

EVALUATION DATED SEPTEMBER 22, 2023, FOR THE CERTIFICATE OF NEED APPLICATION SUBMITTED BY EMPRES HEALTHCARE GROUP, INC. (EDEN HOSPICE AT WHATCOM COUNTY, LLC) PROPOSING TO PROVIDE MEDICARE AND MEDICAID-CERTIFIED HOSPICE SERVICES TO RESIDENTS OF SKAGIT COUNTY

APPLICANT DESCRIPTION

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

EmpRes Healthcare Group, Inc. owns 100% of EmpRes Home Health and Hospice, LLC, which owns 100% of EmpRes Hospice, LLC. This application was submitted by Eden Hospice at Whatcom County, LLC which is 100% owned by EmpRes Hospice, LLC. [source: Application, Appendix 4 and April 10, 2023, screening response, Attachment 15] For this project, EmpRes Healthcare Group, Inc. is the applicant.

If a Certificate of Need is issued for this project, the department recognizes that an In-Home Service license has been issued to Eden Hospice at Whatcom County, LLC and this project requests an expansion of the services area for the existing license.¹ For this review, references to the applicant will identify “*Eden Hospice at Whatcom County, LLC*” or simply “*Eden.*”

Currently, the applicant owns and operates nine in home service agencies in Washington State.²

PROJECT DESCRIPTION

Under the Medicare payment system, hospice care benefits consist of the following services: physician and clinical services, nursing care, medical equipment and supplies, prescription drugs, hospice aide and homemaker services, physical and occupational therapy, speech-language pathology services, social worker services, dietary counseling, grief and loss counseling, short-term inpatient care (for pain and symptom management), and short-term respite care.³ Hospice staff must be available 24/7 for emergencies.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden currently operates a Medicare and Medicaid certified hospice agency in Whatcom County. The agency, known as Eden Hospice at Whatcom County,⁴ is located at 316 McLeod Road, #104 in Bellingham [98226]. This project proposes to expand the agency’s Medicare and Medicaid hospice services into adjacent Skagit County. Eden provided the following rationale for proposing to serve Skagit County residents from its existing Whatcom County operations. [source: April 10, 2023, screening response, pp2-3]

“Upon receipt of a certificate of need approval, Eden Hospice at Whatcom County will continue to offer services in Skagit County. Staff of the Whatcom County based agency will continue to support hospice services Skagit King County and the agency will recruit additional licensed staff residing in Skagit County to serve the entire county. The current administrative team as well as contract-supported staff will serve residents of Skagit County. The administrative office is located in Bellingham, Washington.”

The focus of this evaluation is limited to the Skagit County expansion except where Eden’s Whatcom County operations overlap, then that agency’s operations are included in this evaluation.

¹ IHS.FS.61117985.

² Nine agencies are: EmpRes Home Health of Bellingham [IHS.FS.60491681], EmpRes Home Care of Bellingham, [IHS.FS.60651755], Eden Home Health of King County, LLC [IHS.FS.60871865], Eden Home Health of Spokane County [IHS.FS.61014910], Eden Home Health of Clark County, LLC [IHS.FS.61097918], Eden Hospice at Whatcom County, LLC [IHS.FS.61117985], Eden Hospice at Portland, LLC [IHS.FS.61290232], Eden Hospice at King County, LLC [IHS.FS.61293991], and Eden Hospice at Snohomish County, LLC [IHS.FS.61367726].

³ Medicare Hospice Benefits, page 8 Centers for Medicare & Medicaid Services. CMS Product No. 02154, Revised March 2023.

⁴ IHS.FS.61117985.

Eden provided the table below identifying the services it intends to provide in Skagit County. [source: Application, p15]

Applicant's Table

| | |
|--|-------------------------------|
| X Skilled Nursing | X Durable Medical Equipment |
| X Home Health Aide | X IV Services |
| X Physical Therapy | X Nutritional Counseling |
| X Occupational Therapy | X Bereavement Counseling |
| X Speech Therapy | X Symptom and Pain Management |
| X Respiratory Therapy | X Pharmacy Services |
| X Medical Social Services | X Respite Care |
| X Palliative Care | X Spiritual Counseling |
| X Other (please describe) | |
| Services primarily for Alzheimer's disease and other dementias | |
| Aroma therapy – By contract | |
| Music therapy – Use of volunteers and contractors | |
| Therapeutic touch – By contract | |
| Advanced feeding techniques - By contract | |

If approved, Eden intends to be Medicare certified to provide hospice services to the residents of Skagit County in September 2023. Within the application materials, Eden explains that it has been providing Medicare and Medicaid hospice services to residents of Skagit County under Governor Inslee's Proclamation 20-36. [source: Application, pp15-16] Based on the timeline identified by the applicant, year 2023 is a partial year, and full calendar year one of the project is 2024 and full calendar year three is 2026.

Eden states that there is no capital expenditure or start-up costs for this project and provided the following clarification and rationale for the assertion. [source: April 10, 2023, screening response, p77]

“EmpRes Healthcare Group, Inc. is responsible for 100% of the capital costs. Eden Hospice at Whatcom County, LLC will collocate with Eden Home Health of Bellingham which will minimize start-up and continuing overhead costs associated with independent solo startups thus reducing breakeven levels. For example, there is no capital expenditure associated with the project because there is a sufficient supply of desk phone/computer setups, and the field clinicians have company-issued cell phone and table from our equipment inventory. That inventory is sufficient to support the addition of hospice staff serving Skagit County. The co-shared office location is currently wired with secure IT infrastructure and requires no modification for this project.

There are no start-up costs because this is just an extension of the Eden Hospice at Whatcom County agency.”

APPLICABILITY OF CERTIFICATE OF NEED LAW

This application proposes to establish Medicare and Medicaid-certified hospice services for the residents of Skagit County. This action is subject to review as the construction, development, or other establishment of new health care facility under Revised Code of Washington (RCW) 70.38.105(4)(a) and Washington Administrative Code 246-310-020(1)(a).

EVALUATION CRITERIA

WAC 246-310-200(1)(a)-(d) identifies the four determinations that the department must make for each application. WAC 246-310-200(2) provides additional direction in how the department is to make its determinations. WAC 246-310-290 contains service or facility-specific criteria for hospice projects and must be used to make the required determinations.

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); 246-310-240 (cost containment); and WAC 246-310-290 (hospice standards and forecasting method).

TYPE OF REVIEW

As directed under WAC 246-310-290(3) the department accepted this application under the 2022 cycle 2 annual hospice agency concurrent review timeline for Skagit County. Given that this application was the only hospice application proposing to provide services to the residents of Skagit County, it was converted to the regular review process as allowed by WAC 246-310-290(6).

During the 2022 hospice concurrent review cycles, Eden submitted applications to provide Medicare and Medicaid-certified hospice services in Pierce, Skagit, and Spokane counties. While this evaluation focuses on the Skagit County project, some areas of the evaluation must take into consideration the possibility that the applicant could be approved for multiple counties. A table showing the chronological summary of the review for this Skagit County project is on the following page.

APPLICATION CHRONOLOGY

| Action | Eden |
|---|---|
| Letter of Intent Received | November 29, 2022 |
| Application Received | December 28, 2022 |
| Department's pre-review activities including: <ul style="list-style-type: none"> • DOH First Screening Letter • Applicant's Responses Received • DOH Second Screening Letter • Applicant's Responses Received | January 31, 2023 April 10, 2023 ⁵ May 1, 2023 June 12, 2023 |
| Beginning of Review | June 20, 2023 |
| End of Public Comment <ul style="list-style-type: none"> • Public comments accepted through the end of public comment • No public hearing requested or conducted | July 25, 2023 |
| Rebuttal Comments Deadline | August 8, 2023 |
| Department's Anticipated Decision Date | September 22, 2023 |
| Department's Actual Decision Date | September 22, 2023 |

AFFECTED PERSONS

"Affected persons" are defined under WAC 246-310-010(2). In order to qualify as an affected person someone must first qualify as an "interested person" defined under WAC 246-310-010(34). During the course of the review of this application three entities requested interested person status. Below is a review of each entities affected person status.

Hospice of the Northwest

Hospice of the Northwest is a Medicare and Medicaid certified hospice agency that serves residents of Island, San Juan, Skagit, and Snohomish counties.⁶ The agency is located in Mount Vernon, within Skagit County. Hospice of the Northwest sent its request for interested and affected person status on March 8, 2023, and the department received Hospice of the Northwest's public comment on July 25, 2023. Hospice of the Northwest qualifies as an affected person for this project.

Health Facilities Planning and Development

Health Facilities Planning and Development (HFPD) is a business located in Seattle that specializes in strategic planning, market intelligence, facility master plan development, business planning, feasibility studies, legislative/regulatory/policy support, community health needs assessments, and grant writing primarily for the health care sector throughout the Pacific Northwest. HFPD submitted a request for interested person status on February 20, 2023. On its own, this entity does not qualify for interested person status and, therefore, cannot qualify for affected person status.

Health Trends

Health Trends is a business located in Seattle that supports health organizations, specializing in a variety of health economic and analytic services and has been practicing for over twenty years. Health Trends submitted a request for interested person status on March 29, 2023. On its own, this entity does not qualify for interested person status and, therefore, cannot qualify for affected person status.

⁵ The applicant's first screening response was originally due on March 17, 2023. The applicant was granted a 24-day extension to respond to the first screening of the initial application.

⁶ IHS.FS.00000437.

In summary, only the following entity/person qualifies as affected persons for this Skagit County hospice project:

- Hospice of the Northwest

SOURCE INFORMATION REVIEWED

- Eden's Certificate of Need application received on December 28, 2022
- Eden's first screening responses received on April 10, 2023, and replacement attachment on May 23, 2023
- Eden's second screening responses received on June 12, 2023
- Public comments received on or before July 25, 2023
- Rebuttal comments received on or before August 8, 2023
- Licensing and/or survey data provided by the Department of Health's Office of Health Systems Oversight
- Department of Health Integrated Licensing and Regulatory System database [ILRS]
- Licensing data provided by the Medical Quality Assurance Commission, Nursing Quality Assurance Commission, and Health Systems Quality Assurance Office of Customer Service
- EmpRes Healthcare Group, Inc.'s website at <http://www.empres.com>
- CMS QCOR Compliance website: https://qcor.cms.gov/index_new.jsp
- Centers for Medicare & Medicaid Services Medicare Hospice Benefits booklet CMS Product No. 02154, Revised March 2023
- Washington State Secretary of State corporation data
- Certificate of Need Program reports

PUBLIC COMMENTS

During this Skagit County hospice review the department received extensive public comment regarding this project. For reader ease, the department will identify who submitted the comments and whether the comments supported or opposed the project.

CONCLUSION

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

For the reasons stated in this evaluation, the application submitted by EmpRes Healthcare Group, Inc.'s proposing to expand its Whatcom County Medicare and Medicaid hospice services into Skagit County is not consistent with applicable criteria of the Certificate of Need Program, and a Certificate of Need is denied.

CRITERIA DETERMINATIONS

A. Need (WAC 246-310-210) and Hospice Services Standards and Need Forecasting Methodology (WAC 246-310-290)

Based on the source information reviewed, the department determines that EmpRes Healthcare Group, Inc.'s project **does not meet** the applicable need criteria in WAC 246-310-210 and the availability and accessibility criteria in WAC 246-310-290(8).

(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 246-310-290(8)-Hospice Agency Numeric Methodology

The numeric need methodology outlined in WAC 246-310-290(8) uses hospice admission statistics, death statistics, and county-level population projections to predict where hospice services will be needed in Washington State. If a county shows an average daily census of 35 unserved hospice patients three years after the application submission year, there is numeric need and the county is "open" for applications. The department published the final step-by-step methodology on November 1, 2022. The methodology is attached to this evaluation as Appendix A. Following is the discussion and evaluation of this applicant's numeric need methodology outlined in WAC 246-310-290(8).

The numeric methodology follows the Washington Administrative Code standards as written. Any alternate methodologies that historically have been suggested or past public comments that suggest an alternative to the stated rules will not be included in this review.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden provided its own step-by-step calculation of numeric need for Skagit County which expands on the one published by the department. Both numeric methodologies project no need for an additional hospice agency in Skagit County in year 2024. Eden has extended the methodology through 2027, demonstrating there is no projected need through 2027 based on current data, and provided the following statements related to this sub-criterion. [source: Application, pp18-19, and April 10, 2023, screening response, p37]

"Exhibit 1 (discussed in the next section) shows there will be need for an average daily census of 6 patients in 2024, 10 patients in 2025 and 14 patients in 2026.

Exhibit 1 on a following page provides the hospice need methodology for 2024 prepared by the Department through 2025. This projection was then extended to include 2026 and 2027. All population data was provided by OFM in its 2017 growth management, medium population forecasts for under 65, and 65 years and older cohorts. This Exhibit demonstrates population-based need without considering new patient admissions for specific populations that can be identified by various characteristics that produce disparity in access; Eden's goal is to reduce disparity in access for these population cohorts from 2023, through 2026. Table 13 provides the annual number of negative admissions -- net non-duplicative hospice admissions as follows that can be sourced back to Exhibit 1:

- 2023 - 25 admissions*
- 2024 - 50 admissions*
- 2025 - 75 admissions*
- 2026 - 96 admissions"*

Exhibit 1 referenced in the statements above is recreated below and extends the department's methodology through years 2025-2027.

Applicant's Table

Department of Health
2022-2023 Hospice Numeric Need Methodology
Methodology By County

Skagit *Select from drop down menu

| Skagit County Only | | | | | | | | | | | | | | |
|------------------------------|--------|--------|--------|--------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Population information (OFM) | | | | | | | | | | | | | | |
| Ages | County | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 |
| 0 - 64 | Skagit | 97,885 | 98,616 | 99,346 | 100,076 | 100,807 | 101,537 | 101,887 | 102,236 | 102,586 | 102,935 | 103,285 | 104,082 | 104,880 |
| 65 + | Skagit | 22,735 | 24,021 | 25,308 | 26,595 | 27,881 | 29,168 | 30,314 | 31,460 | 32,607 | 33,753 | 34,899 | 35,841 | 36,783 |

| WAC 246-310-290(8)(a) Step 1: | | | | | | |
|-------------------------------|---------------------------------|--------|--------|--------|---------|----------|
| Ages 0 - 64 | | 2019 | 2020 | 2021 | Average | Use Rate |
| | Hospice unduplicated admissions | 3,712 | 3,680 | 3,893 | 3,762 | 23.16% |
| | Total deaths | 14,047 | 16,663 | 18,015 | 16,242 | |

| Ages 65 + | | 2019 | 2020 | 2021 | Average | Use Rate |
|-----------|---------------------------------|--------|--------|--------|---------|----------|
| | Hospice unduplicated admissions | 26,175 | 27,957 | 27,884 | 27,339 | 58.07% |
| | Total deaths | 44,159 | 46,367 | 50,717 | 47,081 | |

| WAC 246-310-290(8)(a) Steps 2-8: | | | | | | | | | | | | | |
|--|------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|--|-------------|
| Ages 0-64 | Step | Result | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | | |
| Planning area historical resident deaths (OFM) | 2 | | 229 | 269 | 334 | | | | | | | | Ages 0 - 64 |
| Average deaths (2019-2021) | 2 | 277 | | | | | | | | | | | Steps 2-4 |
| Projected patient deaths: 23.16% | 3 | 64 | | | | | | | | | | | |
| Average population (OFM) | 4 | 101,410 | | | | | | | | | | | |
| Projected population | N/A | | 100,807 | 101,537 | 101,887 | 102,236 | 102,586 | 102,935 | 103,285 | 104,082 | 104,880 | | |
| Potential volume | N/A | | 64 | 64 | 65 | 65 | 65 | 65 | 65 | 66 | 66 | | |

| Ages 65+ | Step | Result | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | | |
|-------------------------------------|------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--|-----------|
| PA historical resident deaths (OFM) | 2 | | 1,018 | 1,068 | 1,190 | | | | | | | | Ages 65+ |
| Average deaths (2019-2021) | 2 | 1,092 | | | | | | | | | | | Steps 2-4 |
| Projected patient deaths: 58.07% | 3 | 634 | | | | | | | | | | | |
| Average population (OFM) | 4 | 29,121 | | | | | | | | | | | |
| Projected population | N/A | | 27,881 | 29,168 | 30,314 | 31,460 | 32,607 | 33,753 | 34,899 | 35,841 | 36,783 | | |
| Potential volume | N/A | | 607 | 635 | 660 | 685 | 710 | 735 | 760 | 780 | 801 | | |

| All Ages | Step | Result | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | | |
|--|------|--------|---------|---------|---------|-------|-------|-------|-------|-------|-------|--|-----------|
| Combined age cohorts | 5 | | 671 | 699 | 725 | 750 | 775 | 800 | 825 | 846 | 867 | | All Ages |
| Current capacity (DOH survey) | N/A | 765 | | | | | | | | | | | Steps 5-8 |
| Unmet need | 5 | | (94) | (65) | (40) | (15) | 10 | 35 | 61 | 82 | 103 | | |
| Unmet need patient days (statewide ALOS) | 6 | 61.89 | (5,800) | (4,038) | (2,479) | (921) | 637 | 2,196 | 3,754 | 5,055 | 6,355 | | |
| Unmet Average Daily Census (ADC) | 7 | | (16) | (11) | (7) | (3) | 2 | 6 | 10 | 14 | 17 | | |
| Agency needed (ADC > 35) | 8 | 35 | FALSE | FALSE | FALSE | FALSE | FALSE | FALSE | FALSE | FALSE | FALSE | | |

Public Comments

Alpha Home Health and Hospice and Hospice of the Northwest noted in public comment that the department's methodology does not project numeric need for another hospice agency in Skagit County. Neither disputed the results of the numeric methodology.

Rebuttal

In rebuttal, Eden stated that it "disputes that there is no numeric need. The state methodology found partial numeric need for a 6-patient Average Daily Census for 2024." [source: August 8, 2023, rebuttal packet p12]

Department's Evaluation of Numeric Methodology

The 2022-2023 hospice numeric need methodology was released on November 1, 2022, and followed the steps required by WAC 246-310-290(8). The methodology relies on 2019- 2021 historical data and projects to year 2024. Eden acknowledged that the numeric methodology posted to the department's website identifies no need for an additional Medicare and Medicaid certified hospice agency in Skagit County in projection year 2024. The results of the numeric methodology are shown in the table below.

| Department's Table 1 | |
|--|---|
| Skagit County Hospice Methodology Projection Summary for Year 2024 | |
| Year 2024 - Unmet Patient Days divided by 365 | 6 |

| | |
|---|---|
| Year 2024 - Number of Agencies Needed (divide by 35)* | 0 |
|---|---|

* the numeric need methodology projects need for whole hospice agencies only – not partial hospice agencies. Therefore, the results are rounded down to the nearest whole number.

The numeric methodology is a population-based assessment used to determine the projected need for hospice services in a county (planning area) for a specific projection year. Based solely on the numeric methodology applied by the department, need for additional hospice agencies to serve the residents of Skagit County is not demonstrated. **The department concludes that numeric need is not demonstrated for this project.**

Though numeric need is not met, this does not preclude the approval of this project, consistent with WAC 246-310-290(12). In the event that the applicant satisfies all other applicable review criteria, this project will be assessed under that sub-criterion, which provides for an exception to numeric need under limited circumstances. Therefore, the review for WAC 246-310-290(12) is completed at the end of this evaluation.

In addition to the numeric need, the department must determine whether other services and facilities of the type proposed are not or will not be sufficiently available and accessible to meet the planning area residents’ needs.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden provided extensive information in its application and its screening responses to demonstrate compliance this sub-criterion. Not all information is restated below, but all is considered in this review.

Focusing on factors in Skagit County that could restrict patient access to hospice services, Eden provided the following statements and clarifications. [source: Application, pp18-19 and April 10, 2023, screening response, p5]

“There are a variety of factors within the planning area that restrict patient access to hospice services. These are listed in order and discussed in greater detail in response to Question 4 that requires applicants to document that their applications will not result in unnecessary duplication of services.

General Population Increase: *Exhibit 1 (discussed in the next section) shows there will be need for an average daily census of 6 patients in 2024, 10 patients in 2025 and 14 patients in 2026.*

Dual Medicare Eligible Disparity: *Dual-eligible Medicare beneficiaries’ income is so low that they also qualify for Medicaid. This Medicare population is called the dual-eligible beneficiary cohort. In Skagit County dual-eligible hospice admissions make up 18% of Medicare hospice admissions. As Table 7 shows, in 2021, Skagit County, hospice utilization by dual-eligible Medicare beneficiaries was 42.9% of Medicare dual-eligible deaths, while utilization by non-dual (not Medicaid eligible) Medicare beneficiaries was 55.9% of Medicare non-dual-eligible beneficiaries. Disparity in use of hospice by dual-eligible Medicare beneficiaries is 23% lower than for non-dual-eligible beneficiaries. This disparity, using 2021 Medicare data, would account for 36 hospice admissions and an average daily census of 6 hospice patients using the current State-calculated average length of stay.*

Racial and Ethnic Disparity: *Race and Ethnic disparity exists in Skagit County. However, an examination of OFM population estimates (summarized in Table 5), shows that the Skagit County population age 65 and older that accounts for approximately 87% of hospice admissions contains a very low percentage of the at-risk population in racial and ethnic groups other than White. As a result, efforts to reduce racial and ethnic disparity in hospice admissions while necessary will yield limited*

results in Skagit County due to the small population sizes of the “at-risk” population cohorts. The Eden approach is to assure cultural competence in the delivery of services and to focus outreach on the dual-eligible population which would also include racial and ethnic minority population cohorts.

Table 6 provides hospice utilization rates for racial and ethnic groups. The data shows that the Black and North American Indian and Alaska Native cohorts have lower hospice utilization rates than the statewide average. For example, the population defined as Black have a hospice utilization rate of 35% which is 27% lower than the overall Skagit County Medicare hospice use rate. However, the 65 and older Black cohort makes up only .2% of the total Skagit County population. Results are similar for the Hispanic ethnic population whose hospice admits in 2021 in Skagit County are suppressed because the total is less than 11 hospice admissions. So, while the Hispanic population makes up nearly 6% of the overall Skagit population, less than 2% of the total Hispanic population is 65 and older.

Nursing Home and Assisted Living Facilities Disparity: Eden’s extensive experience in offering a broad array of rehabilitation and long term care services in addition to hospice services provides a different perspective and level of experience in outreach to nursing home and home health agency patients. Initially, Eden will focus on services to our home health agency in Skagit County and Whatcom County as well as our nursing home in Whatcom County that are listed below.

- Eden Home Health of Bellingham, a Medicare certified home health agency
- North Cascades Health and Rehabilitation Center, a Whatcom County nursing home

Eden’s experience in evaluating Whatcom County and Spokane County Eden nursing homes and retirement facilities is that our patients have not received outreach services from existing hospices – and residents in these facilities make up a large component of the dual-eligible population. Because of our direct experience, Eden has already initiated outreach to Skagit County nursing homes since Eden does not own a nursing home in Skagit County and will not be perceived as a competitor. As Table 9 demonstrates the low percentage of referrals related to nursing home care. Based on our benchmarking approach, Eden would expect to 40 – 50 hospice patients at North Cascades yet there were only 2 hospice patients in 2022. Eden would expect the same scale of hospice-supported patients in Skagit County but has adjusted its referral expectations down to 12 – 19 hospice referrals to patients living in nursing homes to take into account developing a new outreach program. Eden’s budget includes a full time outreach liaison who will reach out to other nursing home and retirement facilities instead of working solely with EmpRes/Eden programs. Together, the principal Eden approach will reduce dual-eligible disparity in admissions without duplication of existing services and will increase the overall dual eligible hospice admission rate

Death with Dignity Disparity: The 2021 Death with Dignity state report (See Appendix S, PDF, page 10), indicated that Skagit County registered 1 – 9 Death with Dignity participants. Tables 11 and Table 12 indicate that if Death with Dignity participation rates were the same as Washington State counties west of the Cascades, there would be approximately 7 – 8 Death with Dignity participants. Statewide, 91% of Death with Dignity participants are enrolled in a hospice program (PDF, page 5). As noted earlier, our goal is to reach out to families and patients who have questions about end-of-life control. Eden expects to serve (annually) 10 – 15 patients with Death with Dignity questions in Skagit County. This volume of Death with Dignity hospice patients is fully non-duplicative.

Rural Staffing Disparity: On average, 30% - 40% of nurses employed by Eden Home Health at Skagit County live in Skagit County so the ability to continuously serve rural hospice patients is facilitated.”

When asked in screening to elaborate on how a “General Population Increase” is a potentially access restricting factor in Skagit County, Eden provided the following clarifying statement.

“Since “Need” in the Methodology multiplies population by a use rate, population increase will increase demand for services. If service capacity is fixed and patient volume increases, access to services will be restricted meaning patients may have to wait longer for services. This normally affects patients with less financial resources first and their use rate goes down (compared to resourced patients) – which causes disparity in access. Specific to Skagit County, the dual eligible utilization of hospice services is 22% below the non-dual eligibility rate, which means that increased hospice demand associated with general population growth represents a clear and present barrier access problem to dual eligible patients. Dual eligible patients must wait longer for hospice services. Furthermore, hospice hours of care per patient are reduced and/or agencies reduce short-term outreach to balance existing operational demand for services with that agency’s resources to supply services. The experience by Eden is that Skagit utilization of hospice services -- 42 Eden-Skagit patients during 2022 demonstrates general need.”

Eden provided the following statements related to why this project should not be considered an unnecessary duplication of services for Skagit County, including information regarding underserved populations in Skagit County. [source: Application, pp20-29, April 10, 2023, screening response, pp13-16, pp31-33, June 12, 2023, screening response, p6]

“Table 4 on the following page presents expected admits, length of stay, hospice days and average daily census. It shows that population-based admissions alone would make up about one-half of the projected hospice admissions for Skagit County before considering special populations and new, unduplicated patient admissions shown in Table 13. Table 13 shows that there is a remaining balance of unduplicated admissions available for Skagit Hospice Services or for Eden. Table 5 through Table 12 provide supporting documentation.

Applicant’s Table
Table 4
Eden Hospice at Whatcom County, LLC Admits, Days and Average Daily Census
For the First Three Years of Operation

| SKAGIT COUNTY | 2023 | 2024 | 2025 | 2026 |
|--------------------------------|-------------|-------------|-------------|-------------|
| Total hospice admissions | 54 | 114 | 162 | 178 |
| Average Length of Stay | 59.5 | 61.2 | 61.2 | 61.2 |
| Total hospice days | 3,215 | 6,977 | 9,911 | 10,892 |
| Projected average daily census | 8.81 | 19.11 | 27.15 | 29.84 |

A. Skagit County Medicare Dual-eligible Utilization Disparity Analysis

Regarding population growth generating additional hospice need, the Department has accepted the population growth approach as a starting point in addressing unnecessary duplication. In recent applications, the Department expressed interested in how applicants will address barriers to care beyond simple availability of a new hospice service. The Department rationale is that applicants proposing to serve counties where there is a hospice Need of less than a 35-patient average daily census must identify **Unmet Need, not just population growth.**

In response to the evolving position of the Department, most applicants have studied the health status of individual counties – Skagit County – as well as the demographic mix of the population. We applaud the many successful efforts of existing providers to address racial and ethnic disparity in access as well as new applicants proposing to serve various counties in the State. New applicant analyses have found that there is disparity resulting in lower utilization due to income (including homelessness), race and ethnicity. **Our community analysis contained in Appendix X concurs with earlier applicant findings, but the problems identified by other applicants fundamentally**

misunderstand the scale of hospice utilization disparity in terms of ethnic and racial disparity and require a new array of solutions to reducing disparity in hospice utilization in Skagit County. In most previous analyses, social values, e.g., Death with Dignity or LGBTQ, access disparity and have been under analyzed and remains underutilized for the LGBTQ population due to an absence of demographic data.

Ethnic and racial access disparity in Skagit County does exist as shown in Table 5. Table 5, shows that the population with the highest hospice use, aged 65 and older for Hispanic, Black, and other racial minorities is quite small compared to the overall population in these cohorts as demonstrated in Table 5. While Table 6 documents disparity in hospice admission rates per 1,000 Medicare Beneficiary Deaths is significant and also exists at the Washington State and the United States levels. In this case, the differences in these utilization rates do not translate into a large number of hospice admissions due to the lower percent and absolute population numbers in racial and ethnic groups for the population age 65 and older as shown in Table 5. For example, the Hispanic population age 65 and older makes up only 4.8% of the total Hispanic population while it makes up 25.0% of the total County population over age 65. As a result, the number of hospice referrals is low for sheer population numbers in addition to income, education, and other disparity barriers. This adds special challenges in addressing racial and ethnic disparities in hospice admissions.

Applicant's Table

**Table 5
2020 Skagit Population and Percent of Total Population By Age Group (OFM/Census)**

| Age Cohort | Total | % of Total | Black | % of Total | American Indian Alaska Native | % of Total | Asian | % of Total | Hispanic | % of Total |
|--------------|---------|------------|-------|------------|-------------------------------|------------|-------|------------|----------|------------|
| Under Age 65 | 100,712 | 77.2% | 1,263 | 95.8% | 3,308 | 90.5% | 2,756 | 85.9% | 25,201 | 95.2% |
| Over Age 65 | 29,738 | 22.8% | 56 | 4.2% | 348 | 9.5% | 453 | 14.1% | 1,278 | 4.8% |
| Total | 130,450 | | 1,319 | | 3,656 | | 3,209 | | 26,479 | |

As a result, Table 6 shows total hospice admissions for all racial and ethnic groups other than White is only 25 admissions. As such, outreach concentrating solely on racial and ethnic outreach strategies will miss curing most of the disparity existing in the county. Eden like other providers is committed to culturally competent care but will focus its outreach efforts to the dual-eligible population group focusing first on patients in Nursing Homes and Residential Facilities where Eden has experience and where referrals to hospice is exceptionally low for all groups, as well as to eligible hospice patients who also have an interest in considering a Death with Dignity participation option.

