



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

May 5, 2010

CERTIFIED MAIL: # 7007 3020 0000 3056 2445

Donna Goodwin, VP Operations  
Family Home Care  
22820 East Appleway Avenue  
Liberty Lake, Washington 99019

Dear Ms. Goodwin:

We have completed the final remand review of the Certificate of Need application submitted by Family Home Care proposing to establish a Medicare certified/Medicaid eligible hospice agency in Spokane County. For the reasons stated in this evaluation, Family Home Care's application is not consistent with the Certificate of Need review criteria and a Certificate of Need is denied.

Need	Washington Administrative Code 246-310-210 and 290
Financial Feasibility	Washington Administrative Code 246-310-220
Structure and Process of Care	Washington Administrative Code 246-310-230
Cost Containment	Washington Administrative Code 246-310-240

You have two options should you wish to appeal our decision. You may request a public hearing within 28 days from the date of this letter for reconsidering our denial on grounds specified in Washington Administrative Code (WAC) 246-310-560. You must send your reconsideration request to the Program at one of the following addresses.

Mailing Address:

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

FedEx and UPS:

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

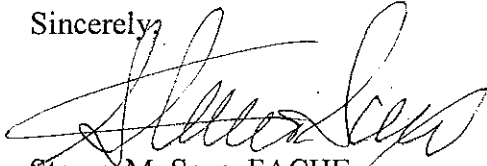
You may request an adjudicative proceeding within 28 days from the date of this letter by filing notice of appeal according to the provisions of Revised Code of Washington 34.05 and WAC 246-310-610. A request for an adjudicative proceeding must be delivered to the Adjudicative Clerk Office, 310 Israel Road, Building 6, or sent to that office at Post Office Box 47879, Olympia, Washington 98504-7879. You are entitled to an adjudicative proceeding if you are not satisfied with the results of the reconsideration hearing.



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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,

A handwritten signature in black ink, appearing to read "Steven M. Saxe". The signature is fluid and cursive, with a large initial "S" and "M".

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

Enclosure

cc: Richard McCartan, AAG, Certificate of Need Program  
Kathleen Benedict, Attorney for Family Home Care  
Peter Witherspoon, Attorney for Hospice of Spokane

# **FINAL REMAND EVALUATION OF THE APPLICATION SUBMITTED BY FAMILY HOME CARE PROPOSING TO ESTABLISH A MEDICARE CERTIFIED AND MEDICAID ELIGIBLE HOSPICE AGENCY TO SERVE SPOKANE COUNTY**

## **APPLICANT DESCRIPTION**

Family Home Care (FHC) is a privately-owned, for-profit Washington corporation that operates a Medicare certified/Medicaid eligible home health agency<sup>1</sup> in the city of Spokane, within Spokane County.<sup>2</sup> The Spokane County home health agency has been in operation for approximately 40 years. On October 1, 2006, FHC purchased an existing home health and hospice agency located in the city of Colfax, within Whitman County. The Colfax agency—formerly known as Whitman Home Health and Hospice—provided Medicare and Medicaid home health and hospice services to the residents of Whitman County. As a result, FHC currently provides Medicare certified home health services to the residents of Spokane and Whitman counties; and Medicare certified hospice services to the residents of Whitman County. [source: Application, p5; Family Home Care website at familyhomecare.org]

## **BRIEF BACKGROUND DESCRIPTION**

On October 25, 2006, FHC submitted an application proposing to expand its Medicare certified hospice services into Spokane County. On April 20, 2007, the department denied FHC's application. The denial was based on FHC's failure to meet the criteria related to need, financial feasibility, structure and process of care, and cost containment.

On May 17, 2007, FHC submitted its "Request for Reconsideration" related to the department's denial, which included information related to the criteria denied.<sup>3</sup> The department granted FHC's reconsideration request, and on September 10, 2007, the department denied FHC's application again. The reconsideration denial was based on FHC's failure to meet the criteria related to need, financial feasibility, structure and process of care, and cost containment.

On October 5, 2007, FHC submitted its "Request for Adjudicative Proceeding" to the department's Adjudicative Services Unit (ASU). An adjudicative hearing was scheduled for March 24, 2008. On November 27, 2007, FHC and the Certificate of Need Program submitted a joint petition to ASU requesting a "stay" of the adjudicative proceedings because the issues raised in the FHC application were also raised in a previous, ongoing appeal in an unrelated case.<sup>4</sup> Since the resolution of the unrelated case may affect the FHC case, the health law judge agreed to the request for stay.

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<sup>1</sup> A Medicare certified agency is also Medicaid eligible, therefore, the term "Medicaid eligible" will not be repeated throughout this evaluation. Those agencies that are state licensed but not Medicare certified will be referred to as "licensed only."

<sup>2</sup> Michael Nowling is the sole owner and stockholder of Family Home Care. [source: December 27, 2006, supplemental information, p1]

<sup>3</sup> WAC 246-310-560.

<sup>4</sup> Odyssey Healthcare Operating, B, LP and Its Parent Company, Odyssey Healthcare, Inc., vs. Washington State Department of Health, Court of Appeals #36489-1-II and three Odyssey Healthcare, Inc. requests for adjudicative appeals, Master Case #07-09-C2003CN, #07-09-C-2004CN, and #07-09-C-2005CN.

