



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

May 31, 2011

Certified Mail 7008 1300 0000 7202 9621

Newell D. Yarborough, Jr.
Yarborough Consulting, Inc.
103 Marsh Edge Lane
Savannah, Georgia 31419

RE: CN10-35

Dear Mr. Yarborough:

We have completed review of the Certificate of Need application submitted by Brookdale Senior Living, Inc. proposing to establish a Medicare certified/Medicaid eligible home health agency within Pierce County. The written evaluation for the application is enclosed.

For the reasons stated in this evaluation, the department has concluded that the project is not consistent with the Certificate of Need review criteria identified below, and a Certificate of Need is denied.

Structure and Process of Care
Cost Containment

Washington Administrative Code 246-310-230
Washington Administrative Code 246-310-240

This decision may be appealed. The two appeal options are listed below.

Appeal Option 1:

You or any interested or affected person may request a public hearing to reconsider this decision. The request must state the specific reasons for reconsideration in accordance with Washington Administrative Code 246-310-560. A reconsideration request must be received within 28 calendar days from the date of the decision 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
310 Israel Road SE
Tumwater, WA 98501



Appeal Option 2:

You or any affected person with standing may request an adjudicative proceeding to contest this decision within 28 calendar days from the date of this letter. The notice of appeal must be filed according to the provisions of Revised Code of Washington 34.05 and Washington Administrative Code 246-310-610. A request for an adjudicative proceeding must be received within the 28 days at one of the following addresses:

Mailing Address:

Adjudicative Service Unit
Mail Stop 47879
Olympia, WA 98504-7879

Other Than By Mail

Adjudicative Clerk Office
310 Israel Road SE, Building 6
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

cc: Linda Foss, Department of Health, Investigations and Inspections Office
Karen Stricklett, Department of Health, Customer Service Office

**CERTIFICATE OF NEED EVALUATION
 BROOKDALE SENIOR LIVING, INC. D/B/A INNOVATIVE SENIOR CARE HOME
 HELATH PROPOSING TO ESTABLISH A MEDICARE CERTIFIED AND MEDICAID
 ELIGIBLE HOME HEALTH AGENCY IN PIERCE COUNTY**

APPLICANT DESCRIPTION

Brookdale Senior Living, Inc (BSLI) owns and operates approximately 549 senior or retirement living communities in 35 states. The company offers independent living, personalized assisted living, Alzheimer and dementia care, rehabilitation, and skilled nursing to residents of its communities through a subsidiary known as Innovative Senior Care Home Health (ISCHH). Innovative Senior Care Home Health, a wholly-owned subsidiary of Brookdale Senior Living, Inc., provides rehabilitation therapy, fitness and educational programming, and home health services.¹

Brookdale Senior Living, Inc. is located at 111 Westwood Place, Suite 400 within the city of Brentwood in the state of Tennessee. Brookdale Senior Living, Inc. owns or operates three subsidiary entities listed below. [Source: Application pg 5]

American Retirement Corporation
 ARC Therapy Services, LLC
 Innovative Senior Care Home Health

In Washington, Brookdale has the following senior living communities:

| | |
|--|--|
| Clare Bridge at Shoreline View, Gig Harbor | Park Place, Spokane |
| Clare Bridge of Lynnwood, Lynnwood | Villas at Union Park, Tacoma |
| Clare Bridge of Olympia, Olympia | Wynwood of Allenmore, Tacoma |
| Clare Bridge of Puyallup, Puyallup | Clare Bridge of Spokane, Spokane |
| Clare Bridge of Silver Lake, Everett | Wynwood of Bellevue, Bellevue ² |
| Wynwood of Columbia Edgewater, Richland | Wynwood of Yakima, Yakima |
| Foundation House of Federal Way, Federal Way | |

Innovative Senior Care currently serves as a contract therapy³ staffing service under a national contractual agreement with Gentiva Health Services Holdings Corporation. [Source: Screening responses, pg 2] In Pierce County ISC has a contact with Gentiva, an existing Medicare certified home health agency to provide therapy services to its home health patients. [Source: Application, pg. 6]

¹ Source: <http://www.brookdaleliving.com/about-brookdale.aspx>

² Since this application was submitted, this facility is known as Patriot’s Glen and apparently no longer a Brookdale facility.

³ Therapy services included physical therapy (PT), occupational therapy (OT), and speech therapy (ST)

PROJECT DESCRIPTION

Brookdale Senior Living, Inc.’s application proposes to establish a Medicare certified/Medicaid eligible home health agency to serve the residents of Pierce County. The proposed home health agency would lease office space at its existing healthcare community known as The Villas at Union Park located at 2010 South Union Avenue within the city of Tacoma. [Source: Application pgs 2 and 11] The proposed Medicare certified/Medicaid eligible home health agency would provide the following services:

| Nursing Services | | Therapy Services | Other Services |
|----------------------------|-----------------------------------|-------------------------|-------------------------|
| Cardiac | Pain Therapy | Speech Therapy | Nutrition Counseling |
| Continuous IV Therapy | HIV/AIDS Care | Physical Therapy | Home Medical Equip. |
| Diabetes | Psychiatric Services | Occupational Therapy | Home Health Aide |
| Oncology | Care for Alzheimer’s Patients | Medical Social Services | Home Care Coordination |
| Total Parenteral Nutrition | Enterostomal Therapy (Wound Care) | | Case Management Support |
| Rehabilitation | | | |

[Source: Application, pgs 11-12]

The estimated capital expenditure associated with the establishment of the proposed Medicare certified/Medicaid eligible home health agency is \$118,217. These costs are broken as follows:

| Description | Cost |
|---------------------------|------------------|
| Office Equipment | \$20,890 |
| Office Furniture | 6,770 |
| Certificate of Need costs | 46,001 |
| Start-up costs | 44,556 |
| Total | \$118,217 |

[Source: Application, Page 50]

Brookdale Senior Living, Inc. anticipates that upon approval of Certificate of Need (CN) application, it would be providing services within ninety days. Under this timeline, the proposed agency’s first full calendar year of operation is 2011 and year three is 2013. [Source: Application, pg 26; Screening Responses, pg 1]

For ease of reference, the department will refer to Brookdale Senior Living, Inc., the applicant, as “Brookdale.” Since the proposed Medicare certified and Medicaid eligible home health agency would be operated under the subsidiary of Innovative Senior Care Home Health, the department will reference the new agency as “ISCHH”.

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).

A Medicare certified home health 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 or a Medicare certified agency not CN approved for a given service area, will be referred to as “licensed only”

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 does not contain service or facility standards for home health agencies. To obtain Certificate of Need approval, Brookdale 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); 246-310-240 (cost containment).⁴ Consistent with WAC 246-310-200(2)(b),

⁴ 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); WAC 246-310-220 (2), (3), and WAC 246-310-240(2) and (3).

the home health agency projection methodology and standards found in the 1987 State Health Plan, Volume II, Section (4)(d) is used to assist in the evaluation of home health applications.