Applicant's Table

Table 6

2021 Skagit County Medicare Hospice Utilization Rates by Race and Ethnicity
(Berg 2021 Medicare Beneficiary Data)

| Gray = Less than 11 Suppression | | | |
|---|-------------------------|-------------------------|------------------|
| Race | Hospice Admissions 2021 | Deaths of Beneficiaries | Utilization Rate |
| White | 639 | 1,185 | 53.9% |
| Black | | | 33.3% |
| Asian | | | 50.0% |
| Hispanic or Latino | | | 27.8% |
| North American Native | | | 30.8% |
| Other | | | 40.0% |
| Unknown | | | 46.2% |
| Total | 664 | 1,252 | 53.0% |
| Total Suppressed Racial and Ethnic Admissions | 25 | 67 | 37% |
| Total Suppressed Racial and Ethnic Admissions Based on Disparity Rate Adjustment | 4 | 11 | 17% |

Barriers to hospice access vary dramatically for the dual-eligible population in Skagit County as well as the Population that Accesses Death with Dignity in all counties East of the Cascades. Table 6 provides the 2021 Utilization Rates for the Dual-eligible and Non-Dual-eligible Population in Skagit County. The dual-eligible hospice utilization rate for dual-eligible Medicare beneficiaries was 42.9% compared to 55.9% for non-dual-eligible beneficiaries. The difference in hospice utilization in Skagit County in 2021 is a full 23.2% lower for Skagit County dual-eligible beneficiaries – compared to a 16.8% lower Washington State hospice utilization rate, and 11.7% lower National utilization rate for dual-eligible Medicare beneficiaries. The 23.2% lower hospice utilization rate represents disparity due to the economic and medical challenges facing the dual-eligible beneficiary compared to the non-dual eligible patient but also is due to a lack of outreach to nursing homes and home health agencies. Curing this disparity between dual eligible and non-dual-eligible Skagit Medicare beneficiaries requires reach out and increasing utilization for at least 36 dual-eligible beneficiaries (2021) who currently die without the support of hospice services as shown in Table 8. **The 36 hospice admits, and 2,199 hospice days (6.0 Average Daily Census) represents Unduplicated Need for Skagit County.**

Applicant's Table

Table 7
Total Medicare Utilization for Both Dual-eligible and Non Dual-eligible Patients in 2021
(Berg Data Medicare Beneficiary 2021)

| Race | Hospice Admissions 2021 | Deaths of Beneficiaries | Utilization Rate |
|--|-------------------------|-------------------------|------------------|
| Dual | 117 | 273 | 42.9% |
| Non-Dual | 547 | 979 | 55.9% |
| Total | 664 | 1,252 | 53.0% |
| Percent Dual Utilization Lower than NonDual Utilization | | | 23.3% |

Applicant's Table

Table 8
Average Daily Census Increase by Achieving Parity Between Skagit County Hospice Utilization For Dual-Eligible And Non-Dual-Eligible Medicare Beneficiaries
(2021 Medicare Claims Data, Berg Data)

| Average Daily Census Increase by Achieving Parity Between Skagit County Hospice Admission Rates for the Dual Eligible And Non-Dual-Eligible Medicare Beneficiaries | | | | | | | |
|--|------------------------------|-------------------------------|--|---|--|---|--|
| | Skagit County Hospice Admits | Skagit County Medicare Deaths | Hospice Admission Rate per 1,000 Beneficiaries | Dual-Eligible Percent of Non-Dual Eligible Admit Rate | | Additional Admits Needed to Achieve Parity with Non-Dual Admits | Additional Hospice Days to Reach National Average Length of Stay of 61.89 Days |
| 2021 Dual Eligible Medicare Admissions | 117 | 273 | 429 | 76.7% | | 36 | 2,199 |
| 2021 Non-Dual Eligible Medicare Admissions | 547 | 979 | 559 | | | | |
| Total Admissions and Average Daily Census Needed to Achieve Parity | 664 | 1,252 | 530 | | | | 6.0 |

The EmpRes/Eden experience in Whatcom County provides further documentation about the disparity in dual-eligible admissions for Medicare hospice patients. Empres/Eden operates two programs within Skagit County and each of these programs further documents unmet need that is principally due to disparity. The two programs are:

- Eden Home Health of Bellingham, a Medicare certified home health agency
- North Cascades Health and Rehabilitation Center, a Whatcom County Nursing Home

Table 9 provides utilization data for EmpRes operated nursing and assisted living facilities in Skagit County and Whatcom County, year-to-date for 2022. The 25% of nursing home patients on average being eligible for hospice is consistent with Eden benchmarks as well as the reported experience of Bethany in its CN 21-45 that found that 25% of its patients were transferred to hospice in these two facility categories. This finding is consistent with the findings reported in a 2010 study by Monroe and Carter included in Appendix W that found that 24% of nursing home patients qualified for hospice but only 6% received hospice services. Specific to nursing home referrals, the EmpRes Whatcom North Cascades facility would have 56 annual referrals per national and local benchmarks to hospices with 42 referrals being logged as disparity in access to hospice services. While EmpRes currently does not operate a nursing home or retirement facility in Skagit County, it

does have a new contract with a nursing home in Skagit County that is of similar size to the EmpRes North Cascades facility and as noted below additional referrals to hospice from nursing homes will take several years to develop, but Eden expects a substantial increase in hospice referrals and these referrals would represent **Unduplicated Need for Skagit County.**

- The annual non-duplicated hospice admission volume would be realized over several years, as shown in Table 10. Table 10 estimates 16 hospice admits in 2024, 18 admits in 2025 and 19 admits in 2026 (primarily dual-eligible patients associated with a nursing home or assisted living facility with disparity associated with low income). This represents one-half of the dual eligible disparity and Eden is addressing the “other one-half” through outreach to the EmpRes Home Health of Bellingham for both Skagit County and Whatcom County. **This 38-patient dual eligible access disparity cohort is a new population, based on our analysis in Whatcom County and Spokane County. Eden notes that the Bethany reference that shows a high number of hospice referrals for nursing home patients in Snohomish County.**
- Based on the analysis included in Table 8, existing hospices’ referral volume will be unaffected by the addition of the Eden Hospice program.

Applicant’s Table

Table 9

Existing and Expected Hospice Referrals Based on An Analysis of EmpRes Nursing Homes

| Program | Total Patients 2022 | Hospice Referrals Through 2022 | Percent of Hospice Referrals |
|--|------------------------|-----------------------------------|---------------------------------|
| Spokane County | | | |
| Royal Park SNF -- 164 Beds | 245 | 4 | 1.6% |
| Royal Park ALF - 95 Beds | 136 | 9 | 6.6% |
| Potential Hospice Referrals @ 25% of Beds (Benchmark) | 381 | 66 | 25.5% |
| Unmet Need | | 53 | 80.3% |
| Whatcom County | | | |
| North Cascades | 224 | 14 | 6.3% |
| Potential Hospice Referrals @ 25% of Beds (Benchmark) | 224 | 56 | 25.0% |
| Unmet Need | 224 | 42 | 50.0% |

Table 10 provides the annual, expected hospice referrals associated with outreach to nursing and assisted living facilities based on the analysis of EmpRes/Eden hospice referrals from our facilities in Whatcom County and Spokane County. Focusing on EmpRes/Eden facilities located in Skagit County will reduce dual-eligibility beneficiary disparity by over 30%. Eden will continually monitor its progress in reducing disparity for dual-eligible patients and add additional outreach efforts as demonstrated in the Eden Hospice at Whatcom County, LLC operating budget.

Applicant’s Table

Table 10
 Skagit County Dual-eligible Medicare Patients Disparity Reduction General and Nursing Homes
 Eden Hospice at Whatcom County, LLC Outreach

| | 2023 | 2024 | 2025* | 2026* |
|--|-----------|-----------|-----------|-----------|
| Skagit County Disparity of Dual Eligible Hospice Admits Based on 2021 Rate | 36 | 37 | 37 | 38 |
| Eden Admissions Due to Outreach -- Dual Eligible | 12 | 16 | 18 | 19 |
| Eden Admissios Due to Outreach --Dual Eligible in Nursing Homes | 12 | 16 | 18 | 19 |
| Total Potential Dual Eligible Disparity Reduction Patients | 24 | 32 | 36 | 38 |
| Percent of Dual Eligible Disparity Reduction | | 86% | 97% | 100% |
| * Disparity estimate is stoppe to not exceed the estimated access disparity for dual eligible pts. Based on 2021 adjusted for general population increae | | | | |

B. Skagit County Death with Dignity Analysis

Eden is in full compliance with the Death with Dignity statute and supports Washington citizens who are considering Death with Dignity as an option within their hospice care. Eden’s analysis documents that there is variance in use of Death with Dignity in Washington State counties – especially when the east of the Cascades is compared to west of the Cascades. Table 11 shows that the Death with Dignity Death Rate per 100,000 persons residing in counties east of the Cascades was 2.7 deaths per 100,000 persons while the death rate in counties west of the Cascades was 4.8 deaths per 100,000 persons. Using the West of Cascades rate results in only 7 or 8 Skagit patients annually choosing Death with Dignity, but the population under study is the cohort troubled about end of life decisions around Death with Dignity is much greater. Eden has already admitted 8 patients in 2022 choosing Eden because of its Death with Dignity policy, which represents 6% - 7% of all Eden hospice patients in Skagit County and Whatcom County.

Eden, to remain in full compliance with the Death with Dignity statute, has examined the implications of full compliance with the Act by hospices and by Eden in Skagit County. Our analysis provided in Table 11 (based on the 2020 OFM population estimates) reveals that approximately 7 Skagit County citizens would annually request Death with Dignity. Population growth since 2020 would increase the Death with Dignity choice to by an additional patient per year. Eden would support any request for this service from Skagit County hospice patients.

Applicant’s Table

Table 11
2021 Death with Dignity Expected Participation in Skagit County

| | Counties East of Cascades | Counties West of Cascades | Total |
|---|---------------------------|---------------------------|-------------|
| 2021 Total Population | 1,677,575 | 6,089,400 | 7,766,975 |
| Percent of State Population | 22% | 78% | 100% |
| 2021 Death with Dignity Deaths | 46 | 341 | 387 |
| Percent of Total Death with Dignity Deaths | 12% | 88% | 100% |
| Participation Rate per 100,000 persons | 2.7 | 5.6 | 5.0 |
| Percent Disparity East to West Cascades Counties | N.A. | N.A. | N.A. |
| Expect Death with Dignity Participants to Equal West of Cascade Participants | 90 | 341 | 431 |
| 2021 Skagit County Population (OFM) | N.A. | 130,000 | N.A. |
| Expected Skagit County Death with Dignity Participants in 2021 | N.A. | 7.3 | N.A. |

In Skagit County, working with existing hospice and other care providers to let them know about Eden’s resource capacity will help patients access hospice earlier. Unfortunately, Covid-19 affected healthcare systems in Washington State thus generating additional, systemwide barriers to care – including hospice. Eden is a known quantity in Skagit County among many referral sources and has reached out to garner “on-the-ground” experience as it relates to hospice need in Skagit County. Eden will continue to develop and refine effective outreach strategies. To date, Eden’s outreach efforts have included as to the following:

- *Veterans: Studies and clinical experiences documented by palliative care providers have shown that many veterans have unspoken health needs at the end of life. By reaching out to community agencies focused on serving Veterans and has continued its membership in the “We Honor Veterans” program. Currently, Eden Hospice at Whatcom County is at Level 2 of a 5- level engagement process designed by the We Honor Veterans Program and intends to qualify at Level 3 during 2023 – the program is aimed at supporting and engaging Veterans facing the end-of-life as well as enhancing the cultural competence of all Eden hospice employees to the unique needs of Veterans.*
- *LGBTQ Community Residents: Local LGBTQ members estimate that 3% of the Skagit County population self-identify as belonging to the LGBTQ cohort (approximately 15,000 residents). As a community-based, nonsectarian hospice agency, Eden is committed to culturally competency, and is sensitive to LBGTQ issues related to their hospice care needs. Eden’s goal to provide unbiased, unwavering support to anyone in hospice care, their families, and caregivers.*
- *As Table 5 shows, the 2020 census enumerated 3% or 3,656 residents who identify as Native American. Eden has reached out to three separate tribes in Skagit County and Whatcom County to begin establishing working relationships to support. Eden is committed to culturally competency, and sensitivity to all tribal members and issues related to their hospice care needs. Eden’s goal to provide unbiased, unwavering support to anyone in hospice care, their families, and caregivers.*

WAC 246-310-210 (2) (2) establishes the criteria for assessing necessary duplication. It states the following:

“ . . . all residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services. The assessment of the conformance of

a project with this criterion shall include, but not be limited to, consideration as to whether the proposed services makes a contribution toward meeting the health-related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services.

This project specifically addresses low-income and elderly Medicare beneficiaries that are receiving Medicaid support for long term nursing home services that are eligible for hospice services and are not receiving these services. Eden is also reaching out to provide hospice services to the DWD at-risk “Choice” group the Washington State Legislature recognized (by passing ESSB 5179). The Legislature enacted ESSB 5179 in part, due to the inadequate access to the DWD protocol for end-of-life services. Eden has also identified underserved groups including low income Medicare beneficiaries who are eligible for community-based hospice services but are receiving these services at use rate that is 23% below the non-dual, Medicare beneficiary – even though this hospice eligible population is more fragile and medically compromised than the non-dual eligible Medicare hospice beneficiary! Eden has also identified outreach approaches for Veterans and the LGBTQ+ defined Gender Orientation cohort.

Table 4 presents the revised and updated analysis of duplication presented in the application in Table 13. The revision is in response to the results of legislative action in passing ESSB 5179 to improve access to end-of-life services under the current DWD statute. Eden’s response to question 22 provides the justification for that revision. There are three elements of our response to this important screening question: (a) Identifying underserved populations that require additional programs to disparity in access to hospice services and implementing those programs; (b) Providing choice of hospice services in Counties where there is no choice of provider and (c) Responding to general hospice need based on population growth.

Applicant's Table

Table 4
 Duplication Analysis for Eden Whatcom County Services for 2023 Through 2026

| | 2022 Historical | 2023 Current* | 2024 | 2025 | 2026 |
|--|--------------------|------------------|------------|------------|------------|
| Total Eden Hospice at Whatcom County Skagit County Utilization | | | | | |
| 1. Admissions Due to Outreach -- Dual Eligible | Not Applicable | 12 | 16 | 20 | 24 |
| 2. Admissions Due to Outreach - - Death w/Dignity at-risk) | Not Applicable | 13 | 27 | 27 | 27 |
| 3. Choice Cohort (5.33% of general population) | 40 | 41 | 43 | 44 | 45 |
| 4. Nursing Home additional outreach | Not Applicable | 12 | 16 | 20 | 24 |
| 5. Subtotal: New Admits from Outreach | 40 | 78 | 102 | 111 | 120 |
| 6. Total Projected Eden Hospice at Whatcom County Admits for Pro Forma | 40 | 54 | 114 | 162 | 178 |
| 7. Eden Admissions Net of Annual Population Growth | 0 | -24 | 12 | 51 | 58 |
| 8. Projected population growth increases in hospice admits state methodology | 25 | 10 | 35 | 61 | 82 |
| 9. Duplication Impact of Eden Admits -- Total Eden admits less State Methodology population-based admit growth less Eden underserved hospice cohorts (Negative number means no duplication) | -25 | -34 | -23 | -10 | -24 |
| Total Eden Hospice at Whatcom County Skagit County Utilization | | | | | |
| 10. Total Skagit County Hospice Admits | 790 | 842 | 878 | 913 | 943 |
| 11. Average Length of Stay | 40 | 59.5 | 61.2 | 61.2 | 61.2 |
| 12. Eden Hospice at Whatcom County Days | 1,600 | 3,213 | 6,977 | 9,914 | 10,894 |
| 13. Total Skagit Days -- State Methodology Extended and Eden New Outreach | 46,418 | 47,965 | 49,512 | 51,059 | 52,359 |
| 14. Eden Market Share by Hospice Admits Adjusted for Outreach | 5% | 6% | 13% | 18% | 19% |
| 15. Eden Market Share by Hospice Days Adjusted for Outreach | 3% | 7% | 14% | 19% | 21% |

- Eden demand exceeds capacity for new patients in 2024.

A. Serving underserved populations that require new programs to reduce disparity

The Eden application identified two population cohorts in this category. First, the dual eligible nursing home patients that require contracts between nursing homes and hospices so that they can receive the Medicare services that they are entitled to receive. Line 4 presents the expected demand for Eden ranging from 12 patients to 24 patients annually. With only 0.1% of all hospice days this population is virtually not served and represents Unduplicated hospice services. Eden expects to meet 50% of the need by 2026. Table 2 provides the analysis associated with serving this population. This table demonstrates that long term nursing home hospice days are low on a statewide basis equaling only 59% of the Washington State best practice level in King County and only 50% of the Eden Benchmark for this service. Eden notes that the Washington State utilization level is less than 20% of the national long term care utilization level.

*The second service that represents an underserved population also includes dual eligible Medicare beneficiaries who receive hospice services outside of the long term nursing home patients. As an overall cohort, the dual eligible hospice utilization level at 42.9% is over 23% lower than the Skagit County non-dual eligible rate of 55.9% of beneficiary deaths supported by hospice. Eden is currently carrying out outreach to Veterans through Level – 3, We Honor Veterans public outreach and using our home health agency Referral agency list to seek out additional dual eligible end-of-life patients (See Attachment 6). Line 1 in Table 4 shows that this cohort represents 12 patients to 24 patients per year through 2026 that represents **Unduplicated hospice patents**.*

B. Providing choice of hospice services in Counties where there is no choice of provider

Table 4, Line 3 represents Eden’s actual experience in serving 40 Skagit County patients in 2023 under Governor Inslee’s Proclamation 20-32. These patients are listed as Choice patients. With no criticism of Hospice of the Northwest intended, consumer choice would simply be expected to reach eligible hospice individuals who for whatever reason, including distance or provider familiarity opt to choose one hospice over another hospice. A very specific reason why choice would increase hospice patients is the shared experience of Eden and the Seattle Cancer Care Alliance, each found that approximately 25% of end-of-life, hospice eligible patients die before a referral to a hospice is completed. Other hospice eligible patients may also die or drop out as they consider hospice options. With patient choice Eden believes that referral loss will be reduced and in the case of the 40 patients that Eden served in Skagit County, most of the patients were “new” patients meaning that the current State Methodology does not have a parameter to immediately adjust market demand to take choice into account.

*Table 4, Line 2 identifies the DWD at-risk cohort (most DWD at-risk patients do not elect to fully participate in the DWD protocol) consisting of 13 hospice referrals to 27 hospice referrals from 2023 through 2026. As extensively discussed in the response to Question 23, the finding of Access Disparity by the Legislature resulting in response to Question 22 and Eden’s expectation of reaching 50% of the projected patients documents that the DWD at-risk patient projection for Eden is a **Non-Duplicative Service**.*

C. Responding to general hospice need based on population growth

Table 4, Line 8 projects patient hospice need of 10 patients in 2023 increasing to 82 patients in 2026. While the current state methodology does not project the need for an entire agency, it does project need for a partial agency. Table 4 shows that when the underserved population cohorts experience significant non-duplicative hospice patient growth, and this total is added to the projection of non-duplicative, general hospice patient need through 2026, the entire Eden Skagit hospice services volume is supported fully by non-duplicative growth. Table 4 shows annual hospice patient surpluses of 10 to 34 patients.

Eden provided the following, additional information specific information regarding specific underserved populations within Skagit County. [source: Application, pp30-31, and June 12, 2023, screening response, p6]

“Eden Hospice at Whatcom County, LLC Northwest has identified several significant underserved populations in Skagit County and has developed its application to serve those populations. Table 13 summarizes the impact of these 4 underserved populations. Together these populations will generate 68 to 89 Eden hospice admits annually beginning in 2023 through 2026.

- (1) Dual-eligible Disparity Cohort:** Based on an analysis of 2021 Medicare utilization, Eden Hospice at Whatcom County, LLC has a calculated 23.2% disparity in utilization of hospice services in Skagit County compared to non-dual utilization. An additional 36 Medicare dual-eligible beneficiaries need to be admitted annually to match the Medicare non-dual hospice utilization rate in Skagit County Eden will reduce this disparity by a minimum of 38 patients by 2026, which is 100% of the 2021 dual-eligible disparity rate. Over time, Eden wants to do better than just equalize disparity in access between dual-eligible and non-dual-eligible Medicare beneficiaries – Eden’s goal is to become a State and national leader in eliminating access barriers for all Medicare beneficiaries.
- (2) Nursing Home Disparity in Access Cohort:** In Washington State, Bethany through its certificate of need and national studies document that approximately 25% of nursing home and assisted living facility patients are eligible for hospice services. Eden will admit 12 patients in 2023 increasing to 19 nursing home-hospice patients by 2026 substantially reducing access disparity.
- (3) Choice Patient Disparity in Admissions Cohort:** Eden Hospice at Whatcom County is adding over 40 hospice admissions in 2022 for Skagit County residents. The state 2022-23 need methodology projected an increase of 25 patients from 725 admissions in 2021 to 750 admissions in 2022 –a growth of 25 patients. Eden’s two-pronged effort in educating patients and organizations about hospice as a community agency and in supporting patients with our unambiguous, fully complying Death with Dignity policy has improved access to hospice services in Skagit County. While hospitals refer to hospice, Eden’s direct community outreach in Skagit County will develop a more educated and informed population.
- (4) Death with Dignity Disparity in Access Cohort:** The goal of Eden is to increase hospice referrals to individuals considering Death with Dignity in this way: a patient may support, be neutral or not interested in Death with Dignity, but for some, the statute has philosophical weight and can be misunderstood by patients and others involved. Some patients may be fearful of losing control over their own death because of their inherent misunderstanding about the Death with Dignity statute. Conversely, patients who want the option available may be concerned about not being allowed to access it. Either way, Eden reduces barriers to access and reduces delays to hospice admissions because we assuage concerns about personal control over end-of-life decisions. That said, increasing Death with Dignity is not part of Eden’s short or long term goals. Simply stated, Eden is non-secular and therefore complies with Washington State’s Death with Dignity statute. Navigating the end of life have many people overwhelmed, caught off guard, and unprepared. Many have also been conditioned to believe that aging and death should be both feared and fought; that dying is somehow a failed outcome to be avoided at all costs rather than part of life. Eden’s hospice care teams work directly with the patient and families to quell fears, reduce stress, and provides as much physical and emotional comfort as possible during this sad, albeit natural event in life.

Eden started serving patients in 2022 in Skagit County (under Proclamation 20-36 it). The following calculation to generate a percentage of the total patients making up the “Choice” population for 2022:

- 1) the total number of hospice referrals served by Eden in Skagit County in 2022 – **40 annualized***
 - 2) the Eden total was then divided by the 2022 State Methodology total projected hospice patients for Skagit County – **750**
 - 3) This generated an estimate of 5.33% of all hospice patients making up the Choice population.
- *The actual total Skagit referrals for 2022 is 42 patients, slightly higher than annualized data.

In addition to the statements above, Eden provided additional information and clarification on the intended approach, process, and any specific programs it would use to ensure it would capture the underserved Skagit County populations identified in its application. [source: Application, pp13-14, April 10, 2023, screening response, pp16-18, 31-33, and June 12, 2023, screening response, p1, pp9-10] The information provided by Eden is restated below.

“... The demographic analysis for Skagit County shows that Skagit County racial and ethnic population cohorts face significant disparity in hospice access rates – Black, Hispanic, and American Indian/Alaska Native cohorts, but they make up only 3.9% of the overall 2020 Skagit County population over age 65. This age cohort accounts for an estimated 87% of admissions to Washington State hospices. Rather than direct outreach, Eden will reach out to other nursing homes and residential facilities as well as the Department of Social and Health services to further reduce access disparity. This effort aimed at reducing dual-eligible disparity will substantially reduce racial, ethnic, and general economic disparity in access. However, until those efforts take place, Eden is not “enumerating” additional admissions that exceed hospice admits and average daily census generated by general population increase in 2025 through 2027 although Eden anticipates that many of these referrals would come from reducing disparity in admissions.

... Our community experience indicates that a number of Skagit County residents have questions about the Death with Dignity statute and face barriers in deciding on hospice care due to ambiguities in how the statute is implemented by hospices. Table 10 shows that the Death with Dignity participation rate for residents East of the Cascades is 54% of the rate West of the Cascades where most residents reside. This may extend to Skagit County. Religion of residents is also listed as the difference in Death with Dignity participation rates and in how the statute is implemented by hospices. Appendix S11 and other studies report little percentage difference between King County 38.7% and Skagit County 37.8% in the number of residents who are religious, so religion does not explain the differences in participation rates. The issue is whether a lack of understanding constitutes a barrier to hospice eligible residents selecting hospice services or causes a delay in selecting hospices all due to a lack of outreach.

Eden has a Death with Dignity policy that fully complies with the Washington State statute. Testimony provided in all recent hospice certificates of need indicate that individuals supporting compliance with the Washington Death with Dignity raised compliance concerns with nearly every hospice organization in the State. Eden’s concerns focus on whether a lack of understanding among Skagit County residents create a barrier to hospice eligible residents to either delay or simply forego enrolling in hospice. As noted, our experience is that 6% - 7% of our hospice patients to date have requested information about Death with Dignity and stated that they chose Eden Hospice because Eden would support their decisions. Eden’s role, in part, is to be transparent and educational about all issues related dying. Furthermore, Eden is a nonsecular hospice agency so patients can be assured there is no religious oversight and/or moral monitoring about their beliefs and choices. Table 11 estimates that Eden will serve 10 to 15 new, (non-duplicative) hospice patients per year, due to patients’ expressed concerns in how the Death with Dignity statute is implemented by our agency.

Also, important to note is Eden’s approach to spiritual support of families and hospice patients. Many Skagit County residents, especially over 65 years old, are religious. Eden provides chaplaincy service to any patient that requests this vital and irreplaceable aspect of hospice care. As a community-based, nonsectarian hospice agency, Eden is committed to welcoming, engaging and supporting all hospice patients and will actively support patients who value their religion. Eden will also support residents, regardless of their beliefs who wish to understand or pursue their “Death with Dignity” options as available under Washington law. As part of this effort, Eden will reach out to End of Life Washington for their advice and support in policy development, staff training and in locating needed resources

within Skagit County. Welcoming has many aspects. For example, chaplaincy in the past has been largely associated with Christianity but Eden offers a broader viewpoint to patients...

Eden's outreach in Skagit County outside of our own EmpRes home health agency will initially start with contacting the nursing homes facility administrators and residents about the benefits of hospice and Eden's respectful, culturally competent approach. There are approximately 8 nursing homes and 7 assisted living centers in Skagit serving the current population of 121,725.

First, it is important to point out Hospice of the Northwest and Eden Hospice at Whatcom County are competitors and cannot jointly plan to allocate the market. Eden Hospice at Whatcom County and its extended services to support hospice need in Skagit County began in 2022, with Whatcom hospice services beginning in earnest in 2021. So, from a historical perspective, the two hospice agencies have had only informal contacts sharing the status of operations for the two agencies. Eden Home Health has maintained referral relationships with both Hospice of the Northwest and its public hospital district owners. Eden's home health agency has long standing referral relationships with the public district hospitals as well as Hospice of the Northwest, Attachment 6, provides the Referral Partners List.

Going forward, the Eden home health agency and Eden Hospice at Whatcom County will develop collaborations aimed at general outreach to the public and specific organization activities focused on developing effective transfer relationships as well as mutual aid to address access issues. Three key areas where community collaboration is warranted includes serving a very small number of Pediatric patients and collaborating on public outreach to Veterans and the LGBTQ+ community. With the passage of ESSB 5179, both hospices and hospices generally will be responsible for informing the public about how changes in the Statute will be implemented in Skagit County. Eden stands ready to be supportive of a multi-agency public outreach approach to inform the public.

Eden is undertaking the following approaches, programs and processes to reach out population cohorts that are underserved due to defined economic, lifestyle, race, ethnicity and gender orientation.

- a. Long term Care Nursing home patients: Eden has documented that only 0.1% of hospice days of care for the Medicare population long term nursing home residents who are eligible for hospice care under Medicare but are generally paid for by the Medicaid program. The approach as describe is to reach out to nursing homes through their Social Workers, Administrators and Medical Directors to enter into hospice support contracts. Secondarily, Eden will continue to reach out to individual clinicians and clinics who remain attending physician for the population group.*
- b. Existing Eden Home Health Referrals: Eden will continue its outreach to home health patients and referral sources to advocate for referral to hospice care for home health patients who become eligible for hospice care*
- c. Level III – We Honor Veterans Program: Eden will carry out public outreach activities consistent with requirements for this certification level and proceed with other community agencies toward outreach to veterans contained in Level IV – We Honor Veterans Program*
- d. Death With Dignity (DWD) At-Risk Outreach: With the passage of ESSB 5179, there is a unique opportunity for public education and outreach about the changes in the DWD act and a discussion of the DWD policies and procedures of hospitals and hospice agencies. Eden will reach out to other agencies (hospitals and hospices) charged with notifying the public about their DWD policy and participate in jointly sponsored workshops if possible. Eden will also notify referring clinicians about how Eden supports hospice patient choice that includes supporting patients who wish to participate in the DWD protocol.*

- e. *Gender Orientation (LGBTQ+) Cohort: outreach will include working internally on cultural competence in supporting individuals identified in the LGBTQ community and outreach through conventional means such as outreach to referral sources and community agencies.*
- f. *Outreach to the underserved dual eligible Medicare beneficiaries whose utilization of hospice services is 22% below the non-dual eligibility rate through conventional outreach such as referrals from the Eden home health agency and outreach to clinicians and clinics serving the Medicaid population.*

Eden provides the revised table in this section that replaces Appendix N. A more descriptive heading herein is Market Analysis Supporting Hospice Volume Projections. The overall application in general is a business plan that describes business objectives for serving Skagit County potential hospice patients. A general need for hospice services is projected by the Department through the Hospice methodology and hospice applicants put forth proposals supported by assumptions to meet identified Need as well identifying Need that is not documented in the general hospice need methodology. A key component of the plan is the financial pro forma where detailed assumptions about Patient Volume, Revenues and Expenses are required. This response provides the market analysis assumptions that support the Eden financial pro forma Profit and Loss Statement.

In general, the Market Analysis volume projections should match the pro forma volume projections and the application narrative should support the detailed market analysis assumptions or additional documentation should be provided to support the market analysis assumptions. The one-page summary of patient volume by category is supported by a narrative for each key topic.

2026: Market Potential Column: *The overall estimate of unmet hospice Need in 2026 is 82 patients using the State 2022-2023 Methodology for Need based on general population growth. Individual category estimates are based on separate analyses presented throughout the application and the number of patients Eden expects to serve. The Eden analysis documents that in addition to the population-based, general need, there is a new hospice patient need due to disparity in access for defined patient cohorts for up to 144 patients. Eden realizes that patients can fall into multiple groups that could reduce that new patient total down from 144 patients and Eden has taken that into account in its Market Analysis that indicates that it will successfully reach out to 84 to 112 new hospice patients.*

Death with Dignity Patients: *The 2026 overall estimate of 73 patients making up the at-risk “Choice” population (see Table 3) and the 29 hospice referrals associated with Eden outreach efforts represents the overall at-risk population and the number of new individuals who would respond to Eden through home health, public events and liaison directed outreach targeting their concerns about end-of-life control. Only one-fourth of these hospice patients would directly participate in the Death with Dignity protocol based on the current estimate of Skagit County DWD protocol participants.*

Long Term Nursing Home Hospice Referral Patients including Racial and Ethnic Cohorts: *Table 2 and the narrative on PDF pages 5 – 6 highlight the glaring disparity in access to hospice care among Skagit County’s Medicaid long term care patients. The response to Question 22, PDF Pages 8,12, and Table 4 of this response supports Eden’s estimate of serving 24 long term nursing home hospice patients in 2026. Given that long term nursing home hospice days are at 0.1% of all hospice days occurring in Skagit County in 2021 and long term nursing home hospice patient days are at only 2.4% or the 4.1% of county hospice days in the 2021 Best Practice rates in King County or the Eden 2026 Benchmark hospice days percentage of 6% of total days (see Table 3) all of these patients and patient days represent new hospice patients that are currently uncounted in the Skagit County need methodology. Eden has initiated a plan to correct this glaring access disparity condition through contracting with a local nursing home but cannot move forward until receiving certificate of need approval.*

Referrals through EmpRes Home Health and Word of Mouth: *The overall estimate of unmet hospice Need in 2026 is 82 patients using the State methodology that does not include the disparity in access by all dual eligible patients who would represent new patients, not covered by the current methodology. Table The Eden hospice referral target is 10% of Home Health Admissions. Table 3 in response to Question 15 presents the hospice referrals based on expected home health volume. Attachment 6 provides the current referral contact list for the King County and Pierce County home health agencies, which will be used for hospice referrals in both King County and Pierce County. Overall, by 2026, Pierce hospice referrals from this source are forecast to be 48 hospice patient referrals.*

Pediatric Patients: *The overall estimate of unmet hospice Need in is approximately 20 patients using the State methodology and Eden expects to serve 2 patients per year, primarily older youth. PDF pages 19 and 20, address Pediatric need in Pierce County.*

LGBTQ+ Patients: *The overall estimate of unmet hospice Need in 2026 is 225 patients using estimates for the Puget Sound area. Eden expects to reach out to the estimated 15,000 person target group to be a resource to LGBTQ+ population within that 15,000 person cohort who are facing end-of-life decisions. The patients would be drawn from the State methodology estimate of up to 82 patients by 2026.*

Other Patients Including VA Patients: *The overall estimate of unmet hospice Need in 2026 is 82 patients using the State methodology. Regarding Veterans, Eden broadly expects to achieve at least Level 3, in the We Honor Veterans program (PDF, page 7). Level 3 calls for a minimum of one public outreach event annually directly supported by the agency. Attachment 6 provides the current referral contact list for the Eden Whatcom County based home health and general outreach, which will be used for hospice referrals in both Whatcom County and Skagit County. Eden expects 20 - 66 general referrals through these channels by 2026.*

Appendix N, Market Analysis Supporting Hospice Volume Projections shows that in 2026, Eden expects to serve 178 hospice patients. In 2026, 112 Eden hospice patients represent hospice patients that are currently underserved, while 62 hospice patients will come through population growth.

