STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT

In Re:	)	Master Case No. M2012-102
	)	
EASTSIDE MEDICAL GROUP	)	FINDINGS OF FACT,
CERTIFICATE OF NEED TO	)	CONCLUSIONS OF LAW
ESTABLISH AN AMBULATORY	)	AND FINAL ORDER
SURGICAL FACILITY IN ISSAQUAH,	)	
	)	
SWEDISH HEALTH SERVICES, a	)	
Washington nonprofit corporation,	)	
	)	
Petitioner.	)	
_____	)	

APPEARANCES:

Petitioner, Swedish Health Services (Swedish), by
Perkins Coie, LLP, per
Brian W. Grimm, Attorney at Law

Intervenor, Eastside Medical Group (Eastside), by
Freimund Jackson Tardif & Benedict Garrett, PLLC, per
Jeff Freimund, Attorney at Law

Department of Health Certificate of Need Program (Program), by
Office of the Attorney General, per
Richard A. McCartan, Assistant Attorney General

PRESIDING OFFICER: John F. Kuntz, Review Judge

A hearing was held in this certificate of need (CN) matter on November 27-28, 2012.[1] The issue at hearing was whether to grant the Eastside application to establish a two-operating room ambulatory surgical facility. Application granted.

[1] The term "certificate of need" is known by the abbreviation CN. It will be used in this decision.

ISSUES

Because of the prehearing determination that Eastside met all of the application criteria except "need" as defined by WAC 246-310-210 and WAC 246-310-270(9), the only issue at hearing is whether need exists for Eastside's proposed surgical facility in the East King County planning area. The issue also includes the analysis of whether extraordinary circumstances exist to grant the application in the event need is not proven.

SUMMARY OF THE PROCEEDINGS

At the hearing, the Program presented the testimony of Janis Sigman, Certificate of Need Program Manager. Swedish presented the testimony of Chuck Salmon, Chief Executive, Swedish/Issaquah Medical Group; and Frank Fox, Ph.D., CN Consultant. Eastside presented the testimony of Dr. Kallie Kang; and Jody Carona, Eastside's Consultant.

The following exhibits were admitted at hearing:

Program exhibits

P-1: The 434-page Administrative Record (AR) compiled by the Program related to the Eastside CN application[2]; and

P-2: Revised ASC Need Methodology calculation of Janis Sigman, dated November 19, 2012.

Swedish exhibits

S-1: Application record;

[2] References to the hearing transcript will use the abbreviation TR followed by the relevant page number.

S-2: Curriculum vitae of Frank Fox, Ph.D.;

S-4: CN Program's evaluation of Swedish's application to establish an ambulatory surgical facility in East King County planning area, April 17, 2008; and

S-5: Calculations of East King County planning area operating room need calculated by Frank Fox, Ph.D.

Eastside exhibits

E-1: The Administrative Record;

E-2: Snoqualmie Valley Hospital's website (Exhibit 5 to the deposition of Janis Sigman);

E-3: The exhibit included with the Janis Sigman deposition (specifically Exhibit 6); and

E-4: Need calculation of Jody Carona.

The parties submitted post-hearing briefs in lieu of closing arguments. *See* Prehearing Order No. 2; *see also* RCW 34.05.461(7).

I. FINDINGS OF FACT

1.1 On August 23, 2011, Eastside applied for a CN to establish a two-operating room ambulatory surgery center in Issaquah, Washington.

1.2 On January 25, 2012, the Program approved Eastside's application with conditions (providing charity care in compliance with policies; limiting Eastside's facility to two operating rooms; providing an executed copy of a Patient Transfer Agreement for the Program's review and approval prior to commencing service). Eastside notified the Program in writing that it would comply with the conditions on February 7, 2012. The Program issued CN #1462 to Eastside on February 10, 2012.

1.3 On February 16, 2012, Swedish filed an Application for Adjudicative Proceeding with the Adjudicative Service Unit to contest the Program's decision awarding CN #1462 to Eastside.

1.4 On October 31, 2012, the parties entered into a written stipulation that if need exists, then Eastside meets the remaining CN criteria of financial feasibility; structure and process of care; and cost containment. *See* WAC 246-310-220 through WAC 246-310-240.