During the time the unrelated cases were under appeal, the department received information from existing hospice providers. The information corrects historical data used by the department to evaluate FHC's application. The department determined that the corrected information should have been used in the FHC application. Therefore, on November 6, 2009, the health law judge signed an order ("Remand Order") submitted jointly by the department, FHC, and the affected person approving a remand of the project to the Certificate of Need Program for reevaluation.<sup>5</sup>

On February 11, 2010, the department released its first evaluation based on the Remand Order. The first remand evaluation was provided to the applicant and all interested or affected persons for comment. The comments provided on the first remand evaluation were provided to the applicant and all interested or affected persons for rebuttal comment. The Remand Order allows the department to release a final Remand Evaluation that takes into account all comments and rebuttal statements provided.

This document is the department's final remand evaluation based on the Remand Order. Within this document, the department will reference sources submitted by the applicant or affected persons during the initial review, the reconsideration review, or this remand process. This document also includes a review of the corrected information referenced above. Where appropriate in this final remand evaluation, the department will also take into account the 2½ years that have passed since FHC submitted its initial application.

## **PROJECT DESCRIPTION**

### **Initial and Reconsideration Review**

This project proposes to add Medicare certified hospice services to Spokane County. The proposed hospice agency would be co-located with FHC's home health agency at 9922 East Montgomery Avenue, Suite 3 in Spokane. If this project is approved, the Spokane County Medicare certified home health and hospice agency would be known as "Family Home Care and Hospice." [source: Application p8]

Hospice programs are designed to offer support, care, and comfort to terminally ill patients and their families in the final stages of the patient's life. Provided either in-home or within an assisted living or skilled nursing center, hospice services typically include palliative care, patient and family counseling, and pastoral support. The proposed FHC hospice agency would offer a full range of hospice services, including routine home hospice care, continuous home care, inpatient respite care, and general inpatient care. Inpatient respite care and general inpatient care would be provided through contracts with existing nursing homes and hospitals. The hospice multidisciplinary team would include physicians, nurses, home health aides, medical social workers, counselors, chaplains, volunteers, and professional therapists. [source: Application, p9]

If this project is approved, FHC anticipates it would begin implementation of the approval and obtain Medicare certification by July 2008. Year 2009 would be the facility's first full calendar year of operation, and year 2011 would be the facility's third full year. [source: December 27, 2006, supplemental information, pp4&5]

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<sup>5</sup> The signed remand order also dismissed the appeal without prejudice.

The estimated capital expenditure to establish the Medicare certified hospice agency is \$32,089, which is solely related to moveable equipment for the hospice agency. [source: Application, p29; January 9, 2007, supplemental information, S-2]

### **Remand Review**

The project continues to propose Medicare certified hospice services to Spokane County. On October 13, 2008, FHC relocated its home health agency to 22820 East Appleway in Liberty Lake, within Spokane County. During this remand review, the department expects that the new hospice agency would continue to be co-located with FHC's home health agency. As a result, the hospice agency would also be located in Liberty Lake.

Given that the majority of hospice agencies offer the full range of hospice services referenced above, the department expects FHC's proposed services have not changed since submission of its initial application. FHC would offer routine home hospice care, continuous home care, inpatient respite care, and general inpatient care. Inpatient respite care and general inpatient care would be provided through contracts with existing nursing homes and hospitals. The hospice multidisciplinary team would include physicians, nurses, home health aides, medical social workers, counselors, chaplains, volunteers, and professional therapists.

In the initial application, FHC anticipated it would begin providing Medicare certified hospice services in Spokane County within 15 months of approval. For this remand decision, the department assumes FHC's implementation timeline would not change. If this project is approved under this remand review, FHC would be expected to begin implementation of the approval and obtain Medicare certification within 15 months of approval, or by December 2011. Year 2012 would be the facility's first full calendar year of operation, and year 2014 would be the facility's third full year.

Since FHC identified a capital expenditure solely related to moveable equipment, within this remand evaluation, the department expects no change in the equipment needed for the proposed hospice services. Therefore, the department will base this remand evaluation on the initial estimated capital expenditure of \$32,089.

### **APPLICABILITY OF CERTIFICATE OF NEED LAW**

This project is subject to Certificate of Need review as the establishment of a new health care facility under the provisions of Revised Code of Washington (RCW) 70.38.105(4)(a) and Washington Administrative Code (WAC) 246-310-020(1)(a).

### **CRITERIA EVALUATION**

WAC 246-310-200(1)(a)-(d) identifies the four determinations that the department must make for each application. WAC 246-310-200(2) provides additional direction in how the department is to make its determinations. It states:

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

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

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

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

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

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

WAC 246-310-290 contains service or facility specific criteria for hospice projects and must be used to make the required determinations.

To obtain Certificate of Need approval, FHC must demonstrate compliance with the applicable criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment). Additionally, FHC must demonstrate compliance with applicable standards outlined in WAC 246-310-290 (hospice standards and forecasting method).<sup>6</sup>

## **APPLICATION CHRONOLOGY**

### **Initial Review**

September 25, 2006  
 October 26, 2006  
 October 27, 2006  
 through January 15, 2007

Letter of Intent Submitted  
 Application Submitted  
 Department's Pre-Review Activities

- 1<sup>st</sup> screening activities and responses
- 2<sup>nd</sup> screening activities and responses
- 3<sup>rd</sup> screening activities and responses

<sup>6</sup> 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), and (6); and WAC 246-310-240(2).

