

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:)	
)	Master Case No. M2008-117826
SUNSHINE HEALTH FACILITIES, INC.,)	
CERTIFICATE OF NEED APPLICATION)	FINDINGS OF FACT,
TO ESTBALISH A MEDICARE)	CONCLUSIONS OF LAW,
CERTIFIED AND MEDICAID ELIGIBLE)	AND FINAL ORDER
HOME HEALTH AGENCY IN SPOKANE)	
COUNTY,)	
)	
SUNSHINE HEALTH FACILITIES, INC.,)	
)	
Petitioner.)	
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APPEARANCES:

Petitioner, Sunshine Health Facilities, Inc., by
Stamper Rubens, P.S., per
Edward H. Turner, 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: Christopher Swanson, Health Law Judge

A hearing occurred October 20-21, 2008, in Tumwater, Washington. Sunshine Health Facilities, Inc., filed a certificate of need application for a Medicare-certified and Medicaid-eligible home health agency in Spokane, Washington. The Program denied the application. Certificate of need granted.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

ISSUES

- A. Did Sunshine show that it meets the certificate of need criteria?
- B. May the Program advocate a basis for denial that is not listed in its findings?
- C. Did the Program overcome the showing made by Sunshine?

SUMMARY OF PROCEEDINGS

At the hearing, the Program presented the testimony of the following witnesses: Peter Agabbi and Janis Sigman, Certificate of Need (CN) Program. The Petitioner presented the testimony of Peter Agabbi and Bart Eagan, CN Program; Nathan C. Dikes, Chief Executive Officer, Sunshine Health Facilities, Inc., and Jerry F. Brown, Jerry F. Brown, L.L.C. The following Program exhibits were admitted:

Exhibit CNP-1: Sunshine Health Facilities, Inc., Application Record.¹

Exhibit CNP-2: Curriculum Vitae of Peter T. Agabi.

The following Program exhibit was denied admission:

Exhibit CNP-3: Program's 2005 Survey.

The following Respondent exhibits were admitted:¹

Exhibit PT-2: In re: Northwest Healthcare Alliance to Establish a Home Health Agency to Serve Cowlitz and Wahkiakum Counties.

Exhibit PT-3: In re: Touchmark Living Centers, Inc., to Establish a Home Health Agency to Serve the Residents of Spokane County.

¹ On August 28, 2008, the Program submitted an excerpt of the Washington State Health Plan for inclusion into the Application Record. At the October 1, 2008 prehearing conference, the parties stipulated to its inclusion.

¹ In Prehearing Order No. 3: Order Defining Conduct of Hearing, Exhibit PT-1 was identified as including the documents contained in PT-2, PT-3, and PT-4. Since the documents are now separate exhibits, there is no Exhibit "PT-1" in this order.

Exhibit PT-4: In re: Touchmark Living Centers, Inc., to Establish a Home Health Agency to Serve the Residents of Clark County.

Exhibit PT-5: In re: Maxim Healthcare Services, Inc., to Establish a Home Health Agency to Serve the Residents of Spokane County.

The Presiding Officer permitted the parties to file briefs in lieu of closing argument pursuant to RCW 34.05.461(7). The parties filed opening briefs on November 19, 2008, and responsive briefs on November 26, 2008. The Presiding Officer closed the hearing record effective November 26, 2008.

Based upon the evidence presented, the Presiding Officer makes the following:

I. FINDINGS OF FACT

Certificate of Need

1.1 A certificate of need is a non-exclusive license to establish a new health care facility. *St. Joseph Hospital & Health Care Center v. Department of Health*, 125 Wn.2d 733, 736 (1995). The purpose of the CN process is to promote public health by providing accessible health services and facilities, while controlling costs. RCW 70.38.015.

1.2 Establishment of new health care facilities, including home health agencies providing home health services in the Medicaid or Medicare program,² require a CN from the Department of Health. RCW 70.38.025(6), RCW 70.38.105(4)(a), and WAC 246-310-010(30).

² No Certificate of Need is needed if the home health agency does not accept Medicaid or Medicare payments.