APPLICATION CHRONOLOGY

| | |
|--|--------------------|
| Letter of Intent Submitted | March 22, 2010 |
| Application Submitted | June 30, 2010 |
| Department Pre-Review Activities | |
| • Application Screening Questions Mailed | July 23, 2010 |
| • Application Responses Received | August 17, 2010 |
| Department Begins Review of Application | August 24, 2010 |
| Public Hearing Conducted | September 27, 2010 |
| Close of Rebuttal Comment Period | October 12, 2010 |
| Department's Anticipated Decision Date | November 29, 2010 |
| Department Actual Decision Date | May 27, 2011 |

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.*”

Throughout the review of this project, MultiCare Health System sought and received affected person status. MultiCare Health System owns and operates MultiCare-Good Samaritan Home Health and Hospice, a Medicare certified and Medicaid eligible home health provider serving patients within Pierce County.

SOURCE INFORMATION REVIEWED

- Brookdale Senior Living, Inc application received June 30, 2010
- Brookdale Senior Living, Inc. supplemental information received August 17, 2010
- MultiCare Health System public comments received September 27, 2010
- Comments received at the public hearing on September 27, 2010
- Public comment received during the review
- Brookdale Senior Living, Inc. rebuttal comments received October 8, 2010
- Completed provider utilization surveys received from existing Pierce County home health providers for calendar year 2008
- Population data obtained from the Office of Financial Management based on year 2000 census and published January 2007.
- 19787 Washington State Health Plan Performance Standards for Health Facilities and Services, Home Health methodology and standards.
- Licensing and survey data provided by the Department of Health’s Investigations and Inspections Office.

- Licensing and compliance history data provided by the Department of Health's Medical Quality Assurance Commission.
- Licensing and compliance data from the Department of Social and Health Services

CONCLUSION

For the reasons stated in this evaluation the application submitted by Brookdale Senior Living, Inc. d/b/a Innovative Senior Care Home Health Inc. to establish a Medicare certified, Medicaid eligible a home health agency in Pierce County is not consistent with the applicable review criteria and is denied.

A. Need (WAC 246-310-210) and Home Health Need Method (SHP)

Based on the source information reviewed and the applicant’s agreement to the terms and condition identified in the “conclusion” section of this evaluation, the department determines that the applicant has met the need criteria in WAC 246-310-210(1) and (2).

(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 does not contain specific WAC 246-310-210(1) need criteria as identified in WAC 246-310-200(2)(a)(i). To assist with the determination of numeric need for home health agencies, the department uses the numeric methodology contained in the 1987 Washington State Health Plan (SHP).

Home Health Numeric Methodology-1987 SHP

The SHP methodology is a multiple step process that projects the number of home health visits in a planning area. The method uses the following elements:

- projected population of the planning area, broken down by age groups [0-64; 65-70; & 80+];
- estimated home health use rates per age group; and
- the number of visits per age group.

The total projected number of visits is then divided by 10,000, which is considered the ‘target minimum operating volume’ for a home health agency. The resulting number represents the maximum projected number of agencies needed in a planning area. The SHP states fractions are rounded down to the nearest whole number. [Source: SHP, pg B-35] The final step in the numeric methodology is to subtract the existing number of home health agencies in a planning area from the projected number of agencies needed. This results in the net number of agencies needed for the planning area.

Brookdale methodology

Brookdale presented two different methods in its application. One followed the SHP as described above but without subtracting the existing home health agencies it identified to determine net need. The second method presented basically followed the SHP method but instead of using the different visit counts by age cohort as described in the SHP, Brookdale used 21 visits per patient for each group⁵.

Using the SHP methodology, Brookdale determined the number of projected patient visits in Pierce County for year 2012, its projected second full calendar year of operation, to be 172,530. Dividing the projected number of visits by 10,000, Brookdale projected a total of 17.25 agencies would be needed in Pierce County. Using the modified methodology, Brookdale projected 237,511 visits or 23.75 agencies for this same time period.

⁵ The department had previously used this same two method approach. However, the modified method approach is no longer used by the department as it may not meet the requirements of WAC 246-310-200(2)(b).

Brookdale then identified the number of existing home health agencies serving Pierce County as either 15 (using CMS-Home Health Compare) or 9 (using Medicare Cost report data). To determine the net need for home health agencies in Pierce County, Brookdale focused on its modified method projections. Brookdale made two different calculations. One subtracted 15 from the 23.75 projected agencies to equal a net need of 8.75. The second calculation subtracted 9 agencies from the 23.75 to equal a net need of 14.74 agencies. Brookdale argues that regardless of which number of existing agencies you use, 15 or 9, a net need for an additional home health agency exists in the Pierce County planning area. [Source Application, pgs 37 and 38] A summary of Brookdale’s methodologies is presented in Table 1 below.

**Table 1
Summary of Brookdale’s 2012 Need Projections**

| | SHP | Modified SHP (1) | Modified SHP (2) |
|-------------------------------|------------|-------------------------|-------------------------|
| # Total Patient Visits | 172,530 | 237,511 | 237,511 |
| Divided by 10,000 | 17.24 | 23.75 | 23.75 |
| Existing Home Health Agencies | | 15 | 9 |
| Net Need | | 8.75 | 14.75 |

Based on these numeric method numbers and contributing factors such as aging of the “baby-boomers”, increasing importance of home health care, and changing technology, Brookdale concluded there was a need for additional home health agencies in Pierce County.

Department’s Numeric Methodology

The department used the SHP methodology to assist in determining need for home health agencies in Pierce County. Fourteen home health providers were identified as serving Pierce County based on documentation obtained from the department’s licensing database and the Pierce County Human Services website⁶. A summary of the methodology is presented in Table 2. The complete methodology is included in this analysis as Appendix A.

**Table 2
Summary of Department of Health
Pierce County Home Health Need Projection**

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| # Total Patient Visits | 163,331 | 166,539 | 170,152 | 174,181 | 178,032 | 181,953 | 185,846 |
| Divided by 10,000 | 16.33 | 16.65 | 17.02 | 17.42 | 17.80 | 18.20 | 18.58 |
| Existing Home Health Agencies | 14 | 14 | 14 | 14 | 14 | 14 | 14 |
| Net Need | 2.33 | 2.65 | 3.02 | 3.42 | 3.80 | 4.20 | 4.58 |
| No. Agencies Needed per SHP | 2 | 2 | 3 | 3 | 3 | 4 | 4 |

Fractions are rounded down to the nearest whole number

⁶ Advanced Healthcare, Catholic Community Services of Western Washington, Gentiva Health Services (private pay), Northwest Medical Specialties, PLLC, On Your Own, ResCare Home Care, Right At Home In Home Care & Assistance, Gentiva Certified Healthcare Corp., Puget Sound Home Health, Group Health Home and Community Services, Signature Home Health, LifeCare at Home of Washington, Wesley Homes at Home, LLC, and MultiCare Good Samaritan.

