RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: August 22, 2024
TIME: 8:59 AM

WSR 24-18-006

Agency: Department of Health

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: Kidney disease treatment center temporary emergency exemptions. The Department of Health (department) has adopted a new section, WAC 246-310-825 Kidney disease treatment centers— Temporary emergency situation exemption, and has adopted amendments to existing kidney disease treatment center rules, WAC 246-310-800 through 246-310-806, and 246-310-812 through 246-310-833, to implement Substitute Senate Bill (SSB) 5569 (chapter 48, Laws of 2023), codified in RCW 70.38.280.

The department has also adopted amendments to address impacts to the need methodology based upon new temporary emergency situation exemption, as well as clean-up language to ensure consistency in kidney disease treatment center rules

Citation of rules affected by this order:

New: WAC 246-310-825
Repealed: None
Amended: WAC 246-310-800, 246-310-803, 246-310-806, 246-310-812, 246-310-815, 246-310-818, 246-310-821, 246-310-824, 246-310-827, 246-310-830, 246-310-833
Suspended: None

Statutory authority for adoption: RCW 70.38.135 and SSB 5569 (chapter 48, Laws of 2023) codified at RCW 70.38.280

Other authority: RCW 70.38.280

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-10-089 on 4/30/2024 (date).

Describe any changes other than editing from proposed to adopted version:

The department has updated references from "facility" to "center" in WAC 246-310-800 through 246-310-806 and 246-310-812 through 246-310-833 for consistency.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Other:

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	0	Amended	0	Repealed	0
Federal rules or standards:	New	0	Amended	0	Repealed	0
Recently enacted state statutes:	New	1	Amended	11	Repealed	0

The number of sections adopted at the request of a nongovernmental entity:

	New	0	Amended	0	Repealed	0

The number of sections adopted on the agency's own initiative:

	New	1	Amended	11	Repealed	0

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	0	Amended	0	Repealed	0

The number of sections adopted using:

Negotiated rule making:	New	0	Amended	0	Repealed	0
Pilot rule making:	New	0	Amended	0	Repealed	0
Other alternative rule making:	New	1	Amended	11	Repealed	0

Date Adopted: 8/21/2024

Name: Kristin Peterson, JD for Umair A. Shah, MD, MPH

Title: Chief of Policy for Secretary of Health

Signature:

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-800 Kidney disease treatment centers—Definitions. The definitions in this section apply to WAC 246-310-800 through 246-310-833, unless the context clearly indicates otherwise:

(1) "Affiliate" or "affiliated" means:

(a) Having at least a ((~~ten~~)) 10 percent but less than ((~~one hundred~~)) 100 percent ownership in a kidney ((~~dialysis facility~~)) disease treatment center;

(b) Having at least a ((~~ten~~)) 10 percent but less than ((~~one hundred~~)) 100 percent financial interest in a kidney ((~~dialysis facility~~)) disease treatment center; or

(c) Three years or more operational management responsibilities for a kidney ((~~dialysis facility~~)) disease treatment center.

(2) "Base year" means the most recent calendar year for which December 31st data is available as of the letter of intent submission date from the *((~~Northwest Renal~~)) Network's Modality Report*.

(3) "Capital expenditures," as defined by *Generally Accepted Accounting Principles* (GAAP), means expenditures made to acquire tangible long-lived assets. Long-lived assets represent property and equipment used in a company's operations that have an estimated useful life greater than one year. Acquired long-lived assets are recorded at acquisition cost and include all costs incurred necessary to bring the asset to working order. Capital expenditure includes:

(a) A force account expenditure or acquisition (i.e., an expenditure for a construction project undertaken by a ((~~facility~~)) center as its own contractor).

(b) The costs of any site planning services (architect or other site planning consultant) including, but not limited to, studies, surveys, designs, plans, working drawings, specifications, and other activities (including applicant staff payroll and employee benefit costs, consulting and other services which, under GAAP or Financial Accounting Standards Board (FASB) may be chargeable as an operating or nonoperating expense).

(c) Construction cost of shelled space.

(d) Building owner tenant improvements including, but not limited to: Asbestos removal, paving, concrete, contractor's general conditions, contractor's overhead and profit, electrical, heating, ventilation and air conditioning systems (HVAC), plumbing, flooring, rough and finish carpentry and millwork and associated labor and materials, and utility fees.

(e) Donations of equipment or facilities to a ((~~facility~~)) center.

(f) Capital expenditures do not include routine repairs and maintenance costs that do not add to the utility of useful life of the asset.

(4) "Concurrent review" means the process by which applications competing to provide services in the same planning area are reviewed simultaneously by the department.

(5) "Dialysis facility report (DFR)" means the kidney ((~~dialysis facility~~)) disease treatment center reports produced annually for Centers for Medicare and Medicaid Services (CMS). The DFR is provided to individual dialysis ((~~facilities~~)) centers and contains summary data on each ((~~facility~~)) center compiled from multiple sources. The DFR

facilitates comparison of patient characteristics, treatment patterns, transplantation rates, hospitalization rates, and mortality rates to local and national averages.

(6) "Dialysis facility compare (DFC) report" means the kidney dialysis facility compare quarterly report that is produced by CMS and posted on the medicare DFC website. This report provides information about statistically measurable practice patterns in kidney disease treatment ((~~facilities~~)) centers including, but not limited to, mortality, hospitalization, late shifts, and availability of home training.

(7) "End-of-year data" means data contained in the fourth quarter modality report or successor report from the ((~~Northwest Renal~~)) Network.

(8) "End-of-year in-center patients" means the number of in-center hemodialysis (HD) and self-dialysis training patients receiving in-center kidney dialysis at the end of the calendar year based on end-of-year data.

(9) "Exempt isolation station" means one certificate of need approved certified station per ((~~facility~~)) center dedicated to patients requiring medically necessary isolation. This station may not be used for nonisolation treatments. This one approved station is included in the kidney ((~~dialysis facility's~~)) disease treatment center's total CMS certified station count. However, for purposes of certificate of need, this one isolation station is not included in the ((~~facility's~~)) center's station count for projecting future station need or in calculating existing station use. Providers may operate more than one isolation station, but only one is excluded from the ((~~facility's~~)) center's station count for purposes of projecting future station need and in calculating existing station use.

(10) "Kidney disease treatment center" or "kidney dialysis facility" means any place, institution, building or agency or a distinct part thereof equipped and operated to provide services, including outpatient dialysis. In no case will all stations at a given kidney disease treatment center or kidney dialysis facility be designated as self-dialysis training stations. For purposes of these rules, kidney disease treatment center and kidney dialysis facility have the same meaning.

(11) "Maximum treatment floor area square footage" means the sum of (a), (b), (c), and (d) of this subsection:

(a) One hundred fifty square feet multiplied for each general use in-center station and each nonisolation station;

(b) Two hundred square feet multiplied for each isolation station and each permanent bed station as defined in subsection (14) of this section;

(c) Three hundred square feet for future expansion of two in-center treatment stations; and

(d) Other treatment floor space is ((~~seventy-five~~)) 75 percent of the sum of (a), (b), and (c) of this subsection.