January 16, 2007	Department Begins Review of the Application public comments accepted throughout review
February 20, 2007	Public Hearing Conducted – End of Public Comment
March 7, 2007	Rebuttal Documents Received at the Department
April 23, 2007	Department's Anticipated Decision Date
April 20, 2007	Department's Actual Decision Date

**Reconsideration Review**

May 14 and May 17, 2007	Applicant Submits Request for Reconsideration, including Supplemental Documentation
June 15, 2007	Department Grants Reconsideration
July 12, 2007	Reconsideration Public Hearing Conducted in Spokane Information Submitted by Applicant & Affected Persons
July 27, 2007	Rebuttal Documents Received the Department
September 10, 2007	Department's Anticipated Reconsideration Decision Date
September 10, 2007	Department's Actual Reconsideration Decision Date

**Remand Review**

November 6, 2009	Health Law Judge Signs Remand and Dismissal Order
December 28, 2009	Department Notifies Applicant and Affected Person of Timeline and Process for Remand Evaluation
February 11, 2010	Department's Remand Evaluation Due (this document)
March 1, 2010	Comments Accepted from Applicant and Affected Persons Related to Remand Evaluation
March 16, 2010	Rebuttal Documents Accepted from Applicant and Affected Persons Related to Remand Evaluation
April 5, 2010	Department's Final Remand Evaluation Due
May 5, 2010	Department's Final Remand Evaluation Due w/ 30 day Extension

As previously stated, this document is the department's final remand evaluation based on the Remand Order.

**AFFECTED PERSONS**

**Initial Review**

This application was submitted under the hospice agency concurrent review schedule for calendar year 2006 outlined in WAC 246-310-290(2).<sup>7</sup> Throughout the initial review of this project, four entities sought and received affected person status under WAC 246-310-010. Two of the four entities currently provide Medicare certified hospice services to the residents of Spokane County:

- 1) Horizon Hospice, LLC located at 123 West Cascade Way #E in Spokane; and
- 2) Hospice of Spokane located at 121 South Arthur Street in Spokane.

<sup>7</sup> Northwest Healthcare Alliance also submitted an application to serve Spokane County during the 2006 review cycle; however, the Northwest Healthcare Alliance application was withdrawn on January 16, 2007.

One of the four entities—VNA Home Health Care Services—provides Medicare certified home health services to the residents of Spokane County.

The remaining entity—Northwest Healthcare Alliance—does not provide home health or hospice services in Spokane County, however, this entity submitted a letter of intent and an application during the 2006 hospice agency concurrent review cycle. The application was withdrawn on January 16, 2007.

### **Reconsideration Review**

During the reconsideration process, only two of the four entities continued to participate in the reconsideration process. As a result, the two entities—Horizon Hospice, LLC and Hospice of Spokane—maintained their affected person status for this project.

### **Remand Review**

For this remand review, all four entities that sought and received affected person status under WAC 246-310-010 in the initial review have the opportunity to submit comments related to this evaluation. The four entities are:

- 1) Horizon Hospice, LLC;
- 2) Hospice of Spokane ;
- 3) VNA Home Health Care Services; and
- 4) Northwest Healthcare Alliance.

On February 11, 2010, the department mailed a copy of the first remand evaluation to Family Home Care and all four entities listed above. Only the applicant and two of the four entities (Horizon Hospice and Hospice of Spokane) submitted comments by March 1, 2010. Only Family Home Care provided rebuttal comments on March 16, 2010.

### **SOURCE INFORMATION REVIEWED—INITIAL**

- Family Home Care's Certificate of Need Application received October 26, 2006
- Family Home Care's supplemental information dated December 27, 2006, January 9, 2007, January 24, 2007, and January 30, 2007
- Public comments received throughout the review
- Public comments received at the February 20, 2007, public hearing
- Family Home Care's rebuttal comments received March 7, 2007
- Hospice of Spokane rebuttal comments received March 7, 2007
- Completed provider utilization surveys received from existing hospice providers
- Population data obtained from the Office Financial Management census published January 2005.
- Licensing and/or survey data provided by the Department of Health's Office of Health Care Survey
- Quality of Care surveys for all health care facilities owned, operated, or managed by Family Home Care
- WAC 246-310-290 Hospice services-standards and need forecasting method
- Data obtained from Family Home Care's website [[www.familyhomecare.org](http://www.familyhomecare.org)]
- Certificate of Need Historical files



### **ADDITIONAL SOURCE INFORMATION REVIEWED—RECONSIDERATION**

- Family Home Care's Requests for Reconsideration with supporting documentation received May 14 and May 17, 2007
- Family Home Care's information submitted at the July 12, 2007, reconsideration public hearing
- Hospice of Spokane's information submitted at the July 12, 2007, reconsideration public hearing
- Horizon Hospice's information submitted at the July 12, 2007, reconsideration public hearing
- Family Home Care's rebuttal comments received July 26, 2007
- Hospice of Spokane's rebuttal comments received July 27, 2007
- Hospice Methodology Advisory Committee Draft Report to Department of Health dated April 3, 2001
- Hospice Methodology Advisory Committee Draft Report to Department of Health dated September 12, 2001

### **ADDITIONAL INFORMATION REVIEWED—FIRST AND FINAL REMAND**

- Corrected 2004 and 2005 provider utilization surveys received from existing hospice providers. 2003 data provider utilization data was not incorrect
- Location data obtained from Family Home Care's website [[www.familyhomecare.org](http://www.familyhomecare.org)]
- Family Home Care comments on the first remand evaluation received February 24, 2010
- Horizon Hospice comments on the first remand evaluation received March 1, 2010
- Hospice of Spokane comments on the first remand evaluation received March 1, 2010
- Family Home Care's rebuttal comments received March 16, 2010

In November 2007—seven months after the initial decision and two months after the reconsideration decision was released—the Office of Financial Management released updated state and county population data and projections. Given that this updated information was not available at the time of the initial or reconsideration reviews, the department will not base its remand decision on the new population data.

