

CORRECTED EVALUATION DATED SEPTEMBER 30, 2020 FOR THE CERTIFICATE OF NEED APPLICATION SUBMITTED BY KAISER FOUNDATION HEALTH PLAN OF WASHINGTON PROPOSING TO ESTABLISH A FOUR OPERATING ROOMS AND THREE PROCEDURE ROOMS AMBULATORY SURGICAL FACILITY IN EVERETT, WITHIN SNOHOMISH COUNTY SECONDARY HEALTH SERVICES PLANNING AREA.

APPLICANT DESCRIPTION

Kaiser Foundation Health Plan of Washington (“KFHPWA”) is a tax-exempt Washington non-profit corporation registered as a health maintenance organization (“HMO”) ¹. In 2017, KFHPWA acquired Group Health Cooperative also an HMO and its subsidiaries. KFHPWA Unified Business Identifier (UBI#) is 578-011-461. Currently, KFHPWA serves more than 710,170 members in Washington. [Source: <https://wa.kaiserpermanente.org>]

The sole corporate member of KFHPWA is Kaiser Foundation Health Plan, Inc., a California non-profit corporation. In Washington, KFHPWA owned and operates several medical facilities through providers employed directly by KFHPWA or by its affiliated medical group Washington Permanente Medical Group, P.C. [Source: Application page 5] KFHPWA operates one acute care hospital in Seattle, as well as three licensed ambulatory surgical facilities (ASF)².

PROJECT DESCRIPTION

KFHPWA is seeking Certificate of Need approval to construct four operating rooms and three-procedure rooms ambulatory surgery center. The ambulatory surgery center would be known as Kaiser Everett Ambulatory Surgery Center and it would be located at 2929 Pine Street, Everett [98201] but this address is yet to be formally approved by the local municipal authority. The Snohomish County parcel numbers associated with the medical office building is 00439069505800.

Services to be provided at Kaiser Everett Ambulatory Surgery Center include cardiology³, gastroenterology including endoscopy, and bariatric, general surgery, OB/GYN, ophthalmology,

¹ Under RCW 70.38.025(7), a health maintenance organization means “a public or private organization, organized under the laws of the state, which:

- (a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services [Service] Act; or
- (b) (i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

² Ambulatory Surgical Facilities (ASFs) are licensed providers of outpatient surgical services. Many ASFs are also Ambulatory Surgery Centers (ASCs), which designates certification under Medicare. For Certificate of Need purposes, the terms are often used interchangeably.

³ Does not include PCI procedures as defined under WAC 246-310-705(4).

orthopedics, otolaryngology, pain management, podiatry, pulmonary, and urology to patients six months and older who can be treated in an outpatient setting. [Source: Application page 9]

The estimated capital expenditure associated with this project is \$45,015,138 and is related to land purchase, building construction, fixed and moveable equipment, fees, and taxes. [Source: Application, page 11] If this project is approved, KFHPWA anticipates it would begin to offer services as a Certificate of Need approved ambulatory surgery center by the end of September 2022. Under this timeline, 2023 would be the first full year of operation and year 2025 would be the third full year of operation. [Source: April 23, 2020, Screening responses, page 6]

For the reader's ease, Kaiser Everett Ambulatory Surgery Center will be referred to in this evaluation as "Kaiser Everett ASC".

APPLICABILITY OF CERTIFICATE OF NEED LAW

This project is subject to Certificate of Need (CN) review as the other establishment of a new health care facility under the provisions of Revised Code of Washington (RCW) 70.38.105(3)(a) and Washington Administrative Code (WAC) 246-310-020(1)(a).

EVALUATION CRITERIA

Revised Code of Washington (RCW) 70.38.115(3) limits the criteria the department uses in its review of an HMO facility. WAC 246-310 does not contain service or facility standards for an HMO project.

TYPE OF REVIEW

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

APPLICATION CHRONOLOGY

Action	Kaiser Everett ASC
Letter of Intent Submitted	January 9, 2020
Application Submitted	February 14, 2020
Department's Pre-Review Activities <ul style="list-style-type: none">• Department 1st Screening Letter Sent• KFHPWA 1st Screening Responses Received• Department 2nd Screening Letter Sent• KFHPWA 2nd Screening Responses Received	March 9, 2020 April 23, 2020 May 14, 2020 June 8, 2020
Department Begins Review of the Application <ul style="list-style-type: none">• public comments accepted throughout review;• no public hearing requested or conducted	June 15, 2020
End of Public Comment	July 20, 2020
Rebuttal Comments Due	August 3, 2020
Department's Anticipated Decision Date	September 17, 2020
Department's Actual Decision Date	September 16, 2020
<u>Department's Corrected Evaluation Released</u>	<u>September 30, 2020</u>

AFFECTED PERSONS

Washington Administrative Code 246-310-010(2) defines “affected person.”:

WAC 246-310-010(2) requires an affected person to first meet the definition of an ‘interested person,’ defined under WAC 246-310-010(34).

For this application, Providence Health & Services – Washington dba Providence Regional Medical Center Everett sought interested person status and requested that copies of all information regarding the application be provided to throughout the course of review.

Providence Health & Services

Providence Health & Services is a health care organization that serves Pierce, King, Spokane, Thurston, and Snohomish counties. In Snohomish County, Providence Health & Services owns Providence Health & Services dba Providence Regional Medical Center Everett.

Providence Health & Services qualifies as interested person under WAC 246-310-010(34). The second requirement to be recognized as an affected person is to submit written comment or to testify at a public hearing. A public hearing was not conducted, however Providence Health & Services submitted written comments and it qualifies under WAC 246-310-010(2) as an “affected person.”