As of the effective date of these rules, maximum treatment floor area square footage identified in a successful application cannot be used for future station expansion, except as provided in (c) of this subsection. For example, the applicant may use the maximum allowable treatment floor area square footage. The number of stations may include one isolation station, one permanent bed station, eight general use in-center stations, two future expansion stations, and maximum other treatment floor space. In this example, the total maximum treat-

ment floor area square footage in this example would equal ((~~three thousand three hundred twenty-five~~)) 3,325 square feet.

(12) "Network" means end stage renal disease (ESRD) Network 16.

(13) "Operational" means the date when the kidney ((~~dialysis facility~~)) disease treatment center provides its first dialysis treatment in newly approved certificate of need stations, including relocated stations.

((~~(13)~~)) (14) "Patients per station" means the reported number of in-center patients at the kidney ((~~dialysis facility~~)) disease treatment center divided by counted certificate of need approved stations. The results are not rounded up. For example, 4.49 is not rounded to 4.5.

((~~(14)~~)) (15) "Permanent bed station" means a bed that would commonly be used in a health care setting.

((~~(15)~~)) (16) "Planning area" or "service area" means an individual geographic area designated by the department for which kidney dialysis station need projections are calculated. For purposes of kidney dialysis projects, planning area and service area have the same meaning. Each county is considered a separate planning area, except for the planning subareas identified for King, Snohomish, Pierce, and Spokane counties. If the United States Postal Service (USPS) changes zip codes in the defined planning areas, the department will update areas to reflect the revisions to the zip codes to be included in the certificate of need definitions, analyses and decisions. Post office boxes are not included.

(a) King County is divided by zip code into ((~~twelve~~)) 12 planning areas as follows:

KING ONE	KING TWO	KING THREE
98028 Kenmore	98101 Business District	98070 Vashon
98103 Green Lake	98102 Eastlake	98106 White Center/West Seattle
98105 Laurelhurst	98104 Business District	98116 Alki/West Seattle
98107 Ballard	98108 Georgetown	98126 West Seattle
98115 View Ridge/ Wedgwood	98109 Queen Anne	98136 West Seattle
98117 Crown Hill	98112 Madison/ Capitol Hill	98146 West Seattle
98125 Lake City	98118 Columbia City	98168 Riverton
98133 Northgate	98119 Queen Anne	
98155 Shoreline/ Lake Forest Park	98121 Denny Regrade	
98177 Richmond Beach	98122 Madrona	
98195 University of Washington	98134 Harbour Island	
	98144 Mt. Baker/ Rainier Valley	
	98199 Magnolia	

KING FOUR	KING FIVE	KING SIX
98148 SeaTac	98003 Federal Way	98011 Bothell
98158 SeaTac	98023 Federal Way	98033 Kirkland
98166 Burien/ Normandy Park		98034 Kirkland
98188 Tukwila/ SeaTac		98052 Redmond
98198 Des Moines		98053 Redmond
		98072 Woodinville

KING FOUR	KING FIVE	KING SIX
		98077 Woodinville

KING SEVEN	KING EIGHT	KING NINE
98004 Bellevue	98014 Carnation	98055 Renton
98005 Bellevue	98019 Duvall	98056 Renton
98006 Bellevue	98024 Fall City	98057 Renton
98007 Bellevue	98045 North Bend	98058 Renton
98008 Bellevue	98065 Snoqualmie	98059 Renton
98039 Medina	98027 Issaquah	98178 Skyway
98040 Mercer Island	98029 Issaquah	
	98074 Sammamish	
	98075 Sammamish	

KING TEN	KING ELEVEN	KING TWELVE
98030 Kent	98001 Auburn	98022 Enumclaw
98031 Kent	98002 Auburn	
98032 Kent	98010 Black Diamond	
98038 Maple Valley	98047 Pacific	
98042 Kent	98092 Auburn	
98051 Ravensdale		

(b) Pierce County is divided into five planning areas as follows:

PIERCE ONE	PIERCE TWO	PIERCE THREE
98354 Milton	98304 Ashford	98329 Gig Harbor
98371 Puyallup	98323 Carbonade	98332 Gig Harbor
98372 Puyallup	98328 Eatonville	98333 Fox Island
98373 Puyallup	98330 Elbe	98335 Gig Harbor
98374 Puyallup	98360 Orting	98349 Lakebay
98375 Puyallup	98338 Graham	98351 Longbranch
98390 Sumner	98321 Buckley	98394 Vaughn
98391 Bonney Lake		

PIERCE FOUR	PIERCE FIVE
98402 Tacoma	98303 Anderson Island
98403 Tacoma	98327 DuPont
98404 Tacoma	98387 Spanaway
98405 Tacoma	98388 Steilacoom
98406 Tacoma	98430 Tacoma
98407 Ruston	98433 Tacoma
98408 Tacoma	98438 Tacoma
98409 Lakewood	98439 Lakewood
98416 Tacoma	98444 Parkland
98418 Tacoma	98445 Parkland
98421 Tacoma	98446 Parkland
98422 Tacoma	98447 Tacoma
98424 Fife	98467 University Place
98443 Tacoma	98498 Lakewood
98465 Tacoma	98499 Lakewood
98466 Fircrest	98580 Roy

(c) Snohomish County is divided into three planning areas as follows:

SNOHOMISH ONE	SNOHOMISH TWO	SNOHOMISH THREE
98223 Arlington	98201 Everett	98012 Mill Creek/ Bothell

SNOHOMISH ONE	SNOHOMISH TWO	SNOHOMISH THREE
98241 Darrington	98203 Everett	98020 Edmonds/ Woodway
98252 Granite Falls	98204 Everett	98021 Bothell
98271 Tulalip Reservation/ Marysville	98205 Everett	98026 Edmonds
98282 Camano Island	98208 Everett	98036 Lynnwood/ Brier
98292 Stanwood	98251 Gold Bar	98037 Lynnwood
	98224 Baring	98043 Mountlake Terrace
	98258 Lake Stevens	98087 Lynnwood
	98270 Marysville	98296 Snohomish
	98272 Monroe	
	98275 Mukilteo	
	98288 Skykomish	
	98290 Snohomish	
	98294 Sultan	

(d) Spokane County is divided into two planning areas as follows:

SPOKANE ONE	SPOKANE TWO
99001 Airway Heights	99003 Chattaroy
99004 Cheney	99005 Colbert
99011 Fairchild Air Force Base	99006 Deer Park
99012 Fairfield	99009 Elk
99016 Greenacres	99021 Mead
99018 Latah	99025 Newman Lake
99019 Liberty Lake	99026 Nine Mile Falls
99022 Medical Lake	99027 Otis Orchards
99023 Mica	99205 Spokane
99030 Rockford	99207 Spokane
99031 Spangle	99208 Spokane
99036 Valleyford	99217 Spokane
99037 Veradale	99218 Spokane
99201 Spokane	99251 Spokane
99202 Spokane	
99203 Spokane	
99204 Spokane	
99206 Spokane Valley	
99212 Spokane Valley	
99216 Spokane/Spokane Valley	
99223 Spokane	
99224 Spokane	

((~~(16)~~)) (17) "Projection year" means the fifth calendar year after the base year. For example, reviews using 2015 end-of-year data as the base year will use 2020 as the projection year.