Application Process

1.3 The submission of an application initiates CN review process.

WAC 246-310-090. The process includes correspondence with the applicant, public hearings, and written comments by interested parties. WAC 246-310-080 through WAC 246-310-190. The Program reviews the information submitted and grants or denies the application. WAC 246-310-200, WAC 246-310-490 and WAC 246-310-500.

1.4 In reviewing the application, the Program applies the criteria in WAC 246-310-200 through WAC 246-390-240. The applicant must show that the proposed project: (1) is needed, (2) is financially feasible, (3) will meet criteria for structure and process of care, and (4) will foster containment of the costs of health care. *Id.*

1.5 After reaching a decision, the Program issues written findings. WAC 246-310-490. The findings “shall be stated in writing and include the basis for the decision[.]” WAC 246-310-490(1)(a).

1.6 Following the denial of a CN application, the applicant may request an adjudicative proceeding. RCW 70.38.115(10)(a) and WAC 246-310-610.

Sunshine Application

1.7 Sunshine Health Facilities, Inc. (Sunshine), is an operator of health facilities in Spokane County, including: Sunshine Gardens (nursing care and rehabilitation), Sunshine Physical Therapy and Fitness Center (physical therapy and rehabilitation), Sunshine Terrace (boarding care), and Sunshine House (boarding care).

1.8 On April 26, 2007, Sunshine submitted an application requesting approval

for a Medicare-certified and Medicaid-eligible home health agency (certified agency).

1.9 On March 4, 2008, the Program issued its written findings and decision, denying the application (Decision).

1.10 In its Decision, the Program found that Sunshine did not establish the need, structure and process, and cost containment criteria. The Program found that structure and process, and cost containment were not established solely because need was not established.³ The Program found that Sunshine established financial feasibility.

1.11 The Program based its denial decision on the availability of other providers in the planning area to meet any potential need. The Program reviewed its 2005 surveys of the planning area and concluded that two certified agencies had projected yearly patient visits of less than 10,000. The Program relied on the methodology contained in the sunsetted State Health Plan (SHP). Since the SHP lists the “target minimum operating volume for a home health agency” as 10,000 yearly patient visits, the Program concluded that other agencies in the planning area are available to meet any potential need. On this basis, the Program denied Sunshine’s CN application.

1.12 On March 28, 2008, Sunshine requested an adjudicative proceeding on its application.

³ The parties agreed that the only *contested* issue at hearing was whether Sunshine’s application met the need criteria. However, this order makes independent findings on the contested *and* uncontested issues.

1.13 At the hearing, the Program's witnesses testified that the Program's basis for denial as listed in its Decision was not valid. The Program abandoned this position and provided new arguments for denial as discussed herein.⁴

Criteria # 1: Need

1.14 WAC 246-310-210 requires a showing of: (1) need for the project and the lack of availability of other facilities, and (2) adequate access to all residents in the service area. Each sub-criteria is addressed in turn.

Need and Availability Sub-criteria

1.15 WAC 246-310-210(1) requires a showing that:

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.

1.16 The Program argues that Sunshine did not meet this need sub-criteria. This is the only basis for denial of the CN advocated by Program.

1.17 Sunshine analyzed two component parts of the sub-criteria: (1) whether the planning area has the potential to support a new certified agency based upon the population; and (2) if it does, whether other home certified agencies are available to meet potential need in the planning area.

⁴ In footnote 9 of its Post Hearing Memorandum in Support of Denial of Application, the Program states "[t]he Program's evaluation indicated that a reason for denial was that two existing agencies were performing fewer than 10,000 visits per year. The Program no longer takes the position [reference to the record omitted]."

