



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

June 20, 2013

CERTIFIED MAIL # 7011 1570 0002 7802 6357

Trisha West, Director of Strategic Planning
Evergreen Healthcare
12040 Northeast 128th Street, MS-100
Kirkland, Washington 98034

Re: CN11-35

Dear Ms. West:

We have completed reconsideration review of the Certificate of Need application submitted by Evergreen Healthcare proposing to add 43 acute care beds to Evergreen Hospital and Medical Center. For the reasons stated in this evaluation, the application submitted by Evergreen Healthcare is consistent with applicable criteria of the Certificate of Need Program, provided Evergreen Healthcare agrees to the following in its entirety.

Project Description:

Evergreen Hospital Medical Center is approved to increase the hospital's acute care licensed bed capacity by 43 beds. A breakdown of the acute care beds at project completion is shown below. The licensed capacity of the hospital will increase to 318 total licensed beds.

Bed Classification	New Bed Count
General Medical Surgical	261
Acute Rehabilitation	14
ICN level II	29
NICU level III	14
Total	318

Conditions

1. King County Public Hospital District #2-Evergreen Healthcare agrees with the project description as stated above. King County Public Hospital District #2-Evergreen Healthcare further agrees that any change to the project as described in the project description is a new project that requires a new Certificate of Need.
2. King County Public Hospital District #2-Evergreen Healthcare will provide charity care at Evergreen Hospital Medical Center in compliance with the charity care policies provided in this Certificate of Need application. Evergreen Hospital Medical Center will



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use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by hospitals in the King County Region. Currently, this amount is 1.42% for gross revenue and 2.51% for adjusted revenue. Evergreen Hospital Medical Center will maintain records documenting the amount of charity care it provides and demonstrating compliance with its charity care policies.

Approved Capital Costs:

There is no capital expenditure associated with this project.

Please notify the Department of Health within 20 days of the date of this letter whether you accept the above in its entirety. Your written response should be sent to the Certificate of Need Program, at one of the following addresses.

Mailing Address:

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

Other Than By Mail:

Department of Health
Certificate of Need Program
111 Israel Road SE
Tumwater, WA 98501

If you have any questions, or would like to arrange for a meeting to discuss our decision, please contact Janis Sigman with the Certificate of Need Program at (360) 236-2955.

Sincerely,



Steven M. Saxe, FACHE
Director, Health Professions and Facilities

Enclosure

**RECONSIDERATION EVALUATION DATED JUNE 20, 2013, OF THE CERTIFICATE
OF NEED APPLICATION SUBMITTED BY EVERGREEN HEALTHCARE
PROPOSING TO ADD ACUTE CARE BED CAPACITY TO EVERGREEN HOSPITAL
MEDICAL CENTER IN KIRKLAND, WITHIN KING COUNTY**

APPLICANT DESCRIPTION

King County Public Hospital District #2 operates Evergreen Healthcare, which in turn operates an acute care hospital, a home health service, and a hospice service in King County. The three healthcare facilities are shown in the table below.

Type of Facility	Name
Acute Care Hospital	Evergreen Hospital Medical Center
Home Health Agency	Evergreen Home Health Services
Hospice Agency and Hospice Care Center	Evergreen Hospice Services

This project focuses on the acute care hospital—Evergreen Hospital Medical Center (EHMC) located at 12040 Northeast 128th Street in the city of Kirkland within King County. EHMC is a provider of Medicare and Medicaid services to the residents of Kirkland and surrounding areas. The hospital is currently licensed for 275 acute care beds, holds a three-year accreditation from the Joint Commission, and is designated as a Primary Stroke Center. [source: DOH licensing records, Joint Commission website, CN historical files]

For this project the hospital district is the applicant and will be referenced as ‘Evergreen Healthcare.’ The site for the project is the hospital, which will be referenced as ‘EHMC.’