((~~(17)~~)) (18) "Quality incentive program" or "QIP" means the end-stage renal disease (ESRD) quality incentive program (QIP) administered by the Centers for Medicare and Medicaid Services (CMS). The QIP measures kidney ((~~dialysis facility~~)) disease treatment center performance based on outcomes assessed through specific performance and quality measures that are combined to create a total performance score (TPS). The QIP and TPS are updated annually and are publicly available on the CMS DFC website.

((~~(18)~~)) (19) "Quintile" means any of five groups into which a population can be divided according to the distribution of values of a particular variable.

((~~(19)~~)) (20) "Resident in-center patients" means in-center hemodialysis (HD) patients who reside within the planning area. If more than ((~~fifty~~)) 50 percent of a kidney ((~~dialysis facility's~~)) disease treatment center's patients reside outside Washington state, these out-of-state patients would be considered resident in-center patients.

((~~(20)~~)) (21) "Shelled space" means space that is constructed to meet future needs; it is a space enclosed by a building shell but otherwise unfinished inside unless the space designated for future needs is part of an existing, finished building prior to an applicant's proposed project. In that case, there is no requirement to degrade the space. The shelled space may include:

(a) Electrical and plumbing that will support future needs;

(b) Insulation;

(c) Sheet rock that is taped or other similar wall coverings that are otherwise unfinished; and

(d) Heating, ventilation, and air conditioning.

((~~(21)~~)) (22) "Temporary emergency situation" means a temporary emergency situation as defined in RCW 70.38.280 and WAC 246-310-825.

(23) "Training services" means services provided by a kidney ((~~dialysis facility~~)) disease treatment center to train patients for home dialysis. Home training spaces are not used to provide in-center dialysis treatments. Spaces used for training are not included in the ((~~facility's~~)) center's station count for projecting future station need or in calculating existing station use. Stations previously designated as "training stations" may be used as in-center dialysis stations and will continue to be included in the ((~~facility's~~)) center's current station count for projecting future station need or in calculating existing station use. For the purpose of awarding the point for home training in the superiority criteria section (WAC 246-310-823), training services include the following:

(a) Home peritoneal dialysis (HPD); and

(b) Home hemodialysis (HHD).

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-803 Kidney disease treatment ((~~facilities~~)) centers—Data reporting requirements. (1) By February 15th or the first working day thereafter of each year, each provider will electronically submit the following data elements for each of its kidney ((~~dialysis facilities~~)) disease treatment centers in the state of Washington and each out-of-state kidney ((~~dialysis facility~~)) disease treatment center that might be used in an application review during the next year (an out-of-state kidney ((~~dialysis facility~~)) disease treatment center may be used as one of the three closest ((~~facilities~~)) centers for a future project during the next year pursuant to WAC 246-310-827):

(a) Cost report data for the most recent calendar or fiscal year reporting period for which data is available reported to the Centers for Medicare and Medicaid Services (CMS) that is used to calculate net revenue per treatment; and

(b) Data reported to providers by CMS for the most recent calendar or fiscal year reporting period for which data is available to identify the percentage of nursing home patients and the average number of comorbid conditions.

(2) A provider's failure to submit complete data elements identified in subsection (1)(a) and (b) of this section in the format identified by the department for a ((~~facility~~)) center by the deadline in subsection (1) of this section or whose data for a ((~~facility~~)) center is not complete on the DFC report or QIP report (medicare website) will result in automatic rejection of concurrent review applications for that provider until the following year's data report deadline unless an exemption is granted pursuant to subsection (3) of this section. Corrections to the DFC report, as noted in WAC 246-310-827(7) do not require the filing on an exemption.

(3) A provider may request an exemption from subsection (2) of this section in writing by the first working day in March. The exemption request must demonstrate that reasonable efforts were made to timely submit the required data elements in subsection (1)(a) and (b) of this section. An exemption request based on missing data in the DFC report or QIP report should demonstrate the absence of data is not the result of failure to report to medicare. The department has sole discretion to grant these exemptions. The department will review all submitted exemption requests and respond with a decision by the first working day in April.

(4) Within ((~~ten~~)) 10 working days, providers must report to the department the date that kidney dialysis stations first became operational for the following:

(a) New kidney ((~~dialysis facility~~)) disease treatment center;

(b) Stations added to an existing kidney ((~~dialysis facility~~)) disease treatment center; or

(c) Relocated stations of a kidney ((~~dialysis facility~~)) disease treatment center.

(5) The department will confirm it has received the required data in subsections (1) and (4) of this section as well as any exemption requests in subsection (3) of this section via email within ((~~ten~~)) 10 working days of receipt.

(6) The department will publish on its website the date that the stations in subsection (4) of this section became operational.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-806 Kidney disease treatment ((~~facilities~~)) centers —Concurrent review cycles. The department will review kidney ((~~dialysis facility~~)) disease treatment center applications using the concurrent review cycles described in this section, unless the application was submitted as described in subsection (9) of this section. There are four concurrent review cycles each year.

(1) Applicants must submit applications for review according to the following table:

		Application Submission Period			Department Action	Application Review Period		
Concurrent Review Cycle	Letters of Intent Due	Receipt of Initial Application	End of Screening Period	Applicant Response	Beginning of Review	Public Comment Period (includes public hearing if requested)	Rebuttal Period	Exparte Period
Special Circumstances 1	First working day of **April** of each year.	First working day of **May** of each year.	**May 15** or the first working day thereafter.	**June 15** or the first working day thereafter.	**June 22** or the first working day thereafter.	**30-Day** Public comment period (including public hearing). Begins **June 23** or the first working day thereafter	**7-Day** Rebuttal period. Applicant and affected party response to public comment.	**15-Day** Exparte period. Department evaluation and decision.
Nonspecial Circumstance Cycle 1	First working day of **May** of each year.	First working day of **June** of each year.	Last working day of **June**.	Last working day of **July**.	**August 5** or the first working day thereafter.	**30-Day** Public comment period (including public hearing). Begins **August 6** or the first working day thereafter.	**30-Day** Rebuttal period. Applicant and affected party response to public comment.	**75-Day** Exparte period. Department evaluation and decision.
Special Circumstances 2	First working day of **October** of each year.	First working day of **November** of each year.	**November 15** or the first working day thereafter.	**December 15** or the first working day thereafter.	**December 22** or the first working day thereafter.	**30-Day** Public comment period (including public hearing). Begins **December 23** or the first working day thereafter.	**7-Day** Rebuttal period. Applicant and affected party response to public comment.	**15-Day** Exparte period. Department evaluation and decision.
Nonspecial Circumstances Cycle 2	First working day of **November** of each year.	First working day of **December** of each year.	Last working day of **December**.	Last working day of **January**.	**February 5** or the first working day thereafter.	**30-Day** Public comment period (including public hearing). Begins **February 6** or the first working day thereafter.	**30-Day** Rebuttal period. Applicant and affected party response to public comment.	**75-Day** Exparte period. Department evaluation and decision.

(2) The department should complete a nonspecial circumstance concurrent review cycle within nine months, which begins the first day after letters of intent are due for that particular review cycle. The department should complete the regular review process within six months, which begins the first day after the letters of intent are due for that particular review cycle.