Applicant's Table
Table 8
Market Analysis Supporting Hospice Volume Projections

| SKAGIT COUNTY HOSPICE VOLUME PROJECTION | | Market Potential | 2023 | 2024 | 2025 | 2026 |
|---|---|------------------|-----------|------------|------------|------------|
| Eden Hospice – Skagit County Admission Projections | | | | | | |
| Total Hospice Patients | | 40 | 54 | 114 | 162 | 178 |
| New Patient Referrals through Outreach | | | | | | |
| FFS Dual -Eligible Medicare | Outreach to FMQCs -- 12 centers | Market Potential | | | | |
| FFS Raise dual-eligible to county non -dual rate- new underserved cohort | 36% in 2023,42% in 2024, 48% in 2025 50% in 2026 | 38 | 12 | 16 | 20 | 24 |
| Continue outreach to Choice patient Cohort | Referrals through EmpRes home health and word of mouth | 45 | 41 | 43 | 44 | 45 |
| Control over end-of-life including Death with Dignity | General and Death with Dignity patients -- new patients concerned about end of life control | 43 | 19 | 19 | 19 | 19 |
| Increase SNF Referrals duals & non-duals, new underserved cohort (large Medicaid cohort) | Based on Eden, Bethany and national best practices vs. actual per Whatcom County | 18 | 12 | 16 | 20 | 24 |
| New Patient Subtotal: Reducing Disparity Among Population Cohorts Through Outreach | | 144 | 84 | 94 | 103 | 112 |
| Eden Hospice -- Skagit County Needed in Addition to Underserved Population Cohorts | | | | | | |
| Other Patients -- VA, LGBTQ, Hospital Referrals, Pediatric, Ethnic and Racial minority (Need and Surplus (-) Hospice Patients | | 82 | -30 | 20 | 59 | 66 |
| Hospice Patient Admissions from Population Growth | | | | | | |
| Total New Patients from Population Growth in State Methodology | State methodology projected forward using OFM population estimates | 82 | 10 | 35 | 61 | 82 |
| Net Duplicated Need or Surplus (-) | | | | | | |
| Net Duplicated Need or Surplus (-) | | | -40 | -15 | -2 | -16 |

Other Patients Row – These patients come from general population growth and are generated through targeted outreach to VA and LGBTQ population groups, marketing to Assisted Living Facilities, outreach to physicians, as well as hospitals and clinics operated through Skagit Regional Health. – 18%, 36% and 37% of total hospice days for Eden in Skagit County.

Long term nursing home patients from North Cascades Health and Rehabilitation Care Center were not being referred for hospice care as shown by the 2021 report of location of hospice days. Eden does have a contract with North Cascades Health and Rehabilitation Care Center (Attachment A). Referrals to hospice from nursing homes usually require outreach from a hospice to establish a contract with a nursing home so that room and board expense for Medicaid long term care patients/residents can continue to be reimbursed to the nursing home by the state Medicaid agency. When a Medicaid nursing home patient converts to hospice care, reimbursement shifts from the Medicaid agency to the nursing to the hospice, which receives funds from the state Medicaid program, which in turn are used to reimburse the nursing home for room and board nursing home expense for the Medicaid hospice patient. In addition, the hospice is receiving Medicare reimbursement for hospice service for the eligible hospice Medicare beneficiary. Since the Medicaid nursing home resident has established eligibility under both the Medicaid and the Medicare programs, that patient is a dual eligible patient.

First, Eden Hospice at Whatcom County only started to serve hospice patients in 2021 in Whatcom County and 2022 in Skagit County and did so under Covid-19 conditions with a myriad of restrictions

associated with providing healthcare under the Covid-19 emergency. To a great extent this limited any outreach. The application notes that there will be a higher referral rate from the North Cascades Health and Rehabilitation Center as well as Lifecare Center of Skagit Valley, but Eden is starting at a very low referral base where in 2021, only 0.1% of hospice patient days in Skagit County took place in long term care nursing homes. Increasing referrals from these two facilities requires outreach to the facilities and fortunately, the major barrier to care – lack of a contract – has been removed. Referrals from other nursing homes in Skagit and Whatcom County will involve establishing contracts but this routine and without inherent roadblocks. In fact, this is a win-win for the patient, nursing homes and Eden as a much needed gap in hospice care will be filled.

As to Proclamation 20-36, Eden can serve hospice patients in Skagit County at this time under the transition provisions associated with 20-36, but Eden would not be able to serve patients at Lifecare Center of Skagit Valley if this Certificate of Need is not approved. Denial of this application by the Department at this time would create an access barrier for dual-eligible Medicare patients, and a denial for Eden would hurt hospice patients who live in (or at) the poverty level the most.”

Eden also provided further detailed responses specific to its intended outreach for the proposed Death with Dignity and dual-eligible underserved populations [source: April 10, 2023, screening response, p4, pp9-13, and June 12, 2023, screening response, pp3-4]

“First, it is important to note that Eden is committed to increasing access to hospice services, not increase Death with Dignity participation rates. Eden repeatedly has noted that many individuals facing end-of-life decisions are concerned about staying in control of their end-of-life even as they are losing the ability to care for themselves. In short, perception and policies surrounding Death with Dignity have been a barrier that the required Legislative action to address. Eden has found from early experience that 6% - 7% of current hospice patients indicated that a contributing reason for choosing Eden hospice services was based on its Death with Dignity policy. Attachment 14 provides a copy of the recently passed ESSB 5171: Increasing Access to the provisions of the Death with Dignity Act legislation that identified access as a significant problem and approved initiatives to address the access issue. Two provisions of the legislation require hospitals and hospices to provide copies of their Death with Dignity policies to the Department and to the public. Eden will fully support outreach to the public regarding its Death with Dignity policy and will directly work with hospice patients to support their decision making around Death with Dignity consistent with its provided policy. It will not refer its patients to outside agencies to find out information about Death with Dignity.

First as noted, Table 10 from the original application should not be used to directly estimate the number of DWD participants in Skagit County. More importantly, the population that Eden has identified as the DWD at-risk population, is the patient cohort of end-of-life Skagit County residents who are deciding on how hospice or DWD participation fits into end-of-life for themselves and their family – in a stressful process. As this response will show, the DWD at-risk population has been defined through the Seattle Cancer Care Alliance study that will be presented and hospice and DWD access for the DWD at-risk population has been confirmed as a significant statewide process that required legislative intervention through ESSB 5179: Increasing Access to the Provisions of the Death with Dignity Act.

Since the filing of this application, Eden has reviewed two significant findings, a 2013 published study authored by the Seattle Cancer Care Alliance and the passage of ESSB 5179: Increasing Access to the Provisions of the Death with Dignity Act. This is the culmination of several years of effort across the State to address the access barriers of end-of-life patients who wish to consider participating in the Death with Dignity protocol in Washington. Eden’s interest is to enhance access to hospice services, in accepting an end-of-life diagnosis; becoming aware of the end-of-life options available and enrolling

in hospice not to promote a specific end-of-life patient decision. Reducing the time to accessing hospice services because Eden's experience in its home health agencies is that home health patients frequently die waiting for transfer to hospice care. Effective outreach is vital to reduce the barriers that delay hospice care.

Eden identified a significant, Seattle-based (Seattle Cancer Care Alliance), peer reviewed research study (Attachment 17) that analyzed Death with Dignity patients' behavior in selecting or not selecting to participate in the DWD protocol. This report allowed Eden and the Department to gain a thorough understanding of the barrier to access to hospice care for an older, sicker (facing death) and frequently low income Medicare patient. This study confirms that for every 3 end-of-life patients that have questions or considerations about participating in the Death with Dignity Statute protocol, only 1 patient actually participates and dies under the Death with Dignity protocol. The Seattle Cancer Care Alliance reported in its study that of 114 individuals with concerns and an interest in the Death with Dignity Statute, only 40 patients fully participated in the Death with Dignity protocol and died. Access to hospice and Death with Dignity continues to be a significant problem identified by the Legislature.

Again, Eden points out that for this certificate of need for hospice services, reaching out to support end-of-life patients and families to provide access to hospice services is critically needed for individuals concerned about maintaining control over lives and considering Death with Dignity as one of many options. These patients need to be enrolled in hospice care and the Legislature reached this finding on improving access in March 2023. In short, most accurate estimate of the hospice at-risk DWD population is 3 times greater than the actual number of Skagit County DWD participants.

As the study points out, the level of interest in Death with Dignity as one of many decisions facing a patient is much higher than the actual DWD participation rate as noted in a thorough analysis of the dynamics Death with Dignity choice contained in the study.

"Data on patients who have participated in the Death with Dignity program at Seattle Cancer Care Alliance are presented in Table 2, along with comparable data publicly reported by Washington and Oregon for all Death with Dignity participants from March 5, 2009, through December 31, 2011, and from January 1, 1998, through December 31, 2011, respectively.^{1,2} During the former period, 114 patients inquired about our Death with Dignity program. Of those, 44 patients (38.6%) did not pursue Death with Dignity further or were deemed ineligible. We have refused participation to only 1 patient, who expressed an unwillingness to ingest the medication privately. Thirty patients (26.3%) initiated the process by making a first oral request but either elected not to pursue Death with Dignity or died before completing the process (average time from first oral request to death, 16.6 weeks [range, 2.3 to 97.1]). Our patients seldom contact Compassion and Choices without also discussing this with their physician (Miller R, Compassion and Choices of Washington: personal communication).

The most common reasons given by patients for wanting to participate in Death with Dignity were loss of autonomy (97.2%), inability to engage in enjoyable activities (88.9%), and loss of dignity (75.0%) (Table 3). Eight of 36 participants (22.2%) reported uncontrolled pain or concerns of future pain (as compared with 34.7% and 22.6% of Washington State and Oregon participants, respectively). None of the patients who inquired about Death with Dignity and were found to have either current or previous depression or decisional incapacity elected to move forward with the process. Among patients who have pursued Death with Dignity, no participants were deemed to require mental health evaluation for depression or decisional incapacity (as compared with 10 of 209 patients [4.8%] in Washington State and 40 of 596 patients [6.7%] in Oregon).

The second finding is the culmination of years of continued assessment regarding access to hospice and Death with Dignity. This resulted a finding and an action by the Washington Legislature identifying that access to hospice care and DWD is a problem that required legislative action. Eden points out that for this Certificate of Need for hospice service, reaching out to support end-of-life patients and families by providing information and access to all hospice services is critically needed for individuals concerned about maintaining control over lives – and considering Death with Dignity as one of many options. Furthermore, had there been no concern about hospice patients access to DWD, the Washington State Legislature would not have addressed and then changed access to DWD. Clearly, patients who need to be enrolled in hospice care want access to what is legally available to them under Washington State Law – whether or not they decide to use the DWD option – and the 2023 Washington State Legislative session reached the finding to improve access.

Summary of Bill:

'The health care providers authorized to perform the duties of the Death with Dignity Act (Act) are expanded to include advanced registered nurse practitioners and physician assistants. Authorized health care providers are defined as "qualified medical providers." Patients may select the attending or consulting health care provider of their choosing, as long as a physician or osteopathic physician serves in one of the roles. The attending and consulting qualified medical providers chosen by the patient may not have a direct supervisory relationship with each other.

A prescription from an attending qualified medical provider may be submitted to a pharmacist electronically and the prohibition on dispensing medications by mail or courier is eliminated. Medications may be delivered by personal delivery, messenger service, or the United States Postal Service or a similar private parcel delivery entity. The addressee or an authorized person must sign for the medications upon receipt.

In the event either an attending or consulting qualified medical provider refers the patient to counseling, the types of providers who may provide counseling to patients under the Act are expanded to include independent clinical social workers, advanced social workers, mental health counselors, and psychiatric advanced registered nurse practitioners.

The timeframe in which a qualified patient must wait to make a second oral request is reduced from 15 days to seven days. The 48-hour waiting period between the written request and the writing of a prescription is removed. Transfer of care or medical records does not restart a waiting period

In addition to filing by mail, the prescribing qualified medical provider may file all required documentation with the Department of Health (DOH) by fax or email no later than 30 days after the death of the patient.

An employing health care provider may not contractually prohibit an employee health care provider from participating in the Act while outside of the employment relationship and not on the employing health care provider's premises or on property that is owned by, leased by, or under the direct control of the employing health care provider. A health care provider who does participate in the Act outside the course and scope of an employment relationship with a health care provider who prohibits participation is required to be at a location not on the employer's premises or on property that is owned by, leased by, or under the direct control of the employing health care provider.

Hospitals must submit policies related to end-of-life care and the Act to the DOH. By November 1, 2023, the DOH is required to develop an additional form for hospitals to submit which must provide

the public with information about which end-of-life services are and are not available at each hospital. Hospitals must submit completed forms to the DOH within 60 days of the form being provided.

Agencies and facilities providing hospice services must submit their policies related to end-of-life care to the DOH and must include information for the public about which end-of-life services are and are not available at each agency or facility. A copy of the policies must be posted to the website of each agency or facility providing hospice services. An agency or facility providing hospice services must submit changes to any of the policies to the DOH within 30 days of the approval of the change'

As a result of newly revised and corrected estimates for DWD participants in Skagit County in 2021; this newly analyzed study from the Seattle Cancer Alliance and the passage of ESSB 5179, Eden has revised its estimate for the size of the hospice at-risk DWD population. Table 3 provides a revised estimate of the data and Eden's estimate of patients it may serve from this hospice at-risk DWD population. The analysis shows that the size of the DWD at-risk population in Skagit County is approximately 38 patients to 73 patients based on the estimated Skagit County participation in the 2021 Death with Dignity report (See Attachment 10, PDF, page 121). Without knowing the actual single-point participation number, Eden elected to provide an estimate at the low end, 10 participants, the median 15 participants and the high end, 19 participants. The number of patients was then divided by 26%, the Seattle Alliance reported participation rate in DWD from all patients expressing initial interest, to calculate the at-risk population. The shaded Blue line was selected as the most likely estimate given that aging and population growth as well as the new legislation would likely increase the at-risk population from the lowest estimate level.⁵ Eden did not use the highest participation level based on earlier work calculating the West of Cascades participation projection number, adjusted for the Skagit County median age being 11% higher than the state median age level for 2022 and including population growth – all of these factors would argue for the shaded blue middle estimate for the at-risk population.

The Department's initial concern about the size of the DWD population being insufficient to be considered as representing disparity in access can now be addressed after this extensive documentation and re-calculation of the data presented in Table 3. An annual at-risk population of 38 patients to 73 patients together with the findings of the Washington Legislature does represent a unique population of patients who are concerned about control and autonomy in deciding on both entering hospice care and considering the DWD protocol and includes non-dual and dual eligible Medicare beneficiaries, ethnic and racial cohorts – the distinguishing characteristics are concern about autonomy and control of decisions. The real world experience documented by The Seattle Cancer Care Alliance findings that 26% of patients died or did not complete the DWD protocol and only 26% of initial end-of-life patients did complete and die under the DWD protocol and Eden's experience of 24% of individuals dying while waiting for hospice transfer shows the importance of outreach to this population.

Within the estimate of 73 total patients in this at-risk population, Eden estimates that the 29 patients it will serve primarily represent 1 new patients that die without hospice support, given that the make-up of the 73-patient at-risk cohort includes prospective hospice patients who died while considering hospice or the cohort who died while requesting hospice services and died before enrollment. The smallest subset of Death with Dignity patients is the cohort completing the DWD protocol. An important core assumption is that patients with an end-of-life diagnosis are fragile and die much more frequently and less predictably than individuals without an end-of-life diagnosis and any effort that reduces the time of approaching death unsupported is critical.

Applicant's Table

Table 3
Estimate of the Size of the Death With Dignity At- Risk Population and
Eden Share of the Population

| | 2023 | 2024 | 2025 | 2026 |
|--|------|------|------|------|
| High Estimate of Death with Dignity Hospice At-Risk Patient Population Estimate | | | | |
| Skagit County County Death with Dignity Participants : 26% of individuals concerned about Death with Dignity Participation | 19 | 19 | 19 | 19 |
| Conversion of Actual Participants to At-Risk Population | 26% | 26% | 26% | 26% |
| End of Life Population Interested in Death with Dignity based on | 73 | 73 | 73 | 73 |
| Median Estimate of Death with Dignity Hospice At-Risk Patient Population Estimate | | | | |
| Skagit County County Death with Dignity Participants : 26% of individuals concerned about Death with Dignity Participation | 15 | 15 | 15 | 15 |
| Conversion of Actual Participants to At-Risk Population | 26% | 26% | 26% | 26% |
| End of Life Population Interested in Death with Dignity based on | 58 | 58 | 58 | 58 |
| Low Estimate of Death with Dignity Hospice At-Risk Patient Population Estimate | | | | |
| Skagit County County Death with Dignity Participants : 26% of individuals concerned about Death with Dignity Participation | 10 | 10 | 10 | 10 |
| Conversion of Actual Participants to At-Risk Population | 26% | 26% | 26% | 26% |
| End of Life Population Interested in Death with Dignity based on | 38 | 38 | 38 | 38 |
| Hospice Patients Choosing Eden Hospice Due to Death with Dignity Policy Medium Population Estimate* | | | | |
| Low Estimate: 25% of Hospice Patients Choosing Eden | 14 | 14 | 14 | 14 |
| Medium Estimate: 50% of Hospice Patients Choosing Eden | 29 | 29 | 29 | 29 |
| high Estimate: 75% of Hospice Patients Choosing Eden | 43 | 43 | 43 | 43 |

The Eden share of this population (not DWD patients, but the DWD at-risk patient population during the first three years) will rest in the Low Estimate and will be similar to Hospice of the Northwest. Other forms of outreach over time will provide earlier educational intervention about the value of hospice care to the overall end-of-life population.

...Our response to Question 24 indicates that 64.9% of individuals initially expressing an interest in the Death with Dignity protocol as part of their end of life process did not proceed to dying through the Death with Dignity end of life protocol. Taking the State annual report estimating 10 – 19 Death with Dignity reported deaths for Skagit County and adjusting for the 64.9% of the estimated population that initially finds a Death with Dignity option as an important element in end of life decision making, defines the underserved population size as approximately 28 – 54 hospice patients per year. The Washington State Legislature through passage of Senate Bill 5179 found access to Death with Dignity was a problem statewide for a variety of reasons previously discussed in the application and screening. Eden's goal is to enroll as many individuals as possible from the 28 – 54 potential hospice patients (4% - 8% of 2021 Skagit hospice admissions) into a hospice program that supports all of their end of life decisions so that no hospice eligible patient dies without the support of hospice services.

As stated in the first screening response, Eden noted that Skagit Regional Health has a complying Death with Dignity Policy. This policy allows but does not require its providers to provide counselling to

patients if the patient is interested in the Death with Dignity statute. Providers are not required to participate in the program. Skagit Regional Health will not dispense Death with Dignity medications although providers may prescribe medications if they choose. Providers are encouraged to refer patients to Hospice of the Northwest (currently the only Certificate of Need approved hospice serving Skagit County). Hospice of the Northwest does provide a description of its Death with Dignity practices on page 22 of its patient handbook. That document notes that it does not restrict hospice staff from providing information services and staff can be present when a patient ingests medication staff but there are restrictions:

‘Hospice of the Northwest staff cannot provide, pay for, deliver, administer, or assist a patient in taking medications prescribed for Death with Dignity use. Hospice of the Northwest physicians may be in the “Consulting Physician” role, but they are not able to prescribe Death with Dignity medications as part of their hospice duties.’

Eden’s two-year experience is that approximately 5% - 7% of its Skagit County referrals to our hospice program are based on patients’ concerns about Death with Dignity support by Hospice of the Northwest despite Skagit Regional Health having a complying Death with Dignity policy. For the population cohort that Eden has identified even what some may think as small difference, e.g., a hospice physician being unable to prescribe medications poses a significant barrier to this population.

Eden’s understanding is that Skagit Regional Health and Hospice of the Northwest are “neutral” in their support of providers and patients in regard to the Death with Dignity program. What Eden means as neutral does not mean “for” or “against” Death with Dignity but instead positive outreach to fully understand each eligible hospice patient’s concerns and expectations in such a way that the individual facing the end of life feels fully supportive and elects hospice care or elects hospice care earlier than they would have without this kind of outreach. Community outreach and hospice staff education and support of Eden employees and providers will contribute to assuring that all patients feel like their end of life decisions will be supported.”

Public Comments

During the review of this project, the department received letters of support only for the existing provider, Hospice of the Northwest, and letters of opposition for Eden’s proposal. No letters in support of Eden were received.

While all letters are considered in this evaluation, below is a sampling of the public comments indicative of Hospice of the Northwest’s ability to provide care to the community and public sentiment about the existing hospice services.

Amie Tidrington, RN BSN, Correctional Health Manager at Skagit County Public Health

“I am writing a letter of support for Hospice of the Northwest. In 2022 Skagit County Community Justice Center had a need for Hospice care for an incarcerated individual who was unable to be released. We reached out to Hospice of the Northwest. They readily agreed to provide care. Their response was professional and timely. We were all, medical and jail staff alike, extremely impressed with the level of care and commitment we received from their organization.

As one could image our environment is an unusual one and we will always be grateful to Hospice of the Northwest, their willingness to work with us and the amazing, compassionate care that each and every one of their staff provided. It would be our hope that Skagit County residents would have available to them this level of commitment and dedication.”

Dr. James Ramos, Owner at Virginia Mason Medical Center

“As a provider of health care to tens of thousands in Skagit Valley for nearly 30 years now, I have been fortunate enough to have countless conversations with patients that find themselves in the very same situation I was in with my Dad. I have been, and continue to be, able to have the utmost confidence in these conversations and relay to them what their experience will be like when their loved one transitions to Hospice of Northwest. The compassion from their staff and providers is comforting. Their knowledge and commitment to the service and aid of others is impeccable as this is not the kind of work most humans can perform. I have no doubt that Hospice of Northwest will provide any and all services required in the most demanding and troubling time of need. They will always have my greatest respect and highest recommendation.”

Administration, Alpha Home Health and Hospice

“Alpha Home Health and Hospice would like to provide support for Hospice of the Northwest as we are aware another agency has applied for a Hospice CON in Skagit County

We have worked with HNW for several years in Skagit County as we’ve transitioned some of our Home Health patients to their services. We have also collaborated with their outreach staff on education via resource fairs and other community events. In addition, Alpha has a contract to provide therapy services for HNW when appropriate for their patients.

HNW has been in the community for decades and has made every effort to provide the best care and experience for all patients and families as they’ve transitioned to end of life care. As the DOH methodology does not currently show a need for another HOS agency in Skagit County, we feel adding another agency would dilute the overall quality of care in the community and have an adverse impact on staffing in an already depleted pool.

Alpha is acutely aware of the lack of evidence and data to support an argument for an underserved population in Skagit County as we applied for a Hospice CON in 2022. Through the process, it became clear to us, as well as the DOH, the available data does not show a specific underserved group within the county.

We would ask the DOH to hold the same standards for review and consideration in the 2023 application for Hospice CON in Skagit as the numeric need methodology still does not equate to adding another agency. We support the process for CON approval and until the methodology does show a need, another agency should not be added to Skagit County.”

Amy Benson, Franchise Owner and DSHS Approved Community Instructor at Home Instead

“Hospice of the Northwest here in Skagit County has been my partner for almost 14 years, providing comfort, support, and end of life care to the families and clients of Home Instead. There has never been a situation where they were not available, sometimes that very day, to meet with one of our families to explain how Hospice works, and determine whether one of my clients is appropriate for their services. I rely on them not only for this, but for the many resources they make available should Hospice not be the best option.

At this time, I feel strongly that another Hospice option is not needed in Skagit County. The people I serve are not having to wait for Hospice Care. My clients and Care Professionals are able to get almost immediate help from the Hospice of the Northwest Team, be it the nurse handling that patient or just a general question. Myself and my office staff have never waited more than a few hours for a return call regarding a mutual patient.

Thank you for allowing Hospice of the Northwest to remain the Hospice option in Skagit county. They do a phenomenal job.”

Roy Graves, MD – Fellow at American Academy of Emergency Physicians

“I am a retired Emergency Medicine physician and a volunteer on the Ethics Committee at Hospice of the NW in Skagit County. I have also been a prescribing physician for Medical Aid in Dying under the Death with Dignity law for 8 years. I have firsthand experience both with the clinical excellence of this organization and the patient experiences of dealing with their terminal illnesses.

Hospice of the Northwest Foundation provides for services not funded by Medicare and other insurance, such as: massage therapy, therapeutic music, aromatherapy, therapeutic pet visits, chiropractic care, and much more. The Foundation also pays for community bereavement support.

I interact weekly with all levels of staff support and have not, in my 8 years, had a single episode of being uncomfortable with the care provided. I have had friends and colleagues who have needed hospice, and it was reassuring that I could rely on their clinical excellence every day.

This organization excels at being inclusive and supportive regardless of race, religion, finances or any other factors that might make providing care more difficult. When members of their own staff have needed hospice for themselves or family, they knew where to go to get the services they needed.

The concept of bringing another hospice into the area doesn't make sense medically, financially or ethically. It will dilute scarce resources, requiring a whole new administration and support system. I believe that a single excellent existing program makes the most sense for our community.

Cassandra Sutherland, MPH, Client Services Manager, End of Life Washington

“End of Life Washington (EOLWA) has had a good working relationship with Hospice of the Northwest for many years. They have been one of the top referral sources to EOLWA in the state and made over 273 referrals to EOLWA since the law went into effect in 2009. To the best of our knowledge, Hospice of the Northwest is in full compliance with WAC 70.245.

Since the Death with Dignity Act took effect in 2009, there have been significant barriers for patients to qualify for and use the law. This is a statewide issue. It is not specific to Skagit County and is not a reflection on Hospice of the Northwest. Our hope is that many of these barriers will improve with the recent passage of the Medical Aid in Dying (MAID) Act, which takes effect in July 2023.

Hospice of the Northwest continues to demonstrate its commitment to supporting patients' end-of-life choices, including Medical Aid in Dying (MAID), and are currently reviewing their Death with Dignity (DWD) policy to ensure future access to patients who choose MAID at the end of life.”

The current existing provider within the planning area, Hospice of the Northwest, submitted a more comprehensive letter of opposition focused on multiple areas of presumed deficiencies within Eden's application. Excerpts related to this specific sub-criterion are below.

Bob Laws, Executive Director, Hospice of the Northwest

“Each year, the Certificate of Need (CN) Program collects volume and County-level data from every existing hospice agency in the State. It uses this data to calculate use rates and then determine which of Washington's 39 counties have need for an additional hospice provider. The CN Program's Fall 2022 hospice agency need projections show no need for an additional provider in Skagit County, at least through the 2027-2028 timeframe.

In the absence of a published need, WAC 246-310-290 allows parties to submit applications, but requires that they provide publicly available, quantifiable data to show that specific population(s) are underserved by the current hospice provider(s). After reviewing and considering the data, the CN Program has the discretion to grant or deny such application(s). The specific language of the rule is included below:

(12) The department may grant a certificate of need for a new hospice agency in a planning area where there is not numeric need.

(a) The department will consider if the applicant meets the following criteria:

- (i) All applicable review criteria and standards with the exception of numeric need have been met;*
- (ii) The applicant commits to serving Medicare and Medicaid patients; and*
- (iii) A specific population is underserved; or*
- (iv) The population of the county is low enough that the methodology has not projected need in five years, and the population of the county is not sufficient to meet an ADC of thirty-five.*

EmpRes Healthcare Group, Inc., dba Eden Hospice at Whatcom, County, LLC (Eden), submitted a CN application to establish an agency in Skagit County. They propose to do this by permanently extending their Whatcom agency into Skagit. Unlike most hospice agencies that responded to COVID by expansion in the early days of the pandemic, Eden did not extend into Skagit County until the waning days of the Governor's Proclamation 20-36. Per Eden's application, they did not begin serving Skagit under the PHE until 2022. A review of their application and supplemental information portrays an application heavy on tables, data, and literature about generally underserved populations, but severely lacking any data to demonstrate the existence of underserved populations in Skagit County. It is also absent any data to demonstrate that Eden has the capacity, history, or resources to "move the needle" on the situation, as they suggest.

The introduction to Eden's January 2023 application states:

Eden Hospice at Whatcom County, LLC, will serve Medicare and Medicaid patients and employs a charity care policy that is consistent with most Washington State hospitals serving indigent patients. In addition to providing non-duplicative hospice services to reduce dual eligibility disparity in access and reducing patient-determined barriers related to perceived access issues surrounding Death with Dignity (providing Choice), Eden will continue to comply with serving Pediatric hospice patients. Regarding Death with Dignity, Eden is one of only a handful of Washington hospices that fully complies with the requirements of the Death with Dignity statute operating statewide. In addition, as previously noted, Eden participates in the We Honor Veterans program and is currently submitting documentation for Level Three participation in that program.

According to its application:

Eden Hospice at Whatcom County, LLC, has four goals tailored to the unique needs and circumstances in the Skagit County service area to address barriers and resulting access disparity to support increasing hospice admissions and ALOS in hospice care. These barriers have created two unique population cohorts with disparity in utilization: the dual-eligible Medicare beneficiary cohort, and the cohort that is concerned about the means of end of life, which includes Death with Dignity choice concerns. (p. 10)

The application also assumes that Eden would serve about three pediatric patients over the course of 3-5 years (p. 14).

What the application fails to document is the breadth of the current Hospice of the Northwest (HNW) services related to each of the populations it identified in its application. HNW's commitment to the entirety of Skagit County and to each of the populations highlighted by Eden in its application is thoroughly documented in this public comment submittal.

II. Hospice of the Northwest Opposes the Eden Project

HNW has been serving Northwest Washington since 1989. We are a governmental entity owned by two Public Hospital Districts. Our service area includes Island, San Juan, Skagit, and Snohomish counties. We provide a comprehensive array of hospice and bereavement services, have a broad charity care policy, and in 2022, served more than 1,200 patients. Year to date 2023, we have served 741 patients (or nearly 1,300 annualized), an all-time high census.

HNW has reviewed Eden's application materials and has determined that Eden has not demonstrated need pursuant to WAC 246-310-290(12)(a)(i) or (iii). A CN should not be granted.

Specifically related to WAC 246-310-290 (12)(a)(i), and as described in more detail in Sections IV and V below, Eden has not demonstrated compliance with the CN review criteria and standards, particularly WAC 246-310-220, Determination of Financial Feasibility. Eden's volumes are not supported through its historical operations, or through data unique to Skagit County. Without this information, the Program is unable to determine financial feasibility. Eden also fails to consider in its financials the operating losses and start-up costs of its Whatcom County agency (the applicant in this process) or of its other Washington agencies currently or soon to be in start-up. And finally, Eden does not provide documentation demonstrating its ability and/or willingness to cover these costs.

Most importantly, related to WAC 246-310-290 (12)(a)(ii), and as described in more detail in Section III below, Eden provides no actual County-specific data to support its claims related to the populations in Skagit County it suggests are underserved. It also provides no data indicating its ability to serve these populations. In contrast, HNW is already providing high-quality and responsive hospice services to each of the populations noted in Eden's CN application as underserved.

For example, and as Eden suggests, the majority of dual-eligible patients are residents of nursing homes. The nursing home that Eden referenced in its CN application is located in Whatcom County, not Skagit County. In 2022, HNW served 27 dual-eligible patients, and YTD 2023, we are on target to serve more 30. In terms of patients interested in Death with Dignity (DWD), HNW provided DWD information to 107 patients in the last year, of which 37 chose DWD. Of this number, HNW was present at 18 deaths. HNW also serves an average of three pediatric patients per year; this number is more than Eden even projected as needing hospice services. We were also recently granted "We Honor Veterans" Level IV status; a level higher than Eden was suggesting it is striving to attain.

The bottom line is that there is no numeric need for another hospice care provider in the County, and Eden fails to demonstrate compliance with the exception criteria. HNW has the necessary programs and outreach and has demonstrated our commitment and experience with each of the populations that Eden targets as underserved. The volumes are low, and a second provider would unnecessarily duplicate and potentially fragment care delivery. The project is not needed at this time.

We respectfully request that the Program deny Eden’s application due to: 1) its failure to document that the populations it references as underserved are not being served by HNW; 2) its failure to document or provide data to show how its existing hospice agencies have changed the course on care and access to any underserved community; and 3) its disqualifying application flaws, specifically a lack of financial feasibility. Because of delayed implementation in Washington State, Eden has very limited operating experience. Without this information, it is impossible to differentiate between theory and practice.

III. The “Underserved Populations” Noted by Eden Are Served Today by Hospice of the Northwest

A. Dual-Eligible Patients:

Eden’s application states that engaging nursing homes and retirement facilities will make the largest contribution to reducing access disparity for low-income residents, particularly the dual-eligible long-term care patients and residents. However, its application states that North Cascades Health and Rehabilitation Care Center has had only 2 hospice patients in 2022, despite the fact that Eden is a certified hospice provider in Whatcom County and already has the opportunity to support this need.

Eden continues to provide vague and unsubstantiated claims related to this population throughout its application materials. This includes linking dual-eligible patients to its integration of hospice services into nursing homes; although, per page 12 of their application, Eden concedes that it does not expect to serve a substantial cohort of these patients in the first three years, and, hence, are not ‘enumerating’ additional admissions that exceed hospice admits and average daily census generated by general population increase in 2025 through 2027. In sharp contrast, HNW is already actively serving this population and is able to provide concrete data to demonstrate their commitment to dual-eligible patients.