SOURCE INFORMATION REVIEWED

- Kaiser Foundation Health Plan of Washington Certificate of Need Application received on February 14, 2020
- Supplemental information received on April 23, 2020, and June 8, 2020
- Public comments received July 20, 2020
- Rebuttal comments received August 3, 2020
- Licensing data provided by the Department of Health’s internal database, Integrated Licensing & Regulatory System, “ILRS”
- Kaiser Foundation Health Plan of Washington website at <https://wa.kaiserpermanente.org>
- Washington State Secretary of State website at www.sos.wa.gov
- Washington State Department of Revenue website at www.dor.wa.gov
- Certificate of Need historical files

CONCLUSION

For the reasons stated in this evaluation, the application submitted by Kaiser Foundation Health Plan of Washington to construct a four operating room and three procedure rooms ambulatory surgery center in Everett within Snohomish County is consistent with the applicable review criteria, provided Kaiser Foundation Health Plan of Washington agrees to the following in its entirety.

Project Description

This project approves the construction of Kaiser Everett Ambulatory Surgery Center in Everett within Snohomish County. Surgical services provided at Kaiser Everett Ambulatory Surgery

Center are cardiology⁴, gastroenterology including endoscopy, and bariatric, general surgery, OB/GYN, ophthalmology, orthopedics, otolaryngology, pain management, podiatry, pulmonary, and urology to patients six months and older who can be treated in an outpatient setting.

Conditions

1. Kaiser Foundation Health Plan of Washington agrees with the project description as stated above. Kaiser Foundation Health Plan of Washington further agrees that any change to the project as described in the project description is a new project and requires a new Certificate of Need.
2. Consistent with Revised Code of Washington 70.38.115(3), Kaiser Foundation Health Plan of Washington may not be sold, leased, or have a change in control without first obtaining Certificate of Need.

Approved Costs

The approved capital expenditure for this project is \$45,015,138.

⁴ Does not include PCI procedures as defined under WAC 246-310-705(4).

CRITERIA DETERMINATIONS

A. RCW 70.38.115(3)(a)

Based on the source information reviewed and provided the applicant agrees to the conditions stated in the 'conclusion' section of this evaluation, the department determines Kaiser Foundation Health Plan of Washington met the applicable criteria set forth in RCW 70.38.115(3)(a).

Revised Code of Washington 70.38.115(3)(a) provides only the following guidance for reviewing applications submitted by an HMO. It states:

"A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll"

WAC 246-310 does not provide specific review criteria for an HMO operated or controlled ASC. Therefore, the department reviewed the information and statements provided by KFHPWA.

Kaiser Foundation Health Plan of Washington

KFHPWA provided the following statement related to this project.

For purposes of certificate of need review under the HMO criteria set forth in RCW 70.38.115, the service area is considered to be Snohomish County. However, it should be recognized KFHPWA insureds from other counties are also expected to utilize the proposed ASF. If the ASF were not owned and controlled by a health maintenance organization, the service area designated by WAC 246-310-270(2) and (3) would be the Central Snohomish County Secondary Health Service Planning Area. [Source: Application page 8]

*Specifically to address need for the project KFHPWA state, Neither the CN statute nor Department rules provide a methodology for determining the extent of ASF capacity that is required in order to meet the minimum needs of HMO members, but Department rules do provide an ASF need methodology for non-HMO applicants at WAC 246-310-270(9). Consequently, we have adapted the non-HMO ASF need methodology for use in this project, as explained and applied below. The adapted need methodology projects a **total need for 4 operating rooms and 3 procedure rooms**. Please see Table 5 below, as well as a detailed description of the methodology used following the table. [Source: Application page 17]*

In addition to the statements above, KFHPWA states, "Please see Table 6 below for a utilization forecast for the five years following the project". [Source: Application page 19]

Table 6. Kaiser Permanente Everett Ambulatory Surgery Center Utilization Forecast, 2022-2027

Room Type	Department	Aug-Dec 2022	2023	2024	2025	2026	2027	2028
OR	ORTHOPEDICS	231	988	1,379	1,542	1,719	1,905	2,027
OR	GENERAL SURGERY	118	491	667	728	794	861	916
OR	OPHTHALMOLOGY	54	230	319	356	396	437	472
OR	OB/GYN	73	305	414	450	490	530	561
OR	UROLOGY	70	294	401	440	482	525	561
OR	GASTROENTEROLOGY	45	190	264	293	324	357	380
OR	OTOLARYNGOLOGY	52	215	290	312	336	361	381
OR	CARDIOLOGY	5	22	30	33	36	39	42
OR	PAIN MANAGEMENT	2	7	9	10	11	12	13
OR	PODIATRY	1	3	4	4	5	5	5
OR	PULMONARY	1	3	3	4	4	4	4
PR	GASTROENTEROLOGY	583	2,477	3,430	3,808	4,220	4,651	4,947
PR	OPHTHALMOLOGY	216	921	1,277	1,423	1,582	1,750	1,889
PR	PAIN MANAGEMENT	156	657	901	991	1,089	1,190	1,267
PR	CARDIOLOGY	10	44	60	66	73	79	85
PR	PULMONARY	5	19	26	28	30	32	34
Total		1,622	6,867	9,473	10,486	11,590	12,739	13,585

Furthermore, KFHPWA stated, “We have used the current number of procedures performed in the PRs and have adjusted for forecasted growth as follows:

- Base projections on KFHPWA’s members’ 2018 actual utilization.
- Apply a layer of internalization as members use internal Kaiser Permanente providers such as Everett Ambulatory Surgery Center in place of external providers.
- Project approximately 2.6% average annual growth in membership between 2018 and 2027.

As shown in Table 7 below, KFHPWA has experienced significant year-over-year membership growth in the service area over the past five years (6.9% in Snohomish County). In addition to membership growth, there is a layer of internalization of members’ utilization from external delivery providers to internal providers such as Everett Ambulatory Surgery Center. This is consistent with KFHPWA’s model of furnishing clinically integrated health care services and health coverage through its comprehensive system of managed care”.

Table 7. KFHPWA Enrollment of Snohomish County Residents, 2014-2019

	2014	2015	2016	2017	2018	2019	2014-2019 Average Annual Growth
Snohomish County	45,596	46,569	54,603	56,216	56,977	63,525	6.9%

Source: Applicant

[Source: Application page 20]

During the screening of the application, the Department asked KFHPWA to clarify its projected need. In response, KFHPWA provided an updated need methodology and the following statements. [Source: 2nd screening response received June 8, 2020, page 3-5]

We agree that projected demand for procedure rooms is 2.18 rooms in the 3rd full year of operations, and further, that we have requested three procedure rooms, which is rounding up. To fully address projected demand for the Kaiser Permanente Everett ASC, three procedure rooms are required because KFHPWA cannot develop and utilize a 0.18 procedure room; it must either operate two or three rooms, hence our request for three rooms. Two (2) procedure rooms will be insufficient to meet the needs of KFHPWA members by the third year of operation (2025), notwithstanding the increased shortage over time that would result in future years if only two procedure room were approved and operationalized.