PROJECT DESCRIPTION AND BACKGROUND DESCRIPTION

This application proposes to add acute care beds to the hospital. When this application was submitted on May 16, 2011, Evergreen Healthcare provided the following project description.

“...certificate of need application proposing to have our existing level II and III neonatal bassinets added to our licensed bed capacity. Evergreen operates a 43-bed Level II/III neonatal intensive care nursery with 29 dedicated to level II care and 14 dedicated to level III care. At completion of this project, Evergreen will have a total of 318 licensed beds (275 acute, 29 level II, and 14 level III).” [source: Application face sheet]

As shown above, Evergreen Healthcare asserted that none of the 43 level II and level III beds had been included in the hospital license, and this application was submitted to rectify the omission. Evergreen Healthcare asserted that its project was the addition of 43 acute care beds.

On December 8, 2011, the department released its evaluation of the project however; the department’s project description was different than Evergreen Healthcare’s description. It stated the following.

Evergreen Hospital Medical Center is approved to reduce the hospital's ICN level II beds from 30 to 29, and add 6 NICU level III beds to the eight previously approved. The licensed capacity of the hospital will be increased to 280 total licensed beds.

<i>Bed Classification</i>	<i>New Bed Count</i>
<i>General Medical Surgical</i>	<i>223</i>
<i>Acute Rehabilitation</i>	<i>14</i>
<i>ICN level II</i>	<i>29</i>
<i>NICU level III</i>	<i>14</i>
<i>Total</i>	<i>280</i>

In its evaluation, the department concluded that 38 of the 43 beds had been included in EHMC's 275 bed license, and the application proposed an addition of 5 acute care beds that would be dedicated to the combined level II and III nursery. [source: December 8, 2011, initial evaluation, p5]

Condition #1 attached to the department's initial evaluation is the applicant's agreement to the project description. Evergreen Healthcare did not agree with the project description, as a result, the department's December 8, 2011, approval reverted to a denial and no certificate was issued.

On December 27, 2011, Evergreen Healthcare requested reconsideration of the department's approval. On January 30, 2012, the department granted the reconsideration request. A reconsideration hearing was conducted on March 26, 2012, and the department received additional documentation from Evergreen Healthcare. This document is the evaluation of the reconsideration information.

This reconsideration evaluation will focus on the disagreement of the project descriptions identified above. Once that issue is resolved, this evaluation will also include a reconsideration review of the criteria under WAC 246-310-210, 220, 230, and 240.

APPLICABILITY OF CERTIFICATE OF NEED LAW

Regardless of which of the two project descriptions is used, this project is subject to review under Revised Code of Washington 70.38.105(4)(e) and Washington Administrative Code 246-310-020(1) (c) as the increase in bed capacity of the hospital.

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. It states:

"Criteria contained in this section and in WAC [246-310-210](#), [246-310-220](#), [246-310-230](#), and [246-310-240](#) shall be used by the department in making the required determinations.

(a) In the use of criteria for making the required determinations, the department shall consider:

(i) The consistency of the proposed project with service or facility standards contained in this chapter;

- (ii) *In the event the standards contained in this chapter do not address in sufficient detail for a required determination the services or facilities for health services proposed, the department may consider standards not in conflict with those standards in accordance with subsection (2)(b) of this section; and*
- (iii) *The relationship of the proposed project to the long-range plan (if any) of the person proposing the project.”*

In the event the WAC 246-310 does not contain service or facility standards in sufficient detail to make the required determinations, WAC 246-310-200(2)(b) identifies the types of standards the department may consider in making its required determinations. Specifically WAC 246-310-200(2)(b) states:

“The department may consider any of the following in its use of criteria for making the required determinations:

- (i) *Nationally recognized standards from professional organizations;*
- (ii) *Standards developed by professional organizations in Washington state;*
- (iii) *Federal Medicare and Medicaid certification requirements;*
- (iv) *State licensing requirements;*
- (v) *Applicable standards developed by other individuals, groups, or organizations with recognized expertise related to a proposed undertaking; and*
- (vi) *The written findings and recommendations of individuals, groups, or organizations with recognized expertise related to a proposed undertaking, with whom the department consults during the review of an application.”*