### **CONCLUSION**

For the reasons stated in this evaluation, the application submitted by on behalf of Family Home Care proposing to establish a Medicare certified hospice agency to serve the residents of Spokane County is not consistent with applicable criteria of the Certificate of Need Program, and a Certificate of Need is denied.

## FINAL REMAND EVALUATION

### A. **Need (WAC 246-310-210) and Hospice Agency Need Forecasting Method (WAC 246-310-290(7) and (8))**

Based on the source information reviewed, the department determines that Family Home Care's project has not met the need criteria in WAC 246-310-210(1) and (2) and the Hospice Agency Need Forecasting method criteria in WAC 246-310-290(7) and (8).

- (1) The population served or to be served has need for the project and other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet that need.

WAC 246-310-290(7) requires the department to evaluate hospice applications based on the populations need for the service and determine whether other services and facilities of the type proposed are not, or will not, be sufficiently available or accessible to meet that need as required in WAC 246-310-210. The hospice services specific numeric methodology applied is detailed under WAC 246-310-290(7).

#### Methodology WAC 246-310-290(7)

The determination of numeric need for hospice services is performed using the hospice services need forecasting method contained in the WAC 246-310-290. The methodology is a six-step process of information gathering and mathematical computation. The first step examines historical hospice utilization rates at the statewide level. The remaining five steps apply that utilization to current and future populations at the planning area level and are intended to determine total baseline hospice services need and compare that need to the capacity of existing providers. The completed methodology is presented as an appendix to this evaluation.

As stated above, the numeric methodology relies on historical statewide utilization rates which are then applied to planning areas. For the initial and reconsideration reviews of this project, the department relied on 2003, 2004, and 2005 historical data. In mid 2009, the department discovered that while 2003 data was reported accurately by providers, 2004 and 2005 historical data was inaccurately reported. This remand evaluation incorporates the corrected 2004 and 2005 historical data.

The next portion of this evaluation will describe, in summary, the calculations made at each step and the assumptions and adjustments made in that process. Where applicable it will also describe the corrections made in the first remand evaluation and the result of the corrections.

During this remand process, the department received comments related to the numeric methodology from Hospice of Spokane. The comments identified a number of calculation errors made by the department in its application of the numeric methodology for the first remand evaluation. Specifically, when correcting the data for years 2004 and 2005, the department inadvertently entered incorrect data into the spreadsheet, which resulted in erroneous calculations and conclusions.

In response to Hospice of Spokane's comments, FHC provided the following statement in its rebuttal comments:

*"In a remand, the Department not only has the discretion and authority to use accurate data when that data is available, but the responsibility to do so."*

[source: FHC March 16, 2010, rebuttal comments, p3]

The department concurs with FHC's statement above. This final remand evaluation will correct the errors made in the first remand evaluation and show the results of the corrections. The titles for each step are excerpted from the WAC.

*Step 1: Calculate the following four statewide predicted hospice use rates using CMS and department of health data or other available sources.*

- (i) The predicted percentage of cancer patients sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients the age of sixty-five and over with cancer by the average number of past three years statewide total deaths sixty-five and over from cancer.*
- (ii) The predicted percentage of cancer patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients under the age of sixty-five with cancer by the current statewide total of deaths under sixty-five with cancer.*
- (iii) The predicted percentage of noncancer patients sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients age sixty-five and over with diagnoses other than cancer by the current statewide total of deaths over sixty-five with diagnoses other than cancer.*
- (iv) The predicted percentage of noncancer patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients under the age of sixty-five with diagnoses other than cancer by the current statewide total of deaths under sixty-five with diagnoses other than cancer.*

For these sub-steps within Step 1, the department obtained utilization data for 2003 through 2005 from the licensed and Certificate of Need approved hospice providers throughout the state. The department asked providers to report their admissions by age group (under 65 and 65+) and diagnosis (cancer/non-cancer) for each of the most recent three years. This information was to be provided by county of resident. The results of this survey were used in conjunction with data provided by the Department of Health's Center for Health Statistics and Cancer Registry office to determine the percentages of deaths due to cancer and non-cancer causes for the two age groups. Although not all hospice providers in the state responded to the program's surveys, all providers in Spokane County provided responses.

#### Final Remand Corrections

With the corrected 2004 and 2005 data, the average admissions for the timeframe decreased from the first remand evaluation data calculations. A comparison of the calculated averages broken down by age group and diagnosis is shown in Table 1 below.

**Table 1**  
**Three-Year Average Hospice Admissions by Age/Diagnosis**

Age/Diagnosis	First Remand Corrected Data	Final Remand Corrected Data
65+ with cancer	5,380.3	5,380.3
<65 with cancer	2,290.0	2,083.3
65+ without cancer	8,977.0	7,740.3
<65 without cancer	798.7	712.0

As shown in Table 1 above, the corrected data results in a lesser number of average admissions per age and diagnosis, which also results in a smaller use rate calculated in this step. Table 2 on the following page shows the comparison of incorrect and corrected use rates.

**Table 2**  
**Hospice Use Rates by Age/Diagnosis**

Age/Diagnosis	First Remand Use Rate	Final Remand Use Rate
65+ with cancer	69.31%	69.31%
<65 with cancer	70.52%	64.16%
65+ without cancer	34.42%	29.68%
<65 without cancer	9.49%	8.46%

As shown in Table 2 above, the corrected data results in a smaller percentage of persons using hospice services by diagnosis and age group. The results of these calculations are applied in Step 3.

The numeric methodology builds upon itself with six steps. As demonstrated in Step 1 above, inaccurate data will substantially affect future steps that rely on those calculations within the methodology.