As shown in Table 2, two home health agencies are projected to be needed in year 2009. This number increases to four by year 2015. Based solely on the numeric methodology, there is a projected need for Brookdale’s project.

As required under WAC 246-310-210(1), an applicant must demonstrate that the existing providers are not available or accessible to meet the projected need. As part of Brookdale’s need assessment and to demonstrate an unmet need still existed, Brookdale presented 2008 home health use data information. Brookdale then presented what it considered the most direct metric of home health utilization. Brookdale used the number of patients served by the benefit (home health) divided by the eligible population. Brookdale states using this method eliminates differences in regional practices on patients having multiple periods of care and varying lengths of stay and intensity. [Source: Application: pg 33-34] Table 3 below shows that comparison.

Table 3
2008 Comparative Home Health Data

| | Pierce County | Washington State | National |
|--------------------------------------|----------------------|-------------------------|-----------------|
| Medicare Home Health Patients Served | 3,984 | 40,410 | 3,455,157 |
| Medicare Fee-For-Service Population | 80,898 | 703,455 | 34,722,944 |
| Medicare Home Health Utilization | 4.5% | 5.7% | 10.0% |

[Source: Application, pg 34]

Using the information from the table above, Brookdale concluded Pierce County is not adequately served compared to both the Washington State and national averages, indicating an unmet need. [Source: Application, pg 34] Further, Brookdale stated it does not plan to solicit patients that are currently served by existing providers; rather, Brookdale simply seeks regulatory approval to compete in Pierce County. [Source: Applicant Rebuttal, page 1] Table 3 above shows differences in home health use rates but does not necessarily show unmet need.

On September 27, 2010, the department conducted a public hearing on the Brookdale application. Below is a summary of the comments received:

- “While there are a number of home health providers in Pierce County, unfortunately, there are many times home health services are either difficult to obtain, or the home health agency is unable to implement their services in a timely manner”. [Source: Letter Rajiv Nagaich, Attorney and Counselor-at-Law]
- “There is no quantitative need for additional providers at this time”... “Between MGSHH&H and other existing providers in the area, patients are receiving the highest care possible in a timely and coordinated manner. We strongly urge the Department to deny the request for an additional home health agency in Pierce County.”[Source: MultiCare Health Systems, public comments received September 27, 2010]
- “Having personally cared for many patients in Pierce County, I can assure you there is a definite need to provide further resources for Home Health Care. Currently there is often a 3-5 day delay in initiating care or in responding in a timely manner to new requests for provision of care.” [Source: Letter from Karen J. Fahey, MD]

In addition to the comments received at the public hearing, two home health agencies included comments related to this sub-criterion in their responses to the department's survey. Those comments are summarized below.

Wesley Home At Home [Source: Survey responses dated August 31, 2010]

- There is little need for additional capacity for Medicare clients.
- Wesley Home will recruit staff as needed to meet any potential demand for services.

Puget Sound Home Health [Source: Survey responses received Augusts 27, 2010]

- Existing home health agencies in Pierce County are able to meet existing and future need.
- We can meet demand by simply hiring new nurses and therapist without driving up costs. Any new agency will drive up costs by destabilizing personnel markets which will drive up wages and drive up total costs for the consumer and state programs.

Brookdale responded to these statements by the existing agencies by stating:

“According to the survey responses submitted by existing Pierce County providers, there is presently a need for additional therapists and services in Pierce County: Puget Sound Home Health LLC, which did not submit comments at the public hearing or during the public comment period, states “that RNs, PTs, OTs are in short supply in Pierce County”; Gentiva, (which did not submit public testimony or comments) , likewise states that PTs are occasionally not available and notes that they refer to other agencies when they do not have the resources to handle referral. Wesley Home At Home, LLC (which did not submit public testimony or comments) response (sic) also states that RN’s, PT’s and OT’s are all difficult to hire and that in the past year they have seen almost 50% growth in needed services. Thus, the existing providers recognized the need for additional staff resources, which Brookdale has the unique ability to recruit, and the increasing need for home health services in Pierce County”. [Source: Applicant Rebuttal, pg 1]

Department's Evaluation

It is true that existing providers could hire additional staff as demand for their services increases. The business decision to expand services at some future date is not relevant to whether existing providers are available and accessible at the time of application. Only in rare circumstances is it reasonable to apply an artificially inflated capacity to exiting providers when determining a community's need. None of those circumstances exist in this application. It is also unreasonable to rely solely on existing providers hiring additional staff to meet all future projected need.

To further evaluate the availability of the existing providers, the department looked at their reported current patient volumes and agency capacities. The department identified a total of 14 home health care providers serving Pierce County based on documentation obtained from the department's internal licensing database and the Pierce County Human Services website. Of the 14 agencies, 7 are “licensed only” agencies and 7 are Medicare certified agencies.

Table 4 below identifies each of the agencies.

**Table4
Pierce County Home Health Agencies**

| Licensed Only Agencies | |
|--|---|
| Advance Healthcare | Catholic Community Services of Western Washington |
| Gentiva Health Services (Private pay) | Northwest Medical Specialties, PLLC |
| On Your Own | ResCare HomeCare |
| Right at Home In Home Care & Assistance (Pieta PC) | |
| Medicare Certified Agencies | |
| Gentiva Certified Healthcare Corp | Puget Sound Home Health |
| Group Health Home and Community Services | Signature Home Health |
| LifeCare at Home of Washington | Wesley Homes at Home, LLC |
| MultiCare Good Samaritan | |

These agencies were sent a utilization survey asking for 2009 use data. Four agencies serving Pierce County returned completed surveys⁷. Those agencies were Gentiva Certified Healthcare Corp, Puget Sound Home Health, Wesley Homes at Home, LLC, and MultiCare Good Samaritan. Survey responses show that existing Pierce County home health agencies provided a total of 102,026 patient visits in year 2009. [Source: Department 2010 survey responses] Table 5 below is a summary of the survey responses.

**Table 5
Summary Home Health Agencies Patients Visits Year 2009**

| Name | Total Visits |
|-----------------------------------|---------------------|
| Gentiva Certified Healthcare Corp | 49,032 |
| MultiCare Good Samaritan | 25,797 |
| Puget Sound Home Health | 24,104 |
| Wesley Homes At Homes | 3,093 |
| Total | 102,026 |

In addition to the information provided in the above table, each of the agencies reported their Average Daily Census (ADC) and the agency's current maximum capacity based on current staffing. That information is presented in Table 6 on the following page.