Rounding up is also completely consistent with the Department's previous evaluation of HMO procedure rooms. In the Department's December 2016 evaluation approving KFHPWA's continued operation of Group Health Capitol Hill Procedure Center, the Department approved the methodology employed by KFHPWA in demonstrating numeric need that included rounding up gastroenterology demand (from 2.4 procedure rooms) to the nearest integer (3 procedure rooms)...Table 2 demonstrates that the proposed four operating rooms and three procedure rooms associated with the Everett ASC application is fully supported and substantiated by the Department's previous evaluation of HMO ASC projects.

Table 2. Kaiser Permanente Everett Ambulatory Surgery Center Need Model

Existing Capacity	Operating Rooms	Procedure Rooms
Supply of Rooms	0	0
Annual Capacity (68,850 min/room)	0	0
Future Demand		
3rd Year (2025) Demand - Cases	4,171	6,315
Average Minutes/Case	61.658	23.786
Gross Demand in 3rd Year (in Minutes)	257,176	150,209
Gross Demand (Rooms): 3rd Year Minute Demand Divided by Single Room Capacity Minutes (68,850)	3.74	2.18
Minimum OR/PR Demand	4 ORs	3 PRs
Net Need (Surplus)		
Numeric Demand for Rooms	4 ORs	3 PRs
Supply of Rooms	0 ORs	0 PRs
Numeric Net Need (Surplus)	4 ORs	3 PRs
Non-numeric Demand for backup	0.5 OR	0.5 PR
Non-numeric Demand for coordinated care	0.5 OR	0.5 PR
Numeric + Non-numeric Net Need	5 ORs	4 PRs

To further, demonstrate adherence to the criteria in RCW 70.38.115(3)(a), in the application, KFHPWA provided the following statements.

According to Office of Insurance Commissioner records, there are currently nine (9) registered HMOs active in Washington State, including KFHPWA. (See Exhibit 3) KFHPWA has evaluated the eight other active HMOs and concludes, based on publicly available information about each of these entities, that none of the other eight HMOs provides services in the Primary Service

Area of this project in a manner similar to KFHPWA. More specifically, none of the other eight HMOs owns and operates medical facilities furnishing the majority of services to its enrollees in the Primary Service Area, and none of the other eight HMOs furnishes physician and related professional services through an affiliated medical group that has a mutually exclusive relationship with the HMO Everett Ambulatory

Table 1. Central Snohomish providers with operating rooms

Facility	License Number
Providence Regional Medical Center Everett - Colby	HAC.FS.00000084
Providence Regional Medical Center Everett - Pacific	HAC.FS.00000084
Gateway Surgery Center	ASF.FS.60100914
Sound Surgeons Surgery Center dba Northwest Weight Loss Surgery	ASF.FS.60534516
Everett Bone and Joint Surgery Center	ASF.FS.60101038
Kemp Surgery Center	ASF.FS.60100209
Physicians Eye Surgery Center	ASF.FS.60099809

KFHPWA provides its services in a manner unlike other community ambulatory surgery centers that perform procedures on a fee-for-service basis. As discussed below, KFHPWA provides procedural care to its members as one part of the comprehensive, clinically-integrated health care services furnished to members primarily by employed or closely affiliated providers under prepaid health coverage arrangements... [Source: Application pages 9-10]

KFHPWA believes that there are no “similar existing services” available and accessible to its current or anticipated future enrolled members within the service area for the Everett Ambulatory Surgery Center. There are two ways in which KFHPWA services furnished by KFHPWA providers to KFHPWA members in KFHPWA facilities are unique. First, KFHPWA’s model of furnishing clinically integrated managed care services through its providers and in its facilities is not available from any of the other HMOs that provide health coverage in this service area. Second, the surgical/procedure services that might be purchased from fee-for-service providers in the community are dissimilar in significant respects from the services available to KFHPWA members at its current and proposed owned-and-operated outpatient procedure facilities, making it impossible to identify and provide information on “similar existing services” that are comparable to KFHPWA’s own.

Specifically, with respect to the eight other HMOs identified as ‘active’ by the Washington State Office of Insurance Commissioner (OIC), each of these HMOs operates primarily, if not exclusively, on a “network provider” model in which services are furnished by community providers who have contracts with the HMO to care for the HMO’s patients, along with all of the provider’s other patients. Unlike KFHPWA, these ‘competing’ HMOs do not own and operate medical facilities in this area where most services – including outpatient procedure services -- are furnished to the HMO’s members. Nor are the many contracted community providers in the typical HMO’s ‘networks’ linked together into any unified medical group, furnished with a common electronic health record (EHR) platform with which to share clinical information, or provided other clinical support tools to enhance the clinical integration of care to patients. In other words, the other HMOs in the service area may use a managed care approach to health care financing but do not attempt to manage patient care in the highly integrated manner

KFHPWA is able to achieve using its own facilities, EHR platform and exclusive multi-specialty provider arrangements.

Further, Table 1 above provides a list of Central Snohomish providers with operating rooms. KFHPWA believes that the related procedures available for purchase in the fee for- service provider community do not constitute “similar existing services” to those furnished through KFHPWA’s procedure centers. Procedures purchased on a fee-for service basis a la carte from a variety of unrelated providers are fundamentally different from procedures furnished on a prepaid basis by an integrated delivery system using a single, closely affiliated multispecialty medical group. KFHPWA strives to provide procedure services to its members through a model of employed staff and closely affiliated providers – medical and surgical specialists, anesthesiologists and others -- working in KFHPWA facilities, sharing common clinical practice guidelines and HER systems, and sharing common incentives to provide the best and most appropriate care to members in the most efficient manner possible.