1.5 The hearing was conducted on November 27-28, 2012. Much of the argument at the hearing centered on how to apply the WAC 246-310-270(9) methodology in this case.

1.6 On March 27, 2013, the Presiding Officer issued a Findings of Fact, Conclusions of Law and Order on Remand (Remand Order). The Presiding Officer did not decide the issue of whether a new facility was needed. Rather he made findings regarding how many operating rooms were available in the planning area and the number of surgeries arising from the available operating rooms for use in determining need using the WAC 246-310-270(9) methodology. The order remanded the matter to the Program to calculate whether need existed for Eastside's application for the ambulatory surgical facility based on the remand findings.

1.7 On May 10, 2013, the Program filed a Motion for Entry of Final Order, Following Remand, Approving Eastside Medical Group's Certificate of Need Application (Program Motion). As a part of the Motion, the Program requested the Presiding Officer reconsider his decision: (1) to include that the Children's Bellevue Ambulatory Surgical

Center (ASC) volume in the need calculation; and (2) to find that the Swedish Issaquah Hospital had 10 operating rooms (OR) rather than six.[3] Both Swedish and Eastside filed responsive pleadings following the Program's Motion, with the final pleading being filed on June 12, 2013. As a part of its responsive pleadings, Eastside provided some additional information regarding Children's Hospital surgical volumes.

1.8 On May 29, 2013, Swedish filed a Motion to Strike Eastside Medical Group's New Post-Hearing Evidence (Motion to Strike). In its Motion to Strike, Swedish argued that Eastside's responsive pleading relied on new evidence that was not part of the CN record in this matter (not presented during the November 27-28, 2012 hearing). Eastside filed its Response to the Motion to Strike on June 7, 2013, and requested the issuance of an order denying Swedish's Motion to Strike. Eastside argued that the evidence was timely submitted and should not be stricken, but should be given little weight (merely to show that Children's Hospital ASC projected surgery volumes were conservative estimates).[4]

1.9 A CN is a non-exclusive license for health care providers seeking to establish a new health care facility. The definition of health care facilities includes an ambulatory surgical facility. An ambulatory surgical facility consists of a minimum of two

[3] A motion for reconsideration is a remedy to request a review of a final order. *See* WAC 246-10-704. The Program's request is not a formal reconsideration as there is no final order. Having so stated, authority exists to review motions under WAC 246-10-602(1)(e). The Presiding Officer will rule on any request to "review" or "revise" of an earlier order pursuant to the WAC 246-10-602(1)(e) authority.

[4] An order striking the material will not be granted, as the Presiding Officer does not have the authority to alter a public record of a state agency. *See* WAC 246-10-114; see also chapter 42.56 RCW. Evidence that is offered in a CN case that is outside the snapshot in time and that is not relevant will not be given any weight.

operating rooms available for outpatient surgery. The term operating room is not specifically defined in the CN statutes or regulations. It can be defined as a room in which surgery (an invasive medical procedure that utilizes a knife, laser, heat, freezing, or chemicals to remove, correct, or facilitate the diagnosis or cure of a disease or injury) is performed on a patient. *See* RCW 70.230.010(7).

1.10 A surgery can be performed on an outpatient or inpatient basis. An outpatient surgery is where the surgery and post-surgical care will be performed on a patient and the patient will be released from care in less than 24 hours. An inpatient surgery is where the surgery and post-surgical care requires more than 24 hours. Inpatient operating rooms (operating rooms located in hospitals) can be used to perform both inpatient and outpatient surgery. When additional operating rooms are required in a planning area, WAC 246-310-270(5) specifies that a preference shall be given for dedicated outpatient operating rooms. WAC 246-310-270(5) does not specifically state the reason(s) for the preference. At least in part, the preference can be attributed to the reduced costs for surgeries performed in ambulatory surgical facilities.