HNW has contracts with every SNF in Skagit County and provides care to dually eligible patients in each of these facilities. Table 1 demonstrates HNW’s historical provision of hospice care to dual-eligible patients. It is important to note that during COVID, SNFs were reluctant to let hospice providers (or anyone) in their buildings, so they were less apt to refer dual-eligible patients. In addition, two community SNFs have closed in Skagit over the last few years. However, even with these realities, HNW remained committed to serving all dual-eligible patients referred, and continues to enhance outreach efforts, which is reflected in the increase in the number of patients served post-COVID.

Hospice of the Northwest’s Table

| Table 1: HNW Dual-Eligible Patients Served | | |
|--|------------------------------------|--------------------|
| Year | # of Dual-Eligible Patients Served | Days |
| 2018 | 35 | 1,925 |
| 2019 | 43 | 3,028 |
| 2020 | 38 | 1,678 |
| 2021 | 28 | 1,281 |
| 2022 | 27 | 1,709 |
| 2023 | 30 (annualized) | 1,899 (annualized) |

Eden also attempts to support its “commitment” to dual-eligible patients by claiming participation in the Department of Social and Health Services Long-Term Services Support Dual Eligible Demonstration Project and the Medicaid Apple Program. However, in another recent CN application (Pierce County), when the CN Program questioned Eden on its participation in these programs, Eden states that they will reach out to DSHS in the next year to define what its role “could be.” With this kind of ambiguity, again, the Program cannot rely on any of these assumptions.

B. Death with Dignity Patients:

Eden suggests that HNW has institutional constraints in addressing the Death with Dignity (DWD) statute in Washington, which can restrict access. They go on to suggest that local experience shows that perceptions create barriers to access among terminally ill patients and their families concerned about a loss of control in how a patient and family will address dying. No further data or evidence is provided to support these statements.

HNW has tangible data and evidence to refute these assertions. First and foremost, it is important to formally state that HNW complies fully with Washington State’s DWD statute. The statistics from internal HNW records depicted in Table 2 further demonstrates HNW’s strong commitment to patients interested in and/or choosing DWD through providing comprehensive information and consulting services and being present at death. HNW is already supporting DWD patients beyond the total numbers projected by Eden for Skagit County.

Hospice of the Northwest’s Table⁷

Table 2: HNW DWD Assistance and Utilization

| County | Provided Information on DWD to Patient/Family | HNW MD Was Consulting Physician | HNW Patient Chose DWD | HNW Providers/Staff Present at Death |
|--------------|---|---------------------------------|-----------------------|--------------------------------------|
| Island | 18 | 7 | 4 | 1 |
| San Juan | 22 | 11 | 4 | 2 |
| Skagit | 52 | 29 | 22 | 12 |
| Snohomish | 15 | 7 | 7 | 3 |
| Total | 107 | 54 | 37 | 18 |

C. Pediatrics:

HNW also has data demonstrating service provision to pediatric patients, with a historical average of three pediatric patients per year (a similar number to the pediatric hospice patients projected in Skagit County by Eden).

Our success in serving the Pediatric population was documented in a recent article by Seattle Children’s Hospital, the Washington State Hospice & Palliative Care Organization, and Oregon Hospice & Palliative Care Association (see Attachment 1). Specifically, the article notes:

⁷ The department acknowledges that concerns were raised regarding privacy issues in this table. However, because no direct or indirect identifiers as defined in Chapter 246-455 WAC are used, the department has not suppressed this information.

One example of a successful relationship with a hospice that primarily serves adults, is between Seattle Children’s Hospital Palliative Care team and Hospice of the Northwest. This hospice serves a large geographic area with patients in Skagit and San Juan counties, as well as Whidbey Island in Island County.

Many features make this service area unique for Hospice of the Northwest. They serve a rural area that is known for farming and recreation, with an area of over 2,000 square miles—some of which is only accessible by ferry. They creatively manage this area with staff that live both on and off the islands, many of whom have sheds in their back yards to store extra medical supplies and equipment. This group of hospice professionals have to navigate between islands via ferries that don’t run 24 hours a day. None of the islands have pharmacies open seven days a week, which means that they must also be experts in anticipating what might be needed. This frontier-type situation in their service area, has helped to foster the initiative to navigate the frontier of serving pediatrics well.

Why is this hospice, with an average daily census like many other hospices, so well respected in their care of pediatric patients? As one of their referral sources, they have staff and physicians who are motivated and actively involved in getting to really know the kids they follow: what brings them joy, what quality of life looks like to them, and they accept the child and family’s goals of care, without trying to fit them into the box of how adult hospice “works.”

This hospice has gone all in with pediatric care and by embracing it, they take a sense of pride in a job well done. That pride is apparent in all, from the people who answer the phone, their amazing staff, their medical directors, and executive director. They have cared for a child with heart failure from complex congenital heart disease, a teen receiving dialysis, a child who needed frequent blood transfusions because of liver disease, kids with cancer diagnoses, and kids with severe neurologic impairment. They have asked the Seattle Children’s Hospital Palliative Care team to visit their hospice in person or via zoom several times to keep them current with training. They know they can call any time 24/7 with questions. They are great partners who communicate well with their referral sources, including when a child may need to be seen in an Emergency Department.

Like the other claims that Eden made in its CN application materials, its suggestion that the pediatric population is underserved in Skagit County, and the claim that they are equipped to serve this population, are both unsubstantiated. Per the data above and the specific data in Table 3, HNW demonstrates for the record, our strong commitment to the pediatric population.

Hospice of the Northwest’s Table

Table 3: HNW Historical Pediatric Hospice Service

| | Pediatric Patients Served (including carryovers from prior year) | Pediatric Patients Referred - New Patients |
|------|---|---|
| 2018 | 4 | 4 |
| 2019 | 4 | 2 |
| 2020 | 7 | 5 |
| 2021 | 1 | 0 |
| 2022 | 2 | 1 |
| 2023 | 2 | 1 |

D. Veterans:

Eden identifies Veterans as an underserved population, providing vague statements not specific to Skagit County, about how “Studies and clinical experiences documented by palliative care providers have shown that many veterans have unspoken health needs at the end of life.” Eden further suggests that because they participate in the “We Honor Veterans” Program, currently as a Level II provider (and intending to eventually be a Level III provider), the Program should conclude both that the Veteran’s population is underserved, and that Eden is somehow uniquely qualified to serve it.

HNW is already serving the Veteran community in Skagit County and recently was granted “We Honor Veterans” Level IV status; a level higher than even that Eden is striving to be. Level IV status means that HNW has: (1) Built the professional and organizational capacity to provide quality services for Veterans and their families; (2) Developed and/or strengthened partnerships with hospices, VA, Veteran organizations, and other healthcare organizations; (3) Promoted hospice and palliative care for Veterans; and (4) Demonstrated the impact of organizational programs through evaluation and analysis of programs.

HNW is already serving the Veteran community in Skagit County and recently was granted “We Honor Veterans” Level IV status; a level higher than even that Eden is striving to be. Level IV status means that HNW has: (1) Built the professional and organizational capacity to provide quality services for Veterans and their families; (2) Developed and/or strengthened partnerships with hospices, VA, Veteran organizations, and other healthcare organizations; (3) Promoted hospice and palliative care for Veterans; and (4) Demonstrated the impact of organizational programs through evaluation and analysis of programs.

Hospice of the Northwest’s Table
Table 4: HNW Patients Self Reporting as a Veteran

| Year | Self-Reported Veteran Patients |
|-------------|---------------------------------------|
| 2016 | 175 |
| 2017 | 222 |
| 2018 | 168 |
| 2019 | 172 |
| 2020 | 194 |
| 2021 | 175 |
| 2022 | 145 |
| 2023 | 164 (annualized) |

Rebuttal Comments

“A. Introduction

Several individuals and agencies submitted written comments that for the most part supported Hospice of the Northwest but did not oppose the approval of the Eden CN #23-20 application. Eden will provide rebuttal comments on each submission that opposed the CN#23-20 application. Before providing rebuttal comments on opposition letters, Eden will outline its general approach to involving employees, patients, patient’s families, and community agencies in the public testimony process.

Eden does not request employees, patients, patient’s families, and agencies to provide letters of support or opposition.

Patients and Patient’s Families: *In the case of patients and patient’s families, a request could be viewed as coercive given the agency – patient relationship. In addition, information supplied by one family member could be considered a breach of confidentiality by a different family member. If*

patients or families wish to participate in the testimony process, Eden supports their efforts by providing contact information to independently submit information into the record. As a healthcare provider, Eden is governed under HIPPA and Department of Health regulations on protecting confidential information distribution, which is a profoundly serious responsibility.

Agencies: Eden does not request general letters of support from agencies that are business partners because it realizes that this could affect these agencies' other patient care relationships. If agencies wish to comment on the public process Eden provides contact information so that these agencies can independently submit information. If there are specific business relationships between Eden and an agency or business associate, the terms of that agreement cover Eden's requests for letters of support or identification of business relationships.

B. Alpha Letter of Support for Hospice of the Northwest and Opposition to Eden CN#23-20.

Alpha Home Health and Hospice submitted testimony indicating that Alpha had referred some patients to HNW. Alpha competes with Eden's home health agency in Skagit County. Alpha notes that it had submitted a CN for hospice services under its parent corporation, Pennant Group, Inc. during the 2022 concurrent review cycle ending in denial. Alpha stated that it did not submit information documenting sufficient need under the hospice need methodology or by addressing exceptions and documenting underserved population needs. Therein lies the difference in the Alpha and Eden applications. Eden documents substantial unmet need; and in the most important category, low income disparity in access for underserved populations. Eden addressed underserved populations in its application and throughout the screening response and will address underserved populations in its rebuttal to the HNW assertion that:

'A review of their application and supplemental information portrays an application heavy on tables, data, and literature about generally underserved populations, but severely lacking any data to demonstrate the existence of underserved populations in Skagit County.'

Further comments on disparity will be provided in rebuttal to HNW assertions that there are no underserved populations. While Eden generally agrees with Alpha that Eden should be held to the same standards as Alpha, it believes that with the benefits of hindsight the Department should have taken Alpha's arguments about necessary service redundancy far more seriously. Alpha properly noted that Skagit County is the only county in Washington State with one hospice provider (for the entire county). As with to the acute care methodology, redundancy and resiliency must be addressed more forcefully by the Department.

With the benefits of hindsight and information provided by HNW, the Department can now address the issue of redundancy and resiliency as it relates to having only a single approved hospice provider serving a large suburban County such as Skagit County. This rebuttal portion addresses the exceptions language that states that the Department "may" grant an exception to the general need methodology if all other criteria are met. In the prior denial decision, the Department's analyst properly framed the primary concern for the patient and the health care system was "the risk of destabilizing the hospice healthcare system in Skagit County."

With the benefits of hindsight and information provided by HNW, the Department can now address the issue of redundancy and resiliency as it relates to having only a single approved hospice provider serving a large suburban County such as Skagit County. This rebuttal portion addresses the exceptions language that states that the Department "may" grant an exception to the general need methodology if all other criteria are met. In the prior denial decision, the Department's analyst

properly framed the primary concern for the patient and the health care system was “the risk of destabilizing the hospice healthcare system in Skagit County.

The North District (Island, San Juan, Skagit, Snohomish, and Whatcom counties) hosted its focus group on Friday, April, 2022. A total of 14 individuals participated. This group was primarily composed of highly experienced individuals, with diverse professional backgrounds. The sectors that were represented through the participants were Hospital, LTC, Outpatient Clinics, Fire, EMS, County Emergency Management, Surgery Centers, Home Health, DOH, and Hospice.

The North District, which includes Whatcom, Skagit, San Juan Island, Island, & Snohomish Counties held its focus group on Monday, May 19th, 2023, with a total of 45 individuals participating. Professional backgrounds among individuals included members from Hospitals, Public Health, County Emergency Management, Private Ambulance, Outpatient Clinics, Home Health, and Long-Term Care. According to their study, “health incident(s), extreme heat” are considered “Extreme” – meaning, there is high likelihood with high impact. See Attachment 13.

Eden, through its own research understands that supporting healthcare service redundancy and resiliency is critical. Eden has identified the following actual and potential destabilizing risks that have occurred since 2021 both locally and throughout the United States and the world that must be addressed by adding service redundancy by approving this project:

- The ongoing Covid-19 Pandemic that still produces staffing and inflationary disruptions*
- Fires causing major air quality effects in British Columbia and throughout Washington*
- Worldwide fire conflagrations causing major evacuations throughout the West and internationally extending to islands such as Island County or the San Juans.*
- Flooding caused by atmospheric rivers or hurricane or hurricane-like wind events – Floods are one of the most common natural disasters in Skagit County. The Skagit River can experience flooding due to heavy rain, snowmelt, coastal storms, and other severe weather events. These flooding events can cause damage to our homes, closed roads (I-5 and State routes 9, 20 and 536 all lie in the flood plain), and municipal infrastructure like public drinking water and wastewater treatment.*
- Extreme Heat Events related to Climate Change and specifically heat domes. (See Attachment 8)*
- Seismic Events – Dozens of active faults crisscross Washington, earning the state the second-highest earthquake risk in the country. Whatcom and Skagit counties are home to numerous shallow crustal faults, which could produce extensive local damage should they rupture. Risk level “HIGH” – the probability of a 5.0 earthquake within the next 50 years is 58.85%. (See Attachment 9)*
- Volcanic Events – Skagit and Whatcom Counties are near Mt. Baker. The next eruption of Mount Baker is likely to produce massive lava flows, pyroclastic flows, tephra falls, lahars, and flank failures. Flank failures and eruptive activity spawning lahars are by far the greatest concern because they can travel tens of kilometers from source into more populated areas. However, flank failures and lahars can also originate without associated volcanic activity and therefore without warning. The map provided in Attachment 10 shows volcanic events that would threaten Skagit County as well as adjacent counties.*
- Human-caused events such as the closure of two in-center hospice services in Southwest Washington (See HNW’s Rebuttal, PDF page 39 of the combined Comments).*
- Another highly probable human-caused event would be the possible sale of the financially health HNW hospice to a private equity owned national chain can influence patient concerns about the availability of hospice services particularly in Skagit County as shown in*

Attachment 11. Even while finally rejecting the acquisition offer, the community was left with a concern that HNW is just a commodity to be operated or sold rather than a core service that is part of the mission of the two hospital district owners.

Except for seismic and volcanic events, all the previously listed destabilizing risks are predicted to become more severe and more frequent. The Department now has the advantage of more knowledge on the frequency and severity of natural events and the community impact of closures and acquisitions on smaller communities and the need to offset this impact by adding an additional hospice in these communities to provide redundancy and greater service resiliency for Skagit County. The advantages of service redundancy were in the limelight when Eden stepped in to assist HNW in serving hospice patients in Skagit County. HNW in its testimony, stated:

'...in 2022, (it) served more than 1,200 patients. Year to date 2023, we have served 741 patients (or nearly 1,300 annualized), an all-time high census.'

This took place simultaneously with Eden initiating Covid-19 emergency hospice services in Skagit County in 2022 and projecting breakeven volumes by year-end 2023 in response to Proclamation 20-36. The logical conclusion is that if Eden demonstrates that underserved hospice populations need exists as well as a plan to meet this need, an exception to the general hospice need methodology should be granted to provide greater resiliency for hospice services for Skagit County residents.

C. Roy Graves, MD – Fellow American Academy of Emergency Physicians

The doctor's undocumented statement that Eden is somehow ethically inferior because of its "for-profit" status is misguided and not supported by HSN's own acceptance and multi-year assessment of an acquisition proposal by a for-profit hospice that to date, has not been accepted. As it relates to "cherry picking," using the doctor's own words, he is asking the analyst to "cherry pick" the non-profit over the for-profit. EmpRes/Eden has operated a home health agency that has served Skagit, Island, Snohomish, and Whatcom counties since 2014 and operated the North Cascades Health and Rehabilitation Center in Bellingham since 2003 (central office of Eden Hospice at Whatcom County). Eden is well established in the community.

Longstanding, community organizations are successful because they do not "cherry pick."

In summary, Eden's CN that provides missing agency resiliency and redundancy in a high-risk environment and dramatically improves access and outreach to underserved Skagit County residents will have no adverse financial effect on HNW.

Returning to the important element of ethics, two examples of why approving the Eden CN is the only ethical option available for the Department.

- *First as noted, there is no hospice agency redundancy in Skagit County – Is it ethical to deny an application that provides agency service redundancy; has demonstrated financial feasibility and will have no adverse effect on the existing hospice agency?*

On serving underserved populations by providing enhanced outreach – Is it ethical to not serve long term convalescent nursing home (not eligible for Medicare skilled care) patients when CMS reports that only 0.1% of eligible, low income hospice patient days are generated by this patient cohort when that total should be 4.8% of overall Skagit County hospice days?

While HNW believes that it serves these patients, it inexplicably does not understand that it does not serve long term convalescent nursing home (not eligible for Medicare skilled care) patients. HNW ignored CMS's publicly available information which documents the underserved (See summary Table 1 (Page 15 of this rebuttal). The CMS data represents substantial disparity for a population that paid into Medicare and is entitled to receive eligible hospice services.

Regarding this project and an evaluation based on ethics, Eden occupies the high ground, not HNW. Eden is confident that the Department will act to provide hospice agency redundancy and to evaluate the unaddressed hospice needs of this population that even extends beyond the impact to the convalescent population cohort but also to the overall Washington State Medicaid program. The long term convalescent care nursing home is reimbursed for care for this population by Medicaid. Medicaid program reimbursement costs for the qualifying hospice patients will be reduced by 5% once these patients are enrolled in hospice care, which frees up state resources for other Washington Medicaid patients.

D. Amy Benson, HCA

Eden thanks Amy Benson for her testimony. Amy Benson indicates that she feels strongly that additional hospice is not needed. Ms. Benson indicates that she has a partnership relationship with Hospice of the Northwest. No specific concerns are raised about any adverse impact of an additional hospice serving Skagit County are raised.

Rebuttal to Hospice of the Northwest Testimony

A. Introduction

As noted in the prior section, HNW criticizes Eden for providing an application heavy on tables, data, and literature about underserved populations. The comments go on to indicate that the data does not demonstrate the existence of underserved populations in Skagit County. Eden will rebut testimony provided for specific population cohorts in terms of demonstrating need. Eden will not provide rebuttal testimony on population cohorts where HNW did not provide specific testimony challenging the "tables, data and literature." This would be improper rebuttal. In these cases, Eden's application and response to Department screening questions represents Eden's case about underserved populations.

As to accusing Eden that it applies evidence-based tables and data supported by peer reviewed literature to substantiate Need – yes, Eden pleads guilty as charged by HNW. Eden applies evidence-based tables and data supported by peer reviewed literature to substantiate Need. Department standards require applicants to address existing need methodologies and to identify populations that the applicant will serve. The populations that applicants will serve generally must be underserved either by disparity or by need methodology-based population growth.

The Department requires applicants to use evidence that can be independently verified. Eden's response in this case to these requirements is to start by relying on the CMS Medicare data sets that show utilization by Medicare populations and the absence of utilization in some cases. The Department and affected parties can review and independently verify this data as needed. Eden goes on to use Department of Health and other entities analyses of need which again can be independently verified Finally, Eden provides evidence from peer-reviewed journals as well as the complete referenced studies in its applications. In this application, HNW at its own peril, chose to ignore the publicly accessible data and rely solely on its information systems which Eden and the department are unable to independently verify.

B. Background

HNW indicated that “Eden did not extend into Skagit County until the waning days of COVID (PDF Page 20).” First, HNW fails to note that Eden established and certified its Eden Hospice at Whatcom County agency during the heart of the initial Covid-19 pandemic and could not respond until it built the necessary core capacity throughout 2020, the first year of the pandemic impact. As to what most agencies did during the earlier days of the continuing Covid-19 pandemic, HNW provides no information for Eden to rebut.

As to Pediatric hospice care, HNW is apparently under the impression that Eden criticizes it for low Pediatric hospice utilization. Eden intended no criticism of HNW but instead was responding to the CN advisory by the Department that all hospices should commit to assuring that Pediatric hospice services are available. In this section, HNW confirms Eden’s commitment to serving Pediatric patients and notes the very important but low in patient numbers need for Pediatric hospice care that requires special attention.

C. Hospice of the Northwest Opposes the Eden Project

Hospice of the Northwest notes the following in its summary opposition statement:

“HNW has been serving Northwest Washington since 1989. We are a governmental entity owned by two Public Hospital Districts. Our service area includes Island, San Juan, Skagit, and Snohomish counties. We provide a comprehensive array of hospice and bereavement services, have a broad charity care policy, and in 2022, served more than 1,200 patients. Year to date 2023, we have served 741 patients (or nearly 1,300 annualized), an all-time high census.” (PDF Page 21)

Eden congratulates HNW on serving the area for a number of years. Eden, through its home health services, has also served Skagit County for many years.

HNW’s summary of its opposition contrary to Eden is light on data. Further, Eden has requested that the Department expunge or delete from the record any information provided by HNW as not conforming with HIPPA and Department of Health patient confidentiality requirements for data suppression.⁸ As to the remainder of the comments in this section, HNW does provide additional remarks in other sections of its testimony which will be rebutted in detail.

HNW helpfully does provide a summary of its issues with the Eden CN #23-20 application:

“The bottom line is that there is no numeric need for another hospice care provider in the County, and Eden fails to demonstrate compliance with the exception criteria. HNW has the necessary programs and outreach and has demonstrated our commitment and experience with each of the populations that Eden targets as underserved. The volumes are low, and a second provider would unnecessarily duplicate and potentially fragment care delivery. The project is not needed at this time.” (PDF Page 22)

Eden disputes that there is no numeric need. The state methodology found partial numeric need for a 6-patient Average Daily Census for 2024. Eden will specifically rebut HNW’s challenges regarding underserved populations where rebuttal is allowed. Eden presented a number of populations such as the LGBTQ population where HNW provided no challenges to unmet need so Eden’s estimate of LGBTQ need goes unrecognized and unchallenged.

⁸ As previously noted, no direct or indirect identifiers as defined in Chapter 246-455 WAC are used in the referenced data, therefore the department has not suppressed this information.

Regarding potentially fragmenting service delivery, Eden operates a unique outreach channel unavailable to HNW and to the Alpha home health agency. This outreach channel integrates hospice and home health services and generates more hospice referrals than a stand-alone non-affiliated home health agency. Eden's benchmark for referrals for home health patients is 10%. In addition, unlike Alpha, Eden is currently operating both home health and hospice services as affiliated services in Skagit County. National research shows that home health and affiliated hospice service agencies generate 28.4% more referrals than unaffiliated home health agencies such as Alpha in Skagit County. (See Attachment 2).

Of greater significance is what HNW does not list. HNW provides no testimony on any adverse financial impact of Eden's efforts to reduce disparity among the long term convalescent non-skilled care Medicaid population cohort residing in the county's four skilled nursing facilities, choice that expands the hospice enrolled base for patients considering end of life alternatives and outreach and choice for an affiliated home health and hospice agencies outreach to home health patients that results in an increase in home health referrals of approximately 28.4%.

In fact, to the contrary, HNW states that it will have record projected hospice patient volume of approximately 1,300 hospice patients this year. Yet, as to "possible fragmentation," HNW lists no specific examples that Eden can rebut. However, Eden notes that the unique opportunity afforded to the residents of Skagit County by this project is the ability to reduce fragmentation through coordinated outreach between Eden's affiliated home health and hospice agencies that increase hospice referrals over conventional home health outreach by an average of 28.4%. If this application is not approved, there will be no affiliated home health and hospice agency provider in Skagit County and outreach will suffer by reducing new referrals from an affiliated home health – hospice program by an expected 28.4%.

HNW's intransigence to address hospice need by simply comparing its own inward focused "Need" assessment instead of applying national benchmarks for utilization and disparity among the population cohorts is concerning. The Department is mandated to apply all the statutory Declaration(s) of Public – including "Need" – equitably and equally. RCW 70.38.015 Declaration of public policy in Health Planning and Development that includes declaration 4 (See Attachment 14).

(4) ". . . the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition . . ."

*By adding a second hospice agency to the only Washington State county that is served by a single provider, the Department can improve resiliency; reduce disparity by targeted outreach; provide more integration of home health with hospice services through agency affiliation; maintain cost effectiveness by sharing agency facilities and management personnel while maintaining two hospice agencies that are strong financially. All of this can be done with virtually **no** increase in prices since most patients are covered under Medicare and Medicaid pricing.*

D. The "Underserved Populations" Noted by Eden Are Served Today by Hospice of the Northwest

1. Introduction

Proper rebuttal restricts Eden from providing rebuttal to testimony that was not given. In the case of HNW testimony regarding underserved populations, Eden can only rebut testimony on specific population cohorts identified in the testimony and this rebuttal testimony is provided in separate subsections that include the following:

- Long term Medicaid convalescent nursing home cohort residing in nursing homes
- Hospice Eligible Patients Considering Death with Dignity
- Pediatric Patients
- Veterans

Eden also identified the following hospice population cohorts where Hospice of the Northwest presented no testimony challenging these services as being unneeded (See First Screening Response PDF Pages 31 -33). Since these services were not challenged by HNW or other parties providing testimony they stand unchallenged, and Eden can provide no further rebuttal comments.

- Dual Eligible Patients in Residential Settings Other Than Long term Medicaid unskilled nursing home patients
- Referrals through EmpRes Home Health
- LGBTQ+ Patients
- Eden Affiliated Hospice and Home Health “Choice” Referrals. (See previous page)

1. Dual-Eligible Disparity

Eden has identified two dual eligible population groups cohorts that are underserved and face significant access disparity:

- 1) *The long term Medicaid convalescent nursing home cohort residing in nursing homes that are ineligible for skilled nursing home care but are eligible for hospice under Medicare. This population group is essentially not served in Skagit County with only 0.1% of Skagit County hospice days included in this residential category compared with 2.4% of statewide and 4.1% of King County hospice services in long term convalescent nursing homes. Eden’s benchmark for total hospice days for this residential category is 4.8^*
- 2) *Dual eligible patients in all settings other than the long term convalescent (non-skilled) nursing home residential setting.*

HNW reports (PDF page 23) states that it meets all Medicare dual eligible access need and refers to its utilization in Table 1 that lists dual-eligible patients served and dual-eligible and total annual patient days but provides no information on its efforts to reduce dual eligible patients in all settings other than the long term convalescent (non-skilled) nursing home residential setting. HNW made no comments on the 23% dual eligible access disparity identified in Appendix R, PDF page 168) of Eden CN 23-20 presented in the application.

In short, this population cohort is unchallenged by HNW. No information for this population cohort is provided and Eden is not allowed to provide rebuttal testimony in this area. The information provided by Eden in its application and in response to screening questions is the only data allowable for Department analysis.

HNW reports (PDF page 23) states that it meets all Medicare dual eligible access need and refers to its utilization in its Table 1 testimony that lists dual-eligible patients served and dual-eligible and total annual patient days for the Medicaid long term convalescent nursing home population that are residents in long term care convalescent non-skilled nursing home care (patients that are ineligible for Medicare nursing home reimbursement but are eligible for Medicare hospice services if they are dual-eligible patients).

Eden rebuts the information provided by HNW. This data is obviously incorrect as will be shown using 2021 Medicare Beneficiary Data compiled by Berg Data Solutions to check the reliability and validity of the Hospice of the Northwest Table 1 data. When the data is shown to be

incorrect, there is no factual basis to dispute Eden's finding on the need for hospice services for dual eligible, long term convalescent care (non-skilled nursing home residential setting).

The analysis of HNW Table 1 Data and Conclusions:

Table 7 (PDF 24 and Appendix R PDF Page 168) of Eden CN 23-20 application shows that in 2021 (latest year available at the filing time), there was a total of 117 dual eligible Medicare hospice admissions and 547 non-dual Medicare admissions for a total of 664 Medicare hospice admissions. Dual eligible Medicare admissions were 17.6% and non-dual Medicare admissions were 82.4% of total admissions, which is 4.7 times greater than the dual-eligible percentage for 2021.

HNW identifies 28 patients that it identifies as dual-eligible hospice admissions and it identified that these patients generated a total of 1,281 hospice days in 2021. If this number is correct, it would represent about 24% of all HNW Skagit County dual-eligible hospice admissions in skilled nursing homes. Since this total number of dual-eligible patients excludes non-dual hospice patients which make up 82.4% of total Medicare hospice admissions, there would be a very large number of non-dual Medicare nursing home admissions that would also be in nursing homes – approximately 4.7 times as many additional nursing home hospice patients or an estimated 131 additional patients. At the computed length of stay for 2021 of HNW patients of 45.8 days, the total hospice nursing home days for dual-eligible and non-dual eligible patients would be 7,274 nursing home – hospice days rather than the 1,281 nursing home days that does show that are probably Medicare skilled nursing facility days.

*Table 2 in the First Screening response (PDF Page 24) using Berg Data Solutions 2021 hospice utilization by care setting shows a total of 1,545 hospice days in 2021 with 65 total Skagit County hospice days in long term convalescent (non-skilled) nursing home residential settings and 1,480 Skagit County hospice days in Skilled Nursing Home residential setting. **The result of this analysis is that the Table 1 representation of dual-eligible patients and patient days is incorrect and does not support HNW's assertion that it meets the hospice need for long-term convalescent care (non-skilled nursing home) hospice patients in this residential setting***

As noted earlier, on a purely speculation basis, it is likely that the 28 hospice patients reported in Table 1 are combined dual-eligible and non-dual eligible Medicare patients with all but 65 hospice days taking place in the Medicare skilled nursing facility residential setting. If non-dual eligible patients were inadvertently left out, adding those dual-eligible Medicare patients and days would result in approximately 17% of total hospice patients and days being served in nursing homes.

Again, HNW indicates that it provided 1,281 dual eligible days in 2021 in its Table 1 presentation. As Table 1 in this rebuttal shows there were a total of 65 long term or non-skilled nursing days and 1,480 SNF days (third column) reported through Medicare in 2021 indicating that most days recorded by Medicare were for skilled nursing home care. Matching data from two sources does lend itself to the criticism of too much evidence, but the two data sources reasonably match up. In short, HNW is not enrolling long term convalescent care (non-skilled) nursing home patients. Also note that skilled patient enrollment (3.4%) is also lower than the statewide and King County average of 4.9%. Eden does not have a separate benchmark for Medicare skilled nursing home eligible patients.

Table 1 in this rebuttal on the next page summarizes CMS data collected by Berg Data for 2021 that summarizes the total utilization of Skagit County Medicare hospice patients by residential setting. Note that while care for the nursing home non-skilled residents at 0.1% of all days is virtually non-existent, the utilization for Medicare skilled nursing facility eligible hospice patients is also 31% below the statewide average for hospice days in this residential setting.

Applicant's Table
Table 1
2021 Skagit County CMS (dual and non-dual eligible) Hospice Patient Days
By Place of Service

| Place of Service | Q Code | Hospice Days 2021 | 2021 Percentage of Skagit County Total Days | Apply WA State % of Long-Term (LTC) Days | Apply KING County BENCHMARK % of Long-Term (LTC) Days | Apply EDEN BENCHMARK % of Long-Term (LTC) Days (post 2026) | Apply National % of Long-Term (LTC) Days |
|---|--------|-------------------|---|--|---|--|--|
| Home | Q5001 | 28,108 | 64.6% | | | | |
| Assisted Living Facility | Q5002 | 13,394 | 30.8% | | | | |
| Nursing Long-Term Care Facility (LTC) or Non-Skilled Nursing Facility (NF) | Q5003 | 65 | 0.1% | 2.4% | 4.1% | 4.8% | 12.7% |
| SNF | Q5004 | 1,480 | 3.4% | 4.9% | 4.9% | 4.9% | 4.4% |
| Inpatient Hospital | Q5005 | 47 | 0.1% | | | | |
| Inpatient Hospice Facility | Q5006 | 146 | 0.3% | | | | |
| Long-Term Care Facility | Q5007 | - | 0.0% | | | | |
| Inpatient Psychiatric Facility | Q5008 | - | 0.0% | | | | |
| Other | Q5009 | 105 | 0.2% | | | | |
| Hospice Facility | Q5010 | 171 | 0.4% | | | | |
| Total | | 43,516 | 100.0% | | | | 100.0% |
| Additional Nursing Long-Term Care Facility (LTC) Hospice Days | | | 0 | 982 | 1,719 | 2,024 | 5,461 |
| Additional Nursing Long-Term Care Facility (LTC) Hospice Admissions | | | | 16 | 28 | 33 | 89 |
| Total Days: Additional Nursing Long Term Care Facility (LTC) or Non-Skilled Nursing Facility (NF) | | 43,516 | | 44,498 | 45,235 | 45,540 | 48,977 |

2. Hospice Eligible Patients Considering Death with Dignity

HNW testifies that Eden suggests that HNW has institutional constraints in addressing the Death with Dignity (DWD) statute in Washington, which can restrict access. They go on to suggest that local experience shows that perceptions create barriers to access among terminally ill patients and their families concerned about a loss of control in how a patient and family will address dying. No further data or evidence is provided to support these statements. HNW asserts HNW has tangible data and evidence to refute these assertions.