(3) The department will notify applicants ((~~fifteen~~)) 15 days prior to the scheduled decision date if it is unable to meet the decision deadline on the applications. In that event, the department will establish and commit to a new decision date.

(4) When two or more applications are submitted for the same planning area, the department will first evaluate each application in-

dependently for meeting the applicable standards described in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240. If two or more applications independently meet those four standards, the department will apply the superiority criteria in WAC 246-310-827 to determine the superior application under WAC 246-310-240(1).

(5) An applicant receiving points for the purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) may only apply for station need in one planning area per review cycle.

(6) An applicant receiving points for purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) must operate the newly awarded stations for a period of time long enough to have a full year of data reporting medicare cost report worksheets and a full year of data reporting the ((~~dialysis facility~~)) kidney disease treatment center report prior to any future applications.

(7) The department will not accept new nonspecial circumstance applications for a planning area if there are any nonspecial circumstance applications for which the certificate of need program has not made a decision in that planning area filed under a previous concurrent review cycle. This restriction does not apply if the department has not made a decision on the pending applications within the review timelines of nine months for a concurrent review and six months for a regular review. This restriction also does not apply to special circumstance applications.

(8) The department may convert the review of a nonspecial circumstance application that was initially submitted under a concurrent review cycle to a regular review process if the department determines that the nonspecial circumstance application does not compete with another nonspecial circumstance application.

(9) Pending certificate of need applications. Kidney ((~~dialysis facility~~)) disease treatment center applications submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the applications were received.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-812 Kidney disease treatment ((~~facilities~~)) centers —Methodology. A kidney ((~~dialysis facility~~)) disease treatment center that provides hemodialysis or peritoneal dialysis, training, or backup must meet the following standards in addition to applicable review criteria in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240.

(1) Applications for new stations may only address projected station need in the planning area in which the ((~~facility~~)) center is to be located.

(a) If there is no existing ((~~facility~~)) center in an adjacent planning area, the application may also address the projected station need in that planning area.

(b) Station need projections must be calculated separately for each planning area within the application.

(2) Data used to project station need must be the most recent five-year resident end-of-year in-center patient data available from

the ((~~Northwest Renal~~)) Network as of the letter of intent submission date, concluding with the base year at the time of application.

(3) Projected station need must be based on 4.8 resident in-center patients per station (4.8 planning area) for all planning areas except Adams, Columbia, Douglas, Ferry, Garfield, Jefferson, Kittitas, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, San Juan, Skamania, Stevens, Wahkiakum, and Whitman counties. The projected station need for these exception planning areas must be based on 3.2 resident in-center patients per station (3.2 planning area).

(4) The number of dialysis stations projected as needed in a planning area will be determined by using the following methodology:

(a) Determine the type of regression analysis to be used to project resident in-center station need by calculating the annual growth rate in the planning area using the end-of-year number of resident in-center patients for each of the previous six consecutive years, concluding with the base year.

(i) If the planning area has experienced less than six percent growth in any of the previous five annual changes calculations, use linear regression to project station need; or

(ii) If the planning area has experienced six percent or greater growth in each of the previous five annual changes, use nonlinear (exponential) regression to project station need.

(b) Project the number of resident in-center patients in the projection year using the regression type determined in (a) of this subsection. When performing the regression analysis use the previous five consecutive years of end-of-year data concluding with the base year. For example, if the base year is 2015, use end-of-year data for 2011 through 2015 to perform the regression analysis.

(c) Determine the number of dialysis stations needed to serve resident in-center patients in the planning area in the projection year by dividing the result of (b) of this subsection by the appropriate resident in-center patient per station number from subsection (3) of this section. In order to assure access, fractional numbers are rounded up to the nearest whole number. For example, 5.1 would be rounded to 6.0. Rounding to a whole number is only allowed for determining the number of stations needed.

(d) To determine the net station need for a planning area, subtract the number calculated in (c) of this subsection from the total number of certificate of need approved stations located in the planning area. This number does not include the one department recognized exempt isolation station defined in WAC 246-310-800(9)<u>, nor does it include any dialysis stations added during a temporary emergency situation</u>. For example, a kidney ((~~dialysis facility~~)) <u>disease treatment center</u> that is certificate of need approved and certified for ((~~eleven~~)) <u>11</u> stations would subtract the one exempt isolation station and use ((~~ten~~)) <u>10</u> stations for the methodology calculations.

(5) Before the department approves new in-center kidney dialysis stations in a 4.8 planning area, all certificate of need counted stations at each ((~~facility~~)) <u>center</u> in the planning area must be operating at 4.5 in-center patients per station. However, when a planning area has one or more ((~~facilities~~)) <u>centers</u> with stations not meeting the in-center patients per stations standard, the department will consider the 4.5 in-center patients per station standard met for those ((~~facilities~~)) <u>centers</u> when:

(a) All stations for a ((~~facility~~)) <u>center</u> have been in operation for at least three years<u>, excluding temporary emergency situation stations</u>; or

(b) Certificate of need approved stations for a ((~~facility~~)) center have not become operational within the timeline as represented in the approved application. For example, an applicant states the stations will be operational within eight months following the date of the certificate of need approval. The eight months would start from the date of an uncontested certificate of need approval. If the certificate of need approval is contested, the eight months would start from the date of the final department or judicial order. However, the department, at its sole discretion, may approve a one-time modification of the timeline for purposes of this subsection upon submission of documentation that the applicant was prevented from meeting the initial timeline due to circumstances beyond its control.

Both resident and nonresident patients using the kidney ((~~dialysis facility~~)) disease treatment center are included in this calculation. Data used to make this calculation must be from the most recent quarterly modality report from the ((~~Northwest Renal~~)) Network as of the letter of intent submission date; or

(c) If a center was affected by a temporary emergency situation at the time of the patient census estimates presented in the most recent quarterly modality report from the Network as of the letter of intent submission date, then the in-center census data for the affected center must come from the quarterly modality report from the Network that directly precedes the date that the temporary emergency situation exemption request was submitted to the department for the affected center.

(6) Before the department approves new in-center kidney dialysis stations in a 3.2 planning area, all certificate of need counted stations at each ((~~facility~~)) center in the planning area must be operating at or above 3.2 in-center patients per station. If the certificate of need approval is contested, the eight months would start from the date of the final department or judicial order. However, when a planning area has ((~~facilities~~)) centers with stations not meeting the in-center patients per station standard, the department will consider the 3.2 in-center patients per station standard met for those ((~~facilities~~)) centers when:

(a) All stations for a ((~~facility~~)) center have been in operation for at least three years, excluding temporary emergency situation stations; or

(b) Certificate of need approved stations for a ((~~facility~~)) center have not become operational within the timeline as represented in the approved application. For example, an applicant states the stations will be operational within eight months following the date of the certificate of need approval. The eight months would start from the date of an uncontested certificate of need approval. However, the department, at its sole discretion, may approve a one-time modification of the timeline for the purposes of this subsection upon submission of documentation that the applicant was prevented from meeting the initial timeline due to circumstances beyond its control.