KFHPWA does not compete with fee-for-service ASCs or procedure centers in providing procedural services to the broader community. Instead, KFHPWA is legally responsible as an HMO for providing comprehensive health care services to its members, and focuses on accomplishing this by ensuring that it has the capacity and capability to care for its current and future members in the most effective and efficient ways possible.

In short, there are no “similar existing services” in the Everett area to what KFHPWA furnishes to its HMO members who require ambulatory procedures. This is evident by the fact that no ‘competing’ HMO in the service area furnishes these services in the same manner as KFHPWA, and in the fact that KFHPWA does not ‘compete’ with the fee-for service providers of ambulatory procedure services in the community. KFHPWA provides ambulatory procedural services directly where it can effectively and efficiently do so, and purchases some specialized ASC services when necessary to care for its member. [Source: Application page 21-22]

Public Comment

The Department received public comments from Providence Health & Services opposing this project. The public comments are restated below.

Providence Health & Services [Source: Public comments received July 21, 2020]

The application does not clearly disclose whether use of the ASF will be limited to members of KFHPWA’s HMO, or whether it also will be used by enrollees in Kaiser Foundation Health Plan of Washington Options’ PPO plans. Accordingly, the Department cannot conclude that the ASF “is needed to meet the special needs and circumstances” of HMO members in accordance with WAC 246-310-210(5).

As KFHPWA notes in its application, the CN statute provides that a CN application filed by an HMO “shall be approved” if the Department finds that (1) approval of the application “is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll” and (2) the HMO is “unable to provide” the proposed services through existing providers in the community. The

Department has implemented this statutory provision in WAC 246-310-470, which provides that the Department “shall issue” a CON for a proposed HMO project if the Department “finds the proposed project meets the criteria set forth in WAC 246-310-210(5).” Under WAC 246-310-210(5), KFHPWA is required to demonstrate the following in order for its proposed ASF project to be approved: **“The project is needed to meet the special needs and circumstances of enrolled members or reasonably anticipated new members of a health maintenance organization**

On its website, Kaiser Permanente offers three health care products: “Core HMO,” “Access PPO,” and “Elect PPO.” It is not clear from KFHPWA’s CN application whether the proposed ASF will be used solely by members of the Core HMO, or whether it also will be used by enrollees in the Access PPO and/or the Elect PPO health plans offered by Kaiser Foundation Health Plan of Washington Options, Inc. (“KFHPWA Options”). For example, the application states: “a high proportion of patients will be enrolled members of KFHPWA health plans who have chosen to receive care from Kaiser Permanente providers.” This suggests that use of the ASF will not be limited to HMO members. Further, the ASF operating room need projections contained in the application are based on “KFHPWA’s members’ 2018 actual utilization,” “a layer of internalization as members use internal providers,” and a projected “2.6% average annual growth in membership between 2018 and 2027.” It is unclear whether the terms “members” and “membership” refer solely to members of the Core HMO or whether they also include enrollees in the Access PPO and Elect PPO plans. Clarifying this ambiguity is important given that, in 2019, there were 155,931 enrollees in the PPO plans, representing approximately 27% of the total combined enrollment of KFHPWA’s HMO and KFHPWA Options’ PPO plans.

Under WAC 246-310-210(5), KFHPWA’s ASF project may only be approved if “the project is needed to meet the special needs and circumstances” of the members of KFHPWA’s HMO. It is not clear from the application whether the project is directed solely to the needs of the members and prospective members of KFHPWA’s Core HMO, or whether it also will be serving the needs of the enrollees in KFHPWA Options’ two PPO plans. In the absence of this information, the Department cannot make a determination as to whether KFHPWA’s application satisfies RCW 70.38.115(3), WAC 246-310-470(2), and WAC 246-310-210(5).

KFHPWA has failed to demonstrate, as required by WAC 246-310-210(5), that the proposed ASF services “are not available” to it from non-HMO providers or other HMOs “in a reasonable and cost-effective manner.”

In addition to requiring KFHPWA to demonstrate that the ASF “is needed to meet the special needs and circumstances” of KFHPWA’s HMO members, WAC 246-310-210(5) also requires KFHPWA to demonstrate that “the services proposed are not available from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner consistent with the basic method of operation of the health maintenance organization.” In order to evaluate whether KFHPWA has satisfied this requirement, the Department considers four enumerated factors.

KFHPWA has provided a list of five ASFs and two other surgery providers in the Central Snohomish planning area that may be available to provide surgical services to KFHPWA’s HMO members. However, KFHPWA has not provided any information regarding any attempt by it to determine whether any of the five ASFs and two other surgery providers would in fact be

available to provide services to KFHPWA members in accordance with the four enumerated factors. Instead, KFHPWA simply states: “KFHPWA believes that the related procedures available for purchase in the fee-for-service provider community do not constitute ‘similar existing services’ to those furnished through KFHPWA’s procedure centers.” KFHPWA further states: “Procedures purchased on a fee-for-service basis a la carte from a variety of unrelated providers are fundamentally different from procedures furnished on a prepaid basis by an integrated delivery system using a single, closely-affiliated multispecialty medical group.”

Rebuttal Comments

In response to the comments provided by Providence Health & Services KFHPWA submitted rebuttal comments and those comments are restated below.