First and foremost, it is important to formally state that HNW complies fully with Washington State's DWD statute. HNW submits statistics from internal HNW records depicted in its Table 2 to demonstrate HNW's strong commitment to patients interested in and/or choosing DWD through providing comprehensive information and consulting services and being present at death.

HNW asserts using Table 2 data for some unspecified reporting period that it already provides more Death with Dignity information to its patients resulting in more patients electing Death with Dignity than proposed in the Eden application. Putting aside, HNW's misunderstanding of the Eden Death with Dignity potential hospice population for the moment, HNW's asserts that its efforts already result in more patients selecting Death with Dignity than Eden has identified:

"In terms of patients interested in Death with Dignity (DWD), HNW provided DWD information to 107 patients in the last year, of which 37 chose DWD." (PDF page 22)

In reviewing Table 2 testimony data, HNW provided DWD information to 52 Skagit County hospice patients and 22 HNW patients chose Death with Dignity. Returning to the Death with Dignity population, Eden is not in a competition to increase the number of individuals selecting Death with Dignity. Quite the contrary, Eden by reaching out earlier in the dying process to support all Skagit County residents in order to reduce the percentage of hospice residents currently choosing Death with Dignity due to late enrollment in hospice care. The population that Eden is describing are dying residents that are considering hospice as well as Death with Dignity and enrolling those individuals into hospice services as early as possible.

Attachment 4 presents: (1) An analysis model of the HNW current Death with Dignity effort; (2) The Seattle Cancer Care Alliance Death with Dignity peer-reviewed study findings: (See First Screening Response, PDF pages 12 -13) and (3) The Eden Death with Dignity outreach strategy. The results of the Eden approach would be to maintain the number of Skagit hospice patients choosing Death with Dignity at the current 22-patient level by increasing outreach. This would reduce the overall percentage of Skagit County hospice patients selecting Death with Dignity from 2.6% to 2.3% of total hospice patients. This is the concept of providing a population-based solution focusing on additional outreach through Eden to hospice eligible patients at an earlier phase in their dying process.

Turning back to the overall population, Eden provided its best estimate of future estimates of the population that had an interest in hospice and Death with Dignity and the number of Skagit County hospice patients that would enroll in Eden hospice services as well as the number of hospice patients who would elect a Death with Dignity alternative. Table 3, PDF Page 13, First Screening Response) provides a low, median and high estimate of the number of eligible persons who would enroll in the Eden hospice due to the Eden approach to Death with Dignity. Eden does note that this table is based on approximately 15 Skagit County DWD deaths in 2026 when there were actually 22 Skagit County deaths reported by HNW, which cannot be verified by allowable data). The high estimate is that there would be 19 Skagit County DWD deaths rather than 22 deaths. This methodology relies on the Washington State 2021 Death with Dignity annual report that is informed with feedback from individuals who have chosen Eden as its hospice provider due the patient's concern about Death with Dignity.

Seeing the growth in DWD deaths in Skagit County fully demonstrates the importance of early outreach and support of hospice eligible Skagit County residents and their families facing end of life decisions.

3. Pediatric Patients

As noted previously, Eden will comply with requirements to serve Pediatric patients. It has not identified the Pediatric population cohort as an underserved population. Eden will provide or collaborate with HNW and teaching and training resources (Including throughout the Puget Sound area to support development of Pediatric hospice services as described in the NHPCO

Pediatric Facts and Figures report published in June 2023 (See Attachment 12). In terms of every hospice provider's role, the NHCPO lists challenges for serving Pediatric patients to include:

- *Lack of Pediatric trained personnel*
- *Discomfort in caring for Pediatric patients*
- *Organizational competing priorities*
- *No demand for Pediatric Care*
- *Inadequate reimbursement*

Eden will work with the collaborative efforts of the Washington State Hospice & Palliative Care Organization, the Oregon Hospice & Palliative Care Association and Seattle Children's hospital in supporting pediatric hospice services in each of its agencies.

4. Veterans

*Eden stated that it was applying for Level 3 Status in the We Honor Veterans program. **In at least partial response to Eden's position, HNW indicated that it achieved Level 4 Status in the We Honor Veterans program.** A primary difference in status levels in the We Honor Veterans program is the level of outreach to Veterans by a hospice agency. Additional outreach and competition about status levels in the We Honor Veterans program can only increase the number of hospice referrals. Veterans receiving hospice services currently represents approximately 12% of total HNW overall patients as described in Table 4 (PDF Page 27) and as HNW notes the self-reported status of Veterans likely dramatically under reports Veterans who are eligible for hospice services. In short, HNW acknowledges that the Veterans hospice population is underserved.*

As a new agency, Eden cannot report the number of Veterans that it serves in Skagit County under confidentiality constraints. Eden can note that upon achieving Level 3 Status it will initiate steps to proceed to a higher level of outreach as described Level 4. Veterans are an important population that needs access to hospice services and as competition shows will benefit if Eden is approved to continue offering hospice services to all underserved populations.

Department Evaluation

This section of the application allows an applicant to explain why the proposed project is not an unnecessary duplication of services. This section also overlaps with the hospice-specific rules found in WAC 24631-290(12), discussed at the end of this evaluation.

As noted earlier in the evaluation, Eden conceded, and all comments submitted for this project appear to agree, that the hospice need methodology as prepared by the department shows insufficient need in Skagit County to approve an additional hospice provider.

Eden provided an extensive discussion to establish that this project should be approved absent numeric need. Creating utilization rates sourced from Eden's historical experience operating under Proclamation 20-36, various population data sources, state reports, third-party data analysis of Skagit County, the applicant demonstrated the existence of several underserved group, and the need for the proposed services.

Both Hospice of the Northwest and Alpha Home Health and Hospice provided comment questioning Eden's assessment of underserved groups, with Hospice of the Northwest further questioning Eden's

ability to serve these groups. Eden rebutted these comments by reiterating its assumptions and calculated underutilization of the questioned groups.

Eden’s application references several potential underserved groups and analyzed the need for hospice services for these groups at varying levels of detail. These ranged from the lengthy calculations and multiple Appendix items, including white papers, newspaper stories, state reports, and academic publications used to demonstrate underutilization for the presumed dual-eligible and death with dignity cohorts, to the bullet point acknowledgments of LGBTQ+ patients. References to these groups as targeted, underserved populations also varies across documents, as some appear to be sub-categories within other efforts by Eden, such as the combination of ethnic and racial minority patient cohorts with veteran, LGBTQ, pediatrics, and hospital referrals, as well as part of its long-term nursing home outreach. Eden’s consideration of these populations of underserved groups, or its own definition of underserved group is further thrown into question as the above mentioned “*Other Patients*” category is labeled “*Skagit County Needed in Addition to Underserved Population Cohorts,*” implying these patients may not be considered underserved in Eden’s current calculations. [source: April 10, 2023, screening response, pp32-33]

The clearest, most concise list of what Eden considers to be underserved populations within Skagit County is provided in rebuttal. These are:

- Long term Medicaid convalescent nursing home cohort residing in nursing homes
- Hospice Eligible Patients Considering Death with Dignity
- Pediatric Patients
- Veterans
- Dual Eligible Patients in Residential Settings Other Than Long term Medicaid unskilled nursing home patients
- Referrals through EmpRes Home Health
- LGBTQ+ Patients
- Eden Affiliated Hospice and Home Health “Choice” Referrals

[source: August 8, 2023, rebuttal packet, p14]

Under the sub-criterion of WAC 246-310-210(1), the services proposed for the above listed groups must not just be offered, but also not be sufficiently available or accessible to these populations, or else risk unnecessary duplication of services in the planning area. In the case of new services, the department considers the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

The department has no set standard to determine this efficiency and appropriateness and depends on the applicant to demonstrate this through their application, as well as input from members of the planning area and healthcare community.

Each cohort will be evaluated separately below as to whether they constitute an underserved group in Skagit County, or whether the applicant’s proposed services are currently sufficiently available and accessible.

Long term Medicaid convalescent nursing home cohort residing in nursing homes

Eden indicated the existence of a population of nursing home residents underutilizing hospice services. Specifically, residents who were dual-eligible for Medicare and Medicaid and utilized hospice at a below-average rate. In attempting to address this underutilization, Eden stated that underserved racial and ethnic groups, as well as non-dual eligible nursing home residents would be served due to its efforts as well.

To address this underservice, Eden stated they have “...*In the case of long term care nursing home residents, the nursing home is their residence, and these qualifying hospice dual eligible patients will be served in long term care nursing homes where Eden is able to develop a contract with the nursing home as is required.*” [source: June 12, 2023, screening response, p5]

To demonstrate this strategy, Eden submitted an existing contract between Eden Hospice at Whatcom County and Life Care Center of Skagit Valley. [source: April 10, 2023, screening response, Attachment 3] While this agreement is not signed, it does demonstrate some foresight into outreach into the community. However, in public comment, Hospice of the Northwest stated, “*HNW has contracts with every SNF in Skagit County and provides care to dually eligible patients in each of these facilities.*” The outreach and contracting with nursing and senior living communities proposed by Eden are not described as having any additional component to improve or address the enrollment of the dual-eligible, or the other potential underserved groups included in this patient cohort. The department concludes that with no additional component, the standard business practice of contracting with these facilities is already implemented by Hospice of the Northwest and its use as a patient enrollment tool would be duplicative. Further, any underserved groups presumed not to be captured in the department’s methodology would not be reached through services already existing in the planning area.

Hospice Eligible Patients Considering Death with Dignity

In regard to the “Death with Dignity Cohort,” Eden indicated the existence of a population underutilizing or delaying hospice care due to concerns about end-of-life control. To address this underservice, Eden stated they intend to serve this population by “...*Assurr[ing] that all residents considering hospice are offered informed choice as required by CMS: (a) actively address and overcome any general negative views of Medicare hospice related to real and perceived loss of control about how a patient and family will address dying and (b) provide a secular hospice choice that fully complies with the Death with Dignity statute.*” Eden provided further detail on its existing Death with Dignity policy that fully complies with Washington State statute and its availability of its policy to patients. [source: Application pp13-14]

When asked in screening to clarify its intended plans for outreach to this group, Eden responded with information regarding a perceived lack of access to hospice due to patients in this cohort hesitating to seek hospice care from lack of information regarding Death with Dignity, and Eden seeking to address it through transparency. [source: April 10, 2023, screening response, pp9-11]

Additionally, Eden provided information on ESSB 5171: Increasing Access to the provisions of the Death with Dignity Act legislation, saying “*Two provisions of the legislation require hospitals and hospices to provide copies of their Death with Dignity policies to the Department and to the public.*” [source: April 10, 2023, screening response, p4] As a result of this legislation, Eden proposed the possibility of joint workshops with other hospices and hospitals to promote public education. However, a cursory online search for Hospice of the Northwest’s interaction with the planning area community on death with dignity and end-of-life care shows news articles⁹, film screenings¹⁰, and public expressions of gratitude in obituaries. It is not clear how Eden’s proposed educational programs would not be duplicative of these efforts and reach patients in this population not currently reached by Hospice of the Northwest.

⁹ Honea, Tahlia “Controversy and choices: Doctors, activists stand on both sides of the issue.” Skagit Valley Herald, April 6, 2012.

¹⁰ Singing Wolf Documentaries Production & Hospice of the Northwest. October 28, 2021. “Presentation and Film: Last Rights: Facing End of Life Choices” [Film Screening] Lincoln Theater, Mount Vernon, WA.

In additional screening responses Eden indicated Hospice of the Northwest's practice as outlined in its patient handbook regarding Death with Dignity "...poses a significant barrier to this population," based on a hospice physician being unable to prescribe associated medications. [source: June 12, 2023, screening response, p4]

Eden's submitted Death with Dignity Act Policy states: "*If a patient elects to participate in the Death with Dignity Act of a participating state, Eden Health employees and Volunteers are limited to providing information/education and will not provide, deliver, prepare, administer, assist, or participate in any manner with the administration/consumption of any medication prescribed or obtained for intended use under The Act. Upon the patient's request, Eden Health employees may be present during, but not assist in The Act in any way as outlined above.*" [source: Application, Appendix O]

This policy fully complies with the state's requirements in terms of Death with Dignity. However, it is not apparent how this differs from Hospice of the Northwest's Death with Dignity policy. As a result, it does not show that the proposed service will not result in the unnecessary duplication of services.

Pediatric Patients

Eden provided utilizations include pediatric admissions, along with its assumptions and calculations for those projections. In public comment, Hospice of the Northwest reiterated its existing efforts and commitment to serve pediatric patients, as well as questioned Eden's assessment of an underserved population. Eden provided rebuttal stating its intention was to meet the departments requirements regarding pediatric hospice services.

Since HNW provided comment on this population, Eden provided information on this population in rebuttal, noting that "*Eden will comply with requirements to serve Pediatric patients. It has not identified the Pediatric population cohort as an underserved population.*" With the above clarification and the inclusion of pediatric patients within the "*Other Patients*" category in utilization projections, it is apparent this population was not intended to be identified as an underserved group. Considering this alongside a lack of planned outreach distinct from those currently provided to this population within the planning area, the application does not show that the proposed service will not result in the unnecessary duplication of services. [source: Application pp15-16, April 10, 2023, screening response, pp32-33, July 26, 2023, public comment, pp25-26, and August 8, 2023, rebuttal packet, p11 and p20]

Veterans

Eden included veterans as a potential underserved group within its application, and stated, "*Eden Hospice at Whatcom County is at Level 2 of a 5-level engagement process designed by the We Honor Veterans Program and intends to qualify at Level 3 during 2023 – the program is aimed at supporting and engaging Veterans facing the end-of-life as well as enhancing the cultural competence of all Eden hospice employees to the unique needs of Veterans.*" Hospice of the Northwest submitted public comment affirming its own engagement with "We Honor Veterans" at a Level IV status. Eden provided rebuttal stating its intention to achieve Level IV status eventually, as well as affirming its assessment of veterans as an underserved population.

This population was listed as an underserved group within Eden's submitted rebuttal. However, its inclusion of veterans within the "*Other Patients*" labeled as separate and in addition to the underserved population cohorts, it does not appear this population was initially intended to be an underserved group. Considering this alongside a lack of planned outreach distinct from those currently provided to this population within the planning area, the application does not show that the proposed service will not

result in the unnecessary duplication of services. [source: Application pp28-29, April 10, 2023, screening response, p33, July 26, 2023, public comment, pp26-27, and August 8, 2023, rebuttal packet, p20]

Dual Eligible Patients in Residential Settings Other Than Long term Medicaid unskilled nursing home patients

Eden indicated the existence of an underserved group of dual-eligible patients separate from those living in nursing homes who would not be reachable through proposed outreach and contracting intended for that population. To address this underservice, Eden stated “...*These patients will be identified and admitted through the Eden home health agency, referrals from hospitals, Medicare-eligible skilled short term nursing home discharges, or Eden community outreach to health care providers and the community.*” [source: June 12, 2023, screening response, p6]

In rebuttal, Eden noted that Hospice of the Northwest failed to indicate dual-eligible enrollment outside of the long term convalescent nursing home population, maintaining that the remaining dual-eligible population are “unchallenged” by Hospice of the Northwest. While Hospice of the Northwest does comment on its interactions with nursing homes in regards to dual-eligible hospice services, it does not specify that its submitted dual-eligible numbers consist only of nursing homes.

Additionally, the type of outreach and referral relationships with community health care providers proposed by Eden are demonstrated to be in place with Hospice of the Northwest through the submitted letters of support for the existing provider. As with the above populations, there is no described additional component to improve or address the enrollment of this patient cohort. The department concludes that with no additional component, the standard business practice of establishing referral agreements within the community is already implemented by Hospice of the Northwest and its use as a patient enrollment tool would be duplicative. Further, any underserved groups presumed not to be captured in the department’s methodology would not be reached through services already existing in the planning area.

LGBTQ+ Patients

Eden included patients within the LGBTQ+ community as a potential underserved group within its application, identifying it as a cohort that faces significant, documented access barriers, and adding, “*In most previous analyses, social values, e.g., Death with Dignity or LGBQT, access disparity and have been under analyzed and remains underutilized for the LGBQT population due to an absence of demographic data.*” Eden provided the following assumptions for this proposed population:

“Other Patients Row – These patients come from general population growth and are generated through targeted outreach to VA and LGBQT population groups, marketing to Assisted Living Facilities, 8 outreach to physicians, as well as hospitals and clinics operated through Skagit Regional Health. – 18%, 36% and 37% of total hospice days for Eden in Skagit County.”

When asked for specifics on any proposed programs to reach this population Eden provided the following response:

“Gender Orientation (LGBQT+) Cohort: outreach will include working internally on cultural competence in supporting individuals identified in the LGBQT community and outreach through conventional means such as outreach to referral sources and community agencies.”

Given the acknowledgement of this population as existing within the general population growth projected by the department’s methodology and a lack of planned or demonstrated outreach beyond the conventional expected of an agency, the application does not show that the proposed service will not

result in the unnecessary duplication of services. [source: Application, p4 and p22, April 10, 2023, screening response, p18, and June 12, 2023, screening response, pp10-11]

Referrals through EmpRes Home Health

Eden included patients receiving treatment via its existing home health agency as a potential underserved group within its application. The outreach strategy for this group would be to refer existing patients to Eden’s affiliated hospice agency.

Eden provided the following information related to current referrals from its home health agency:

“Eden Home Health has maintained referral relationships with both Hospice of the Northwest and its public hospital district owners. Eden’s home health agency has long standing referral relationships with the public district hospitals as well as Hospice of the Northwest.

Eden has no difficulty in referring patients to hospice from home health since the opening of Whatcom County hospice in 2021 and the addition of Skagit County hospice services in 2022.

As noted in the previous response, the EmpRes home health agency does not have difficulty in referring patients to hospice services in either Whatcom County or Skagit County with the current ability to use the Eden Hospice at Whatcom County. Patients currently do not wait to be referred into the Eden hospice specific to dying while awaiting admission and there is not a concern at this time for referral to Hospice of the Northwest for patients requesting referral to that agency.” [source: April 10, 2023, screening response, p17, and June 12, 2023, screening response, p5]

Based on the above statements of there being no delays in referring patients, and the Eden approach of referring patients directly from its home health agency to its own hospice agency rather than Hospice of the Northwest within Skagit County, Eden has shown an improved efficiency in its service delivery, not an underserved population. The application fails to show that the proposed service will not result in the unnecessary duplication of services.

Eden Affiliated Hospice and Home Health “Choice” Referrals

Eden included a “choice” patient cohort as a potential underserved group within its application. The applicant projects this population existence based on the number of patients it served under Proclamation 20-36 as a percentage of total projected hospice patients in Skagit County in 2022. [source: June 12, 2023, screening response, p6]

By suggesting individuals are underserved in Skagit County due to a consumer desire for choice, Eden implies this group is underserved due to their choosing to forgo hospice care rather than seek services from Hospice for the Northwest. Eden provided no evidence that the patients the patients identified within this cohort would choose Eden for hospice care solely from a desire for another hospice option. No comment from the community was received to support this claim either.

While the approval of an additional hospice provider in Skagit County might result in additional options for terminally ill hospice patients, based on the information reviewed the department concludes that Eden has not provided practical rationale and supporting documentation to approve its project absent numeric need. **This sub-criterion is not 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.

To evaluate this sub-criterion, the department evaluates an applicant's admission policies, willingness to serve Medicare and Medicaid patients, and to serve patients that cannot afford to pay for services.

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

Medicare certification is a measure of an applicant's willingness to serve the elderly. With limited exceptions, Medicare is coverage for individuals ages 65 and over. Medicaid certification is a measure of an applicant's willingness to serve low-income persons and may include individuals with disabilities.

Charity care shows a willingness of a provider to provide services to individuals who do not have private insurance, do not qualify for Medicare, do not qualify for Medicaid, or are under insured.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

In response to this sub-criterion, Eden provided copies of the following policies. [source: Application, Appendices F-I, Appendix M, and April 10, 2023, screening response, Attachment 13]

Non-Discrimination Policy

The policy includes the following purpose: *To prevent Eden Health staff from discriminating against other staff members, patients, clients or other customers based on race, color, religion, age, sex, sexual orientation, disability, or place of national origin in compliance with federal and state regulations.*

The policy includes the following non-discrimination language:

“1. According to Title VI of the Civil Rights Act of 1964 and its implementing regulation, Eden Health will, directly or through contractual or other arrangement, admit, and treat all persons without regard to race, color, religion, sex, sexual orientation, disability, or national origin in its provision of services and benefits, including assignments or transfers within facilities.

2. According to Section 504 of the 1973 Rehabilitation Act and its implementing regulations, Eden Health will not, directly or through contractual or other arrangements, discriminate based on disability (mental or physical) in admissions, access, treatment, or employment.

3. According to the Age Discrimination Act of 1975 and its implementing regulation, Eden Health will not, directly or through contractual or other arrangements, discriminate based on age in the provision of services unless age is a factor necessary to the normal operation or the achievement of any statutory objective.

4. According to Title II of the American with Disabilities Act of 1990, Eden Health will not, based on disability, exclude or deny a qualified individual with a disability from participation in, or benefits of, the services, programs, or activities of Agency.

5. Eden Health complies with state specific regulations related to discrimination.

Eden Health provides patient services without regard to race, color, religion, age, sex, sexual orientation, disability (mental or physical), or place of national origin.”

Admission Policy

The policy includes the following purpose: *To keep acceptance of patients consistent with Eden Hospice’ mission and scope of services based on the reasonable expectation that the patient’s care and service needs can be appropriately and safely met in the patient’s place of residence.*

The policy includes the following language regarding admission.

“Patients with a terminal illness are accepted for care and services who meet the eligibility criteria listed below:

- a. The physician is willing to sign or get another physician to sign the death certificate upon the patient's death. The physician discusses the patient’s resuscitation status with the patient, family, or caregiver.*
- b. The patient identifies a family member, a caregiver, or a legal representative who agrees to be a primary support care person. Terminally ill patients (who are currently independent in activities of daily living) without an identified support person require the development of a specific plan for the future need of a primary support person. Staff discuss and plan for this at time of admission.*
- c. The patient has a life-threatening illness with a life expectancy of six months or less, as determined by the attending physician and Hospice Medical Director.*
- d. The patient wants hospice services and is aware of his/her diagnosis and prognosis.*
- e. The focus of the care wanted is palliative versus curative.*
- f. The patient, family, or caregiver agrees to participate in the plan of care and signs the Hospice Consent Form.*
- g. The patient, family, or caregiver understands and agrees that the Agency primarily provides care at home.*
- h. The physical facilities and equipment in the patient’s home are adequate for safe and effective care.*
- i. The patient resides within the Agency’s geographical area.*
- j. Hospice does not base eligibility for participation on the patient’s race, color, creed, sex, age, disability (mental or physical), communicable disease, or place of national origin.*
- k. The patient meets the eligibility criteria for Medicare, Medicaid, or private Hospice benefit.*
- l. In order to be eligible to elect hospice care under Medicare, the patient is:*
- m. The Agency accepts patients based on their care needs. The Agency considers the adequacy and suitability of staff and the resources required to provide the service. A reasonable expectation exists that the Agency can adequately take care of the patient at home.*
 - i. Entitled to Part A of Medicare; and*
 - ii. Certified as being terminally ill.*
- n. The Agency accepts patients based on a patient’s ability to pay for hospice services, either through state or federal assistance programs, private insurance, personal assets or the Eden Hospice charity care program. Refer to policy: HOPP 2023 Charity Care Policy.*
- o. The Agency reserves the right to refuse patients who do not meet the admission criteria and refers patients to other resources.*
- p. For Medicare patients, the physician is willing to provide a face-to-face encounter and the required written orders for care and/or services.*
- q. Payment Method: Eden Hospice accepts most private healthcare insurance (please refer to the Agency brochure for further details), Medicare, and Medicaid.”*

Charity Care Policy

The policy includes the following language:

1. *“Patients will not be refused admission based on ability to pay and may be eligible for charity care at the time of admission to Eden Hospice or during the period when they receive hospice services, consistent with the Income Guidelines set out below.*
2. *Eden Health staff notify patients of the option for charity care as the need is identified. Notification may occur in person, via telephone or mail/e-mail.*
3. *Admitted patients can appeal charity care determinations according to the Patient Concerns and Grievances policy.*
4. *Eligibility for charity care under this policy is at all times contingent upon the patient's cooperation with the application process, including the timely submission of all information that Eden Hospice deems necessary or appropriate to enable it to make a charity care determination.*
5. *Patients’ eligibility for free or discounted care is based on household income and family size as identified in Exhibit 1, which is updated annually, and is based on eligible services.*
 - *Income Level of 200% or less — 100% discount level*
 - *Income Level of 201% to 300% — 75% discount level*
 - *Income Level of 301% to 400% — 50% discount level”*

Washington Patient Bill of Rights

The policy outlines the rights of the patient. The policy also includes the following nondiscrimination language:

“Patients have the right to:

... Be treated with courtesy, respect, and privacy;

...Be free from verbal, mental, sexual, and physical abuse, neglect, exploitation, discrimination, and the unlawful use of restraint or seclusion;”

To further support its availability to residents of the planning area, Eden provided the following statements related to this sub-criterion. [source: Application, p29, and April 10, 2023, screening response, p17]

“Eden commits to serving the entire planning area. As previously noted, Eden has available nursing staff – approximately 25% – who live in rural or unincorporated areas of Skagit. Eden also will provide Pediatric hospice services consistent with the November 29th, 2022 Department of Health e-mail memorandum.

The residential location of nursing staff changes over time. A conservative estimate is that 25% of the nursing staff reside in Skagit County. This is expected to increase, consistent with growth in volume upon approval of this certificate of need.

The response to Question 4 provided a comprehensive approach to the strategy and actions that Eden will initiate to reduce disparity in availability and accessibility to under-served groups.”

Eden provided a table showing its projected payer mix, shown below. [source: April 10, 2023, screening response, Attachment 7]

Applicant’s Table

| PAYER MIX | | | | |
|------------------|--|-------------|-------------|-------------|
| Medicare | | 90% | 90% | 90% |
| Medicaid | | 5% | 5% | 5% |
| Commercial/Other | | 5% | 5% | 5% |
| TOTAL | | 100% | 100% | 100% |

Eden provided the following clarification regarding payer mix. [source: Application, pp35-36, April 10, 2023, screening response, pp19-20, and June 12, 2023, screening response, pp10-13]

Applicant's Table
Table 14-A
Projected Payer Mix for Skagit County

| Payer Mix: Total | Percentage of Gross Revenue | Percentage by Patient |
|------------------|-----------------------------|-----------------------|
| Medicare | 93% | 90% |
| Medicaid | 4% | 5% |
| Commercial | 3% | 5% |
| Total | 100% | 100% |

“Medicare pays approximately 91% of Medicare rates, while commercial insurance pays approximately 80% of Medicare rates. However, Medicaid and Commercial Insurance patients are each estimated to make up only 5% of total patients. Note that dual-eligible patients are categorized as Medicare in this table.

The historical payer mx is he following:

Applicant's Table
Table 14-B
Projected Payer Mix for Eden Hospice At Whatcom County

| Payer Mix: Total | Percentage of Gross Revenue | Percentage by Patient |
|------------------|-----------------------------|-----------------------|
| Medicare | 93% | 90% |
| Medicaid | 4% | 5% |
| Commercial | 3% | 5% |
| Total | 100% | 100% |

It is important to note that the Eden payer mix projection is an estimate subject to year-to-year small differences. That said, payer mix in Table 14 is not expected to change throughout the first three years of operations on a per patient basis. On a revenue basis, patient mix using a conventional methodology is also not expected to change from the assumed levels. However, Eden is engaged in expanding hospice services to long-term nursing home patients who generally qualify for Medicare but for long term “custodial” nursing home services, they receive Medicaid support. Under the hospice program, Medicaid long term nursing home patients receive room and board services that previously was paid for by the Medicaid program. Payment shifts to the hospice, which in turn receives Medicaid room and board expense reimbursement at approximately 95% of the previous Medicaid room and board rate. This is essentially a pass-through reimbursement that does not cover direct care room and board services by the hospice in the nursing home facility.

In a less conventional representation approach for payer mix, Table 5 provides the payer mix if Medicaid reimbursement of the hospice pass through is incorporated into the payer mix.

As an example, Eden’s strategy of increasing dual eligible patients through outreach to long term nursing home patients results in a population that is primarily Medicare as measured by the number of

patients. Existing long term patients are generally older than age 65 and are Medicare patients but with low income qualify for Medicaid support for their long term nursing care. Hospices that serve long term nursing home patients in Washington State receive 95% of the Medicaid nursing home patient reimbursement for room and board expense from the State Medicaid program, and in turn reimburse long term nursing homes for their room and board expense on a patient day basis. This is a pass through program. Eden had chosen to represent the payer mix ignoring the pass through revenue and expense for nursing home room and board expense in Table 14. If this reimbursement is included as Medicaid revenue the percentages of Medicaid reimbursement would increase as shown below in Table 14-A – the percentage of Medicare and Medicaid revenue could vary depending on the percentage of nursing home days that represent private pay and commercial insurance reimbursed nursing home patient days that convert to hospice days. Eden asserts that Table 14 that treats Medicaid revenue to hospices as a pass through is the more conventional approach.

Applicant’s Table

Table 5⁶

Modified Payer Mix Table Based on Including Pass-Through Medicaid Nursing Home Revenue Skagit Count and Whatcom Agency

| SKAGIT ONLY | 2023 | 2024 | 2025 | 2026 |
|--------------------------------------|-------------|-------------|-------------|-------------|
| Medicare | 66.8% | 73.8% | 76.7% | 77.1% |
| Hospice Medicaid | 3.7% | 4.1% | 4.3% | 4.3% |
| Medicaid Nursing Home Room and Board | 25.8% | 18.0% | 14.8% | 14.3% |
| Commercial/Other | 3.7% | 4.1% | 4.3% | 4.3% |
| TOTAL | 100% | 100% | 100% | 100% |

| WHATCOM AGENCY | 2023 | 2024 | 2025 | 2026 |
|--------------------------------------|-------------|-------------|-------------|-------------|
| Medicare | 82.4% | 82.6% | 83.2% | 83.4% |
| Hospice Medicaid | 4.6% | 4.6% | 4.6% | 4.6% |
| Medicaid Nursing Home Room and Board | 8.5% | 8.2% | 7.5% | 7.4% |
| Commercial/Other | 4.6% | 4.6% | 4.6% | 4.6% |
| TOTAL | 100% | 100% | 100% | 100% |

At the time of Eden’s application submission, no current payer mix was available – other than 2021, which was a partial implementation year with a patient base of 27 patients and 995 hospice days. For that period, Medicaid represented 2% of gross revenue with Medicare representing 98%. The Medicaid revenue was generated solely from Room and Board reimbursement for nursing home care. Eden’s assumption was that the historical data for a partial start-up year and a full year under Covid-19 did not represent a comparative database to compare future projections under normal operating conditions.

At the time of Eden’s application submission, no current payer mix was available – other than 2021, which was a partial implementation year with a patient base of 27 patients and 995 hospice days. For that period, Medicaid represented 2% of gross revenue with Medicare representing 98%. The Medicaid revenue was generated solely from Room and Board reimbursement for nursing home care. Eden’s assumption was that the historical data for a partial start-up year and a full year under Covid-19 did

not represent a comparative database to compare future projections under normal operating conditions.

In 2022, which included 12-months operating data for both Whatcom County and Skagit County, Eden hospice served 107 patients who generated 6,344 hospice days. The percentage of Medicaid by Gross Revenue was 3.2%, the percentage of Insurance/Other by Gross Revenue was 1.3% with the remaining percentage of Gross Revenue by Medicare being 95.5%. Medicaid patient days generated in nursing homes (paid by Eden) were not recorded. For patient days excluding this category from patient days, the percentage of Medicaid days could not be calculated because the days were covered by a special DSHS grant (Covid-19). Patient days for Insurance represented 2.6% of the recorded days with the remainder of recorded days, 97.4%, representing Medicare.