Sunshine's Showing: Potential Need

1.18 To establish the first requirement (the potential need for a new certified agency), the methodology contained in the SHP may be used.⁵ The methodology designates Spokane County as a separate planning area.⁶

1.19 Under step 1 of the methodology, the projected Spokane population through 2010 by age is multiplied by the home health "use rate" for age groups. Step 2 takes the step 1 calculation, and projects how many people in Spokane County need home health services through 2010. Under step 3, the SHP applies the number patient visits by age, and calculates the number of home health visits through 2010.⁷

1.20 A modified methodology may also be used in step 3.⁸ This methodology assumes patients of all ages make 21 visits.

1.21 In step 4, the calculations from step 3 are used to determine the potential number of new certified agencies. Per the SHP, it is assumed one agency performs 10,000 visits per year. Under the SHP applying of varying visits by age (from step 3), it is calculated that 11 potential certified agencies are needed in Spokane. Under the modified methodology (from step 3), it is calculated that 14 potential certified agencies are needed. There are seven approved certified agencies in Spokane County. Thus, a

⁵ Unlike the CN application process for some health care facilities, there is no specific Washington Administrative Code methodology for home agency CN application cases. Both parties applied the SHP methodology.

⁶ Need is evaluated based on need in the county as a whole.

⁷ The SHP assumptions are: under age 65 = 10 visits; age 65-79 = 14 visits, over age 80 = 21 visits.

⁸ Both methodologies were used by both parties to obtain a range.

range of 4 to 7 new agencies are potentially needed. Sunshine must show that Spokane County has the potential to support at least one new certified agency. It did so.

Sunshine's Showing: Availability

1.22 In analyzing the first need sub-criteria, the second question is whether other certified agencies are available to meet the potential need.

1.23 In order to establish that other certified agencies are not available, Sunshine applied data from the Program's Waterford evaluation. Since the Waterford data was from 2003, Sunshine increased the total visits contained in the data by 2 percent per year to account for population increases for the period between 2003 through 2008.⁹ Based upon this calculation, the projected number of patient visits are significantly less than the estimated need for patient visits as determined by the modified methodology. See Exhibit A in Sunshine's Post-Hearing Brief. Based upon the evidence presented, Sunshine made an initial showing that other certified agencies are not available.

Sunshine's Threshold Showing

1.24 Sunshine made a threshold showing that it meets the requirements of the first need sub-criteria. The Program may overcome Sunshine's showing by presenting its own evidence and/or rebutting Sunshine's threshold showing.

⁹ The Program performed surveys of home health agencies and used Medicare cost reports to determine projected yearly visits. The data from the cost reports were increased by 19 percent to compensate for the non Medicare visits not included in the Medicare cost report.

The Program’s Analysis: Potential Need

1.25 The Program applies the same methodology to Sunshine to determine potential need. Thus, the Program agrees that Spokane County has the potential to support at least one new certified agency.

The Program’s Analysis: Availability

1.26 Although the Program agrees that potential need has been shown, the Program asserts that other certified agencies in the area are available to provide needed services.

1.27 The Program argues that approval of a certified agency in the planning area in 2005 (Waterford), precludes the need for a new certified agency. In making its argument, the Program uses 2005 survey data from home health agencies in the planning area.¹⁰ Using the data, the Program estimates that existing certified agencies made approximately 128,454 visits before the addition of Waterford. The Program argues that this was at the upper of the range of estimated need of 108,117 yearly visits using the SHP methodology and 140,889 visits using the modified methodology (step 3). The Program concludes that need is not present, especially in light of

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¹⁰ This data was summarized in Table 11 of the Decision (Home Health Agencies Projected Visits and Market Share).

operation of Waterford. In its application, Waterford projected 10,500 visits for the first year.¹¹

1.28 The Program argues that there is a lack of need for Sunshine's project, and Sunshine's application should be denied.

The Data Supporting the Program's Availability Analysis

1.29 The Program's argument to deny the certificate of need hinges on its 2005 survey data.

1.30 At the hearing, Sunshine challenged lack of substantiation for the data and pointed out several errors in the table summarizing the data. The Program summarized the data in table 11 of its Decision, but did not include the hard data in the application record or offer the data as an exhibit at the prehearing conference. The Program acknowledged that the data should have been in the application record.

1.31 On the second day of the hearing, the Program moved for admission of the data.

1.32 At the time the motion was made, the Program had rested its case and Sunshine had completed examination of three of its four witnesses. A substantial portion of examination of the witnesses at hearing involved application of the data.

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¹¹ Waterford did not start operation until July, 2007, and no visit data was available when the Program reviewed Sunshine's application.

1.33 Sunshine objected to admission of the data. The Presiding Officer denied admission of the data under WAC 246-10-404(6).

Adequate Access Sub-criteria

1.34 WAC 246-310-210(2) requires a showing that:

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.

1.35 The Program did not contest that Sunshine had established the second need sub-criteria (adequate access).

1.36 Sunshine submitted its admission policy into the application record. The policy describes the patients it will admit, and provides assurances regarding access to care. It states that patients will be accepted for care regardless of age, race, color, national origin, religion, sex, disability, veteran status, or any other category provided by law or decisions regarding advance directives. Sunshine also submitted pro forma financial data that included a projected 2 percent line item of its gross revenue designated for charity care. Sunshine stated that charity care would be available at the proposed certified agency.

1.37 Based on the information submitted, Sunshine has shown, if approved, all residents in the service area would have adequate access to the proposed certified agency.

Criteria # 2: Financial Feasibility

1.38 To establish financial feasibility, Sunshine must show: (1) the operating costs of the project can be met, (2) the cost of the project will probably not result in an unreasonable impact on the costs and charges for health services, and (3) the project can be appropriately financed. WAC 246-310-220. The Program did not contest that Sunshine had established financial feasibility of its proposed certified agency. Sunshine has shown that it meets the financial feasibility sub-criteria as described below.

Operating Costs Sub-criteria

1.39 Sunshine submitted a partial year and two full year's pro-forma financial data to the Program, as well as other supplemental information. Table 12 of the Program's Decision lists Sunshine's projected revenue, expenses, and net income per patient visit for partial year 2007, and full year 2008, and 2009. During the application process, it was determined that the Center for Medicare and Medicaid Services (CMS) had recently published reductions in reimbursement rates. Sunshine did not account for the reductions in its submissions. Accounting for any reduction in revenues based upon the reimbursement reductions, Sunshine would still turn a profit. Sunshine has shown that its operating costs of the project can be met.

Impact on Costs and Charges Sub-criteria

1.40 In its application, Sunshine states that its capitol costs are negligible and will be depreciated over time, so there will be minimum impact in any given year from the depreciation costs. Additionally, Sunshine stated that most charges are reimbursed on a fixed fee basis and that this would have zero impact on the cost of service to the

patient. Sunshine has shown that the cost of the project will probably not result in an unreasonable impact on the costs and charges for health services.

Financing Sub-criteria

1.41 As part of meeting the operating costs and impact and charges sub-criteria, Sunshine showed that the project is financially viable. In its application, it noted that a financing source will be equity from the owner of Sunshine. Sunshine provided a copy of its available cash statement. Sunshine has shown that it meets the appropriate financing sub-criteria.

Criteria # 3: Structure and Process

1.42 To establish structure and process of care, Sunshine must show: 1) a sufficient supply of qualified staff for the project are available and can be recruited, (2) the services will have an appropriate relationship to ancillary and support services, and ancillary and support services will be sufficient to support an health services included in the project, (3) there is reasonable assurance that the project will be in conformance with state licensing requirements and with related Medicaid or Medicare conditions for participation, (4) the project will promote continuity in the provision of health care, (5) there is reasonable assurance that the services to be provided will be in a manner that ensures safe and adequate care to the public to be served in accordance with state and federal laws. Apart from finding a lack of showing of need, the Program did not contest that Sunshine had shown structure and process. Sunshine has shown that it meets the structure and process sub-criteria as described below.

Staff Sub-criteria

1.43 Sunshine operates four healthcare facilities in Spokane County. Sunshine is not currently a provider of home health services.

1.44 Sunshine submitted a staffing plan for its proposed certified agency, including a proposed number of full time equivalent employees and contracted employees, and their positions and/or functions within the agency. Sunshine also addressed its strategy to identify and recruit staff, including development of a list of applicants for various clinical positions.

1.45 Based upon its submissions, Sunshine has shown that there is reasonable assurance that a sufficient supply of qualified staff is available or can be recruited.

Ancillary and Support Services Sub-criteria

1.46 As documented in the application record, Sunshine's existing facilities in Spokane County have ancillary and support services that may be employed and/or expanded to serve the proposed certified agency. Sunshine has shown that there is reasonable assurance that the proposed certified agency will have the appropriate ancillary and support services.

Licensing and Safe and Adequate Care Sub-criteria

1.47 Sunshine has a satisfactory compliance history as revealed by its application and quality of care compliance history for Sunshine's current facilities obtained from the Medical Quality Assurance Commission. Sunshine has shown that there is reasonable assurance that it is in compliance with state and federal licensing requirements.

Continuity of Health Care Sub-criteria

1.48 Sunshine has shown that there is a potential need for a new certified agency and other agencies that are unavailable to meet the need. Sunshine has shown that its certified agency would provide needed services. Therefore, Sunshine has shown that its proposed certified agency promotes the continuity of needed health care services.

Criteria # 4: Cost Containment

1.49 To establish cost containment, Sunshine must show that superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable. Apart from finding a lack of showing of need, the Program did not contest that Sunshine had shown cost containment.

1.50 Sunshine has shown that there is a potential need for a new certified agency and that other agencies are unavailable to meet the need. Sunshine has shown that its certified agency would provide needed services. Therefore, Sunshine has shown that superior alternatives are not available.

II. CONCLUSIONS OF LAW

Jurisdiction

2.1 The Secretary of Health (and by designated authority, the Presiding Officer) has jurisdiction over the subject matter of this proceeding.

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Burden of Proof

2.2 The applicant for a CN has the burden of showing by a preponderance of the evidence that its application meets all applicable criteria. WAC 246-10-606(2) and *Davita v. Department of Health*, 137 Wn. App. 174, 184 (2007).

The Program may argue any basis for denial that is supported by the application record.

2.3 The Program seeks to advance a position at hearing that was not in its Decision and abandon the sole reason for denial that is in its Decision. In a certificate of need hearing, both parties are permitted to advocate new arguments at hearing as long as the arguments are supported by the application record.¹²

2.4 CN hearings are conducted de novo. WAC 246-10-602(2)(a) and *DaVita*, 137 Wn. App. at 183. “De Novo” means “Anew; afresh; a second time.” Black’s Law Dictionary, Sixth Edition. Although the hearings are de novo, the evidence relied on for any new argument at hearing, should exist at the time the application record closed. See *University of Washington v. Department of Health*, 164 Wn.2d 95, 104 (2008).¹³ Preferably, the evidence is contained in the existing application record.

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¹² In fact, as the Program points out, at the hearing and in brief, Sunshine modified or abandoned a number of the arguments it made previously. The Program’s Post-Hearing Memorandum in Support of Denial of Application, pages 8-10.

¹³ Since the request for an adjudicative proceeding does not begin the application process anew, evidence that comes into existence after the close of the public comment period may be denied admission as irrelevant.

2.5 Since the Program's new arguments are based on table 11 contained in its Decision, it may advance its new arguments at hearing.¹⁴

The Scope of the Hearing

2.6 Since a certificate of need proceeding involves an application for a license, the burden is Sunshine's "to establish that the application meets all applicable criteria[.]" WAC 246-10-606(2) In contrast, the burden, in all other types of cases, "is on the department to prove the alleged factual basis set forth in the initiating document." WAC 246-10-606(2).

2.7 The rules put the applicant on specific notice that the scope of the adjudicative proceeding is broader than the issues listed in the Program's written decision. Likewise, the applicant is put on notice that the Program will not be required to defend its original findings.

2.8 Instead, the applicant has the burden to show that it meets *all applicable license criteria*. The Presiding Officer is "obligated to make factual findings on all material issues – including whether [the applicant] met its burden."

DaVita, 137 Wn. App. at 185.

The Basis for Denial of the Program's Decision

2.9 Sunshine argues that the Program did not comply with WAC 246-310-490(1)(a) because its findings do not contain the "basis" of its decision to

¹⁴ The Program's abandonment of the basis for its decision at hearing, though not improper under the law, may undermine the credibility of its case. Additionally, if the applicant is able to show the data underlying the Program's new arguments is unreliable, as Sunshine has done in this case, the new arguments may not be supported by the evidence at hearing.

deny the application. Sunshine is incorrect. At the time the Program's Decision was issued, it fully complied with the requirements of WAC 246-310-490(1)(a).¹⁵ It fully explained the reason why it was denying Sunshine's application. That is all that is required by the rule. As noted previously, the Program is not bound to argue the basis of its Decision at the de novo hearing.

The Program has not overcome Sunshine's showing of need.

2.10 Sunshine made a threshold showing of need. The Program has not overcome the showing.

2.11 At the prehearing conference, the Program offered the Decision into evidence. At the hearing, the Program retreated from the basis of its Decision, and instead, offered new reasons for denial of Sunshine's application. The new reasons for denial were supported by a table summarizing data in its Decision. The Decision did not contain the hard data supporting the table.

2.12 At the hearing, Sunshine showed that the table containing the decision had a number of errors and otherwise lacked credibility. In response, near the end of the hearing, after nearly all the witnesses had completed their testimony, the Program moved for admission of the hard data supporting the table and its new reasons for denial.

¹⁵ There is no evidence in this case of bad faith on the part of the Program.

2.13 The primary basis of the Program's case was the data summarized in its Decision. Sunshine spent a substantial portion of the hearing examining both parties' witnesses about the data. The Program's position was that its failure to include the data was an oversight. Sunshine objected to its late admission.

2.14 The law gives considerable discretion to the presiding officer to determine the scope of admissible evidence. *University of Washington v. Department of Health*, 164 Wn.2d 95, 104 (2008). The Presiding Officer found that the Program had not shown good cause for failure to identify the data at the prehearing conference, and denied admission of the data.¹⁷ WAC 246-10-404(6).

2.15 The Presiding Officer does not need to give any particular deference to the Program analyst. *DaVita v. Department of Health*, 137 Wn. App. 174, 183 (2007). Nor must the Presiding Officer give any particular deference to the analyst's written Decision. The table summarizing the Program's 2005 survey data contained in its Decision lacks credibility and substantiation. This data was the primary basis of the Program's arguments for denial. Sunshine has shown that it is unreliable.

2.16 The Program argues that if the Presiding Officer determines that the Program's 2005 survey data is unreliable, it should also determine that the Program's 2003 data (relied on by Sunshine) is unreliable.

¹⁷ The record shows that it is typical in CN cases for the applicant to rely on the Program's data. In fact, the record established that Sunshine made repeated attempts to obtain independent data, but could not. The Program acknowledged that obtaining data is difficult for an applicant.

2.17 In this case, Sunshine provided a reasoned basis for meeting the CN criteria. In making its argument, it relied on the Program's 2003 survey data. Sunshine showed that the table summarizing the Program's 2005 data had a number of errors and otherwise lacked credibility. If the Program had a basis to attack its own 2003 survey data at hearing, it could have chosen to do so. It did not.

2.18 Since the Program is unable to overcome the showing made by Sunshine, the Presiding Officer concludes that Sunshine has established the need criteria.

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

2.19 The Program did not attempt to overcome Sunshine's showing on financial feasibility criteria, structure and process, and cost containment. WAC 246-310-210 through WAC 246-310-240. As discussed herein, Sunshine has met these criteria.

Conclusion

2.20 Since Sunshine has established that it meets all criteria for licensure, Sunshine's application for a certificate of need to operate a Medicare-certified and Medicaid-eligible home health agency in Spokane County should be granted.

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III. ORDER

Based upon the above, the Presiding Officer hereby issues in this case the following ORDER:

3.1 Sunshine's application for a certificate of need is GRANTED.

Dated this 23 day of February, 2009.

_____/s/_____
CHRISTOPHER SWANSON, Health Law Judge
Presiding Officer

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 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 246-11-580. 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 a 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/hearings>