KFHPWA

Kaiser Permanente Washington – previously known as Group Health Cooperative – has served Washington state residents for more than 70 years, and in 2017 became part of the Kaiser Permanente Medical Care Program. KFHPWA is and has been a health maintenance organization (HMO) that provides integrated and comprehensive health care services and health coverage to its members. To achieve this model of integrated care delivery, it seeks to furnish care for its members utilizing its closely affiliated multi-specialty medical group (Washington Permanente Medical Group), its KFHPWA-employed providers and staff, and its own medical facilities, to the greatest extent possible. These features are the foundation of KFHPWA’s unique system of care and coverage; in short, they constitute its basic method of operation

KFHPWA therefore seeks to build and operate the facilities that it requires to care for its HMO members, as well as for those non-HMO members it serves. For example, KFHPWA provides care for Washington State Medicaid patients. In addition, it cares for those PPO members of KFHPWA’s wholly-owned subsidiary – Kaiser Foundation Health Plan of Washington Options, Inc. (“KFHPWA-Options”) – who choose to obtain some or all of their health care services through the HMO’s care delivery system, rather than from community providers in the KFHPWA-Options network. All of these patients benefit from KFHPWA’s basic method of operation, including its coordinated system of care, evidence-based medicine, established clinical pathways, common electronic health record (EHR) platform used across the system, and the other advantages its system offers. [Source: Rebuttal comments received August 3, 2020, page 1]

Criteria for Reviewing HMO CN Applications

When an HMO applies for a CN, the statute and rules discussed below establish general standards by which such applications are to be reviewed; unlike the statute and rules for non-HMO applications, they do not provide quantitative formulas or standards by which to assess ‘need.’ For instance, HMOs are not required to use the standard CN planning area parameters in determining the need for the HMO’s proposed project. KFHPWA’s application fully satisfies the standards for approval set forth in the applicable statute and rule. But to further support its application, KFHPWA has also referred to non-HMO CN quantitative methodologies, applied to the relevant service area for its HMO members in the north Puget Sound region, to demonstrate that its Everett ASF CN application warrants approval even under these quantitative formulas. [Source: Rebuttal comments received August 3, 2020, page 1]

Approval of KFHPWA's CN Application Is Justified Solely Based on the Projected Volumes of HMO Members

In its comments, Providence states: "The application does not clearly disclose whether use of the ASF will be limited to members of KFHPWA's HMO or whether it will also be used by enrollees in Kaiser Foundation Health Plan of Washington Options' PPO plans. Accordingly, the Department cannot conclude that the ASF 'is needed to meet the special needs and circumstances' of HMO members in accordance with WAC 246-310-210(5)." In other words, Providence asserts that, because the proposed KFHPWA Everett ASF may care for HMO members and KFHPWA-Options PPO members, the Department of Health cannot determine whether the project meets the criteria for CN approval. The comments further pull overall KFHPWA enrollment data from financial statements filed with the Office of the Insurance Commissioner to imply that 27% of the volume of "members" who may use the Everett ASF may be PPO enrollees, not KFHPWA HMO members.

As detailed below, Providence is incorrect. Approval of KFHPWA's Everett ASF CN application is completely warranted based on the projected volumes of services to its HMO members alone. We demonstrate this using only KFHPWA HMO residents' actual ambulatory surgery case volumes for Snohomish, Skagit and Whatcom counties

Please see Table 1 below that presents KFHPWA HMO-Only Study Area members' 2018 historical case volumes and 2025 volume projections (the third full year of operations at the proposed Everett ASF).

Table 1 also includes the calculated compound average annual growth rates (CAGR) from 2018 through 2025. The volume growth assumptions underlying this forecast in Table 1 correspond to and are based on KFHPWA's internal projections of HMO membership in the Study Area expected in 2025

Table 1. KFHPWA CY2018 and CY2025 Combined Operating Room and Procedure Room Cases by County in Study Area.

	HMO-Only Members' TOTAL CASE DEMAND (Regardless of Facility)		
County	2018	2025	CAGR (1)
Snohomish	5,470	7,745	5.1%
Skagit	4,141	4,097	-0.2%
Whatcom	5,822	6,195	0.9%
Total Study Area	15,433	18,037	2.3%

(1) The CAGR figures reflect KFHPWA's internal HMO membership growth projections for these counties.

Moreover, the growth assumptions shown in Table 1 are well supported by KFHPWA's HMO historical membership growth. In all cases, these forecasted average annual rates are much lower than historical growth in KFHPWA's HMO enrollment from 2015-2019 (see Table 2 below). [Source: Rebuttal comments received August 3, 2020, pages 2-3]

Table 2. KFHPWA HMO Historical Enrollment, by County, 2015-2019

County	2015	2016	2017	2018	2019	Compound Annual Growth Rate (CAGR)
Snohomish	29,424	33,628	41,042	50,349	45,068	11.25%
Skagit	13,203	17,788	17,505	18,429	15,982	4.89%
Whatcom	23,848	30,078	30,616	31,206	27,502	3.63%
Total	66,475	81,493	89,163	99,984	88,552	7.43%

As discussed in KFHPWA's June 2020 screening response, in forecasting utilization, KFHPWA distinguishes between operating rooms (OR) and procedure rooms (PR). Therefore, the KFHPWA HMO-only Study Area total case projections presented in Table 1 have also been segmented by room type (see Table 3 below).

Table 3. KFHPWA CY2025 Study Area Cases by County, Segmented by Room Type

County	HMO-Only Members' TOTAL CASE DEMAND (Regardless of Facility)		
	CY2025 Operating Room (OR)	CY2025 Procedure Room (PR)	CY2025 TOTAL
Snohomish	3,133	4,613	7,745
Skagit	1,748	2,348	4,097
Whatcom	2,767	3,428	6,195
Total Study Area	7,648	10,389	18,037

Table 4 provides a comparison of the case projections, by room type, between total projected demand by Study Area HMO-Only KFHPWA members (regardless of facility) and the forecasted case counts to the proposed Everett ASF project which were provided in our Application. Table 4 clearly demonstrates KFHPWA HMO members' projected utilization (Table 3) can fully support (in fact, more than supports) its certificate of need request for four ORs and three procedure rooms. For example, the Everett ASF forecast model (Application, Table 5., p.17) is projected to provide 10,486 cases to Study Area KFHPWA members, whereas the total case projection for all KFHPWA HMO network members residing in the Study Area is anticipated to be 18,037 cases. In total, the Everett ASF forecast case count of 10,486 cases in CY2025 is only 58% ($10,486/18,037 = 0.58$) of that same forecast for all KFHPWA HMO members in CY2025. To reiterate, KFHPWA was purposefully conservative in its Application utilization forecast by (1) using moderate growth assumptions to estimate future case demand by Study Area KFHPWA members and (2) allocating a reasonable subset of cases to the proposed Everett ASF facility based on KFHPWA's significant experience in operating ASFs in Washington State. [Source: Rebuttal comments received August 3, 2020, pages 3-5]

Table 4. KFHPWA Everett ASF Net Case Allocation, CY2025.