⁷ When an agency does not return a use survey, the department concludes that agency has made the determination that the proposed project will either not impact them or any impact the proposed new agency will have is not significant.

**Table 6
Summary-Home Health Agencies ADC and Maximum Capacity**

| Name | ADC | Maximum Capacity | Department Calculated Occupancy |
|--------------------------|-----|------------------|---------------------------------|
| Gentiva Health Services | 330 | 380 | 86.8% |
| MultiCare Good Samaritan | 700 | 750 | 93.3% |
| Puget Sound Home Health | 250 | 280 | 89.3% |
| Wesley Homes At Homes | 135 | 150 | 90% |

These figures suggest that these agencies are nearing their capacity based on their current staffing. The department also reviewed the potential number of additional patients and number of visits these agencies could serve with existing staff. Table 7 is a summary of that information.

**Table 7
Summary-Additional Patients to Reach Maximum Capacity and Estimated No of Visits**

| Name | No. of Patients to Reach Capacity | Average No. of Visits Per Patient Reported in Surveys | Estimated No. of Visits (rounded) |
|--------------------------|-----------------------------------|---|-----------------------------------|
| Gentiva Health Services | 50 | 17 | 850 |
| MultiCare Good Samaritan | 50 | 13.4 | 670 |
| Puget Sound Home Health | 30 | 13.07 | 392 |
| Wesley Homes At Homes | 15 | 11.6 | 174 |
| Total | 145 | | 2,086 |

Table 7 shows that with existing staffing, the current home health agencies could provide an additional 2,086 visits in Pierce County. As shown earlier in this need evaluation, 163,331 visits were projected for 2009. Including all the visits reported by the existing agencies in their survey responses (102,026) and those additional estimated visits to reach capacity (2,086) the total visits the existing agencies could provide with current staffing is 104,112 visits. This leaves a potential unmet need of 59,219 visits in 2009.

In its application, Brookdale projected it would provide the following number of visits in its first three years of operation.

| Year 1-2011 | Year 2-2012 | Year 3-2013 |
|-------------|-------------|-------------|
| 2,152 | 4,212 | 6,306 |

The department assumed the existing home health agencies would provide at least the same number of visits in 2011, 2012, and 2013 as they did in 2009. To this number the department added Brookdale's projected visits for its first three years of operation. The total of these

two numbers was then subtracted from the SHP projected visits for these same years. The results show that there are over 65,000 visits per year projected as remaining un-served.

Table 8
Projected Home Health Visits 2011 - 2013

| Year | Existing Agency Visits | Brookdale Projected Visits | Total Visits | SHP Projected Visits | Additional Un-served Visits |
|-------------|-------------------------------|-----------------------------------|---------------------|-----------------------------|------------------------------------|
| 2011 | 102,026 | 2,152 | 104,178 | 170,152 | 65,974 |
| 2012 | 102,026 | 4,212 | 106,238 | 174,181 | 67,943 |
| 2013 | 102,026 | 6,306 | 108,332 | 178,362 | 70,030 |

Based on the department’s evaluation the department concludes that existing providers at their current capacity will not be sufficiently available to meet the projected need. **This sub-criterion is met.**

- (2) All residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services.

The admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility and any assurances regarding access to treatment. The applicant states:

“ISCHH will not discriminate against any person on the basis of race, color, national origin, religion or creed, disability, age, ability to pay, or status with regard to public assistance in admission, treatment, or participation in its programs, services and activities. This is in compliance with 45 CFR Parts 80, 84, and 91, respectively. In addition, ISCHH will not discriminate against any person on the basis of sexual orientation, marital status, veteran status, or creed.” [emphasis added] [Source: Application, pgs 11 and 46]

Brookdale is an existing provider of home health services in other states. In Washington, Brookdale provides therapy staffing services for Gentiva through a contractual arrangement. To demonstrate compliance with this sub-criterion, Brookdale provided two documents. One was a copy of its admission policy from ISC Home Health Policy and Procedure Manual, revised October 1, 2007. [Source: Application, Appendix 5] The second was information contained in the Innovative Senior Care by Brookdale Home Care Patient Admission Booklet. [Source: Application, Appendix 6]

The department reviewed this material and found the following:

- The Admission policy contained in the ISC Home Health Policy and Procedure Manual states:
“ISCHH will not discriminate against any person on the basis of race, color, national origin, disability, age, or status with regard to public assistance in admission, treatment, or participation in its programs, services and activities. This is in compliance with 45 CFR Parts 80, 84, and 91, respectively. In

addition, ISCHH will not discriminate against any person on the basis of sexual orientation, marital status, veteran status, or creed.”

- The Patient Admission Booklet provided in the application was developed for North Carolina. References throughout this document do not relate to Washington State. The booklet however, includes the same non-discrimination statement as the admission policy in ISC’s procedure manual.

Contrary to the applicant’s statement made on pages 11 and 46 of its application, the department does not find any statement in the applicant’s adopted admission policy (Appendix 5) or patient admission booklet (Appendix 6) that states it does not discriminate on the basis of the ability to pay. If this project is approved, a condition is necessary that Brookdale’s adopted admission policy and patient admission booklet used in Washington State include as the non-discrimination policy the statement made on page 46 of its application. Additionally a condition requiring the patient admission booklet be revised to provide Washington State residents with the appropriate references and contact information is also necessary.

To determine whether low-income residents would have access to the proposed services, the department uses the facility’s Medicaid eligibility or contracting with Medicaid as the measure to make that determination. Brookdale’s admission policy from its ISC Home Health Policy and Procedure Manual states:

“ISCHH will not discriminate against any person on the basis of race, color, national origin, disability, age, or status with regard to public assistance in admission, treatment, or participation in its programs, services and activities.”

[emphasis added] [Source: Application, Appendix 5]

The department also reviewed the applicant’s pro forma financial information for inclusion of Medicaid revenue and contractual allowances. Medicaid revenue and contractual allowances were included. [Source: Screening Responses, Attachment C] The department concludes Medicaid patients will have access to Brookdale’s home health services.

To determine whether the elderly would have access or continue to have access to the proposed services, the department uses Medicare certification as the measure to make that determination. The purpose of this application by Brookdale is to be granted a CN so it can provide home health care services to Medicare patients. Information provided in the application demonstrates that Brookdale intends to obtain Medicare certification for this agency if the project is approved. Brookdale’s pro-forma financial information includes Medicare revenues. [Source: Screening Responses, Attachment C] The department concludes Medicare patients will have access to Brookdale’s home health services.