Revised Table 14-B below provides a summary of payer mix under start-up and Covid 19 based on Gross Revenue. The column based on Patients or Patient days cannot be calculated given the service delivery model proposed for Skagit County where most of the Medicaid revenue and volume will be generated through long term convalescent nursing homes.

Eden chose 5% revenue as an assumption for Medicaid revenue based on other applicants as identified in previous responses. Based on the early Eden response for Washington State which were based solely on data gathered during the Covid-19 pandemic and on a noticeably short start-up year, Eden concludes that the general Medicaid percentage of revenue based on either "Revenue", or patient volume on a county by county basis, is likely to be lower than 5%. Table 7 on the next page shows the percentage of Medicaid by patient days using 2021 cost report data for hospice cost reports. Table 7 excludes hospices that file their reports as part of larger organizations, either nursing homes or hospital organizations. The data shows that the average Medicaid percentage of hospice volume is 1.8% with one hospice reporting 4.5%. It was also possible to examine the Medicaid percentage by patient days for Spokane County where the three hospices serving that county in 2021 each submitted a cost report. The percentage of Medicaid by patient days in Spokane was 2.6% with one hospice achieving 3.9% as a high and another hospice achieving 0.5% as a low.

Applicant's Table

Table 7
Comparative Medicaid Statistics for Hospices with Individual 2021 Cost Reports

| Modern Provider Name | Location | Year | Total Hospice Days (Medicare) | Total Hospice Days (Medicaid) | Total Hospice Days (Other) | Total Hospice Days (Total) | | % Medicaid |
|--|------------------|------|-------------------------------|-------------------------------|----------------------------|----------------------------|--|-------------|
| ASSURED HOSPICE - 501528 | MOSES LAKE, WA | 2021 | 20,687 | | 608 | 21,295 | | 0.0% |
| CAROLINE KLINE GALLAND HOME - 501540 | SEATTLE, WA | 2021 | 34,105 | 117 | 2,986 | 37,208 | | 0.3% |
| COMMUNITY HOME HEALTH & HOSPICE - 501504 | LONGVIE W, WA | 2021 | 51,632 | 15 | 3,919 | 55,566 | | 0.0% |
| CONTINUUM CARE OF SNOHOMISH - 501545 | EVERETT, WA | 2021 | 36,892 | 223 | 2,410 | 39,525 | | 0.6% |
| EDEN HOSPICE AT WHATCOM COUNTY - 501548 | BELLINGHAM, WA | 2021 | 585 | | | 585 | | 0.0% |
| ENVISION HOSPICE - 501544 | TACOMA, WA | 2021 | 14,520 | 367 | 83 | 14,970 | | 2.5% |
| HEARTLINKS - 501519 | SUNNYSIDE, WA | 2021 | 20,194 | 93 | 1,161 | 21,448 | | 0.4% |
| HORIZON HOSPICE - 501535 | SPOKANE, WA | 2021 | 63,826 | 297 | 1,218 | 65,341 | | 0.5% |
| HOSPICE OF SPOKANE - 501503 | SPOKANE, WA | 2021 | 99,098 | 4,506 | 10,496 | 114,100 | | 3.9% |
| KFH - WASHINGTON HOSPICE - 501521 | SEATTLE, WA | 2021 | 39,193 | 96 | 3,705 | 42,994 | | 0.2% |
| KINDRED HOSPICE - 501534 | LIBERTY LAKE, WA | 2021 | 33,988 | 732 | 1,176 | 35,896 | | 2.0% |
| KINDRED HOSPICE - 501541 | SEATTLE, WA | 2021 | 15,988 | 215 | 186 | 16,389 | | 1.3% |
| PROVIDENCE HOSPICE OF SEATTLE - 501515 | SEATTLE, WA | 2021 | 190,232 | 6,468 | 18,317 | 215,017 | | 3.0% |
| SKAGIT HOSPICE SERVICES LLC - 501505 | MOUNT VERNON, WA | 2021 | 64,501 | 67 | 3,163 | 67,731 | | 0.1% |
| SYMBOL HEALTHCARE INC. - 501547 | TACOMA, WA | 2021 | 1,378 | | | 1,378 | | 0.0% |
| TRI-CITIES CHAPLAINCY - 501510 | RICHLAND, WA | 2021 | 55,716 | 1,020 | 4,247 | 60,983 | | 1.7% |
| WALLA WALLA COMMUNITY HOSPICE - 501520 | WALLA WALLA, WA | 2021 | 17,355 | 856 | 695 | 18,906 | | 4.5% |
| WESLEY HOMES HOSPICE - 501543 | DES MOINES, WA | 2021 | 7,331 | | | 7,331 | | 0.0% |
| | | | | | | | | |
| TOTAL OF SAMPLE | | | 767,221 | 15,072 | 54,370 | 836,663 | | 1.8% |

It is important to note that 2021 represented a Covid 19 year so outreach to referring providers was limited. Certainly, there is disparity for Medicaid only patients, a low income population, who are not

dual-eligible under Medicare due to either age or qualifying disabilities. Outreach to Medicaid patients will improve in a post Covid-19 environment, thus a 5% Medicaid by volume may be possible for some hospices, however 2% - 3% range is a fair and reasonable expectation. Clearly, this percentage varies by county. It is important to note that this percentage does not have a material effect on the pro forma of any hospice because hospice patient reimbursement for Medicare or Medicaid is essentially the same amount in Washington State. Furthermore, if patients generated through population increase are more likely to be 92% of 93% by Revenue (rather than 90%) – and this only means that each agency’s pro forma will show more patients being Medicare patients rather than Medicaid.

Turning to Eden serving Skagit County, the emphasis on outreach to dual-eligible Medicare patients residing in long term convalescent care nursing homes as an underserved population generates conventional hospice reimbursement, which Eden classifies as Medicare revenue because the patient is eligible for hospice care under Medicare but ineligible for long term nursing home care under Medicare. These patients are eligible for Medicaid reimbursement for nursing home care, which DSHS will provide as Medicaid reimbursement to the hospice for room and board expense and where the hospice is required to fully reimburse nursing homes for room and board expense. Generally, the state Medicaid program will achieve a 5% savings in Medicaid reimbursement, with the 5% burden shifting to the hospice, not the nursing home. Table 5 in the first screening response (PDF Page 20) shows that including Medicaid reimbursement received by the Whatcom Hospice in Skagit County and Whatcom County substantially increases the overall percentage of Medicaid revenue on either a patient or revenue basis.

Eden reviewed the payer mix provided in the above mentioned Table 5 and has chosen not to revise the overall payer mix Since the Whatcom hospice agency is new for both Whatcom County and for Skagit County. Table 5 shows that Eden has a commitment to serving Medicaid patients in all settings. Specific to Whatcom Hospice direct reimbursement of Medicaid room and board expense, it is important to point out that Eden is accepting a 5% discount from the Medicaid program for room and board reimbursement.

The previous response fully described the initial approach and subsequent review of how Eden arrived at the initial 90% Medicare, 5% Medicaid and 5% Commercial/Other payer mix. As to the historical payer mix, Covid-19 and initial start-up operations contributed to showing no general Medicaid patients being served from the community. Given Covid-19 restrictions during this period, the only sources for Medicaid referral were from the Eden home health agency and from North Cascades Rehabilitation Center referrals of Medicare skilled rehabilitation patients to hospice services. Given the percentage of eligible Medicaid-only referrals previously discussed, it is not unusual that Eden hospice received no general Medicaid hospice referrals. It is particularly important to highlight that Eden has successfully entered into two nursing home contracts for hospice services to be delivered in the long term nursing home residential setting for Medicaid patients. In both counties, Eden has been able to establish contracts and to receive Medicaid room and board-based reimbursement (Eden did not separate Medicaid reimbursement for room and board-based services by County, but presumably the reimbursement took place in 2022 from only North Cascades Rehabilitation Center referrals).

There was no public comment or rebuttal comments related to this sub-criterion.

Department Evaluation

Eden proposes to provide Medicare and Medicaid hospice services to the residents of Skagit County through its existing Whatcom County agency. For this reason, all policies and procedures for the hospice agency are already in place.

The Non-Discrimination Policy describes the preventative measures, management processes, and internal standards Eden would use to ensure all patients will be admitted for treatment without discrimination.

The Admission Policy describes the criteria for admission and the procedure Eden would use to admit a patient to its hospice agency. The policy also includes additional language to ensure all patients will be admitted for treatment without discrimination.

The Washington Patient Bill of Rights document also includes language to ensure all patients will be admitted for treatment without discrimination.

The Charity Care Policy includes nondiscrimination language, outlines the documentation necessary to obtain charity care, and includes the process used by the agency to determination qualification for charity care.

Eden provided its projected payer mix for Skagit County. The projected payer mix shows 90% of its patients are Medicare and 5% are Medicaid. In its application and screening responses, Eden stated these projections were based on previous applicant assumptions and Eden's planned outreach to previously described underserved groups. Based on this assumption and the department's evaluation in WAC 246-310-210(1), the projected payer mix is not able to be considered reasonable.

If this project is approved, Eden anticipates its combined Medicare and Medicaid revenues for the expanded hospice agency will be approximately 97% of its total revenues—93% Medicare and 4% Medicaid. The financial data provided in the application shows revenues for both Medicare and Medicaid patients and includes deductions from revenue for charity care.

Based on the information reviewed the department concludes that while Eden's policies include the appropriate language, the application's unverifiable utilization assumptions make the it unable to demonstrate all residents of the service area will be accepted for services, regardless of the ability to pay, age, and diagnosis. The department concludes that **this sub-criterion is not met.**

- (3) The applicant has substantiated any of the following special needs and circumstances the proposed project is to serve.
 - (a) The special needs and circumstances of entities such as medical and other health professions schools, multidisciplinary clinics and specialty centers providing a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas.
 - (b) The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.
 - (c) The special needs and circumstances of osteopathic hospitals and non-allopathic services.
- (4) The project will not have an adverse effect on health professional schools and training programs. The assessment of the conformance of a project with this criterion shall include consideration of:
 - (a) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.
 - (b) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools serving the area will have access to the services for training purposes.
- (5) The project is needed to meet the special needs and circumstances of enrolled members or reasonably anticipated new members of a health maintenance organization or proposed health maintenance

organization and 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 or proposed health maintenance organization.

Department Evaluation

This sub-criterion under WAC 246-310-210(3), (4), and (5) is not applicable to this hospice project.

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

Based on the source information reviewed, the department determines that EmpRes Healthcare Group, Inc.'s project **does not meet** the applicable financial feasibility criteria in WAC 246-310-220.

(1) The immediate and long-range capital and operating costs of the project can be met.

Chapter 246-310 WAC 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 reviews the assumptions provided by an applicant, projected revenue and expense (income) statements, and projected balance sheets. The assumptions are the foundation for the projected statements. The income statement is a financial statement that reports a company's financial performance over a specific period—either historical or projected. Projected financial performance is assessed by giving a summary of how the business expects its revenues to cover its expenses for both operating and non-operating activities. It also projects the net profit or loss incurred over a specific accounting period.¹¹

The purpose of the balance sheet is to review the financial status of company at a specific point in time. The balance sheet shows what the company owns (assets) and how much it owes (liabilities), as well as the amount invested in the business (equity). This information is more valuable when the balance sheets for several consecutive periods are grouped together, so that trends in the different line items can be viewed.

As a part of this Certificate of Need review, the department must determine that an approvable project is financially feasible – not just as a stand-alone entity in a new county, but also as an addition to its own existing operations. To complete its review, the department requested the applicant to provide projected financial information for the parent corporation if the proposed agency would be operated under the parent.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden provided the following assumptions used to determine its utilizations and clarify market share for the proposed Skagit County hospice services. [Application, pp22-23, April 10, 2023, screening response, p]

¹¹ One purpose behind the income statement is to allow key decision makers to evaluate the company's current situation and make changes as needed. Creditors use these statements to decide on loans it might make to the company. Stock investors use these statements to determine whether the company represents a good investment.

Applicant's Table

Table 1
Revisions to Table 4 Average Daily Census for 2024 "leap year"

| SKAGIT COUNTY | 2022* | 2023 | 2024 | 2025 | 2026 |
|--------------------------------|--------------|-------------|-------------|-------------|-------------|
| Total hospice admissions | 40 | 54 | 114 | 162 | 178 |
| Average Length of Stay | | 59.5 | 61.2 | 61.2 | 61.2 |
| Total hospice days | | 3,215 | 6,977 | 9,911 | 10,892 |
| Projected average daily census | | 8.81 | 19.07 | 27.15 | 29.84 |

** Annualized data based on January through November actual utilization data*

“Number of Admissions: Hospice admissions are made up of three components: (a) Unmet hospice admissions from population growth by extending admitting projections through 2026; (b) Hospice admissions from outreach to dual-eligible Medicare patients whose hospice enrollment is only 77% of the county non-dual eligible rate primarily due to economic disparity in Skagit County and (c) “Choice” hospice patients who selected Eden rather than Skagit Hospice Service.

Average Length of Stay: While average length of stay is longer nationally than in Washington State. Eden outreach to the dual-eligible in Skagit through its intensive, outreach program will likely increase length of stay as referral sources mature. To remain conservative, Eden has selected the current, statewide length of stay.

Patient Days and Average Daily Census are both products of simple algebraic equations, e.g., Patient days divided by 365 days, equals Average Daily Census in this case because no leap year is involved.

Eden provided the following assumptions used to prepare its pro forma financial statements. [source: April 10, 2023, screening response, Attachment K]

Applicant's Table

| Combined Hospice Pro Forma Assumptions | |
|---|---|
| Hospice Patients | 54 admits in 2023, 114 admits in 2024, 162 admits in 2025 and 178 admits in 2026 |
| Average Length of Stay | 61.2 days, set below 61.89 days due to nursing home hospice referrals |
| Hospice Days | 3,215 days in 2023, 6,977 days in 2024, 9,911 days in 2025, 10,892 days in 2026 |
| Average Daily Census | 8.8 in 2023, 19.1 in 2024, 27.2 in 2025 and 29.8 in 2026 |
| Routine hospice care 60 days | Most patients have stays of 60 days or less, Eden experience . For Routine hospice care, 45% of days receive revenue in the "Routine hospice care of 60 days or less" |
| Routine hospice care, 61+ days | A number of patients have stays exceeding 60 days. For Routine hospice care for longer stay patients, 53% of days have stays exceeding 60 days that receive revenue in the "Routine hospice care of greater than 60 days" |
| General Inpatient Care Days | .5% of days based on Eden averages and other providers |
| Inpatient Respite Care Days | 1% of days based on Eden and other WA providers |
| Continuous Home Care Days | .5% of days based on Eden averages and other WA providers. Each day receives on average 8 hours of direct care at the rates listed under continuous home care for each |
| Medicaid long term Nursing Home R&B Days | Excludes outreach to nursing home patients in Whatcom County. 714 days (12 pts.) for 2023, 979 days (16 pts) for 2024, 1,102 days (18 pts.) for 2025 and 1,163 days (19 |
| Routine Home Care 1-60 Day Revenue | \$232.57 weighted average per day based on Medicare rate of 236.13, Medicaid rare of \$212.22 and commercial at \$188.90 with 90% Medicare, 5% Medicaid and 5% |
| Routine Home Care 61+ Day Revenue | \$183.78 weighted average per day based on Medicare rate of \$186.59, Medicaid rare of \$167.69 and commercial at \$149.27 with 90% Medicare, 5% Medicaid and 5% |
| Inpatient Respite Care Revenue | \$537.41 weighted average per day based on Medicare rate of \$545.44 Medicaid rare of \$493.99 and commercial at \$436.35 with 90% Medicare, 5% Medicaid and 5% |
| General Inpatient Care Revenue | \$1,217.69 weighted average per day based on Medicare rate of \$1,226.10 Medicaid rare of \$1,115.20 and commercial at \$988.88 with 90% Medicare, 5% Medicaid and 5% Commercial/Other |
| Continuous Home Care Revenue | \$70.76 weighted average per hour based on Medicare rate of \$71.89 per hour, Medicaid rare of \$63.72 per hour and commercial at \$957.57 per hour with 90% Medicare, 5% Medicaid and 5% Commercial/Other. Day. Use 8 hours per day for each eligible day |
| Medicaid R&B Revenue | 95% of \$309.38 or \$293.91 per day based on current skilled nursing facility contracts. Treated as a pass through |
| Payer Mix: | |

Applicant's Table

| | |
|------------|---|
| Medicare | Assume 90% in Pierce based on Eden experience and review of WA CoNs |
| Medicaid | Assume 5% in Pierce based on Eden experience and review of WA CoNs |
| Commercial | Assume 5% in Pierce based on Eden experience and review of WA CoNs |

| | |
|--|--|
| Deductions from Revenue | |
| Contractual Adjustments for | 2% of Medicare based on CMS rules. |
| Charity Care | 1.5% of gross revenue based on charity care policy and Eden experience |
| Provision for Bad Debts | 1.0% of gross revenue |
| Patient Care Costs | |
| Salaries and Benefits | Experience |
| Hospice Employees | See salary tables |
| Payroll Taxes and Benefits | 30% of salaries based on Eden exp |
| Medical Director (Contracted) | \$7 per hospice day, no caps in contract |
| Pharmacy - Medications & IV Supplies & Lab | \$5 per hospice day |
| DME Costs (Equipment, oxygen) | \$6.50 per hospice day, |
| Medical Supplies | \$4.35 per patient day |
| Imaging Services | \$.08 per hospice day |
| Physical Therapy | \$.05 per hospice day |
| Occupational Therapy | \$.03 per hospice day |
| Speech Therapy | \$.05 per hospice day |
| Dietary | \$.09 per hospice day |
| Patient and ambulance transport | \$.40 per hospice day |
| Communications | \$1.25 per patient day |
| Employment and recruitment services | Based on existing contracts and budget |
| Misc. contract servs: Career Arc, SHP, Curaspan etc. engaged in social recruitment, quality assurance. | Based on existing contracts and budget |
| General Inpatient Costs | \$864.50 per general inpatient care per day |
| Inpatient Respite Costs | \$381.11 per day |
| Nursing Home Medicaid R&B Costs | Excludes Outreach to Nursing Home patients in Whatcom County. Pay \$309.38, the average Medicaid room and board rate for current nursing homes Treated as pass through |
| Mileage -- RN & Social Service | \$1.77 per hospice day will depend on mix of service |
| Mileage -- Bereavement | \$1.00 per hospice day will depend on mix of service |
| Marketing | Lump sum |
| Office supplies | Lump sum |
| Postage | Lump sum |
| License fees | \$1,040 lump sum, will vary by year and volume related |
| Utilities | \$128 per month |

Applicant's Table

| | |
|---|---|
| Medical Director (Contracted) | \$7.00 per patient day - historical |
| Insurance -- Liability, property and malpractice | \$120 per month |
| Lease costs includes rent with semi-annual increases and operating expenses which are adjusted annually based on cost of living. Lease allocated 50% to | See Lease and Operating Expense Table |
| B&O tax and Licensing fees. | 2.12% of gross revenue, Bellingham does not have B&O tax but a licensing fee based on employees. B & O tax is on Gross Revenue. |
| Management Fee | Management fee - 5% of net revenue |

Eden provided clarification on some of the line items above. [source: April 10, 2023, screening response, p25-30]

Applicant's Table

**Table 5
Annual Management Consultant Costs at 5% of Net Revenue**

| | 2023 | 2024 | 2025 | 2026 |
|--|-----------|-----------|-----------|-----------|
| Whatcom Hospice Agency Net Revenue and Management Consultant Compensation | | | | |
| Skagit County Net Revenue | 825,630 | 1,622,269 | 2,215,294 | 2,419,663 |
| Compensation Rate Percentage | 5% | 5% | 5% | 5% |
| Management Consultant Compensation for Pierce County Hospice | \$41,282 | \$81,113 | \$110,765 | \$120,983 |
| King Hospice Agency Net Revenue and Management Consultant Compensation | | | | |
| Total Whatcom Hospice Agency Net Revenue | 2,757,008 | 3,905,720 | 4,863,271 | 5,240,286 |
| Compensation Rate Percentage | 5% | 5% | 5% | 5% |
| Management Compensation for King County Hospice Agency Hospice | \$137,850 | \$195,286 | \$243,164 | \$262,014 |

Medical Director Costs

“There is no cap on the number of hours that the physician will function in the capacity of the medical director.

Eden understands the Department’s interest in the hours and level of compensation for hospice medical director services because it is quite variable for different applicant organizations. The nature of this question seems to be pro forma related rather than quality of care related and so is this response. The annual number of medical director hours leading to annual compensation was determined based on Eden’s years of experience in operating hospices in multiple states. The Eden allocation of hours is \$7 per hospice day and a length of stay of 61.2 days length of stay, which translates into 2.68 hours per hospice patient on average. The contract covers all years and is reviewed annually. Table 6 provides the Estimated Medical Director Fees Based on Hospice Day Volume for Skagit County and the Whatcom County Agency.”

Applicant's Table

Table 6
Estimated Medical Director Fees Based on Patient Day Volume for Skagit County and Whatcom County

| | 2023 | 2024 | 2025 | 2026 |
|---|----------|-----------|-----------|-----------|
| Whatcom Hospice Agency County Patient Days and Medical Director Compensation | | | | |
| Skagit County Hospice Days | 3,215 | 6,977 | 9,911 | 10,892 |
| Compensation per Hospice Day | \$7 | \$7 | \$7 | \$7 |
| Medical Director Compensation for Pierce County Hospice Days | \$22,502 | \$48,837 | \$69,379 | \$76,245 |
| Whatcom Hospice Agency Patient Days and Medical Director Compensation | | | | |
| Total Whatcom Hospice Agency Hospice Days | 12,141 | 17,248 | 21,650 | 23,364 |
| Compensation per Hospice Day | \$7 | \$7 | \$7 | \$7 |
| Medical Director Compensation for King Hospice Agency Hospice Days | \$84,988 | \$120,735 | \$151,548 | \$163,550 |

Lease Agreement

Applicant's Table
Table 7
Annual Estimated Lease Costs

| | | Jan-June 2023 | July-Dec. 2023 | Total 2023 | Jan-June 2024 | July-Dec. 2024 | Total 2024 | Jan-June 2025 | July-Dec. 2025 | Total 2025 | Jan-June 2026 | July-Dec. 2026 | Total 2026 |
|---------------------------------|-----|---------------|----------------|------------|---------------|----------------|------------|---------------|----------------|------------|---------------|----------------|------------|
| Total Monthly Rent Rate | | \$1,897 | \$1,725 | | \$1,725 | \$1,805 | | \$1,805 | \$1,853 | | \$1,853 | \$1,903 | |
| Months at Rate | | 6 | 6 | | 6 | 6 | | 6 | 6 | | 6 | 6 | |
| Total Rent | | \$10,182 | \$10,350 | \$20,532 | \$10,350 | \$10,830 | \$21,180 | \$10,830 | \$11,118 | \$21,948 | \$11,118 | \$11,418 | \$22,536 |
| 50% Allocation to Skagit County | 50% | \$5,091 | \$5,175 | \$10,266 | \$5,175 | \$5,415 | \$10,590 | \$5,415 | \$5,559 | \$10,974 | \$5,559 | \$5,709 | \$11,268 |

“Eden has reviewed the Tenant Improvements subsection and within Exhibits and Riders sections of the lease and has no record of work requiring an addition of Exhibit C to be part of the current lease agreement, signed on September 4, 2021 or the term extension.

Attachment 7 (Skagit) and Attachment 8 (Combined Whatcom Agency) provide an enhanced set of assumptions that as requested. While actual percentages of patient days referenced in the question can vary from year to year, the assumptions used are based on Eden’s experience – there is no reason to change these allocations from historical experience to actual performance based on any anticipated changes by payers. In this case, the principal payer is Medicare at 90% and there are no expected changes in regulations that would affect the above allocations.

Perhaps, the largest potential change would be to Routine 0 – 60 days and Routine 61+ days. With median length of stay being relatively stable at 16 days, it is clear that there are likely three patient cohorts in Washington, very short length of stay patients who are likely to be discharged to home or to a hospice center from an acute care hospital; medium length of stay patients that are spread across the continuum of home settings, e.g., residential home, assisted living facility or nursing home. In Washington State, nursing home hospice days are very low so that leaves referrals to home settings or senior housing or assisted living.

There are some hospices in the State that specialize in longer stay patients who reside in assisted living facility memory care types of programs which would alter the ratio of 0 – 60 days to include a larger percentage of patients in the 61+ routine care category. Eden is not one of the agencies that specializes in long length of stay hospice patients given that it operates home health agencies in most of its locations. In this case, patients progress from home support to hospice care aimed at maintaining

patients in their current settings versus referring patients to memory care units. In regard to serving the nursing home long term care patients, Eden believes that initially, e.g., for the first three full years of operation it is highly unlikely that Eden will have a substantial cohort of long term memory care patients to the degree that it would affect the pro forma assumptions.

Continuous Care assumptions are covered in the revised Pro Forma for Skagit-only (Attachment 7) and for the Whatcom-combined agency (Attachment 8) by two pages of assumptions, revenue and staffing backed up by an additional page of assumptions with further detailed revenue and expense assumptions. The calculation is as follows:

- a) Continuous Care days are calculated by multiplying total hospice days by 0.005 (0.5%).
- b) Continuous Care days are calculated by multiplying total hospice days by 0.005 (0.5%). b) Eligible Continuous Care days are days with at least 8 hours of nursing care. Eden has assumed conservatively that each Continuous Care day will receive 8 hours of nursing at the weighted average rate.
- c) Care weighted hourly rate is \$70.76 per hour.
- d) Calculated Continuous Care days are then multiplied by hours per Continuous Care day and then multiplied by \$70.76 per hour to calculate the total Continuous Care revenue.

The narrative should state 1.5% charity care and 1% bad debt.

Applicant's Table
Table 6
EBITDA Calculation

| EBITA Calculation | | | | |
|--------------------------|-----------------|----------------|----------------|----------------|
| Earnings | (24,927) | 353,845 | 644,545 | 783,786 |
| Add Depreciation | 5,736 | 5,736 | 5,736 | 5,736 |
| Subtract Interest | - | - | - | - |
| Subtract Taxes | - | - | - | - |
| EBITA | (19,191) | 359,581 | 650,281 | 789,522 |

If this project is approved, the Skagit County service area of the hospice agency would be operated in combination with Eden's existing Skagit County home health operations. Eden provided pro forma financial statements for Skagit County operations alone, and the proposed combined Skagit/Whatcom operations.

Based on the assumptions described above, below is a summary of Eden's pro forma Revenue and Expense Statement summary for its Skagit County-only operations. [source: April 10, 2023, screening response, Attachment 7]

Department's Table 2
Eden Skagit County-Only Projected Revenue and Expense Statement Summary

| | CY 2023 | CY Year 1 2024 | CY Year 2 2025 | CY Year 3 2026 |
|----------------------------|--------------------|---------------------------|---------------------------|---------------------------|
| Net Revenue | \$825,630 | \$1,622,269 | \$2,215,294 | \$2,419,663 |
| Total Expenses | \$1,074,144 | \$1,590,493 | \$2,039,139 | \$2,170,903 |
| Net Profit / (Loss) | (\$248,514) | \$31,776 | \$176,155 | \$248,760 |

Net revenues include all gross revenue, minus any deductions for charity care, bad debt, contractual adjustments and allowances. Total expenses include staff salaries and benefits, and all costs associated with the Skagit County operations. [source: April 10, 2023, screening response, Attachment 7]

Department's Table 3
Eden Skagit County-Only Pro Forma Balance Statement Summary

| ASSETS | CY 2023 | CY Year 1 2024 | CY Year 2 2025 | CY Year 3 2026 |
|------------------------|-------------------|-------------------|-------------------|-------------------|
| Current Assets | (\$69,243) | \$45,261 | \$269,626 | \$553,201 |
| Property and Equipment | \$2,880 | \$2,880 | \$2,880 | \$2,880 |
| Other Assets | \$0 | \$0 | \$0 | \$0 |
| Total Assets | (\$66,362) | \$48,141 | \$272,506 | \$556,081 |

| LIABILITIES | CY 2023 | CY Year 1 2024 | CY Year 2 2025 | CY Year 3 2026 |
|--------------------------------------|--------------------|-------------------|-------------------|-------------------|
| Current Liabilities | \$55,047 | \$80,204 | \$100,761 | \$107,099 |
| Capital | \$100,000 | \$0 | \$0 | \$0 |
| Retained Earnings | \$0 | \$0 | \$10,000 | \$95,939 |
| Equity | \$27,105 | (\$63,839) | (\$14,410) | \$104,284 |
| Net Income | (\$248,515) | \$31,776 | \$176,154 | \$248,758 |
| Total Liabilities and Capital | (\$66,363) | \$48,141 | \$272,505 | \$556,081 |

Below is a summary of Eden's projected utilization and the pro forma Revenue and Expense Statement summary for its combined Skagit and Whatcom County operations. This combined information is based on Eden's understanding and experience of the market. [source: April 10, 2023, screening response, Attachment 8]

Department's Table 3
Eden Skagit and Whatcom Combined Utilization Summary

| | CY 2023 | CY Year 1 2024 | CY Year 2 2025 | CY Year 3 2026 |
|------------------------------|---------|-------------------|-------------------|-------------------|
| Total Number of Admissions | 206 | 282 | 354 | 382 |
| Total Number of Patient Days | 12,141 | 17,248 | 21,650 | 23,364 |
| Average Daily Census | 33.26 | 47.25 | 59.31 | 64.01 |
| ALOS-Calculated | 61.2 | 61.2 | 61.2 | 61.2 |

Department's Table 4
Eden Skagit and Whatcom Combined Pro Forma Revenue and Expense Statement Summary

| | CY 2023 | CY Year 1 2024 | CY Year 2 2025 | CY Year 3 2026 |
|----------------------------|-------------------|-------------------|-------------------|-------------------|
| Net Revenue | \$2,757,007 | \$3,905,721 | \$4,863,271 | \$5,240,286 |
| Total Expenses | \$2,781,936 | \$3,551,874 | \$4,218,725 | \$4,456,501 |
| Net Profit / (Loss) | (\$24,929) | \$353,847 | \$644,546 | \$783,785 |

Eden also provided a copy of its combined pro forma Balance Sheet for its Skagit and Whatcom hospice operations. The balance sheet is summarized below. [source: April 10, 2023, screening response, Attachment 8]

**Department’s Table 5
Eden Skagit and Whatcom Combined Pro Forma Balance Statement Summary**

| ASSETS | CY 2023 | CY Year 1 2024 | CY Year 2 2025 | CY Year 3 2026 |
|------------------------|------------------|-------------------|--------------------|--------------------|
| Current Assets | \$352,645 | \$781,832 | \$1,363,882 | \$2,065,015 |
| Property and Equipment | \$2,868 | \$2,880 | \$2,880 | \$2,880 |
| Other Assets | \$0 | \$0 | \$0 | \$0 |
| Total Assets | \$355,513 | \$784,712 | \$1,366,762 | \$2,067,895 |

| LIABILITIES | CY 2023 | CY Year 1 2024 | CY Year 2 2025 | CY Year 3 2026 |
|--------------------------------------|-------------------|-------------------|--------------------|--------------------|
| Current Liabilities | \$136,169 | \$175,775 | \$207,545 | \$219,156 |
| Capital | \$100,000 | \$30,000 | \$0 | \$0 |
| Retained Earnings | \$0 | \$13,380 | \$367,225 | \$1,011,770 |
| Equity | \$144,271 | \$211,712 | \$147,448 | \$53,184 |
| Net Income | (\$24,927) | \$353,845 | \$644,545 | \$783,786 |
| Total Liabilities and Capital | \$355,513 | \$784,712 | \$1,366,763 | \$2,067,896 |

Numbers may not be exact due to rounding.

Public Comments

Bob Laws, Executive Director, Hospice of the Northwest

“IV. Eden Has Underperformed in Washington State, and in Whatcom County in Particular. Tying the Feasibility of its Skagit CN to Whatcom Is Tenuous, at Best

Eden has underperformed in each of its Washington State CN-approved hospice agencies and has experienced significant delays in operationalizing each. Eden was approved in September of 2020 to establish an agency in Whatcom County, approved in October 2021 to establish an agency in Snohomish County, and approved in November of 2021 to establish an agency in King County. As illustrated in Table 4 below, Eden provided identical utilization projections for the first three years of operation in all three counties, despite each county being significantly different in terms of size, need, and demographic make-up.