Need

1.11 To determine if there is a need for operating rooms in a planning area[5] (here East King County), WAC 246-310-270(9) provides the method for calculating the need. The need methodology calculation consists of three steps: (1) determining what is the existing capacity of operating rooms in the planning area under WAC 246-310-270(9)(a); (2) anticipating the number of surgeries in the planning area

[5] *See* WAC 246-310-270(3). A planning area is a county or a portion of a county; when it is a portion of a county, it is defined by zip codes. See Application Record (AR) 20 and 389.

three years into the future under WAC 246-310-270(9)(b); and (3) determining whether the existing operating room capacity in the planning area is sufficient to accommodate the projected number of future surgeries under WAC 246-310-270(9)(c). The lower the existing capacity (supply) in step 1 and/or the greater the projected demand in step 2, the more likely there will be need in step 3. The need methodology calculation assumes the population in the planning area will increase. The parties used this increased population growth assumption in performing their respective need methodology calculations.

1.12 Completing the future need methodology calculation (the anticipated number of surgeries) requires the calculation of a number known as the "use rate" (the number of surgeries per every 1,000 individuals of the population within the planning area). The use rate is calculated by dividing the total number of surgeries performed in the base year by the total population of the planning area and multiplying that number by 1,000. For example: the use rate of 125.258/1,000. *See* Appendix 4-5 (which are incorporated as a part of this order.)

1.13 On its face, the WAC 246-310-270(9) methodology calculation appears to be a straight-forward process for the applicant. That is, the applicant simply inserts the appropriate number of existing operating rooms in the planning area (here, East King County) and the anticipated number of surgeries to determine whether need exists by the third year. However, the methodology is not so straight-forward. The parties involved in the application process in the current matter have contested the number of operating rooms and the number of surgeries in the planning area. *See* Exhibit P-2 (the

Program's Revised Need Calculation); Exhibit S-5 (the Swedish Second Revised Need Calculation); and Exhibit E-4 (the Eastside Need Calculation). The dispute of the parties includes a disagreement over which operating rooms and surgeries should be excluded as special purpose rooms (for example, open heart surgery and delivery rooms). *See* WAC 246-310-270(9)(a)(iv). This is important because surgeries performed in special purpose operating rooms are excluded from the need methodology calculation.

1.14 As stated in Paragraph 1.13 above, the parties disputed the number of dedicated outpatient and mixed-use operating rooms in the East King planning area. Following the hearing, the Presiding Officer determined the number of dedicated outpatient operating rooms (19) and mixed-use rooms (33).[6] In determining how many operating rooms to use in calculating the need methodology, the Presiding Officer finds:

A. Endoscopy rooms and pain treatment procedure rooms are "special purpose rooms" under WAC 246-310-270(9)(a)(iv) and are excluded from the need method calculations. The endoscopy procedures and pain treatment procedures are not considered surgeries and are excluded from the WAC 246-310-270(9) need methodology calculations.

[6] *See* Findings of Fact, Conclusions of Law and Order on Remand dated March 27, 2013, pages 11-16.

B. Consistent with the holding in *Overlake Hospital Association v. Department of Health*, 170 Wn. 2d 43 (2010),[7] the two operating rooms in the Children's Hospital ambulatory surgery center (ASC) are excluded from the supply side of the need methodology calculations.[8] The exclusion is based on the fact that the operating rooms are specifically built for children and cannot be used for adult surgeries. While adult surgeries cannot be performed in the Children's operating rooms, the opposite is not true; pediatric surgeries can be performed in "adult" operating rooms. Similar to the Washington Supreme Court's approach in *Overlake*, which counts the surgeries performed in exempt facilities in the methodology calculations, the pediatric surgeries should be counted in the need methodology calculations.

C. Having so stated, Seattle Children's ASC had no surgical volumes during the relevant period.[9] The Seattle Children's ASC had no surgical volumes

[7] The issue in the *Overlake* case was whether the exclusion of exempt operating rooms meant the exclusion of the surgeries performed in the exempt operating rooms in performing the WAC 246-310-270(9) need methodology calculations. The Washington Supreme Court (consistent with the Program's long-standing interpretation) held it did not. The *Overlake* Court reasoned that the language in RCW 70.38.015(1) set forth the overriding purpose of the CN program, namely promoting, maintaining and assuring access to health services. *Overlake*, 170 Wn. 2d at 55.

[8] It should be noted that the Program advised Eastside during the application process to exclude the two operating rooms at the Children's ambulatory surgical facility. *See* AR 387-388.