A facility’s charity care policy should confirm that all residents of the service area including low-income, racial and ethnic minorities, handicapped and other underserved groups have, or would have, access to healthcare services of the applicant. The policy should also include the process one must use to access charity care at the facility.

Brookdale states “all patients referred for care will be served (also, please refer to the policies and procedures contained in Appendix 5).” Brookdale also states it intends to provide indigent/charity care at 2% of gross charges. [Source: Application, pg 46] To demonstrate compliance with this criterion, Brookdale included a page within the application entitled ISC Home Health Indigent/Charity Care Policy. The stated purpose of this policy is:

“To define the processes and required approvals necessary to engage in the provision of services to indigent clients.”

“The agency will provide care to all clients, including, Medicaid and Medicare, regardless of the client’s ability to pay. Indigent care is defined as all unpaid charges for services to clients whose family income level was equal to or less than one-hundred-fifty (150) percent of the most Federal Poverty Guidelines, excluding those unpaid charges classified as contractual allowances for Medicare or other free care such as courtesy allowances, policy discounts, and administrative adjustments.” [Source: Application, Page 48]

This same document includes guidelines/procedures to be applied. Below are elements of these guidelines/procedures that deserve highlighting.

“1. If there is no third-party source for reimbursement of services, the client (or his/her guarantor) is responsible for payment.

7. It is anticipated that some clients will exhaust their benefits from their payment source prior to the time when home health care is no longer needed. The Medical Social Worker will help these clients to secure an alternative payment source, if available. If no alternative is available, these clients will be reclassified as indigent/charity, as appropriate. It will be the policy of the Company to continue to provide services to these clients as long as care is warranted.

8. In addition to the agency criteria for admission, which address appropriateness of home health care and staff safety, the following guidelines are applied when providing uncompensated care to clients:

a. The client and/or family accept the program of care in the home and agree to learn to independently manage health care needs.

b. The client/family provides all supplies and pharmaceuticals necessary to manage health care needs.

c. Referrals to the agency for uncompensated care must include a Social Work referral.

d. Cases accepted outside of the above guidelines must be approved in advance by the Director of Client Care, or the agency Administrator.”

[Source: Application, Page 48]

The department notes this Indigent/Charity Care Policy is neither represented as a draft policy to be adopted by Brookdale pending application approval nor is it represented as Brookdale’s current adopted charity care policy. Additionally, the department does not find a copy of the Charity Care policy within the ISC Home Health Policy and Procedure Manual or patient admission booklet. The department compared the charity care purpose and

guidelines/procedures with the adopted admission policy, patient admission process, and special instructions contained in the ISC Home Health Policy and Procedure Manual. Key elements from the Policy and Procedure Manual are listed below:

ISC Home Health Policy and Procedure Manual

Admission Policy

Policy

“ISCHH will not discriminate against any person on the basis of race, color, national origin, disability, age, or status with regard to public assistance in admission, treatment, or participation in its programs, services and activities. This is in compliance with 45 CFR Parts 80, 84, and 91, respectively. In addition, ISCHH will not discriminate against any person on the basis of sexual orientation, marital status, veteran status, or creed”.

Purpose

“To provide guidelines for accepting patients for home health care services to be provided in the patient’s place of residence that are clear to the home care staff, the medical and lay community, and that abide by state/federal guidelines.”

Special Instructions

“Criteria for Patient Admission:

9. The patient must be entitled to receive covered home health services under the Health Insurance of the Aged Act, Title XVIII and/or Title XIX of the Social Security Act (Medicare and Medicaid), or have other funding sources, i.e. private insurance, HMO, or ability to self pay.”

Patient Admission Process

Policy

“Services shall be provided to all persons, without regard to race, color, creed, sex, national origin, handicap, sexual orientation, age, marital status, status with regard to public assistance or veteran status....”

Special Instructions

“1.g. The patient has the financial ability to fund the home care services provided, if no other funding source is available.”

“10.g. Advise the patient/caregiver of the charges and billing procedures and, to the extent possible, the anticipated insurance coverage, the patient/caregiver financial liability, and other methods of payment.”

In its comparison, the department found inconsistencies between the admission policy and patient admission process included in Brookdale’s policy and procedure manual and the indigent/charity care policy and its guidelines/procedures. The adopted admission policy and special instructions—criteria for patient admission are silent on the existence of a charity care policy and the guidelines/procedures for that policy. This omission along with the

inconsistencies between these documents may result in patients being denied care. Therefore, if this project is approved, a condition is necessary that Brookdale's adopted charity care policy be included in any home health policy and procedure manual used in Washington State.

The department evaluated Brookdale's assertion that it will not discriminate against patients based on their ability to pay in admissions, treatment, or participation in its programs, services and activities. [Source: Application, pg 46]

The focus of this portion of the evaluation is on the guidelines/procedures outlined in the Indigent/Charity Care Policy. In particular on item number 8. Number 8 states:

“8. In addition to the agency criteria for admission, which address appropriateness of home health care and staff safety, the following guidelines are applied when providing uncompensated care to clients:

- a. The client and/or family accept the program of care in the home and agree to learn to independently manage health care needs.
- b. The client/family provides all supplies and pharmaceuticals necessary to manage health care needs.
- c. Referrals to the agency for uncompensated care must include a Social Work referral.
- d. Cases accepted outside of the above guidelines must be approved in advance by the Director of Client Care, or the agency Administrator.”

[Source: Application, Page 48] Emphasis added.

These specific guidelines are applied to only uncompensated/charity care patients. If these patients don't have the financial means to pay for the home health services, it is also unlikely they have the means to pay for all supplies and pharmaceuticals necessary during their home health treatment. These patients are also the only patients that must agree to learn to independently manage health care needs. Based on its evaluation of these materials, the department cannot validate Brookdale's non-discrimination statement made within its application concerning those patients receiving uncompensated/charity care. Therefore, if this project is approved, a condition is necessary that Brookdale eliminate from its charity care policy those requirements that are exclusively applied to patients receiving uncompensated/charity care.

The department also reviewed Brookdale's financial information for information about its intent to provide charity. Brookdale included a 'charity care' line item as a deduction from revenue within the pro forma financial documents. [Source: Screening Responses, Attachment C]

Based on the documents provided in the application and with the conditions in the conclusion section of this analysis the department concludes that all residents, including low income, racial and ethnic minorities, handicapped, and other under-served groups would have access to the services provided by the applicant. **This sub-criterion is met.**

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

Based on the source information reviewed, and the applicant's agreement to the condition identified in the 'conclusion' section of this evaluation, the department determines that the applicant 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.

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.