To obtain Certificate of Need approval, Evergreen Healthcare must demonstrate compliance with the criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); and 246-310-240 (cost containment).¹ Where applicable, the applicant must demonstrate compliance with the above criteria by meeting the 2005 Perinatal Level of Care Guidelines established by the Washington State Perinatal Advisory Committee.²

TYPE OF REVIEW

Applications proposing acute care bed additions are not reviewed under a published concurrent review cycle. The initial application was reviewed under regular review timeline as outlined in WAC 246-310-160. This reconsideration review was also reviewed under the regular review timeline, but has experienced considerable delays.

¹ Each criterion contains certain sub-criteria. The following sub-criteria are not discussed in this evaluation because they are not relevant to this project: WAC 246-310-210(3), (4), (5), & (6) and WAC 246-310-240(2) & (3).

² Since the release of the December 8, 2011, initial evaluation, the Perinatal Advisory Committee released updated guidelines. Since the initial evaluation relied on the 2005 guidelines, this reconsideration evaluation will also rely on the 2005 guidelines.

APPLICATION CHRONOLOGY

Initial Review Action	Evergreen Healthcare
Letter of Intent Submitted	March 14, 2011
Application Submitted	May 16, 2011
Department's pre-review activities including screening and responses	May 17 through August 2, 2011
Beginning of Review <ul style="list-style-type: none">• public comments accepted throughout review• no public hearing requested or conducted	August 3, 2011
End of Public Comment	September 7, 2011
Department's Anticipated Decision Date	November 7, 2011
Department's Actual Decision Date	December 8, 2011

Reconsideration Review Action	Evergreen Healthcare
Evergreen Submits Request for Reconsideration	December 27, 2011
Department Grants Reconsideration	January 30, 2012
Reconsideration Public Hearing Conducted in Tumwater <ul style="list-style-type: none">• Comments submitted by Evergreen Healthcare	March 26, 2012
Department's Anticipated Reconsideration Decision Date	May 10, 2012
Department's Actual Reconsideration Decision Date	June 20, 2013

AFFECTED PERSONS

Washington Administrative Code 246-310-010(2) defines "affected person" as:

"...an "interested person" who:

- (a) Is located or resides in the applicant's health service area;*
- (b) Testified at a public hearing or submitted written evidence; and*
- (c) Requested in writing to be informed of the department's decision."*

During the initial review of this project, Swedish Health Services sought and received affected person status. During this reconsideration review, no entity, including Swedish Health Services, sought and received affected person status.

SOURCE INFORMATION REVIEWED

Initial Review

- Evergreen Healthcare's Certificate of Need Application received May 16, 2011
- Evergreen Healthcare's supplemental information dated July 22, 2011
- Swedish Health Services' public comments received September 6, 2011
- Evergreen Healthcare's rebuttal comments received September 21, 2011
- Comprehensive Hospital Abstract Reporting System (CHARS) data obtained from the Department of Health's Hospital and Patient Data Systems office

- November 4, 2011, financial feasibility and cost containment analysis prepared by the Department of Health's Hospital and Patient Data Systems office
- Historical charity care data obtained from the Department of Health's Hospital and Patient Data Systems (2007, 2008, and 2009 summaries)
- Washington State Perinatal Levels of Care Criteria adopted by the Perinatal Advisory Committee--February 2005
- Historical Certificate of Need Evaluations
- Licensing and/or survey data provided by the Department of Health's Investigations and Inspections Office
- Joint Commission website [www.jointcommission.org]

