$ 1,529,363        |                                     |                     |
| Board Designated Assets  | \$ 378,818          | <b>Equity</b>                       | <b>\$ 4,364,539</b> |
| <b>Total Assets</b>      | <b>\$ 5,119,619</b> | <b>Total Liabilities and Equity</b> | <b>\$ 5,119,619</b> |

Because the ASC has been operational for less than one year, it is still working toward financial solvency. The balance sheets above show that the ASC would be operating with little liabilities. This is typical of ASC operations that have been reviewed by the department. The balance sheets above show that the ASC would be financially stable through full calendar year 2016.

Based on the source information above, the department concludes that the immediate and long range capital and operating costs of the project can be met. **This sub-criterion is 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.*

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

As previously stated, the estimated capital expenditure for establishing the exempt ASC in 2012 was \$2,127,221. Even though the dollars have already been expended, since the exempt ASC has been operational for less than 24 months, the capital costs are required to be included in this application. [source: Application, p28]

Since the ASC has been operational since February 2012, VPSCA provided projected payer mix based on its historic payer mix. The table below shows the expected payer mix for the ASC. [source: August 29, 2012, supplemental information, p2]

**Table 7  
VP Surgery Center of Auburn Payer Mix**

| <b>Payer Source</b>                      | <b>Percentage</b> |
|--|-------------------|
| Medicare                                 | 10.0%             |
| Medicaid                                 | 65.0%             |
| Commercial/Other Insurance <sup>10</sup> | 25.0%             |
| <b>Total</b>                             | <b>100.0%</b>     |

<sup>10</sup> ‘Other’ payers include Blue Cross, Premera, and other private insurers.

As shown above, the majority of the ASC's payer source has been, and would continue to be, Medicaid insurance. Considering the types of procedures historically provided at the ASC, this large payer source is expected.

In response to this sub-criterion, VPSCA provides the following statements:

*"The current exempt facility serves exclusively the needs of pediatric patients requiring extensive oral care and as such has no Medicare patients. Looking ahead, once the facility is granted a CN, the applicant would continue to serve that patient demographic. Table 4 [in the application] contemplates serving a small Medicare population as the surgical services are broadened to include ENT, orthopedics, and plastic surgery."*

[source: August 29, 2012, supplemental information, pp1-2]

Since the majority of the ASC's payer source has been Medicaid and reimbursement for those services are on a fixed rate, the department does not expect approval of this project to result in an unreasonable impact to costs or charges. For the remaining 35%, Medicare makes up 10% of the payer mix is also reimbursed at a fixed rate. The remaining 25% would be derived through a variety of reimbursement sources.

Based on the information provided, the department concludes that the costs of this project would not result in an unreasonable impact to the costs and charges for health care services. **This sub-criterion is met.**

*(3) The project can be appropriately financed.*

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

Even though the dollars for this project have already been expended, VPSCA provided a breakdown of the costs, which is shown in the table below. [source: Application, p28]

**Table 8  
VPSCA Capital Costs**

| <b>Item</b>                       | <b>Cost</b>         | <b>% of Total</b> |
|-----------------------------------|---------------------|-------------------|
| Building Construction             | \$ 1,198,585        | 56.4%             |
| Fixed Equipment                   | \$ 296,803          | 14.0%             |
| Associated Fees <sup>11</sup>     | \$ 361,818          | 16.9%             |
| Financing Cost & Interim Interest | \$116,000           | 5.5%              |
| State Sales Tax                   | \$ 154,015          | 7.2%              |
| <b>Total Project Cost</b>         | <b>\$ 2,127,221</b> | <b>100.0%</b>     |

<sup>11</sup> 'Associated Fees' include architect, engineering, CMS survey, CN DOR & application fees, city inspection fees, DOH licensure fees, and consulting fees.

The capital expenditure was financed by the two owning physicians of VPSCA. Documentation provided in the application demonstrates that the owners had the funds available and financed the project in its entirety. [source: August 29, 2012, supplemental information, SR-2]

Based on the information, the department concludes the funding for this project is available. **This sub-criterion is met.**

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

Based on the source information reviewed and the applicant’s agreement to the conditions identified in the ‘conclusion’ section of this evaluation, the department determines that VP Surgery Center of Auburn, LLC’s project has met the structure and process of care criteria in WAC 246-310-230.

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

WAC 246-310 does not contain specific WAC 246-310-230(1) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what specific staffing patterns or numbers of FTEs that should be employed for projects of this type or size. Therefore, using its experience and expertise the department compared the proposed project’s source of financing to those previously considered by the department.