While all three projects have now passed their projected operational date, only one of the three agencies, Whatcom County, is confirmed operational, and it operates far below the admissions projected in Eden’s CN application (providing 26 actual admissions in 2021, as compared to the 81 projected; and providing 65 actual admissions in 2022, as compared to the 180 projected). In a June rebuttal document for Pierce County, Eden stated that King is now operational, but there is no data available on number of admissions, if any, but clearly it remains far below the estimated volume of 182 admissions for 2023 and had no admissions for 2022 (compare to 81 projected).

With this underperformance, the Program should not rely on the projections provided in the Skagit application because they include Whatcom volumes that are 80% less than what was projected in its CN for 2023 (152 projected admissions vs. 276 projected admissions in the original Whatcom CN).

Hospice of the Northwest's Table

Table 4: Eden Projected vs. Actual Admissions From Approved CNs

| | Estimated Operational Date Per CN Application | Projected Volumes vs. Actual Volumes | | | | | | | |
|-----------|---|--------------------------------------|--------|----------|--------|----------|---------------------|----------|--------|
| | | 2021 | | 2022 | | 2023 | | 2024 | |
| County | | CN Proj. | Actual | CN Proj. | Actual | CN Proj. | Actual ¹ | CN Proj. | Actual |
| Whatcom | 1/2021 | 81 | 26 | 180 | 65 | 276 | 152 | NA | 168 |
| Snohomish | 1/2022 | | | 81 | 0 | 180 | 0 YTD | 276 | NA |
| King | 1/2022 | | | 81 | 0 | 180 | 0 YTD ² | 276 | NA |

The underperformance of Whatcom has had significant financial impact. As can be identified in Attachment 11 to Eden's first screening response, the first-year operating loss for its Whatcom agency was -\$203,511. The total operating loss for partial certification year 2021 and full year 2022 was -\$547,382.

In its recent Pierce County CN, Eden stated that its two months of "break-even" status, in November and December of 2022 in Whatcom County means that it will have a positive bottom line in 2023. However, the monthly financial statements for Eden Whatcom on pages 132-134 of its Skagit screening response do not demonstrate a discernible trend toward profitability. The monthly net income fluctuates between positive and negative net income throughout the year. Although the last two months of the year were positive, two months is not sufficient to establish a trend. Importantly, the months leading up to November 2022 did not indicate a pattern of decreasing losses trending toward profitability. In fact, August and October of 2022 had the second and third worst net losses of the year.

In contrast, Eden's pro forma financials presented in its original Whatcom County CN projected a 2021 and 2022 total net income of \$371,941. Again, this compares to the actual 2021 and 2022 operating loss of -\$547,382—meaning Eden's bottom line is over \$900,000 worse than what they originally projected. As identified in Table 4 above, Eden's CN also projected its 2022 ADC in Whatcom County to be more than double what was actually provided by Eden in Whatcom County in 2022.

Eden also has applications pending in Pierce County, where there is numeric need, and in Spokane County, where there is no numeric need. Eden also recently acquired a number of hospice agencies in Southwest Washington. They have a lot of "irons in the fire," and no data to suggest they can support all these agencies.

V. The Financial Feasibility of Eden Skagit Cannot Be Determined

Eden's negative track record, as outlined above, related to its Washington State CN approved and operational agencies and to the financial health of its Whatcom agency, will likely lead the Program to find that Eden fails WAC 246-310-220. It will, therefore, also be determined to cause fragmentation in care delivery (failing WAC 246-310-230), and ultimately fail WAC 246-310-240 as well.

In addition to these fatal flaws, Eden's application is also confusing, in general, and contains conflicting statements and inaccurate assumptions throughout that conflict with Eden's history in Washington. The pro forma assumptions also include errors, particularly for the combined financials, which result in an inability to "connect the dots" to Eden's financial projections. Specific additional concerns and gaps in the underlying assumptions and pro formas include:

A. Eden’s unrealistic volume projections and drastically overstated net income estimates result in an inability for the Program to determine financial feasibility.

Eden has not provided the data needed for the Program to be able to determine that its current Whatcom agency is financially feasible. Adding volume and expenses in Skagit, where there is no demonstrated need, does not help. Eden has not provided the data needed to support the magnitude of underserved populations, nor have they shown through their historical operations that they serve these populations. And, per the data in Section IV above, they have a history in Washington State of overestimating both volumes and net income. These factors alone make it impossible for the Program to determine Eden’s financial feasibility.

B. Eden did not account for all the potential start-up costs and operating losses in its financial projections.

While Eden presents “best-case” and “worst-case” financial scenarios to the Program, the worst-case scenario presented is nowhere near an actual “worst-case.” While Eden implies that start-up costs and operating losses for the other CN-approved agencies or agencies under review are somehow included in the worst-case scenario, it is unclear what agencies are included, and what the total amount assumed was. But it is clear that it is not all-inclusive.

In its Pierce County screening response, Eden states that its start-ups frequently have operating losses of \$500,000-\$600,000 as the new agencies achieve Medicare certification and build up volume to break-even levels. However, none of its prior CN pro formas estimated a loss of this magnitude. For example, in Whatcom, the loss was estimated at just over \$84,000. The reality was more in-line with Eden’s stated range of \$500,000-\$600,000. Thus, even if Eden is assuming some losses for these agencies, the pro forma does not reflect the actual losses experienced in Whatcom, nor the projected losses assumed in the other counties. With Eden potentially entering into six new counties, start-up costs and operational losses could be in excess of \$3 million. The Program does not have the necessary information to measure this impact on Eden’s Skagit proposal.

Additionally, in January of 2023, Eden entered into an agreement with Community Home Health and Hospice (CHH&H), located in Southwest Washington. Under the agreement, Eden assumed the operations of CHH&H in Clark, Cowlitz, and Wahkiakum counties effective May 1, 2023. A few months prior to the announced acquisition, CHH&H went through a lay-off process and cut back or stopped providing a number of services. According to a recent article published in the Columbian (Attachment 2), CHH&H has not operated at a profit since 2018.

The concern is that Eden has recently assumed control of an agency that will require significant financial investment to turn back to profitability, on top of the multiple CN-approved and applied for agencies that will also have start-up expenses and initial operating losses. These costs are not accounted for in any of Eden’s application materials.

C. In addition to not providing the Program with accurate information regarding total operating losses/expenses, Eden also did not provide documentation that EmpRes, its parent, is committed to covering the losses.

There is NO commitment from EmpRes to cover the potential start-up expenses/operating losses referenced above. The only commitment provided in the application materials from the EmpRes CFO was to provide \$100,000 to the “working capital fund” for Eden Hospice at Whatcom County, LLC. The letter specifically reads:

The Certificate of Need program's application instructions for a Medicare-certified hospice agency asks for a financial letter of commitment. The Members of Eden Hospice at Whatcom County, LLC have committed the necessary working capital to finance the expansion of hospice services to Skagit County.

On receipt of the Washington Certificate of Need, the members of Eden Hospice at Whatcom County, LLC will contribute sufficient funds, currently estimated at approximately \$100,000, to the working capital account of Eden Hospice at Whatcom County, LLC.

This amount is not sufficient to cover even a fraction of the operating losses in Whatcom, let alone Skagit County and the numerous other Eden agencies in, or soon to be in, start-up. Without the CN-required commitment to fund the overall expenses/operating losses, the Department cannot determine the project's financial feasibility.

Rebuttal Comments

"E. Eden Has Underperformed in Washington State, and in Whatcom County in Particular. Tying the Feasibility of its Skagit CN to Whatcom Is Tenuous, at Best

HNW accuses Eden of "underperforming" because it did not simultaneously open and certify three new hospices in the teeth of Covid-19. Under normal times, the Department rules allow applicants 2 – 2.5 years to implement (see the first Medicare or Medicaid patient) its project, so by rule, Eden is not "underperforming." These are not normal times and HNW as a mature agency should not criticize Eden for certifying and initiating operations of the Eden Hospice at Whatcom County and suffer the added costs of Covid-19 on to the normal high costs of certifying a new hospice agency. Again, Eden notes that in the face of Covid-19 and with less than 2 years of operation Eden achieved profitability in the waning months of 2022 and using 2022 monthly performance data documented (see Attachment 3) that the trendline shows a substantial profit in 2023.

As to King County, Eden was approved and is now operating with a date scheduled for its CMS certification. Again, Eden in an abundance of caution delayed its opening and certification as a good steward of its financial resources to focus on Whatcom County and Skagit County. Eden notes that there have been 6 CN applications approved or receiving an exemption in the previous two review cycles so there is an abundance of additional capacity being added in King County.

The Department is well aware of the dilemma created by Bethany in continuing to appeal an application that has been denied. New agencies facing certification could face substantial operating losses if during the middle or end of the CN process their approved CN project was nullified. Eden Hospice at Snohomish County has now started serving patients, preparatory to its CMS survey. Again, a number of applications have recently been approved in Snohomish County and Eden again as a rational provider has delayed proceeding due to the added regulatory risk of the continued appeals of its approval. Eden is now proceeding to certification.

F. The Financial Feasibility of Eden Skagit Cannot Be Determined

1. NWH falsely stated that "Eden's unrealistic volume projections and drastically overstated net income estimates result in an inability for the Program to determine financial feasibility"

Eden's initial plans that included volume projections were developed in 2019 for the Whatcom County hospice CN application that was submitted in February 2020. In the words of Mike Tyson, "Everybody has a plan until they get punched in the mouth." Well, Eden and the World was punched in the mouth by a pandemic. On February 11, 2020, the World Health Organization designated the SARS virus as Covid-19. Washington Governor Jay Inslee declared a state of emergency on

February 29, 2020, which was followed by a statewide stay-at-home order on March 23 that would last at least two weeks. To date, Washington has 1,971,290 confirmed cases and a total of 15,984 confirmed deaths as of July 26, 2023. The pandemic is not over.

Considering a 100-year pandemic, Eden Hospice at Whatcom County proceeded through certification and initiated services carefully in Whatcom County to carefully manage operating expenses and planned operating losses to the greatest extent possible. While HNW states the first two years of Eden Whatcom operations as generating operating expense losses of \$547,382 it fails to note that the first full year of operations after certification had an operating loss of \$203,511 and Eden Whatcom achieved profit levels in both November and December of 2022. As a result, Eden modified its operation plan for the Eden Hospice at Whatcom County.

HNW testimony indicated that the monthly financial statements for Eden Whatcom on pages 132-134 of its Skagit screening response do not demonstrate a discernible trend toward profitability. While Eden did not submit a trendline analysis in response to screening questions because it was not asked, HNW is incorrect that the 2022 data does not show a discernible trend toward profitability. Attachment 3 provides a 12-month trendline for 2023 Eden Hospice at Whatcom County using the 12-month 2022 monthly net revenue. The trendline analysis shows a substantial profitability trend. Net income using the trendline approach advocated by HNW shows a \$337,802 profit for the 2023, 12 -month period. (See Attachment 3 Trendline projection).

As an example of bad math and the “Pot calling the Kettle black,” HNW mixes a previous CN “before” Covid-19 operating budget and a “during” Covid-19 revised pro forma in the Eden CN #23-20 application, a true Oranges (before) and Lemons (during) comparison. HNW proceeds with this bad math experiment and concludes that there is a \$900,000 difference between the two budgets. Of note, HNW for the most recent 3 annual accounting periods 2019, 2020 and 2021 generates even a larger variance from year-to-year as shown in Table 2 per its audit reports. Obviously, revenue and expense vary dramatically from year to year but as the auditor notes, the reader has no real knowledge of the reasons why there is such a large variance in HNW financial performance because management did not provide the required analysis of HNW operations to even to its auditor:

“Other Matter – Required Supplementary Information

Management has omitted management’s discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.”(Attachment 5, PDF page 50, or 53-audit findings).

The same criticism of the audit of 2019 – 2020 performance was also raised (see Attachment 6, PDF Page 5, or Page 2 of audit findings). Taken as a whole, HNW has no credibility in critiquing financial performance as demonstrated by their auditor’s findings.

Applicant's Table

Table 2

HNW Net Revenue, Operating Income and Percent & Total Income and Percent by Year

| | 2019 | 2020 | 2021 |
|--|-----------|------------|------------|
| Net Revenue By Year | 9,895,378 | 11,821,829 | 12,390,186 |
| 2022 Operating Income | (348,342) | 890,213 | 102,136 |
| Operating Income as a Percent of Revenue | -3.5% | 7.5% | 0.8% |
| Total Operating and Non-Operating Income | 36,956 | 1,211,918 | 347,699 |
| Total Income as a Percent of Revenue | 0.4% | 10.3% | 2.8% |

Source: Audited HNW Financial Statements in Attachment 5 and Attachment 6

Eden rejects this approach as simply bad math and a misunderstanding of CN rules. There is only one pro forma that Eden has submitted for review in this project. In truth, we are all midway in understanding how Covid 19 will affect hospice health care utilization and operating revenues and expenses. The same is true for accounting for other variables where agencies must modify their plans to deal with adverse events. Eden will continue to apply its best efforts. The Department should concur in rejecting HNW's management capacity to critique Eden's financial performance since HNW even refuses to provide management commentary on its own financial performance to its auditors.

2. Eden did not account for all the potential start-up costs and operating losses in its financial projections

The Department in its hospice application instructions for Section B Financial Feasibility describes start-up include any non-capital expenditure expenses incurred prior to the facility opening or initiating the proposed service. First, there is no capital expenditure in this project. Capital expenditures are not included as start-up costs. Since the project involves adding a county to an existing agency without any additional office space that might generate start-up costs as in an independent agency, there would normally be no start-up costs for adding a county. In addition, this project is unique because it has already been implemented and thus if there had been any start-up costs, they would have been incurred in response to the Governor Inslee Proclamation 20-36 emergency period.

As to operating expenses and losses related to certification, Eden began operations in April 2021 during the height of the Covid-19 pandemic as a service to the residents of Whatcom County and Skagit County. All approved applicants have two years with an extension of an additional six months to initiate serving the first Medicare or Medicaid patient, which would have been as late as March 2023.

Eden also fully addressed the working capital requirements associated with first year operating expenses and customarily associated with first "full" operating year census build up for new agencies. This was addressed in the application that included EmpRes's most recent audited financial statement showing \$15,507,455 in cash and cash equivalents as well as a \$40 million line of credit. Eden provided extensive documentation on its ability to fund all of its hospice operations and the Department notified it that all required financial information had been provided (see response to Question 26 on the second screening response Page 13).

3. In addition to not providing the Program with accurate information regarding total operating losses/expenses, Eden also did not provide documentation that EmpRes, its parent, is committed to covering the losses.

Eden rebuts the HNW assertion that Eden did not provide accurate operating losses/expenses to the Program for Eden Hospice at Whatcom County operations during 2021 and 2022. This illogical representation is contradicted by HNW own “bad math” analysis of operating statement information in the two previous sections. As to its assertion that EmpRes, the parent corporation, did not commit to any required funding, HNW’s excerpt from the Eden application documents the opposite:

“The Certificate of Need program's application instructions for a Medicare-certified hospice agency asks for a financial letter of commitment. The Members of Eden Hospice at Whatcom County, LLC have committed the necessary working capital to finance the expansion of hospice services to Skagit County. On receipt of the Washington Certificate of Need, the members of Eden Hospice at Whatcom County, LLC will contribute sufficient funds, currently estimated at approximately \$100,000, to the working capital account of Eden Hospice at Whatcom County, LLC.” (PDF Page 30)

HNW also evades the evidence that Eden Hospice at Whatcom County, which includes Skagit County hospice utilization in 2022 already has turned a profit in the last two months of 2022. The trend analysis included as Attachment 3 that HNW seems to require shows unequivocally that Eden Hospice at Whatcom County will be profitable in 2023 at a level sufficient to require no additional working capital.”

Department Evaluation

Utilization Assumptions

The applicant currently operates multiple hospice agencies in Washington State and based its projected utilization on specific factors:

- Admissions were based on a combination of unmet hospice admissions from hospice growth through 2026, hospice admissions from outreach to dual-eligible patients, and patients who selected Eden as part of it presumed “choice” cohort.
- Average Length of Stay (ALOS) at 61.2 days based on the current statewide average. This is slightly shorter than the current statewide average of 61.89 days.
- Patient days and average daily census are based on applying arithmetic to the above factors and dividing by the given days in a year.

When asked during screening for additional information regarding the outreach strategies necessary to secure the projected admissions, Eden provided extensive reiteration and explanation of its assumptions used to calculate its admissions and volumes, along with strategies determined to be standard practices or currently in place with the existing provider.

The applicant provided pro forma financial statements, including Revenue and Expense Statements, and Balance Sheets to allow the department to evaluate the financial viability of both the Skagit County hospice services and the Whatcom County agency with the Skagit County services.

As noted earlier in this evaluation, the department has concluded that Eden failed to demonstrate reasonable rationale for its proposed volumes under WAC 246-310-210(1). Consequently, the patient volumes relied upon in this application are not expected to be served under Eden’s proposal and the utilizations used as a basis to project revenues cannot be supported.

An applicant's utilization assumptions are the foundation for the financial review under this sub-criterion. For the reasons stated above, the department will not continue with its financial review of the application under this sub-criterion, which includes an evaluation of information submitted by the applicant and public comments.

In summary, based on the information available, the department cannot complete a review of the immediate and long-range operating costs of this project. **This sub-criterion is not 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.*

Chapter 246-310 WAC 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 direct 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.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden provided the following statements in response to this sub-criterion. [source: Application, p34-35, and April 10, 2023, screening response, p77]

“EmpRes Healthcare Group, Inc. is responsible for 100% of the capital costs. Eden Hospice at Whatcom County, LLC will collocate with Eden Home Health of Bellingham which will minimize start-up and continuing overhead costs associated with independent solo startups thus reducing breakeven levels. For example, there is no capital expenditure associated with the project because there is a sufficient supply of desk phone/computer setups, and the field clinicians have company-issued cell phone and table from our equipment inventory. That inventory is sufficient to support the addition of hospice staff serving Skagit County. The co-shared office location is currently wired with secure IT infrastructure and requires no modification for this project.

Various studies on the cost-effectiveness of hospice, both federally and privately sponsored, provide strong evidence that hospice is a cost-efficient approach to care for the terminally ill.

An early study for CMS concluded that during the first three years of the hospice benefit, Medicare saved \$1.26 for every \$1.00 spent on hospice care. The study found that much of these savings accrue over the last month of life, which is due in large part to the substitution of home care days for inpatient days during this period.

Thee cost reductions to the Medicare and other payers have been compelling. For example, Providence estimated savings for 25,000 Washington State Medicare beneficiaries in 2017 dollars of nearly \$100 million – or \$4,000 per beneficiary not receiving 5 weeks of hospice care. On a peer-reviewed CMS evaluation of the Washington dual diagnosis and hospice integration 6-year demonstration project, annual savings of \$6 million or \$2,000 per enrollee for 30,000 enrollees was calculated using a full-throated actuarial analysis. Finally, the 16-year evaluation of 8,568 decedents found: total health expenditures for hospice was \$6,426 at 1-month and \$3,351 at 3-months per matched pair. Authors conclude that: “Our findings that hospice does not shift economic burden from Medicare to families underscores the need to promote timely access to hospice care as even those with short hospice durations experienced cost savings.

In this application, Eden cites the Washington Department of Social a & Health Services (DSHA) Fee for Service Dual-eligible Project that found through integrating hospice services with other home care, nursing home, assisted living and residential care that Medicare costs were reduced by 10% with

savings amounting to \$2,000 per enrolled dual-eligible Medicare beneficiary. Eden also submitted further evidence that the integration model proposed through this project is well supported by other national studies.

Additional research on hospice supports the premise that cost savings associated with hospice care are frequently unrealized because terminally ill Medicare patients often delay entering hospice care until they are within just a few weeks or days of dying, suggesting that more savings and more appropriate treatment could be achieved through earlier enrollment.

There are no start up costs. EmpRes Healthcare Group, Inc. is responsible for the estimated start-up costs if they are incurred.”

There were no public comments or rebuttal comments submitted for this sub-criterion.

Department Evaluation

There are no capital costs and no construction associated with this project. In screening, the applicant clarified that there are also no start-up costs.

The department does not have an adopted standard on what constitutes an unreasonable impact on charges for health services. Medicare patients typically make up the largest percentage of patients served in hospice care. For the combined operations of the Whatcom and Skagit County hospice agency, Eden projected that 90% of its patients would be eligible for Medicare; 5% of its patients would be eligible for Medicaid, for a combined Medicare and Medicaid total patients at 95%. Gross revenue from Medicare and Medicaid is projected to be 97% of total revenues. Thus, standard reimbursement amounts and related discounts are not likely to increase with the approval of this project.

Based on the information reviewed and the fact that the applicant has failed to demonstrate need for this project, the department cannot conclude that approval of this project would not have an unreasonable impact on the costs and charges of healthcare services in the planning area. Based on the information, the department concludes that this Skagit County hospice expansion project **does not meet this sub-criterion.**

(3) The project can be appropriately financed.

Chapter 246-310 WAC 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 direct 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.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden provided the following statement regarding this criterion. [Source: April 10, 2023, screening response, p77]

“EmpRes Healthcare Group, Inc. is responsible for 100% of the capital costs. Eden Hospice at Whatcom County, LLC will collocate with Eden Home Health of Bellingham which will minimize start-up and continuing overhead costs associated with independent solo startups thus reducing breakeven levels. For example, there is no capital expenditure associated with the project because there is a sufficient supply of desk phone/computer setups, and the field clinicians have company-issued cell phone and table from our equipment inventory. That inventory is sufficient to support the addition of hospice staff serving Skagit County. The co-shared office location is currently wired with secure IT infrastructure and requires no modification for this project.

There are no start up costs. EmpRes Healthcare Group, Inc. is responsible for the estimated start-up costs if they are incurred.”

Although there are no anticipated capital or start-up costs, Eden also provided a letter of financial commitment to demonstrate the organization’s commitment to any costs that may be incurred as a result of the project. The letter is dated December 28, 2022, and signed by Michael J. Miller, Chief Financial Officer of EmpRes Healthcare Management, LLC. [source: Application, Appendix P]

The applicant also included a copy of audited financials for EmpRes Healthcare Group Inc. and Subsidiaries to demonstrate existing capital is available for this project, should it be needed. [source: Application, Appendix Y]

There were no public comments or rebuttal comments submitted for this sub-criterion.

Department Evaluation

Eden identified no capital costs and the potential for up to \$100,000 for start-up costs. The applicant demonstrated that the funds are available for both capital and start-up costs and provided a letter of commitment to demonstrate the availability of funding.

To further demonstrate financial health and ability to fund the project, audited financial statements for the years 2020 and 2021 were submitted for EmpRes Healthcare Group, Inc. and subsidiaries. These statements report the parent entity has more than sufficient reserves to finance this project.

If this project is approved, the department would attach a condition requiring the applicant to finance the project consistent with the financing description in the application. With the financing condition, the department concludes **this sub-criterion is met.**

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

Based on the source information reviewed, the department determines that EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County project **does not meet** the applicable 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.

Chapter 246-310 WAC does not contain specific WAC 246-310-230(1) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what specific staffing patterns or numbers of FTEs that should be employed for projects of this type or size. Therefore, using its experience and expertise the department concludes that the planning would allow for the required coverage.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

To demonstrate compliance with this sub-criterion, Eden provided the following assumptions it used in projecting full-time equivalents (FTEs) for this expansion project, including the tables below, submitted to show the logistics of staff sharing. Table 15-A table shows the number of additional FTEs projected for Skagit County services. The second table shows the historical number of FTEs for the Whatcom County operations (years 2021 and 2022), current operations (2023) and projected combined Whatcom and Skagit operations. [source: Application, p37, p39, April 10, 2023, screening response, pp23-24 and June 12, 2023, screening response, p7]

Applicant's Tables

Table 15 -A

FTEs by Category for Eden Hospice Services in Skagit County

| | 2022 | 2023 | 2024 | 2025 | 2026 |
|-----------------------------|------|-------------|-------------|--------------|--------------|
| CLINICAL OPERATIONS | | | | | |
| Registered Nurse | | 0.88 | 1.91 | 2.72 | 2.98 |
| Medical Social Worker | | 0.29 | 0.64 | 0.91 | 0.99 |
| Hospice Aide | | 0.88 | 1.91 | 2.72 | 2.98 |
| Spiritual Care Coord | | 1.00 | 1.00 | 2.00 | 2.00 |
| TOTAL | | 3.05 | 5.46 | 8.34 | 8.96 |
| ADMINISTRATIVE | | | | | |
| Administrator | | 0.50 | 0.50 | 0.50 | 0.50 |
| Director of Patient Care | | 0.50 | 0.50 | 0.50 | 0.50 |
| Clinical Manager | | 0.50 | 0.50 | 0.50 | 0.50 |
| Business Office Manager | | 0.50 | 0.50 | 0.50 | 0.50 |
| Clinical Support Specialist | | 1.00 | 1.00 | 1.00 | 1.00 |
| Community Liaison | | 0.50 | 0.50 | 0.50 | 0.50 |
| TOTAL | | 3.50 | 3.50 | 3.50 | 3.50 |
| TOTAL FTE'S | | 6.55 | 8.96 | 11.84 | 12.46 |

| TOTAL WHATCOM AGENCY | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 |
|-----------------------------|-------------|-------------|--------------|--------------|--------------|--------------|
| CLINICAL OPERATIONS | | | | | | |
| Registered Nurse | 0.68 | 2.15 | 3.33 | 4.73 | 5.93 | 6.40 |
| Medical Social Worker | 0.43 | 0.79 | 1.11 | 1.58 | 1.98 | 2.13 |
| Hospice Aide | 0.19 | 1.23 | 3.33 | 4.73 | 5.93 | 6.40 |
| Spiritual Care Coord | 0.28 | 0.93 | 1.00 | 1.00 | 2.00 | 2.00 |
| Subtotal | 1.58 | 5.10 | 8.76 | 12.03 | 15.84 | 16.94 |
| ADMINISTRATIVE | | | | | | |
| Administrator | 0.21 | 0.87 | 1.00 | 1.00 | 1.00 | 1.00 |
| Director of Patient Care | 0.58 | 0.93 | 1.00 | 1.00 | 1.00 | 1.00 |
| Clinical Manager | 0.73 | 0.75 | 1.00 | 1.00 | 1.00 | 1.00 |
| Business Office Manager | 0.25 | 1.08 | 1.00 | 1.00 | 1.00 | 1.00 |
| Clinical Support Specialist | - | - | 2.00 | 2.00 | 2.00 | 2.00 |
| Community Liaison | 0.02 | 0.24 | 1.00 | 1.00 | 1.00 | 1.00 |
| Subtotal | 1.79 | 3.87 | 7.00 | 7.00 | 7.00 | 7.00 |
| TOTAL FTE'S | 3.37 | 8.97 | 15.76 | 19.03 | 22.84 | 23.94 |

Table 16
Eden Hospice at Whatcom County, LLC Staff / Patient Ratio

| Type of Staff | Eden Hospice at Whatcom County, LLC Staff / Patient Ratio |
|----------------------------|--|
| Skilled Nursing (RN & LPN) | 1:10 |
| Physical Therapist | Contract only |
| Occupational Therapist | Contract only |
| Medical Social Worker | 1.30 |
| Speech Therapist | Contract only |
| Home Health / Hospice Aide | 1:10 |
| Chaplain | Initially Fixed then 1:40 |

While preparing staffing ratios, Eden evaluated a sample of applications approved from 2018 through 2021 and has followed staffing patterns used in its three operating hospices outside of Washington State. Table 16 provides staffing ratios that are consistent with staffing for existing Eden Hospices as well as with the assumptions in the Certificate of Need applications that were evaluated. These ratios apply to Eden’s employed clinical staffing. Co-location also provides advantages to sharing peak workloads of 2 county service areas. More generally, members of the Eden administrative staff work flexibly with each other to meet patient care needs. Eden’s Administrator and Director of Patient Care are qualified and prepared to provide direct patient care or other administrative functions. Thus, the team is readily able to respond to patient needs when the growing agency experiences peaks in census.

The most important introductory clarification point here is that Eden has extensive experience operating Medicare certified hospice agencies in the Western United States which includes one currently operating hospice in Washington State serving Whatcom County and Skagit County. In Table 24 from an earlier Certificate of Need application, e.g., Snohomish County CN 21-47, Eden provided a reference to other Washington hospice providers to demonstrate due diligence in its staffing assumptions. That Table with page reference is included below.

The short response to why Eden’s ratios are applicable is that they readily fall in the range of applications that have been submitted in prior application by providers with multiple agencies. Further, the Department accepted the ratios submitted by the Department. Eden believes that they were accepted as reasonable because they fell with the range of other credible applicants and providers.”

Applicant's Table

Table 24

Comparative Staff : Patient Ratios on Recently Approved Hospice Agencies
(Eden Snohomish CoN 21-47, page 58)

| Type of Staff | Olympic Medical Center 2019 CoN | Providence 2018 CoN | Envision 2019 Snohomish | Inspiring 2019 Snohomish |
|----------------------------|---------------------------------|-----------------------|-------------------------|--------------------------|
| | Staff / Patient Ratio | Staff / Patient Ratio | Staff / Patient Ratio | Staff / Patient Ratio |
| Skilled Nursing (RN & LPN) | 1: 10 | 1:11 | 1:10 | 1:8 |
| Physical Therapist | Contract only | Contract only | Contract only | Contract only |
| Occupational Therapist | Contract only | Contract only | Contract only | Contract only |
| Medical Social Worker | 1:35 | 1:25 | 1:35 | 1:03 |
| Speech Therapist | Contract only | Contract only | Contract only | Contract only |
| Home Health / Hospice Aide | 1:10 | 1:15 | 1:10 | 1:8 |
| Chaplain | Contract per Visit | 1:50 | 1:37 | 1:30 |

Eden clarified that the positions of medical director; aroma, music, and touch therapists; and advanced feeding technique staff are under contract and not included in this FTE count.

In response to questions regarding the logistics of sharing staff between the operational Whatcom County hospice agency and the proposed expansion into Skagit County, as well as regarding the recruitment and retention of necessary staff, Eden provided the following information. [source: Application, p40, and April 10, 2023, screening response, pp21-23]

“Hospice services have been proven to reduce the demand for inpatient hospital services and the nursing and other ancillary staff needed to support hospital inpatients. As a result, hospice in general reduces the demand for hospital-based nursing staff by reducing hospital length of stay and reducing readmissions to acute care hospitals.

As a large multi-state organization, EmpRes and Eden have employees, visibility, and contacts across numerous job markets. Specific to Skagit County, EmpRes currently operates both a home health agency and a skilled nursing facility in Skagit County, so it has local knowledge and established relationships within Skagit County for recruiting staff.

Beyond maintaining a competitive salary structure and a rating as a preferred employer, Eden is a large multi-state organization. EmpRes and Eden has employees, visibility, and contacts across numerous job markets. Specific to Whatcom County, EmpRes currently operates a home health agency serving Skagit County and also serving Whatcom County and adjoining counties as well as a skilled nursing facility serving Whatcom County. Eden also operates home health services in Snohomish County. As a result, Eden has local knowledge and established relationships within Skagit County, Whatcom County and adjoining counties for recruiting staff.

Eden Hospice at Whatcom County is an employee-owned agency. This is an added recruitment advantage in several important aspects of staffing, recruitment, and retention:

- EmpRes maintains a recruitment office to systematically recruit for employees*
- Staff mobility within and between labor markets supports recruitment and enhances overall retention efforts for employees stay in the EmpRes and Eden organizations*

- *As an employee-owned organization, EmpRes and Eden experience lower turn-over rates than many other health care providers because employees have a stake in the success of Eden in carrying out its mission in the future.*
- *Co-location of a suite of agencies – Home Health in Whatcom, Skagit County and adjoining creates a hub for employees particularly for hard to recruit nursing and overall management managers in the start-up years.*
- *The EmpRes commitment to Employees/Residents reflected in the company name is also reflected in management efforts to prioritize employees and residents as core to any success again reducing turnover and making EmpRes an attractive employer.*
- *EmpRes maintains an Employee Referral bonus program.*

The response to Question 34 provides a detailed discussion of Eden’s internal experience in providing direct care hospice services such as nursing services. In a previous approved application Eden provided a comparative external analysis of what other hospice providers presented in their Certificate of Need applications to justify their direct staffing assumptions.

Indirect staffing for general administration, patient care administration and administrative support positions rely on site-specific assumptions including the number of hospice agencies that co-locate; the number of counties being served in those hospices; the timing of implementations of services on an agency and county basis and the experience required for these positions which is partially based on the complexity of the operation.