Both resident and nonresident patients using the kidney ((~~dialysis facility~~)) disease treatment center are included in this calculation. Data used to make this calculation must be from the most recent quarterly modality report from the ((~~Northwest Renal~~)) Network as of the letter of intent submission date; or

(c) If a center was affected by a temporary emergency situation at the time of the patient census estimates presented in the most recent quarterly modality report from the Network as of the letter of intent submission date, then the in-center census data for the affec-

ted center must come from the quarterly modality report from the Network that directly precedes the date that the temporary emergency situation exemption request was submitted to the department for the affected center.

(7) If a kidney disease treatment center was affected by a temporary emergency situation other than a staffing shortage, the department will continue to include the affected center's total number of certificate of need approved permanent stations in the supply for the planning area, unless, in the department's discretion, including the affected center's stations in the supply would negatively impact access to dialysis services.

(8) When there are relocated stations within a planning area pursuant to WAC 246-310-830(3) and data is not available for the relocated stations, the department will use the station use rate from the previous location as reported on the last quarterly modality report from ((~~Northwest Renal~~)) the Network.

((~~(8)~~)) (9) If a provider, including any affiliates, submits multiple applications for projected need in a planning area, the department will use the following process:

(a) Each application will be scored as an individual application to determine superiority.

(b) The sum of the stations requested in the applications cannot exceed the projected need at the time of applications in the planning area.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-815 Kidney disease treatment ((~~facilities~~)) centers—Financial feasibility. (1) The kidney ((~~dialysis facility~~)) disease treatment center must demonstrate positive net income by the third full year of operation.

(a) The calculation of net income is a subtraction of all operating and nonoperating expenses, including appropriate allocated and overhead expenses, amortization and depreciation of capital expenditures from total revenue generated by the kidney ((~~dialysis facility~~)) disease treatment center.

(b) Existing facilities. Revenue and expense projections for existing ((~~facilities~~)) kidney disease treatment centers must be based on that ((~~facility's~~)) center's current payor mix and current expenses.

(c) New facilities.

(i) Revenue projections must be based on the net revenue per treatment of the applicant's three closest ((~~dialysis facilities~~)) kidney disease treatment centers.

(ii) Known expenses must be used in the pro forma income statement. Known expenses may include, but are not limited to, rent, medical director agreement, and other types of contracted services.

(iii) All other expenses not known must be based on the applicant's three closest ((~~dialysis facilities~~)) kidney disease treatment centers.

(iv) If an applicant has no experience operating kidney ((~~dialysis facilities~~)) disease treatment centers, the department will use

its experience in determining the reasonableness of the pro forma financial statements provided in the application.

(v) If an applicant has one or two kidney ((~~dialysis facilities~~)) disease treatment centers, revenue projections and unknown expenses must be based on the applicant's operational ((~~facilities~~)) centers.

(2) An applicant proposing to construct finished treatment floor area square footage that exceeds the maximum treatment floor area square footage defined in WAC 246-310-800(11) will be determined to have an unreasonable impact on costs and charges and the application will be denied. This does not preclude an applicant from constructing shelled space.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-818 Special circumstances one- or two-station expansion—Eligibility criteria and application process. (1) The department will approve one or two additional special circumstance stations for an existing kidney ((~~dialysis facility (facility)~~)) disease treatment center (center) if it meets the following criteria, regardless of whether the need methodology in WAC 246-310-812 projects a need for additional stations in the planning area:

(a) For 4.8 planning areas, the ((~~facility~~)) center has operated at or above an average of 5.0 patients per station for the most recent six consecutive month period preceding the letter of intent submission date for which data is available. Data used to determine patients per station must be obtained from the ((~~Northwest Renal~~)) Network; or

(b) For 3.2 planning areas, the ((~~facility~~)) center has operated at or above an average of 3.5 patients per station for the most recent six consecutive month period preceding the letter of intent submission date for which data is available. Data used to determine patients per station must be obtained from the ((~~Northwest Renal~~)) Network; and

(c) The ((~~facility~~)) center can accommodate one or two additional stations within its existing building, which may include shelled space. If renovation is needed to accommodate the additional station(s), renovation must be within the existing building.

(2) The department may approve special circumstance station expansions even if other kidney ((~~dialysis facilities~~)) disease treatment centers not owned or affiliated with the applicant in the planning area are below the minimum patients per station operating thresholds set by WAC 246-310-812 (5) or (6).

(3) A ((~~facility~~)) center approved for two special circumstance stations under subsection (1) of this section is not eligible for further special circumstance expansions under this subsection until the department awards additional nonspecial circumstances kidney ((~~dialysis stations~~)) disease treatment centers in the planning area.

(4) As of the effective date of these rules, a ((~~facility~~)) center that has relocated all or part of its stations may not request a special circumstance one- or two-station expansion until three years have lapsed from the date the stations become operational. The three-year prohibition applies to any new kidney ((~~dialysis facility~~)) disease treatment center or ((~~facilities~~)) centers whose station count is changed by the relocation of stations. The three-year prohibition will

be retrospectively applied only to kidney ((~~dialysis facilities~~)) disease treatment centers that were approved for partial or complete relocation after January 1, 2015.

(5) For 4.8 planning areas, a ((~~facility~~)) center is ineligible for a special circumstance one- or two-station expansion if the owner or affiliate has approved certificate of need stations in the planning area that have operated below an average of 4.5 patients per station for the most recent six consecutive month period preceding the letter of intent submission date. Data used to calculate patients per station must be obtained from the ((~~Northwest Renal~~)) Network.

(6) For 3.2 planning areas, a ((~~facility~~)) center is ineligible for a special circumstance one- or two-station expansion if the owner or affiliate has approved certificate of need stations in the planning area that have operated below an average of 3.2 patients per station for the most recent six consecutive month period preceding the letter of intent submission date. Data used to calculate patients per station must be obtained from the ((~~Northwest Renal~~)) Network.

(7) For 4.8 planning areas, a special circumstance one- or two-station expansion will not be approved if, with the requested new station(s), the applicant's kidney ((~~dialysis facility~~)) disease treatment center would fall below a calculated 4.5 patients per station. Data used to make this calculation is the average patients per station from subsection (1)(a) of this section.

(8) For 3.2 planning areas, a special circumstance one- or two-station expansion will not be approved if, with the requested new stations(s), the applicant's kidney ((~~dialysis facility~~)) disease treatment center would fall below a calculated 3.0 patient per station. Data used to make this calculation is the average patients per station from subsection (1)(b) of this section.

(9) If a provider operates one or more kidney ((~~dialysis facilities~~)) disease treatment centers within a planning area and applies for a special circumstance one- or two-station expansion in the planning area the department will not accept a letter of intent from that provider for additional stations to meet projected planning area need in the next nonspecial circumstance concurrent review cycle.

(10) Station(s) approved under this section must be operational within six months of approval, otherwise the approval is revoked.

(11) The department will provide a special circumstance one- or two-station expansion application form that incorporates the criteria for certificate of need approval. The application will not be approved unless the criteria are met. Special circumstances applications are evaluated independently of one another and accordingly without reference to the superiority criteria set forth in WAC 246-310-827. Therefore, multiple special circumstances applications may be approved in the same planning area during the same concurrent review cycle.

(12) Applicants must submit special circumstance one- or two-station expansion applications according to the schedule set forth in WAC 246-310-806(1).

(13) Special circumstance station applications will be treated as approved and will reduce net station need in the planning area when no nonspecial circumstance applications decisions are pending within the planning area. Special circumstance application approvals will not result in a reduction of net station need in the planning area when nonspecial circumstance application approvals decisions are pending within the planning area.

(14) The department will review special circumstance requests with the following considerations related to temporary emergency stations defined in WAC 246-310-825 and RCW 70.38.280.

(a) All calculations described in this section exclude temporary emergency stations.

(b) A center that operated temporary emergency stations due to a staffing shortage emergency situation, during the most recent six consecutive month period preceding the letter of intent submission date, is eligible to apply for special circumstances, if it has met all eligibility criteria described in this section. Centers operating temporary emergency stations during this period for temporary emergency situations other than staffing shortages are ineligible for special circumstance expansions.

(c) Pursuant to RCW 70.38.280 (2)(d), a center that operated temporary emergency stations due to a staffing shortage emergency situation may not exceed the number of patients served at the time of the exemption request. All calculations described in this section for the review of a center that operated temporary emergency stations due to staffing shortage emergency will have its patient census reported in the Network data limited to a maximum of the patients served at the time of the emergency request for the months when the temporary emergency was in effect.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-821 Kidney disease treatment ((~~facilities~~)) centers—Standards for planning areas without an existing ((~~facility~~)) center. (1) Columbia, Ferry, Garfield, Klickitat, Lincoln, Pend Oreille, San Juan, Skamania, Stevens, Wahkiakum, and Whitman counties do not have an existing kidney ((~~dialysis facility~~)) disease treatment center as of the effective date of these rules. The department will award the first project proposing to establish a ((~~facility~~)) center in each of these planning areas as follows:

(a) A minimum of four stations, provided the project meets applicable review criteria and standards; and

(b) The ((~~facility~~)) center must be projected to operate at 3.2 in-center patients per station by the third full year of operation. For purposes of this subsection, the applicant may supplement data obtained from the ((~~Northwest Renal~~)) Network with other documented demographic and utilization data to demonstrate station need.

(2) Once a county no longer qualifies under subsection (1) of this section, the county remains a 3.2 in-center patient per station county. As of the effective date of these rules, Adams, Douglas, Jefferson, Kittitas, Okanogan, Pacific, and Stevens counties are also identified as 3.2 in-center patient per station counties.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-824 Kidney disease treatment centers—Exceptions. The department will not approve new stations in a planning area if the projections in WAC 246-310-812(4) show no net need, and will not approve more than the number of stations projected as needed unless:

(1) The proposed project qualifies under WAC 246-310-818 for special circumstances one- or two-station expansions; or

(2) All other applicable review criteria and standards have been met; and

(3) One or more of the following have been met:

(a) The department finds the additional stations are needed to be located reasonably close to the people they serve; or

(b) Existing dialysis stations in the kidney ((~~dialysis facility~~)) disease treatment center requesting the exception are operating at 5.5 patients for a 4.8 planning area or, 3.7 patients per station for the 3.2 planning areas. Data used to make this calculation must be from the most recent quarterly modality report from the ((~~Northwest Renal~~)) Network as of the letter of intent submission date; or

(c) The applicant documents a significant change in ESRD treatment practice has occurred, affecting dialysis station use in the planning area; and

(4) The department finds that exceptional circumstances exist within the planning area and explains the approval of additional stations in writing.

NEW SECTION

WAC 246-310-825 Kidney disease treatment centers—Temporary emergency situation exemption. The department may grant a kidney disease treatment center an exemption to exceed its authorized number of dialysis stations during a temporary emergency situation.

(1) In addition to the temporary emergency situations identified in RCW 70.38.280(2), the following are defined as temporary emergency situations:

(a) Any state or federal emergency declaration issued by a state or federal entity that has a direct impact on availability, operations, or patient access to kidney dialysis services in Washington state; and

(b) Any other temporary emergency situations that in the department's discretion constitute a "temporary emergency situation."

(2) For purposes of RCW 70.38.280 (2)(d), the following definitions apply:

(a) "Staffing shortage" means that kidney disease treatment center does not have sufficient staff to safely provide treatment.

(b) "Reconfiguration" means the addition of dialysis stations to facilitate the delivery of dialysis services, provided the center does not exceed the number of patients served at the time of the exemption request.

(3) In order to be granted a temporary emergency situation exemption, a kidney disease treatment center must make a written request to

the department consistent with RCW 70.38.280(3). In addition to the information required in RCW 70.38.280(3), the following information is required:

(a) A specific description of the actions the kidney disease treatment center will take to address the temporary emergency situation;

(b) For temporary emergency situations other than those caused by staffing shortages, identify each center expected to be affected by the temporary emergency situation. Kidney disease treatment centers expected to be affected by the temporary emergency situation includes the center requesting temporary emergency stations and any center that suspends operations due to circumstances that qualify as a temporary emergency situation;

(c) The number of stations the center intends to add during the duration of the temporary emergency situation;

(d) The number of shifts the center proposes to operate during the duration of the temporary emergency situation; and

(e) Whether a capital expenditure will be made to remedy the temporary emergency situation.

(4) A kidney disease treatment center may submit a temporary emergency situation exemption request at any time and is not subject to the concurrent review cycles for kidney disease treatment centers in WAC 246-310-806.

(5) A kidney disease treatment center's certificate of need shall remain in full effect even if the center is required to suspend operations, in part or in its entirety, only if partial or full facility closure is due to circumstances that qualify under WAC 246-310-825(1) and the department approves a temporary emergency situation exemption request. The center may restore its full approved stations once the temporary emergency has ended without having to reapply for certificate of need approval.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-827 Kidney disease treatment ((~~facilities~~)) centers ——Superiority criteria. For purposes of determining which of the competing applications should be approved, the criteria in this section will be used as the only means for comparing two or more applications to each other. No other criteria or measures will be used in comparing two or more applications to each other under any of the applicable subcriteria within WAC 246-310-210, 246-310-220, 246-310-230 or 246-310-240.

(1) An application will be denied if it fails to meet any criteria under WAC 246-310-210, 246-310-220, 246-310-230, or 246-310-240 (2) or (3).

(2) An application will be denied if the applicant has one or more kidney ((~~dialysis facilities~~)) disease treatment centers in the planning area not meeting the 4.5 or 3.2 in-center patients per station standards required in WAC 246-310-812 (5) or (6) as of the most recent quarterly report from the ((~~Northwest Renal~~)) Network as of the date of the letter of intent.

(3) When available, Washington ((~~facilities~~)) kidney disease treatment centers must be used as comparables, as follows:

(a) For existing kidney ((~~dialysis facilities~~)) disease treatment centers proposing to expand, use data for the existing ((~~facility~~)) center plus the next two closest Washington ((~~facilities~~)) centers as comparables owned by or affiliated with the applicant as measured by a straight line. Straight lines will be calculated using "Google Maps" or equivalent mapping software (mileage calculated out to two decimal points, no rounding).

(b) For new kidney ((~~dialysis facilities~~)) disease treatment centers, use data for the next three closest ((~~facilities~~)) centers as comparables owned by or affiliated with the applicant as measured by a straight line from the proposed new kidney ((~~dialysis facility~~)) disease treatment center location. Straight lines will be calculated using "Google Maps" or equivalent mapping software (mileage calculated out to two decimal points, no rounding).

(c) The number of applications per concurrent review cycle that rely on the same three comparables is limited to two.

(d) If complete medicare data is not available for any of the kidney ((~~dialysis facilities~~)) disease treatment centers and a ((~~facility~~)) center has been granted a department exemption in WAC 246-310-803(3), then that ((~~facility~~)) center will not be used as a comparable and the next closest ((~~facility~~)) center should be used as a comparable.

(e) If the applicant currently does not own or is not affiliated with any kidney ((~~dialysis facility~~)) disease treatment center, the department will assign the following points:

(i) The median quintile points for those superiority measures using quintiles (excluding net revenue per treatment);

(ii) Two points for standardized mortality ratio (SMR);

(iii) Two points for standardized hospitalization ratio (SHR); and

(iv) Any remaining points for other measures will be based on the representations made in the application.

(f) If the applicant owns or is affiliated with one existing kidney ((~~dialysis facility~~)) disease treatment center in total, the department will assign the ((~~facility's~~)) center's actual points as follows:

(i) The actual quintile points for those superiority measures using quintiles;

(ii) The actual points for SMR;

(iii) The actual points for SHR; and

(iv) Any remaining points for other measures will be based on the representations made in the application.

(g) If the applicant owns or is affiliated with two existing kidney ((~~dialysis facilities in total~~)) disease treatment centers, the department will average the ((~~facility's~~)) center's scores as follows:

(i) The average quintile points for those superiority measures using quintiles;

(ii) The average points for SMR;

(iii) The average points for SHR; and

(iv) The average of the remaining points for other measures will be based on the representations made in the applications.

(4) The following table identifies the data measures and the data sources:

Data Item	Source
Home peritoneal dialysis and home hemodialysis training (Yes or No)	DFC report
Shift beginning after 5:00 p.m.? (Yes or No)	DFC report
Nursing home residents percentage (quintile)	Dialysis facility report (DFR)
Average number of comorbidities claimed (quintile)	Dialysis facility report (DFR)
Standardized mortality ratio performance (SMR) (better than expected, as expected, worse than expected)	DFC report - 4 year
Standardized hospitalization ratio performance (SHR) (better than expected, as expected, worse than expected)	DFC report - 1 year
Medicare total performance score (quintile)	QIP report
Net revenue per treatment (quintile)	Department calculation from medicare cost report. Divide total revenue by total treatments.

(5) The department will obtain the medicare QIP total performance scores (QIP Report) and the kidney dialysis facility compare reports (DFC Report) from the medicare website on the first working day in February.

(6) The department will determine the quintile scores and nonquintile scores. The department will calculate the quintile scores using the following process for each quintile measure:

(a) For all kidney ((~~dialysis facilities~~)) disease treatment centers for which data is available, sort the ((~~facilities~~)) centers from most favorable to least favorable according to the identified data.

(b) Use the percent rank formula using Excel to create the percentile ranking for each kidney ((~~dialysis facility~~)) disease treatment center in the data set. The array used in the formula is the data set of available ((~~facility~~)) center data identified for that measure.

(c) Assign quintile and nonquintile scores using the following methods:

(i) Quintile measures. For nursing home resident percentage, number of comorbidities, and QIP total performance score measures, the department will determine the quintile scores using the following process:

(A) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking of ((~~eighty~~)) 80 percent or higher get five points.

(B) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking less than ((~~eighty~~)) 80 percent and greater than or equal to ((~~sixty~~)) 60 percent get four points.

(C) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking less than ((~~sixty~~)) 60 percent and greater than or equal to ((~~forty~~)) 40 percent get three points.

(D) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking less than ((~~forty~~)) 40 percent and greater than or equal to ((~~twenty~~)) 20 percent get two points.

(E) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking below ((~~twenty~~)) 20 percent get one point.

(ii) Quintile measure. For the net revenue per treatment measure, the department will determine the quintile scores using the following process:

(A) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking of ((~~eighty~~)) 80 percent or higher get one point.

(B) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking less than ((~~eighty~~)) 80 percent and greater than or equal to ((~~sixty~~)) 60 percent get two points.

(C) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking less than ((~~sixty~~)) 60 percent and greater than or equal to ((~~forty~~)) 40 percent get three points.

(D) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking less than ((~~forty~~)) 40 percent and greater than or equal to ((~~twenty~~)) 20 percent get four points.

(E) ((~~Dialysis facilities~~)) Kidney disease treatment centers with a percentile ranking below ((~~twenty~~)) 20 percent get five points.

(F) Hospitals that do not have a cost report may submit net revenue per treatment actuals from the previous year. Hospitals must also submit a signed attestation stating the net revenue per treatment data is accurate.

(iii) Nonquintile measures. The department will determine the nonquintile scores using the following process:

(A) ((~~Dialysis facilities~~)) Kidney disease treatment centers that offer training services are given one point.

(B) ((~~Dialysis facilities~~)) Kidney disease treatment centers that offer a shift that begins after 5 p.m. are given one point.

(C) The department will determine SMR points for ((~~dialysis facilities~~)) kidney disease treatment centers as follows:

(I) "Better than expected" get four points.

(II) "As expected" get two points.

(III) "Worse than expected" get 0 points.

(D) The department will determine SHR points for ((~~dialysis facilities~~)) kidney disease treatment centers as follows:

(I) "Better than expected" get four points.

(II) "As expected" get two points.

(III) "Worse than expected" get 0 points.

(E) The department will assign two points for an "as expected" score for ((~~dialysis facilities~~)) kidney disease treatment centers missing only SMR data from the DFC report, provided the ((~~facility~~)) center was granted an exception under WAC 246-310-803(3).

(7) The department will publish the data set including resulting scores and quintiles for all kidney ((~~dialysis facilities~~)) disease treatment centers for review no later than March 15th or the first working day thereafter. The data set, including resulting scores and quintiles, will remain open for review and any person may propose the correction of data to the department for seven calendar days. Correction of data may be proposed as follows:

(a) Training services (HPD and HHD): The department will accept a copy of a medicare certification for training services (HPD and HHD) as evidence that a kidney ((~~dialysis facility~~)) disease treatment center provides these services, regardless of what is represented in the DFC report.

(b) Data related to a shift beginning after 5 p.m.: The department will accept an attestation that a ((~~facility~~)) center either operates a shift beginning after 5 p.m. or will operate that shift if there is a need, regardless of what is represented in the DFC report.

(c) The department will publish the final data set, including resulting scores and quintiles, no later than the first working day in April.

(8) The department will do the following analysis in order to determine the superior application:

(a) Create the comparable kidney ((~~dialysis facility~~)) disease treatment center set for each application per subsection (3) of this section.

(b) Determine the individual measure scores for each application by taking the simple average of the comparable scores for each measure.

(c) Determine the total score in the following manner according to the table below:

Data Items:	Calculation of Points	Score
Home training	The average score of comparable ((~~facilities~~)) centers rounded up to two decimal places.	
Shift beginning after 5 p.m.	The average score of comparable ((~~facilities~~)) centers rounded up to two decimal places.	
Nursing home residents	Average quintile score of comparable ((~~facilities~~)) centers rounded up to two decimal places.	
Average number of comorbid conditions	Average quintile score of comparable ((~~facilities~~)) centers multiplied by 1.25 and rounded up to two decimal places.	
Standardized mortality ratio	Average score of comparable ((~~facilities~~)) centers rounded up to two decimal places.	
Standardized hospitalization ratio	Average score of comparable ((~~facilities~~)) centers rounded up to two decimal places.	
QIP total performance score	Average quintile score of comparable ((~~facilities~~)) centers multiplied by 2.0 and rounded up to two decimal places.	

Data Items:	Calculation of Points	Score
Net revenue per treatment	Average quintile score of comparable ((~~facilities~~)) centers rounded down to two decimal places.	
Total score	Sum each of these individual average scores to arrive at total score.	

(9) The application with the highest total score will be the superior alternative for the purpose of meeting WAC 246-310-240(1).

(10) After applying the superiority criterion in this section, if applications are tied, the department will use the following process to determine the superior alternative:

(a) An applicant that was assigned points under subsection (3)(e) of this section in the superiority analysis will be considered the superior alternative; if no applicant was assigned points under subsection (3)(e) of this section, apply (b) of this subsection:

(b) The applicant with the highest average QIP total performance score will be considered the superior alternative;

(c) If applications have the same average QIP total performance score, the applicant with the lowest average net revenue per treatment will be considered the superior alternative.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-830 Kidney disease treatment ((~~facilities~~)) centers—Relocation of ((~~facilities~~)) centers. (1) When an existing ((~~facility~~)) kidney disease treatment center proposes to relocate any of its stations to another planning area, a new health care facility is considered to be established under WAC 246-310-020 (1)(a).

(2) When an existing kidney ((~~dialysis facility~~)) disease treatment center proposes to relocate a portion but not all of its stations within the same planning area, a new health care facility is considered to be established under WAC 246-310-020 (1)(a).

(3) When an existing kidney ((~~dialysis facility~~)) disease treatment center proposes to relocate a portion but not all of its stations to an existing ((~~facility~~)) center, it will be considered a station addition under WAC 246-310-020 (1)(e).

(4) When an entire existing kidney ((~~dialysis facility~~)) disease treatment center proposes to relocate all of its stations within the same planning area, a new health care facility is not considered to be established under WAC 246-310-020 (1)(a) if:

(a) The existing kidney ((~~dialysis facility~~)) disease treatment center ceases operation after the relocation;

(b) No new stations are added to the replacement kidney ((~~dialysis facility~~)) disease treatment center. The maximum treatment floor area square footage as defined in WAC 246-310-800 (11)(a) is limited to the number of certificate of need stations that were approved at the existing ((~~facility~~)) center;

(c) There is no break in service between the closure of the existing kidney ((~~dialysis facility~~)) disease treatment center and the operation of the replacement ((~~facility~~)) center;

(d) The existing ((~~facility~~)) center has been in operation for at least five years at its present location; and

(e) The existing kidney ((~~dialysis facility~~)) disease treatment center has not been purchased, sold, or leased within the past five years.

(5) Station use rates at new ((~~facilities~~)) kidney disease treatment centers created by the total relocation of an existing ((~~facility~~)) center or the partial relocation of an existing ((~~facility~~)) center should not be a barrier to the addition of new stations projected as needed for the planning area. In 4.8 planning areas, the station use rate will be counted as 4.5 in-center patients per station. If the department has had to count the station use at 4.5 under the need methodology described in WAC 246-310-812(5), the ((~~facility~~)) center may not request additional stations at the new ((~~facility~~)) center for three years from the date the stations become operational or the ((~~facility~~)) center meets the 4.5 station use standard, whichever comes first. Data used to make this determination will be the most recent ((~~Northwest Renal~~)) Network quarterly modality report available as of the letter of intent submission date.

(6) Station use rates at new ((~~facilities~~)) kidney disease treatment centers created by the total relocation of an existing ((~~facility~~)) center or the partial relocation of an existing ((~~facility~~)) center should not be a barrier to the addition of new stations projected as needed for the planning area. In 3.2 planning areas, the station use rate will be counted as 3.2 in-center patients per station. If the department has had to count the station use at 3.2 under the need methodology described in WAC 246-310-812(6), the ((~~facility~~)) center may not request additional stations at the new ((~~facility~~)) center for three years from the date the stations become operational or the ((~~facility~~)) center meets the 3.2 station use standard, whichever comes first. Data used to make this determination will be the most recent ((~~Northwest Renal~~)) Network quarterly modality report available as of the letter of intent submission date.

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-833 One-time state border kidney ((~~dialysis facility~~)) disease treatment center station relocation. (1) When an existing owner-operator of a Washington state kidney ((~~dialysis facility~~)) disease treatment center is also the owner-operator of a kidney ((~~dialysis facility~~)) disease treatment center in a contiguous Idaho or Oregon county, the department will not consider a ((~~facility~~)) center that combines the Washington ((~~facility~~)) center and the out-of-state ((~~facility~~)) center to be a new health care ((~~facility~~)) center under WAC 246-310-020(1) provided all of the following criteria are satisfied:

(a) The Washington state kidney ((~~dialysis facility~~)) disease treatment center is located in Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pend Oreille, Skamania, Wahkiakum, Walla Walla, or Whitman counties;

(b) The kidney ((~~dialysis facility~~)) disease treatment center is the sole provider of dialysis services in the Washington state county;

(c) The kidney ((~~dialysis facility~~)) disease treatment center is the sole provider of dialysis services in the contiguous Idaho or Oregon county;

(d) The replacement kidney ((~~dialysis facility~~)) disease treatment center will be located in the same county or planning area as the current Washington state ((~~facility~~)) center;

(e) Both existing kidney ((~~dialysis facilities~~)) disease treatment centers cease operation;

(f) There is no break in service between the closure of the existing kidney ((~~dialysis facilities~~)) disease treatment centers and the operation of the replacement ((~~facility~~)) center;

(g) There has been no change in ownership of either the Washington kidney ((~~dialysis facility~~)) disease treatment center or out-of-state kidney ((~~dialysis facility~~)) disease treatment center for at least five years prior to applying for the exemption under this section;

(h) Each existing kidney ((~~dialysis facility~~)) disease treatment center has been operated by the current provider for a minimum of five years prior to applying for the exemption under this section;

(i) Each existing kidney ((~~dialysis facility~~)) disease treatment center has been operating at its current location for a minimum of five years prior to applying for the exemption under this section;

(j) The department has not granted a previous exemption under the provisions of this section; and

(k) The number of stations at the replacement kidney ((~~dialysis facility~~)) disease treatment center does not exceed the total of:

(i) All stations from the Washington state kidney ((~~dialysis facility~~)) disease treatment center; and

(ii) Using the 4.8 patients per station standard, the stations necessary for the number of patients receiving dialysis at the out-of-state kidney ((~~dialysis facility~~)) disease treatment center as reported on the most recent ((~~Northwest Renal~~)) Network quarterly modality report.

(2) Once a Washington state provider has requested and received its one-time exemption under the provisions of this section, the kidney ((~~dialysis facility's~~)) disease treatment center's "resident in-center patient" will have the same meaning as all patients at the ((~~facility~~)) center.