[9] The Program argues that it should not be required to impute a volume at a newly-approved ASC. *See* Program's Motion for Entry of Final Order, Following Remand, Approving Eastside Medical Group's Certificate of Need Application, page 2, lines 14-18 (May 10, 2013). The Presiding Officer agrees. Had there been a volume during the relevant snapshot in time, it would need to be included in the need methodology calculations. It does not matter whether the facility intended or did not intend to offer such surgery services to pediatric patients.

during the relevant time period here because it had not opened during the "snapshot in time."[10]

1.15 In the Order remanding this case back to the Program (Remand Order), the Presiding Officer instructed the Program to include 10 operating rooms for the Swedish Issaquah hospital in the need methodology calculation. A subsequent review of the hearing record actually shows that the Swedish Issaquah hospital facility had six open, equipped, and staffed operating rooms during the relevant snapshot in time.[11] The relevant portions from the hearing record include:

A. Testimony from Charles Salmon, the Chief Executive for Swedish Issaquah hospital, that the hospital had six operating rooms available to the public for general surgeries. TR 170, 193-194, 201-202, and 325.

B. When the Program evaluated the Eastside application in August 2011, the Swedish Issaquah hospital was still in Phase I of its project. Swedish identified that it had 14 operating rooms, with four of those rooms identified as either endoscopy or catheter rooms, during Phase I. AR 363. Of the remaining ten operating rooms, Mr. Salmon identified that six were available but that the remaining four could activated within a short period of time. TR 170. This was consistent with the number identified in Phase I of the Swedish

[10] Eastside offered evidence related to surgery volumes. *See* Eastside's Response to Motion for Entry of Final Order Following Remand, pages 4-7. Even though this evidence was offered for a limited basis, the Presiding Officer finds it is both outside the relevant "snapshot in time" period and submitted subsequent to the hearing. It will not be considered for that reason.

[11] The "snapshot in time" refers to the facts around the time the application is filed. *See University of Washington v. Department of Health*, 164 Wn. 2d 95, 103 (2008).

application and was also consistent with the line drawing submitted by Swedish with its application. AR 259 and 276. So there were six operating rooms, rather than ten, in existence at the time of Eastside application. The six operating rooms represent the "existing" capacity as required in WAC 246-310-270(9)(a).

C. By adjusting the calculations to reflect six operating rooms (rather than the ten specified in the Remand Order), there were 19 outpatient operating rooms and 29 mixed-use operating rooms in East King County for the relevant time period. With all other need methodology calculation criteria remaining the same (that is, the use rate, population, projected number of surgeries, and average time of surgeries), there is a need for more than two ambulatory surgical facility operating rooms in East King County.[12] In fact, the methodology calculation shows a shortage of 23.54 dedicated outpatient operating rooms in the planning area by 2015.

1.16 For purposes of the Eastside application, the parties do not dispute that the planning area is East King County.[13] The parties also do not dispute that the third year of operation is 2015.[14]

Eastside Application/Charity Care Access

1.17 The need determination requires that all residents of the service area are likely to have adequate access to the proposed health service. WAC 246-310-120(2).

[12] A copy of Appendix 4 and 5 are attached and incorporated into the Final Order.

[13] *See* WAC 246-310-270(3).

[14] *See* WAC 246-310-270(9)(b)(i).

Eastside provided a copy of the non-discrimination policy it created and approved .to serve as the admission policy for the proposed facility. AR 111-113. To show that low income residents would have access to the proposed facility, Eastside provided the facility's Medicaid eligibility or contracting with Medicaid to show its compliance with this criterion. AR 8 and 21; and AR 106-107.

1.18 For charity care purposes, the Department of Health's Hospital and Patient Data System (HPDS) divides Washington State into five regions; the relevant region for the Eastside application is King County. According to the 2007-2009 HPDS charity care data,[15] the three year average applicable for Eastside was 0.96 percent of the facility's total gross revenue and 1.55 percent of its adjusted net revenue. See AR 322. Eastside projected the three year average for total gross revenue was 0.74 percent; its projected three year adjusted net revenue was 2.45 percent. AR 322. Eastside agreed to meet the required charity care on February 1, 2012. AR 338-339. It was awarded CN #1462 on February 10, 2012. AR 346-349. Eastside meets the WAC 246-310-210(2) criteria.[16]

Financial Feasibility, Structure and Process of Care, and Cost Containment

1.19 In addition to showing need exists, an applicant for a CN for an ambulatory surgical facility must show that the proposed facility is financially feasible; meets the structure and process of care requirements; and meets the cost containment requirements set forth in WAC 246-310-220 through WAC 246-310-240. As stated in

[15] At the time of the application, year 2010 charity care data was unavailable.