County	CY2025 Operating Room (OR)	CY2025 Procedure Room (PR)	CY2025 TOTAL
Study Area HMO-Only TOTAL DEMAND (Regardless of Facility)	7,648	10,389	18,037
Everett ASF Case Forecast	4,171	6,315	10,486

Total Demand source: see Table 3.

Everett ASF source: CN App #20-46 Application Table 5, p. 17.

The above analysis underscores the reasonableness of KFHPWA’s forecasted volumes, whether all KFHPWA insureds utilization are used or only HMO members’ utilization projections are used in the forecast model. This clearly establishes the required need for its proposed seven (7) OR Everett ASF project, and disproves the Providence contentions that KFHPWA has not demonstrated need for its project when only HMO members are utilized in the forecast methodology

Table 5 presents the Everett ASF need model, as consistently applied throughout KFHPWA’s application and screening responses. It demonstrates that the need for the proposed four operating rooms and three procedure rooms is fully supported and validated by the Department’s previous evaluation of HMO ASC projects

Table 5. KFHPWA ASF Forecast Model— Everett ASF Case Allocation and Corresponding Net OR/PR Need, 2025.

	Operating Room	Procedure Room
Everett ASF Total Cases = 10,486 (2025-3 rd year of operations)	4,171	6,315
Average Minutes/Case (actuals)	62	24
Gross Demand, in Minutes	257,184	150,216
Gross Demand (rooms) (minutes divided by 68,850, single room capacity minutes (WAC 246-310-270(9)(a)(ii)).	3.74	2.18
Minimum OR/PR Demand	4 ORs	3 PRs
Current Supply	0 ORs	0 PRs
Numeric Net Need	4 ORs	3 PRs
Non-numeric Demand for backup	0.5 OR	0.5 PR
Non-numeric Demand for coordinated care	0.5 OR	0.5 PR
Numeric + Non-numeric Net Need	5 ORs	4 PRs

Source: Application, Table 5, p. 17. and June 2020 Screening Responses, Table 2, p. 4.

In sum, KFHPWA has demonstrated that the Everett ASF project meets the CN approval criteria even if only KFHPWA HMO members are taken into account. [Source: Rebuttal comments received August 3, 2020, pages 4-6]

Purchasing Services from a Fragmented Array of Community Providers Would be Neither “Consistent with [KFHPWA’s] Basic Method of Operation” Nor “Administratively Feasible.”
Providence refers to fee-for-service (“FFS”) ASFs in the Central Snohomish planning area, and asserts that KFHPWA has not demonstrated whether these community ASFs “would in fact be available to provide services” to the HMO’s members, citing to WAC 246-310-210(5). Such an assertion misconstrues the HMO CN approval criteria set forth in the CN statute, RCW 70.38.115, and in the rules applicable to HMO CN applications, including WAC 246-310-210(5).

KFHPWA demonstrated in its CN application that its “basic method of operation” is to provide integrated care and coverage, and comprehensive services to its members, through its closely affiliated medical group and KFHPWA-employed providers and staff (collectively referred to as

“KP providers”), in KFHPWA’s own facilities, to the greatest extent possible. It would be inconsistent with this basic method of operation for KFHPWA to abandon this integrated approach in favor of purchasing health care services from the fragmented array of fee-for-service community ambulatory surgery providers currently available in this geographic area. This is particularly so where, as here, KFHPWA has shown that its HMO-enrolled member volumes alone justify the proposed facility. [Source: Rebuttal comments received August 3, 2020, pages 6-7]

...Again, the rule does not require KFHPWA to abandon its basic method of operation in favor of purchasing services from fragmented community providers. If KFHPWA were to purchase services from various fee-for-service community ASC/ASF providers, as the objectors propose, its HMO members could not conveniently obtain outpatient surgical services through KFHPWA’s closely affiliated medical group and employed providers, as described under subsection (b) above. Instead, HMO members would have to be cared for by fee-for-service contracted providers who are not part of Kaiser Permanente’s integrated system, or they would have to travel further than practical for the types of services available at ASFs.

Alternatively, Kaiser Permanente providers would be forced to seek clinical privileges at each of the ASFs that might be capable of caring for KFHPWA members, presenting significant logistical and other administrative complications. Access by KP providers to OR “block time” at community ASFs – and thus access for HMO members– typically would be very challenging, because KP providers would be seeking OR time that is also sought by community providers, who often have ownership interests in, or favorable scheduling priority at, the community ASFs where the services would be furnished. In short, in the scenario proposed by the objectors, services from community ASFs would not be “available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization,” as provided in the rule. [Source: Rebuttal comments received August 3, 2020, page 8]

Department’s Review

Providence Health & Services asserted that KFHPWA needed to demonstrate its project is needed to meet the special needs and circumstances of KFHPWA members. Providence Health & Services also asserted that WAC 246-310-210(5) requires KFHPWA to demonstrate that the services proposed are not available from other non-health maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner consistent with the basic method of operation of the health maintenance organization.

The Department agrees with Providence Health & Services that KFHPWA should demonstrate that services proposed are not available or accessible through other non-health maintenance organization providers. However, RCW 70.38.115(3) limits the criteria the department uses in its review of an HMO facility.