From a pro forma standpoint, the administrative position pro forma calculation is the following: Administrative position salary (based on experience required due to complexity) multiplied by the FTE requirement (each County), and then the allocation to the individual agency and to a county within an individual agency for multi-county agencies. The net objective of this process is to provide a reasonable estimate of administrative expense on a position by position basis. With co-located agencies, deviations from forecast expense and actual performance can be minimized in that overall, there are less administrative positions required than are required for individual, non-co-located agencies.

In tight labor markets such as the current market in the Puget Sound area, competent administrative staff can be recruited at the anticipated level of expertise if available or individuals with lower levels of experience and expertise can be recruited at lower compensation levels. Generally, lower experience and expertise individuals who meet job requirements are more plentiful than applicants with greater skills and experience and the agency (s) can add additional FTE positions while maintaining the overall administrative expense budget constant. Co-location provides an option for meeting staffing demand for administrative personnel with the preferred staffing pattern or recruiting some additional staff persons at lower compensation levels but with similar pro forma results, e.g., overall administrative expense.

The response to Question 34, provided a brief discussion of how staff-sharing for direct patient care positions can address a portion of the nurse staffing shortage that can occur periodically on a daily or weekly basis. The above response to this question responds to the role that staff-sharing plays in providing administrative services for the agency in terms of flexibility in recruitment, retention and provision of administrative services.

*Staff sharing is discussed extensively above. Staff sharing is one strategy for handling short term day-to-day staffing issues. Planned staff-sharing for administrative positions provides Eden with the flexibility of addressing anticipated and unanticipated administrative support services. **On a longer***

term basis, the availability for employees to serve in a variety of positions and have the opportunity for advancement helps maintain Eden as a preferred employer and is a significant recruitment advantage for new employees and retaining existing, talented employees.

As referenced above, in screening Eden also provided their Recruitment Policy which outlines the purpose, hiring process, job posting criteria, transfer and referral process, and other related procedures. [Source: April 10, 2023, screening response, Attachment 4]

Public Comments

During the review of this project, the department received public comment related to this sub-criterion. The public comments are restated below.

Alpha Home Health and Hospice

“HNW has been in the community for decades and has made every effort to provide the best care and experience for all patients and families as they’ve transitioned to end of life care. As the DOH methodology does not currently show a need for another HOS agency in Skagit County, we feel adding another agency would dilute the overall quality of care in the community and have an adverse impact on staffing in an already depleted pool.”

Roy Graves, MD – Fellow American Academy of Emergency Physicians

“I have multiple concerns regarding a second, potentially for-profit, hospice. The local commissioners recently explored transitioning to a for-profit model and found that most of these organizations tended to cherry pick the profitable cases and did not wish to continue to support the difficult-to-access rural areas in our county. Salaries trended lower for employees to help support shareholder profits, leading to turnover and less continuity of care.”

Rebuttal Comments

Eden provided the following rebuttal specifically directed to public comment related to staffing.

Eden Hospice at Whatcom County, LLC

“In regard to concerns about employee turnover in a for-profit agency, EmpRes – Eden is 100% employee owned, which reduces turnover. Regarding requiring a whole new administration and support system, Eden Hospice at Whatcom County is requesting to add Skagit County to its existing, operating hospice, consistent with its operation of home health in Skagit County. Eden is not creating a new hospice, so it is not creating a new administration and support system.”

Department Evaluation

Eden would be a new provider of Medicare and Medicaid hospice services for the residents of Skagit County to be served from its existing Whatcom County agency; thus, it based staffing ratios and projections on those of previous Certificate of Need applications.

Eden provided its projected staffing for the Skagit hospice operations alone, and its staffing for the combined operations for the Whatcom County agency. As shown in the Skagit County-only FTE table, Eden expects to recruit 6.55 FTEs in the first partial year of operation (2023), which increases to 12.46 FTEs by the end of full year three (2026). The combined Whatcom and Skagit County operations table shows a total of 15.76 FTEs for the agency in year 2023, which increases to 23.94 FTEs by the end of full year three. Eden also clarified that the positions of medical director; aroma, music, and touch therapists; and advanced feeding technique staff are under contract and not included in this FTE count. This approach is reasonable.

Alpha Home Health and Hospice and Roy Graves, MD submitted public comment expressing concerns over the addition of an additional Skagit County hospice agency impacting staffing and turnover. Alpha states that the addition of Eden to the existing supply of hospice providers would stress an existing, limited supply of available staff. Dr. Graves expressed concern that Eden would experience an above average turnover rate. While Eden did not provide specific rebuttal towards Alpha’s staffing comments, it did provide rebuttal to Dr. Graves’ staffing concerns, stating its ownership structure acts as a reducing factor for turnover.

While Eden did not provide evidence for its rebuttal statement, the department does not find the submitted comment impactful for this sub-criterion of review. The department is aware of staff shortages across the nation and has requested all applicants, regardless of the type of project, to provide more detailed information on recruitment and retention of necessary staff in light of these shortages. In response, Eden provided additional detailed information on approaches it would use to ensure appropriate staffing is available to provide services in Skagit County. Additionally, the department does not consider the ownership structure of an applicant as an indicator of its ability to recruit and maintain staff.

Based on the information reviewed the department determines that Eden likely has the ability and expertise to recruit and retain a sufficient supply of qualified staff to expand its Whatcom County operations into Skagit County. **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.

Chapter 246-310 WAC does not contain specific WAC 246-310-230(2) 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 an agency must meet when it is to be Medicare certified and Medicaid eligible. Therefore, using its experience and expertise the department assessed the applicant’s ability to establish and maintain appropriate relationships.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden provided the following information to demonstrate compliance with this sub-criterion. [source: Application, pdfs 41-42, and April 10, 2023, screening response, p25]

“Inpatient contractors

For General Inpatient Care and for Respite Care, the proposed hospice will develop contracts with one or more local facilities.

General Inpatient Care

Eden will initiate relationships on approval of its Skagit County CON and anticipates developing “general inpatient care” contracts with local hospitals that serve the area. Eden expects to develop GIP contracts with:

- *Skagit County hospitals whose physicians and discharge planners refer patients to Eden Hospice at Whatcom County, LLC the regional hospital system operated by Skagit Regional Health*
- *PeaceHealth?*

Respite Care

- *North Cascades Rehabilitation and Health Services, LLC, a skilled nursing home*
- *Highland Health and Rehabilitation, a skilled nursing home*

In-home care for nursing home residents

In addition to arranging for General Inpatient Care and Respite Care, Eden will also plan with area nursing homes so that long term residents, for whom the facility is home, are able to receive routine in-home hospice services there, again beginning with:

- *North Cascades Rehabilitation and Health Services, LLC, a skilled nursing home*
- *Highland Health and Rehabilitation, a skilled nursing home*

Criteria for selection

In selecting inpatient providers with which to contract, Eden will apply the following criteria:

Of the potential hospital contracts available, Eden believes each provides high quality care. Eden plans to contract with each facility willing to do so. Criteria for contracting and referral of specific patients will include:

- a) availability of inpatient hospice beds appropriate to GIP admissions (i.e., least restrictive environment and/or availability of a home-like setting*
- b) availability of appropriate clinical resources and beds for Eden's patients*
- c) relative geographic access of the facility for the patient's primary care team and/or potential visitors.*
- d) availability of a palliative care in-patient team or a hospitalist team that includes individuals with palliative care expertise.*
- e) Compatibility with Eden's adopted policies honoring a patient's End of Life choices*
- f) Cost containment*

Respite Care

- a) availability of inpatient hospice beds appropriate to 'respite care'*
- b) availability of clinical resources needed for Eden's patients*
- c) relative geographic access for the patient's primary care team and/or potential visitors.*
- d) compatibility with Eden's adopted policies honoring a patient's End of Life choices*
- e) cost containment*
- f) availability of a home-like setting*
- g) nursing facilities already contracting with Eden for it to provide in-home hospice visits to its long-term care residents*

... these relationships would be newly established relationships.

Eden Hospice at Whatcom County has referral relationships with PeaceHealth."

Eden also provided the following list of ancillary and support service vendors that are already in place for Eden Home Health within Spokane County. [source: Application, pp40-41 and Appendix U]

"Appendix U provides a list of vendors based on Eden Home Health at Skagit and selected vendors for other home health and hospice services provided in Washington agencies.

This list is based heavily on vendor relationships already in place for Eden home health and agencies located throughout the State and specifically in Skagit County.

- 1. Medical Supplies – Medline*
- 2. Quality and Outcomes Vendor – Strategic Healthcare Partners (SHP)*
- 3. CAHPS – Strategic Healthcare Partners (SHP)*
- 4. Electronic Health Record – Homecare Homebase*

5. *Referral Management – Allscripts, NaviHealth*
6. *Clearing House – Zirned/E-Solutions*
7. *Telephone/Internet Services – Verizon Wireless and Comcast*
8. *Shredding – Iron Mountain*
9. *Answering Service (after-hours) – TeleMed*
10. *Virtual Care Technology/Telehealth – Healthcare Recovery Services (HRS)*
11. *Learning Management System – Relias*
12. *Online Patient Education – Krames*
13. *Shipping/Postage – FedEx*
14. *HR/Payroll System – Kronos*
15. *Hazardous Waste Disposal – Stericycle*
16. *Interpretation – Language Line Services*
17. *Recruiting – Indeed, Social Media Platforms (Facebook, LinkedIn, etc.)*
18. *Applicant Tracking System – Newton/Paycor*
19. *Background Checks – Assure Hire, WSP*
20. *OIG Searches – Certiphino Screening*
21. *Office Supplies/Promotional Products – Office Depot, Millennium, DocuMart*
22. *Pharmacy – Ectara Pharmacia”*

In addition to the information above, Eden provided a copy of the existing Medical Director Agreement between Eden Hospice at Whatcom and Premier Hospice Physicians. The agreement was executed on January 18, 2023, and outlines necessary qualifications for the medical director and describes roles and responsibilities for both the medical director and the agency. The agreement is effective unless terminated by either entity with 30 days’ notice. The compensation for medical director services for both Skagit and Whatcom County is \$160.00 per hour, in addition to a \$2,500 monthly on-call fee. [source: April 10, 2023, screening responses, Attachment 2]

There were no public comments or rebuttal comments submitted for this sub-criterion.

Department Evaluation

As previously stated, Eden proposes to serve Skagit County hospice patients by expanding the service area of its existing Whatcom County hospice agency. Eden’s parent organization operates several hospice agencies both within and outside of Washington State.

Eden provided a listing of ancillary and support agreements it would use for the proposed hospice agency.

Information provided in the application demonstrates that the applicant has the experience and access to all necessary hospice ancillary and support services needed to expand Medicare- and Medicaid-certified hospice services into Skagit County. Based on the information reviewed, the department concludes that Eden has the experience and expertise to maintain and expand existing ancillary and support relationships for the proposed project. Thus, the department concludes **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.

Chapter 246-310 WAC 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 an agency must meet when it is to be Medicare certified and Medicaid eligible. Therefore, using its experience and expertise the department assessed the applicant's history in meeting these standards at other agencies owned or operated by the applicant.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

In response to this sub-criterion, Eden provided the following statements. [source: Application, p42]

"There is no such history."

Eden provided the following statement regarding its proposed assessment for training quality staff, customer satisfaction, and quality improvement. [source: April 10, 2023, screening response, p24]

"Eden uses Strategic Healthcare Partners for customer satisfaction and quality improvement assessments."

Regarding the department's routine quality-of-care analysis, Eden provided the following statement. [Source: Application p44]

"There is no pattern of condition-level findings among facilities owned by EmpRes/Eden."

Appendix V lists 77 healthcare facilities owned or operated by EmpRes/Eden. There is no pattern of condition-level findings among facilities owned by EmpRes/Eden."

There were no public comments or rebuttal comments submitted for this sub-criterion.

Department Evaluation

As a part of this review, the department must conclude that the proposed services provided by an applicant would be provided in a manner that ensures safe and adequate care to the public.¹² For hospice services, the department reviews two different areas when evaluating this sub-criterion. One is a review of the Centers for Medicare and Medicaid Services (CMS) "Terminated Provider Counts Report" covering years 2020 through 2023.¹³ The department uses this report to identify agencies that were involuntarily terminated from participation in Medicare reimbursement.

The department also reviews an applicant's conformance with Medicare and Medicaid standards. The department uses the CMS 'Survey Activity Report' to identify facilities with a history of condition level findings. For CMS surveys, there are two levels of deficiencies: standard and condition.¹⁴

- Standard Level

A deficiency is at the Standard level when there is noncompliance with any single requirement (or several requirements) within a particular standard that is not of such character as to substantially limit a facility's capacity to furnish adequate care, or which would not jeopardize or adversely affect the health or safety of patients if the deficient practice recurred.

- Condition Level

¹² WAC 246-310-230(5).

¹³ Reports are all current as of August 3, 2022.

¹⁴ Definitions of standard and condition level surveys: <https://www.compass-clinical.com/deciphering-tjc-condition-level-findings/>

Deficiency at the Condition level may be due to noncompliance with requirements in a single standard that, collectively, represent a severe or critical health or safety breach, or it may be the result of noncompliance with several standards within the condition. Even a seemingly small breach in critical actions, or at critical times, can kill or severely injure a patient, and such breaches would represent a serious or severe health or safety threat.

Below is a summary of the two areas reviewed for Eden.

As stated in the Applicant Description section of this evaluation, EmpRes Healthcare Group, Inc. owns EmpRes Home Health and Hospice, LLC, which in turn owns EmpRes Hospice, LLC. EmpRes Hospice, LLC owns Eden Hospice at Whatcom County, LLC, the applying entity. Based on the ownership structure, EmpRes Healthcare Group, Inc. is the applicant for this project.

CMS Survey Data

Using the Center for Medicare and Medicaid Services Quality, Certification & Oversight Reports (QCOR) website, the department reviewed the historical survey information for all operational Eden Hospice at Whatcom County and affiliated in-home services agencies and nursing homes. The following table summarizes the department’s findings.

**Department’s Table 6
Eden Hospice at Whatcom County and Affiliated In-Home Services
Federal Survey Summary Record Year 2020 to Current**

| Service Type | State | # of Agencies / Facilities | Standard Surveys | Complaint Surveys | Deficiency Information |
|---------------------|--------------|-----------------------------------|-------------------------|--------------------------|-------------------------------|
| Home Health | Arizona | 2 | 0 | 0 | No deficiencies |
| | California | 1 | 0 | 0 | No deficiencies |
| | Idaho | 2 | 0 | 0 | No deficiencies |
| | Montana | 1 | 0 | 0 | No deficiencies |
| | Nevada | 1 | 1 | 0 | No deficiencies |
| | Oregon | 1 | 0 | 0 | No deficiencies |
| | Washington | 4 | 1 | 0 | No deficiencies |
| | Wyoming | 1 | 0 | 0 | No deficiencies |
| Hospice | Arizona | 1 | 1 | 0 | No deficiencies |
| | Idaho | 2 | 1 | 0 | No deficiencies |
| | Montana | 1 | 1 | 0 | No deficiencies |
| | Nevada | 1 | 1 | 0 | No deficiencies |
| | Oregon | 2 | 1 | 0 | No deficiencies |
| | Washington | 3 | 1 | 0 | No deficiencies |
| | Wyoming | 1 | 0 | 0 | No deficiencies |
| Total | | 24 | 8 | 0 | 0 deficiencies |

Terminated Provider Counts Report for EmpRes Healthcare Group, Inc.

Focusing on full years 2020 through 2022 and partial year 2023, none of EmpRes’s hospice or home health agencies were involuntarily terminated from participation in Medicare reimbursement. [source: CMS Quality, Certification, and Oversight Reports as of September 7, 2023]

Conformance with Medicare and Medicaid Standards for EmpRes Healthcare Group, Inc.

Using the Center for Medicare and Medicaid Services (CMS) Quality, Certification & Oversight Reports (QCOR) website, the department’s review included full years 2020 through 2022 and partial year 2023 for all eight states.

Of the 24 agencies, eight received standard surveys during the timeframe identified above. None of the agencies surveyed in this period showed any deficiencies or required follow-up visits.

Washington State Healthcare Agencies

Focusing on its Washington State facilities, EmpRes operates a total of seven separate agencies in the counties of Clark (1), King (2), Snohomish (1), Spokane (1), Whatcom (2). Of the seven, only the Spokane County agency was surveyed and had no deficiencies.

In summary, since year 2020, none of EmpRes’ home health or hospice agency surveys resulted in termination from participation; and no surveys reported any deficiencies.

As stated in the project description section of this evaluation, Eden explains that it has been providing some Medicare and Medicaid hospice services to residents of Skagit County under the Governor’s Proclamation 20-36. [source: Application, p3] The department does not consider this action by Eden to be operating out of compliance.

Eden provided a copy of the executed Medical Director Contractor Agreement between Kelle Brogan, MD of Premier Hospice Physicians and EmpRes Healthcare Management, LLC. Using data from the Washington State Medical Commission, the department found that Dr. Brogan is compliant with state licensure and has no enforcement actions on his license. The Director of Patient Care Services is Kristina Wood, RN. Using data from the Nursing Commission, the department found that Kristina Wood is compliant with state licensure and has no enforcement actions on her license.

Eden provided the names and professional license numbers for its key clinical staff, shown in the submitted table below.

Applicant’s Table

| Name | Specialty | Number | State |
|--------------------|---------------------|---------------|--------------|
| Shannon Parks-Beck | Chaplain | NA | WA |
| Lisa Notter | RN Clinical Manager | RN60815859 | WA |
| April Cortez | CNA | NC60916097 | WA |
| Kaitlin Bird | CNA | NC60963897 | WA |
| Amy Bradley | MSW/Administrator | SC61008852 | WA |
| Dorinda Dibble | MSW | SC61091121 | WA |
| Kelly Rifenburg | RN | RN60740917 | WA |
| Leili Krinitskaia | RN | RN61315344 | WA |
| Lynnann Case | RN | RN60505448 | WA |
| Karla Carano | RN | RN00119822 | WA |
| Ahavah Goldman | RN | RN61097629 | WA |

Using data from the Washington State Medical Commission the department confirmed that all but one of the above individuals all have an active license with no enforcement action in Washington State. The one exception is an RN with a credential status currently listed as “Active on Probation.” An informal disposition from the Nursing Care Quality Assurance Commission has cleared this individual to continue their work with the existing hospice agency. Provided this individual remains in compliance with the terms agreed upon with the commission, the department finds that clinical staff comply with this criterion.

Based on the information reviewed, the department concludes that Eden has been operating in compliance with applicable state and federal licensing and certification requirements. The department also concludes there is reasonable assurance that the applicant’s service area expansion of an existing hospice agency in Washington State would not cause a negative effect on the compliance history of Eden. The department concludes that this project **meets this sub-criterion.**

- (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.*

Chapter 246-310 WAC does not contain specific WAC 246-310-230(4) 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 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.

Eden Hospice at Whatcom County, LLC

Eden provided the following statements regarding hours of operation and patient access to services outside of the hours of operation. [source: Application, p40, and pp42-43]

“It is in the very nature of the Medicare-certified hospice to assure continuity and to avoid unwarranted fragmentation. The core purpose of the interdisciplinary hospice team is to develop the patient’s plan of care, manage their care daily, and to support the patient’s needs. In particular, the per diem payment to the hospice for all services puts the control of the full range of care in the hands of that core team.

As noted in the Executive Summary, the Washington Department of Social a & Health Services (DSHA) Fee for Service Dual-eligible project covering six years has reduced Medicare expenses by 10% per year as well as reducing overall Washington Medicaid costs. As of September 2020, 37% of the state dual-eligible program is enrolled in the State Health Home program. In the sixth Demonstration Year (2022) that included Skagit County, Medicare savings were over \$55 million with total Medicare savings over the 5-year period of \$166.8 million (Appendix S). Medicaid savings have not yet been calculated by the Centers for Medicaid and Medicare Services. Note that the savings mentioned do not include Medicaid or family and patient health care expenditure savings.

Through this project, EmpRes and Eden Hospice at Whatcom County, LLC have the opportunity to integrate home health, hospice, nursing home, and assisted living facilities into system of care that has been demonstrated to improve health care, patient and family satisfaction, improve emotional health, and to reduce costs for both players such as Medicare and Medicaid and patients and their families in Skagit County.

The office hours will be 8 a.m. to 5 p.m. Monday through Fridays.

At all other times, Eden will have paid staff on call and accessible by telephone via a phone call to a main number. Also, hospice patients who prefer to participate in the tele-medicine option will have 24/7 access through their own dedicated electronic tele-medicine device.”

Additionally, Eden also named inpatient contractors, general inpatient care, and respite care as the types of existing healthcare facilities it anticipated developing working relationships with. They also provided the criteria that would be used in selecting these partners, clarifying that the relationship would generally be the same as those used for its King County agency as well. [source: Application, pp41-42]

Public Comment

Bob Laws, Executive Director, Hospice of the Northwest

“The bottom line is that there is no numeric need for another hospice care provider in the County, and Eden fails to demonstrate compliance with the exception criteria. HNW has the necessary programs and outreach and has demonstrated our commitment and experience with each of the populations that Eden targets as underserved. The volumes are low, and a second provider would unnecessarily duplicate and potentially fragment care delivery. The project is not needed at this time.”

Rebuttal Comments

“Regarding potentially fragmenting service delivery, Eden operates a unique outreach channel unavailable to HNW and to the Alpha home health agency. This outreach channel integrates hospice and home health services and generates more hospice referrals than a stand-alone non-affiliated home health agency. Eden’s benchmark for referrals for home health patients is 10%. In addition, unlike Alpha, Eden is currently operating both home health and hospice services as affiliated services in Skagit County. National research shows that home health and affiliated hospice service agencies generate 28.4% more referrals than unaffiliated home health agencies such as Alpha in Skagit County

Of greater significance is what HNW does not list. HNW provides no testimony on any adverse financial impact of Eden’s efforts to reduce disparity among the long term convalescent non-skilled care Medicaid population cohort residing in the county’s four skilled nursing facilities, choice that expands the hospice enrolled base for patients considering end of life alternatives and outreach and choice for an affiliated home health and hospice agencies outreach to home health patients that results in an increase in home health referrals of approximately 28.4%.

In fact, to the contrary, HNW states that it will have record projected hospice patient volume of approximately 1,300 hospice patients this year. Yet, as to “possible fragmentation;” HNW lists no specific examples that Eden can rebut. However, Eden notes that the unique opportunity afforded to the residents of Skagit County by this project is the ability to reduce fragmentation through coordinated outreach between Eden’s affiliated home health and hospice agencies that increase hospice referrals over conventional home health outreach by an average of 28.4%. If this application is not approved, there will be no affiliated home health and hospice agency provider in Skagit County and outreach will suffer by reducing new referrals from an affiliated home health – hospice program by an expected 28.4%.

HNW’s intransigence to address hospice need by simply comparing its own inward focused “Need” assessment instead of applying national benchmarks for utilization and disparity among the population cohorts is concerning. The Department is mandated to apply all the statutory Declaration(s) of Public – including “Need” – equitably and equally. RCW 70.38.015 Declaration of public policy in Health Planning and Development that includes declaration 4 (See Attachment 14).

(4) “. . . the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition . . .”

By adding a second hospice agency to the only Washington State county that is served by a single provider, the Department can improve resiliency; reduce disparity by targeted outreach; provide more integration of home health with hospice services through agency affiliation; maintain cost effectiveness by sharing agency facilities and management personnel while maintaining two hospice agencies that are strong financially. All of this can be done with virtually no increase in prices since most patients are covered under Medicare and Medicaid pricing.”

Department Evaluation

For this proposed service area expansion project, Eden identified potential referral sources, detailed its existing area relationships and network, and discussed its criteria for selecting contracting partners. Certificate of Need evaluations also consider any public comments submitted during the review. A provider’s participation in Washington State’s Death with Dignity Act¹⁵ is not a requirement for CN approval. However, the department finds it an important component to promoting continuity in the provision of requested services and to ensure that applicants have a plan on how requested services would be provided directly, in-directly, or referred.

To evaluate this sub-criterion, the department also considers its own analysis and conclusions of this project as related to WACs 246-310-210 and 220. The department concluded this application was not compliant with the need criterion under WAC 246-310-210 and the financial feasibility criterion under WAC 246-310-220.

Based on the information reviewed and the fact that the department has concluded that Eden has not demonstrated need for the proposed project, the department concludes that expansion of the Whatcom County agency’s Medicare- and Medicaid-certified hospice services into Skagit County would likely result in unwarranted fragmentation of hospice services in the planning area. **This sub-criterion is not 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.*

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

This sub-criterion is addressed in sub-section (3) above and **is met for** Eden’s Skagit County expansion project.

¹⁵ ‘The Washington Death with Dignity Act’ was effective on March 5, 2009, except for section 24 of the act which was effective on July 1, 2009. [source: RCW 70.245]

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

Based on the source information reviewed, the department determines that EmpRes Healthcare Group, Inc. project **does not meet** the applicable cost containment criteria in WAC 246-310-240.

(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 has met the applicable criteria in WAC 246-310-210 through 230 criteria, in step two, the department assesses the other options considered by the applicant. If the department determines the proposed project is better or equal to other options considered by the applicant and the department has not identified any better options, this criterion is determined to be met unless there are multiple applications.

If there are multiple applications, the department’s assessment is to apply any service or facility superiority criteria contained throughout WAC 246-310 related to the specific project type in Step three.

Step One

Department Evaluation

Eden’s application to expand its Whatcom County agency’s Medicare and Medicaid hospice services into Skagit County did not meet the applicable review criteria under WAC 246-310-210, 220, and 230. Therefore, the department does not move to step two for this project.

In its application and screening responses, Eden provided a discussion of why submitting this application is the superior alternative when considering advantages and disadvantages related to access to health care services, quality of care, costs and operating efficiencies, and legal considerations of either this project or taking no action. Eden concluded that the most advantages and least disadvantages were in submitting this proposed project.

The department concluded that Eden has not met the applicable criteria in WAC 246-310-210 through 230, therefore it cannot be considered the best available alternative for the community. **This sub-criterion is not met.**

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

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

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

Department Evaluation

There is no construction associated with this proposed project, thus this sub-criterion is not applicable.

(3) The project will involve appropriate improvements or innovations in the financing and delivery of health services which foster cost containment and which promote quality assurance and cost effectiveness.

EmpRes Healthcare Group, Inc. dba Eden Hospice at Whatcom County, LLC

Eden provided the following statements related to this sub-criterion. [source: Application, pp15-16]

“Hospice services will be provided to terminally ill patients requiring end-of-life care with a life expectancy of 6 months or less. The proposed hospice will provide care to patients regardless of the

source or availability of payment for care. Hospice services will be provided to all patients consistent with all provisions of the Death with Dignity Act.

*Eden Hospice at Whatcom County, LLC will provide Pediatric hospice services for residents of the Skagit County service area consistent with the Department memorandum of November 29, 2022. **The estimated annual deaths for the Skagit Pediatric population are between 3 and 5 patients with natural deaths for the age 1 – age 14 population estimated at 5 patients. This represents the maximum potential population base for hospice services. Given that not all families choose hospice, referrals are estimated to be 1 or 2 patients every 3 to 5 years.***

Table 1 estimates the number of natural deaths (excluding accident, suicide and homicide deaths occurring in the Skagit Pediatric age cohort, ages 1 – 17. Pediatric hospice services are not applicable for infant deaths below age 1. The latest year for Skagit County pediatric reported deaths for the Pediatric population is 2020. Actual deaths are suppressed for all Skagit age cohorts, ages 1 – 17 because each age cohort has less than 10 deaths per national confidentiality policy. Table 1 is based on the calculated 2020 Department of Health estimated population for each age cohort in Skagit County by the statewide death rate per 100,000 persons for each age cohort, which can generate a total deaths per age cohort estimate for each cohort from age 1 through age 17, and a natural death estimate for each age cohort from age 1 through age 14. The accident, suicide and homicide deaths for the Skagit population are consolidated for age group cohort 15 – 17, and age group 18 – 19 thus limiting the estimate for Pediatric deaths to age cohorts including the population age 1 through age 14. Table 1 provides a summary of the analysis.

*Applicant’s Table
Table 1
Estimated Skagit County Pediatric Deaths in 2020*

| | 2020 State Population | Total Deaths | Total Death Rate | Natural Death Rate | Skagit 2020 Population | Skagit Total Deaths | Skagit Natural Deaths |
|--------------|-----------------------|--------------|------------------|--------------------|------------------------|---------------------|-----------------------|
| Age 1 - 4 | 360,890 | 57 | 15.8 | 15.8 | 5,862 | 0.9 | 0.9 |
| Age 5 - 9 | 461,674 | 41 | 8.9 | 8.9 | 7,449 | 0.7 | 0.7 |
| Age 10- 14 | 486,751 | 77 | 15.8 | 7.4 | 8,410 | 1.3 | 0.6 |
| Age 15 - 17* | 279,862 | 99 | 35.4 | | 4,740 | 1.7 | |
| Total | | | | | | 4.6 | 2.2 |

* Accident, Suicide and Homicide category is Age 15 - 19 and is not comparable

(Data Source: WA Department of Health Vital Statistics)

Many Skagit patients in hospice care will have end-stage cancer, the remainder of patients will have other terminal conditions as documented in Table 2. Unique to Eden Skagit Hospice, will be the outreach and commitment to reaching dual-eligible Medicare patients. While most patients will be over age 75, outreach to dual-eligible patients is expected to result in a younger population that cannot be quantified at this time. Many dual-eligible patients are under 65 and qualify for Medicare due to physical or mental disabilities. Their dual eligibility is often because their disability limits (or halts) their ability to produce income. Of course, this very unfortunate situation leads to poverty thus dual-eligibility healthcare status.

Table 2 below provides the percentage breakdown of estimated diagnostic mix for Skagit County. However, Eden will adhere to its Patient Admission Criteria that commits to serving all patients that can benefit from hospice regardless of their age. Patients receiving in-home care includes those still

living in private homes, residents of nursing homes, adult family homes and assisted living facilities. Care will be provided to patients regardless of ethnicity, culture, language, gender identity, or sensory disability. Interpretive services and assistive communication technologies will be provided as needed. Table 1 shows the national average case mix for 2019 (published by the National Hospice and Palliative Care Organization). A later report, prepared in October 2021, also focused on the 2019 diagnostic mix but with a higher level of detail. Given that Covid-19 has had such a material effect on overall death rates that may persist into the future, Eden has chosen to use the 2019 data.

Applicant's Table
Table 2
Expected Diagnostic Mix of Hospice Patients

| Diagnosis | Percent |
|---------------------------|----------------|
| Cancer | 30 |
| Heart/Cardiac/Circulatory | 18 |
| Dementia | 16 |
| Lung/Respiratory | 11 |
| Stroke/Coma | 9 |
| Other | 14 |
| Chronic Kidney Disease | 2 |
| Total | 100% |

There were no public comments or rebuttal comments submitted for this sub-criterion.

Department Evaluation

As noted earlier in this evaluation, Eden’s project has been determined to not meet other criteria, therefore it cannot be viewed as likely to improve delivery of hospice services to the residents of Skagit County with the addition of the proposed service to the planning area. The department concludes that **this sub-criterion is not met.**

Department Evaluation of WAC 246-310-290(12)

WAC 246-310-290(12)

“The department may grant a certificate of need for a new hospice agency in a planning area where there is not numeric need.

- (a) The department will consider if the applicant meets the following criteria:*
 - (i) All applicable review criteria and standards with the exception of numeric need have been met;*
 - (ii) The applicant commits to serving Medicare and Medicaid patients; and*
 - (iii) A specific population is underserved; or*
 - (iv) The population of the county is low enough that the methodology has not projected need in five years, and the population of the county is not sufficient to meet an ADC of thirty-five.*
- (b) If more than one applicant applies in a planning area, the department will give preference to a hospice agency that proposes to be physically located within the planning area.*
- (c) The department has sole discretion to grant or deny application(s) submitted under this subsection.”*

For this application, the sub-criteria under 12(a)(i), (ii), and (iii) apply. Sub-criterion (iv) will not be discussed in this evaluation.

WAC 246-310-290(12)(a)(i) requires an applicant to meet all applicable review criteria and standards, with the exception of numeric need. Based on the information provided in the application and the public comments submitted by community members, the department concludes that Eden did not demonstrate that an additional Medicare and Medicaid certified hospice services should be approved for Skagit County absent numeric need. **This sub-criterion is not met.**