To determine if the proposed home health agency would meet its immediate and long range operating costs, the department reviewed the assumptions used by Brookdale to prepare its pro-forma income statements for the proposed agency first full three years of operation. [Source: Screening Responses, Attachment C]

The assumptions used by Brookdale as the basis for projecting utilization and the revenue it expects are summarized below. [Source: Application, Appendix 8]

- All salary and wages are based upon the Bureau of Labor and Statistic data for 2010. Salary and wages were increased from years 2 and 3.
- All fringe benefits are projected at 16.5% which is the applicant's benefit rate management.
- FTEs were computed using Medicare guidelines for FTE computations, for example, hours worked divided by 2,080 hours.
- Costs per visit were computed using accumulated cost (cost of services rendered) as a basis for the cost step down of overhead. All administrative and general expenses are spread by month evenly as they represent fixed costs.

As stated above, the assumptions relied on by Brookdale to project its finances is dependent upon various source of information. The department concludes the assumptions relied on by Brookdale to show financial viability appears reasonable.

Brookdale's projected revenue, expenses, and net income per patient visit for full calendar years 2011 through 2013 is summarized in Table 9 on the following page. [Source: Application, Page 41 and Screening Responses, Attachment C]

Table 9
ISCHH's Projected Financial Data Years 2010 through 2013

| | 2011 | 2012 | 2013 |
|--------------------------------------|-------------|-------------|-------------|
| # of Home Health Visits Per Year | 2,152 | 4,212 | 6,306 |
| # of Patients | 138 | 269 | 403 |
| # of Visit's Per Patient | 15 | 15 | 15 |
| Net Revenue | \$369,072 | \$720,791 | \$1,074,889 |
| Total Expenses | \$485,399 | \$766,969 | \$1,027,222 |
| Net Profit /(Loss) | (\$116,327) | (\$46,179) | \$47,666 |
| Net Revenue Patient Per Visit | \$171.50 | \$171.13 | \$170.45 |
| Operating Expenses Per Patient Visit | \$225.56 | \$182.09 | \$162.90 |
| Net Profit Per Patient Visit | (\$54.05) | (\$10.96) | \$7.56 |

As shown in the table above, at the projected volumes, Brookdale would be operating at a loss for the first two years of operation. Starting in year three it would be operating at a slight profit.

Brookdale stated the agency would be located on the campus of The Villas at Union Park. The Villas is a Brookdale senior independent living community and one of 13 Brookdale communities in Washington State. A copy of the draft lease agreement between Brookdale Senior Living Communities, Inc. d/b/a The Villas at Union Park (landlord) and ARC Therapy Services, LLC d/b/a Innovative Senior Care Home Health (tenant) was provided. [Source: Application, Appendix 3] The term of the lease is for one year and does not include any options to renew the lease through the third year of operation⁸. The rent amount for year one in the expense summary is consistent with the stated amount in the draft agreement. If approved, the department would include a condition requiring Brookdale to provide a copy of the executed lease agreement for review and approval that is valid thru the third year of operation and include any annual adjustments in monthly rental rates.

Brookdale also provided a copy of its executed Medical Director's agreement. The medical director expenses are shown in the pro forma financial statements. [Source: Application, Appendix 2]

Based on the source information reviewed and with the condition stated in the conclusion section of this analysis, department concludes that the immediate and long range capital and operating costs of the project can be met. **This sub-criterion is 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

⁸ Application requirements II. Project Description I.

and expertise the department compared the proposed project’s costs with those previously considered by the department.

Brookdale identified the capital expenditure associated with this project to be \$118,217. [Source: Application, Page 2] The applicant states:

“No negative impact is expected for capital cost as the costs are minor and are treated in accordance with Medicare guidelines for their treatment. As volumes increase, costs tend to go down as evidenced by Brookdale’s Years 2 and 3 Pro-Forma.” [Source: Application, Page 50]

In developing its application, Brookdale evaluated the payer breakdown of existing providers to determine a reasonable payer mix for the new home health agency. [Source: Application, Page 59] Using that information Brookdale expects the majority of its revenue to come from Medicare. Medicare pays for home health care on a perspective payment system (PPS) basis. Table 10 below shows the expected payer mix for the home health agency:

**Table 10
Brookdale Home Health Agency Payer Mix**

| Payer | Payer Source Distribution |
|-------------------------------------|---------------------------|
| Medicare | 62.06% |
| Medicaid | 10% |
| Indigent/ Charity Care ⁹ | 2% |
| Commercial Ins./Private Pay | 25.94% |
| Total | 100% |

Brookdale expects its payer source for the first three years of operation will be 62.06% Medicare, 10% Medicaid and 25.94% private pay. [Source: Application, Page 59] The proposed project is not expected to have any impact on the operating costs and charges for home health services in the planning area because it already provides some core services expected of a Medicare certified home health agency.

Based on the information reviewed, the department concludes that the costs of this project will probably not result in an unreasonable impact to the costs and charges for health care services within the services area. **This sub-criterion is 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.

⁹ Indigent/Charity care is not a Payer Source. It was presented in the application to demonstrate Brookdale’s commitment to providing indigent/charity care.

Brookdale provided the following capital expenditure breakdown for the proposed project.
 [Source: Application, Page 50]

Table 11
ISCHH projected Capital Cost

| Item | Cost | % of Total |
|----------------------------|------------------|-------------------|
| Fixed & Moveable Equipment | \$20,890 | 17.7% |
| Application fees | \$46,001 | 38.9% |
| Start Up Cost | \$44,556 | 37.7% |
| Office Furniture | \$6,770 | 5.7% |
| Total Project Cost | \$118,217 | 100% |

Brookdale states the source of financing for the project is the applicant’s cash reserves. The department received a letter of financial commitment from the applicant’s chief financial officer. The letter states the applicant maintains an account with Bank of America with sufficient funds available for Innovative Senior Care’s home health project in Pierce County.
 [Source: Application, Exhibit 4]

Based on the information, the department concludes the proposed source of funding for this project is appropriate. **This sub-criterion is met.**

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

Based on the source information reviewed the department determines the applicant has not met the structure and process of care criteria in WAC 246-310-230.

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

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.