Since the exempt ASC is already operational, all key staff is in place. VPSCA expects to begin providing ENT services in 2013 and orthopedic and plastic surgery in year 2014. The applicant project a minimal increase in staff that is directly related to its projected increase in procedures for years 2013 through 2015. The table below summarizes the current FTEs and proposed FTEs for current year 2012 through full year 2015. [source: Application, p33]

**Table 9  
VPSCA Current and Proposed FTEs Years 2012-2015**

| <b>Staff</b>       | <b>Current Year 2012</b> | <b>Year 1 2013 Increases</b> | <b>Year 2-2014 Increases</b> | <b>Year 3-2015 Increases</b> | <b>Total</b> |
|--------------------|--------------------------|------------------------------|------------------------------|------------------------------|--------------|
| RNs                | 2.00                     | 0.00                         | 0.50                         | 0.50                         | 3.00         |
| RN Manager         | 1.00                     | 0.00                         | 0.00                         | 0.00                         | 1.00         |
| Surgery Techs      | 3.00                     | 0.00                         | 0.00                         | 0.00                         | 3.00         |
| Reception          | 1.00                     | 0.00                         | 0.50                         | 0.50                         | 2.00         |
| Anesthesia         | 0.00                     | 0.00                         | 1.50                         | 0.50                         | 2.00         |
| <b>Total FTE's</b> | <b>7.00</b>              | <b>0.00</b>                  | <b>2.50</b>                  | <b>1.50</b>                  | <b>11.00</b> |

Since the ASC already has all the majority of the key staff in place, VPSCA was able to provide names and professional license numbers for all key staff. [source: August 29, 2012, supplemental information, pp4]

Based on the information, the department concludes that sufficient staffing is available or can be recruited. **This sub-criterion is met.**

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

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

VPSCA has been an existing provider of healthcare services in King County since February 2012. This project proposes to establish an ASC in Auburn by converting an existing exempt ASC. The ASC is located, and will remain in, southeast King County. To address the sub-criterion, VPSCA provided the following statements. [source: Application, p35]

*"The proposed project will, in part, fill a void in the planning area, providing enhanced access to a truly freestanding facility. The addition of this service will promote continuity in the service area, adding a non-hospital owned, independent facility, which is not currently available to the defined population."*

Since the ASC is operational as an exempt facility, some support and ancillary services have already been established. As a CN approved facility, transfer agreements are required. VPSCA expects to enter into a transfer agreement with one of three nearby hospitals:

- MultiCare Health System's Auburn Regional Medical Center in Auburn
- MultiCare Health System's Good Samaritan Hospital in Puyallup; or
- Franciscan Health System's St. Francis Hospital in Federal Way.

To demonstrate compliance with this sub-criterion, VPSCA provided a draft patient transfer agreement that it would use with one of the hospitals. The draft agreement identifies roles and responsibilities for both entities and does not require any compensation by either VSPCA or the hospital. If this project is approved, the department would attach a condition to the approval requiring the applicant to provide an executed patient transfer agreement with one of the three hospitals identified above.

VPSCA also provided a copy of the existing Operating Agreement for VP R/E, LLC, which is the real estate corporation used by the applicant. The agreement was effective beginning March 23, 2011. This Operating Agreement states that the corporation shall continue until dissolved. The agreement identifies each member's capital contributions and outlines the process to be used for profit sharing and distribution of funds and assets. [source: Application, Attachment I-B]

VPSCA also provided a draft Operating Agreement for the corporation of VP Surgery Center of Auburn, LLC. The purpose of this draft agreement is to 'establish, own, and operate an ambulatory surgery center.' This draft Operating Agreement states that the corporation shall continue until dissolved. The agreement identifies each member's capital contributions and



outlines the process to be used for profit sharing and distribution of funds and assets. [source: Application, Attachment I-B] Since this agreement is a draft, if this project is approved, the department would require VPSCA to provide a copy of the executed Operating Agreement consistent with this draft agreement.

Provided that VPSCA agrees to the conditions related to the transfer agreement and the operating agreement, **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.

WAC 246-310 does not contain specific WAC 246-310-230(3) criteria as identified in WAC 246-310-200(2) (a) (i). There are known recognized standards as identified in WAC 246-310-200(2) (a) (ii) and (b) that a facility must meet when it is to be Medicare certified and Medicaid eligible. As part of its review, the department must conclude that the proposed service would be operated in a manner that ensures safe and adequate care to the public.<sup>12</sup> Therefore, using its experience and expertise the department assessed the applicant's history in meeting these standards at other facilities owned or operated by the applicant.

VPSCA has been is a provider health care services in Washington State since February 2012. VPSCA or its owning physicians do not have any other healthcare facilities in Washington or any out-of-state facilities. As a dental facility, VPSCA is not required to be licensed as an ASC in Washington State. [source: Revised Code of Washington 70.230.040(2)] If this project is approved, VPSCA would expand its services beyond dentistry and Washington State licensure is required.