Reconsideration Review

- Evergreen Healthcare’s reconsideration request received December 27, 2011
- Evergreen Healthcare’s reconsideration documents submitted at the March 26, 2012, reconsideration public hearing
- Updated Comprehensive Hospital Abstract Reporting System (CHARS) data obtained from the Department of Health's Hospital and Patient Data Systems office
- September 4, 1984, memorandum from the Department of Social and Health Services [now known as Department of Health] to all hospital administrators regarding neonatal intensive care bassinet licensure

CONCLUSION

For the reasons stated in this evaluation, the Certificate of Need application submitted by King County Public Hospital District #2-Evergreen Healthcare proposing to add acute care bed capacity to Evergreen Hospital and Medical Center is consistent with the Certificate of Need review criteria, provided that the applicant agrees to the following in its entirety.

Project Description:

Evergreen Hospital Medical Center is approved to increase the hospital’s acute care licensed bed capacity by 43 beds. A breakdown of the acute care beds at project completion is shown below. The licensed capacity of the hospital will increase to 318 total licensed beds.

Bed Classification	New Bed Count
General Medical Surgical	261
Acute Rehabilitation	14
ICN level II	29
NICU level III	14
Total	318

Conditions

1. King County Public Hospital District #2-Evergreen Healthcare agrees with the project description as stated above. King County Public Hospital District #2-Evergreen Healthcare further agrees that any change to the project as described in the project description is a new project that requires a new Certificate of Need.

2. King County Public Hospital District #2-Evergreen Healthcare will provide charity care at Evergreen Hospital Medical Center in compliance with the charity care policies provided in this Certificate of Need application. Evergreen Hospital Medical Center will use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by hospitals in the King County Region. Currently, this amount is 1.42% for gross revenue and 2.51% for adjusted revenue. Evergreen Hospital Medical Center will maintain records documenting the amount of charity care it provides and demonstrating compliance with its charity care policies.

Approved Capital Costs:

There is no capital expenditure associated with this project.

RECONSIDERATION REVIEW OF PROJECT DESCRIPTION

While both the applicant and the department agree that the project requests the addition of acute care beds to EHMC, the disagreement lies in the number of acute care beds that should be requested. Evergreen Healthcare's position is that 43 beds is the appropriate request, while the department's position is that 5 beds is the appropriate request. Below is a summary of Evergreen Healthcare's position.

Evergreen Healthcare

Evergreen Healthcare contends that level II intermediate care and level III neonatal intensive care bed spaces have not been required to be included in the hospital's license total or used to calculate their annual licensing fees. Evergreen Healthcare supported this position with the following documents.

- 1) Evergreen Healthcare submitted specific documents from the 2001 application proposing to establish the level III neonatal intensive care unit.³ Evergreen Healthcare asserts that this project requested approval of a tertiary service but not a specific number of beds.
- 2) Evergreen Healthcare submitted pertinent portions of WAC 246-320-990(3), the hospital licensing regulations that became effective on March 10, 1999, and were in effect during the 2001 review above. Evergreen Healthcare pointed out that the rules state that the licensed capacity of the hospital should "*include neonatal intensive care [NICU] bassinette spaces.*"
- 3) Evergreen Healthcare also submitted historical letters from DOH licensing staff intended to clarify what neonatal beds are to be included as part of or in addition to a hospital's licensed bed capacity.⁴
- 4) Notes from a December 7, 2006, meeting between representatives from Evergreen Healthcare and department staff. At that meeting, the licensure of level II and level III beds was discussed. Evergreen Healthcare submitted notes from this meeting to demonstrate that the department knew in 2006 that the level II and level III beds were not included under the hospital's license. Evergreen Healthcare states that the department advised Evergreen Healthcare to '*continue to do business as usual*' until a policy on how to deal with the issue [of unlicensed level II and level III beds] was developed by the program. After five years, no formal policy or guideline was ever provided, so Evergreen Healthcare submitted this application.
- 5) Evergreen Health submitted additional historical memos and e-mails intended to support that level II and level III beds were not required to be included in the hospital's licensed bed capacity.