Within the application KFHPWA stated, there are nine registered HMOs active in Washington State, including KFHPWA and concludes that none of the other eight HMOs provides services in Snohomish County in a manner similar to KFHPWA. More specifically, none of the other eight HMOs owns and operates medical facilities furnishing majority of services to its enrollees in the primary service area, and none of the other eight HMOs furnishes physician and related professional services through an affiliated medical group that has a mutually exclusive relationship with the HMO. [Source: Application page 9]

The Department agrees with KFHPWA that if it were to purchase services from community providers, KFHPWA HMO members may not benefit from the HMO-specific cost savings through its affiliated medical group and employed providers. Specifically, KFHPWA states “... *Unlike KFHPWA, these 'competing' HMOs do not own and operate medical facilities in the Primary Service Area where most services -- including outpatient procedure services -- are furnished to the HMO's members. Nor are the many contracted community providers in the typical HMO's 'networks' linked together into any unified medical group, furnished with a common electronic health record (EHR) platform with which to share clinical information, or provide other clinical support tools to enhance the clinical integration of care to patients. In other words, the other HMOs in the service area may use a managed care approach to health care financing but do not manage patient care in the same highly-integrated manner as KFHPWA, through its closely-affiliated primary care and multispecialty medical group, within KFHPWA-owned and operated facilities to the greatest extent possible, and utilizing clinical pathways, quality oversight programs, and a shared EHR platform.*

KFHPWA offers comprehensive, coordinated health care services and health coverage to an enrolled membership on a prepaid basis, primarily through its owned and operated facilities, employed and closely affiliated providers, and also a contracted provider network. KFHPWA has a mutually exclusive relationship with its affiliated medical group -- Washington Permanente Medical Group -- which furnishes physician and related professional services to KFHPWA members within KFHPWA's core service area”. [Source: April 23, 2020, Supplemental information page 12]

Given there are no adopted standards for the review of an HMO owned or controlled ASC, in the application, KFHPWA states it currently enroll about 63,525 members in Snohomish County and it has experienced significant membership growth within the past five years, with membership growing at 6.9% annual growth from 2014 to 2019. Based on its 2018 actual membership KFHPWA projected demand for five operating rooms and four operating procedure rooms. For its projected operating rooms surgeries, KFHPWA projected 4,171 surgeries in year 2023. KFHPWA then converted the projected surgeries to minutes by multiplying the 4,171 surgeries count by 61.658 minutes per surgery, which resulted in demand for 257,175.5 minutes. KFHPWA divided the 257,175.5 minutes by the operating room default of 68,850 minutes and this yielded 5 operating rooms.

For the projected procedure room surgeries, KFHPWA projected 6,315 surgeries in year 2023. KFHPWA then converted the projected surgeries to minutes by multiplying the 6,315 surgeries count by 23.786 minutes per surgery, which resulted in demand for 150,209 minutes. KFHPWA divided the 150,209 minutes by the operating room default of 68,850 minutes and this yielded 4 procedure rooms.

KFHPWA does not currently operate any surgery center in Snohomish County. The department agrees that the assumptions used by KFHPWA to project surgery rooms within the service area are reasonable and the adapted methodology can be substantiated. Though Providence does accurately point out that there are alternatives to the establishment of this facility, Providence did not demonstrate that KFHPWA does not meet the criteria outlined in RCW 70.38.115(3)(a). Based on the source information evaluated the department concludes that **this criterion is met.**

B. RCW 70.38.115(3)(b)

Based on the source information reviewed and provided the applicant agrees to the conditions stated in the ‘conclusion’ section of this evaluation, the department determines Kaiser Foundation Health Plan of Washington met the applicable criteria set forth in RCW 70.38.115(3)(b).

Revised Code of Washington 70.38.115(3)(b) provides only the following guidance for reviewing applications submitted by an HMO. It states:

"A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it."

WAC 246-310 does not provide specific review criteria for an HMO operated or controlled ASC. Therefore, the department reviews the statements, data used, and alternatives considered by the applicant.

Kaiser Foundation Health Plan of Washington

KFHPWA provided the following statement related to this project. [Source: Application page 24-27]

Neither the CN statute nor Department rules provide more detailed criteria for determining whether an HMO would be unable, without approval, to provide its health services in a reasonable and cost-effective manner, consistent with its basic method of operation and which makes such services available on a long-term basis through physicians and other health professionals associated with it. In the absence of Department rules or clarifying application information requests, KFHPWA has adopted the statutory standard for use in this application, as explained and applied below

KFHPWA's Basic Method of Operations

KFHPWA serves the needs of its members by providing health care services and coverage on a prepaid basis, principally using its own employed and closely affiliated providers and staff, and whenever possible furnishing such care in its own facilities. This ‘model’ of care has been fundamental to KFHPWA’s values throughout its more than 70- year existence as a provider of integrated health care services and health coverage in Washington state, and continues to be reflected in its current operations. Any description of the “basic method of operation” of KFHPWA must focus on these key elements of clinical and operational integration that make KFHPWA unique in this service area.

KFHPWA Makes Its Services Available on a Long-Term Basis Through Physicians and Other Health Care Professionals Associated With It

KFHPWA's existing surgery centers, such as Bellevue Ambulatory Surgery Center and Bellevue Procedure Center, are examples of how KFHPWA's 'basic method of operation' has been carried out 'on a long term basis through physicians and other health care professionals associated with it.' [RCW 70.38.115(3)(b).] KFHPWA's proposed development of a new ASC in Snohomish County is a continuation of this 'basic method of operation' of KFHPWA.

KFHPWA Is Unable to Provide, Through Services of Facilities Which Can Reasonably Be Expected to Be Available to KFHPWA, Its Health Services in a Reasonable and Cost-Effective Manner

KFHPWA's clinical approach has no direct comparison in the Snohomish service area, or across Washington state. Even if KFHPWA could find providers of fee-for-service services in the community that had excess capacity to care for KFHPWA members, such services would not be comparable to those furnished within the KFHPWA integrated delivery system, and would not be "reasonable and cost-effective" and also "consistent with the basic method of operation of the organization

Alternative services or facilities are not available in a 'reasonable and cost-effective' manner which is consistent with the 'basic method of operation' of the health maintenance organization.

- The provision of coordinated care across the continuum is a key element of the high quality care provided to KFHPWA consumers. Reliance on other providers of fee-for-service services would diminish our ability to provide coordinated care and achieve quality goals.*
- Our ability to directly manage quality and safety, and to control costs, would diminish if services are provided outside KFHPWA facilities.*
- Scheduling and coordinating care between KFHPWA providers and facilities, and a variety of non-KFHPWA surgery centers would add needless complexity to systems and processes. The added complexity would diminish our ability to coordinate care, and would raise risks related to service quality and patient safety.*
- Our ability to use our integrated electronic health record system for the seamless coordination of care for members would be diminished, compromising our ability to coordinate care, achieve our high quality standards, and provide KFHPWA members access to key portions of the members' electronic health records.*
- KFHPWA members are accustomed to receiving outpatient surgical care at facilities owned and operated by KFHPWA, where possible. Referring members to other community providers would significantly diminish the member experience at KFHPWA.*

Alternatives Analysis

As presented below, alternatives were evaluated in terms of access; quality; cost/efficiency; staffing impacts; and legal comparisons.

The following two options for this project were evaluated:

1. *KFHPWA would not seek a CN and would not develop a new facility. (“Do Nothing”)*
2. *KFHPWA would seek CN approval to develop and operate Everett Ambulatory Surgery Center with four (4) operating rooms and three (3) procedure rooms. (The Project).*

Table 8. Alternatives Analysis: Promoting Access to Health Care Services.

Option:	Advantages/Disadvantages:
Option One: Do Nothing	<ul style="list-style-type: none"> Members living in the Planning Area are currently travelling to Capitol Hill, and Bellevue for procedures. Given increased congestion and travel times in the Puget Sound region, members may have to travel 1 to 3 hours for their procedures. (Disadvantage—“D”) Would limit members’ access to the best-practices and core competencies from KFHPWA. (Disadvantage—“D”) Would harm KFHPWA’s preferred health care delivery model to own and operate its care facilities and have health care services furnished by its employed staff or closely affiliated Kaiser Permanente providers. (D)
Option Two: Develop and operate Everett Ambulatory Surgery Center with four (4) operating rooms and three (3) procedure rooms. (The Project).	<ul style="list-style-type: none"> A new ASC will decrease member travel and stress by significantly increasing geographic access to KFHPWA provided surgical services. (Advantages “A”) Provides members’ access to the best-practices and core competencies from KFHPWA. (“A”) Provides the preferred delivery model for both KFHPWA, i.e., owning and operating care facilities and directly furnishing health care services. (A)

Table 9. Alternatives Analysis: Promoting Quality of Care.

Option:	Advantages/Disadvantages:
Option One: Do Nothing	<ul style="list-style-type: none"> To the extent that patients reduce or delay care due to limited access or other barriers (e.g. long travel and wait), this negatively affects health outcomes and quality of care. (D) By limiting members’ access to the increased clinical collaboration among KFHPWA providers, this Option would comparatively limit members’ quality of care. (D)
Option Two: Develop and operate Everett Ambulatory Surgery Center with four (4) operating rooms and three (3) procedure rooms. (The Project).	<ul style="list-style-type: none"> By expanding members’ access to the increased clinical collaboration among KFHPWA providers, this Option would comparatively enhance members’ quality of care. (A)

Table 10. Alternatives Analysis: Promoting Cost and Operating Efficiency.

Option:	Advantages/Disadvantages:
Option One: Do Nothing	<ul style="list-style-type: none">• No additional capital expenditure required. (A)
Option Two: Develop and operate Everett Ambulatory Surgery Center with four (4) operating rooms and three (3) procedure rooms. (The Project).	<ul style="list-style-type: none">• Does require significant capital expenditures. (D)• By greatly expanding members' access to KFHPWA surgical services, this would allow greater execution of KFHPWA's preferred clinical delivery model---one it has found to be operationally most effective and efficient, i.e., lowest cost. (A)• Opportunities for clinical collaboration and sharing best practices; would promote greater efficiency and quality. (A)

Table 11. Alternatives Analysis: Staffing Impact.

Option:	Advantages/Disadvantages:
Option One: Do Nothing	<ul style="list-style-type: none">• No change in current staffing. (Neutral, "N")
Option Two: Develop and operate Everett Ambulatory Surgery Center with four (4) operating rooms and three (3) procedure rooms. (The Project).	<ul style="list-style-type: none">• Although this Option requires additional staff, given KFHPWA competencies in recruitment this is not a barrier to developing and operating the proposed Everett facility. (N)

Table 12. Alternatives Analysis: Legal Comparison.

Option:	Advantages/Disadvantages:
Option One: Do Nothing	<ul style="list-style-type: none">• Does not require a certificate of need. (A)
Option Two: Develop and operate Everett Ambulatory Surgery Center with four (4) operating rooms and three (3) procedure rooms. (The Project).	<ul style="list-style-type: none">• Requires a certificate of need. (D)

Department's Review

KFHPWA is an HMO that provides the full spectrum of health care services and healthcare coverage to its membership. KFHPWA provides healthcare services to its members through its employees and/or closely affiliated providers in facilities owned by it, or in facilities not own by it in order to help control costs. Within the application, *KFHPWA asserted that its ability to directly manage quality and safety, and to control costs, would diminish if services are provided outside KFHPWA facilities.* [Source: application, page 25]

KFHPWA also stated that members are used to receiving outpatient surgeries and care at the facilities owned or operated by it referring members to other community providers would diminish KFHPWA member experience.

If this project were a traditional ambulatory surgery facility application, the intent of this section would be to ensure the project is the most cost-effective option after a thorough review of

alternatives considered. The Department agrees with KFHPWA that its ability to directly manage quality and safety, and to control costs, would diminish if services are provided by fee for services facilities as suggested by Providence in their public comment under the previous sub-criterion. Given this project is for KFHPWA members ~~only~~ and members of their subsidiary KFHPWA-Options health plans, the applicant's ability to control healthcare services costs for its members by providing services in facilities owned or operated by it or in affiliated provider's facilities could help to control costs.

Based on information, the department will rely on the alternatives considered by the applicant. Within the application, KFHPWA states that alternative services or facilities of the type proposed are not available in a 'reasonable and cost-effective' manner that is consistent with the 'basic method of operation' of the health maintenance organization.

The department agrees that the alternative considered by KFHPWA demonstrates reasonableness for this project and shows this is the best available alternative for the applicant. This project would provide services to KFHPWA HMO members ~~only~~ and members of their subsidiary KFHPWA-Options health plans, a first in Snohomish County. The department concludes that with the approval of this project KFHPWA will be better able to provide health services to its members in a reasonable and cost-effective manner that is consistent with its current method of operation providing outpatient surgery. **This criterion is met.**