In response to this sub-criterion, the applicant states it intends to comply with all state and federal laws, including ASF/ASC licensure. VPSCA provided a copy of its Department of Health, Construction Review Services documentation to demonstrate compliance with all construction requirements for an ASC.<sup>13</sup> [source: Application, Attachment V-D]

VPSCA also identified the names and professional license number for all existing staff of the ASC, including anesthesiologists currently under contract. A compliance history review of all staff did not show any current or past enforcement actions. [source: Compliance history provided by Medical Quality Assurance Commission]

Given the compliance history of the staff associated with VPSCA, the department concludes there is reasonable assurance that the ASC would be operated in conformance with state and federal regulations. **This sub-criterion is met.**

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<sup>12</sup> Also WAC 246-310-230(5).

<sup>13</sup> CRS #60228715.

- (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.

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

To demonstrate compliance with this sub-criterion, VPSCA provided the following statements. [source: Application, 35]

*"Prior to CN approval, the applicant is operating as an exempt facility, and as a result, will have in place a variety of established relationships with local hospitals and healthcare providers. These relationships will be maintained as the facility transitions to the new business model."*

Since the ASC is operational as an exempt facility, working relationships with existing healthcare facilities have already been established. Since the ASC will not relocate, the department expects these relationships to continue. Further, nothing in the documents provided by VPSCA and reviewed by staff suggests that approval of this project would change these relationships. [source: CN historical files]

Based on the source information provided above and the applicant's agreement to the conditions identified in the 'conclusion' section of this evaluation, the department concludes that approval of this project would not cause unwarranted fragmentation of the existing healthcare system. **This sub-criterion is met.**

- (5) There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations.

This sub-criterion is evaluated in sub-section (3) above, and no public comments were submitted for this sub-criterion for this application. **This sub-criterion is met.**

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

Based on the source information reviewed and the applicant's agreement to the conditions identified in the 'conclusion' section of this evaluation, the department determines that VP Surgery Center of Auburn, LLC's project has 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.*

WAC 246-310 does not contain specific WAC 246-310-240(2)(a) criteria as identified in WAC 246-310-200(2)(a)(i). There are known minimum building and energy standards that healthcare facilities must meet to be licensed or certified to provide care. If built to only the minimum standards all construction projects could be determined to be reasonable. However, the department, through its experience knows that construction projects are usually built to exceed these minimum standards. The department considered information in the applications that addressed the reasonableness of their construction projects that exceeded the minimum standards. Therefore, using its experience and expertise the department assessed the materials contained in the application.

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

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

Step three of this assessment is to apply any service or facility specific criteria (tie-breaker) contained in WAC 246-310. The tiebreaker criteria are objective measures used to compare competing projects and make the determination between two or more approvable projects which is the best alternative. If WAC 246-310 does not contain any service or facility criteria as directed by WAC 246-310-200(2)(a)(i), then the department would look to WAC 246-310-240(2)(a)(ii) and (b) for criteria to make the assessment of the competing proposals. If there are no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b), then using its experience and expertise, the department would assess the competing projects and determine which project should be approved.

#### Step One

For this project, VP Surgery Center of Auburn, LLC's has met the review criteria under WAC 246-310-210, 220, 230, and the ASC methodology and standards under WAC 246-310-270. Therefore, the department moves to step two below.

### Step Two

Before submitting this application, VPSCA only considered the option of status quo or 'do nothing.' This option ultimately results in continuing to operate the ASC under the exemption. VPSCA states that the ASC is not currently utilized at full capacity and in order to allow physicians not associated with the group practice access to the ASC, a Certificate of Need is required. To best utilize the ASC and to ensure that the ASC continues to remain in operation in the future, this option was rejected. [source: Application, pp37-38 and August 29, 2012, supplemental information, p5]

Once VPSCA determined that it wanted to allow physicians not part of the practice access to the exempt ASC, the only option it had is to submit a Certificate of Need application. The department did not identify any other options that should have been considered by VPSCA. Taking into account that the majority of the procedures provided at the exempt ASC are pediatric oral/dentistry for Medicaid eligible patients and the impact of closing this ASC would have on residents of the community, the department concludes that VPSCA chose the best option available.

### Step Three

This step is used to determine between two or more approvable projects which is the best alternative. Since VPSCA is the only applicant requesting to establish an ASC in southeast King County, this step does not apply.

As stated in the need section of this evaluation, the department concluded that VPSCA demonstrated that approval of its ASC would not affect current OR supply or projected need in the southeast King planning area. The facility is already operational and currently focuses on pediatric oral/dental services. VPSCA does not intend to change the site or physician access for the ASC. As a result, approval of this project is reasonable and a good resource for the community. **This sub-criterion is met.**

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

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

This sub-criterion is evaluated within the financial feasibility criterion under WAC 246-310-220(2). Based on that evaluation, the department concludes that **this sub-criterion is met.**

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

This sub-criterion is evaluated within the financial feasibility criterion under WAC 246-310-220(2) **and is met.**