Evergreen's position, in summary, is that in the past, the department has not required that level II or level III beds be included as part of the hospital's licensed bed capacity. Further, the department knew in year 2001 when Evergreen Healthcare submitted its application to establish its level III neonatal intensive care unit that the additional beds would not be included in the hospital's license.

³ Application #00-20 that resulted in the March 5, 2000, issuance of CN #1222.

⁴ January 3 and January 25, 2000, letters from Susan Kelly [DOH] to Jim Wolfe, Vice President of planning at Kadlec Medical Center in Richland.

Department's Review

During the reconsideration review of this project, the department reviewed all documents submitted by Evergreen Healthcare to support its position that its level II and level III beds were not required to be included as part of the licensed bed capacity. The department understands Evergreen Healthcare's assertions, but disagrees based on the following documents.

- 1) **Hospital licensing regulations**: Regardless of any disagreement or interpretation of the licensing regulations regarding level II bed licensure, level III NICU beds have always been required to be licensed. This position is clear in the 1999 licensure rules, and the subsequent licensure rules that became effective in April 11, 2009.⁵
- 2) **2001 Certificate of Need Application**: During the review of this application, program staff specifically asked Evergreen Healthcare to clarify whether the level III beds would '*change the hospital's licensure.*' Evergreen Healthcare's response is that the '*newborn isolettes are not licensed acute care hospital beds.*' Evergreen Healthcare's position is that program staff knew that Evergreen Healthcare had no intention of including the level III beds under the hospital license. This position is incorrect; rather, program staff did not consider that Evergreen Healthcare would intend to provide care in an unlicensed bed space.
- 3) **December 7, 2006, meeting notes**: These meeting notes demonstrate that licensure of the level II and level III beds were discussed and at the time of the meeting, EHMC did not include the level II and level III beds in the hospital's license. The notes do not support any claim by Evergreen Healthcare that the '*program would develop a policy or guidance for dealing with*' the unlicensed beds.
- 4) **Historical memos and letters**: These documents may imply that level II beds are not included in the hospital's license; however when read with the licensure rules in place at the time, this position simply does not make sense.
- 5) **Current Licensure Rules**: The 2009 licensure rules provide the following guidance: This section establishes the license and annual use fees for hospitals.
 - (1) *Applicants must:*
 - (a) *Send the department an initial license fee of one hundred twenty-three dollars for each bed space within the authorized bed capacity for the hospital;*
 - (b) *Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient care;*
 - (c) *Include level 2 and 3 bassinet spaces;*
 - (d) *Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:*
 - (i) *Physical plant requirements of this chapter are met without movable equipment; and*
 - (ii) *The hospital currently possesses the required movable equipment and certifies this fact to the department;*
 - (e) *Exclude all normal infant bassinets.*
- 6) **September 4, 1984, memorandum**: In addition to the documents submitted by Evergreen Healthcare, the department also reviewed a memo from the Department of Social and Health

⁵ Washington Administrative Code 246-320-199.

Services⁶ to all Hospital Administrators. The memo acknowledges that the hospital licensing rules in place before April 17, 1984, excluded all nursery bassinets, including neonatal intensive care unit spaces, from the hospital license bed count. The licensure rule [WAC 440-44-040(1)] was amended to include NICU spaces—both level II and level III. The memo quotes the new rule and specifically points out that the licensed bed capacity shall exclude all normal infant bassinets. Since level II and level III bassinets are not used for ‘normal newborns,’ this memo was intended to clarify that level II and level III bassinets are to be included in the hospital’s license. The memo then provides guidance for hospitals to implement changes in licensed bed count. Each hospital that provides neonatal intensive care nursery services—both level II and level III—must identify the number of beds that are used to provide care for high-risk infants that are in existence as of April 17, 1984. The licensure program would then adjust the number of licensed beds at those hospitals to include both level II and level III capacity.