[16] WAC 246-310-210 includes additional sub-criteria. *See* WAC 246-310-210(3) through (6). These sub-criteria are not applicable to the Eastside application.

Paragraph 1.4 above, the parties have stipulated that if Eastside meets the need requirement that it meets the other criteria. There is sufficient evidence in the application record to support this stipulation. *See* AR 323 through 330.

Extraordinary Circumstances[17]

1.20 The extraordinary circumstances section is found in WAC 246-310-270(4). It states:

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

Eastside argues that its application can be approved even if there is a surplus of outpatient operating rooms in the East King planning area due to extraordinary circumstances. Given the finding above that shows need exists in the East King County planning area, it is unnecessary to address the extraordinary circumstance offered by Eastside here.

II. CONCLUSIONS OF LAW

Evidence in Certificate of Need Decisions

2.1 The Department of Health is authorized and directed to implement the CN program. RCW 70.38.105(1). The applicant must show its application meets all of the applicable criteria. WAC 246-10-606(2). The standard of proof in CN matters is a preponderance of the evidence. *See* WAC 246-10-606. Admissible evidence in

[17] In its Motion, the Program stated that the Remand Order did not address the non-ordinary circumstances issue raised at the hearing. Given that the Remand Order was not the Final Order, it was unnecessary to address the issue at that time.

CN hearings is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1).

2.2 The Presiding Officer (on delegated authority from the Secretary of Health) is the agency's fact-finder and final decision maker. *DaVita v. Department of Health*, 137 Wn. App. 174, 182 (2007). As the final decision maker, the Presiding Officer engages in a *de novo* review of the record. *DaVita*, 137 Wn. App. At 182-183; *see also University of Washington Medical Center v. Department of Health*, 164 Wn. 2d 95, 103 (2008) (citing to the *DaVita* decision).[18] *De novo* review means the Presiding Officer reviews the application record, the hearing transcript and the closing briefs of the parties.

Certificate of Need Criteria

2.3 Pursuant to WAC 246-310-200(1), a determination whether to grant a CN application depends on whether the proposed project:

A. Is needed;
B. will foster containment of costs of health care;
C. is financial feasible; and
D. will meet the criteria for structure and process of care identified in WAC 246-310-230.

The general need criteria in WAC 246-310-210 states:

> The determination of need for any project shall be based on the following criteria.
>
> (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.

[18] The Presiding Officer considers the Program's written analysis but is not required to defer to it. *DaVita*, 137 Wn. App. at 182-183.

2.4 In addition to the general need criteria in WAC 246-310-210, an applicant must prove that the application meets the criteria in WAC 246-310-270(9), which is the methodology used to calculate whether need exists for an ambulatory surgical facility in the planning area. The parties have stipulated, and the Presiding Officer determined, that the criteria of financial feasibility; structure and process of care; and cost containment were met.[19]

Operating Room Methodology

2.5 WAC 246-310-270(9) states:

Operating room need in a planning area shall be determined using the following method:

(a) Existing capacity.

(i) Assume the annual capacity of one operating room located in a hospital and not dedicated to outpatient surgery is ninety-four thousand two hundred minutes. This is derived from scheduling forty-four hours per week, fifty-one weeks per year (allowing for five weekday holidays), a fifteen percent loss for preparation and clean-up time, and fifteen percent time loss to allow schedule flexibility. The resulting seventy percent productive time is comparable to the previously operating hospital commission's last definition of "billing minutes" which is the time lapse from administration of anesthesia until surgery is completed.

(ii) Assume the annual capacity of one operating dedicated to ambulatory surgery is sixty-eight thousand eight hundred fifty minutes. The deviation is the same as (a)(i) of this subsection except for twenty-five percent loss for prep/clean-up time and scheduling is for a thirty-seven and one-half hour week. Divide the capacity minutes by the average minutes per outpatient surgery (see (a)(vii) of this subsection). Where survey data are unavailable, assume fifty minutes per outpatient surgery, resulting in a capacity for one thousand three hundred seventy-seven outpatient surgeries per room per year.