*Step 2: Calculate the average number of total resident deaths over the last three years for each planning area.*

This step was completed using death statistics from the Department of Health's Center for Health Statistics. The total deaths in each of the planning areas for 2003-2005 were averaged for each planning area.<sup>8</sup>

Final Remand Corrections

This historical data was obtained from Center for Health Statistics. The data was accurate for the initial, reconsideration, and first remand decisions. For this final remand evaluation, it continues to be accurate.

<sup>8</sup> In applying Step 2, the department reads "total" to mean the total number of death for each of the four categories of patients identified in Step 1. The department adopts this reading because the various steps in the methodology build on each other and should be read together.

*Step 3: Multiply each hospice use rate determined in Step 1 by the planning area's average total resident deaths determined in Step 2.*

In this step, the use rates from Step 1 are multiplied by the applicable age group's death rate for each planning area to determine the number of likely hospice patients for each of the four age/diagnosis categories.

Final Remand Corrections

Applying the corrected use rates obtained in Step 1 to this step resulted in a smaller number of likely hospice patients for each of the four age/diagnosis categories for Spokane County. Table 4 below is a comparison of incorrect and corrected data.

**Table 4  
Spokane County Projected Hospice Patients by Diagnosis**

<b>Age/Diagnosis</b>	<b>First Remand Data</b>	<b>Final Remand Data</b>
65+ with cancer	441	441
<65 with cancer	175	159
65+ without cancer	735	634
<65 without cancer	61	54
<b>Totals</b>	<b>1,412</b>	<b>1,288</b>

As shown in Table 4 above, the corrected data decreases the projected number of hospice patients in Spokane County.

*Step 4: Add the four subtotals derived in Step 3 to project the potential volume of hospice services in each planning area.*

The numbers of likely hospice patients from each of the four categories derived in Step 3 are added together for each planning area. This number is described as the "potential volume" of hospice services in the area. This represents the number of patients expected to choose hospice services in the area.

Final Remand Corrections

Table 4 above also shows the results of this step. Using incorrect data, the potential volume in the planning area is 1,412. Using corrected data, the potential volume decreases to 1,288.

*Step 5: Inflate the potential volume of hospice service by the one-year estimated population growth (using OFM data).*

The values derived in Step 4 were inflated by the expected populations for each planning area. The age-specific population projections for each county were obtained from the state's Office of Financial Management. The age-specific data set used for this remand evaluation is the "2002 Projections developed for Growth Management Act (developed January 2002)." This age-specific data is available for 5-year intervals only. The department has used these 5-year interval values to estimate population projections for the interstitial years

Final Remand Corrections

Based on 2003 – 2005 data, the methodology projections begin in year 2006, the first year following the historical date range, through 2011. The comparison table for this step is incorporated into the table used for step 6 discussed below.

*Step 6: Subtract the current hospice capacity in each planning area from the above projected volume of hospice services to determine unmet need. Determine the number of hospice agencies in the proposed planning area which could support the unmet need with an ADC [average daily census] of thirty-five.*

Current hospice capacity is defined in the rule as the average number of admissions for the most recent three years of operation for those agencies that have operated or have been approved to operate in the planning area for three years or more. For the remaining agencies that have not operated in the planning area for at least three years, an average daily census (ADC) of thirty-five is assumed for that agency.

There are two Medicare certified hospice agencies in Spokane County and both providers have been in operation at least three years. The department calculated the ADC for each provider by multiplying the state’s most recent average length of stay (ALOS), calculated from historical survey responses, by each hospice agency’s average admissions for the past three years and divided that total by 365 (days per year). The result of this calculation shows unmet need. If the unmet need is 35 or more, numeric need for an additional hospice agency(s) is demonstrated. If the unmet need is less than 35, numeric need is not demonstrated.

Table 5 below is a compilation of both steps 5 and 6 above. It shows the 2006 through 2011 potential hospice patient volume for Spokane County, and then subtracts the current capacity.<sup>9</sup>

**Table 5  
FIRST REMAND PROJECTIONS  
Spokane County 2006-2011 Potential Hospice Patient Volume**

	2006	2007	2008	2009	2010	2011
Total Potential Hospice Patient Volume	1,443	1,459	1,476	1,492	1,509	1,528
Minus Current Capacity	1,212	1,212	1,212	1,212	1,212	1,212
<b>Potential Hospice Volume</b>	<b>231</b>	<b>247</b>	<b>264</b>	<b>280</b>	<b>296</b>	<b>316</b>

**FINAL REMAND PROJECTIONS  
Spokane County 2006-2011 Potential Hospice Patient Volume**

	2006	2007	2008	2009	2010	2011
Total Potential Hospice Patient Volume	1,317	1,332	1,347	1,362	1,376	1,395
Minus Current Capacity	1,162	1,162	1,162	1,162	1,162	1,162
<b>Potential Hospice Volume</b>	<b>155</b>	<b>170</b>	<b>185</b>	<b>200</b>	<b>214</b>	<b>233</b>

<sup>9</sup> The numbers in Table 5 may not add due to rounding.

When comparing the results shown in Table 5 above, the corrected data results in a smaller number of potential hospice patient volumes for all projected years. Table 6 below is the final calculations outlined in step 6. Table 6 shows the results of the potential hospice patient volume in Table 5 and multiplies it by the statewide average length of stay (ALOS).<sup>10</sup> In the first remand evaluation, the department used an ALOS of 53.10; the ALOS decreased to 51.67 with corrected data.

**Table 6**  
**FIRST REMAND PROJECTIONS - Spokane County 2006-2011 Projected ADC**

	2006	2007	2008	2009	2010	2011
<b>Potential Hospice Patient Volume</b>	<b>231</b>	<b>247</b>	<b>264</b>	<b>280</b>	<b>296</b>	<b>316</b>
Projected # of Patient Days [ALOS 53.10]	12,251	13,122	13,993	14,863	15,734	16,784
<b>Unmet Need / (No Need)</b>	<b>(34)</b>	<b>36</b>	<b>38</b>	<b>41</b>	<b>43</b>	<b>46</b>

**FINAL REMAND PROJECTIONS - Spokane County 2006-2011 Projected ADC**

	2006	2007	2008	2009	2010	2011
<b>Potential Hospice Patient Volume</b>	<b>155</b>	<b>170</b>	<b>185</b>	<b>200</b>	<b>214</b>	<b>233</b>
Projected # of Patient Days [ALOS 51.67]	7,990	8,763	9,536	10,309	11,082	12,014
<b>Unmet Need / (No Need)</b>	<b>(22)</b>	<b>(24)</b>	<b>(26)</b>	<b>(28)</b>	<b>(30)</b>	<b>(33)</b>

As shown in Table 6 above, the incorrect data results in numeric need for one hospice agency in Spokane County beginning in year 2007—the year this application was initially submitted. The corrected data results in no need for a hospice agency in the county through at least 2011.

In conclusion, the numeric methodology is a historical and population-based assessment to determine the projected need for hospice services in a county (planning area). The results of the department's methodology conclude that there is not sufficient need demonstrated in Spokane County to approve an additional hospice agency.

**Need (WAC 246-310-210(1) and WAC 246-310-290(8))**

- (1) The population served or to be served has need for the project and other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet that need.

WAC 246-310-290(8) also requires the department to evaluate all hospice applications based on the population's need for the service and determine whether other services and facilities of the type proposed are not, or will not, be sufficiently available or accessible to meet that need as required in WAC 246-310-210.

**Summary of First Remand Review**

In the first remand evaluation, the department concluded that FHC was able to demonstrate that some number of hospice patients may not be receiving hospice services in the county. The department further concluded that the addition of a third hospice provider in Spokane

<sup>10</sup> The numbers in Table 6 may not add due to rounding.

County may not negatively affect the viability of the existing providers. [source: February 11, 2010, first remand evaluation, pp15-16]

### **Final Remand Review**

In its public comments related to the first remand evaluation, Horizon Hospice provided statements to demonstrate that the two existing hospice providers in the county are available and accessible for current and future patients. Excerpts from Horizon Hospice's comments are below. [source: Horizon Hospice comments received March 1, 2010, pp1-3]

- Some ethnic groups, especially those who were raised in the old country, prefer to provide their own end of life care. Some patients believe in holistic care only, and seldom will accept urgent medical care, let alone hospice care.<sup>11</sup>
- Patients residing in long term care facilities and/or nursing homes in Spokane County are being served by both hospice agencies in the county, rather than just one agency as asserted by FHC.
- Rural Spokane County hospice patients receive as much care and as frequently as hospice patients residing in the city.
- Late referrals are not a result of need for another hospice agency in the county; rather it is typically a result of the patient coming to terms with a terminal illness before accessing hospice services.

In summary, Horizon Hospice asserts that the patients choosing hospice services in Spokane County have ample access to hospice services, and both providers are exerting extensive financial resources, through TV, radio, billboards, and other print media in an effort to educate the medical community, and the community at large, of the benefits and availability of hospice care.

In its rebuttal statements, FHC continues to assert that the addition of a new provider in Spokane County would be an asset to the community by "*encouraging new and innovative hospice programs, a greater awareness of hospice services, and give patients and their families an additional choice in who they wish to assist them in their end of life challenges.*" [source: FHC March 16, 2010, rebuttal documents, p13]

The department acknowledges that the addition of another hospice agency in Spokane County may be an asset to the community. However, the results of the numeric need methodology suggest that addition of a new agency in the county at this time is premature. Given that numeric need for an additional agency is not demonstrated through at least year 2011, approval of FHC in Spokane County is not demonstrated. The department concludes that this sub-criterion is not met.

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<sup>11</sup> Edition 18 of Taber's Cyclopedic Medical Dictionary defines 'holism' as "*The philosophy based on the belief that, in nature, entities such as individuals and other complete organisms function as complete units that cannot be reduced to the sum of their parts.*" The same medical dictionary defines 'holistic medicine' as "*the comprehensive and total care of a patient. In this system, the needs of the patient in all areas, such as physical, emotional, social, spiritual, and economic, are considered and cared for.*"



- (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.

**Summary of First Remand Review**

Within its initial and reconsideration evaluations, the department concluded that all residents of the service area, including low-income, racial and ethnic minorities, handicapped, and other underserved groups would have access to hospice services through FHC. The department also concluded that approval of this project would not negatively affect that access. [source: April 20, 2007, initial evaluation, p14; September 10, 2007, reconsideration evaluation, p15]

In the first remand evaluation, the department concluded that there was no information reviewed that would change this conclusion. [source: February 11, 2010, first remand evaluation, p16]

**Final Remand Review**

In this final remand review, the department again concludes that there was no information reviewed that would change this conclusion. This sub-criterion remains met.

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

Based on the source information reviewed, the department determines that Family Home Care's project has not met the financial feasibility criteria in WAC 246-310-220.

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

WAC 246-310 does not contain specific WAC 246-310-220(1) financial feasibility criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what the operating revenues and expenses should be for a project of this type and size. Therefore, using its experience and expertise the department evaluates if the applicant's pro forma income statements reasonably project the proposed project is meeting its immediate and long-range capital and operating costs by the end of the third complete year of operation.

**Summary of First Remand Review**

Within its first remand evaluation, the department reviewed FHC's projected revenues and expenses based on its projected average daily census and ALOS for its first three years of operation. The department concluded that FHC met this sub-criterion. [source: February 11, 2010, first remand evaluation, p17]

**Final Remand Review**

In this final remand review, the department must consider the results of the numeric hospice methodology and the need section of this evaluation. In the need section, the department concluded that need for an additional hospice agency in Spokane County has not been demonstrated. As a result, in this final remand evaluation, the department must also conclude that the projected number of patients proposed to be served by FHC in its first three years of operation may be overstated. The department concludes that this sub-criterion is not met.

- (2) The costs of the project, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.

WAC 246-310 does not contain specific WAC 246-310-220(2) financial feasibility criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what an unreasonable impact on costs and charges would be for a project of this type and size. Therefore, using its experience and expertise the department compared the proposed project's costs with those previously considered by the department.

#### **Summary of First Remand Review**

In its first remand evaluation, the department concluded this sub-criterion was met. [source: February 11, 2010, first remand evaluation, p18]

#### **Final Remand Review**

In this final remand review, the department must consider the results of the numeric hospice methodology, the need section of this evaluation, and the financial feasibility criterion under WAC 246-310-220(1) above. Once the department determined that numeric need had not been demonstrated and the projected number of patients may be overstated, the department must also conclude that the addition of another provider in Spokane County may result in an unreasonable impact on costs and charges for health services. This sub-criterion is not met.

- (3) The project can be appropriately financed.

WAC 246-310 does not contain specific source of financing criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs how a project of this type and size should be financed. Therefore, using its experience and expertise the department compared the proposed project's source of financing to those previously considered by the department.

#### **Summary of First Remand Review**

Within its initial and reconsideration evaluations, the department concluded that the project could be appropriately financed. Since FHC would co-locate its hospice agency with its existing home health agency in the county, the total estimated costs of \$32,085 was solely related to equipment needed for the agency. FHC intended to fund the project from its reserves and provided documentation to demonstrate a commitment to the funding. FHC's historical financial statements demonstrated that the funds were available and the project would not negatively affect the financial viability of FHC as a whole.

In the first remand evaluation, the department concluded that there was no information reviewed that would change this conclusion. [source: February 11, 2010, first remand evaluation, p19]

#### **Final Remand Review**

In this final remand review, the department again concludes that there was no information reviewed that would change this conclusion. This sub-criterion remains met.

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

Based on the source information reviewed, the department determines that Family Home Care has not met the structure and process (quality) of care criteria in WAC 246-310-230.

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

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

**Summary of First Remand Review**

Within its initial and reconsideration evaluations, the department concluded that appropriate hospice staff were available or could be recruited. FHC intended to begin providing hospice services in Spokane County in mid-year 2008. Once operational, FHC expected to increase hospice staff as its patient census increased. In full year 2009, FHC expected to have 7.8 full time employees (FTEs). FHC expected its staff would increase to 13.3 FTEs by end of year three (2011). Further, FHC provided a discussion of strategies it intended to use to recruit and retain key hospice staff without negatively affecting the existing providers. [source: April 20, 2007, initial evaluation, pp15-16; September 10, 2007, reconsideration evaluation, pp15-16]

In the first remand evaluation, the department concluded that there was no information reviewed that would change this conclusion. [source: February 11, 2010, first remand evaluation, pp19-20]

**Final Remand Review**

In this final remand review, the department again concludes that there was no information reviewed that would change this conclusion. This sub-criterion remains met.

- (2) The proposed service(s) will have an appropriate relationship, including organizational relationship, to ancillary and support services, and ancillary and support services will be sufficient to support any health services included in the proposed project.

WAC 246-310 does not contain specific WAC 246-310-230(3) criteria as identified in WAC 246-310-200(2)(a)(i). There are known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that a facility must meet when it is to be Medicare certified and Medicaid eligible. Therefore, using its experience and expertise the department assessed the applicant's history in meeting these standards at other facilities owned or operated by the applicant.

**Summary of First Remand Review**

Within its initial and reconsideration evaluations, the department concluded that FHC's proposed hospice agency would establish appropriate ancillary and support services with local providers. This conclusion was based on FHC's experience of establishing and maintaining similar relationships and agreements for its home health and hospice agency in Whitman County. Although FHC did not have existing relationships in place for Spokane County, FHC provided a detailed plan and timeline for establishment of those relationships if

the project was approved. All agreements and relationships were expected to be in place approximately 12 months after of approval and six months before receiving its Medicare certification. This timeline ensured FHC could begin to provide licensed-only hospice services to the residents of the county while it prepared to meet the Medicare and Medicaid conditions of participation. Given that the actual agreements were not yet in place, the department concluded this sub-criterion would be met with specific terms. [source: April 20, 2007, initial evaluation, pp16-17; September 10, 2007, reconsideration evaluation, pp15-16]

In the first remand evaluation, the department concluded that there was no information reviewed that would change this conclusion and identified the following a term that FHC must agree to meet before this sub-criterion was met. [source: February 11, 2010, first remand evaluation, p20]

Prior to providing hospice services in Spokane County, Family Home Care must provide to the department for review and approval copies of all ancillary agreements specific to Spokane County.

### **Final Remand Review**

There was no information reviewed that would change this conclusion. If this project is approved, to ensure that FHC would establish the appropriate relationships and agreements for ancillary services, the term identified above continues to apply. Provided that FHC agrees to the term above, this sub-criterion would remain met.

- (3) *There is reasonable assurance that the project will be in conformance with applicable state licensing requirements and, if the applicant is or plans to be certified under the Medicaid or Medicare program, with the applicable conditions of participation related to those programs.*

WAC 246-310 does not contain specific WAC 246-310-230(3) criteria as identified in WAC 246-310-200(2)(a)(i). There are known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that a facility must meet when it is to be Medicare certified and Medicaid eligible. Therefore, using its experience and expertise the department assessed the applicant's history in meeting these standards at other facilities owned or operated by the applicant.

### **Summary of First Remand Review**

Within its initial and reconsideration evaluations, the department concluded that FHC would provide services in conformance with applicable state and federal requirements. This conclusion was based on FHC's quality of care history for its existing home health and hospice agencies and the quality of care history of FHC's two identified medical directors. WAC 246-335-100 outlines the key staff positions that each Medicare certified hospice agency must maintain. FHC identified key staff for the all except two positions—the director of clinical services and an alternate director of clinical services. Given that FHC was not operational as a Medicare certified hospice agency in Spokane County, these positions would be recruited once the project was approved. In its initial and reconsideration evaluations, the department determined this sub-criterion would be met with a specific term. [source: April 20, 2007, initial evaluation, pp17-18; September 10, 2007, reconsideration evaluation, pp15-16]

In the first remand evaluation, the department concluded that there was no information reviewed that would change this conclusion and identified the following term that FHC must agree to meet before this sub-criterion was met. [source: February 11, 2010, first remand evaluation, pp20-21]

Prior to providing hospice services in Spokane County, Family Home Care must identify the director of clinical services and an alternate director of clinical services specific to its Spokane County hospice agency.

- (4) The proposed project will promote continuity in the provision of health care, not result in an unwarranted fragmentation of services, and have an appropriate relationship to the service area's existing health care system.

WAC 246-310 does not contain specific WAC 246-310-230(4) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs how to measure unwarranted fragmentation of services or what types of relationships with a services area's existing health care system should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials in the application.

#### **Summary of First Remand Review**

Within its first remand evaluation, the department reviewed its conclusions under the previous review criteria related to the hospice need methodology, need, and financial feasibility, and concluded that FHC met this sub-criterion. [source: February 11, 2010, first remand evaluation, pp21-22]

#### **Final Remand Review**

In this final remand review, the department must again consider the results of the numeric hospice methodology, need, and financial feasibility sections of this evaluation. In the need section, the department concluded that need for an additional hospice agency in Spokane County has not been demonstrated. In the financial feasibility section of this evaluation, the department concluded that the projected number of patients proposed to be served by FHC in its first three years of operation may be overstated. As a result, the department must also conclude that approval of this project where no need is demonstrated may result in unwarranted fragmentation of services in the planning area. The department concludes that this sub-criterion is not met.

- (5) There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations.

This sub-criterion is addressed in sub-section (3) above and is considered met.

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

Based on the source information reviewed, the department determines that Family Home Care has not 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.

To determine if a proposed project is the best alternative, the department takes a multi-step approach. Step one determines if the application has met the other criteria of WAC 246-310-210 thru 230. If it has failed to meet one or more of these criteria then the project is determined not to be the best alternative, and would fail this sub-criterion.

If the project met WAC 246-310-210 through 230 criteria, the department would move to step two in the process and assess the other options the applicant or applicants considered prior to submitting the application under review. If the department determines the proposed project is better or equal to other options the applicant considered before submitting their application, the determination is either made that this criterion is met (regular or expedited reviews), or in the case of projects under concurrent review, move on to step three.

Step three of this assessment is to apply any service or facility specific criteria (tie-breaker) contained in WAC 246-310. The tiebreaker criteria are objective measures used to compare competing projects and make the determination between two or more approvable projects which is the best alternative. If WAC 246-310 does not contain any service or facility criteria as directed by WAC 246-310-200(2)(a)(i), then the department would look to WAC 246-310-240(2)(a)(ii) and (b) for criteria to make the assessment of the competing proposals. If there are no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b), then using its experience and expertise, the department would assess the competing projects and determine which project should be approved.

#### **Summary of First Remand Review**

Within its initial and reconsideration evaluations, the department concluded that FHC did not meet this sub-criterion. FHC's application failed the review criteria under need, financial feasibility, and structure and process of care. As a result, FHC failed step one above. FHC's failure in step one also resulted in a failure of step two. Step three did not apply to this project. [source: April 20, 2007, initial evaluation, p19; September 10, 2007, reconsideration evaluation, p16]

In the first remand evaluation, the department reviewed the previous sub-criteria as outline in step one and concluded FHC met the previous criteria. As a result, the department moved to step two.

In step two, the department reviewed the three options considered by FHC before submitting this application. The department concluded that FHC appropriately rejected all three options. As a result, the department concluded that the FHC project was the best available alternative for the community.

Since FHC was the only application reviewed during the year 2006 hospice concurrent review cycle, the department concluded that step three did not apply to this project. As a result, in the first remand evaluation, the department concluded this sub-criterion was met. [source: February 11, 2010, first remand evaluation, pp23-24]

### **Final Remand Review**

In this final remand review, the department must again begin with step one above. Under step one, the department must consider the results of the numeric hospice methodology, need, financial feasibility, and structure and process of care sections of this evaluation. In the need section, the department concluded that need for an additional hospice agency in Spokane County has not been demonstrated. In the financial feasibility section of this evaluation, the department concluded that the projected number of patients proposed to be served by FHC in its first three years of operation may be overstated. In the structure and process of care section, the department concluded that approval of this project may result in unwarranted fragmentation of services in the planning area.

As a result, the department must conclude that this project is not the best available alternative for the community and this sub-criterion is not met.