Brookdale currently employs therapy staff because of its therapy contract with Gentiva. Therefore, Brookdale expects to hire minimal staff. Table 12 on the following page summarizes Brookdale’s proposed FTEs for years 2011 through 2013. [Source: Application, Page 53 and 54]

Table 12
ISCHH Proposed FTEs Years 2011-2013

| | Current Staff | Year 2011 | Year 2012 | Year 2013 |
|-----------------------|----------------------|------------------|------------------|------------------|
| Skilled Nursing | 0.00 | 0.73 | 1.42 | 2.12 |
| Physical Therapy | 1.50 | 0.57 | 1.11 | 1.66 |
| Speech Therapy | 1.00 | 0.03 | 0.06 | 0.09 |
| Occupational Therapy | 1.00 | 0.14 | 0.28 | 0.42 |
| Medical Social Worker | 0.00 | 0.03 | 0.06 | 0.10 |
| Home Health Aide | 0.00 | 0.10 | 0.21 | 0.31 |
| Administrator | 0.00 | 0.50 | 0.50 | 0.50 |
| Director of Nursing | 0.00 | 0.50 | 0.88 | 1.00 |
| Medical Director | 0.00 | 0.01 | 0.01 | 0.01 |
| Case Manager | 0.00 | 0.50 | 0.88 | 1.00 |
| Other Admin Staff | 0.00 | 1.00 | 1.50 | 2.50 |
| Total FTE's | 3.50 | 4.11 | 6.91 | 9.71 |

To further demonstrate compliance with this sub-criterion, Brookdale provided the following statements:

“ISCHH does not anticipate any difficulty in the recruitment of professional staff. Initially, the current Administrator at the Villas at Union Park will also serve as the Administrator of the proposed home health agency. With the exception of the Medical Social Worker, which is currently available to work on PRN basis, other therapists are in place as full time employees.”

[Source: Application, Page 64]

Brookdale identified Milan S. Moore, MD as the medical director for the proposed home health agency and provided an executed medical director agreement between ISCHH and Dr. Moore. The medical director agreement outlines the medical director’s roles and responsibilities and identifies the annual compensation for services. [Source: Application, Appendix 2]

Based on the source information reviewed department concludes that sufficient staffing is available or can be recruited. **This sub-criterion is met.**

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

WAC 246-310 does not contain specific WAC 246-310-230(2) 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 relationships, ancillary and support services should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials contained in the application.

Brookdale states it would seek working agreements with a broad spectrum of health care providers that serve patients within the proposed planning area. [Source: Application, Page 69]

Brookdale states there are 67 listings for nutritionists in the Tacoma yellow pages. Accessing them should pose no problem. Brookdale further states there are 59 listings for home medical equipment in the Tacoma yellow pages. Again accessing them is not anticipated to pose a problem. If this project is approved, the department would include a condition requiring Brookdale to provide a listing of the healthcare providers with whom it has established ancillary and support agreements.

Based on the evaluation of supporting documents provided and with the condition state in the “conclusion” section, the department concludes **this sub-criterion is met.**

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

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.

As stated in the project description section of this evaluation, Brookdale owns or operates approximately 549 senior or retirement living communities in 35 states. As part of its review, the department must conclude that the services to be provided at the proposed home health agency would be provided in a manner that ensures safe and adequate care to the public.¹⁰ To accomplish this, the department surveyed those states where Brookdale operates any type of health care facility such as home health, assisted living communities or boarding homes.¹¹ Responses received by the department from those states revealed no substantial non-compliance issues regarding the applicant or its subsidiaries. [Source: Licensing and/or survey data provided by out of state health care survey programs]

Brookdale has 12 senior communities within Washington. Eleven of the communities are licensed as boarding homes through the Department of Social and Health Services (DSHS). These licensed boarding homes are Clare Bridge at Shoreline View, Park Place, Clare Bridge of Lynnwood, Clare Bridge of Olympia, Wynwood of Allenmore, Clare Bridge of Puyallup, Clare Bridge of Spokane, Clare Bridge of Silver Lake, Wynwood of Columbia Edgewater, Wynwood of Yakima, and Foundation House of Federal Way. Between January 2010 and November 2010, three of the eleven boarding homes were cited for quality of care issues. The table on the following page identifies those facilities, date cited, the care issues cited, and any fines or other action taken. [Source: DSHS boarding home website]

¹⁰ WAC 246-310-230(5)

¹¹ Arizona, Ohio, Colorado, Tennessee, Illinois, Michigan, Kansas, Missouri, and Kentucky responded to the department’s survey.

| Facility | Care Issues | DSHS Action Taken |
|---------------------------------|---|--|
| Clare Bridge of Lynnwood | | |
| 08/23/2010 | <p>Failure to report to the department as required when un-witnessed injuries occurred in areas not generally vulnerable to trauma for two residents.</p> <p>This was a repeat or uncorrected deficiency previously cited on December 17, 2009 and August 5, 2008.</p> <p>Failure to conduct and/or do a thorough investigation to rule out abuse/neglect and failed to determine causative factors when injuries occurred for four residents.</p> <p>This was a repeat or uncorrected deficiency previously cited on August 5, 2008.</p> | <p>Fined \$200</p> <p>Fined \$400</p> |
| 11/01/2010 | <p>Failed to report to the department when a resident had un-witnessed injuries requiring medical treatment.</p> <p>Failed to conduct a thorough investigation to rule out abuse/neglect and failed to determine causative factors when injuries occurred for residents</p> | <p>Fined \$100</p> <p>Fined \$200</p> |
| Clare Bridge of Olympia | | |
| 04/30/2010 | <p>Possible violation related to:</p> <ul style="list-style-type: none"> • Non-availability of medications • Prescribed medication authorizations. • Providing sufficient, trained staff. • Intermittent nursing services systems. • Criminal history disclosure and background checks. | <p>Temporary Stop Placement prohibiting all admissions to the boarding home pending completion of investigation.</p> |
| 06/29/2010 | Follow-up inspection | <p>Stop Placement Lifted</p> |
| 08/23/2010 | Failure to ensure three caregivers washed their hands prior to and following providing care to residents. | Fined \$100 |
| Wynwood of Allenmore | | |
| 08/23/2010 | Failed to ensure all residents that receive medication assistance or administration are assured a safe medication system and that medications are given as ordered. | Fined \$400 |

According to Boarding Home enforcement staff at Resident Care Services—Department of Social and Health Services, the majority of the state’s 553 boarding homes never have fines imposed. The department took a more in-depth look at seven counties where Brookdale has

boarding homes to compare Brookdale's operation in those counties. These counties are Benton, King, Pierce, Snohomish, Spokane, Thurston, and Yakima. In these counties there are a total of 360 boarding homes. Of those boarding homes 8.61% had fines imposed, 3.06% had stop placements, and 2.50% had conditions placed on their licenses during this same time period. By comparison, 27.27% of Brookdale's boarding homes received fines and 9.09% had a stop placement. The department concludes it would be unreasonable to grant a Certificate of Need to expand Brookdale's services into home health when it currently is having difficulty in meeting the licensing or care standards at the boarding homes it operates in Washington.

The Department of Health's Medical Quality Assurance Commission establishes and monitors qualifications for licensure, and consistently enforces practice standards and professional conduct for physicians and physician assistants¹². A compliance history review for Dr. Milan S Moore, the medical director for the home health agency, revealed no recorded sanctions. [Compliance history provided by Medical Quality Assurance Commission]

After reviewing the compliance history of Brookdale, the department concludes there is not reasonable assurance that Brookdale would operate in conformance with applicable state and federal licensing and certification requirements. **This sub-criterion is not met.**

- (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 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.

To show an appropriate relationship with healthcare providers in the community, the applicant states:

“Working agreements will be sought with a broad spectrum of health care providers that serve patients within the proposed service area to help promote continuity of care. Contacts will be established with physicians, hospital, discharge planners, long term care facilities, other retirement communities, HIV/AIDS councils, patient advocacy groups, the County Health Department, adult congregate living facilities, and other organizations.” [Source: Application, Page 69]

Based on the source information provided above, the department concludes that approval of this project would not cause unwarranted fragmentation of the existing healthcare system. **This sub-criterion is met.**

¹² <http://www.doh.wa.gov/hsqa/MQAC/Default.htm>

- (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 evaluated in sub-section (3) above, and based on that evaluation; the department concludes that **this sub-criterion is not met.**

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

Based on the source information reviewed the department concludes Brookdale Senior Living, Inc. d/b/a Innovative Senior 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.

WAC 246-310 does not contain specific WAC 246-310-240(1) 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 superior alternatives, in terms of cost, efficiency, or effectiveness should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials contained in the application.

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 the applicable 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.

Step One

For this project, Brookdale met the review criteria under WAC 246-310-210 and 220. In its evaluation of WAC 246-310-230, the department concluded Brookdale's application did not meet sub-criterion (3) and (5) as they relate 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.. Therefore, the department concludes the application submitted by Brookdale is not the superior alternative. **This sub-criterion is not met.**

Step Two

Before submitting this application, Brookdale considered and rejected two options, which are discussed below.

Status Quo

The applicant asserts it rejected this option because a personal care services program without the Medicare certified home agency component cannot provide all of the services necessary for the patient.

Acquire an existing Medicare certified agency Pierce County

This option was considered, but none were available for sale.

In step one of this analysis of Cost Containment, the department concluded the application submitted by Brookdale was not the best available alternative because the application had failed WAC 246-310-230(3) and (5). Therefore, further evaluation of step two is unnecessary.

Step Three

For this project, only Brookdale submitted an application requesting to establish a Medicare certified and Medicaid eligible home health agency in Pierce County. As a result, this step is not applicable to this project.

APPENDIX A

**State Health Plan Home Health Methodology-Pierce County
Brookdale Senior Living Inc (10-35)**

| Population by age group by year | | | | | | | |
|---------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| Total County Population | 779,031 | 788,580 | 795,402 | 808,940 | 819,471 | 830,018 | 840,557 |
| Population 0-64 | 692,918 | 700,208 | 703,061 | 712,631 | 719,202 | 725,772 | 732,342 |
| Population 65-79 | | | | | | | |
| 65-69 | 27,789 | 29,175 | 31,172 | 33,169 | 35,166 | 37,163 | 39,160 |
| 70-74 | 19,666 | 20,053 | 21,330 | 22,607 | 23,883 | 25,160 | 26,437 |
| 75-79 | 15,223 | 15,281 | 15,632 | 15,983 | 16,334 | 16,685 | 17,036 |
| Total Population 65-79 | 62,678 | 64,509 | 68,134 | 71,759 | 75,383 | 79,008 | 82,633 |
| Population 80 + | | | | | | | |
| 80-84 | 11,489 | 11,500 | 11,562 | 11,623 | 11,685 | 11,746 | 11,808 |
| 85+ | 11,948 | 12,363 | 12,645 | 12,927 | 13,201 | 13,492 | 13,774 |
| Total Population 80+ | 23,437 | 23,863 | 24,207 | 24,550 | 24,886 | 25,238 | 25,582 |
| Pop. Calc. test back | 779,033 | 788,580 | 795,402 | 808,940 | 819,471 | 830,018 | 840,557 |

**State Health Plan Home Health Methodology-Pierce County
Brookdale Senior Living, Inc (10-35)**

| Step 1-Population by Age Cohort | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| 0-64 | 692,918 | 700,208 | 703,061 | 712,631 | 719,202 | 725,772 | 732,342 |
| 65-79 | 62,678 | 64,509 | 68,134 | 71,759 | 75,383 | 79,008 | 82,633 |
| 80+ | 23,437 | 23,863 | 24,207 | 24,550 | 24,886 | 25,238 | 25,582 |
| Step 2-Projected Home Health Patients by Age Cohort | | | | | | | |
| 0-64 X 0.005 | 3,464.59 | 3,501.04 | 3,515.31 | 3,563.16 | 3,596.01 | 3,628.86 | 3,661.71 |
| 65-79 X 0.044 | 2,757.83 | 2,838.40 | 2,997.90 | 3,157.40 | 3,316.85 | 3,476.35 | 3,635.85 |
| 80+ X 0.183 | 4,288.97 | 4,366.93 | 4,429.88 | 4,492.65 | 4,554.14 | 4,618.55 | 4,681.51 |
| Step 3-Projected Home Health visits by age cohort | | | | | | | |
| 0-64 | 3,464.59 | 3,501.04 | 3,515.31 | 3,563.16 | 3,596.01 | 3,628.86 | 3,661.71 |
| Multiplier | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Subtotal 0-64 | 34,645.90 | 35,010.40 | 35,153.05 | 35,631.55 | 35,960.10 | 36,288.60 | 36,617.10 |
| 65-79 | | | | | | | |
| Multiplier | 14 | 14 | 14 | 14 | 14 | 14 | 14 |
| Subtotal 65-79 | 38,609.65 | 39,737.54 | 41,970.54 | 44,203.54 | 46,435.93 | 48,668.93 | 50,901.93 |
| 80+ | | | | | | | |
| Multiplier | 21 | 21 | 21 | 21 | 21 | 21 | 21 |
| Subtotal 80+ | 90,068.39 | 91,705.51 | 93,027.50 | 94,345.65 | 95,636.90 | 96,989.63 | 98,311.63 |
| Total Projected Home Health Visits | 163,323.94 | 166,453.45 | 170,151.10 | 174,180.74 | 178,032.93 | 181,947.16 | 185,830.65 |
| Step 4-Gross Need (Step 3 Total Visits /10,000) | | | | | | | |
| | 16.33 | 16.65 | 17.02 | 17.42 | 17.80 | 18.19 | 18.58 |
| Step 5- No. of Home Health Agencies | | | | | | | |
| | 14 | 14 | 14 | 14 | 14 | 14 | 14 |
| Step 6 Net Need (Per Method, Fractions are rounded down) | | | | | | | |
| | 2 | 2 | 3 | 3 | 3 | 4 | 4 |

A negative number means there is a surplus