The department’s position, in summary, is that since 1984 neonatal intermediate care nursery and neonatal intensive care nursery bassinet spaces were to be included in the hospital’s total licensed bed capacity. In 1984 the department (then Department of Social and Health Services) administratively adjusted the hospital licensed bed counts by the number of bassinets in existence as of April 17, 1984, for those hospitals meeting the physical space and equipment requirements for licensing. Only normal infant bassinets were excluded from the licensed bed count.

It has been a past practice of the department to allow applicants an opportunity to correct omissions in licensed bed counts by submission of Certificate of Need applications. Evergreen Healthcare asserts this application was submitted to correct an omission of 43 unlicensed level II and level III bed spaces. If approved, EHMC’s licensed beds would increase from 275 to 318.

Documents reviewed support that EHMC has had all 275 licensed beds set up for some time. Further, EHMC has been providing level II and level III care in space equivalent to a combination of 43 level II and level III beds. As a result, the department will concede that this application was submitted to correct a long-time licensing omission and approve the project description provided by Evergreen Healthcare. With this concession, the licensed bed count at EHMC is below.

Bed Classification	New Bed Count
General Medical Surgical	261
Acute Rehabilitation	14
ICN level II	29
NICU level III	14
Total	318

⁶ In 1984, the hospital licensure program was under the Department of Social and Health Services and known as the ‘Health Facilities Survey Unit.’

CRITERIA DETERMINATIONS

A. Need (WAC 246-310-210)

Based on the source information reconsidered and the applicant's agreement to the conditions identified in the "Conclusion" section of this evaluation, the department determines that Evergreen Healthcare has met the applicable need criteria in WAC 246-310-210.

- (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.
- (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.

Initial Evaluation Summary

In its December 8, 2011, initial evaluation the department concluded that Evergreen Healthcare's project met these sub-criteria.

Reconsideration Review

There was no additional information reviewed in this reconsideration that would change the department's initial conclusion. **These sub-criteria remain met.**

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

Based on the source information reviewed and the applicant's agreement to the conditions identified in the 'Conclusion' section of this evaluation, the department determines that Evergreen Healthcare has met the financial feasibility criteria in WAC 246-310-220.

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

Initial Evaluation Summary

In its December 8, 2011, initial evaluation the department concluded that Evergreen Healthcare met these sub-criteria.

Reconsideration Review

There was no additional information reviewed in this reconsideration that would change the department's initial conclusion. However, noted in the initial evaluation, Evergreen Healthcare identified a capital expenditure of \$378,228. The costs were expended in year 2002 when Evergreen Healthcare increased its level II and level III beds from 38 to 43. Since those costs were expended 9 years before this project was submitted, the department

will not include those costs as part of the capital expenditure. As a result, there is no capital expenditure identified with this project. **These sub-criteria remain met.**

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

Based on the source information reviewed and the applicant's agreement to the conditions identified in the 'Conclusion' section of this evaluation, the department determines that Evergreen Healthcare met the structure and process (quality) of care criteria in WAC 246-310-230, which includes review of the 2005 Washington State Perinatal Level of Care guidelines.

- (1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.
- (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.
- (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.
- (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.
- (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.

Initial Evaluation Summary

In its December 8, 2011, initial evaluation the department concluded that Evergreen Healthcare met these sub-criteria.

Reconsideration Review

There was no additional information reviewed in this reconsideration that would change the department's initial conclusion. **These sub-criteria remain met.**

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

Based on the source information reviewed and the applicant's agreement to the conditions identified in the 'Conclusion' section of this evaluation, the department determines that Evergreen Healthcare met the cost containment criteria in WAC 246-310-240.

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

Initial Evaluation Summary

In its December 8, 2011, initial evaluation the department concluded that Evergreen Healthcare met this sub-criterion.

Reconsideration Review

There was no additional information reviewed in this reconsideration that would change the department's initial conclusion. **This sub-criterion remains met.**