[19] *See* Stipulation and Agreed Order Regarding Three CN Criteria dated October 31, 2013.

(iii) Calculate the total annual capacity (in number of surgeries) of all dedicated outpatient operating rooms in the area.

(iv) Calculate the total annual capacity (in number of minutes) of the remaining inpatient and outpatient operating rooms in the area, including dedicated specialized rooms except for twenty-four hour rooms. When dedicated emergency operating rooms are excluded, emergency or minutes should also be excluded when calculating the need in an area. Exclude cystoscopic and other special purpose rooms (e.g., open heart surgery) and delivery rooms.

(b) Future need.

(i) Project number of inpatient and outpatient surgeries performed within the hospital planning area for the third year of operation. This shall be based on the current number of surgeries adjusted for forecasted growth in the population served and may be adjusted for trends in surgeries per capita.

(ii) Subtract the capacity of dedicated outpatient operating rooms from the forecasted number of outpatient surgeries. The difference continues into the calculation of (b)(iv) of this subsection.

(iii) Determine the average time per inpatient and outpatient surgery in the planning area. Where data are unavailable, assume one hundred minutes per inpatient and fifty minutes per outpatient surgery. This excludes preparation and cleanup time and its comparable to “billing minutes.”

(iv) Calculate the sum of inpatient and remaining outpatient (from (b)(ii) of this subsection) operating room time needed in the third year of operation.

(c) Net need.

(i) If (b)(iv) of this subsection is less than (a)(iv) of this subsection, divide their difference by ninety-four thousand two hundred fifty minutes to obtain the area’s surplus of operating rooms used for both inpatient and outpatient surgery.

(ii) If (b)(iv) of this subsection is greater than (a)(iv) of this subsection, subtract (a)(iv) of this subsection from the inpatient component of (b)(iv) of this subsection and divide by ninety-four thousand two hundred fifty minutes to obtain the area’s shortage of inpatient operating rooms. Divide the outpatient component of (b)(iv) of this subsection by sixty-eight

> thousand eight hundred fifty to obtain the area's shortage of dedicated outpatient operating rooms.

2.6 Based on the Findings of Fact, Eastside has met its burden of proving by a preponderance of the evidence that its CN application meets the need criteria as set forth in WAC 246-310-210(1) and WAC 246-310-270(9).

2.7 In addition to the need criteria in WAC 246-310-210(1) and WAC 246-310-270(9), Eastside must meet the criteria in WAC 246-310-210(2). That subsection states in relevant part:

> (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.

2.8 Based on the Finding of Fact, Eastside has met its burden of proving by a preponderance of the evidence that its CN application meets the need criteria set forth in WAC 246-310-210(2).

2.9 WAC 246-310-220 requires a determination that an application meets the criteria for financially feasibility. Based on Findings of Fact 1.4 and 1.19, Eastside has met its burden of proving by a preponderance of the evidence that its CN application meets the financial feasibility criteria.

2.10 WAC 246-310-230 requires that a CN application meets the criteria for structure and process of care. Based on Findings of Fact 1.4 and 1.19, Eastside has met its burden of proving by a preponderance of the evidence that its CN application meets the structure and process of care criteria.

2.11 WAC 246-310-240 requires a determination that an application meets the cost containment criteria. Based on Findings of Fact 1.4 and 1.19, Eastside has met its burden of proving by a preponderance of the evidence that its CN application meets the cost containment criteria.

III. ORDER

Based on the foregoing Procedural History, Findings of Fact, and Conclusions of Law, the Eastside application to establish a two operating room ambulatory surgical facility in Issaquah, Washington is GRANTED.

Dated this 23___ day of July, 2013.

_____/s/_____
JOHN F. KUNTZ, Review Judge
Presiding Officer

NOTICE TO PARTIES

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); RCW 34.05.470. The petition must be filed within ten days of service of this Order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Certificate of Need Program
P.O. Box 47852
Olympia, WA 98504-7852

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-10-704. The petition is denied if the Presiding Officer does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while the petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at:
http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx