



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

June 19, 2012

CERTIFIED MAIL # 7010 2780 0003 6529 7663

Newell Yarborough, Jr.
Yarborough Consulting, Inc.
103 Marsh Edge Lane
Savannah, Georgia 31419

Re: CN #11-13

Dear Mr. Yarborough:

We have completed review of the Certificate of Need application submitted by Brookdale Senior Living proposing to establish a Medicare certified/Medicaid eligible home health agency in King County. For the reasons stated in this evaluation, the application submitted is consistent with applicable criteria of the Certificate of Need Program, provided Brookdale Senior Living agrees to the following in its entirety.

Project Description:

Brookdale Senior Living proposes to establish a Medicare certified home health agency under its subsidiary known as Innovative Senior Care Home Health. The agency would be located within space at its retirement community known as Foundation House of Federal Way located at 32290 First Avenue South in Federal Way. The agency would operate under the name of Innovative Senior Care Home Health. Home health services to be provided include skilled nursing, medical social services, and a variety of therapies, including physical, occupational, and speech therapy.

Conditions:

1. Brookdale Senior Living agrees with the project description stated above.
2. Brookdale Senior Living's Medicare certified and Medicaid eligible home health agency shall be available to provide home health services to all residents of King County.
3. Before commencement of the project, Brookdale Senior Living will provide to the department for review and approval a final Patient Admission Booklet. The final Patient Admission Booklet must be consistent with the draft provided in the application.
4. Before commencement of the project, Brookdale Senior Living will provide to the department for review and approval an executed lease agreement for the site. The executed agreement must be consistent with the draft agreement provided in the application.



5. Before commencement of the project, Brookdale Senior Living will provide to the department for review and approval an executed Medical Director Agreement. The executed Medical Director Agreement must be consistent with the draft agreement provided in the application.

Approved Costs:

The approved capital expenditure for this project is \$111,622.

You have two options, either accept or reject the above in its entirety. If you accept the above in its entirety, your application will be approved and a Certificate of Need sent to you. If you reject any provision of the above, you must identify that provision, and your application will be denied because approval would not be consistent with applicable Certificate of Need review criteria. 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:

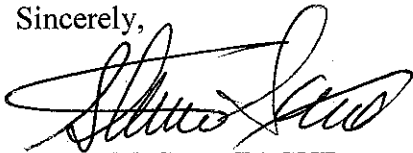
Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

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

Enclosure

**EVALUATION DATED JUNE 19, 2012, OF THE CERTIFICATE OF NEED APPLICATION
SUBMITTED BY BROOKDALE SENIOR LIVING PROPOSING TO ESTABLISH
A MEDICARE CERTIFIED AND MEDICAID ELIGIBLE HOME HEALTH AGENCY IN
KING COUNTY**

APPLICANT DESCRIPTION

Brookdale Senior Living, Inc. (BSL) is located at 111 Westwood Place in the city of Brentwood, within the state of Tennessee. BSL owns and operates 529 assisted living communities, 13 rehabilitation agencies, 44 home health agencies, and 38 skilled nursing facilities, for a total of 624 facilities nationwide. [source: July 8, 2011, supplemental information, p2] The company offers independent living, personalized assisted living, Alzheimer and dementia care, rehabilitation, and skilled nursing to residents of its communities through its three subsidiaries listed below.¹

- American Retirement Corporation
- ARC Therapy Services, LLC
- Innovative Senior Care Home Health

PROJECT DESCRIPTION

BSL proposes to establish a Medicare certified home health agency under its subsidiary known as Innovative Senior Care Home Health. The agency would be located within space at its retirement community known as Foundation House of Federal Way located at 32290 First Avenue South in Federal Way. The agency would operate under the name of Innovative Senior Care Home Health.

Home health services to be provided include skilled nursing, medical social services, and physical, occupational, and speech therapies. [source: Application, p11-12]

The capital expenditure associated with the establishment of the new home health agency is \$111,622. There is no construction required for this project. The \$111,622 capital expenditure is related to equipment (20%); Certificate of Need review fees (41%); and start up costs (39%). [source: Application, p46]

If this project is approved, BSL anticipates commencement and completion within three months of approval. Under this timeline, while the agency would become operational in year 2012, year 2013 would be the facility's first full calendar year of operation. [source: Application, p25]

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).

¹ Source: <http://www.brookdaleliving.com/about-brookdale.aspx>

CRITERIA EVALUATION

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.”*

WAC 246-310 does not contain service or facility specific criteria for home health projects. To obtain Certificate of Need approval, an applicant must demonstrate compliance with the applicable criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); and 246-310-240 (cost containment).² Consistent with WAC 246-310-200(2)(b), the home health agency projection methodology and standards found in the 1987 State Health Plan, Volume II, Section (4)(d) is used to assist in the evaluation of home health applications.

CONCURRENT REVIEW AND BACKGROUND INFORMATION ON TIMELINE

Applications for home health agencies are not submitted under a published concurrent review cycle. On January 12, 2011, BSL submitted this application to establish a Medicare certified home health agency in King County. Before the department could complete its pre-review activities on BSL's

² Each criterion contains certain sub-criteria. The following sub-criteria are not discussed in this evaluation because they are not relevant to any of the three projects: WAC 246-310-210(3), (4), (5), and (6).

application, Kline Galland Center (KGC) submitted an application. Before the department could complete its pre-review activities on both BSL's and KGC's application, Franciscan Health System (FHS) submitted an application. Since all three applications proposed to establish Medicare certified home health services in King County, the department began to review all three projects concurrently. The concurrent review process promotes the expressed public policy goal of RCW 70.38 that the development or expansion of health care services is accomplished in a planned, orderly fashion and without unnecessary duplication.

During the concurrent review of the three home health projects, significant issues were raised related to two of the three. The department was preparing to issue its decision on the three projects when one of the largest Medicare certified home health providers in King County, Swedish Visiting Nurse Services, announced that it is planning to close its home health and hospice services by the end of April 2012.³ Given the unusual circumstances of the upcoming closure of an existing home health agency, and the potential impact its closure would have on the patients currently served in King County, the department notified all three providers that it would bifurcate (separate) its review of the three applications. This process would allow the program to issue a decision on the application with no significant issues and declare a pivotal unresolved issue (PUI) on the other two projects.

APPLICATION CHRONOLOGY

Applications for home health agencies are not submitted under a published concurrent review cycle. Since all three applications propose to establish Medicare certified home health services in King County, the department began to review all three projects simultaneously. A chronologic summary of the review to date for all three applications is shown on the following page.

³ On March 5, 2012, Swedish Visiting Nurse Services notified the Certificate of Need Program that April 27, 2012 is the effective date of closure for the home health and hospice agency.

Action	Brookdale Senior Living	Kline Galland Home	Franciscan Health System
Letter of Intent Submitted	September 10, 2010	September 22, 2010	January 31, 2011
Application Submitted	January 12, 2011	February 7, 2011	May 12, 2011
Department's pre-review Activities including screening and responses	Beginning January 13, 2011 to July 21, 2011	Beginning February 8, 2011 to July 21, 2011	Beginning May 13, 2011 to July 21, 2011
Beginning of Review	July 22, 2011		
Public Hearing /End of Public Comment	September 22, 2011		
Rebuttal Comments Received	October 7, 2011		
Department's Anticipated Decision Date	November 21, 2011		
Department's Anticipated Decision Date w/ 30 days	December 21, 2011		
Department Bifurcates Applications	February 28, 2012		
Department Declares Pivotal Unresolved Issue (PUI)	March 15, 2012	N/A	March 12, 2012
Applicant Submits PUI Documents	March 30, 2012	N/A	March 16, 2012
Public Comments on PUI Documents ⁴	April 16, 2012	N/A	April 2, 2012
Rebuttal Comments on PUI Documents	May 1, 2012	N/A	April 17, 2012
Department's Anticipated Decision Date	June 15, 2012	March 30, 2012	June 1, 2012
Department's Actual Decision Date	June 19, 2012	March 15, 2012 ⁵	April 23, 2012 ⁶

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."

For each application, the other applicants sought and received affected person status under WAC 246-310-010. Additionally, four existing Medicare certified home health providers sought and received affected person status.

⁴ There were no requests for copies of BSL's PUI documents and no comments were submitted. As a result, BSL did not submit rebuttal comments.

⁵ CN #1466 was issued to the Kline Galland Center on April 2, 2012.

⁶ CN #1471 was issued to Franciscan Health System on May 7, 2012.

Careage Home Health [source: CHH website and CN historical files]

Careage Home Health (CHH) is located in 2424 - 156th Avenue Northeast in Bellevue, within King County. CHH has been operating as a Medicare certified home health agency in King County for approximately 17 years; first as Bessie Burton Sullivan Home Health and for the last three years as CHH. Home health services provided by CHH include skilled nursing, rehabilitation, and a variety of therapies. CHH's Medicare certified home health service area is King County.

MultiCare Health System [source: CN historical files]

In 2009, the MultiCare Health System's home health agency merged with Good Samaritan Home Health and Hospice to create MultiCare Home Health (MHH). The agency is located at 3901 Fife Street in Tacoma, within Pierce County. Home health services provided by MHH include skilled nursing, rehabilitation, and a variety of therapies. MHH's Medicare certified home health service area is King and Pierce counties.

Providence Senior and Community Services [source: CN historical files]

Under the Providence 'umbrella' is Providence Hospice and Home Care of Snohomish County (PHHC-SC) located at 2731 Wetmore Avenue in Everett. In 1986, the agency was known as Hospice of Snohomish County when it obtained its home health grandfathering status. Home health services provided by PHHC-SC include skilled nursing, rehabilitation, and a variety of therapies. PHHC-SC's Medicare certified home health service area is King and Snohomish counties.

Swedish Visiting Nurse Services [source: CN historical files]

In 2008, Swedish Health Services and Visiting Nurse Services of the Northwest combined their home health agencies, resulting in Swedish Visiting Nurse (SVN). The agency is located at 5701 - 6th Avenue South in Seattle, within King County. Home health services provided by SVN include skilled nursing, rehabilitation, and a variety of therapies. SVN's Medicare certified home health service area is King, Skagit, and Snohomish counties.⁷

BROOKDALE SENIOR LIVING'S SOURCE INFORMATION REVIEWED

- Brookdale Senior Living's Certificate of Need application submitted January 12, 2011
- Brookdale Senior Living's supplemental information received April 12, 2011 and July 8, 2011
- Public comment received during the course of the review
- Public hearing documents submitted at the September 22, 2011, public hearing
- Brookdale Senior Living's rebuttal documents received October 7, 2011
- Brookdale Senior Living's pivotal unresolved issue (PUI) documents received March 30, 2012
- Licensing and/or survey data provided by the Department of Health's Investigations and Inspections Office
- Licensing and/or survey data provided by out-of-state health care survey programs related to Brookdale Senior Living, or its parent corporation or any of its subsidiaries
- Data obtained from Brookdale Senior Living website [www.brookdaleliving.com]
- Certificate of Need historical files

⁷ In October 2011, SVN elected to discontinue services in Camano Island (Island County) which, for geographic reasons, has been, and continues to be, part of the Snohomish County home health service area.

BROOKDALE SENIOR LIVING'S SOURCE INFORMATION REVIEWED (continued)

- Home health and hospice quality of care websites for the following states: Florida, Illinois, Michigan, New Mexico, Ohio, Oregon, and Virginia
- Assisted living and boarding home quality of care websites for the following states: Arizona, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Michigan, North Carolina, Oklahoma, Texas, and Washington
- Rehabilitation facility quality of care websites for the following states: Alabama, Arizona, and Texas
- Nursing home, home health, rehabilitation facility, and assisted living/boarding home quality of care websites for the following states: Alabama, Colorado, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, and Washington

CONCLUSION

For the reasons stated in this evaluation, the application submitted by Brookdale Senior Living proposing to establish a new Medicare certified home health agency to serve the residents of King County is consistent with the applicable criteria of the Certificate of Need Program, provided Brookdale Senior Living agrees to the following in its entirety.

Project Description:

Brookdale Senior Living proposes to establish a Medicare certified home health agency under its subsidiary known as Innovative Senior Care Home Health. The agency would be located within space at its retirement community known as Foundation House of Federal Way located at 32290 First Avenue South in Federal Way. The agency would operate under the name of Innovative Senior Care Home Health. Home health services to be provided include skilled nursing, medical social services, and a variety of therapies, including physical, occupational, and speech therapy.

Conditions:

1. Brookdale Senior Living agrees with the project description stated above.
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3. Before commencement of the project, Brookdale Senior Living will provide to the department for review and approval a final Patient Admission Booklet. The final Patient Admission Booklet must be consistent with the draft provided in the application.
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5. Before commencement of the project, Brookdale Senior Living will provide to the department for review and approval an executed Medical Director Agreement. The executed Medical Director Agreement must be consistent with the draft agreement provided in the application.

Approved Costs:

The approved capital expenditure for this project is \$111,622.

A. Need (WAC 246-310-210) and Home Health Need Method (SHP)

Based on the source information reviewed and provided the applicant agrees to the conditions identified in the 'conclusion' section of this evaluation, the department concludes that Brookdale Senior Living's project has met the need criteria in WAC 246-310-210(1) and (2) and the home health agency methodology and standards outlined in the 1987 State Health Plan, Volume II, Section (4)(d).

(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 246-310 does not contain specific WAC 246-310-210(1) need criteria as identified in WAC 246-310-200(2)(a)(i). To assist with the determination of numeric need for home health agencies, the department uses the numeric methodology contained in the 1987 Washington State Health Plan (SHP).

Home Health Numeric Methodology-1987 SHP

The SHP methodology is a multiple step process that projects the number of home health visits in a planning area. The method uses the following elements:

- projected population of the planning area, broken down by age groups [0-64; 65-70; & 80+];
- estimated home health use rates per age group; and
- the number of visits per age group.

The total projected number of visits is then divided by 10,000, which is considered the 'target minimum operating volume' for a home health agency. The resulting number represents the maximum projected number of agencies needed in a planning area. The SHP states fractions are rounded down to the nearest whole number. [source: SHP, pB-35]

The final step in the numeric methodology is to subtract the existing number of home health agencies in a planning area from the projected number of agencies needed. This results in the net number of agencies needed for the planning area.

Brookdale Senior Living's Numeric Methodology

BSL presented two different methodologies in its application. One followed the SHP as described above. The second methodology followed the SHP, but instead of using the different visit counts by age cohort as described in the SHP, BSL used 21 visits per patient for each group. In the past, the department had used this same two method approach. However, the revised approach of using 21 visits per patient regardless of age is no longer used by the department because it may not meet the requirements of WAC 246-310-200(2)(b). The remainder of this evaluation will focus on the first methodology submitted by BSL.

Using the SHP methodology, BSL determined the number of projected patient visits in King County for year 2013 to be 456,898. Dividing the projected number of visits by 10,000, resulted in a total of 45.69 agencies would be needed in King County in year 2013.

BSL then identified 14 Medicare certified home health agencies are serving King County and subtracted those agencies from the year 2013 need of 45.69, resulting in a net need of 31.69 new agencies. [source Application, pp25-29] Below is a summary of BSL's numeric methodology.

Table 1
Summary of BSL's Year 2013 Numeric Methodology

	BSL
Total Number of Patient Visits	456,898
Divided by 10,000	45.69
Existing Number of Agencies	14
Net Need	31.69

The next portion of this evaluation will focus on the department's application of the numeric methodology and discuss differences provided BSL.

Department's Numeric Methodology

The department used the SHP methodology to assist in determining need for home health agencies in King County. According to department records, there are a total 50 providers of healthcare services to the residents of King County. The 50 providers are listed in Table 2 below and continued on the following page.

Table 2
Health Care Agencies Serving King County

Name	City Location	Medicare Certified
Accredo Health Group	Kent	No
Alacrity Staffing Solutions	Seattle	No
Alliance Nursing	Woodinville	No
American Healthcare Services	Seattle	No
Amicable Health Care	SeaTac	No
Apria Healthcare Redmond	Redmond	No
Ashley House/Enumclaw	Enumclaw	No
Blossom Health Care	Kent	No
BrightStar Healthcare	Bellevue	No
Chesterfield Health Services, Inc.	Seattle	No
Children's Country Home	Woodinville	No
Community HH & Palliative Care	Tukwila	No
Coram Specialty Infusion Services	Redmond	No
Crista Senior Health Services	Shoreline	No
EKL Health	Woodinville	No
Family Resource Home Care	Seattle	No
Health at Home	Issaquah	No
Health Empowerment	Bellevue	No
Health People	Bellevue	No
Home Care Assistance	Bellevue	No
Home Care Associates	Seattle	No
Jodem Home Health Care	Bellevue	No
LinCare	Woodinville	No
Maxim Healthcare Services / 2branches	Bellevue / Seattle	No
New Care Concepts	Seattle	No
Providence Elder Place	Seattle	No
Providence Infusion & Pharmacy Services	Renton	No

Quest Health Care	Redmond	No
Renton In Home Services Agency	Renton	No
ResCare HomeCare	Seattle	No
Right at Home	Seattle	No
Seattle Children's Hospital HC Services	Bothell	No
Visions Home Health Care	Kirkland	No
VOTO Health Care	Auburn	No
Walgreens Infusion and Respiratory Services	Tukwila	No
Wesley Homes Community Health Services	Des Moines	No
Wilderness Shores	Maple Valley	No
Careage Home Health	Bellevue	Yes
MultiCare Health System	Tacoma	Yes
Swedish Health Services	Mountlake Terrace	Yes
Amenity Home Health Care	Seattle	Yes
Evergreen Home Health and Hospice	Kirkland	Yes
Gentiva Health Services	Kent	Yes
Group Health Home Health and Hospice	Seattle	Yes
Harvard Partners	Kirkland	Yes
Heartland Home Health Care	Seattle	Yes
Highline Home Care Services	Tukwila	Yes
Providence Home Services	Renton	Yes
Sea Mar Community Health Centers	Seattle	Yes
Signature Home Health	Bellevue	Yes

The next step is to determine whether the agencies are considered either licensed only or Medicare certified home health agencies. The department sent a utilization survey to each entity listed above. The survey requested specific information related to the provision of home health services in King County. Seven surveys were returned unopened/undeliverable. For those agencies, the department concluded they were no longer in business in Washington State, and they are not counted as available home health agencies.⁸

For the remaining 43 providers, the department determined 5 agencies do not provide home health services based on either the provider's response to the utilization survey or a review of the provider's website.⁹

For the remaining 38 providers, the department determined that they provide home health services, either Medicare certified or licensed only, to residents of King County. For some providers, services are provided to a select age group. Examples of this are Children's Country Home who provides services to pediatric patients only; and Health at Home, a licensed only agency that provides home health services to only residents of the Type A CCRC nursing home. While both of these examples are a select group, the numeric methodology includes both pediatric patients and residents of a CCRC, so the two providers in the example should appropriately be counted. The table below lists only the 38 home health agencies that will be counted in the department's numeric methodology.

⁸ The seven providers are Alacrity Staffing Solutions, Community HH and Palliative Care, EKL Health, Health Empowerment, Home Care Assistance, Renton In Home Services, and Highline Home Care Services.

⁹ The five providers are Accredo Health Group, Alliance Nursing, Providence Infusion & Pharmacy Services, Quest Health Care, and Helping Hands for the Disabled/Visions Home Health Care.

**Table 3
Health Care Agencies Serving King County**

Name	City Location	Medicare Certified	Comments
American Healthcare Services	Seattle	No	
Amicable Health Care	SeaTac	No	
Apria Healthcare Redmond	Redmond	No	Infusion Svcs
Ashley House/Enumclaw	Enumclaw	No	
Blossom Health Care	Kent	No	
BrightStar Healthcare	Bellevue	No	
Chesterfield Health Services, Inc.	Seattle	No	
Children's Country Home	Woodinville	No	Pediatric focus
Coram Specialty Infusion Services	Redmond	No	Infusion Svcs
Crista Senior Health Services	Shoreline	No	
Family Resource Home Care	Seattle	No	
Health at Home	Issaquah	No	
Health People	Bellevue	No	
Home Care Associates	Seattle	No	
Jodem Home Health Care	Bellevue	No	
LinCare	Woodinville	No	
Maxim Healthcare Services / 2branches	Bellevue / Seattle	No	
New Care Concepts	Seattle	No	
Providence Elder Place	Seattle	No	
ResCare HomeCare	Seattle	No	
Right at Home	Seattle	No	
Seattle Children's Hospital HC Services	Bothell	No	
VOTO Health Care	Auburn	No	
Walgreens Infusion and Respiratory Services	Tukwila	No	
Wesley Homes Community Health Services	Des Moines	No	
Wilderness Shores	Maple Valley	No	
Careage Home Health	Bellevue	Yes	
MultiCare Health System	Tacoma	Yes	
Swedish Health Services ¹⁰	Mountlake Terrace	Yes	
Amenity Home Health Care	Seattle	Yes	
Evergreen Home Health and Hospice	Kirkland	Yes	
Gentiva Health Services	Kent	Yes	
Group Health Home Health and Hospice	Seattle	Yes	
Harvard Partners	Kirkland	Yes	
Heartland Home Health Care	Seattle	Yes	
Providence Home Services	Renton	Yes	
Sea Mar Community Health Centers	Seattle	Yes	
Signature Home Health	Bellevue	Yes	

¹⁰ This evaluation includes Swedish Visiting Nurse Services as an existing agency because the agency will continue to be in operation through April 2012.

A summary of the department's methodology is presented below. Appendix A attached to this evaluation shows the complete methodology.

Table 4
Summary of Department of Health
King County Home Health Need Projection

	2012	2013	2014
Total Number of Patient Visits	450,195.93	456,897.76	463,600.20
Divided by 10,000	45.02	45.69	46.36
Rounded Down	45	45	46
Existing Number of Agencies	38	38	38
Net Need	7	7	8

As shown in the table above, need for an additional seven home health providers is projected in year 2012, which increases to eight in year 2014.

Careage Home Health provided comments related to the department's numeric methodology. Below is a summary of their comments received. [source: Careage Home Health public comments received September 22, 2011]

- The SHP Methodology is not a reliable predictor of numerical need for several reasons:
 - Since 1987 there have been tremendous changes in health care service delivery, population demographics, technology, and reimbursement, that renders the 1987 methodology unreliable.
 - The methodology does not distinguish between Medicare certified and licensed only providers.
 - 10,000 is the target minimum operating volume for home health agencies; but should not be a need predictor for more agencies.
 - Adding new agencies at the 10,000 visit mark does not encourage optimal use of existing resources (agencies) and prevent unnecessary duplication of providers.

All three applicants provided rebuttal statements to the comments provided by Careage Home Health. Since this evaluation focuses on only BSL's project, only those rebuttal statements are summarized. Specifically, BSL stated that the creation of a new methodology likely would require rule-making under the state's Administrative Procedures Act with public notice and opportunity to comment. Using some unidentified, new, or different methodology without prior notice to stakeholders could violate the law. BSL states that the current methodology may be flawed or outdated in some ways, but it is an effective way to determine need. [source: BSL rebuttal comments, pp1-2]

Department's Evaluation

The numeric methodology was created in the mid 1980's and is still used by the CN Program for reviewing home health applications. While the methodology is old, it is not necessarily ineffective or unreliable. The CN Program has modified the methodology twice to make it a more reliable tool for applications reviewed in recent years. For example, a recent modification focuses on the number of existing home health agencies that are counted in the methodology. In past decisions for home health projects, the department has counted only those providers that are Medicare

certified.¹¹ The rationale for this approach was that licensed only providers were not available or accessible to all residents of a service area, and therefore should not be counted against an applicant proposing to serve all residents.

More recently, the CN Program determined that while a licensed only provider is not available to all residents of a service area, those providers serve some residents. Since the methodology is based on population in a service area, rather than only Medicare or Medicaid residents, all agencies that provide home health services, including those dedicated to pediatric patients only, should be acknowledged in the numeric methodology.

To abandon the current numeric methodology in favor of a different methodology would require, at a minimum, pre-notification to all potential applicants, or at a maximum, implementation of a rule making process. This action is inappropriate during the review of this home health application.

In conclusion, the numeric methodology is an effective tool with the modifications described above. Based solely on the numeric methodology, need for an additional 7 home health agencies is demonstrated in year 2012. As the department noted, the upcoming closure of Swedish Visiting Nurse Services would increase the need for an additional home health agency in King County by one in each forecast year.

As required under WAC 246-310-210(1), an applicant must also demonstrate that the existing providers are not available or accessible to meet the projected need. To complement its need methodology, BSL provided the key factors that it believes contribute to the overall need for home health services in King County. [source: Application, p29 and April 12, 2011 supplemental information, p6] The factors are:

- Aging of the 'baby-boomer' population [those born from 1946 to 1964]. The elderly population is the fastest growing segment of the population and the 85+ population is the fastest growing cohort of all.
- An aging population will give rise to a broader spectrum of illnesses and diseases and thus a demand for a broader range of services and treatments.
- Increasing importance of home health care as utilization continues to shift from inpatient to the outpatient setting.
- Changing technology is continually redefining patient care that can appropriately be provided in the home.
- Agencies should have a physical presence in a given county to best serve the needs of the population.

Careage Home Health provided comments related to the availability and accessibility of the existing providers. The comments are summarized below. [source: Careage Home Health public comments received September 22, 2011]

- New agencies in King County will not seek to serve the 'un-served' home health patients that the methodology may suggest exists, but to merely shift patients from existing providers to a new provider.

¹¹ Both BSL and KGC submitted a methodology that subtracted only Medicare certified providers which was consistent with the Program's past practice; but is no longer used.

- The applications do not take into account the recent approval of two new agencies in the county. Neither agency has met their projected utilization.

All three applicants provided rebuttal statements to the comments provided by Careage Home Health. The rebuttal statements from BSL are summarized below.

- Based on the numeric methodology, there are un-served patients in the planning area, which supports that the existing agencies do not fully address the unmet need. BSL also asserts that there is sufficient need in King County to allow agencies to grow even with the approval of BSL's application. [source: BSL rebuttal comments, pp1-2]

Department's Evaluation

To assist in its evaluation of the availability of the existing providers, the department reviewed capacity and current patient volumes for the home health providers in the planning area. The department identified a total of 38 home health providers serving King County. Of the 38 providers, 26 are "licensed only" agencies and 12 are Medicare certified agencies. On April 29, 2011, the department sent a utilization survey to the 38 agencies requesting 2010 home health utilization data, average daily census, and maximum capacity. Of the 38 surveys, responses were received from 10 home health providers.¹² The table below is a summary of the survey responses received by the department.

**Table 5
Summary King County Home Health Patients and Visits for Year 2010**

Name	Medicare Certified	# of Patients for Full Capacity	ADC	Average # of visits/pt	Maximum Capacity¹³
Children's Country Home	No	8 ¹⁴	4	24/7 care	8 pts
Jodem Home Health Care ¹⁵	No	Not provided	2	1	???
Evergreen Home Health	Yes	875	785	11	9,625
Gentiva Health Services ¹⁶	Yes	Not provided	678	19	???
Group Health HH & Hospice	Yes	4,500	1,000	15	67,500
Harvard Partners	Yes	25	33	? ¹⁷	375
Wesley Home Community Health Svcs	Yes	140	140	12.4	1,736
MultiCare Health System	Yes	700	413	13	9,100
Swedish Health Services	Yes	1,600	970	12.2	19,520
Signature Home Health	Yes	200	12.5	11.8	2,360

¹² When an agency does not return a utilization survey, the department concludes that agency has made the determination that the proposed project will either not impact them or any impact the proposed new agency will have is not significant.

¹³ Maximum capacity in this table is calculated by multiplying the number of home health patients considered to be full capacity [question #6] by the average number of visits per patient [question #8].

¹⁴ Children's Country Home provides 24/7 care to pediatric patients in their home. Total number of visits cannot be calculated on this data. Maximum capacity is 8 patients.

¹⁵ Jodem Home Health Care indicates that it provides one visit daily that lasts for 8 hours. Full capacity was not identified.

¹⁶ Gentiva serves King County through three branch offices located in Bellevue, Kent, and Seattle and did not identify full capacity for the agency.

¹⁷ Harvard Partners did not provide this data. Maximum capacity was calculated using an average of 15 visits per patient.

In addition to the information provided in the surveys, some of the providers identified in the table above also submitted comments in their utilization survey. Those comments are summarized below.

- Group Health HH & Hospice – services are provided to patients who are Group Health physician client based.
- Wesley Home Community Health Services – Many King County agencies are below the 10,000 visit per year benchmark. It does not appear that there is an inadequate number of agencies to meet the current Medicare patients in King County.
- Harvard Partners – CN #1434 issued December 2010. As of May 18, 2011, still waiting to receive Medicare number to begin services as a Medicare/Medicaid agency. Expecting to start providing those services in October 2011.
- Evergreen Home Health – We are able to admit patients within 1-2 days and at this time have been able to hire staff to meet the community need for home health services. From our perspective additional agencies in King County are not needed at this time.
- Signature Home Health – King County has an ample supply of home health providers at present. Currently licensed providers can do a variety of services from intermittent skilled care to 24-hour non-skilled care. The greater challenge is to hire skilled and trained personnel to provide the services.
- MultiCare Health System – the department's survey requests the number of home health visits the agency needs to break even. This agency states that it is not the number of visits, but the cost per visits that makes the difference in today's market and the number of admitted patients [ADC].
- Gentiva Health Services – Gentiva has continued to recruit clinicians while maintaining low turnover. This allows us to consistently maintain capacity to provide care to patients in less than 48 hours from referral. We currently have clinicians that are under productivity. An additional provider in King County would decrease available work for our clinicians. Our size and pool of clinicians throughout King County allows us to provide exceptional services to our patients.
- Children's Country Home – we use our home health license to provide 24 hour skilled nursing care to medically fragile, technology-dependent pediatric patients only. Our capacity is 8.
- Jodem Home Health Care – We partner with a couple of other home care agencies on a reciprocal basis and sometimes pay the other agency full fee for the caregiver.

In summary, all seven of the Medicare certified agencies that responded stated that there is no need for an additional Medicare certified home health agency in the county. One of the agencies, Harvard Partners, recently received CN approval and has yet to operate a full 12 months with Medicare certification.¹⁸ The two agencies that are not Medicare certified indicate that they provide services to a very select group of individuals in the county, which implies that approval of another home health agency would not negatively affect them.

The numeric methodology assumes that all 38 agencies operating in King County are providing at least 10,000 visits annually. Since only 10 of the 38 agencies provided a response to the utilization survey, it is difficult to determine how many of the 38 agencies are operating below 10,000 visits.

¹⁸ Although Amenity Home Health did not respond to the department's utilization survey, this agency received CN approval at the same time as Harvard Partners—December 2010—and has yet to obtain Medicare certification and a Medicaid contract.

The table below shows the projected number of visits based on the department's methodology projections shown in Table 4 of this evaluation. Assuming all of the 38 agencies are providing 10,000 visits per year, the department subtracted 380,000 visits from the projections. The remainder is the un-served number of visits shown by year.

Table 6
Estimated Un-Services Visits for Years 2012 through 2014

Year	SHP Projected Number of Visits	Minus Existing Agency Visits	Un-served # of Visits
2012	450,196	380,000	(70,196)
2013	456,898	380,000	(76,898)
2014	463,600	380,000	(83,600)

The conclusions above assume all 38 agencies are providing 10,000 visits per year, and would continue to provide at least the same number of visits in year 2012, 2013, and 2014. Under this assumption, there are a projected 70,196 un-served visits in year 2012, increasing to 83,600 by the end of year 2014. The projected un-served visits do not take into account the closure of one of the largest home health providers in King County.

On April 2, 2012, Kline Galland Center (KGC) was issued CN #1466 and on May 7, 2012, Franciscan Health System (FHS) was issued CN #1471. Both certificates approved the establishment of an additional Medicare certified home health agency in King County. The table below shows the projected un-served number of patients for year 2013 and subtracts the projected number of visits in the first full year of operation for the recently approved KGH and FHS projects.

Table 7
Estimated Un-Services Visits for Year 2013

Un-served # of Visits	Minus KGC # of Visits	Minus FHS # of Visits	Un-served # of Visits
(76,898)	4,500	3,236	(69,162)

As shown above, even with the department's recent approval of two home health agencies, the department calculates that there could be as many as 69,000 visits in year 2013 that would still be un-served. If BSL was also approved to serve King County and reached its projected 4,558 visits in fiscal year 2013, the projected number of un-served visits drops to 64,604. This demonstrates that the existing home health agencies could continue increasing patients and visits even with additional Medicare certified providers in the planning area.

Based on the department's evaluation the department concludes that existing providers at their current capacity will not be sufficiently available to meet the projected need. **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.

BSL currently provides healthcare services in the retirement or assisted living setting in Washington State and out-of-state facilities. To determine whether all residents of the service area would have access to the proposed home health services, the department requires applicants to provide a copy of its current or proposed admission policy. The admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility and any assurances regarding access to treatment.

BSL provided a copy of its Admission Policy that is included in its Home Health Policy and Procedure Manual, revised 05/27/2011. The Admission Policy includes the necessary language to demonstrate that all residents of the service area would have access to BSL's home health services. BSL also provided a copy of its draft Patient Admission Booklet that is intended to be used by BSL for all home health services in Washington State. The Admission Booklet provides BSL's home health admission criteria and outlines the process to be used for admission of patients appropriate for home health care. The booklet also provides information related to patient rights and responsibilities, home safety, and infection control at home. [source: July 8, 2011, supplemental information, Exhibit 4]

To determine whether the elderly would have access or continue to have access to the proposed services, the department uses Medicare certification as the measure to make that determination.

BSL currently provides services to Medicare eligible patients through its independent living, assisted living, and nursing homes throughout the 35 states where it currently operates. For this project, a review of the policies and data provided in the application identifies the facility's financial pro forma includes Medicare revenues. Additionally, BSL provided the expected sources of revenue for the home health agency, which includes approximately 64% Medicare. [source: Application, p47 and Exhibit 8]

To determine whether low-income residents would have access to the proposed services, the department uses the facility's Medicaid eligibility or contracting with Medicaid as the measure to make that determination.

BSL currently provides services to Medicaid eligible patients through its independent living, assisted living, and nursing homes throughout the 35 states where it currently operates. For this project, a review of the policies and data provided in the application identifies the facility's financial pro forma includes Medicaid revenues. Additionally, BSL provided the expected sources of revenue for the home health agency, which includes approximately 7% Medicaid. [source: Application, p47 and Exhibit 8]

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.

BSL provided a copy of its Charity Care policy to be used specifically for its King County home health agency. The policy includes the necessary language to demonstrate 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 BSL's charity care. The policy outlines the process a patient must use to access charity care. Additionally, BSL included charity care as a deduction from revenue within its pro forma financial statements. [source: July 8, 2011, supplemental information, Exhibit 4]

No public comments were submitted for this sub-criterion.

Department's Evaluation

BSL's current Charity Care Policy and draft Patient Admission Booklet specific to Washington State meet this sub-criterion. Since the Patient Admission Booklet is in draft format, if this project is approved, the department would attach a condition to the approval. The condition relates to the Patient Admission Booklet. Provided that BSL would agree to the condition, the department concludes that all residents of the service area would have access to the proposed home health services. **This sub-criterion is met.**

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

Based on the source information reviewed and provided that the applicant agrees to the conditions identified in the 'conclusion' section of this evaluation, the department concludes that Brookdale Senior Living'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 BSL to determine the projected number of patients and patient days it would serve for King County. Those assumptions are summarized below. [source: Application, pp37-41]

- The projected number of unduplicated patients was determined based on the requirements for admission under Medicare Conditions of Participation and historical visit data for existing King County home health agencies.
- BSL calculated the number of visits per patient at 15.193.
- Patient growth each year was based on BSL's experience in other communities with Medicare certified home health services.
- There are only three disciplines that may admit home health patients for services (skilled nursing, physical therapy, and speech therapy). Unduplicated patients were distributed among those disciplines only.

If approved, BSL anticipates commencement and completion within three months of approval. Under this timeline, year 2013 would be the facility's first full calendar year of operation and 2015 would be year three. BSL's projected its patients and patient days, revenue, expenses, and net income per patient visit using fiscal years. Fiscal year one is July 2011 through June 2012, and so forth. The table below shows the projected patients and patient days for fiscal years one through three. [source: Application, p37]

Table 8
Fiscal Years 2012 through 2014 Projected Patients and Patient Days

	FY 2012	FY 2013	FY 2014
# of Unduplicated Patients	150	300	400
# of Visits Per Patient	15.193	15.193	15.193
# of Home Health Visits Per Fiscal Year	2,279	4,558	6,077

The department compared BSL's 15.193 projected number of visits per patient with the average number of visits for the eight Medicare certified home health agencies identified in Table 5 of this evaluation. The average number of visits per patient for those agencies is 13.5. Based on this comparison, the department concludes that the assumptions relied on by BSL to project its projected patients and patient days—including its projected number of visits—are reasonable.

BSL used its projected patients and patient days shown in the table above to prepare its pro-forma income statements for the proposed home health agency. The assumptions used by BSL as the basis for projecting its revenues and expenses are summarized below. [source: Application, p37-41; and pp48-52; April 12, 2011, supplemental information, 11-12; and July 8, 2011, supplemental information, pp1-2]

- Gross revenues were computed applying charges uniformly to all payer sources; computation of gross revenue is: payer source visit by discipline x visit charge = gross revenue.
- Medicare contractual allowance is the difference between gross Medicare charges and PPS payments.
- Medicaid contractual allowance is the difference between gross Medicaid charges and PPS payments.
- Commercial insurance/private pay contractual adjustment is equal to 35% of gross revenues; discounts account for 30% of adjustments and 5% for bad debt accounts.
- Deductions from revenue also reflect contractual allowances for each payer source.
- All payer sources payments, except for Medicare, are projected based on a per visit payment amount; Medicaid payments equal the published payment per discipline amount multiplied by the payer discipline visits; commercial insurance/private pay equals 35% of discipline visits charge times payer discipline visits.
- Medicare payments are projected based on the specific PPS rate for 2011, adjusted for King County in Washington State, and the average weighted case mix for Medicare certified home health agencies providing services in the county.
- Direct expenses are all costs relating to patient care, which includes wages for nursing, therapies, home health aides, and medical supplies. Also included are fringe benefits at 16.5% and travel costs at \$7.50 per visit.

- Indirect or administrative wages are all other salaries and wages not associated with direct patient care, which includes administrator, director of nursing, medical director, case managers and all clerical staff.
- All wages are based on the Bureau of Labor Statistics; May 2009 State Occupational Employment and Wage Estimates, Washington for all employees.
- All administrative expenses were increased each year by 1%.
- Allocated costs (home office costs) are based on accumulated or pooled home office allocation statistics; as agency costs increase, so does the cost allocation.
- Depreciation and amortization expenses are static because no additional capital expenditures are anticipated. Costs are amortized and depreciated over five years using the straight-line method.
- Contingency expense (shown in "All Other" line item) is projected at 0.5% of total agency costs. This amount was included to ensure sufficient costs were included for some that possibility may have been overlooked.
- All administrative costs were considered fixed costs and distributed equally over the 12 month period for each year.

After reviewing the assumptions relied on by BSL to project its revenue and expenses, the department concludes that they are reasonable to project its financial viability.

BSL also projected its revenue and expenses, using fiscal years. The table below shows the revenues, expenses, and net income based on the patient projections. [source: Application, Exhibit 8]

Table 9
Fiscal Years 2012 through 2014 Projected Revenue and Expense Statements

	FY 2012	FY 2013	FY 2014
Net Revenue	\$ 369,737	\$ 738,811	\$ 989,508
Total Expenses	\$ 471,657	\$ 747,484	\$ 920,991
Net Profit /(Loss)	(\$ 101,920)	(\$ 8,673)	\$ 68,517
Net Revenue Patient Per Visit	\$ 162.24	\$ 162.09	\$ 162.83
Operating Expenses Per Patient Visit	\$ 206.96	\$ 163.99	\$ 151.55
Net Profit (Loss) Per Patient Visit	(\$ 44.72)	(\$ 1.90)	\$ 11.27

The 'Net Revenue' line item is gross revenue minus any deductions for charity care, bad debt, and contractual allowances. The 'Total Expenses' line item includes salaries and wages, depreciation, and allocated costs for the King County agency. As shown in the table above, BSL projected it would be operating at a loss in fiscal years 2012 and 2013, and a profit in fiscal year 2014.

BSL intends to co-locate the new home health agency within space at its retirement community in Federal Way and provided a draft lease agreement between BSL Foundation House at Federal Way (lessor) and ARC Therapy Services, LL d/b/a Innovative Senior Care Home Health (lessee). The draft agreement is for one year, with options for annual renewals. All costs associated with the lease of space are identified in the draft agreement and substantiated in the pro forma Revenue and Expense Statements provided in the application. [source: Application, Exhibit 3]

Given that the lease is in draft form, if this project is approved, the department would attach a condition to the approval requiring BSL to provide a copy of the final lease agreement consistent with the draft agreement provided in the application.

BSL identified Milan Moore, MD as the medical director for the proposed home health agency and provided a draft medical director agreement for the services. The draft agreement is for one year, with two one-year options to renew without re-negotiating terms of the agreement. All costs associated with the medical director are identified in the draft and substantiated in the pro forma Revenue and Expense Statements provided in the application. [source: April 12, 2011, supplemental information, Attachment 1]

Given that the medical director agreement is in draft form, if this project is approved, the department would attach a condition to the approval requiring BSL to provide a copy of the executed medical director agreement consistent with the draft agreement provided in the application.

In addition to the projected Revenue and Expense Statements, BSL provided the projected Balance Sheets using fiscal years. Fiscal years one (2011) and three (2013) are shown below.¹⁹ [source: Application, Exhibit 8]

Tables 10
BSL King County Home Health Forecasted Balance Sheets
Fiscal Year One - 2012

Assets		Liabilities	
Current Assets	\$ 78,683	Current Liabilities	\$ 23,502
Fixed Assets	\$ 85,056	Long Term Debt	\$ 0
Board Designated Assets	\$ 0	Equity	\$ 140,237
Total Assets	\$ 163,739	Total Liabilities and Equity	\$ 163,739

Fiscal Year Three - 2014

Assets		Liabilities	
Current Assets	\$ 168,025	Current Liabilities	\$ 33,168
Fixed Assets	\$ 53,199	Long Term Debt	\$ 0
Board Designated Assets	\$ 0	Equity	\$ 188,056
Total Assets	\$ 221,224	Total Liabilities and Equity	\$ 221,224

As shown in the balance sheets above, BSL intends to operate the home health agency with little liability, which is typical of this type of service. However, it is clear that BSL would be financially stable through fiscal year 2014.

No public comments were submitted for this sub-criterion.

¹⁹ BSL noted that the balance sheets were created specifically for this Certificate of Need application. [source: Application, Exhibit 8]

Department's Evaluation

Based on the source information provided and BSL's agreement to the conditions related to the lease agreement and medical director agreement, 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.

BSL identified the capital expenditure associated with this project to be \$111,622, which includes office equipment, startup costs, and CN review fees. Since the agency would be located within space at BSL's retirement community in Federal Way, there are no construction costs. [source: Application, p46]

BSL anticipates the majority of its revenue would come from Medicare. Medicare pays for home health care on a prospective payment system (PPS) basis. The table below shows the expected payer mix for the proposed home health agency. [source: Application, p47]

Table 11
BSL Home Health Agency Payer Mix

Payer Source	Percentage
Medicare	64%
Medicaid	7%
Commercial Insurance/All Other	29%
Total	100%

Since the applicant expects that majority of its payer source would be from Medicare, the proposed project is not expected to have any impact on the operating costs and charges for home health services in the planning area, because Medicare payments are prospective payments.

No public comments were submitted for this sub-criterion. Based on the above information, the department's conclusion regarding this sub-criterion follows.

Department's Evaluation

Based on the information reviewed, the department concludes that the costs of this project will probably not result in an unreasonable impact to the costs and charges for health care services within the services area. **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.

BSL provided the following capital expenditure breakdown for the proposed project. [source: Application, p46 & Exhibit 8]

Table 12
BSL Home Health Projected Capital Cost

Item	Cost	% of Total
Fixed and Moveable Equipment	\$ 21,704	19.4%
Start Up Costs	\$ 43,917	39.3%
CN Application fees	\$ 46,001	41.3%
Total Project Cost	\$ 111,622	100.0%

BSL intends to finance the project through its reserves and submitted a letter of financial commitment from its chief financial officer. The letter confirms financial support for the project and an extensive line of credit with a known institution. BSL also provided a copy of its most recent audited financial statements (fiscal year 2009) demonstrating the financial capability to fund the project. [source: Application, p53 and Exhibits 4 and 7]

No public comments were submitted for this sub-criterion.

Department's Evaluation

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 concludes that Brookdale Senior Living'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 (full time equivalents) that should be employed for projects of this type or size.

BSL intends to co-locate its proposed home health agency within space at its retirement community known as Foundation House of Federal Way. To demonstrate compliance with this sub-criterion, BSL submitted its projected number of FTEs for its home health agency only. The table below

summarizes BSL's proposed FTEs for fiscal years 2011, 2012, and 2013. [source: Application, pp57-59]

**Table 13
Brookdale Senior Living Home Health Proposed FTEs for Fiscal Years 2012-2014**

Staff	Fiscal Year 2012	Fiscal Year 2013 Increase	Fiscal Year 2014 Increase	Total
Administrator	0.50	0.00	0.50	0.50
Director of Nursing	0.50	0.44	0.00	1.00
Case Manager	0.50	0.44	0.40	1.00
Other Administrative	1.00	0.54	0.00	2.50
Skilled Nursing	0.74	0.73	0.00	1.97
MSW/Therapies	0.85	0.86	0.62	2.27
Home Health Aides	0.10	0.11	0.10	0.31
Total FTE's	4.19	3.12	2.24	9.55

To further demonstrate compliance with this sub-criterion, BSL provided the following statements. [source: Application, p30]

"[BSL] does not anticipate any difficulties in the recruitment and retention of professional staff. Initially, the current administrator at the Villas at Union Park [an adult family home operated by BSL] will also service as the administrator of the proposed home health agency. With the exception of the MSW, which is currently available to work on an 'as needed' basis, all other therapists are in place as full time employees. [BSL's] recruitment team consists of 20+ seasoned recruiters and assistants who recruit for different areas of the country and different specialty areas within [BSL]. We have an extensive database of therapists, nurses, and management level candidates with tens of thousands of therapists and nurses throughout the US."

BSL identified Milan Moore, MD as the medical director for the proposed home health agency and provided a draft medical director agreement for the services. The draft agreement is for one year, with two one-year options to renew without re-negotiating terms of the agreement. [source: April 12, 2011, supplemental information, Attachment 1]

No public comments were submitted for this sub-criterion.

Department's Evaluation

BSL provided a draft medical director agreement and the department previously stated that a condition related to the draft is necessary. Provided that BSL would agree to the condition, the department concludes that the necessary staff 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.

BSL is an existing provider of healthcare services through its assisted living facilities in the state. This project proposes to establish a home health agency to be co-located within space at BSL's retirement community known as Foundation House of Federal Way.

To address the sub-criterion, BSL provided the following statements. [source: Application, p65]

"Ancillary services, such as nutrition/dieticians, will be engaged to provide the nutritional counseling to patients as the need arises. While this type of service is common in home health, the occurrence is infrequent and is not a Medicare covered service. The agency will provide the services as part of the overall patient care with no cost to the patient."

No public comments were submitted for this sub-criterion.

Department's Evaluation

Based on the information, the department concludes that there is reasonable assurance the proposed home health agency will have appropriate ancillary and support services. **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.²⁰ 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.

As previously stated, BSL owns and operates 529 assisted living facilities²¹, 13 rehabilitation agencies, 44 home health agencies, and 38 skilled nursing facilities, for a total of 624 facilities nationwide. [source: July 8, 2011, supplemental information, p2] The company offers independent living, personalized assisted living, Alzheimer and dementia care, rehabilitation, and skilled nursing to residents of its communities through its three subsidiaries listed below.

- American Retirement Corporation
- ARC Therapy Services, LLC
- Innovative Senior Care Home Health

To assure that BSL would provide quality healthcare services at its proposed King County home health agency, the department reviews the quality of care histories for the healthcare facilities from the states where BSL, or any of its subsidiaries, owns or operates healthcare facilities.

²⁰ Also WAC 246-310-230(5).

²¹ For this evaluation, the department will use the term 'assisted living facility' to include boarding homes or adult family homes.

In June 2010, BSL submitted a Certificate of Need application proposing to establish a Medicare certified home health agency in Pierce County. During its review of the Pierce County project, the department conducted quality of care surveys for BSL or any of its subsidiaries. On May 27, 2011, the department denied BSL's Pierce County application based, in part, on its quality of care history of its healthcare facilities—specifically its assisted living facilities—in Washington State. On July 26, 2011, the department granted reconsideration of its denial, and allowed BSL to provide reconsideration information related to its quality of care history. For the reconsideration review, the record closed on August 31, 2011. Closure of the record means that no new information can be submitted after that date.²²

For this King County project, public comments were submitted on September 22, 2011, and rebuttal documents were submitted on October 7, 2011. The department considered all of this information in its review, as well as information obtained during the previous reconsideration review of the Pierce County project, as of August 31, 2011. Below is a summary of the information provided by BSL related to this sub-criterion.

Of the 624 healthcare facilities operated nationwide by BSL or one of its subsidiaries, BSL states that 107 adverse actions have been taken in the past three years involving 70 facilities. BSL states '*Although imperfect, this level of performance is not below the norm for the industry.*' [source: July 8, 2011, supplemental information, p2]

BSL Home Health and/or Hospice Agencies [44 agencies nationwide]

BSL provided quality of care information specific to its 44 home health agencies operated nationwide. BSL states that in 2009, it underwent 9 surveys and two of them were deficiency free; there was an average of 7.2 tags per center, with the majority being administrative in nature. In 2010, BSL had 21 surveys, and two were deficiency free. There was an average of 3.8 tags per survey, and again the majority was administrative in nature. From January to June 2011, BSL had 14 surveys, and three were deficiency free. The average number of tags was 3.3, and they continue to be administrative in nature.

BSL also states that Innovative Senior Care is the entity with oversight of the BSL home health agencies. Since 2008, Innovative Senior Care has been included on the "Home Care Elite²³" list. BSL states that this status is a quality of care indicator for its home health agencies. BSL also states Centers for Medicare and Medicaid Services (CMS) considers re-hospitalization rates to be a key indicator of home health quality of care. Based on Medicare Home Health Compare data, the national average for re-hospitalization in home health is 29%. BSL participates in a data clearinghouse for home health agencies, known as Strategic Healthcare Programs, LLC. Based on this data, BSL's 2010 re-hospitalization rate is 19%. BSL states that its performance for its home health agencies demonstrates that the quality of care provided to its home health patients is above average.

²² Rebuttal documents were submitted on September 15, 2011, and the rebuttal documents are limited to the information submitted during the reconsideration review. No new information may be submitted during rebuttal.

²³ Home Care Elite is a compilation of the most successful home care providers in the United States.

BSL Assisted Living Facilities [529 assisted living facilities nationwide]

BSL asserts that the quality of care history/compliance of its assisted living facilities should not be a determining or significant factor in the evaluation of BSL's application to establish a Medicare certified home health agency in Washington State. As its rationale for this position, BSL included differences in the types/level of care, lengths of stay, staff-to-client ratio, patient service needs, level of professional staffing, and BSL's segregation of operations. The segregation of operations focuses on BSL's different subsidiaries that have oversight of different healthcare facilities in the BSL organization.

Specifically related to its 529 assisted living facilities nationwide, BSL provided its 'personalized assisted living outcome indicators' for 2010. [source: July 8, 2011, supplemental information, p3] The summary is broken down by 7 different regions, and shows a total of 124 complaint surveys out of 238 surveys performed. This means that 52% of the surveys were instigated by one or more complaints. Of the 124 complaint surveys, 79—or 64%—were substantiated. Of the 79 substantiated surveys, 13 resulted in fines over \$1,000 and 3 resulted in stop placement for admissions.

BSL notes that there are three specific areas where its Washington State assisted living facilities have received citations:

- 1) medication management and systems;
- 2) reporting of incidents involving resident to resident contact or potential abuse to appropriate authorities; and
- 3) investigation and follow up of incidents.

BSL states that it is implementing a global approach to correct these oversights and avoid additional citations. During the review of this King County project, BSL states that it was attempting to meet with representatives of the Washington State Department of Social and Health Services [DSHS]—the licensing and quality of care entity for assisted living facilities—to seek input on actions that BSL can take to improve the quality of care at its facilities. In the meantime, BSL is currently implementing the following global changes specific to its Washington State facilities.

- Nurse oversight - Washington State does not require assisted living facilities to have nurses on staff; however, BSL intends to have a higher level of nurse oversight and involvement at its facilities. The nurse oversight would include medication management, which would improve the quality and accuracy of its medication delivery system. Additionally, BSL has placed all of its pharmacy delivery and consultation services with one pharmacy. This action should streamline its pharmacy delivery services across communities and reduce medication errors. BSL has hired a person to act as Regional Director of Clinical/Resident Services [Regional Clinical Director] to provide oversight and assistance to the nurses at its assisted living facilities. BSL plans to recruit an RN case manager for its Washington State assisted living facilities to assist nurses with clinical programs, such as 'Falls Management' and 'Nutrition at Risk.' The RN case manager will also assist the Regional Clinical Director with its quality tool, known as 'Standards and Expectations Walkthrough.'
- Abuse & Neglect Training – BSL is reviewing its abuse and neglect policies for compliance with state regulations. Once completed, training will be scheduled with all Executive Directors and nurse leadership. The training will address resident-on-resident contact and

altercations; injuries of unknown source; sexuality and intimacy guidelines; reportable incidences for Washington State, and conducting and documenting an investigation and follow-up measures. Once leadership is trained, staff training will be conducted at the assisted living facilities and monitored by the Regional Clinical Director.

- Standards and Expectations Walkthrough - BSL's Washington State facilities will be implementing its full Standards and Expectations Walkthrough tool, an automated quality management tool that measures compliance with regulatory requirements and company standards. Areas assessed by the tool include health care, training, administration, dining, environment & safety, and activities & safety. BSL's standard is for each facility to complete one Standards and Expectations Walkthrough annually. For Washington State, BSL's standard is to complete two Standards and Expectations Walkthrough annually. The results of the Standards and Expectations Walkthrough will be reviewed by the Regional Clinical Director.

BSL Rehabilitation Agencies [13 rehabilitation agencies nationwide]

Other than providing a listing of all rehabilitation agencies, with address and provider numbers, BSL did not provide a discussion related to its quality of care history of the facilities. [source: July 8, 2011, supplemental information, Exhibit 2]

BSL Skilled Nursing Facilities [38 skilled nursing facilities nationwide]

Other than providing a listing of all skilled nursing facilities, with address and provider numbers, BSL did not provide a discussion related to its quality of care history of the facilities. [source: July 8, 2011, supplemental information, Exhibit 1]

BSL also provided the following documents within its Patient Admission Handbook that are related to this sub-criterion. [source: Application, Exhibit 6]

- Patient Satisfaction Questionnaire-used to assess patient satisfaction for home health services.
- Interdisciplinary Communication Record-used to record and monitor patient vital signs, progress, and changes in progress.
- ISC Teaching Flow Sheet-used by the caregiver, in concert with the patient, to ensure proper diet needs are met, medications are administered accurately, and any other concerns are addressed.
- Home Health Evacuation and Emergency Plan-to be used for natural disaster or inclement weather evacuations to ensure the patient is evacuated to the appropriate facility setting, if necessary.
- Outpatient Rehabilitation and Home Health Choice Form-this document ensures the each patient requiring home health (or rehabilitation services) are properly informed that other providers may be able to meet the care needs, other than BSL or one of its subsidiaries.

Department's Review

First, BSL asserts that the quality of care history and compliance of its assisted living facilities should not be a determining or significant factor in the evaluation of BSL's application to establish a Medicare certified home health agency in Washington State. The department disagrees with this assertion. Washington Administrative Code 246-310-230 (3) and (5) require the department to determine whether there is reasonable assurance that the project will be operated in conformance with state and medical guidelines and the services proposed to be provided by the applicant would

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. Section (5) and sub-section (a) state the following related to this sub-criterion.

(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. The assessment of the conformance of a project to this criterion shall include but not be limited to consideration as to whether:

(a) The applicant or licensee has no history, in this state or elsewhere, of a criminal conviction which is reasonably related to the applicant's competency to exercise responsibility for the ownership or operation of a health care facility, a denial or revocation of a license to operate a health care facility, a revocation of a license to practice a health profession, or a decertification as a provider of services in the medicare or medicaid program because of failure to comply with applicable federal conditions of participation;"

As read, WAC 246-310-230(3) and (5) not only allow the program to consider all healthcare facilities owned or operated by the applicant in Washington and other states, it requires this all-inclusive review.

Below is a summary of the department's quality of care review for BSL or any of its subsidiaries.

BSL Home Health and/or Hospice Agencies

The majority of BSL's home health or hospice agencies operate under the subsidiary of 'Innovative Senior Care.' BSL provided a brief overview of its quality of care history across the nation and concluded that the quality of care provided to its home health patients is above average.

To test BSL's conclusion, the department reviewed the quality of care for both home health and hospice agencies in a variety of states. Not all 44 agencies were reviewed. The department obtained quality of care summaries for agencies in the states of Florida, Illinois, Michigan, New Mexico, Oregon, Virginia, and Ohio. At this time, BSL does not operate any home health agencies in Washington State. Agencies were compared with the respective state and the national average in four areas: 1) managing daily activities, 2) managing pain and treating symptoms, 3) treating wounds and preventing pressure sores, and 4) preventing harm. [source: www.medicare.gov/homehealthcompare] Below is a summary of BSL's comparison.

Comparison Factor	Florida	Illinois	Michigan	N. Mexico	Ohio	Oregon	Virginia
managing daily activities	Below	Below	Above	Below	Above	Below	Below
managing pain and treating symptoms	Above	Above	Above	Below	Above	Above	Above
treating wounds and preventing pressure sores	Above	Above	Above	Above	Above	Above	Above
preventing harm	Above	Above	Above	Below	Above	Above	Above

As shown above, many of the BSL facilities scored lower when compared with the state averages for 'managing daily activities.' This score is based on three factors:

- how often patients got better at walking or moving around;
- how often patients got better at getting in and out of bed; and
- how often patients got better at bathing.

The Medicare compare website also scores the home health agencies on preventing unplanned hospital care. This score is based on how often home health patients had to be admitted to the hospital. The national average is 27%; BSL agencies with percentages lower than 27% is considered a good score.

Florida	Illinois	Michigan	N. Mexico	Ohio	Oregon	Virginia
24%	28%	17%	15%	25%	28%	29%

As shown above, BSL's home health agencies scored lower than 27% in the majority of the agencies that were reviewed.

Based on the information above, the department concludes that the quality of care in BSL's home health and hospice agencies is satisfactory.

BSL Assisted Living Facilities

The majority of BSL's assisted living facilities operate under the subsidiary of 'American Retirement Corporation' or 'BSL.' BSL also operates 11 assisted living facilities in Washington State. BSL provided a brief overview of its quality of care history across the nation and concluded that the quality of care provided to its patients has not been at the standards necessary. Specific to Washington State, BSL identified three areas of where improvement was necessary and provided a 'global plan of corrections' for its Washington facilities.

To test BSL's conclusion, the department reviewed the quality of care for its assisted living facilities in a variety of states—not all 529 assisted living facilities were reviewed. The department obtained quality of care summaries for in the states of Arizona, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Michigan, North Carolina, Oklahoma, Texas, and Washington. The combined number of facilities in these states represents approximately 327—or 62%--of BSL's total assisted living facilities. The quality of care data was obtained from each state's licensing/quality of care website.

The United States has thousands of assisted living facilities across the country. States are allowed to regulate their own assisted living facilities as well as determine their own licensing requirements for the operation of an assisted living facility. Each state determines the licensing procedure for that state. Licensing requirements often include proof of managerial qualifications and education requirements for the management and staff. An applicant for a license will also likely need to provide proof the building or structure where the residents are to be housed meets all health, fire and safety code requirements. Assisted living facilities are subject to state regulation once they are licensed. State regulations generally require regular inspections and yearly re-certification. State regulations also provide for complaint procedures for suspected abuse or neglect. [source: www.ehow.com/facts]

Since each state determines the licensing requirements and regulates its own facilities, the quality of care information is presented very differently on each state's website. For example, Kansas provides very little information related to the survey process used, and even less information related to the surveys for specific facilities. If an assisted living facility is cited for a deficiency, it is listed on the website; if no citations, then the facility is not listed on the website. Oklahoma, on the other hand, provides an extensive amount of information related to its survey process, including all correspondence, whether related to the survey or not. Every survey, every court order, and all other correspondence is available on the Oklahoma website, beginning in year 2003 to November 2011 for every assisted living facility in that state. For all states reviewed, survey information was available on their respective websites.

For Washington State, DSHS surveys assisted living facilities at least every 18 months. These surveys include the entire facility, with resident and staff interviews. Additionally, DSHS responds to every complaint with a survey focused on the complaint issue. If the complaint is substantiated, the facility may receive a citation or a fine. Additionally, the facility may be put in 'stop placement' mode, which means no new residents may be accepted until the issue is resolved with DSHS. A compliant survey is not conducted in lieu of an 18-month full facility survey, so an assisted living facility could be surveyed several times in a 12-month period. [source: DSHS, Residential Care Services staff]

Specific to BSL's assisted living facilities, the department concurs with BSL that a global change is necessary. This is especially evident in Washington State. BSL's overall quality of care for its assisted living facilities in Washington has been alarming and there is much room for improvement. For Washington State alone, of the 11 assisted living facilities, 6 had letters related to civil fines, stop placement, or placement of conditions on the license. Across the nation, fines ranging from \$100 [Washington] to \$14,000 [North Carolina] were prevalent in BSL's survey data for its assisted living facilities.

BSL contends that 107 adverse actions in the past three years involving 70 facilities out of 624 facilities operated nationwide by BSL should not be alarming because it is '*below the norm for the industry.*' [source: July 8, 2011, supplemental information, p2] In addition to the number of adverse actions/citations, the department also considers the severity of the citations. For BSL's assisted living facilities, the severity of those citations is demonstrated by the occurrence, re-occurrence, and amount of fines associated with the citations.

During its review of this application, the department received notification of the impending closure of one the largest home health providers in King County and the potential access to care issues for patients. As a result, the department elected to declare a pivotal unresolved issue (PUI) and allow BSL the opportunity to supplement its quality of care documentation related to the global changes implemented in mid-2011 for its assisted living facilities. On March 15, 2012, the department declared a PUI to allow BSL to provide additional quality of care data from October 8, 2011, through February 29, 2012. BSL provided the PUI documents on March 30, 2012, and the department allowed for public comment and rebuttal comments focused on PUI information. There were no requests for BSL's PUI documents and no comments were submitted. Below is a review of BSL's assisted living facilities, which includes the PUI data from October 8, 2011, through February 29, 2012.

Nurse oversight

BSL hired additional staff for oversight of Washington facilities

BSL created a new position of Regional Vice President for Washington and filled the position on August 1, 2011. This person assumed overall responsibility for the operations and quality of care surveys for all of BSL's assisted living facilities in Washington State. In turn, the Regional Vice President for Washington hired a new Executive Director on October 17, 2011. The Executive Director position is responsible for oversight and compliance of the assisted living facilities that had significant deficiencies related to surveys.²⁴

Meetings with BSL leadership and representatives of Department of Social and Health Services [DSHS]

BSL's new Regional Vice President for Washington attended two separate meetings with the Department of Social and Health Services to discuss the significant non-compliance of two separate facilities: Wynwood of Yakima, in Yakima County, and Clare Bridge in Lynnwood, in Snohomish County. Since both of these facilities had significant civil fines and stop placement orders from DSHS, the meetings included discussions to resolve immediate issues and long-term planning to ensure continued compliance. Information provided by BSL in its PUI documents state that the stop placements had been resolved and subsequent surveys had resulted in no deficiencies. CN staff contacted DSHS staff to confirm that the meetings with BSL representatives occurred and the topics that were discussed.²⁵

Abuse & Neglect Training

A number of citations issued by DSHS fell into the category of 'abuse and neglect.' This category can include uninvited patient-to-patient contact, uninvited staff-to-patient contact, and staff failure to monitor resident well-being. To address the non-compliance citations, BSL established its 'Standards and Expectations Walkthrough' which incorporates administration and staff training specific to the issues raised in the abuse and neglect citations.

Standards and Expectations Walkthrough

BSL implemented its 'Standards and Expectations Walkthrough' tool in early 2011. With the assistance of the Regional Vice President and the Executive Director, BSL reviews compliance of its facilities in the areas of health care, staff training, administration, dining, environment & safety, and activities & safety. For the Washington State facilities, BSL completed 'Standards and Expectations Walkthrough' at all 11 facilities at least twice. The facilities with substantial non-compliance issues were completed three times in 12 months.

BSL's 'Standards and Expectations Walkthrough' revealed that its quality of care had improved and its number of citations and stop placements had reduced. BSL states that average number of deficiencies dropped from 2.6 to 1.7 for its assisted living facilities. Additionally, while BSL has received fines, none resulted in stop placement or conditions on the license. BSL also acknowledged that it still had room for improvement.

²⁴ Wynwood of Yakima in Yakima County, Wynwood of Columbia Edgewater in Benton County, Park Place in Spokane County, Clare Bridge of Spokane in Spokane County, and Clare Bridge of Lynnwood, in Snohomish County.

²⁵ May 8, 2012, phone call between CN Staff and DSHS Residential Care Services staff.

During this review, CN staff contacted DSHS staff to verify BSL's claims. DSHS staff confirmed that BSL's overall compliance history from October 2011 to present had improved and no facilities were under 'stop placement.' Specific to Clare Bridge of Lynnwood, five surveys resulted in citations in 2011. DSHS staff stated that the facility was currently in compliance and had no significant non-compliance issues in 2012. Other BSL facilities that had substantial non-compliance issues or significant fines had also improved substantially. DSHS staff concurred with BSL's statements that it has had improved survey outcomes, less complaint surveys, and little or no fines. DSHS staff also concurred that BSL still had room for improvement, but was '*well on the way to a healthier compliance history.*'

It is clear from the documents provided and the steps taken since BSL's home health project in Pierce County was denied, that its quality of care history for all healthcare facilities is important to BSL. This is directly noted within the documents and statements where BSL identified its weak areas for its Washington State facilities, and also immediately began implementing global changes to correct and avoid citations. Most recent quality of care review history shows that additional oversight staff, additional staff training, and its own self-survey tool have resulted in improvement in its surveys. Based on the information above, the department concludes that the quality of care in BSL's assisted living facilities is currently satisfactory.

BSL Rehabilitation Agencies

The majority of BSL's rehabilitation agencies operate under the subsidiary of 'Innovative Senior Care.' As previously stated, BSL did not provide a discussion related to its quality of care history of these facilities.

BSL operates rehabilitation facilities in four states, with the majority operating in Alabama, Arizona, and Texas. BSL does not operate any rehabilitation facilities in Washington State. The department obtained quality of care summaries for those three states, which represented 8 of 13 facilities. For all 8 facilities, BSL received either no or minimal citations, and submitted a plan of corrections within the time frame required for each state.

Based on the information above, the department concludes that the quality of care in BSL's rehabilitation agencies is satisfactory.

BSL Skilled Nursing Facilities

BSL's skilled nursing facilities operate under the subsidiary of American Retirement Corporation or under the Brookdale Senior Living corporation. As previously stated other than providing a listing of all skilled nursing facilities, with address and provider numbers, BSL did not provide a discussion related to its quality of care history of the facilities.

BSL operates 38 nursing homes in 16 states, with the majority of them in Florida and Texas. BSL does not operate any nursing homes in Washington State. Using the Medicare compare website for nursing homes, the department reviewed the quality of care history in Alabama, Colorado, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, and Texas, representing 24 of 38 nursing homes. [source: www.medicare.gov/nursinghomecompare]

CMS created the 'Five-Star Quality Rating System' to help consumers, their families, and caregivers compare nursing homes more easily and to help identify areas about which they may want to ask questions of the nursing home operators. When reviewing the five-star ratings, more

stars are better. Five (5) stars are the most a nursing home can get. One (1) star is the fewest. Under its 'nursing home compare' website, CMS provides an 'overall rating' for nursing homes. The overall rating is a combination of the health inspection rating, the staffing rating, and the quality measures rating. CMS analyzes these three data sources and each of these ratings is combined into the 'Overall Rating.'

For the nursing homes reviewed in the states identified, BSL typically received an overall rating above three stars, with the majority in the four or five star rating. Two facilities with lower than a three-star rating are located in the states of Kentucky [2 stars] and Oklahoma [1 star]. For both facilities, either 'immediate jeopardy' or 'actual harm' citations were noted during the state inspection.²⁶ For the nursing home in Kentucky, the immediate jeopardy citations were noted in the July 2011 surveys and actual harm citations noted in the 2009 surveys. For Oklahoma, the immediate jeopardy and actual harm citations were noted during a February 2009 survey. Both facilities also received civil fines as part of the penalty for the citations. For both facilities, BSL immediately corrected the deficiencies; however the low overall rating is noted on the CMS compare website until the facility is surveyed again and no immediate jeopardy or actual harm citations are found. Given the low number of nursing homes operated by BSL, these two facilities represent 8% of the 24 surveys reviewed by the department. It is clear, however, that the majority of BSL's nursing homes are operated in compliance with the respective state and federal guidelines. Based on the information above, the department concludes that the quality of care in BSL's nursing homes is satisfactory.

BSL identified Milan Moore, MD as the medical director for the proposed home health agency. A review of Dr. Moore's compliance history did not show any current or past enforcement actions. [source: Compliance history provided by Medical Quality Assurance Commission]

No public comments were submitted for this sub-criterion.

Department's Evaluation

Given the compliance history of Brookdale Senior Living, its subsidiaries, and its proposed medical director, the department concludes there is reasonable assurance BSL's home health agency in King County would be operated in conformance with state and federal regulations. **This sub-criterion is met.**

- (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.

²⁶ An 'immediate jeopardy' citation has the potential to cause harm to resident health or safety; an 'actual harm' citation is identified when actual harm is caused to resident health or safety.

To demonstrate compliance with this sub-criterion, BSL provided the following statements. [source: Application, p65]

“Working agreements will be sought with a broad spectrum of health care providers that serve patients within the proposed service area to help promote continuity of care. Contacts will be established with physicians, hospitals, discharge planners, long term care facilities, and other retirement communities, HIV/AIDS councils, patient advocacy groups, the County Health Department, adult congregate living facilities, and other organizations.”

BSL also states that it intends to become an integral part of a healthcare delivery system that promotes continuity of care in the most appropriate and cost-effective setting for all payer classes of patients. BSL also intends to establish a Professional Advisory Committee (PAC) whose purpose will be to maintain communication with the needs of the consumer population as well as the staff of the proposed office. PAC’s membership will be approximately 12-15, and include the home health administrator and medical director, as well as physician and community representation. [source: Application, p67]

Documents provided in the application suggest that BSL intends to become a part of the existing health system in King County. Additionally, nothing in the documents provided by BSL and reviewed by staff suggests that approval of this project would change these relationships.

No public comments were submitted for this sub-criterion.

Department’s Evaluation

Based on the source information provided above, 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 any of the three applications. Based on the above information, the department’s concludes that **this sub-criterion is met.**

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

Based on the source information reviewed and the applicant’s agreement with the conditions identified in the ‘conclusion’ section of this evaluation, the department concludes that Brookdale Senior Living’s project has met the cost containment criteria in WAC 246-310-230.

- (1) *Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.*
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.

Brookdale Senior Living

Step One

For this project, BSL has met the review criteria under WAC 246-310-210, 220, and 230. Therefore, the department moves to step two below.

Step Two

Before submitting this application, BSL considered and rejected the following four options. [source: Application, p69; April 11, 2011, supplemental information, p12]

- **Do nothing**
BSL's numeric methodology supported a numeric need for an additional Medicare certified provider and this option does not provide the services needed for the residents of King County.
- **Establish a personal care services program in King County**
For Washington State, this type of services is considered 'home care services' and requires Washington State licensure, but not prior Certificate of Need review. BSL also rejected this option because it does not provide the services needed for the residents of King County.
- **Contract with an existing home health agency in King County**
BSL rejected this option because under a contract, BSL is not providing the home health services to the patient; rather, another agency provides the direct patient care. BSL believes it provides quality care and the residents of King County would benefit from the home health services provided by BSL.
- **Acquire an existing home health agency in King County**
BSL rejected this option because there were no agencies available for purchase.

Step Three

This step is used to determine between two or more approvable projects which is the best alternative. Since the three home health projects were separated they are not undergoing concurrent review. As a result, step three is not evaluated under this sub-criterion for this project.

Department's Evaluation

Taking into account the results of the numeric need methodology, the potential impact of the closure of an existing home health agency in the county, and the information above, the department concludes that the establishment of a Medicare certified home health agency by BSL is the best alternative for the community. Based on the source information reviewed and the applicant's agreement to the conditions identified in the 'conclusion' section of this evaluation, **this sub-criterion is met.**

APPENDIX A

**State Health Plan Home Health Methodology-King County
Brookdale Senior Living (Application #11-13)**

Population by age group by year						
	2010	2011	2012	2013	2014	
Total County Population	1,934,124	1,953,110	1,972,096	1,991,081	2,010,067	
Population 0-64	1,713,717	1,722,795	1,731,873	1,740,951	1,750,029	
Population 65-79						
65-69	71,662	77,175	82,688	88,202	93,715	
70-74	46,933	50,251	53,569	56,886	60,204	
75-79	35,083	36,115	37,147	38,178	39,210	
Total Population 65-79	153,678	163,541	173,404	183,266	193,129	
Population 80 +						
80-84	28,909	28,672	28,435	28,197	27,960	
85+	37,820	38,102	38,384	38,667	38,949	
Total Population 80+	66,729	66,774	66,819	66,864	66,909	
Pop. Calc. test back	1,934,124	1,953,110	1,972,096	1,991,081	2,010,067	

**State Health Plan Home Health Methodology-King County
Brookdale Senior Living (Application #11-13)**

Step 1-Population by Age Cohort	2010	2011	2012	2013	2014
0-64	1,713,717	1,722,795	1,731,873	1,740,951	1,750,029
65-79	153,678	163,541	173,404	183,266	193,129
80+	66,729	66,774	66,819	66,864	66,909
Step 2-Projected Home Health Patients by Age Cohort					
0-64 X 0.005	8,568.59	8,613.98	8,659.37	8,704.76	8,750.15
65-79 X 0.044	6,761.83	7,195.80	7,629.78	8,063.70	8,497.68
80+ X 0.183	12,211.41	12,219.64	12,227.88	12,236.11	12,244.35
Step 3-Projected Home Health visits by age cohort					
0-64	8,568.59	8,613.98	8,659.37	8,704.76	8,750.15
Multiplier	10	10	10	10	10
Subtotal 0-64	85,685.85	86,139.75	86,593.65	87,047.55	87,501.45
65-79					
Multiplier	14	14	14	14	14
Subtotal 65-79	94,665.65	100,741.26	106,816.86	112,891.86	118,967.46
80+					
Multiplier	21	21	21	21	21
Subtotal 80+	256,439.55	256,612.48	256,785.42	256,958.35	257,131.29
Total Projected Home Health Visits	436,791.05	443,493.49	450,195.93	456,897.76	463,600.20
Step 4-Gross Need (Step 3 Total Visits /10,000)	43.68	44.35	45.02	45.69	46.36
Step 5- No. of Home Health Agencies	38	38	38	38	38
Step 6 Net Need (Per Method, Fractions are rounded down)	5	6	7	7	8

A negative number means there is a surplus